

1 AN ACT

2 RELATING TO EARLY CHILDHOOD; CREATING THE EARLY CHILDHOOD
3 EDUCATION AND CARE FUND; CREATING THE EARLY CHILDHOOD
4 EDUCATION AND CARE PROGRAM FUND; CREATING THE EXCESS
5 EXTRACTION TAXES SUSPENSE FUND; DISTRIBUTING EXCESS OIL AND
6 GAS EMERGENCY SCHOOL TAX REVENUE TO THE EXCESS EXTRACTION
7 TAXES SUSPENSE FUND; TRANSFERRING REVENUE IN THE EXCESS
8 EXTRACTION TAXES SUSPENSE FUND TO THE TAX STABILIZATION
9 RESERVE AND TO THE EARLY CHILDHOOD EDUCATION AND CARE FUND;
10 DISTRIBUTING CERTAIN REVENUE RECEIVED BY THE STATE PURSUANT
11 TO THE FEDERAL MINERAL LEASING ACT TO THE EARLY CHILDHOOD
12 EDUCATION AND CARE FUND.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. EARLY CHILDHOOD EDUCATION AND CARE FUND.--

16 A. The "early childhood education and care fund"
17 is created within the state treasury. The fund shall consist
18 of distributions, appropriations, gifts, grants and
19 donations. Income from investment of the fund shall be
20 credited to the fund. Money in the fund shall be expended
21 only as provided in this section.

22 B. The state investment officer, subject to the
23 approval of the state investment council, shall invest money
24 in the early childhood education and care fund:

25 (1) in accordance with the prudent investor

1 rule set forth in the Uniform Prudent Investor Act; and

2 (2) in consultation with the state
3 treasurer.

4 C. The state investment officer shall report
5 quarterly to the legislative finance committee and the state
6 investment council on the investments made pursuant to this
7 section. Annually, a report shall be submitted no later than
8 October 1 each year to the legislative finance committee, the
9 revenue stabilization and tax policy committee and any other
10 appropriate interim committees.

11 D. On July 1, 2021, a distribution shall be made
12 from the early childhood education and care fund to the early
13 childhood education and care program fund in the amount of
14 twenty million dollars (\$20,000,000) and on July 1, 2022 and
15 on each July 1 thereafter, a distribution shall be made from
16 the early childhood education and care fund to the early
17 childhood education and care program fund in an amount equal
18 to the greater of five percent of the average of the year-end
19 market values of the fund for the immediately preceding three
20 calendar years or thirty million dollars (\$30,000,000).

21 E. In addition to the distribution pursuant to
22 Subsection D of this section, money in the early childhood
23 education and care fund may be expended in the event that
24 general fund balances, including all authorized revenues and
25 transfers to the general fund and balances in the general

1 fund operating reserve, the appropriation contingency fund,
2 the tobacco settlement permanent fund, the state-support
3 reserve fund and the tax stabilization reserve, will not meet
4 the level of appropriations authorized from the general fund
5 for a fiscal year. In that event, to avoid an
6 unconstitutional deficit, the legislature may appropriate
7 from the early childhood education and care fund to the
8 general fund only in the amount necessary to meet general
9 fund appropriations for that fiscal year and only if the
10 legislature has authorized transfers from the appropriation
11 contingency fund, the general fund operating reserve, the tax
12 stabilization reserve and the tobacco settlement permanent
13 fund that exhaust those fund balances.

14 SECTION 2. EARLY CHILDHOOD EDUCATION AND CARE PROGRAM
15 FUND.--The "early childhood education and care program fund"
16 is created as a nonreverting fund in the state treasury. The
17 fund consists of distributions, appropriations, gifts,
18 grants, donations and income from investment of the fund.
19 The early childhood education and care department shall
20 administer the fund. Money in the fund is subject to
21 appropriation by the legislature for early childhood
22 education and care services and programs. Expenditures from
23 the fund shall be by warrant of the secretary of finance and
24 administration pursuant to vouchers signed by the secretary
25 of early childhood education and care or the secretary's

1 authorized representative.

2 SECTION 3. DISTRIBUTION--EARLY CHILDHOOD EDUCATION AND
3 CARE FUND--PAYMENTS PURSUANT TO FEDERAL MINERAL LEASING
4 ACT.--

5 A. If, by June 30, 2022 and by June 30 of each
6 fiscal year thereafter, the net receipts for that fiscal year
7 of the money received by the state pursuant to the federal
8 Mineral Leasing Act exceed the annual average amount, the
9 excess shall be distributed to the early childhood education
10 and care fund and attributed to that fiscal year. If there
11 is an excess amount, the distribution shall be made as soon
12 as practicable. If there is not an excess amount, no
13 distribution shall be made to the fund. The department of
14 finance and administration shall make the calculation to
15 determine if an excess amount shall be distributed.

16 B. As used in this section, "annual average
17 amount" means the total net receipts attributable to money
18 received by the state pursuant to the federal Mineral Leasing
19 Act in the immediately preceding five fiscal years, divided
20 by five.

21 SECTION 4. A new section of Chapter 6, Article 4 NMSA
22 1978 is enacted to read:

23 "EXCESS EXTRACTION TAXES SUSPENSE FUND--TRANSFER OF
24 EXCESS OIL AND GAS EMERGENCY SCHOOL TAX REVENUE--TAX
25 STABILIZATION RESERVE--EARLY CHILDHOOD EDUCATION AND CARE

1 FUND.--

2 A. The "excess extraction taxes suspense fund" is
3 created as a nonreverting fund in the state treasury. Money
4 in the fund shall only be used to make transfers by the
5 department of finance and administration as required by this
6 section.

7 B. At the end of each fiscal year, the department
8 of finance and administration shall transfer the balance of
9 the fund attributable to that fiscal year as follows:

10 (1) to the tax stabilization reserve, the
11 amount necessary to bring the balance of state reserves to a
12 level equal to twenty-five percent of the aggregate recurring
13 appropriations for that fiscal year from the general fund, as
14 determined by the department; provided that, if the balance
15 in the excess extraction taxes suspense fund is not
16 sufficient to meet that level, the entire balance shall be
17 transferred to the tax stabilization reserve; and

18 (2) to the early childhood education and
19 care fund, the balance remaining in the excess extraction
20 taxes suspense fund, if any, after the transfer is made
21 pursuant to Paragraph (1) of this subsection.

22 C. As used in this section, "state reserves" means
23 the general fund balances, as determined by the department of
24 finance and administration, including all authorized revenues
25 and transfers to the general fund and balances in the

1 appropriation contingency fund, the general fund operating
2 reserve, the state-support reserve fund, the tax
3 stabilization reserve and the tobacco settlement permanent
4 fund."

5 SECTION 5. Section 7-1-6.20 NMSA 1978 (being Laws 1985,
6 Chapter 65, Section 6, as amended) is amended to read:

7 "7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES
8 SUSPENSE FUND--DISTRIBUTION.--

9 A. Except as provided in Subsection B of this
10 section, after the necessary disbursements have been made
11 from the extraction taxes suspense fund, the money remaining
12 in the suspense fund as of the last day of the month shall be
13 identified by tax source and distributed or transferred in
14 accordance with the provisions of Sections 7-1-6.21 through
15 7-1-6.23 and 7-1-6.61 NMSA 1978. After the necessary
16 distributions and transfers, any balance, except for
17 remittances unidentified as to source or disposition, shall
18 be transferred to the general fund.

19 B. Payments on assessments issued by the
20 department pursuant to the Oil and Gas Conservation Tax Act,
21 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
22 Valorem Production Tax Act and the Oil and Gas Severance Tax
23 Act shall be held in the extraction taxes suspense fund until
24 the secretary determines that there is no substantial risk of
25 protest or other litigation, whereupon after the necessary

1 disbursements have been made from the extraction taxes
2 suspense fund, the money remaining in the suspense fund as of
3 the last day of the month attributed to these payments shall
4 be identified by tax source and distributed or transferred in
5 accordance with the provisions of Sections 7-1-6.21 through
6 7-1-6.23 and 7-1-6.61 NMSA 1978. After the necessary
7 distributions and transfers, any balance, except for
8 remittance unidentified as to source or disposition, shall be
9 transferred to the general fund."

10 SECTION 6. Section 7-1-6.61 NMSA 1978 (being Laws 2017
11 (1st S.S.), Chapter 3, Section 3) is amended to read:

12 "7-1-6.61. DISTRIBUTION--OIL AND GAS EMERGENCY SCHOOL
13 TAX--EXCESS EXTRACTION TAXES SUSPENSE FUND.--

14 A. A distribution pursuant to Section 7-1-6.20
15 NMSA 1978 shall be made to the excess extraction taxes
16 suspense fund in an amount as calculated pursuant to
17 Subsection B of this section.

18 B. If the year-to-date amount plus the current net
19 receipts exceeds the annual average amount, the excess shall
20 be distributed by the taxation and revenue department to the
21 excess extraction taxes suspense fund. Each month the
22 department of finance and administration shall make the
23 calculation to determine the excess amount to be distributed.
24 If there is not an excess amount, no distribution shall be
25 made.

1 C. As used in this section:

2 (1) "annual average amount" means the total
3 net receipts attributable to the tax imposed pursuant to
4 Section 7-31-4 NMSA 1978 and distributed pursuant to Section
5 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal
6 years, divided by five; and

7 (2) "year-to-date amount" means the
8 cumulative year-to-date net receipts attributable to the tax
9 imposed pursuant to Section 7-31-4 NMSA 1978 and distributed
10 to the general fund in the prior months of the current fiscal
11 year."

12 SECTION 7. Section 22-8-34 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 90, as amended) is amended to read:

14 "22-8-34. FEDERAL MINERAL LEASING FUNDS.--

15 A. Money received by the state pursuant to the
16 provisions of the federal Mineral Leasing Act shall be
17 distributed to the public school fund, except as follows:

18 (1) an annual appropriation to the
19 instructional material fund;

20 (2) an annual appropriation to the board of
21 regents of the New Mexico institute of mining and technology
22 for the bureau of geology and mineral resources;

23 (3) the distribution made pursuant to
24 Subsection B of this section; and

25 (4) the distribution made pursuant to

1 Section 3 of this 2020 act.

2 B. Money received by the state as its share of a
3 prepayment of royalties pursuant to 30 U.S.C. 1726(b), as
4 that section may be amended or renumbered, shall be
5 distributed as follows:

6 (1) a portion of the receipts, estimated by
7 the taxation and revenue department to be equal to the amount
8 that the state would have received as its share of royalties
9 in the same fiscal year if the prepayment had not been made,
10 shall be distributed to the public school fund; and

11 (2) the remainder shall be distributed to
12 the common school permanent fund."

13 SECTION 8. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2020. _____

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