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AN ACT
RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL
FINANCE ACT; REQUIRING SCHOOL DISTRICTS AND CHARTER SCHOOLS
TO REPORT MEMBERSHIP ESTIMATES OF STUDENTS TO BE ENROLLED AS
DISTANCE LEARNING STUDENTS; REQUIRING SCHOOL DISTRICTS AND
CHARTER SCHOOLS TO MAINTAIN CERTAIN RECORDS REGARDING
STUDENTS ENROLLED IN A DISTANCE LEARNING PROGRAM; EXCLUDING A
SCHOOL DISTRICT'S MEMBERSHIP OF STUDENTS ENROLLED IN DISTANCE
LEARNING PROGRAMS FROM THE CALCULATION FOR SIZE ADJUSTMENT
PROGRAM UNITS; AMENDING THE STATEWIDE CYBER ACADEMY ACT AND
RENAMING THAT ACT THE "DISTANCE LEARNING ACT"; REMOVING
EXISTING DEFINITIONS AND DEFINING NEW TERMS IN THE PUBLIC
SCHOOL FINANCE ACT AND THE DISTANCE LEARNING ACT; REMOVING
THE REQUIREMENT THAT THE STATEWIDE CYBER ACADEMY BE A
COLLABORATIVE PROGRAM; PROVIDING ALL-NEW REQUIREMENTS FOR
SCHOOL DISTRICTS AND CHARTER SCHOOLS THAT OPERATE DISTANCE
LEARNING PROGRAMS; PLACING RESTRICTIONS ON STUDENT ENROLLMENT
IN DISTANCE LEARNING PROGRAMS AND PROVIDING EXCEPTIONS;
CLARIFYING THE REQUIREMENTS OF SCHOOL DISTRICTS AND CHARTER
SCHOOLS REGARDING DISTANCE LEARNING AND STUDENTS WITH
DISABILITIES; REQUIRING PUBLIC EDUCATION DEPARTMENT
EVALUATION OF DISTANCE LEARNING PROGRAMS; MAKING CONFORMING
AMENDMENTS; ENACTING TEMPORARY PROVISIONS RELATING TO THE
PUBLIC SCHOOL FINANCE ACT; ENACTING TEMPORARY PROVISIONS
RELATING TO THE DISTANCE LEARNING ACT; REPEALING SECTION

1 22-30-8 NMSA 1978 (BEING LAWS 2007, CHAPTER 292, SECTION 7
2 AND LAWS 2007, CHAPTER 293, SECTION 7); DECLARING AN
3 EMERGENCY.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. Section 22-8-2 NMSA 1978 (being Laws 1978,
7 Chapter 128, Section 3, as amended) is amended to read:

8 "22-8-2. DEFINITIONS.--As used in the Public School
9 Finance Act:

10 A. "ADM" or "MEM" means membership;

11 B. "membership" means the total enrollment of
12 qualified students on the current roll of a class or school
13 on a specified day. The current roll is established by the
14 addition of original entries and reentries minus withdrawals.
15 Withdrawals of students, in addition to students formally
16 withdrawn from the public school, include students absent
17 from the public school for as many as ten consecutive school
18 days; provided that withdrawals do not include students who
19 are in need of intervention or who are chronically or
20 excessively absent;

21 C. "basic program ADM" or "basic program MEM"
22 means the MEM of qualified students but excludes the full-
23 time-equivalent MEM in early childhood education and three-
24 and four-year-old students receiving special education
25 services;

1 D. "cost differential factor" is the numerical
2 expression of the ratio of the cost of a particular segment
3 of the school program to the cost of the basic program in
4 grades four through six;

5 E. "department" or "division" means the public
6 education department;

7 F. "distance learning student" means a qualified
8 student who receives full-time virtual instruction and is not
9 required to attend school at a school building;

10 G. "early childhood education ADM" or "early
11 childhood education MEM" means the full-time-equivalent MEM
12 of students attending approved early childhood education
13 programs;

14 H. "family income index rate" means the percentage
15 of students in a school district or charter school that is
16 identified as either extremely low income or very low income
17 by the family income index;

18 I. "full-time-equivalent ADM" or "full-time-
19 equivalent MEM" is that membership calculated by applying to
20 the MEM in an approved public school program the ratio of the
21 number of hours per school day devoted to the program to six
22 hours or the number of hours per school week devoted to the
23 program to thirty hours;

24 J. "operating budget" means the annual financial
25 plan and educational plan required to be submitted by a local

1 school board or governing body of a state-chartered charter
2 school;

3 K. "performance measure" means a quantitative
4 indicator used to assess the output or outcome of an approved
5 program;

6 L. "performance target" means the expected level
7 of performance of a program's performance measure;

8 M. "program cost" is the product of the total
9 number of program units to which a school district is
10 entitled multiplied by the dollar value per program unit
11 established by the legislature;

12 N. "program element" is that component of a public
13 school system to which a cost differential factor is applied
14 to determine the number of program units to which a school
15 district is entitled, including MEM, full-time-equivalent
16 MEM, teacher, classroom or public school;

17 O. "program unit" is the product of the program
18 element multiplied by the applicable cost differential
19 factor;

20 P. "public money" or "public funds" means all
21 money from public or private sources received by a school
22 district or state-chartered charter school or officer or
23 employee of a school district or state-chartered charter
24 school for public use;

25 Q. "qualified student" means a public school

1 student who:

2 (1) has not graduated from high school;

3 (2) is regularly enrolled in one-half or
4 more of the minimum course requirements approved by the
5 department for public school students; and

6 (3) in terms of age and other criteria:

7 (a) is at least five years of age prior
8 to 12:01 a.m. on September 1 of the school year;

9 (b) is at least three years of age at
10 any time during the school year and is receiving special
11 education services pursuant to rules of the department;

12 (c) except as provided in Subparagraph
13 (d) of this paragraph, has not reached the student's twenty-
14 second birthday on the first day of the school year; or

15 (d) has reached the student's twenty-
16 second birthday on the first day of the 2019-2020 school
17 year, is counted in a school district's or charter school's
18 MEM on the third reporting date of the 2018-2019 school year,
19 has been continuously enrolled in the same public school
20 since that reporting date and is still enrolled in that
21 school;

22 R. "rural population rate" means that proportion
23 of the total population within a school district's geographic
24 boundaries that lives in a rural area and not in an urban
25 area as defined by the United States census bureau;

1 S. "staffing cost multiplier" means the teacher
2 cost index; and

3 T. "state superintendent" or "secretary" means the
4 secretary of public education or the secretary's designee."

5 **SECTION 2.** Section 22-8-12.1 NMSA 1978 (being Laws
6 1978, Chapter 128, Section 5, as amended) is amended to read:

7 "22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET
8 REQUESTS.--

9 A. On or before October 15 of each year, each
10 local school board or governing body of a state-chartered
11 charter school shall submit to the department:

12 (1) an estimate for the succeeding fiscal
13 year of:

14 (a) the membership of qualified
15 students to be enrolled in the basic program;

16 (b) the membership of students to be
17 enrolled as distance learning students;

18 (c) the full-time-equivalent membership
19 of students to be enrolled in approved early childhood
20 education programs; and

21 (d) the membership of students to be
22 enrolled in approved special education programs;

23 (2) all other information necessary to
24 calculate program costs; and

25 (3) any other information related to the

1 financial needs of the school district or state-chartered
2 charter school as may be requested by the department.

3 B. The information submitted pursuant to
4 Subsection A of this section shall be submitted on forms
5 prescribed and furnished by the department and in accordance
6 with the department's rules and procedures.

7 C. The department shall:

8 (1) review the financial needs of each
9 school district or state-chartered charter school for the
10 succeeding fiscal year;

11 (2) on or before September 1 of each year,
12 submit to the department of finance and administration, the
13 legislative finance committee and the legislative education
14 study committee the department's recommendations for:

15 (a) amendments to the public school
16 finance formula;

17 (b) appropriations for the succeeding
18 fiscal year to the public school fund; and

19 (c) appropriations for the succeeding
20 fiscal year for pupil transportation and instructional
21 materials; and

22 (3) on or before November 30 of each year,
23 submit to the department of finance and administration, the
24 legislative finance committee and the legislative education
25 study committee any adjustments to the department's

1 recommendations for appropriations related to additional
2 enrollment growth program units pursuant to Section 22-8-23.1
3 NMSA 1978."

4 SECTION 3. Section 22-8-13 NMSA 1978 (being Laws 1974,
5 Chapter 8, Section 3, as amended) is amended to read:

6 "22-8-13. REPORTS.--

7 A. Each public school shall keep accurate records
8 concerning membership in the public school.

9 B. The dates for which MEM is reported are as
10 follows:

11 (1) the first reporting date is the second
12 Wednesday in October of each year;

13 (2) the second reporting date is December 1
14 or the first working day in December of each year; and

15 (3) the third reporting date is the second
16 Wednesday in February of each year.

17 C. The superintendent of each school district or
18 head administrator of each state-chartered charter school
19 shall maintain the following reports for each reporting
20 period:

21 (1) the basic program MEM by grade in each
22 public school;

23 (2) the early childhood education MEM;

24 (3) the special education MEM in each public
25 school in class C and class D programs as defined in Section

1 22-8-21 NMSA 1978;

2 (4) the number of class A and class B
3 programs as defined in Section 22-8-21 NMSA 1978;

4 (5) the full-time-equivalent MEM for
5 bilingual multicultural education programs; and

6 (6) the distance-learning-student MEM by
7 grade in each public school.

8 D. The superintendent of each school district and
9 the head administrator of each state-chartered charter school
10 shall furnish all reports required by law or the department
11 to the department on or before the close of each reporting
12 period or as otherwise requested by the department. Failure
13 of the department to approve timely submissions shall not
14 cause a school district or charter school to be found
15 noncompliant with the requirements of this section.

16 E. For purposes of this section, "working day"
17 means every calendar day excluding Saturdays, Sundays and
18 legal holidays.

19 F. The information required pursuant to this
20 section shall be submitted in a manner prescribed by the
21 department. A copy of any report made pursuant to this
22 section shall be kept as a permanent record of the school
23 district or charter school and shall be subject to inspection
24 and audit at any reasonable time.

25 G. The department may withhold up to one hundred

1 percent of allotments of funds to any school district or
2 state-chartered charter school where the superintendent or
3 head administrator has failed to comply with the requirements
4 of this section. The withholding may continue until the
5 superintendent or head administrator complies with and agrees
6 to continue complying with the requirements of this section.

7 H. The provisions of this section may be modified
8 or suspended by the department for any school district,
9 school or state-chartered charter school operating under the
10 Variable School Calendar Act. The department shall require
11 MEM reports consistent with the calendar of operations of
12 such school district, school or state-chartered charter
13 school and shall calculate an equivalent MEM for use in
14 projecting school district or charter school revenue."

15 SECTION 4. Section 22-8-23 NMSA 1978 (being Laws 1975,
16 Chapter 119, Section 1, as amended by Laws 2019, Chapter 206,
17 Section 14 and by Laws 2019, Chapter 207, Section 14) is
18 amended to read:

19 "22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

20 A. An approved public school with a MEM of fewer
21 than four hundred, including early childhood education full-
22 time-equivalent MEM but excluding membership in class C and
23 class D programs and excluding full-time-equivalent
24 membership in three- and four-year-old developmentally
25 disabled programs, that is geographically located in a school

1 district with fewer than two thousand MEM, is eligible for
2 additional program units. Separate schools established to
3 provide special programs, including vocational and
4 alternative education, shall not be classified as public
5 schools for purposes of generating size adjustment program
6 units. The number of additional program units to which a
7 school district or charter school is entitled under this
8 subsection is the sum of elementary-junior high units and
9 senior high units computed in the following manner:

$$\begin{aligned} & \text{Elementary-Junior High Units} \\ & 200 - \text{MEM} \\ & \frac{\quad}{200} \times 1.0 \times \text{MEM} = \text{Units} \end{aligned}$$

14 where MEM is equal to the membership of an approved
15 elementary or junior high school, including early childhood
16 education full-time-equivalent membership but excluding
17 membership in class C and class D programs and excluding
18 full-time-equivalent membership in three- and four-year-old
19 developmentally disabled programs;

$$\begin{aligned} & \text{Senior High Units} \\ & 200 - \text{MEM} \\ & \frac{\quad}{200} \times 2.0 \times \text{MEM} = \text{Units} \end{aligned}$$

24 or,

25 Senior High Units

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$$\frac{400 - \text{MEM}}{400} \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school, excluding membership in class C and class D programs.

B. An approved public school with a MEM of fewer than four hundred, including early childhood education full-time-equivalent MEM but excluding MEM in class C and class D programs and excluding full-time-equivalent MEM in three- and four-year-old developmentally disabled programs, geographically located in a school district with two thousand MEM or more is eligible for additional program units computed in the following manner:

(1) for fiscal year 2020, eighty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;

(2) for fiscal year 2021, sixty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;

(3) for fiscal year 2022, forty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;

(4) for fiscal year 2023, twenty percent of the sum of elementary-junior high units and senior high units

1 as prescribed in Subsection A of this section; and

2 (5) for fiscal year 2024 and subsequent
3 fiscal years, no elementary-junior high units and senior high
4 units as prescribed in Subsection A of this section.

5 C. A school district with total MEM of fewer than
6 four thousand, including early childhood education full-time-
7 equivalent MEM, is eligible for additional program units.
8 The number of additional program units to which a school
9 district is entitled under this subsection is the number of
10 district units computed in the following manner:

$$\begin{array}{r}
 \text{District Units} \\
 4,000 - \text{MEM} \\
 \hline
 4,000
 \end{array}
 \times 0.15 \times \text{MEM} = \text{Units}$$

15 where MEM is equal to the total district membership,
16 including early childhood education full-time-equivalent
17 membership.

18 D. A school district with a MEM of fewer than two
19 hundred, including early childhood education full-time-
20 equivalent MEM, is eligible for additional program units if
21 the department certifies that the school district has
22 implemented practices to reduce scale inefficiencies,
23 including shared service agreements with regional education
24 cooperatives or other school districts for noninstructional
25 functions and distance education. The numbers of additional

1 program units to which a school district is entitled under
2 this subsection is the number of units computed in the
3 following manner:

$$4 \quad 200 - \text{MEM} = \text{Units}$$

5 where MEM is equal to the total district MEM, including early
6 childhood education full-time-equivalent MEM.

7 E. A school district with a rural population rate
8 greater than forty percent or a charter school initially
9 chartered before July 1, 2018 and geographically located in a
10 school district with a rural population rate greater than
11 forty percent is eligible for additional program units. The
12 number of additional program units to which a school district
13 or charter school is entitled pursuant to this subsection is
14 determined by multiplying the full-time-equivalent MEM by the
15 rural population rate and the cost differential factor of
16 0.15; provided that the full-time-equivalent MEM used for
17 this determination does not include membership derived from
18 distance learning students."

19 SECTION 5. Section 22-30-1 NMSA 1978 (being Laws 2007,
20 Chapter 292, Section 1 and Laws 2007, Chapter 293, Section 1)
21 is amended to read:

22 "22-30-1. SHORT TITLE.--Chapter 22, Article 30 NMSA
23 1978 may be cited as the "Distance Learning Act"."

24 SECTION 6. Section 22-30-2 NMSA 1978 (being Laws 2007,
25 Chapter 292, Section 2 and Laws 2007, Chapter 293, Section 2)

1 is amended to read:

2 "22-30-2. DEFINITIONS.--As used in the Distance
3 Learning Act:

4 A. "distance learning course" means an educational
5 course provided through virtual instruction;

6 B. "distance learning student" means a qualified
7 student in accordance with the provisions of the Public
8 School Finance Act who is enrolled in a full-time distance
9 learning program; and

10 C. "full-time distance learning program" means a
11 public school instructional program in which students receive
12 virtual instruction and are not required to attend school at
13 a school building."

14 SECTION 7. Section 22-30-3 NMSA 1978 (being Laws 2007,
15 Chapter 292, Section 3 and Laws 2007, Chapter 293, Section 3)
16 is amended to read:

17 "22-30-3. STATEWIDE CYBER ACADEMY CREATED.--The
18 "statewide cyber academy" is created as a program in the
19 department. The statewide cyber academy may provide distance
20 learning courses for sixth grade through twelfth grade and
21 professional development for teachers, instructional support
22 providers and school administrators."

23 SECTION 8. Section 22-30-4 NMSA 1978 (being Laws 2007,
24 Chapter 292, Section 4 and Laws 2007, Chapter 293, Section 4)
25 is amended to read:

1 "22-30-4. DEPARTMENT RULES.--The department shall
2 promulgate rules to carry out the provisions of the Distance
3 Learning Act."

4 SECTION 9. Section 22-30-5 NMSA 1978 (being Laws 2007,
5 Chapter 292, Section 5 and Laws 2007, Chapter 293, Section 5)
6 is amended to read:

7 "22-30-5. FULL-TIME DISTANCE LEARNING PROGRAM--
8 DUTIES.--

9 A. A school district or charter school that offers
10 a full-time distance learning program shall:

11 (1) administer the program in compliance
12 with the Public School Code, including Section 22-2-8.1 NMSA
13 1978 regarding required instructional hours and Section
14 22-10A-20 NMSA 1978 regarding class load and teaching load
15 limits;

16 (2) administer the program in compliance
17 with state and federal law regarding student privacy, student
18 record confidentiality and secure student record storage;

19 (3) only provide distance learning courses
20 that are taught by licensed teachers or faculty members of
21 accredited post-secondary educational institutions and that
22 meet the department's academic content and performance
23 standards;

24 (4) on or before October 15 of each year,
25 notify the department as to the number of students enrolled

1 in the program and the grade level of the enrolled students;
2 and

3 (5) maintain records of the district's or
4 charter school's expenditures related to the program and
5 furnish the records to the department at the department's
6 request and in the manner prescribed by the department.

7 B. A school district or charter school that
8 operates a full-time distance learning program shall not
9 expand the program to an additional grade level unless the
10 school district or charter school certifies to the department
11 that the program has sufficient courses for a full
12 instructional program for the additional grade level."

13 **SECTION 10.** Section 22-30-6 NMSA 1978 (being Laws 2007,
14 Chapter 292, Section 6 and Laws 2007, Chapter 293, Section 6)
15 is amended to read:

16 "22-30-6. DISTANCE LEARNING STUDENTS--ENROLLMENT.--

17 A. A school district shall not require a student
18 to enroll in a full-time distance learning program.

19 B. A charter school shall not require a student to
20 enroll in a full-time distance learning program.

21 C. The provisions of Subsections A and B of this
22 section do not apply to a school district or charter school
23 if temporary enrollment of the district's or charter school's
24 students in a full-time distance learning program is
25 necessary or appropriate during a public health emergency

1 declared pursuant to the Public Health Emergency Response
2 Act."

3 SECTION 11. Section 22-30-7 NMSA 1978 (being Laws 2003,
4 Chapter 162, Section 2) is amended to read:

5 "22-30-7. DISTANCE LEARNING AND COMPUTER-BASED
6 COURSES.--A school district or charter school that has a
7 full-time distance learning program or offers distance
8 learning courses or other computer-based courses of study
9 shall provide accompanying instructional materials or other
10 materials in an electronic format usable by a person with a
11 disability or compatible with the person's assistive
12 technology."

13 SECTION 12. A new section of the Distance Learning Act
14 is enacted to read:

15 "DEPARTMENT EVALUATION OF PROGRAMS.--By the end of the
16 2028-2029 school year and at least every five years
17 thereafter, the department shall evaluate all full-time
18 distance learning programs to certify that the programs are
19 in compliance with the Public School Code and related rules,
20 including provisions related to instructional hours, class
21 load and teaching load limits. If the department determines
22 that a full-time distance learning program was not in
23 compliance during the period preceding the evaluation, the
24 department may withhold up to one hundred percent of
25 allotments of funding for distance learning students from the

1 school district or state-chartered charter school that
2 operates the full-time distance learning program until the
3 local superintendent or head administrator submits, and the
4 department approves, a plan by which the school district or
5 state-chartered charter school will come into compliance with
6 the Public School Code and related rules."

7 **SECTION 13. TEMPORARY PROVISIONS.--**

8 A. For the purposes of the Public School Finance
9 Act in fiscal year 2026, a school district with MEM over
10 eight thousand whose MEM on the first reporting date of
11 fiscal year 2026 is at least ten percent lower than the
12 school district's MEM on the first reporting date of fiscal
13 year 2025 shall calculate the total number of program units
14 to which the school district is entitled by averaging the
15 school district's MEM on the first reporting date of fiscal
16 year 2025 and the school district's MEM on the first
17 reporting date of fiscal year 2026.

18 B. For the purposes of the Public School Finance
19 Act in fiscal years 2026 and 2027, a school district is not
20 eligible for enrollment growth program units pursuant to
21 Section 22-8-23.1 NMSA 1978 for students enrolled in a full-
22 time distance learning program.

23 C. For fiscal year 2027, a school district or
24 charter school shall not reorganize to create a school
25 district, school or school program that has a majority of

1 students enrolled in a full-time distance learning program.

2 D. The legislative education study committee, in
3 collaboration with the legislative finance committee and the
4 public education department, shall conduct a comprehensive
5 study on virtual instruction in the state. The study shall
6 evaluate the status of full-time distance learning programs
7 or similar programs and assess the outcomes of students
8 enrolled in the programs, with particular focus on those
9 students who are in kindergarten through fifth grade, the
10 cost of operating the programs and potential legislative
11 action regarding full-time distance learning programs. On or
12 before November 1, 2026, the legislative education study
13 committee shall submit a final report on the comprehensive
14 study to the governor, the public education department and
15 the legislative finance committee.

16 E. As used in this section, "full-time distance
17 learning program" means a public school instructional program
18 in which students receive virtual instruction and are not
19 required to attend school at a school building.

20 SECTION 14. REPEAL.--Section 22-30-8 NMSA 1978 (being
21 Laws 2007, Chapter 292, Section 7 and Laws 2007, Chapter 293,
22 Section 7) is repealed.

23 SECTION 15. EFFECTIVE DATE.--The effective date of the
24 provisions of Sections 1 through 12 and 14 of this act is
25 July 1, 2026.

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SECTION 16. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect
immediately.
