## Public School Capital Improvements Act (SB9)

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## Public School Capital Improvements Act (SB9)

- Sections 22-25-1 through 22-25-11 NMSA 1978
- Enacted in 1975, changed periodically through 2020
- 2020 amendment repealed during special session
- Allows school districts to impose a property tax levy of up to two mills for up to six years
- Allowable uses:
- Public school construction and renovation
- Public school grounds improvements
- Maintenance of public school buildings or grounds
- Activity vehicles
- Computer software and hardware
- Education technology and technology infrastructure


## SB9 State Match Calculation

| Projected Program <br> Guarantee |
| :---: |
| $=$ |

=
Average of prior year "total program units" on second and third reporting dates
times
Per Unit Rate: \$86.04
(adjusted annually by CPI)
times
Number of mills approved by voters

$=$

times
Mill rate as a percent approved by voters

Minimum Program
Guarantee
=
Average of prior year
"total program units" on second and third reporting dates
times
Per Unit Rate: \$6.68 (adjusted annually by CPI)
times
Number of mills approved by voters

## SB9 State Match Calculation

Example:
Deming, FY20


## SB9 State Match Calculation

Example:
Artesia, FY20


## SB9 State Match Calculation

| Projected Program <br> Guarantee |
| :---: |
| $=$ |

=

| Average of prior year |
| :---: |
| "total program units" |
| on second and third |
| reporting dates |

times
Per Unit Rate: \$86.04
(adjusted annually by CPI)

$=$


Minimum Program
Guarantee
=
Average of prior year "total program units" on second and third reporting dates
times
Per Unit Rate: \$6.68 (adjusted annually by CPI)
times
Number of mills approved by voters

## Laws 2018, Chapter 38 (House Bill 48)

Changed calculation from
"First forty days' total program units"
to

## "Average of prior year second and third reporting dates' total program units"

- Rationale:
- Prior year data is available sooner, more timely distributions to school districts
- Facilitates spending, prevents large carryforwards
- Problem:
- Program units are not calculated on the second or third reporting dates.
- PED collects membership on the second and third reporting dates to calculate preliminary and final funded units.
- PED analysis of HB48 noted use of average prior year data from the second and third reporting dates was a problem.


## Recommendation

Necessary technical change: Amend the law to use prior year final funded program units.
Additional policy consideration: Exclude discretionary program units.

- The Legislature has included discretionary programs in the funding formula in recent years, including: K-5 Plus, Extended Learning Time Programs, Fine Arts Programs, Bilingual and Multicultural Education Programs, Physical Education
- School districts and charter schools choose whether to participate in these programs; participation varies in each across school districts based on funding availability and local decisions
- Discretionary units increase the SB9 match, making less PSCOF revenue available to meet constitutional obligations from the Zuni lawsuit
- Discretionary units do not align well with actual capital needs
- HB254 of the 2020 legislative session excluded discretionary programs units from the calculation of the SB9 program guarantee, but was repealed during the 2020 special session due to funding concerns
- May consider phasing-out inclusion of discretionary units in the calculation of the SB9 match


# Changes to Public School Capital Improvements Act 

Discussion Draft

## 22-25-2 NMSA 1978: Definitions.

As used in the Public School Capital Improvements Act:
A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and
B. "capital improvements" means expenditures, including payments made with respect to leasepurchase arrangements as defined in the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978] or the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978] but excluding any other debt service expenses, for:
(1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings and pre-kindergarten classroom facilities;
(2) purchasing or improving public school or pre-kindergarten grounds;
(3) maintenance of public school buildings or public school or pre-kindergarten grounds, including the purchasing or repairing of maintenance equipment and participating in the facility information management system as required by the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] and including payments under contracts with regional education cooperatives for maintenance support services and expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;
(4) purchasing activity vehicles for transporting students to extracurricular school activities;
(5) purchasing computer software and hardware for student use in public school classrooms; and
(6) purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and that may also include:
(a) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and the purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and
(b) improvements, alterations and modifications to, or expansions of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this paragraph.

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Red Text = Necessary Technical Change
Blue Text = Optional Policy Consideration
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C. "discretionary program units" means program units generated for elementary fine arts programs, elementary physical education programs, bilingual and multicultural education programs, extended learning time programs, and K-5 Plus programs.

## 22-25-9 NMSA 1978: State distribution to school district imposing tax under certain circumstances.

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, using prior year valuations, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying an average of the school district's prior year second and third reporting dates' total final program units, excluding discretionary program units, by the amount specified in Subsection B of this section and further multiplying the product obtained by the tax rate approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.
B. In calculating the state distribution pursuant to Subsection A of this section, the following amounts shall be used:
(1) the amount calculated pursuant to Subsection D of this section per program unit; and
(2) an additional amount certified to the secretary by the public school capital outlay council. No later than June 1 of each year, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.
C. For any fiscal year notwithstanding the amount calculated to be distributed pursuant to Subsections $A$ and $B$ of this section, except as provided in Subsection $G$ of this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than the amount calculated pursuant to Subsection $E$ of this section multiplied by the average of the school district's prior year second and third reporting dates' total final program units, excluding discretionary program units, and further multiplying the product obtained by the approved tax rate.

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D. For purposes of calculating the distribution pursuant to Subsection B of this section, the amount used in Paragraph (1) of that subsection shall equal seventy dollars (\$70.00) in fiscal year 2008 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.
E. For purposes of calculating the minimum distribution pursuant to Subsection C of this section, the amount used in that subsection shall equal five dollars (\$5.00) through fiscal year 2005 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.
F. In expending distributions made pursuant to this section, school districts and charter schools shall give priority to maintenance projects, including payments under contracts with regional education cooperatives for maintenance support services. In addition, distributions made pursuant to this section may be expended by school districts and charter schools as follows:
(1) for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978; or
(2) for the school district portion of payments made under a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, if the school district has received a grant for the state share of the payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.
G. If a serious deficiency in a roof of a public school facility has been corrected pursuant to Section 22-24-4.4 NMSA 1978 and the school district has refused to pay its share of the cost as determined by that section, until the public school capital outlay fund is reimbursed in full for the share attributed to the district, the distribution calculated pursuant to this section shall not be made to the school district but shall be made to the public school capital outlay fund.
H. A portion of each distribution made by the state pursuant to this section on or after July 1, 2009 shall be further distributed by the school district to each locally chartered or state-chartered charter school located within the school district. The amount to be distributed to each charter school shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the second and third reporting dates of the prior school year is to the total such enrollment in the school district; provided that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year. Each year, the department shall certify to the school district the amount to be distributed to each charter school. Distributions received by a charter school pursuant to this subsection shall be expended pursuant to the provisions of the Public School Capital Improvements Act; except that if capital improvements for the charter school were not identified in a resolution approved by the electors, the charter school may expend the distribution for any capital improvements, including those specified in Subsection $F$ of this section.

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& \text { Red Text }=\text { Necessary Technical Change } \\
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I. In determining a school district's total program units pursuant to Subsections A and C of this section and a school district's total enrollment pursuant to Subsection H of this section, students attending a state-chartered charter school within the school district shall be included.
J. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council.

FY20 Capital Improvements Act Local and State Funding





FY21 Scenario Capital Improvements Act Local and State Funding
ATTACHMENT C
(dollars in thousands)


*Note: Discretionary program units include units generated for elementary fine arts programs, elementary physical education programs, bilingual and multicultural education programs, extended learning time programs, and K-5 Plus programs.

|  | FY20 |  |  |  | FY21-Current Law |  |  |  | FY21-Scenario Excluding Discretionary Units |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| School District | Prior Year Final Funded Units | Projected <br> Local Tax | State Distribution | Total SB9 | Prior Year Final Funded Units | Projected <br> Local Tax | State <br> Distribution | Total SB9 | Prior Year Final Funded Units | Projected <br> Local Tax | State Distribution | Total SB9 |
| ALAMOGORDO | 9,758.5 | \$1,664.8 | \$130.4 | \$1,795.2 | 10,160.6 | \$1,712.4 | \$138.2 | \$1,850.6 | 9,980.2 | \$1,712.4 | \$135.7 | \$1,848.1 |
| 2 ALBUQUERQUE | 180,537.1 | \$33,777.9 | \$2,412.0 | \$36,189.8 | 191,182.6 | \$34,956.2 | \$2,600.1 | \$37,556.2 | 181,658.6 | \$34,956.2 | \$2,470.6 | \$37,426.7 |
| 3 ANIMAS | 506.4 | \$75.3 | \$11.9 | \$87.1 | 517.7 | \$75.9 | \$14.8 | \$90.7 | 513.8 | \$75.9 | \$14.1 | \$90.0 |
| 4 ARTESIA | 6,529.2 | \$3,202.9 | \$87.2 | \$3,290.2 | 7,041.3 | \$3,752.3 | \$95.8 | \$3,848.0 | 6,233.3 | \$3,752.3 | \$84.8 | \$3,837.0 |
| 5 AZTEC | 5,096.2 | \$1,227.1 | \$64.2 | \$1,291.3 | 5,287.7 | \$1,215.2 | \$67.8 | \$1,283.1 | 5,120.5 | \$1,215.2 | \$65.7 | \$1,280.9 |
| 6 BELEN | 7,076.0 | \$1,263.6 | \$94.5 | \$1,358.1 | 7,535.5 | \$1,288.2 | \$102.5 | \$1,390.7 | 7,165.7 | \$1,288.2 | \$97.5 | \$1,385.6 |
| 7 BERNALILLO | 5,720.0 | \$1,283.2 | \$76.4 | \$1,359.6 | 6,291.6 | \$1,316.5 | \$85.6 | \$1,402.0 | 5,446.6 | \$1,316.5 | \$74.1 | \$1,390.5 |
| 8 BLOOMFIELD | 4,758.4 | \$1,523.5 | \$63.6 | \$1,587.1 | 5,134.2 | \$1,649.5 | \$69.8 | \$1,719.3 | 4,654.9 | \$1,649.5 | \$63.3 | \$1,712.8 |
| 9 CAPITAN | 1,113.5 | \$852.8 | \$14.9 | \$867.6 | 1,155.0 | \$886.2 | \$15.7 | \$901.9 | 1,142.9 | \$886.2 | \$15.5 | \$901.7 |
| CARLSBAD | 14,556.5 | \$5,453.1 | \$194.5 | \$5,647.5 | 16,282.9 | \$8,366.6 | \$221.4 | \$8,588.1 | 15,680.7 | \$8,366.6 | \$213.3 | \$8,579.9 |
| CARRIZOZO | 508.3 | \$139.1 | \$6.8 | \$145.9 | 532.3 | \$144.4 | \$7.2 | \$151.7 | 503.4 | \$144.4 | \$6.8 | \$151.3 |
| CENTRAL | 10,684.1 | \$1,493.0 | \$345.5 | \$1,838.5 | 11,300.2 | \$1,676.1 | \$303.5 | \$1,979.6 | 10,835.9 | \$1,676.1 | \$222.1 | \$1,898.2 |
| CHAMA | 1,072.2 | \$293.0 | \$14.3 | \$307.3 | 1,144.6 | \$297.2 | \$15.6 | \$312.7 | 1,066.6 | \$297.2 | \$14.5 | \$311.7 |
| CIMARRON | 1,141.0 | \$862.6 | \$15.2 | \$877.9 | 1,178.8 | \$870.9 | \$16.0 | \$886.9 | 1,165.3 | \$870.9 | \$15.8 | \$886.7 |
| CLAYTON | 1,110.7 | \$272.7 | \$14.8 | \$287.6 | 1,183.7 | \$275.0 | \$16.1 | \$291.1 | 1,081.0 | \$275.0 | \$14.7 | \$289.7 |
| CLOUDCROFT | 977.9 | \$414.0 | \$13.1 | \$427.1 | 1,073.1 | \$425.8 | \$14.6 | \$440.4 | 1,065.3 | \$425.8 | \$14.5 | \$440.3 |
| CLOVIS | 13,787.3 | \$1,680.6 | \$692.0 | \$2,372.5 | 14,436.0 | \$1,729.2 | \$799.7 | \$2,528.9 | 14,108.2 | \$1,729.2 | \$742.3 | \$2,471.5 |
| COBRE | 2,766.0 | \$525.6 | \$37.0 | \$562.6 | 2,994.6 | \$457.8 | \$66.8 | \$524.6 | 2,482.3 | \$457.8 | \$33.8 | \$491.6 |
| CORONA | 337.3 | \$128.7 | \$4.5 | \$133.3 | 339.9 | \$112.7 | \$4.6 | \$117.4 | 338.2 | \$112.7 | \$4.6 | \$117.3 |
| CUBA | 1,504.3 | \$284.9 | \$20.1 | \$305.0 | 1,641.6 | \$286.5 | \$22.3 | \$308.8 | 1,507.7 | \$286.5 | \$20.5 | \$307.0 |
| 1 DEMING | 9,929.5 | \$1,194.7 | \$514.0 | \$1,708.7 | 11,404.9 | \$1,236.0 | \$761.9 | \$1,997.9 | 8,960.0 | \$1,236.0 | \$333.6 | \$1,569.6 |
| 2 DES MOINES | 372.6 | \$77.0 | \$5.0 | \$81.9 | 376.4 | \$77.6 | \$5.1 | \$82.7 | 374.3 | \$77.6 | \$5.1 | \$82.6 |
| DEXTER | 1,830.3 | \$168.5 | \$146.5 | \$315.0 | 1,917.8 | \$163.0 | \$173.0 | \$336.0 | 1,775.4 | \$163.0 | \$148.0 | \$311.0 |
| DORA | 626.6 | \$55.1 | \$52.7 | \$107.8 | 638.3 | \$57.9 | \$54.0 | \$111.8 | 632.4 | \$57.9 | \$52.9 | \$110.8 |
| 5 DULCE | 1,457.6 | \$601.0 | \$19.5 | \$620.4 | 1,592.3 | \$734.9 | \$21.7 | \$756.5 | 1,412.1 | \$734.9 | \$19.2 | \$754.1 |
| ELIDA | 503.9 | \$55.8 | \$31.0 | \$86.7 | 515.2 | \$57.5 | \$32.7 | \$90.3 | 511.3 | \$57.5 | \$32.0 | \$89.6 |
| ESPANOLA | 7,654.5 | \$1,184.7 | \$132.5 | \$1,317.2 | 8,060.2 | \$1,214.3 | \$197.7 | \$1,412.0 | 7,625.8 | \$1,214.3 | \$121.6 | \$1,335.9 |
| 8 ESTANCIA | 1,543.7 | \$237.3 | \$28.4 | \$265.6 | 1,599.7 | \$244.2 | \$36.1 | \$280.2 | 1,556.7 | \$244.2 | \$28.5 | \$272.7 |
| EUNICE | 1,683.5 | \$1,444.7 | \$22.5 | \$1,467.1 | 1,764.1 | \$2,001.9 | \$24.0 | \$2,025.9 | 1,683.8 | \$2,001.9 | \$22.9 | \$2,024.8 |
| FARMINGTON | 18,647.0 | \$3,057.3 | \$249.1 | \$3,306.4 | 19,610.7 | \$3,026.1 | \$409.3 | \$3,435.4 | 18,992.5 | \$3,026.1 | \$301.0 | \$3,327.1 |
| FLOYD | 617.4 | \$29.7 | \$76.5 | \$106.2 | 631.8 | \$28.2 | \$82.5 | \$110.7 | 613.0 | \$28.2 | \$79.2 | \$107.4 |
| FT. SUMNER | 715.3 | \$182.7 | \$9.6 | \$192.3 | 769.4 | \$187.3 | \$10.5 | \$197.7 | 702.0 | \$187.3 | \$9.5 | \$196.8 |
| GADSDEN | 24,493.0 | \$1,965.0 | \$2,249.7 | \$4,214.8 | 27,820.3 | \$2,035.3 | \$2,838.2 | \$4,873.6 | 22,914.6 | \$2,035.3 | \$1,978.9 | \$4,014.2 |
| GALLUP | 21,504.4 | \$1,708.2 | \$1,992.2 | \$3,700.5 | 24,831.4 | \$1,622.4 | \$2,727.6 | \$4,350.0 | 21,120.7 | \$1,622.4 | \$2,077.5 | \$3,699.9 |
| GRADY | 462.0 | \$20.1 | \$59.4 | \$79.5 | 493.0 | \$21.0 | \$65.4 | \$86.4 | 489.6 | \$21.0 | \$64.8 | \$85.8 |
| GRANTS | 6,509.0 | \$661.9 | \$458.1 | \$1,120.1 | 6,931.9 | \$673.9 | \$540.4 | \$1,214.3 | 6,547.6 | \$673.9 | \$473.1 | \$1,147.0 |
| HAGERMAN | 1,088.3 | \$79.0 | \$108.3 | \$187.3 | 1,153.4 | \$75.8 | \$126.2 | \$202.1 | 1,062.9 | \$75.8 | \$110.4 | \$186.2 |
| HATCH | 2,257.6 | \$170.3 | \$218.1 | \$388.5 | 2,523.4 | \$168.2 | \$273.8 | \$442.0 | 2,172.4 | \$168.2 | \$212.4 | \$380.6 |
| HOBBS | 17,492.9 | \$3,170.3 | \$233.7 | \$3,404.0 | 18,902.7 | \$3,749.3 | \$257.1 | \$4,006.4 | 18,249.2 | \$3,749.3 | \$248.2 | \$3,997.5 |
| HONDO | 503.2 | \$74.9 | \$11.7 | \$86.6 | 537.5 | \$73.6 | \$20.5 | \$94.2 | 529.7 | \$73.6 | \$19.2 | \$92.8 |
| 1 HOUSE | 336.6 | \$31.7 | \$26.2 | \$57.9 | 342.2 | \$33.2 | \$26.7 | \$60.0 | 341.2 | \$33.2 | \$26.5 | \$59.8 |
| 2 JAL | 1,069.5 | \$3,537.2 | \$14.3 | \$3,551.5 | 1,095.3 | \$6,564.2 | \$14.9 | \$6,579.1 | 1,083.5 | \$6,564.2 | \$14.7 | \$6,578.9 |
| 3 JEMEZ MTN. | 629.5 | \$637.8 | \$8.4 | \$646.2 | 710.3 | \$445.7 | \$9.7 | \$455.4 | 659.1 | \$445.7 | \$9.0 | \$454.7 |
| JEMEZ VALLEY | 1,058.9 | \$219.7 | \$14.1 | \$233.8 | 1,139.1 | \$215.7 | \$15.5 | \$231.2 | 1,070.9 | \$215.7 | \$14.6 | \$230.3 |
| LAKE ARTHUR | 399.1 | \$97.5 | \$5.3 | \$102.8 | 416.5 | \$115.0 | \$5.7 | \$120.6 | 410.4 | \$115.0 | \$5.6 | \$120.6 |
| LAS CRUCES | 45,003.2 | \$6,873.8 | \$870.4 | \$7,744.2 | 48,883.9 | \$7,116.7 | \$1,446.7 | \$8,563.5 | 43,403.2 | \$7,116.7 | \$590.3 | \$7,707.0 |

(dollars in thousands)


