



Use of Elementary and Secondary School Relief (ESSER) Funds to Reduce State Expenditures for K12 Education

Summary:

Can the Elementary and Secondary School Relief (ESSER) funds be used in place of state aid to public schools to provide relief to the state's general fund balance? This paper looks at several issues involved and concludes that in general the ESSER funds cannot replace state funding. There are some limited circumstances where ESSER funds may be used to pay the salary for existing, budgeted school district staff, but only when the duties of the staff have changed to specific activities related to COVID-19. These are allowable uses of ESSER funds, but the overriding requirement the funds be used **"be used to prevent, prepare for, and respond to coronavirus"** limits the use of ESSER funds for normal school operations. In addition, there may be a legal issue with the legislature directing the use of the 10% reserve portion of funding. Finally, the state must maintain maintenance of effort regarding state funding of K12 education as a condition for receiving the federal funds.

Background:

The CARES Act included funding for K12 education in the form of the Elementary and Secondary School Relief (ESSER grants). Montana received \$41.3M from this round of funding. The Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) added \$170.1M to this funding for Montana for a total of \$211.4M. The grant funds can be spent through September of 2023.

Both rounds of funding require 90% of the funds be allocated to Montana public school districts proportionate to Title I funding provided to the districts. One half of one percent of the funding can be used by the OPI to administer the grants with the remaining funds directed by the OPI to the most urgent education needs in the state attributable to COVID-19.

School District Budgets:

State funding for BASE Aid supports a district's general operations fund, a budgeted fund. ESSER funds are directed to a district's Miscellaneous Programs Fund, a non-budgeted fund. Districts are prohibited from transferring the federal grant funds from the miscellaneous programs fund to the district general fund. Should the state reduce the amount of BASE Aid, the calculation of BASE and Maximum budgets provided for in 20-9-308, MCA would be calculated on the lower values without consideration of federal funds available. The result is a permanent lowering of budget authority for these districts. The district might be able to pass an over-BASE levy to make up the loss of state funding with the result of passing on the requirement to generate revenue to the property taxpayer. Also, a district that cannot pass an

over-BASE levy will incur a permanent loss in budget authority and possibly then not fulfil its fiscal obligations to staff salary and benefits as well as other annual required expense.

Supplement vs. Supplant:

Most federal grants come with a “supplement not supplant” provision meaning federal funds cannot be used to replace state or local funds thereby ensuring the federal funds are used to supplement education activities. However, the ESSER grants do not have this provision, opening the door for the use of the grant funds for base operations. Statewide, salaries and benefits make up 86% of a district’s general fund expenditures so the most reasonable aid the ESSER funds can provide is to pay for the salary of the existing staff. However, the requirement that ESSER funds only “be used to prevent, prepare for, and respond to coronavirus” means the funds can only be used where the duties of the position have changed to include new activities specifically related to COVID-19 and the district payroll system allows the individual to accurately record the hours spent on the new duties. For example, a budgeted IT director who now spends 25% of their time figuring out how to get remote learning to kids can charge 25% of their salary to ESSER so long as the time keeping backs this up. Therefore, while this is the area where ESSER funds can replace state or local funds, the circumstances required make this a small impact overall.

Targeting the 10% Reserve:

The 10% reserve does not have to be distributed directly to school districts but can be used for the purpose that is most beneficial to education in the state. Section 313(e) of the CRRSA states:

(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than one-half of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, including measuring and addressing learning loss, which may be addressed through the use of grants or contracts.

Prior to specifically directing the use of the reserve, legislators should request a legal opinion as to whether this action would conflict with this section of law.

Maintenance of Effort:

Under the CARES Act, a state that receives ESSER funds must maintain support for elementary and secondary education in each of fiscal years 2020 and 2021 at least at the level of such support that is the average of the support for elementary and secondary education provided in the three fiscal years preceding the date of enactment of the CARES Act (FYs 2017, 2018, 2019).

Under the CRRSA Act, a State that receives ESSER II funds must maintain support for elementary and secondary education in FY 2022 based on the proportional share of the State’s support for elementary and secondary education relative to the State’s overall spending averaged over FYs 2017, 2018, and 2019. There is a possibility of obtaining a waiver of this requirement if there is a precipitous decline in state resources.