

Zuni Lawsuit Update

Public School Capital Outlay Oversight Task Force (PSCOOTF)

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PSFA Presenters:

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Partnering with New Mexico's communities to provide quality, sustainable school facilities for our students and educators.

Agenda

- State Response to Zuni Lawsuit
 - Adequacy Standards, Standards-Based Funding Program, Teacher Housing
 - Capital Funding Formula
- Recent Development in the Zuni Lawsuit
- Questions

Background

- Current public school capital funding process in NM was developed and established in response to the 1998 Zuni lawsuit.
- New Mexico public school capital outlay process seeks to establish and implement an equitable and uniform funding system for capital improvements.
- Public school capital outlay funding is both a local and state responsibility in New Mexico.
- Public School Capital Outlay Council (PSCOC) manages the allocation of the Public School Capital Outlay Act Fund (PSCOF) to public school facilities in New Mexico's 89 school districts and 2 special schools (School for the Deaf and School for the Blind and Visually Impaired).

State of NM Response to the Zuni Lawsuit

- **1999:** District Court ruled that public school capital outlay funding in NM was violating the State Constitution guarantee: establishment and maintenance of a *“uniform system of free public schools sufficient for the education of all children of school age.”*
- **1999:** Court ordered the State to *“establish and implement a uniform funding system for capital improvements and for correcting past inequities.”*
- **1999 – 2001:** PSCOC develops draft *“Facility Adequacy Standards.”*
- **2002:** PSCOC adopts first version of the Adequacy Standards in order to:
 - Establish the minimum acceptable level of physical condition and enrollment capacity of school buildings.
 - Provide a measuring stick to evaluate any existing public school building.
 - Define minimum sizes of select space types and minimum performance criteria for educational spaces, based on PED Standards for Excellence.
- **2002 – 2004:** Statewide assessments and first ranking of schools.
- **2004 – present:** Standards-based funding awards, based on the prioritization from the statewide ranking.

Creation of the Standards-Based Process

Between 1999-2004, in response to the Zuni lawsuit and the need to create a uniform system for capital improvements, the State formulated a new “Standards-Based” capital funding program by:

- 1. Assigning the source of the Public School Capital Outlay Fund: supplemental severance tax bond proceeds**
- 2. Designating the administrative and oversight bodies**
 - Public School Capital Outlay Oversight Task Force (PSCOOTF).
 - Public School Capital Outlay Council (PSCOC).
 - Public School Facilities Authority (PSFA).
- 3. Creating the Statewide Adequacy Standards**
 - Minimum space and performance requirements used to evaluate every school and generate the prioritized statewide ranking of all schools.
- 4. Formulating the State/Local match calculation (capital funding formula).**

Purpose of Statewide Adequacy Standards

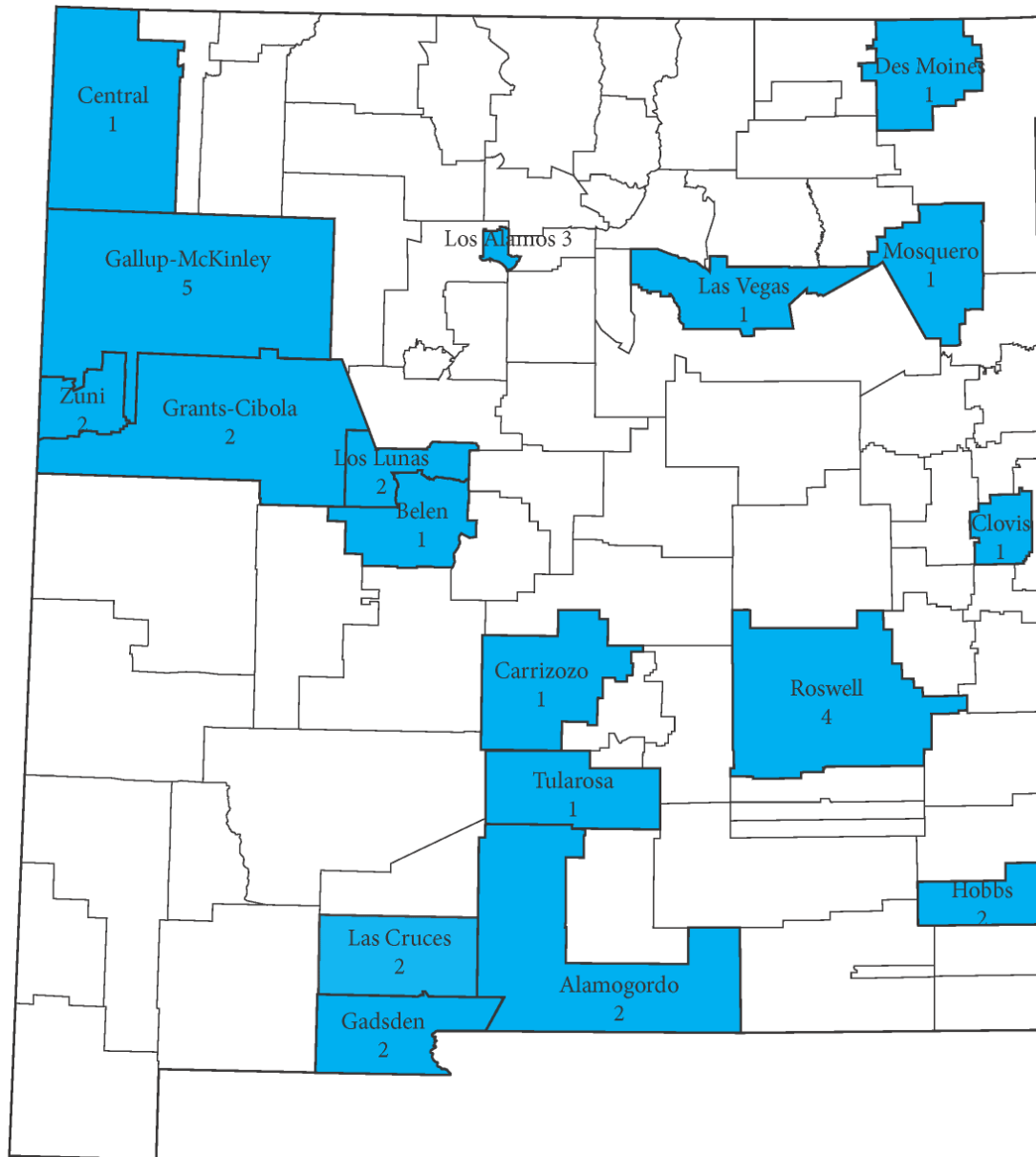
- Adequacy Standards are used to uniformly measure all existing public school buildings in NM: the standards are not a design guideline for new schools.
 - PSFA evaluates/measures every existing school building in NM against the same set of minimum requirements defined in the Adequacy Standards to create a prioritized, ranked list of all schools in NM.
 - Schools with the most deficiencies (relative to the minimum requirements in the Adequacy Standards and physical condition) are identified as having the greatest capital needs.
 - Schools with the greatest needs are prioritized to receive State funding first.
 - New schools are designed to exceed the minimum requirements in the Standards: new schools are larger and higher quality than the minimums.
- Identify deficiencies : assign a cost to correct the deficiencies : calculate the Weighted New Mexico Condition Index score (wNMCI) : rank school facilities.

$$\text{wNMCI} = \frac{\text{Cost to Correct Physical Facility Condition Deficiencies at a School} + \text{Cost to Correct Educational Adequacy Deficiencies at a School}}{\text{Cost to Replace the School}}$$

Standards-Based Program Evolution: Teacher Housing

- In August 2020, PSCOC made a standards-based award to the Zuni HS project, including \$6.9 M in state funding for up to 36 new teacher housing units, to be constructed on the HS campus.
 - This was the first standards-based award since 2004 that includes state funding to construct new teacher housing units in addition to funding to construct a new HS facility.
- In July 2021, PSCOC funded teacher housing projects through the standards-based program to the following districts:
 - Gallup: \$13M for teacher housing units at 3 standards-based project locations (Tohatchi, Crownpoint, and Thoreau).
 - Mosquero: \$2M for teacher housing units.
- In addition to expanding the standards-based program to include funding for teacher housing units, PSCOC plans to award additional teacher housing projects in early 2022, through a new teacher housing funding program.

Districts with New Standards-Based Awards



- Number of new standards-based projects awarded per district during the last 4 years. (FY19, FY20, FY21, FY22)
- At least \$487 M in state funding will be directed to these 34 major capital construction projects in communities throughout NM for the next 3 to 5 years.
- Geographic distribution of awards for large projects is a measure of the state's uniform response to the Zuni lawsuit.

Capital Funding Formula Goals

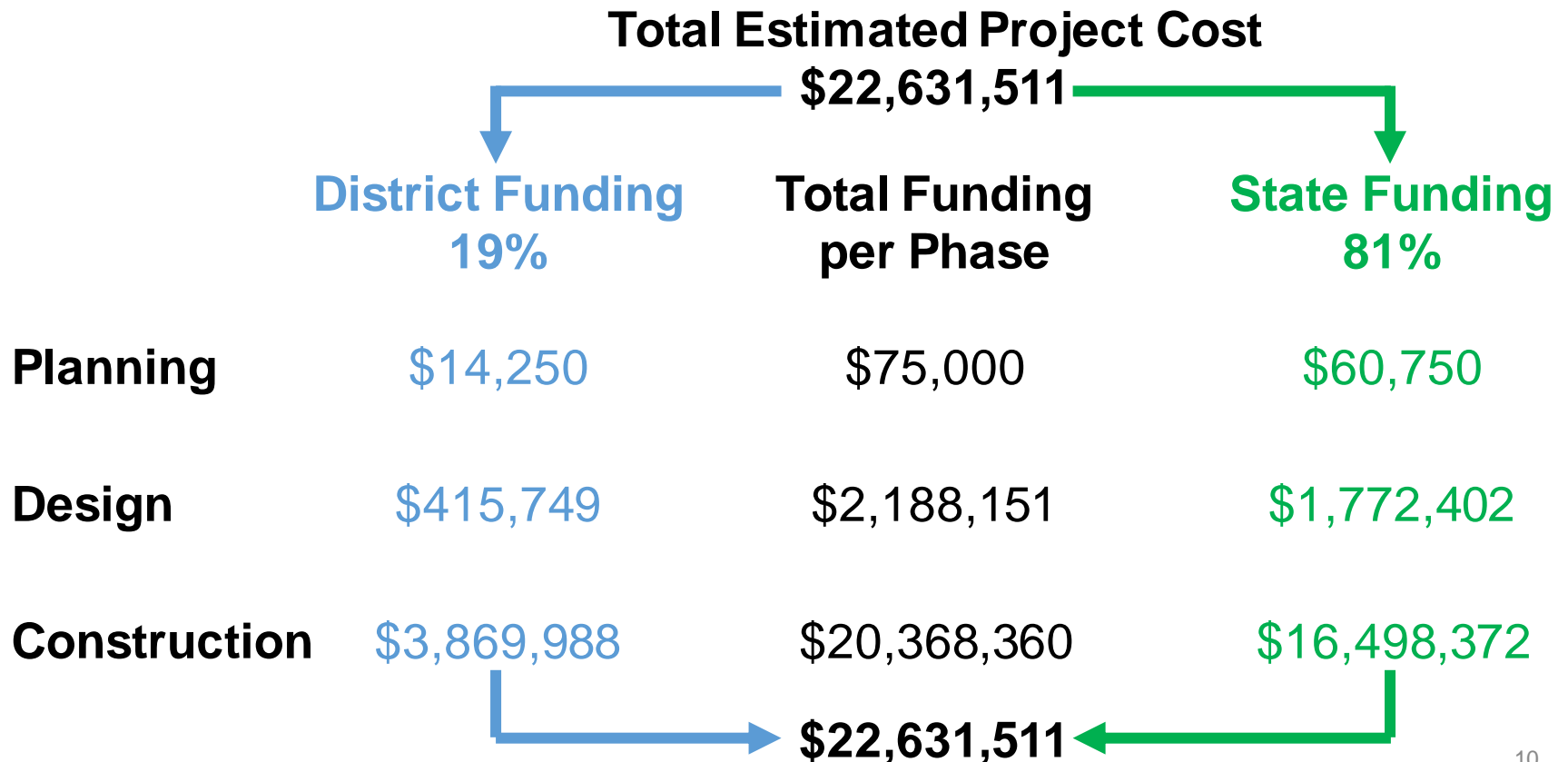
Concept of the funding formula and the resultant state/local match percentage that is assigned to each district intends to:

- Accurately reflect each district's ability to pay for capital improvements for their facilities with local funds.
 - Reduce the state match percentage for districts that are able to raise local funding to pay for their capital replacement cycle.
 - Increase the state match percentage for districts that have less capacity to raise local funds to pay for major capital projects.
- Equitably distribute the limited state funding by shifting more of the project cost to districts that can afford it, with state funds directed to the districts that need it most.
- Ensure broad geographic distribution of state funding.

Funding Formula Project Example - Gallup

In August 2020, Gallup's Navajo Pine High School was awarded state funding for a full replacement project.

- Gallup was a 19/81 district: 19% local funding, 81% state funding.



Direct Appropriations and Offsets History

- Added to the Public School Capital Outlay Act (PSCOA) in 2002. The 2002 report of the Special Master appointed as a result of the Zuni lawsuit specifically highlighted *“the dis-equalizing effect of direct legislative appropriations to individual schools for capital outlay purposes.”* The offset was enacted to mitigate this concern.
- PSCOC must *“reduce any grant amounts awarded to a school district by a **percent** of all direct non-operational legislative appropriations for schools in that district that have been accepted, including educational technology and re-authorizations of previous appropriations.”*
- A change in 2007 allows a 50% reduction in the offset amount if the legislative appropriations are for a project for schools in the current or previous year’s top 150 NMCI ranking.
- The percent reduction is the calculated local match percentage rate, per the state/local share funding formula.
- Offsets are applied to a district, even though appropriations are often directed to a specific school or locally chartered charter school.
- District offsets are calculated each year by the Capital Outlay Bureau of PED, offset balance carries-forward year-to-year, until the balance is paid off by a project.

Importance of the Offset Mechanism

- Legislature enacted the offset, as one of a number of initiatives, to better equalize state funding of capital requests across all of NM's school districts, ensuring state funding is distributed equitably and uniformly to all.
- Without offsets, large districts would gather more funding through direct appropriations while also being eligible to receive state funding through the PSCOF programs, cumulatively accessing more of the finite state funding than smaller districts that receive fewer direct appropriations. More populous districts would be able to gather more of the finite state funding than less populous districts.
- Discourages districts from accepting appropriations for projects types that are not aligned with the district's priorities or critical capital needs. The "future debt obligation" resulting from offsets encourages school districts to carefully consider the benefits and downsides of accepting direct appropriations for projects that might be lower on their list of prioritized capital needs.

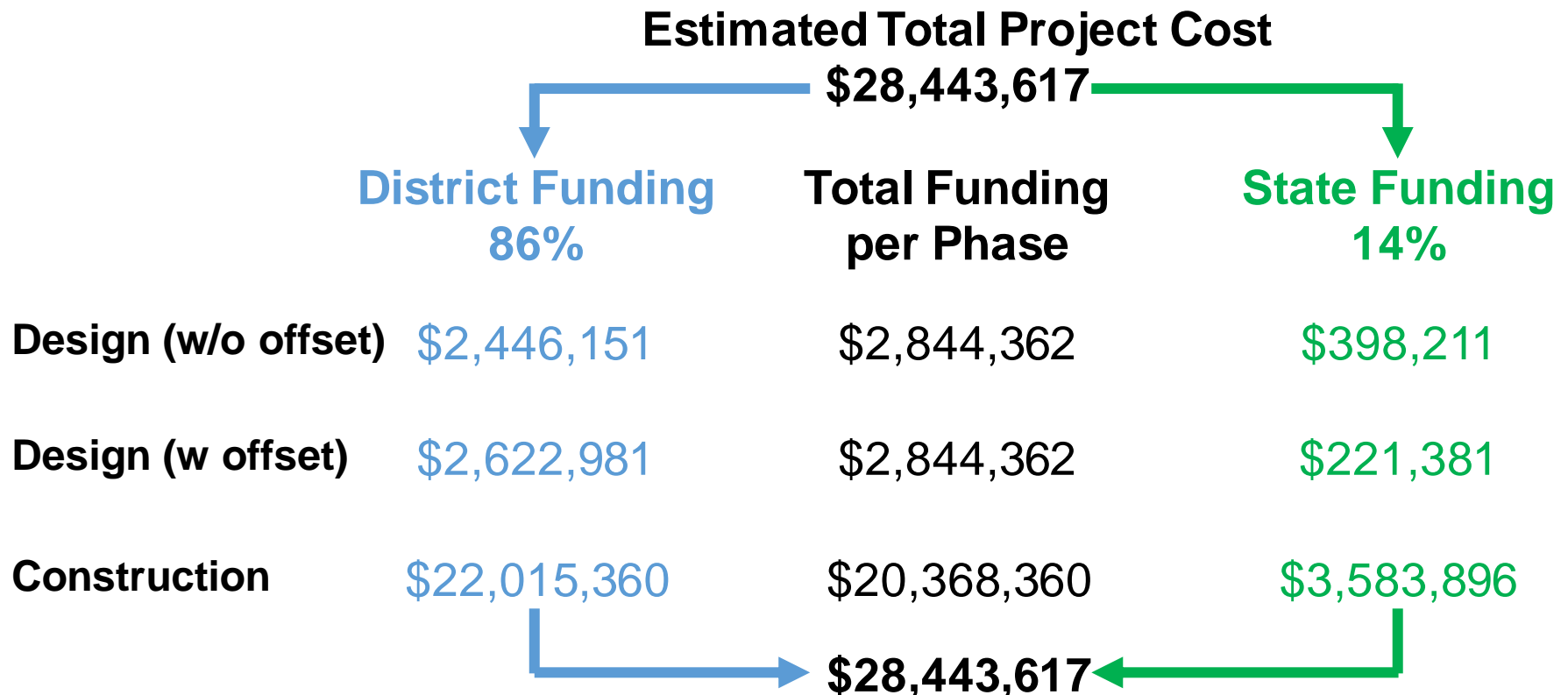
Offsets and Capital Funding Example

- If a district has an offset balance when they receive PSCOC funding for a capital project, the offset amount is added to the local share of the project cost and subtracted from the state share.
- Example District A (14% state match, 86% district match):
 - District receives a total of \$411,233 in direct legislative appropriations for capital expenditures at a school site that is ranked in the top 150 of the statewide ranking prior to applying for a PSCOC award for a major capital project, resulting in an offset balance, calculated as follows:
 - $\$411,233 \times 50\% \text{ (Top 150 rank)} \times 86\% \text{ (District \%)} = \$176,830.$
 - Total estimated project cost of major capital project: \$28,443,617.

District A Example: Offset Applied to a Project

In July 2021, District A is awarded state funding for a major capital project to replace its existing school facilities, \$28,443,617 TPC.

- District A Offset Balance in July 2021 = \$176,830.
- District A is an 86/14 district: 86% local funding, 14% state funding.



Funding Formula Example - Artesia

Artesia's state match percentage is 6%, why?

- \$8.9 B five-year valuation of land in the district.
- Annual local revenue raised if district taxpayers approve taxes on the \$8.9 B valuation = \$8 M (local funding capacity).
- Annual capital investment needed for the 544,318 GSF of district facilities = \$3.7 M (45 year capital investment/replacement cycle).
- $\$8 \text{ M} / \$3.7 \text{ M} = 216\%$
- Conclusion: Artesia has 216% local funding capacity to pay for its capital projects.
 - As calculated, Artesia should get 0% state funding, statutory rule rounds all districts up to at least 6% state funding.

Funding Formula Example - Zuni

Zuni's state match percentage is 100%, why?

- \$11.5 M five-year valuation of land in the district.
- Annual local revenue raised if district taxpayers approve taxes on the \$11.5 M valuation = \$10,370 (local funding capacity).
- Annual capital investment needed for the 196,641 GSF of district facilities = \$1.3 M (45 year capital investment/replacement cycle).
- $\$10,370 / \$1.3 \text{ M} = 0.8\%$
- Conclusion: Zuni has 0.8% local funding capacity to pay for its capital projects.
- Zuni needs 100% state funding to complete any major capital project.

Funding Formula Example - Albuquerque

Albuquerque's state match percentage will be 6% by FY24, why?

- \$81.98 B five-year valuation of land in the district.
- Annual local revenue raised if district taxpayers approve taxes on the \$81.98 B valuation = \$73.8 M (local funding capacity).
- Annual capital investment needed for the 11,378,870 GSF of district facilities = \$77.7 M (45 year capital investment/replacement cycle).
- $\$73.8 \text{ M} / \$77.7 \text{ M} = 95\%$
- Conclusion: ABQ has 95% local funding capacity to pay for its capital projects.
- ABQ is almost self-sustaining, able to pay for its capital needs with local funds.

Funding Formula Example - Mosquero

Mosquero's state match percentage is 6%, why?

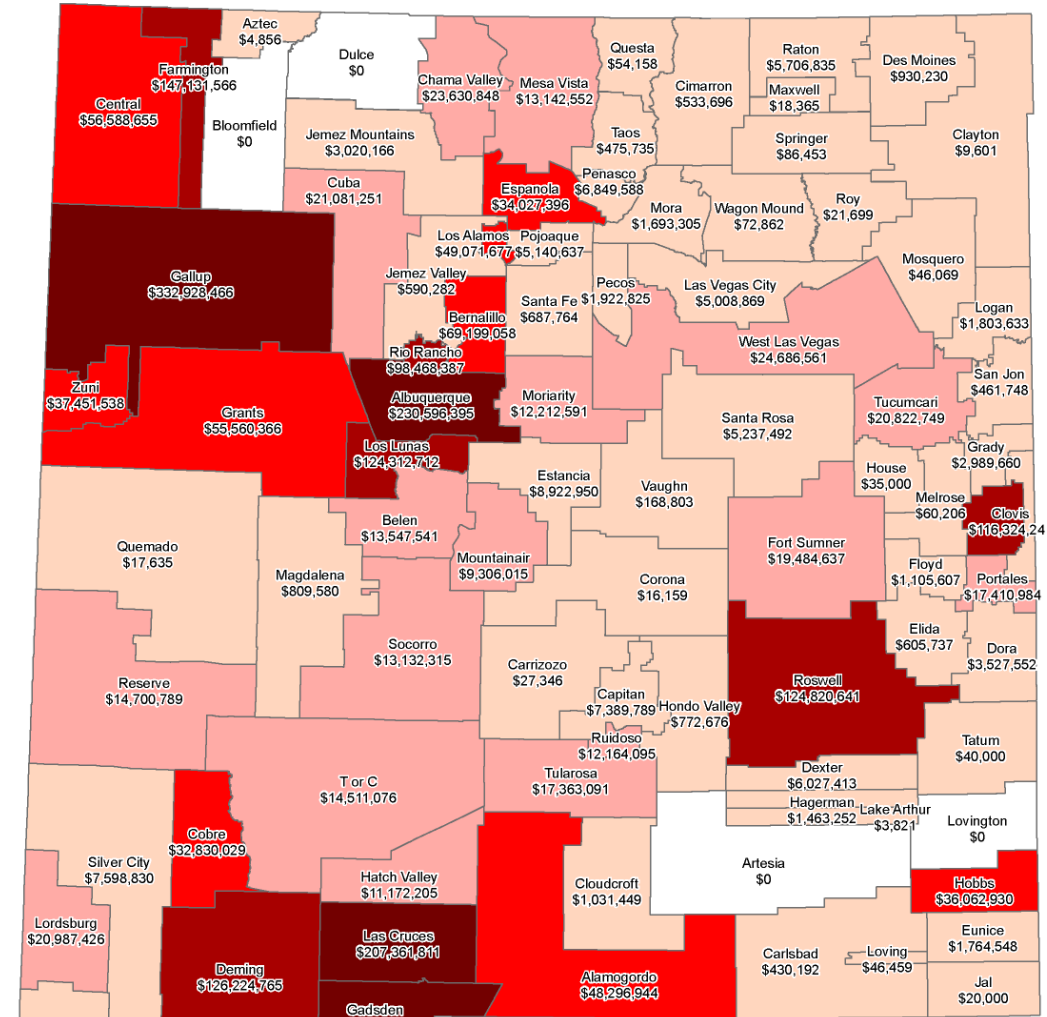
- \$458.5 M five-year valuation of land in the district.
- Annual local revenue raised if district taxpayers approve taxes on the \$458.5 M valuation = \$412,614 (local funding capacity).
- Annual capital investment needed for the 24,665 GSF of district facilities = \$168,528 (45 year capital investment/replacement cycle).
- $\$412,614 / \$168,528 = 245\%$
- Conclusion: Mosquero has 245% local funding capacity to pay for its capital projects.
- Large district with 801,920 acres of low value ranch land, only 1 small combined campus of school facilities for the district for 53 students.



Total PSCOC Dollars Awarded

Total State Funding Awarded per District

- \$332 M – Gallup
- \$247 M – Gadsden
- \$230 M – Albuquerque
- \$207 M – Las Cruces
- \$147 M – Farmington
- \$126 M – Deming
- \$124 M – Roswell
- \$124 M – Los Lunas
- \$116 M – Clovis
- \$0
 - Artesia
 - Lovington
 - Bloomfield
 - Dulce



State Total PSCOC Dollars Awarded
\$2,576,145,742

Total PSCOC Dollars Awarded as of 6/3/2021



State Response to Zuni Lawsuit: HB 6

- January 2021 (Legislative Session): NM Legislature passed HB 6 which eliminates the 75% credit taken for federal Impact Aid, federal forest reserve payments, and the local half-mil levy when calculating the state equalization guarantee (SEG) distribution. The bill also expands the use of capital improvement levies, education technology notes, and local general obligation bond funds to include teacher housing.
- HB 6 calls for changes to the capital outlay funding formula and may serve as another effective state response to the Zuni lawsuit.

House Bill 6 Changes to Phase 2 Formula

- Requires PSCOC to develop rules that will change the capital funding formula (Phase 2 formula), to include a new local revenue source.
- Excerpt from House Bill 6, Section K:

“As used in this section, “unrestricted revenue used for capital expenditures” means the amount of revenue certified by the department that was not restricted for a particular purpose and used by a school district to make capital outlay expenditures, as defined by the council’s rules. No later than July 1, 2024, the council shall adopt rules identifying the procedure for calculating unrestricted revenue used for capital expenditures after consulting with school districts, including school districts with limited bonding capacity for capital projects, the department, the public school capital outlay oversight taskforce, the legislative education study committee and the legislative finance committee; provided that the rules shall provide for the exclusion of revenue raised pursuant to the Public School Capital Improvements Act and the Public School Buildings Act and expenditures related to teacher housing.”

Recent Developments in the Zuni Lawsuit

- December 2020: District court rules in favor of Gallup McKinley County Schools.
- February 2021: State files a motion for post judgement relief.
- June 2021: District court denies the state's motion for post judgement relief.
- July 2021: State files an appeal of the district court's ruling from December 2021.

Questions

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