

Rep. Hill, Merr. 3
Rep. Ladd, Graf. 4
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2021-0356h
06/08

Amendment to HB 613-FN-LOCAL

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to state aid to school districts with special education pupils and relative to
4 pooled risk management for unanticipated special education cost recovery.
5

6 Amend the bill by replacing all after section 2 with the following:

7
8 3 Findings. The general court finds that:

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

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

12 III. Special education costs are increasing each school year.

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

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

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

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

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

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

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

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

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

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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.

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1 V. "Unanticipated special education cost recovery" means the program providing school
2 districts with expanded pathways to recover those costs that are directly associated with special
3 education provided to students assigned to the school district and payable under RSA 186-C:18 that
4 occur after school budgets are fixed.

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

18 186-D:3 Duties of the Department of Education. The department shall:

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

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

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

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

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

33 186-D:4 Requests for Proposals.

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

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1 (a) Annual cost, based on actuarial calculations, of self-funding a reimbursement pool
2 including individual cost structure for each school district's unreimbursed costs directly associated
3 with special education provided to students assigned to the school district and payable under RSA
4 186-C:18.

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

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

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

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

35 V. The selected bidder shall create or update a cost predictor spreadsheet tool so all the
36 school districts may develop budgets and test various situations to arrive a reasonable special
37 education expense prediction. Specific situations built into the spreadsheet shall include, but not be

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1 limited to, full or limited state funding and changes in student population or cost trends. The
2 spreadsheet shall be able to determine rates and district contributions for membership in the risk
3 pool with additional data updates possible to maintain accuracy. The department of education may
4 limit the usage or sharing of the spreadsheet if they solely determine that student privacy may be
5 compromised. The spreadsheet tool and each subsequent revision shall be the sole property of the
6 department of education.

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

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

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

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

23 7 Effective Date. This act shall take effect upon its passage.

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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.