

HB 613-FN-LOCAL - AS AMENDED BY THE HOUSE

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2021 SESSION

21-0127

06/08

HOUSE BILL

613-FN-LOCAL

AN ACT relative to state aid to school districts with special education pupils and relative to pooled risk management for unanticipated special education cost recovery.

SPONSORS: Rep. Ladd, Graf. 4; Rep. Steven Smith, Sull. 11; Rep. Aron, Sull. 7; Rep. Shaw, Hills. 16; Rep. Allard, Merr. 21; Rep. Spilsbury, Sull. 8; Sen. Ward, Dist 8; Sen. Gray, Dist 6

COMMITTEE: Education

AMENDED ANALYSIS

 This bill increases the amount of state aid available to school districts for the costs of special education students.

 This bill also establishes a program for pooled risk management for unanticipated special education cost recovery.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to state aid to school districts with special education pupils and relative to pooled risk management for unanticipated special education cost recovery.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Special Education; State Aid. Amend RSA 186-C:18, III to read as follows:

2 III.(a) The state board of education through the commissioner, department of education,
3 shall distribute aid available under this paragraph as entitlement to such school districts as have a
4 special education pupil for whose costs they are responsible, for whom the costs of special education
5 in the fiscal year exceed ~~[31/2]~~ **2 1/2** times the estimated state average expenditure per pupil for the
6 school year preceding the year of distribution. If in any year, the amount appropriated for
7 distribution as special education aid in accordance with this section is insufficient therefor, the
8 appropriation shall be prorated proportionally based on entitlement among the districts entitled to a
9 grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal
10 year, such funds shall be distributed for court-ordered placements under RSA 186-C:19-b. The state
11 may designate up to \$250,000 of the funds which are appropriated as required by this paragraph, for
12 each fiscal year, to assist those school districts which, under guidelines established by rules of the
13 state board of education, may qualify for emergency assistance for special education costs. Upon
14 application to the commissioner of education, and approval by the commissioner, such funds may be
15 accepted and expended by school districts in accordance with this chapter; provided, however, that if
16 a school district has received emergency assistance funds for certain children with disabilities, it
17 shall not receive special education aid for those same children with disabilities. If any of the funds
18 designated for emergency assistance under this paragraph are not used for such emergency
19 assistance purposes, the funds shall be used to assist school districts in meeting special education
20 cost increases in their special education programs as provided by this paragraph.

21 (b) The school district shall be liable for ~~[31/2]~~ **21/2** times the estimated state average
22 expenditure per pupil for the school year preceding the year of distribution, plus 20 percent of the
23 additional cost, up to 10 times the estimated state average expenditure per pupil for the school year
24 preceding the year of distribution.

25 (c) The department of education shall be liable for 80 percent of the cost above the ~~[31/2]~~
26 **21/2** times the estimated state average expenditure per pupil for the school year preceding the year
27 of distribution, up to 10 times the estimated state average expenditure per pupil for the school year
28 preceding the year of distribution. The department of education shall be liable for all costs in excess
29 of 10 times the estimated state average expenditure per pupil for the school year preceding the year
30 of distribution.

2 Special Education; State Aid. Amend RSA 186-C:18, VIII to read as follows:

VIII. A school district shall raise, appropriate and expend funds, reflecting the total cost in meeting special education student costs as provided under this section, including the school district and department of education liability. A school district may issue reimbursement anticipation notes as provided for in RSA 198:20-d to be redeemed upon receipt of reimbursement from the state. The department of education shall be liable for the cost of the school districts borrowing of any funds for special education student costs over ~~[31/2]~~ **21/2** times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

3 Findings. The general court finds that:

I. Under federal and state law, local school districts are required to provide all children with a free appropriate public education (FAPE).

II. The average per student special education cost in 2020 was \$74,000.

III. Special education costs are increasing each school year.

IV. Only 15 percent of the funds necessary to pay for mandated special education services are provided by the federal government.

V. Only 20 percent of the funds necessary to pay for mandated special education services are provided by the state of New Hampshire.

VI. The remaining 65 percent of the funds necessary to pay for mandated special education services are borne by local school district taxpayers.

VII. Local school district budgets must be finalized prior to the start of the next school year and before the number of special education students and associated services are known.

VIII. Consequently, last minute student transfers into the district as well as unforeseen special education services for those students can far exceed the budgets for these services.

IX Districts with smaller tax bases struggle to meet these unexpected special education costs.

X. To compensate for lack of funds, districts may compromise the quality and quantity of the services provided to our children. Consequently, our children do not get the services they need to enable them to grow to their fullest potential.

XI. To compensate for lack of funds, districts often move money from programming in one area to provide mandated funding in the areas of special education.

XII. To ensure that all our children receive and enjoy their basic right to a public education, it is a valid public purpose that the general court may promote mechanisms that provide special education funding stability to local school districts.

XIII. Recognizing the risk, some districts in the state purposely create non-lapsing special education capital reserve accounts as "rainy-day" funds.

4 Purpose. The purpose of this act is to:

I. Provide the legal mechanisms necessary to create and maintain a special education cost recovery pool.

II. Permit local school districts to voluntarily join a risk pool of the type outlined in RSA 5-B which may self-insure or include an insurance agreement to be offered within the pool to members.

III. Minimize the state regulatory oversight of the pool.

IV. Provide legal protections to the local school districts that enter into pool agreements.

V. Provide local school districts with information necessary to:

(a) Understand the extent of special education aid coverage available to them.

(b) Understand the methods used to determine policy premiums.

(c) Compare past special education costs borne by the district with the cost of pool coverage.

(d) Make informed decisions prior to each year's school district budget formation.

(e) Promote the general welfare by providing districts with options to cover unanticipated special education costs.

(f) Recognize the need to protect student privacy by maintaining control over student data by the department of education.

5 New Subparagraph; Pooled Risk Management. Amend RSA 5-B:3 by inserting after subparagraph (g) the following new subparagraph:

(h) Unanticipated special education cost recovery.

6 New Chapter; Pooled Risk Management for Unanticipated Special Education Cost Recovery. Amend RSA by inserting after chapter 186-C the following new chapter:

CHAPTER 186-D

SPECIAL EDUCATION RISK MANAGEMENT ASSOCIATION

186-D:1 Definitions. In this chapter:

I. "Cost predictor spreadsheet tool" means an actuary-designed tool that can be used to predict future school district special education obligations based on past claims analysis.

II. "Risk pool" means a non-lapsing reserve account held by the state treasurer from which all cost recovery funding is derived. The account held by the treasurer may be funded by member school district assessments, insurance proceeds, interest, or other sources.

III. "RSA 5-B special education cost recovery association" means a voluntary group of at least 5 school districts that form an association under the RSA 5-B risk pool provision specifically to deal with special education cost recovery.

IV. "RSA 5-B special education cost recovery association governing board" means a group of at least 5 superintendents elected from the association members.

V. "Unanticipated special education cost recovery" means the program providing school districts with expanded pathways to recover those costs that are directly associated with special

1 education provided to students assigned to the school district and payable under RSA 186-C:18 that
2 occur after school budgets are fixed.

3 186-D:2 Risk Management Association. No fewer than 5 school districts, by resolution of their
4 governing bodies, may form an RSA 5-B special education cost recovery association under the laws of
5 this state to develop and administer a risk management program for the purpose of recovering
6 unanticipated costs of special education. The members of the association may agree to pool self-
7 insurance reserves, risks, claims, losses, and the expenses of administrative services associated with
8 them. Each district shall be represented by its superintendent, or designee. The members of the
9 association shall elect a governing board from among the members. The RSA 5-B special education
10 cost recovery association governing board shall consist of no fewer than 5 member superintendents,
11 or designees, with diversity in terms of district size and geographic region represented. Each board
12 member shall serve one 3-year term and may only serve one term in each 9 year period. The
13 chairperson of the governing board shall be chosen by the board. Minutes of each meeting shall be
14 kept and made available to the public. There shall be one 2-week period annually, to be decided by
15 the governing board, when new districts shall be allowed to join the association.

16 186-D:3 Duties of the Department of Education. The department shall:

17 I. Provide all school districts with materials to facilitate the formation of an association
18 under RSA 186:D:2.

19 II. Update the department website to include the name of each special education cost
20 recovery association with contact information, current membership, a description of the risk pool
21 association, and the advantages and disadvantages of the program.

22 III. Gather current student data regarding claims and costs which shall be redacted to
23 exclude, to the greatest extent possible, personal student information for all requests for proposals.

24 IV. Arrange one or more educational opportunities for interested school districts. Topics
25 shall include but not be limited to: risk pools, risk calculators, premium predictors, required
26 information for actuarial calculations, the effects of claims on future premiums, and the advantages
27 and disadvantages of using insurance products to achieve the goals of the association.

28 V. Annually assist the risk pool governing board by calculating the unreimbursed special
29 education amounts to be paid to the risk pool member districts from the risk pool funds held by the
30 state treasurer.

31 186-D:4 Requests for Proposals.

32 I. The department of education shall be the sole drafter of requests for proposals in order to
33 protect all student privacy provisions. Proposals shall be submitted no later than June 30 and shall
34 require a contract duration of not less than 3 years. The proposals shall be for the purpose of
35 soliciting bids with actuarial firms specifying:

36 (a) Annual cost, based on actuarial calculations, of self-funding a reimbursement pool
37 including individual cost structure for each school district's unreimbursed costs directly associated

1 with special education provided to students assigned to the school district and payable under RSA
2 186-C:18.

3 (b) The bids may also indicate recommendations for options that exist for using
4 insurance products, including re-insurance, to achieve the same result as the self-insurance risk pool
5 along with the advantages and disadvantages of each. The commissioner of the department of
6 education may grant bidders access to data, including claims history, to the extent necessary to
7 achieve accuracy of the annual cost. All data shall be protected under signed confidentiality
8 agreements and shall be devoid of sensitive personal student information to the extent possible. The
9 department of education shall impose a one month deadline after issuance of the request for
10 proposals to receive bids. Any bids received by the department after the deadline shall be returned
11 to the sender unopened and shall not be considered for acceptance. The department shall specify the
12 minimum threshold for bid acceptance. Acceptance criteria shall include, but not be limited to,
13 weighted factors such as insurance coverage, financial stability of the proposing insurance carrier,
14 bond rating of the company, and insurance maintenance costs in any not included in the premiums.
15 The bids that meet the minimum threshold shall then be ranked by the department based on the bid
16 premium costs for each level of insurance coverage specified in the request for proposals.

17 II. The governing board of the association shall select the most qualified proposal. The
18 board shall decide whether to self-fund or provide insurance products, or both, to the members and
19 shall notify the department of education which shall then notify the selected bidder.

20 III. If the decision is to purchase an insurance product each member district shall be notified
21 and shall be responsible for its share of the premium. Should the insurance agreement require a
22 vote at town meeting, a majority vote of those present and voting shall be required to approve the
23 agreement. The association shall be responsible for informing each member school district of the
24 process and timing of the billing, the handling of late premiums, the lapsing of premiums, and the
25 adjudication process in case of disputes.

26 IV. If the decision is to self-fund, the association board shall provide each member with an
27 outline indicating, at minimum, the cost for the district and the risk pool reimbursement period,
28 which shall be not more than 3 months after the state has reimbursed each school district in the
29 association for the final portion of special education state aid under RSA 186-C:18. Any eligible
30 special education expenses incurred by a member school district that were not reimbursed by the
31 state and were not reimbursed by a purchased insurance product through the association shall be
32 reimbursed by the risk pool to the full extent permitted by the risk pool governing agreement.

33 V. The selected bidder shall create or update a cost predictor spreadsheet tool so all the
34 school districts may develop budgets and test various situations to arrive a reasonable special
35 education expense prediction. Specific situations built into the spreadsheet shall include, but not be
36 limited to, full or limited state funding and changes in student population or cost trends. The
37 spreadsheet shall be able to determine rates and district contributions for membership in the risk

1 pool with additional data updates possible to maintain accuracy. The department of education may
2 limit the usage or sharing of the spreadsheet if they solely determine that student privacy may be
3 compromised. The spreadsheet tool and each subsequent revision shall be the sole property of the
4 department of education.

5 VI. All costs associated with the establishment of the risk pool including filing fees, requests
6 for proposals, education and training for prospective members of the association, and the actuarial
7 services and cost predictor spreadsheet tool shall be the responsibility of the department of
8 education for the first 5 years after the effective date of this chapter.

9 VII. All costs associated with the administration of the risk pool after the filing fees are paid
10 and all costs after the initial 5 year period shall be the responsibility of the association governing
11 board. The governing board may pay those costs from the risk pool fund and shall adjust member
12 district yearly charges to reflect the administration costs by separate line item.

13 VIII. Risk pool funds shall be held in a non-lapsing account by the state treasurer. The
14 governing body may withdraw the funds only by written request with signed board approval. The
15 fund withdrawals shall be kept to a minimum number each year. Funds shall only be removed for
16 payment of unreimbursed costs of all member districts and for administrative costs.

17 IX. The risk pool may be terminated by a resolution of the association governing board and
18 notification to the secretary of state, the department of education, and the state treasurer. All funds
19 shall be distributed to the districts after a professional audit to determine the rightful share.
20 Disputes may be directed to the attorney general.

21 7 Effective Date. This act shall take effect upon its passage.

LBA
21-0127
1/13/21

**HB 613-FN-LOCAL- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to state aid to school districts with special education pupils.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the Department of Education. When completed, the fiscal note will be forwarded to the House Clerk's Office.

AGENCIES CONTACTED:

Department of Education