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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 2/13/2021
Bill No: HB213

Sponsor: Reps. Candie G. Sweetser,
Rebecca Dow, Martin R.
Zamora, & Roger E. Montoya
Short Title: SCHOOL DISTRICT SPECIAL
ED SERVICES FUND

Agency Name and Code PED - 924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB130, School Gifted Education Requirements; HB222, Special Education Ombud Act; HB266, Special Education Teacher Licenses; SB289, Special Ed Division of Ed Dept.; and SB346, Special Ed Ombud Act.

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 213 (HB213) proposes to create a temporary provision that would require each school district to maintain a special education services fund (SESF) and allocate to that fund, on a monthly basis, a percentage of the district’s special education fund received through the state equalization guarantee (SEG) formula. The percentage allocated varies depending on whether the school district is operating in a hybrid model (25%) or whether the school district is not offering in-person learning and is not providing in-person special education services (50%). Money in the SESF would be required to provide assistance and reimbursement to families of special education students with individualized education programs (IEPs) who have paid for special education services out of pocket and whose school districts have not provided services to the special education student.

Additionally under HB213, a family seeking these funds would be required to provide the school district with detailed receipts of the services received by the student and the costs of the services as well as a contract of services from the individual or organization providing the special education services to the student. Upon receipt of the documentation required, the school district would be required to pay the family for services received. The school district would not be required to pay the family for any services received that fall outside of the scope of the student’s IEP. Finally, the school district would not be required to pay the family more than the amount the student generated from the special education program unit.

HB213 would be effective from the date of the act until the termination of the state of public health emergency related to the coronavirus disease 2019 as declared by the Governor.

FISCAL IMPLICATIONS

HB213 does not contain an appropriation.

SIGNIFICANT ISSUES

The federal Individuals with Disabilities Education Act (IDEA) requires, with few exceptions, that school districts and states spend the same amount or more on special education from year to year. That eliminates fluctuation swings in funding, and insures that spending can only go up, not down. There are two separate requirements under the IDEA – one for states and one for school

districts. School districts are required to meet or maintain maintenance of effort (“MOE”) special education funding levels annually, and school districts are able to reduce their spending for a few reasons, such as the departure of staff or of a high-cost student.

The creation and allocation of state funds for the purposes of HB213 could possibly impact the school district’s MOE in terms of budgeting and expenditures, placing school districts and the Public Education Department (PED) at increased risk of MOE non-compliance related to eligibility and compliance standards for MOE (20 U.S.C. §1413(a)(2)(A)(iii); and 34 C.F.R. §300.203 through §300.205).

HB213 could alter the budgeting process by requiring that school districts allocate a portion of their state special education funds for a restricted purpose, thus decreasing the flexibility of the school districts in designing their budgets related to special education.

Additionally, there is no certainty that the allocated funds would be expended on the restricted purpose outlined in the bill. HB213 does not contain an oversight, compliance, or monitoring component.

Moreover, the provisions of the bill raise a number of concerns, including: (1) how HB213 will work with the existing special education requirements currently in place, including the provision of a free appropriate public education (FAPE); (2) how the provisions could impact the administrative system for determining what special education services are required; and (3) special education services reimbursement concerns.

FAPE:

Currently, there are federal and state requirements that the state is required to comply with related to students with disabilities. Under the proposed language of HB213, it appears there is not adequate consideration of the IDEA and state special education rules related to the requirements for special education. Additionally, the provision of FAPE and existing legal standards under the aforementioned laws could be negatively impacted for determination of when equitable relief, including reimbursement, is appropriate. The allocation of state special education fund, as set out in the HB213, would potentially conflict with standards for reimbursement in existing law, the IDEA, and state special education laws and rules, including with the processes, for resolving issues related to the provision of FAPE.

Moreover, the IDEA and state laws also include provisions related to when there is a concern that a student is not being provided with FAPE. There are existing processes in place that allow for families who believe their student was not offered or provided with FAPE due to restrictions on in-person learning to seek and recover reimbursement for out-of-pocket expenses for special education services. Currently, these processes include IEP meetings, mediation, state complaints, and due process hearings. If reimbursement is considered appropriate under existing standards in the IDEA and state special education rules, the school district currently has the flexibility to use IDEA, Part B funds for this purpose.

System for determining special education service requirements:

Currently, the IDEA and state special education rules contain a comprehensive administrative system for determining what special education services are required. In addition, there is a body of case law that has interpreted the standards for FAPE and the remedies that are appropriate for the failure to provide FAPE. (See *Endrew F. v. Douglas County School District RE-1*, 80 U.S. ___, 137 S. Ct. 988 (2017)).

If HB213 is enacted, it could possibly negatively impact the detailed system that determines what special education services are required. The existing laws and rules require consideration of additional factors before an award of reimbursement was considered appropriate, which include among other things: (1) review of the student's IEP; (2) communications with the parents; (3) what was offered and provided to the student in the form of remote special education and related services; (4) whether the parent accepted or rejected those services; and (5) whether what the school district offered did or could have provided FAPE to the student.

Special education services reimbursement concerns:

HB213 could create a parallel right to reimbursement that could possibly only benefit some students. There is a concern that the students who benefit from HB213 would be those from families who have more resources (income, insurance, etc) to enable them to secure private services for their children.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

There are no specific administrative implications described in the bill for the PED; however, it is assumed the department will be charged with oversight, compliance, and monitoring of the special education related expenditures under HB213.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB213 relates to HB130, School Gifted Education Requirements; HB222, Special Education Ombud Act; HB266, Special Education Teacher Licenses; SB289, Special Ed Division of Ed Dept.; and SB346, Special Ed Ombud Act.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

A 2015 U.S. Government Accountability Office report – Special Education: More Flexible Spending Requirement Could Mitigate Unintended Consequences While Protecting Services – found that some states and school district leaders reported the MOE requirement dampens innovation in special education. For example, school districts have no incentive to look for efficiencies in spending, because they cannot actually reduce the amount of money they spend from year to year. Also noted in the report, there is no incentive to make short-term increases in spending – such as to launch a new initiative – because that increase will be required to be maintained annually. Thus, the MOE requirement for school districts has the potential to discourage innovation and efficiencies in special education.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A