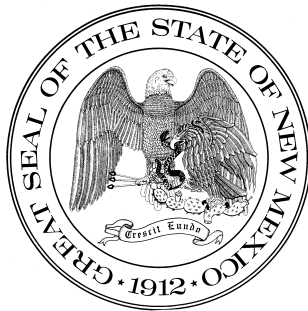


Funding Formula Study Task Force



REPORT to the LEGISLATURE and the GOVERNOR

June 2008
New Mexico Legislative Council Service
File No. 205.214

June 2008

The funding formula study task force is pleased to submit its final report to the legislature and Governor Richardson. The American institutes for research (AIR), a national leader in public education and school finance, has completed its study of public school funding in New Mexico, and its report is available in the legislative library and online at AIR's web site, www.nmschoolfunding.org.

The task force wishes to thank all the participants in the study, particularly the members of the professional judgment panels and the stakeholder panel. Their input was the basis of the study, and the work could not have been done without them. The task force also gratefully acknowledges the assistance of the public education department in providing data and fiscal expertise to AIR and the task force.

The project advisory panel, a subset of the task force, worked long hours over many days and months advising the contractor and serving as the external review panel for the work of the professional judgment panels and the contractor, and the task force appreciates the work of these dedicated members.

In addition, the task force extends its thanks to the legislative council service, legislative education study committee, legislative finance committee, public education department and office of education accountability for staff support.

If you have any questions concerning this report or the work of the committee, please feel free to talk to us or other members of the task force.

Sincerely,



MIMI STEWART
State Representative, District 21
Co-Chair, Funding Formula
Study Task Force



DICK POOL
Superintendent, Silver Consolidated Schools
Co-Chair, Funding Formula Study Task Force

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Background of the Task Force

New Mexico's public school funding formula was enacted by the legislature in 1974. The two critical objectives of the formula were to: (1) equalize funding statewide; and (2) retain local autonomy in budgeting and expending state support. The formula was designed to distribute operational funds to local school districts in an objective manner, based on the educational needs of individual students and the costs of programs designed to meet those needs. The program cost differentials in the original formula were based on nationwide data regarding relative costs of various school programs as well as experience in New Mexico. The current funding formula is divided into three basic parts:

- (1) educational program units that reflect the different costs of identified programs;
- (2) training and experience (T&E) units that provide additional money so districts may hire and retain more highly educated and experienced instructional staff; and
- (3) size adjustment units that recognize local school and district needs, economies of scale, marginal cost increases for growth in enrollment and adjustments for the creation of new districts.

As expected, the funding formula was amended over time as issues and problems arose. By 1995, the legislature recognized the need for another study of the formula. The legislature, governor and state board of education appointed a public school funding formula task force to develop a request for proposals (RFP) and select a consultant to carry out the funding formula study. The task force's charge to the consultant, Forbis Jordan and associates, was to:

- (1) perform a formula equity analysis;
- (2) identify areas of perceived unfairness in the formula;
- (3) propose alternative factors for the formula; and
- (4) review a number of nonformula educational finance issues, particularly in the areas of program and department accountability, capital outlay funding and needs and rewards for schools performing higher than expected.

In the principal finding, the consultant concluded that:

when evaluated on the basis of generally accepted standards of equity, the New Mexico public school funding formula is a highly

equitable formula. State law does not permit local school districts to levy additional taxes to supplement formula distributions. As a result, spending disparities are less than in other states and statistically insignificant.

The consultant also concluded that, given the relatively low per-capita income of the state and the relatively high level of state support, New Mexico is a "high-effort, low-ability state" in terms of elementary and secondary education. Proposed changes to the formula revolved around three major issues:

(1) abolition of the size adjustment factor for large school districts (density) and creation of an at-risk factor to provide additional program units to school districts with students at risk of academic failure to replace density;

(2) revision of special education formula indices, the separate funding of special education ancillary services and the counting of special education students in regular membership; and

(3) infusion of \$55 million into the formula to pay for the changes and to hold harmless districts adversely affected by the changes, including the phase-out of the T&E waivers.

In 1997, the legislature passed House Education Committee Substitute for House Bill 215, which became Chapter 40 of Laws 1997.

New Mexico's public school funding formula is highly equitable; however, changes in law, such as NCLB, IDEA and education reform, and changing school demographics required a new look at the formula.

During the period from 1997 to 2005, there were significant changes in public school laws. The U.S. congress passed and the president signed the No Child Left Behind Act of 2001 (NCLB). The New Mexico legislature, at the behest of its education initiatives and accountability task force, passed a major education reform bill in 2003 that included the enabling legislation for a three-tier licensure system and minimum salaries for teachers and school administrators. Legislators and educators recognized that the education reform changes would necessitate changes to the funding formula, and Laws 2005, Chapter 49 provided the framework for a new, comprehensive study of the formula. That law created the funding formula study task force (FFTF) and provided for its powers and duties. Members were appointed by the legislative council and the governor.

Task Force Membership

The original task force membership changed slightly in 2006 when Jack Jenkins, chief financial officer of the Las Cruces school district, retired and the governor did not appoint his replacement. Karen White, former Gallup-McKinley county school district superintendent, was replaced by Kilino Marquez, Grants-Cibola county school district superintendent. Advisory

members also changed in 2007: Senator Ben D. Altamirano removed himself as a member; Representatives William "Ed" Boykin and Terry T. Marquardt did not return to the legislature; and Representatives Antonio "Moe" Maestas and Shirley A. Tyler were added.

The task force was composed of the following:

Members:

Rep. Mimi Stewart, co-chair
Dick Pool, co-chair, Silver consolidated schools superintendent
Robert Archuleta, Mesa Vista consolidated school superintendent
Sen. Vernon D. Asbill
Charles Bowyer (2006-2007), NEA-NM executive director
Dr. V. Sue Cleveland, Rio Rancho public schools superintendent
Rep. Roberto "Bobby" J. Gonzales
Jack Jenkins (2005-2006), Las Cruces public schools CFO
Randy Manning, Central consolidated schools board member
Kilino Marquez (2006-2007), Grants-Cibola county schools superintendent
Rep. Brian K. Moore
Sen. Cynthia Nava
Lilliema Ortiz, Pojoaque Valley public schools board member
Dennis Roch, PEC chair, Tucumcari public schools assistant superintendent
Sen. James G. Taylor
Karen White (2005-2006), Gallup-McKinley county public schools superintendent

Advisory members:

Sen. Ben D. Altamirano (2005-2006)
Sen. Mark Boitano
Rep. William "Ed" Boykin (2005-2006)
Sen. Pete Campos
Rep. Gail Chasey
Rep. Joni M. Gutierrez
Rep. Jimmie C. Hall
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas (2006-2007)
Rep. Terry T. Marquardt (2005-2006)
Rep. Rick Miera
Sen. Mary Kay Papen
James M. Phipps, Artesia public schools superintendent
Sen. Bernadette M. Sanchez
Rep. Shirley A. Tyler (2006-2007)
Manuel F. Valdez, Chama Valley independent schools superintendent
Rep. Richard D. Vigil
Rep. Teresa A. Zanetti

Task Force Staff:

Jonelle Maison and Sharon Ball, legislative council service (LCS)
Frances Maestas and Dr. Kathleen Forrer, legislative education study committee (LESC)
Paul Aguilar, legislative finance committee (LFC)
Scott Hughes, office of education accountability (OEA)
Steve Burrell, public education department (PED).

Task force membership ensured that the particular perspectives of all elements of public education were represented. Superintendent members were appointed from small, medium, large and impact aid school districts; educators, local school boards and the public education commission were also represented in the membership.

2005 Interim Study

As specified in the law, the funding formula study was a three-year process that culminated in final recommendations to the forty-eighth legislature, second session. The first year, the task force educated itself on the formula and took testimony, particularly from school districts, on problems and issues concerning public school funding in New Mexico.

The task force:

- (1) reviewed previous studies of the New Mexico funding formula and piecemeal amendments to the formula since the last major revisions in 1997;
- (2) reviewed processes undertaken by other states in their funding formula studies and the costs of those studies;
- (3) heard testimony from school districts in the southwestern, southeastern and central areas of New Mexico; sent representatives to meet with the school districts of the northern network and the northwest superintendents; and developed issues of concern preparatory to developing the RFP;
- (4) considered public education policy decisions that affect the formula;
- (5) identified education reform policies and decisions that the state either supports or ignores in the public school budget; and
- (6) developed recommendations to the legislature on critical transitional issues, including how funding for required three-tier salaries should be handled in the general appropriation act; the need to increase the unit value, emergency supplemental and growth funding prior to the study; and the need to raise the cash balance caps to enable school districts to meet obligations year over year.

The task force appreciated the interest and involvement of school superintendents, teachers, other school employees, school-related associations and citizens during its deliberations in the 2005 interim.

At its second meeting, in August, the task force invited Dr. Richard King, former university of New Mexico professor and current professor and coordinator of the program on educational leadership at the university of northern Colorado, to present testimony on New Mexico public school finance. Dr. King reiterated the guiding principles of the governor's advisory committee on school finance in 1973:

- (1) school district funding should reflect need, not wealth or effort;
- (2) the formula should achieve fiscal neutrality via credits for uniform levy and noncategorical federal aid; and
- (3) all operating funds should be noncategorical.

Dr. King posed several questions, which are included in the minutes of the second meeting, for the task force's and consultant's consideration during the formula study. The task force also heard testimony from staff on how the state equalization guarantee (SEG) is computed; formula adjustments; credits; unit value and budget; and history of program cost reductions. Staff gave a funding formula workshop for the members to illustrate how school district program cost is developed.

2005 Task Force Legislation and Recommendations

After its interim study, the task force made the following recommendations.

Study and Task Force Appropriation:

A bill was recommended to extend the life of the task force and to fund it and the funding formula study. The appropriation request was for \$1 million of nonrecurring revenue for expenditure in fiscal years 2006 through 2008.

Other Recommendations:

The task force decided early on that it did not want to make or support any legislative proposals that would change the funding formula until after the study was completed. However, there were still several areas in public school finance that could be improved upon while the state waited for the results of the comprehensive study. Legislative action in those areas would have addressed many of the sufficiency problems the task force heard during the 2005 interim.

Information provided to the task force showed that program cost funding reductions had been substantial since 2000, totaling \$46 million from 2000 through 2004: \$5 million in 2000;

\$4 million of enrollment growth vetoed in 2001; \$4 million in fixed costs not funded in 2002; \$3.4 million lost to sanding in HB 2 in 2002; \$18 million as a one percent program cost reduction in 2003; and \$11.6 million in the cash balance credit. Those cuts resulted in a 2.3 percent reduction in the unit value. In 2005, the governor proposed \$46.6 million in program cost reductions, including no funding increases for fixed costs and underfunding for growth. While rejecting those more draconian cuts, the legislature still underfunded certain areas; for example, growth was projected to cost an additional \$16 million in 2005, but the legislature provided only \$14 million.

After funding for the formula study, the number one recommendation of the task force was to **increase the unit value** — *substantially* increase the unit value. The task force proposed a 10 percent increase, which would have cost \$196 million. That increase would have been in addition to the funding required to "open the doors"; i.e., on top of fixed cost increases, insurance and the level 2 minimum salary increase of \$51.8 million, which would have been rolled into the base.

At the time of the 2005 final report, it had been 25 years since the unit value had seen the kind of infusion the task force sought, and that had been during the last big oil and gas boom. It seemed fitting to the task force that the legislature again show its commitment to public schools when the state was in another boom cycle.

The task force noted that the increase in the unit value was not the ultimate solution for small school districts that are required to subsist on emergency supplemental funding or for growth districts that do not have the funds to open new schools or for any district trying to meet NCLB requirements in the face of inadequate special education and bilingual education resources. But it did believe that the increase would solve some, perhaps many, problems with which school districts on the financial edge are faced.

In conjunction with the recommendation to increase the unit value, the task force recommended that the next year's **minimum salary implementation be funded through the formula**. As part of the recommendation, the task force hoped to endorse and support an LESC bill to **accelerate the implementation of minimum salaries for level three-A teachers and level three-B school principals/assistant principals**.

One of the unkindest cuts for school districts was the bill in 2003 to take credit for cash balances. The measure had disastrous results. Chronic underfunding of program costs, the lack of funding for federal and state mandates and the cash balance credit left many school districts on the brink of disaster. Several small school districts were forced to apply for emergency supplemental funding simply to pay regular operating costs. At least one school district, Rio Rancho public schools, had its bond rating downgraded by Standard & Poor's and Moody's because they considered the lower reserves to constitute "poor financial practices". The task force endorsed and supported a bill to **raise the cash balance caps** as a way to ease the fiscal crises faced by many districts.

Small districts simply have not received enough income through the SEG. The task force heard testimony from over 20 school districts, including those represented on the task force, and

the budget and educational issues of small districts were discussed at almost every meeting. The task force agreed that if the LESC proposed a bill to **increase emergency supplemental funding**, or otherwise provide small district funding, the task force would co-endorse and support it during the legislative session.

The task force also recognized problems on the opposite end of the spectrum, the growth districts that have trouble finding the money required to open needed new schools. The task force supported the public school capital outlay oversight task force (PSCOOTF) and LESC bills to **create a start-up fund for new schools** and asked to co-endorse them.

Other Effects:

There were two issues noted by the task force that greatly affect public schools but that are not funding formula problems, per se. One is the requirement that school districts pay local impact fees; the other is that school districts have no say when local governments decide to issue industrial revenue bonds (IRBs) and take real property off the tax rolls. The task force supported the PSCOOTF proposal to **exempt school districts from the payment of impact fees** and its proposal to **require input from school districts before IRBs are issued**.

2005 Recommendations at a Glance

- ★ *Extend the time for task force and study; fund study – \$1 million (co-endorsed by LESC);*
- ★ *Increase the unit value by 10% – \$196 million (co-endorsed by LESC);*
- ★ *Fund level three-A and three-B minimum salaries noncategorically as part of program cost (endorse LESC bill, if introduced);*
- ★ *Accelerate implementation of level three-A and three-B minimum salaries (endorse LESC bill, if introduced);*
- ★ *Raise the school district cash balance caps (co-endorsed by LESC);*
- ★ *Increase emergency supplemental funding for small districts (endorse LESC bill, if introduced);*
- ★ *Create start-up fund for new schools (endorse LESC bill, if introduced);*
- ★ *Exempt school districts from the payment of local impact fees (endorse PSCOOTF bill, if introduced); and*
- ★ *Require input from school districts before local IRBs are issued (endorse PSCOOTF bill, if introduced).*

2006 Activities

In its second year, the task force issued its RFP and selected the American institutes for research (AIR) to conduct the funding formula study.

The 2006 legislature passed the task force-endorsed measure to extend the life of the task force until December 15, 2007 and to include as a voting member one representative of a statewide teacher organization appointed by the legislative council. Although funding for the task force was included in the General Appropriation Act of 2006, the legislature reduced the task force's requested amount of \$1 million to \$500,000. Given the importance of the study, the legislative council contributed \$100,000, plus the per diem and mileage expenses of the task force; other

legislative committees and the executive also agreed to contribute to the study. Of special note is the contribution of school districts, which contributed \$200,000 toward the cost of the study.

Request for Proposals

Just as New Mexico was in the forefront of the national move toward equitable public school funding back in the 1970s, it was now in the forefront of the national debate over what a sufficient educational program should consist of and how to balance equitable and sufficient funding for public schools. Unlike other states that had been forced into hurried studies through lawsuits or been forced to take the results of plaintiff studies, New Mexico was being proactive by providing approximately 16 months to complete an independent, comprehensive study of public school funding.

The RFP requested that the contractor develop options and recommendations on what constitutes the components of an appropriately sufficient basic educational program for New Mexico public schools, recognizing the realities of New Mexico's economy and the tax burden of New Mexico taxpayers.

The RFP was issued on May 26 and had a closing date of June 26. The task force received 32 requests for the RFP, and six groups responded with proposals. The co-chairs named members of the task force to serve on an evaluation panel that met June 28-30 to read and evaluate the proposals. Each member read each proposal, and the panel ranked the proposals on qualifications of the offeror, description of services and cost. The three finalists were AIR; Augenblick, Palaich and associates; and Craig Wood and associates. After hearing oral presentations at its July 24-26 meeting, the task force awarded the contract to AIR. (Copies of all proposals are in the permanent task force files.)

American Institutes for Research

AIR is a not-for-profit organization devoted to improving policy research and practice in social policy arenas, including education, with an emphasis on helping disadvantaged and other special need populations. The AIR team was led by Dr. Jay G. Chambers, who is a senior research fellow at AIR and who has three decades of experience working in collaboration with local, state and federal policymakers in the area of school finance. Dr. Jesse Levin was project director. AIR was committed to collaborating with key individuals representing a wide range of critical constituencies to produce an independent analysis of the policy issues inherent in re-examining the foundation for the school funding system in New Mexico. It was also committed to the transparency of the process so that the legislature and the public could understand the rationale for the recommendations and how they were crafted to meet the needs of New Mexico public schools and the students they serve.

AIR proposed an enhanced professional judgment approach as the primary costing-out methodology and incorporated elements of the expert/evidence-based and the successful schools models as well.

Project Advisory Panel Membership

AIR requested that a smaller group of the task force be designated as the project advisory panel (PAP) to assist it during the study. The co-chairs named the members and included representation from the New Mexico coalition of school administrators (NMCSA), which provided \$200,000 toward the study costs, and PED.

Project advisory panel members:

Rep. Mimi Stewart, co-chair
Dick Pool, co-chair
Robert Archuleta
Sen. Vernon D. Asbill
Dr. V. Sue Cleveland
Randy Manning
Rep. Brian K. Moore

Don Moya, deputy secy, finance and
operations, PED
James "Bud" Mulcock, NMCSA
Sen. Cynthia Nava
James M. Phipps
Dennis Roch
Tom Sullivan, NMCSA

Study Components

The ultimate goals of the study contemplated by AIR included: (1) determining what it would cost to provide a sufficient education for all New Mexico students; (2) examining and potentially modifying or replacing the current funding formula to distribute the necessary resources; and (3) assessing available revenue sources to fund these changes. To accomplish these goals, AIR proposed four major phases:

Phase One: Setting Goals

The purpose of phase one was three-fold: (1) to inform the public about the project; (2) to identify how New Mexicans envision the goals of their public schools; and (3) to seek public input on what needs to be done to achieve those goals. To identify these goals, the AIR research team examined the existing definition of educational sufficiency as implied by state law, and it solicited input through surveys of key constituencies and a series of town hall meetings that were held around the state.

Phase Two: Costing-Out

The second phase involved determining the costs of ensuring that all students in New Mexico have access to the programs and resources necessary to achieve the goals set out in phase one of the project. AIR proposed to work with teams of programmatic experts and New Mexico educators to design instructional programs, to specify the resources to deliver those programs to the diversity of students across the state and to estimate a range of costs for these programs and resources. This comprehensive cost analysis took into account variations in student needs, e.g., student poverty, English language skills, disabilities, exceptionalities, vocational interests and

mobility; the scale of school and district operations; and variations in the cost of comparable resources, e.g., teachers and other school personnel, across different regions of the state.

Phase Three: Developing a Funding Formula

In the third phase, AIR used the results of the costing-out exercise as the foundation for recommending changes or modifications to the way schools are funded in New Mexico. The task force believed that it was critical that any new funding formula address how best to distribute resources to ensure the provision of a sufficient education to all students, regardless of circumstance or location.

Phase Four: Assessing Revenues

AIR proposed to conduct an analysis of existing revenue sources and identify potential revenue sources that might be called upon to provide the necessary funding to support a sufficient education across all school districts.

*Section 12, Article 1 of the constitution of New Mexico provides that:
[a] uniform system of free public schools sufficient for the education of,
and open to, all the children of school age in the state shall be established
and maintained.*

Public Engagement and Project Web Site

Dr. Karen DeMoss, assistant professor in the educational leadership program at the university of New Mexico, was recruited by AIR to be part of its research team and to conduct the public engagement component of the study. AIR fulfilled the study requirement for public engagement by targeted computer and paper surveys and by town hall meetings. A targeted, secure web-based survey was provided to a group of 225 informed representatives of the state, including legislators, school and district leaders and business and cultural group leaders. In addition, AIR posted the survey on its web site, www.nmschoolfunding.org, and well over 1,000 New Mexicans responded. Twenty-five town halls were held around the state, many more than the eight originally anticipated in discussions with the PAP. Results of the public engagement component are available in Volume 2 of AIR's final report.

Town hall meetings were held in Shiprock, Vaughn, Los Alamos, Clayton, Crownpoint, Gallup, Taos, Gallina, Clovis, Moriarty, Rio Rancho, Animas, Santa Fe (three meetings, one in Spanish), Las Vegas, Albuquerque, Albuquerque's west side, Roswell and Socorro. Meetings were also held with the northern network, school boards association, UNM college of education and the Albuquerque chamber of commerce. Meetings in Alamogordo and Las Cruces were canceled because of weather, and those districts were asked to encourage interested persons to fill out online surveys.

AIR, with the assistance of the PAP, task force staff and various educators and educational organizations, named a stakeholder panel of business people, educators and legislators to assist

AIR in the development of the goal statement that would inform the deliberations of the professional judgment panels (PJPs). The stakeholder panel met with the PJPs to hear each panel's findings and recommendations and then discussed issues raised by the PJP process.

Stakeholder panel members:

Loretta Armenta, president, USWest NM; Hispano roundtable
Dr. Jim Anderson, Los Alamos superintendent; PJP suburban 1 panel
Del Archuleta, president and CEO, Molzen-Corbin
Robert Archuleta, FFTF/PAP; Mesa Vista superintendent
Sen. Vernon D. Asbill, FFTF/PAP; former Carlsbad superintendent
Carlos Atencio, executive director, northern network
Robert Baade, RFK charter school principal
Gerry Bradley, voices for children
John Carey; Dr. Beverlee McClure, association of commerce and industry
Dr. V. Sue Cleveland, FFTF/PAP; Rio Rancho superintendent
Terri Cole, president, greater Abq chamber of commerce; chair, state workforce dev board
Elynn Cowden, school ancillary staff representative
Larry Emerson, chairman, Indian education advisory council (invited)
Larry Fuller, associate director, parents reaching out
James Gallegos, assoc for supervision and curriculum; Cimarron asst super; PJP remote-rural 1
Dr. Veronica Garcia, secretary of public education
Sandy Gladden, director, regional education cooperative #9
Dr. Jim Holloway, PED asst secretary for rural education
I.B. Hoover, Abq businessman, co-chair of education initiatives and accountability task force
Janet Hunt, PJP suburban 1 panel representative
Justin Jones, BHP Billiton (invited)
Sen. Gay G. Kernan, FFTF/SEC/LESC; retired educator
Rep. Rhonda S. King, HAFC/HEC
Ruth LeBlanc, academy for technology and the classics principal; PJP urban 1 panel
Bernadette LeRouge, Santa Fe school board member
Edward Lujan, Albuquerque businessman
Ernest Mackel, Zuni school board president
Rep. James Roger Madalena
Paula Maes, Albuquerque school board president
Randy Manning, FFTF/PAP; Central school board member
Gene McCracken, Jemez mountain school district teacher, American federation of teachers
Sheryl McNellis, PJP remote-rural 2 panel representative; Wagon Mound elementary principal
Rick Miera, FFTF; LESC chair
Rep. Brian K. Moore, FFTF/LFC/HAFC
Debbie Morgan, New Mexico parent teachers association (NMPTA) (invited)
Don Moya, PED deputy secy, finance and operations; PAP
Bud Mulcock, PAP; NMCSA
Rep. Cynthia Nava, FFTF/PAP; Gadsden assistant superintendent
Eduardo Olguin, president, national education association New Mexico

Laura Owens, APS health/mental health dept; counselors association
Mike Phipps, FFTF/PAP; Artesia superintendent
Dick Pool, FFTF/PAP co-chair; Silver consolidated superintendent
Dr. Gloria Rendon, PJP urban 2 panel representative; former Santa Fe superintendent; NMCSA
Dennis Roch, FFTF/PAP; PEC chair; teacher; Tucumcari asst superintendent
Reina Romero, ENLACE
Rita Santistevan, school ancillary staff representative (invited)
Loretta Shriver, PJP urban 1 panel representative
Sen. John Arthur Smith, LFC/SFC
Vicki Smith, Cobre school board president
Dr. Kurt Steinhaus, governor's education advisor
Rep. Mimi Stewart, FFTF/PAP co-chair; APS resource teacher
Tom Sullivan, PAP; NMCSA
Damon Terry, PJP remote-rural 1 panel representative; Floyd elementary principal
Michael Thompson, PJP suburban 2 panel representative; Bloomfield high school teacher
Bill Warren, former legislator
Dr. Katherine Winograd, CNM president
Peyton Yates, Yates petroleum, Artesia

The task force appreciates and thanks the stakeholder panel members for their interest in and dedication to public education in New Mexico.

2007 Activities

In 2007, the task force continued to monitor the funding formula study, which was ongoing.

After its meeting with the stakeholder panel and the development of the goals statement, AIR convened six professional judgment panels (PJPs) on April 18-20, 2007 consisting of two urban, two suburban-small town and two rural-remote panels. Each PJP had two teachers, three principals, a superintendent, a school business official, an English learner (EL) specialist and a special education specialist. Panels were asked to imagine that they were no longer at their current schools and districts and were charged with creating an instructional design for a new school. The instructional program was to be designed to meet the expectations of the goals statement. The PJPs were asked to design base-model instructional programs for elementary, middle and high school and then to modify those program based on poverty, English language learners, mobility, special education and small school size. Each PJP was then asked to redesign its programs based on a 10 percent budget reduction.

There are four districts in New Mexico that meet the federal definition of urban: Albuquerque, Santa Fe, Las Cruces and Farmington. Forty-three districts are considered suburban-small town, and forty-two districts are considered rural-remote. Forty-eight districts in the state have 1,000 or fewer students.

To use a building analogy, the work of the PJPs was the foundation and structure of the proposed funding formula, which was based on the conceptual design drawn by the stakeholder panel in the goals statement. The study could not have been accomplished without the commitment of the educators who served on the PJPs. The task force is grateful for their tenacity as well as their expertise during the arduous process of developing the cost models.

The PJPs considered early childhood education costs separately from K-12 because pre-school is not funded through the current funding formula. The PJPs considered pre-school to be important to the overall educational goal, particularly for at-risk students, as research shows its efficacy in student success and graduation rates. The teacher-student ratio recommended was 1:10, with adjustments for special education, poverty, family services and rurality. The per-child cost was predicated on half- and full-day school for three and four year olds. Panels recommended targeting early childhood educational opportunities to poverty and at-risk children rather than offering universal programs.

At its ninth meeting, in June, the task force heard a progress report from AIR. Dr. Chambers explained that in considering the criteria for evaluating state education funding formulas, formulas must:

- ▶ be understandable;
- ▶ be equitable;
- ▶ be adequate;
- ▶ be predictable;
- ▶ be flexible;
- ▶ be identification-neutral (special education);
- ▶ have a reasonable reporting burden and be low-cost to administer;
- ▶ have fiscal accountability;
- ▶ be cost-based;
- ▶ have cost control (special education);
- ▶ be placement-neutral (special education);
- ▶ have outcome accountability;
- ▶ have a connection between regular and special education; and
- ▶ be politically acceptable.

At the time of the progress report, Phase 2, the cost analysis, was still being conducted. The expert research briefs had been written and were available on the AIR study's web site and the PJPs had met to design their ideas of a sufficient educational program. AIR was working on Phase 3, and the team was working to refine the PED data that would be used to run simulations.

The public engagement process had been completed, and the report was provided to the task force. The process used a web-based survey and town hall meetings to gather information from New Mexicans on their thoughts about the public education system. The survey, used in both venues, sought citizen input on the state's educational priorities by asking them to reflect on

the goals and standards specified by PED in its current rules. The rules divide New Mexico public education goals into two categories: (1) knowledge and skills; and (2) personal qualities. Participants were asked to rate the importance of each of the eight knowledge and skills items and the seven personal qualities items. The ratings, on a scale of 1 to 9, ranged from low importance to high importance. Participants were also asked to rank the importance of a balance between knowledge and skills and personal qualities.

The quantitative data from the public engagement process showed the following themes:

- ▶ Participants felt very strongly that students should leave the K-12 education system prepared for either higher education or a career. The public consistently noted that the lack of career readiness and vocational training was a serious concern and that schools favoring a vocational education were unfairly stigmatized. They believed that the economy needs workers with a wide range of skills and that students need options, including vocational education, to engage them in school.

- ▶ Participants were clear that they did not want a "tracked" system in which students must choose either a higher education or vocational track. They expressed the need for a basic education that will enable college entry without remediation and that provides students the capacity to enter skilled trades immediately upon graduation, if they so choose.

- ▶ In knowledge and skills, citizens valued all knowledge and skills items encompassed in PED rules, but a student's proficiency in English and ability to think critically were the most highly valued. Overall, 74 percent of respondents ranked proficiency in English as highly important; 70 percent ranked a student's ability to integrate content knowledge and demonstrate understanding through reading, writing and other forms of communication as highly important.

- ▶ Those personal qualities surrounding the idea of self-responsibility were rated of highest importance by respondents. Citizens ranked students' acceptance of personal responsibility, and their understanding of the importance of honesty, dependability, integrity and hard work, of highest importance by 80 percent and 78 percent, respectively. Respect for self, others and the environment followed, with 70 percent identifying this item as critically important.

- ▶ Citizens noted that the current education system emphasizes acquisition of content knowledge in specific areas (reading and math) at the expense of the development of other content areas and the development of personal qualities. They indicated that they would prefer a better balance between the two. Overall, citizens ranked the balance at 60 percent knowledge and skills and 40 percent personal qualities. Respondents noted that these areas were not necessarily exclusive of each other and a greater balance could be, and often is, achieved through a more holistic approach to instruction. Interestingly, the general public placed a slightly higher emphasis on knowledge and skills than did school and district employees. School employees ranked knowledge and skills at roughly 56 percent, while citizens prioritized these elements at 61 percent.

- ▶ Both town hall and online respondents were asked to rank the importance of specific programmatic elements for student success. On a scale of 1 to 9, respondents noted several

elements as highly critical to student success. The broader categories were: early childhood, academic opportunities, health and wellness opportunities, opportunities for special education students, teacher quality and school environment. Of the 80 elements grouped into the nine categories, more than half the sample rated the following items as a 9:

- ▲ under early childhood: full-day kindergarten;
- ▲ under academic opportunities: access to technology; intensive early grade reading and math interventions; and tutoring or other individualized support of students needing help;
- ▲ under health and wellness opportunities: physical education;
- ▲ under opportunities for special education students: full-time access to teachers with special education training; access to supplemental supports such as speech and physical therapy; opportunities for individualized academic support in special education classrooms; and intensive early interventions for students identified as possible special education candidates;
- ▲ under teacher quality: teachers certified in the subjects they teach; teachers knowledgeable about the most current teaching methods; teachers with expertise in special education; teachers who understand child development; and sustained professional development opportunities for teachers; and
- ▲ under school environment: a safe building; small classes; learning environments characterized by respect, good communications and positive interactions; close connections between students and teachers; respectful interactions among staff, students and parents; an up-to-date facility; a safe, drug- and violence-free environment; and an environment that seeks to constantly improve using input from parents, teachers and the community.

Qualitative feedback on programmatic elements showed the following:

- ▶ support services, including health, nutrition, counseling and physical therapy, need to be available for all students;
- ▶ special-education, English-language-learner and high-poverty students require additional resources, and funding for these supports should be attached to policy guidelines that ensure that appropriated dollars are tied to the students needing extra support;
- ▶ programs available for at-risk students are not comprehensive;
- ▶ class sizes should be kept small through a cap on actual class size, not by averaging class sizes across grade levels;
- ▶ counselors, nurses and librarians should be included in all schools;

- ▶ arts, music and physical education programs should be available for all students; and
- ▶ high-quality technology should be available to all students and schools.

The following themes also emerged from the qualitative data gathered through the public engagement component of the study:

- ▶ citizens want to keep the funding formula equitable;
 - ▶ there should be additional local control in order to meet local needs;
 - ▶ educators are working hard, but there are issues surrounding licensure and ample pay;
- and
- ▶ current funding does not provide adequate learning opportunities for all students.

Emerging themes for citizens in rural areas of the state included the following:

- ▶ the uniform three-tiered pay scale has worked inconsistently in rural districts, and they have difficulty modifying their budgets to reflect the law and rules of the three-tiered licensure system;
- ▶ there is a shortage of highly qualified teachers in rural areas, as that is defined by NCLB, and teachers coming from urban to rural areas often do not understand the local culture or leave the area within a short period;
- ▶ quality substitutes are equally hard to come by in rural areas and make it difficult to provide a continuous curricular program;
- ▶ rural schools generally perform well on state assessments, but feel unrecognized for their academic successes;
- ▶ transportation costs adversely affect programming;
- ▶ unfunded mandates hit rural districts harder; and
- ▶ rural school employees wear multiple hats, and the basic number of tasks required of rural districts is equivalent to those in large districts, with no commensurate staffing.

Respondents believed that the current funding formula was equitable and an effective way to distribute funds. However, there were several concerns that respondents had with the current formula itself, with the distribution of funds or with the policy implications surrounding implementation of the formula. Following are resounding themes that emerged from the online surveys and town hall meetings:

- ▶ remove fixed costs, particularly insurance and utilities, from the formula as a way to ease fiscal pressures on school districts;
- ▶ stop unfunded mandates;
- ▶ provide incentives for teachers to hold multiple licenses;
- ▶ schools serving children with additional needs should have more resources than currently available through the formula;
- ▶ school sites should receive higher proportions of district budgets;
- ▶ districts should distribute money to schools proportionately to the formula dollars the schools generate;
- ▶ T & E benefits should be productively merged with the three-tiered licensure plan;
- ▶ low-incidence, high-cost situations, e.g., enrollment of a severely disabled child or significant legal challenges, should not be funded out of operating budgets;
- ▶ school leadership should be paid and appropriately supported;
- ▶ districts should be able to retain cash balances;
- ▶ issues of mobility and immigration should be considered separately from other risk factors for students;
- ▶ alternative schools should qualify for small school adjustments;
- ▶ the formula should take cost of living into account; and
- ▶ technology should be explicitly addressed in the formula.

Special policy and implementation issues included the following:

- ▶ parents should also be accountable for their children's education;
- ▶ programmatic initiatives are often linked with capital funding, but capital funding is not linked with operational funding;
- ▶ allowing SB 9 and HB 33 (capital upkeep funding) to be used for personnel costs associated with maintenance could alleviate some pressures on some districts;

- ▶ accountability is important, but testing and adequate yearly progress (AYP) measures as currently implemented place too much emphasis on performance accountability;
- ▶ NCLB accountability cells affect small schools and large schools differently; and
- ▶ districts should also be held accountable, and fiscal and personnel performance within a district should be open to more public discussion.

Highlights of Public Engagement

- ★ *Participants felt strongly that all students should leave the K-12 education system prepared for either higher education or a career; however, participants were equally vocal that they did not want a tracked system in which students are forced to choose either higher education or a career.*
- ★ *English proficiency, critical thinking, and the ability to integrate content knowledge and demonstrate that knowledge through reading, writing and other forms of communication were the most valued components of the PED knowledge and skills category.*
- ★ *Personal responsibility, honesty, dependability, integrity and hard work were the most highly valued personal qualities.*
- ★ *In determining the relative importance of knowledge and skills and personal qualities, participants determined a 60-40 balance, with knowledge and skills being the more important outcome of a public school education. Participants noted that the two were not mutually exclusive and that a greater balance should be achieved through a holistic approach to instruction.*
- ★ *Support services, including health, nutrition, counseling and physical therapy, should be available to all students who need them.*
- ★ *Art, music and physical education programs should be available to all students.*
- ★ *High-quality technology should be available to all students and all schools.*
- ★ *Rural schools have particular problems with recruitment and retention of school personnel, including substitute teachers. Transportation costs adversely affect educational programming in rural schools, and they have a more difficult time dealing with unfunded mandates.*
- ★ *There were other resounding themes that emerged from the online surveys and town hall meetings that are included in the report narrative.*

Dr. Levin reported on the process of data collection and analysis and provided information on school-level data with district operating costs and maintenance and operations added back. AIR stressed that any findings the team was reporting were preliminary and would change as the analysis was refined. All data would be compared with data from the national center for educational statistics. The analysis was set to compare existing funding allocations to predicted expenditures, and AIR planned to suggest modifications to the existing formula and provide input on how to achieve the goals of the formula. The preliminary projected per-student costs of elementary, middle and high school instructional programs, averaged from the two panels each for urban, suburban and rural schools, differed based on the type of school (urban, suburban, rural) and the characteristics of the school, such as high poverty, high poverty with a significant EL population, high mobility, high special education and school size. AIR assumed that there would be schools that spend more than the projected sufficiency levels, but that analysis was still too

preliminary to report. In addition, results varied depending on whether a comparable wage index (CWI) or a geographic cost of education index (GCEI) was applied. Dr. Chambers discussed the labor market analysis that was done by Dr. Lori Taylor. The purpose of the analysis was to isolate factors outside district control and to determine the actual purchasing power of the educational dollar. The geographic cost adjustments, either CWI or GCEI, were intended to pick up variations in factors beyond local control, such as cost-of-living and other factors affecting the supply of teachers in local markets. The AIR team reported an outside preliminary cost of \$800 million, but cautioned that the process was not complete since the cost models had not been subjected to external review.

Final Goals Statement

Background:

It is the purpose of New Mexico schools, in partnership with families, to:

- 1. prepare all students to be responsible citizens and family members;*
- 2. prepare all students for educational success; and*
- 3. prepare all students to obtain and maintain gainful employment.*

By "all" students, it is implied that each student will be provided an opportunity to meet these goals, regardless of classification (English language learners, poverty, special education or otherwise) or location. To accomplish these goals, public schools shall follow the PED Commitment to Excellence, which acknowledges that developing an educated citizenry requires all partners of the educational community to share and support a vision of excellence (NMAC Title 6, Ch. 30, Part 2).

Four Critical Elements: *This Goals Statement encompasses four indispensable and interrelated elements, each of which is described below. Details for each of these elements are provided in the Public Engagement Report found in Volume II, Section 2.1 of the AIR report.*

1. Underlying Philosophies

State-level goals of excellence should coexist and be balanced with appropriate individual and local goals. Students shall have access to a multicultural education, diverse and highly qualified teachers, necessary supports to achieve these goals and a range of enhancement opportunities offered in local communities.

2. Content Standards

All public school students shall make positive and measurable gains through appropriate instructional programs aligned to state content standards and benchmarks. Children will be challenged to learn and succeed, drawing on their strengths through diverse and multiple learning styles.

3. Knowledge, Skills and Personal Qualities

New Mexico high school graduates shall exhibit a range of knowledge, skills and personal qualities that enable them to be successful, productive members of their communities, the nation and the world. Schools, in partnership with families and communities, seek to promote personal qualities in ways that integrate with content curriculum and in conjunction with curricular and co-curricular activities.

4. Performance Goals

*All students in New Mexico's public education system should have the opportunity to make demonstrable, appropriate growth each year on a wide range of measures. Students should be provided the opportunity to demonstrate learning outcomes aligned with standardized measures reflective of state, national and international standards **and** to demonstrate growth in areas not captured by standardized tests. In addition, students graduating from New Mexico high schools should have the requisite skills to enable entry into community college or the work force without remedial needs.*

External Review Process

During the late summer and fall of 2007, over the course of eight days, including weekends, the PAP functioned as the study's external review body to review and refine the recommendations of the PJPs. The PAP met with representatives of the six panels, who described the educational programs each panel had specified and discussed the decisions made by each panel. Based on the work of all the panels, the PAP specified singular cost models that AIR used to arrive at the final funding formula and its cost.

Development of Final Recommendations

At its November meeting, the task force heard final recommendations from AIR, including the proposed new funding formula. AIR calculated the cost of achieving sufficiency by using extant 2006-2007 PED data and PAP specifications. The proposed public school funding formula was built through an analysis of cost variations related to student need and scale, and the sufficiency estimates were derived by costing out resource specifications generated by the PJP/PAP process and by measuring how the calculated costs of a sufficient educational program varied across ranges of student needs and school size. By using measures of variations in sufficient program cost with respect to student needs and school size, AIR was able to project a unique sufficient cost for every public school and district in New Mexico.

Final sufficiency estimates took into account: (1) student needs (poverty, English language learners, special education and mobility); (2) differential costs across elementary, middle and high schools, including alternative and charter schools; and (3) school and district size.

Final sufficiency estimates included: (1) the school-level resources necessary to deliver a sufficient instructional program to all students; (2) support for central district administration and maintenance and operations; (3) ancillary services; and (4) funding to hire highly qualified staff.

Overall Recommendations

Following is a summary of AIR's findings and recommendations.

(1) Increase state funding by approximately 15 percent (marginal sufficiency cost with hold harmless is \$354 million, using 2007-2008 preliminary demographic data).

(2) Adopt a new simplified funding formula.

Special Education:

(1) Fund using a single weight.

(2) Use census-based funding versus funding on actual special education identifications.

(3) Establish a contingency fund for high-need/high-cost students.

Training and Experience:

(1) Replace the current T&E index with the index of staff qualifications (ISQ), which complements the three-tier licensure system.

(2) Recalibrate to reflect qualifications built into the cost estimates and adjust to reflect the percent expended on ISQ-eligible staff.

Growth and Decline:

(1) Fund based on maximum of this year's versus last year's enrollment.

(2) Provide separate support to fund new schools.

Following are the details of the AIR presentation.

Topic 1: Sufficient Levels of Funding and Modification of Existing Formula.

RFP Question: What is the cost of a sufficient K-12 educational program, and how should the state distribute these resources to meet the needs of New Mexico's diverse districts, schools and students?

Recommendation 1: Increase State Funding to Achieve Sufficiency. Based on the analysis, AIR and the PAP recommended to the task force that the state increase funding for public K-12 education by approximately 15 percent in order to provide support for sufficient educational services to all students.

Recommendation 2: Adopt a Simplified Basic Funding Formula. AIR and the PAP recommended to the task force that the state adopt a revised formula that incorporates the following elements:

- ▶ a smaller, simplified set of four weighting adjustment factors to achieve an equitable distribution of funds according to student need;
- ▶ a simplified set of weights to account for the cost difference in providing instructional programs at the elementary, middle and high school grade levels; and
- ▶ separate weight adjustments that account for the wide range in size at which districts and charter schools operate.

The merits of the proposed formula are that it is:

- ▶ simple — it avoids unnecessary complexity by focusing directly on the factors associated with student need and scale;
- ▶ fair — it promotes and preserves strict vertical funding equity across districts;

- ▶ safe — it makes use of adjustment factors that are largely beyond a district's control and thus minimizes incentives to "formula chase"; and
- ▶ comprehensive — most of the adjustments in the current funding formula are either accounted for in the sufficient base per-student cost or contained explicitly in the suggested formula.

Using simple statistical analysis, AIR was able to determine the impact of various student need and scale factors on sufficient per-student program costs. From this analysis, AIR developed the following formula for distributing state aid to local districts and charter schools:

"Sufficient Per-Student Cost =
 Base Per-Student Cost x
 Poverty Adjustment x
 English Learner Adjustment x
 Special Education Adjustment x
 Mobility Adjustment x
 Grade 6-8 Enrollment Share Adjustment x
 Grade 9-12 Enrollment Share Adjustment x
 Total Enrollment Adjustment".

The formula is "centered" around a base figure representing the per-student cost for a district or charter school of average size and average grade composition with no additional needs. The series of weighting adjustment factors is then applied in a multiplicative fashion.

The technical formula is:¹

"Sufficient Per-Student Cost = \$5,106 x
 [(1+ Proportion Free/Reduced Lunch)^{0.375}] x
 [(1+ Proportion English Learners)^{0.094}] x
 [(1+ Proportion Special Education)^{1.723}] x
 [(1+ Mobility Rate)^{0.190}] x
 [(1+ Enrollment Share Grades 6-8)^{0.291} ÷ 1.063]
 [(1+ Enrollment Share Grades 9-12)^{0.608} ÷ 1.187] x
 [(ENR)^{-0.576} x exp(ln(ENR)²)^{0.029}] ÷ 0.062 x
 ISQ".

Exponents represent percentage increases in sufficient per-student cost resulting from a one percent increase in each cost factor index.

¹ The technical formula changed slightly after AIR reported to the task force. The formula in this report is the final version as described in HB 241.

Example 1 — Hypothetical district with the following characteristics:

Poverty	= 40.3%
English learners	= 20.1%
Special education	= 18.3%
Mobility	= 17.9%
Enrollment share in grades 6-8	= 21.3%
Enrollment share in grades 9-12	= 37.0%
Total enrollment	= 13,423
ISQ	= 1.028

$$\begin{aligned} & \text{Sufficient Per-Student Cost} = \\ & \text{Base} \times \text{POV} \times \text{EL} \times \text{SE} \times \text{MOB} \times \text{EN68} \times \text{EN912} \times \text{ENR} \times \text{ISQ} \\ & \$5,106 \times 1.135 \times 1.017 \times 1.291 \times 1.032 \times 0.995 \times 1.020 \times 0.913 \times 1.028 = \$7,487 \end{aligned}$$

Example 2 — High-poverty/EL district with all other factors equal to Example 1 (changes in italics):

Poverty	= 80.6%
English learners	= 40.3%
Special education	= 18.3%
Mobility	= 17.9%
Enrollment share in grades 6-8	= 21.3%
Enrollment share in grades 9-12	= 37.0%
Total enrollment	= 13,423
ISQ	= 1.028

$$\begin{aligned} & \text{Sufficient Per-Student Cost} = \\ & \text{Base} \times \text{POV} \times \text{EL} \times \text{SE} \times \text{MOB} \times \text{EN68} \times \text{EN912} \times \text{ENR} \times \text{ISQ} \\ & \$5,106 \times 1.248 \times 1.032 \times 1.291 \times 1.032 \times 0.995 \times 1.020 \times 0.913 \times 1.028 = \$8,352 \end{aligned}$$

Charter Schools. AIR and the PAP recommended to the task force a separate formula for charter schools, which is very similar to that of districts. In fact, the estimated regression equation purposefully constrains all coefficients *except* those for enrollment to be equal. This is done because charter schools operate on a much smaller range than districts so that the district-level coefficients could not be applied. A comparison of the enrollment adjustment factor profiles for districts and charter schools shows that the resulting difference is that the drop in the adjustment value for charter schools is much steeper than that of districts. However, this is offset (compensated) by a higher base per-student expenditure for charter schools.

In calculating sufficient funding each year, the demographic data of districts and charter schools will be used. The seven key demographics — poverty, ELs, special education, mobility, grades 6-8 and 9-12 shares of enrollment and total enrollment – are based on the PED's student teacher accountability reporting system (STARS). The appropriate inflation factor is applied to the base per-student cost.

Topic 2: Funding Special Education Services.

RFP Question: How should the state fund special education services for students?

During the task force's first year, it heard from many superintendents who were concerned about sufficient funding for special education students. AIR was asked to analyze and evaluate the weights for services for students in need of special education, including gifted students.

In 2005-2006, New Mexico had an identification rate just under 16 percent for special education students (Individuals with Disabilities Education Act (IDEA) only), which was higher than the national average of 14 percent. Rates have been declining, but still remain relatively high when compared to national numbers. Moreover, special education identification rates also exhibit a fairly wide range across the 89 school districts, with a low of six percent to a high of 31 percent.

Recommendation 1: Use a Single, Overall Weight. AIR and the PAP recommended to the task force that special education be funded using a single, overall weight rather than three separate weights corresponding to the A/B, C and D categories. The weighting factor in the simplified funding formula would be 1.723. This weight indicates that a district with a 10 percent special education identification rate compared to a district with a zero percent special education identification rate would require an additional 17.8 percent in overall per-student funding. Funding for special education in the proposed formula is only for disabled students; gifted students are funded in the base model.

A single weight simplifies the formula and minimizes fiscal incentives for identifying more severe students. A higher, single weight (1.723) takes into account:

- ▶ the costs associated with all levels of severity;
- ▶ the costs of ancillary services; and
- ▶ the costs of three- and four-year-old developmentally delayed students.

Recommended Option — Use a Census-Based Approach to Fund Special Education.

AIR and the PAP recommended to the task force that special education students be funded using a single weight and a fixed identification rate of a certain percent (e.g., 16 percent) that would be used to determine funding for each district. In line with federal requirements that states reduce incentives for over-identification, the goal of a census-based approach is to ratchet down the census over time.

A district with identification rates below the designated rate would still receive funding to support special education as if it had that designated rate. Similarly, a district with higher identification rates would be funded at the designated, lower identification rate. Funds could be used for pre-referral, response to intervention (RTI) and early intervention programs.

Option 2, which was not recommended by the PAP, would fund special education using actual identification rates and the single weight. Using actual counts continues to create a fiscal incentive to identify more students as requiring special education services.

Recommendation 2 — Create Contingency Fund for High-Cost Students. AIR and the PAP recommended to the task force that the state establish a contingency fund to help districts pay the cost of educating high-cost students with disabilities, particularly those students that move into a district and for which the district had not planned. The contingency fund will insure districts against extraordinarily high special education costs that may arise and may be particularly difficult for small districts to fund. Thirty-one states have established this type of fund. The fund would be designed to be used rarely, since it would be for catastrophic cases that overwhelm a district's budget. Districts would be eligible to apply for funds for students for whom they can document costs of more than, for example, three or four times the average per-student cost of regular education students in their districts. AIR recommended that there be some district responsibility (i.e., a co-pay) for the excess costs for these high-cost students. Using the PED data, AIR calculated the amount of the contingency fund at just over \$7 million.

Topic 3: Accounting for Compensation of Instructional Staff.

RFP Question: How should the state provide an opportunity for all districts to hire and retain highly qualified teachers, school principals and instructional support providers?

The current funding formula's T&E index uses a matrix of 25 cells to adjust the value of the student unit on the basis of the training and experience of instructional personnel. In 2004, the state adopted a three-tiered licensure system that is based on the attainment and demonstration of PED-adopted competencies. The PJP and PAP specifications and projected sufficiency levels include costs associated with a more experienced and highly educated work force.

Recommendation 1: Adopt a New ISQ to Replace the T&E Index.

AIR and the PAP recommended to the task force that the state adopt an ISQ to replace the current T&E index and to account for the costs associated with training and experience for instructional staff and the three-tiered licensure system. The use of the ISQ ensures that the cost estimates do not double count the costs already built into the basic cost model that support instructional staff qualifications.

The ISQ is bifurcated to reflect the adoption in 2003 of the three-tiered licensure system for teachers and school administrators. Matrix A is the teachers' index and Matrix B is for the other, non-tiered instructional staff that had been covered by the T&E index. In most cases, the years of experience remained the same as the T&E index while the academic classifications were simplified. Extant data were used to identify the average experience of New Mexico staff and to determine the differentials in pay for each year of experience, tier and academic degree. Similar to the implementation now, all districts would have a minimum ISQ value of 1.00. The ISQ value would be adjusted to reflect the percent of budgets expended on applicable personnel. With the ISQ is calibrated around a higher level of training and experience, 31 of the 89 districts would

receive additional adjustments through the ISQ. In the aggregate, these adjustments distributed to the districts would total approximately \$11 million.

Topic 4: Accounting for Growth and Decline. Over the past decade, New Mexico's student population has remained relatively constant. There have, however, been shifts in the distribution of this student population. All four urban areas and many of their neighboring districts have experienced neutral or positive growth while a number of rural-remote districts and small towns have experienced steady decline. There are several issues of concern for both growing and declining districts.

Recommendation 1: Fund on Maximum Enrollment. AIR and the PAP recommended to the task force that funding for growth districts be based on the *greater* of the previous year's 80/120-day average enrollment or the current year's enrollment, as determined by the 40-day count.

Currently, growing districts do not receive funding for growth below one percent of their student population unless growth is more than one percent over the previous year. Under this recommendation, growing districts would receive allocations more representative of the actual enrollments faced in the current year. This recommendation would continue to guarantee that declining districts would, at the very least, receive funding according to their previous years' enrollment. In terms of overall costs to the state, the state would continue to absorb the costs for supporting declining districts under the "save harmless" clause for one year, while providing funding for growing districts based on current year enrollment. Analysis shows this additional cost equal to approximately \$16 million for districts that grew from 2005-2006 to 2006-2007.

Recommendation 2: One-Time Fund for Opening New Schools. Section 22-8-48 NMSA 1978 created the "new school development fund" to be used to help school districts pay for supplies, equipment and operating costs unique to the first year of operation of a new school. AIR and the PAP recommended to the task force that the state apply nonpersonnel ratios associated with these expenses to the counts of students enrolled in these new schools. In 2005-2006, allocations for nonpersonnel instructional expenditures averaged 4.9 percent of teachers salaries and benefits. Therefore, a school with an enrollment of 500, with 37 teachers and with approximately \$2.2 million in salaries and benefits would be eligible for \$108,000.

Phase-In of Funding Formula

The sufficient per-student cost is based on a comprehensive instructional program that includes the cost of core academic programs, career-technical education, gifted programs, bilingual-multicultural programs, arts and music, health and physical education and special education and appropriate staff. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board or governing body. Just as provided now under current law and the current formula, the money distributed through the provisions of the Public School Act would be discretionary to local school boards and governing bodies to provide the programs identified in their EPSS that meet state standards.

AIR noted that adding significant amounts of funding to educational budgets will require a great deal of planning at both the state and local levels to ensure that new revenues are expended in the most cost-effective manner. The PAP and AIR recommended to the task force that the new formula be phased in over four years; the first year for planning and the next three years for stepped funding increases. The phase-in will allow the state to leverage other potential revenue sources over time and minimize the immediate impact to and burden on the general fund. A phase-in also gives school districts time to collect accurate student demographic data upon which funding will be based; to make gradual programmatic adjustments; and to recruit and train new personnel to deliver those programs.

If sufficiency were fully funded in 2009-2010, AIR estimated that it would cost a total of \$2,782.6 million to provide a sufficient education to all students statewide. However, that is the amount of money that would just provide a sufficient education; there are a few school districts and charter schools whose actual program costs exceed what the study deemed sufficient. Therefore, the PAP and AIR recommended to the task force that there be a hold-harmless for those districts and charter schools over the first two years of phase-in (not counting the planning year). In addition, in comparison with full one-year funding, there will be districts and charter schools that need to be held harmless during phase-in simply because each year's funding will be only a portion of the total necessary to achieve full sufficiency. With the hold-harmless, if the bill had passed, the total appropriation for the single-year implementation in 2009-2010 would have been \$2,789 million, using 2007-2008 demographic data. That amount breaks down to a marginal sufficiency cost of \$354.2 million, which includes \$6.3 million hold-harmless and which is a 14.5 percent relative increase over actual program cost plus emergency supplemental; the actual dollar change from 2008-2009 is \$422.3 million. In a three-year phase-in, making assumptions about inflation and holding demographics constant, the estimated marginal sufficiency funding cost with hold-harmless for the first two years would be \$140.6 million in 2009-2010, \$115.5 million in 2010-2011 and \$100.6 million in 2011-2012. The hold-harmless ends with full roll-out of the formula and all districts and charter schools should be receiving sufficient funding based on student need, grade level composition and scale of district and charter school operations.

The cost estimates provided by AIR necessarily did not account for future demographic changes. AIR began the study with 2005-2006 student data, went to 2006-2007 data as it became available and ended with 2007-2008 data. The prevailing wisdom of the task force and others involved in the study was that poverty is undercounted in some districts and special education and EL are overcounted in some. As implementation of the funding formula moves forward, the necessity of having accurate, verified student data is critical. PED has been working hard to improve its student teacher accountability reporting system (STARS), and districts and charter schools will recognize the importance of reporting accurately and ensuring that the STARS reports reflect those accurate reports. In addition, the cost estimates obviously did not take into account actions by the 2008 legislature that will change the calculations. For example, during the 2008 session, the legislature provided for one additional instructional day; that cost, approximately \$14 million, would necessarily change the marginal sufficiency estimates.

During the phase-in period, the task force considered a number of ways school districts could use additional revenue. The measures listed here are those considered by the public, the PJP, the PAP, the stakeholder panel and the task force to be the most important for improving student success.

Examples of Phase-In Expenditures for Student Success

- ★ extending the instructional year up to five days for students;
- ★ extending the school day for teachers or extending contract days for teachers up to four days beyond the instructional year;
- ★ offering summer school, credit recovery and enhanced before- and after-school opportunities;
- ★ lowering class sizes and student-teacher ratios;
- ★ employing academic coaches, resource teachers and specialists, particularly in reading, mathematics and English language learning programs;
- ★ enhancing intervention efforts for children who may be at risk of academic failure;
- ★ enhancing remediation programs in language arts and reading, mathematics, science and social studies;
- ★ improving truancy prevention and intervention strategies, including establishing or enhancing truancy tracking systems and employing truancy officers;
- ★ establishing or enhancing bilingual-multicultural programs;
- ★ offering visual and performing arts, music and physical education to more students;
- ★ enhancing programs for gifted students;
- ★ enhancing career-technical education programs;
- ★ providing educational assistants, librarians, counselors, nurses, social workers and student support service staff;
- ★ providing professional development opportunities for licensed school employees outside the instructional day or year;
- ★ providing teaching English as a second language and bilingual endorsement courses for instructional staff;
- ★ improving information technology services for students and staff, including employing information technology personnel or contracting with technical consultants;
- ★ improving the district's ability to collect and analyze student and staff data to improve education management; and
- ★ improving student and school safety.

The list was not considered to be exhaustive, and the task force foresaw school districts and charter schools considering and applying additional best practices that would serve their students.

Accountability

It is important to note that the request for proposals for the funding formula study did not include an accountability study. That said, however, it was never the intention of the task force to recommend funding increases without attendant accountability. AIR recommended the "educational plan for student success" (EPSS), currently required by PED rule, as a useful tool to

align academic plans with district and charter school budgets. The EPSS already serves as a good blueprint to guide resource allocation and staffing at the school and district levels, since it requires districts to identify areas for improvement in effective leadership, quality teaching and learning, collaborative relationships and support for systemwide improvements. In addition, AIR noted that as part of an accountability study, PED should develop a structure and information system that links student performance with school resources. By "student performance", AIR meant not only reading and math scores, but some of the dimensions that are reflected in the goals statement developed for the study. AIR suggested several questions to be asked relative to accountability.

- ★ What is the rate of growth of student achievement test scores over time?
- ★ To what extent are student attendance rates and rates of expulsions or suspensions changing over time?
- ★ How are graduation rates changing?
- ★ To what extent are these outcomes changing for various subpopulations of students?
- ★ What are the rates at which students are enrolling in advanced placement classes or career-technical classes in high schools, and to what extent are these classes available in all districts?

In addition, AIR suggested that PED work with policymakers to consider alternative mechanisms for assessing the success of the education system in developing responsible citizens and family members. While that success might be measured through evaluation of progress in subjects such as history, government, economics and political science, other more specialized surveys and assessment instruments might address outcomes found in the PED's standards of excellence for personal qualities, such as:

- ★ individual creativity;
- ★ student self-concept;
- ★ willingness to accept personal responsibility;
- ★ ability to make decisions to promote good health;
- ★ respect for oneself, others and the environment;
- ★ honesty;
- ★ dependability; and
- ★ strong work ethic.

AIR also expected that PED would track the resources being expended at the state, district and school levels. AIR saw PED's key responsibility to take the mass of data it collects and develop standardized reports that link fiscal, personnel and student outcome data at the school level to allow policymakers and educators to track how well the education system is functioning. According to AIR, most states, including New Mexico, have the data, but few take the next step to turn data into valuable information that can be used for decision-making. With such a system, the state would be able to see how schools and districts in different communities were allocating resources and could track the extent to which types of resources make a difference in terms of student performance across various student subpopulations and communities. Such a system will also help the state identify which schools appear to be using resources most effectively and shed

light on how resources are used at successful schools; that knowledge can then be shared across the state.

Updating the Funding Formula

As noted by AIR, the formula adjustment factors, discussed earlier in this report, represent incremental increases over the projected base per-student sufficiency costs. They are intended to remain relatively stable over a reasonable period of time, although AIR recognizes that as population demographics shift, as we learn more about what works in education and as the federal role in education funding changes, it will be important for the state to periodically review the assumptions upon which the school district and charter school funding formulas are predicated. However, AIR cautions that it is important for policymakers to allow sufficient time for the new funding levels to have an effect. If the legislature chooses a three-year, or longer, phase-in of the formula, there needs to be an additional five to seven years to be able to detect a significant impact. As provided in House Bill 241, PED was directed to undertake a thorough funding formula study every 10 years to update the formula and determine the formula's equation exponents and denominators. AIR recommends the use of a professional judgment approach much like the one it used in this study.

To maintain the formula on an annual basis, PED would be required to:

- (1) update the cost factors of each school district and charter school to determine their respective formula adjustments for the year; and
- (2) adjust the base per-student cost according to legislative appropriation, including inflation.

Possible Revenue Sources

The LCS, with which AIR has its contract, did not find that the subcontracted study of existing and potential revenue sources was presented in a way that was useful to the task force and so did not accept the draft report from the subcontractor. In its stead, LCS staff developed revenue estimates on several options and presented those options to the PAP, which, in turn, provided them to the task force. Although a consensus was not reached on each item, the task force agreed to consider legislation on the following:

- (1) mandatory combined or consolidated corporate reporting for corporate income tax (estimated conservatively at approximately \$60 million for FY10 and beyond);
- (2) equalize the school tax rate for oil and carbon dioxide with natural gas (four percent) (estimated at \$33 million in FY09 and declining slightly over time);
- (3) repeal yield control for school property tax (estimated at \$5 million to the general fund and \$2 million to local schools in FY09 and remaining relatively stable over time);

(4) increase property tax valuation from 33.3 percent to 40 percent (constitutional amendment required); which is the equivalent of four mills; recalibrate municipal and county share; require schools to impose 3.34 mills; and have the state take credit for 75 percent, as it does now on the .5-mill levy (estimated at \$168 million to the general fund and \$56 million to local schools in FY10, with a continued rise; estimated total in FY13 is \$237 million total);

(5) increase the property tax to 22 mills (constitutional amendment required), and dedicate the additional two mills to school districts, subject to the SEG credit and yield control, if applicable (estimate at \$112 million in FY13 with yield control or \$123 million without);

(6) propose a constitutional amendment to repeal the forthcoming distribution reduction in the land grant permanent fund and increase distribution to 6.5 percent (\$125 million to beneficiaries in FY13, with \$21 million to beneficiaries other than public schools); and

(7) increase state gross receipts tax to 5.5 percent (\$244 million FY09 and \$282 million in FY13).

2008 Task Force Legislation

At the end of the three-year process, the FFTF accepted the AIR study and its recommendation for a new, simplified funding formula for public schools in New Mexico, along with several other legislative proposals. The task force sought, and received, endorsement from the LESC for the public school funding reform bill.

House Bill 241, endorsed by both the task force and LESC, was the culmination of the legislature's public education reform efforts begun in 1999 with the creation of the educational initiatives and accountability task force. The purpose of HB 241 was to establish a new, simplified funding formula for public schools based on student need, grade composition and scale of operations for school districts and charter schools. The formula, and the attendant accountability that was provided, would strengthen the goals of the overall education reform specified in Section 22-1-1.2 NMSA 1978. The bill linked the increased funding that would be provided under the new formula with each school district's and charter school's educational plan for student success (EPSS). The formula began with base funding that provided for all of the programs that school districts and charter schools had currently, such as core academic subjects, art, music, physical education, programs for gifted students, bilingual-multicultural programs and career-technical education. District demographics then came into play by providing additional funding depending on the make-up of the student body.

Simplified Funding Formula

Sufficient Per-Student Cost =
Base Per-Student Cost x
Poverty Adjustment x
English Learner Adjustment x
Special Education Adjustment x
Mobility Adjustment x
Grade 6-8 Enrollment Share Adjustment x
Grade 9-12 Enrollment Share Adjustment x
Total Enrollment Adjustment x
Weighted ISQ Adjustment

Funding and accountability were linked through each school district's EPSS, which was required to be specific, measurable, realistic and attainable and required to include focus areas and goals that addressed student needs based on demographic data and student academic achievement data. Individual school plans, as part of the district EPSS, were required to include data-based strategies and activities that supported each of the focus areas and goals. The bill required each school plan to include the persons responsible for ensuring that each of the plan's strategies and activities were carried out. School district budgets were required to be aligned to the EPSS in order to be approved by the department. The bill included other measures the task force had determined to be important, such as the ability of school districts to retain cash balances.

The task force and LESC endorsed a supplemental appropriation bill to support public school funding. **House Bill 398** provided appropriations to PED to carry out its responsibilities under HB 241, including \$250,000 for planning and implementing the new formula and accountability; \$250,000 for data collection and verification; and \$400,000 for EPSS program managers. The bill also included \$3 million for the new school development fund and \$7 million for the catastrophic aid fund for use by school districts that have very expensive special education students. The PJPs all recognized the importance of providing services, such as parent academies and literacy classes, for families of students, particularly those high-poverty students, English language learners and highly mobile students. The PAP agreed and recommended additional funding through the Family and Youth Resource Act; the task force agreed, and the bill included \$3 million for those nonformula needs.

Six revenue measures were eventually introduced in the 2008 session. **House Joint Resolution 8** was a constitutional amendment to increase the land grant permanent fund distribution to public schools (other beneficiaries would also benefit). As introduced, the permanent increase would be 6.5 percent of the average of the year-end market values of the fund for the immediately preceding five calendar years (estimated at approximately \$103 million in FY13). **House Joint Resolution 10** was a constitutional amendment to increase the property tax to 25 mills and have the first five mills be a statewide rate for public schools (estimated at approximately \$260 million in FY10, which was approximately 70 percent of revenue needed for

the new formula). **House Bill 51** would have required combined reporting of corporate income tax and would distribute 20 percent of that amount to the public school fund (estimated at approximately \$108 million in FY10). **House Bill 229** would have removed yield control on the one-half mill levy for public schools (estimated at approximately \$6 million in FY10). **House Bill 311** would have raised the state gross receipts and compensating tax by one-half percent, to 5.5 percent (estimated at approximately \$270 million in FY10). **House Bill 626** would have equalized the tax on oil and carbon dioxide with natural gas; all would be at four percent (estimated at approximately \$33 million in FY09).

2008 Recommendations at a Glance

- ★ *Increase noncategorical funding for public schools by approximately 15% to achieve sufficiency. Cost for full implementation in 2009, based on 2007-2008 preliminary demographics, is approximately \$354 million in marginal increase and approximately \$422 million in actual year-over-year cost (includes inflation).*
- ★ *Adopt a simplified funding formula based on student need and differences in type of school and grade and district size.*
- ★ *Fund special education using a single weight and census of 16% of each district's enrollment. Create a contingency fund for high-cost special education students.*
- ★ *Replace the T&E with the ISQ, which is aligned with three-tiered licensure.*
- ★ *Fund growth and protect declining districts by funding on either the prior-year 80/120 or the current-year 40-day enrollment. Provide one-time funding for opening new schools.*
- ★ *Require accountability through each district's EPSS.*
- ★ *Possible revenue sources to fund sufficiency include:*
 - ▶ *increasing the distribution from the land grant permanent fund;*
 - ▶ *increase the state property tax and dedicate the first five mills to public schools;*
 - ▶ *require combined reporting of corporate income tax and distribute 20% to the public school fund;*
 - ▶ *remove yield control on the one-half mill levy for public schools;*
 - ▶ *increase the state gross receipts and compensating tax by one-half percent; and*
 - ▶ *equalize tax on oil and carbon dioxide with natural gas.*

APPENDIX

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; DISTRIBUTING A PORTION OF CORPORATE
INCOME TAX REVENUE TO THE PUBLIC SCHOOL FUND; AMENDING THE
CORPORATE INCOME AND FRANCHISE TAX ACT TO MANDATE COMBINED
REPORTING; REPEALING A SECTION OF THE NMSA 1978 PERTAINING TO
CONSOLIDATED RETURNS.

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

Section 1. [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL
FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978
shall be made to the public school fund in an amount equal to
twenty percent of the net receipts attributable to the
corporate income tax.

Section 2. Section 7-2A-8.3 NMSA 1978 (being Laws 1983,
Chapter 213, Section 12, as amended by Laws 1993, Chapter 307,
Section 4 and also by Laws 1993, Chapter 309, Section 2) is

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1 amended to read:

2 "7-2A-8.3. COMBINED RETURNS.--

3 A. A unitary corporation that is subject to
4 taxation under the Corporate Income and Franchise Tax Act [~~and~~
5 ~~that has not previously filed a combined return pursuant to~~
6 ~~this section or a consolidated return pursuant to Section~~
7 ~~7-2A-8.4 NMSA 1978 may elect to~~] shall file a combined return
8 with other unitary corporations as though the entire combined
9 net income were that of one corporation. The return filed
10 under this method of reporting shall include the net income of
11 all the unitary corporations. Transactions among the unitary
12 corporations may be eliminated by applying the appropriate
13 rules for reporting income for a consolidated federal income
14 tax return. [~~Any corporation that has filed an income tax~~
15 ~~return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978~~
16 ~~shall not file pursuant to this section unless the secretary~~
17 ~~gives prior permission to file on a combined return basis.]~~

18 B. Once corporations have reported net income
19 through a combined return for any taxable year, they shall file
20 combined returns for subsequent taxable years, so long as they
21 remain unitary corporations, [~~unless the corporations elect to~~
22 ~~file pursuant to Section 7-2A-8.4 NMSA 1978 or~~] unless the
23 secretary grants prior permission for one or more of the
24 corporations to file individually.

25 [~~G. For taxable years beginning on or after January~~

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1 ~~1, 1993, no unitary corporation once included in a combined~~
2 ~~return may elect, or be granted permission by the secretary,~~
3 ~~for any subsequent taxable year to separately account pursuant~~
4 ~~to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.]"~~

5 Section 3. REPEAL.--Section 7-2A-8.4 NMSA 1978 (being
6 Laws 1983, Chapter 213, Section 13, as amended) is repealed.

7 Section 4. APPLICABILITY.--The provisions of this act
8 apply to taxable years beginning on or after January 1, 2008.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; REMOVING THE SCHOOL DISTRICT ONE-HALF-MILL LEVY FOR OPERATING PURPOSES FROM YIELD CONTROL LIMITATIONS ON PROPERTY TAX RATES.

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

Section 1. Section 7-37-7.1 NMSA 1978 (being Laws 1979, Chapter 268, Section 1, as amended) is amended to read:

"7-37-7.1. ADDITIONAL LIMITATIONS ON PROPERTY TAX RATES.--

A. Except as provided in Subsections D and E of this section, in setting the general property tax rates for residential and nonresidential property authorized in Paragraphs (1) and (3) of Subsection B of Section 7-37-7 NMSA 1978, the other rates and impositions authorized in Paragraphs (2) and (3) of Subsection C of Section 7-37-7 NMSA 1978, except

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1 the portion of the rate authorized in Paragraph (1) of
2 Subsection A of Section 4-48B-12 NMSA 1978 used to meet the
3 requirements of Section 27-10-4 NMSA 1978, and benefit
4 assessments authorized by law to be levied upon net taxable
5 value of property, assessed value or a similar term, neither
6 the department of finance and administration nor any other
7 entity authorized to set or impose a rate or assessment shall
8 set a rate or impose a tax or assessment that will produce
9 revenue from either residential or nonresidential property in a
10 particular governmental unit in excess of the sum of a dollar
11 amount derived by multiplying the appropriate growth control
12 factor by the revenue due from the imposition on residential or
13 nonresidential property, as appropriate, for the prior property
14 tax year in the governmental unit of the rate, imposition or
15 assessment for the specified purpose plus, for the calculation
16 for the rate authorized for county operating purposes by
17 Subsection B of Section 7-37-7 NMSA 1978 with respect to
18 residential property, any applicable tax rebate adjustment.
19 The calculation described in this subsection shall be
20 separately made for residential and nonresidential property.
21 Except as provided in Subsections D and E of this section, no
22 tax rate or benefit assessment that will produce revenue from
23 either class of property in a particular governmental unit in
24 excess of the dollar amount allowed by the calculation shall be
25 set or imposed. The rates imposed pursuant to Sections 7-32-4

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1 and 7-34-4 NMSA 1978 shall be the rates for nonresidential
2 property that would have been imposed but for the limitations
3 in this section. As used in this section, "growth control
4 factor" is a percentage equal to the sum of "percent change I"
5 plus V where:

6 (1) $V = \frac{\text{base year value} + \text{net new value}}{\text{base year value}}$,
7

8 expressed as a percentage, but if the percentage calculated is
9 less than one hundred percent, then V shall be set and used as
10 one hundred percent;

11 (2) "base year value" means the value for
12 property taxation purposes of all residential or nonresidential
13 property, as appropriate, subject to valuation under the
14 Property Tax Code in the governmental unit for the specified
15 purpose in the prior property tax year;

16 (3) "net new value" means the additional value
17 of residential or nonresidential property, as appropriate, for
18 property taxation purposes placed on the property tax schedule
19 in the current year resulting from the elements in
20 Subparagraphs (a) through (d) of this paragraph reduced by the
21 value of residential or nonresidential property, as
22 appropriate, removed from the property tax schedule in the
23 current year and, if applicable, the reductions described in
24 Subparagraph (e) of this paragraph:

25 (a) residential or nonresidential

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1 property, as appropriate, valued in the current year that was
2 not valued at all in the prior year;

3 (b) improvements to existing residential
4 or nonresidential property, as appropriate;

5 (c) additions to residential or
6 nonresidential property, as appropriate, or values that were
7 omitted from previous years' property tax schedules even if
8 part or all of the property was included on the schedule, but
9 no additions of values attributable to valuation maintenance
10 programs or reappraisal programs shall be included;

11 (d) additions to nonresidential property
12 due to increases in annual net production values of mineral
13 property valued in accordance with Section 7-36-23 or 7-36-25
14 NMSA 1978 or due to increases in market value of mineral
15 property valued in accordance with Section 7-36-24 NMSA 1978;
16 and

17 (e) reductions to nonresidential
18 property due to decreases in annual net production values of
19 mineral property valued in accordance with Section 7-36-23 or
20 7-36-25 NMSA 1978 or due to decreases in market value of
21 mineral property valued in accordance with Section 7-36-24 NMSA
22 1978; and

23 (4) "percent change I" means a percent not in
24 excess of five percent that is derived by dividing the annual
25 implicit price deflator index for state and local government

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1 purchases of goods and services, as published in the United
2 States department of commerce monthly publication entitled
3 "survey of current business" or any successor publication, for
4 the calendar year next preceding the prior calendar year into
5 the difference between the prior year's comparable annual index
6 and that next preceding year's annual index if that difference
7 is an increase, and if the difference is a decrease, the
8 "percent change I" is zero. In the event that the annual
9 implicit price deflator index for state and local government
10 purchases of goods and services is no longer prepared or
11 published by the United States department of commerce, the
12 department shall adopt by regulation the use of any comparable
13 index prepared by any agency of the United States.

14 B. If, as a result of the application of the
15 limitation imposed under Subsection A of this section, a
16 property tax rate for residential or nonresidential property,
17 as appropriate, authorized in Subsection B of Section 7-37-7
18 NMSA 1978 is reduced below the maximum rate authorized in that
19 subsection, no governmental unit or entity authorized to impose
20 a tax rate under Paragraph (2) of Subsection C of Section
21 7-37-7 NMSA 1978 shall impose any portion of the rate
22 representing the difference between a maximum rate authorized
23 under Subsection B of Section 7-37-7 NMSA 1978 and the reduced
24 rate resulting from the application of the limitation imposed
25 under Subsection A of this section.

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1 C. If the net new values necessary to make the
2 computation required under Subsection A of this section are not
3 available for any governmental unit at the time the calculation
4 must be made, the department of finance and administration
5 shall use a zero amount for net new values when making the
6 computation for the governmental unit.

7 D. Any part of the maximum tax rate authorized for
8 each governmental unit for residential and nonresidential
9 property by Subsection B of Section 7-37-7 NMSA 1978 that is
10 not imposed for a governmental unit for any property tax year
11 for reasons other than the limitation required under Subsection
12 A of this section may be authorized by the department of
13 finance and administration to be imposed for that governmental
14 unit for residential and nonresidential property for the
15 following tax year subject to the restriction of Subsection D
16 of Section 7-38-33 NMSA 1978.

17 E. If the base year value necessary to make the
18 computation required under Subsection A of this section is not
19 available for any governmental unit at the time the calculation
20 must be made, the department of finance and administration
21 shall set a rate for residential and nonresidential property
22 that will produce in that governmental unit a dollar amount
23 that is not in excess of the property tax revenue due for all
24 property for the prior property tax year for the specified
25 purpose of that rate in that governmental unit.

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F. For the purposes of this section:

(1) "nonresidential property" does not include any property upon which taxes are imposed pursuant to the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas Production Equipment Ad Valorem Tax Act or the Copper Production Ad Valorem Tax Act; and

(2) "tax rebate adjustment" means, for those counties that have an ordinance in effect providing the property tax rebate pursuant to the Income Tax Act for the property tax year and that have not imposed for the property tax year either a property tax, the revenue from which is pledged for payment of the income tax revenue reduction resulting from the provision of the property tax rebate, or a property transfer tax, the estimated amount of the property tax rebate to be allowed with respect to the property tax year, and for any other governmental unit or purpose, zero; provided that any estimate of property tax rebate to be allowed is subject to review for appropriateness and approval by the department of finance and administration."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE AND FOR THE
LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING A NEW PUBLIC SCHOOL
FUNDING FORMULA; PROVIDING FOR MAINTENANCE AND PERIODIC
RECALIBRATION OF THE FORMULA; REQUIRING ACCOUNTABILITY; USING A
CENSUS-BASED SPECIAL EDUCATION IDENTIFICATION RATE FOR SCHOOL
DISTRICTS; CLARIFYING FINANCIAL RESPONSIBILITY FOR SPECIAL
EDUCATION; CREATING A FUND; CHANGING REPORTING TIMES TO
SPECIFIED DATES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTIONS OF LAW IN A SINGLE YEAR; AMENDING, REPEALING, ENACTING
AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] PURPOSE OF 2008 EDUCATION REFORM.--

A. The legislature finds that education reform in

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1 New Mexico has been a multiyear process that began in 1999 with
2 the creation of the education initiatives and accountability
3 task force. That task force reported the results of its work
4 to the 2001 legislative session, and the legislature passed a
5 bill that was subsequently vetoed by the governor. In 2003,
6 the legislature again passed the bill, commonly referred to as
7 "House Bill 212", and the governor signed it. That bill
8 enacted the first part of education reform, which was based on
9 the need to attract and retain highly qualified teachers to
10 teach New Mexico's multicultural student population and to hold
11 teachers and administrators accountable for student success.
12 That educational reform recognized the importance of
13 integrating the cultural strengths of New Mexico into the
14 curriculum with high expectations for all students. In 2007,
15 the legislature and governor addressed the need for a rigorous
16 and relevant high school curriculum, as expressed in House Bill
17 212, by enacting what is popularly known as "high school
18 redesign". The goal of that legislation is to prepare students
19 for success in college and the workplace.

20 B. The legislature finds that the next step toward
21 true educational reform was taken in 2005, when the legislature
22 passed, and the governor signed, legislation to appoint a task
23 force of legislators and educators to direct an independent
24 study of the state's funding formula.

25 C. The purpose of this 2008 act is to establish a

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1 new, simplified funding formula for public schools that is
2 based on student need, grade composition and scale of
3 operations for school districts and charter schools. The
4 formula, and the attendant accountability that is provided,
5 strengthen the goals of the overall education reform begun in
6 House Bill 212 and specified in Section 22-1-1.2 NMSA 1978.
7 This 2008 reform links the increased funding that will be
8 provided through the adoption and implementation of the new
9 funding formula to each school district's and charter school's
10 educational plan for student success. The educational plan and
11 the attendant site-specific school plans are the means to
12 enliven statutory provisions such as the Assessment and
13 Accountability Act, kindergarten plus and K-3 plus, high school
14 redesign, the Indian Education Act, the Bilingual Multicultural
15 Education Act, the Fine Arts Education Act, the Mathematics and
16 Science Education Act and other curricula-specific provisions
17 of the Public School Code."

18 Section 2. Section 22-1-2 NMSA 1978 (being Laws 2003,
19 Chapter 153, Section 3, as amended) is amended to read:

20 "22-1-2. DEFINITIONS.--As used in the Public School Code:

21 A. "academic proficiency" means mastery of the
22 subject-matter knowledge and skills specified in state academic
23 content and performance standards for a student's grade level;

24 B. "adequate yearly progress" means the measure
25 adopted by the department based on federal requirements to

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1 assess the progress that a public school or school district or
2 the state makes toward improving student achievement;

3 C. "cost factor demographic data" means a school
4 district's or charter school's student-need data pertaining to
5 poverty, English language learners, special education and
6 mobility;

7 [~~G.~~] D. "commission" means the public education
8 commission;

9 E. "December enrollment" means the total enrollment
10 in a public school or school district on the second Wednesday
11 in December;

12 [~~D.~~] F. "department" means the public education
13 department;

14 [~~E. "forty-day report" means the report of~~
15 ~~qualified student membership of each school district and of~~
16 ~~those eligible to be qualified students but enrolled in a~~
17 ~~private school or a home school for the first forty days of~~
18 ~~school;]~~

19 G. "educational plan" means the educational plan
20 for student success of a school district or charter school;

21 H. "February enrollment" means the total enrollment
22 in a public school or school district on the second Wednesday
23 in February;

24 [~~F.~~] I. "home school" means the operation by the
25 parent of a school-age person of a home study program of

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1 instruction that provides a basic academic educational program,
2 including reading, language arts, mathematics, social studies
3 and science;

4 ~~[G.]~~ J. "instructional support provider" means a
5 person who is employed to support the instructional program of
6 a school district, including educational assistant, school
7 counselor, social worker, school nurse, speech-language
8 pathologist, psychologist, physical therapist, occupational
9 therapist, recreational therapist, interpreter for the deaf and
10 diagnostician;

11 ~~[H.]~~ K. "licensed school employee" means teachers,
12 school administrators and instructional support providers;

13 ~~[I.]~~ L. "local school board" means the policy-
14 setting body of a school district;

15 ~~[J.]~~ M. "local superintendent" means the chief
16 executive officer of a school district;

17 N. "October enrollment" means the total enrollment
18 in a public school or school district on the second Wednesday
19 in October;

20 ~~[K.]~~ O. "parent" includes a guardian or other
21 person having custody and control of a school-age person;

22 ~~[L.]~~ P. "private school" means a school, other than
23 a home school, that offers on-site programs of instruction and
24 that is not under the control, supervision or management of a
25 local school board;

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1 [M-] Q. "public school" means that part of a school
2 district that is a single attendance center in which
3 instruction is offered by one or more teachers and is
4 discernible as a building or group of buildings generally
5 recognized as either an elementary, middle, junior high or high
6 school or any combination of those and includes a charter
7 school;

8 R. "qualified student" means a public school
9 student who:

10 (1) has not graduated from high school; and

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

14 (3) is at least five years of age prior to
15 12:01 a.m. on September 1 of the school year or will be five
16 years of age prior to 12:01 a.m. on September 1 of the school
17 year if the student is enrolled in an extended-year
18 kindergarten program that begins prior to the start of the
19 regular school year; or

20 (4) is at least three years of age at any time
21 during the school year and is receiving special education
22 pursuant to rules of the department; or

23 (5) has not reached the student's twenty-
24 second birthday on the first day of the school year and is
25 receiving special education in accordance with federal law;

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1 ~~[N.]~~ S. "school" means a supervised program of
2 instruction designed to educate a student in a particular
3 place, manner and subject area;

4 ~~[O.]~~ T. "school administrator" means a person
5 licensed to administer in a school district and includes school
6 principals and central district administrators;

7 ~~[P.]~~ U. "school-age person" means a person who is
8 at least five years of age prior to 12:01 a.m. on September 1
9 of the school year and who has not received a high school
10 diploma or its equivalent. A maximum age of twenty-one shall
11 be used for a school-age person who ~~[is classified as]~~ receives
12 special education ~~[membership as defined in Section 22-8-21~~
13 ~~NMSA 1978 or as a resident of a state institution]~~ as provided
14 in Sections 22-13-5, 22-13-7 and 22-13-8 NMSA 1978;

15 ~~[Q.]~~ V. "school building" means a public school, an
16 administration building and related school structures or
17 facilities, including teacher housing, that is owned, acquired
18 or constructed by the school district as necessary to carry out
19 the functions of the school district;

20 ~~[R.]~~ W. "school bus private owner" means a person,
21 other than a school district, the department, the state or any
22 other political subdivision of the state, that owns a school
23 bus;

24 ~~[S.]~~ X. "school district" means an area of land
25 established as a political subdivision of the state for the

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1 administration of public schools and segregated geographically
2 for taxation and bonding purposes;

3 [F.] Y. "school employee" includes licensed and
4 nonlicensed employees of a school district;

5 [U.] Z. "school principal" means the chief
6 instructional leader and administrative head of a public
7 school;

8 [V.] AA. "school year" means the total number of
9 [~~contract~~] instructional days offered by public schools in a
10 school district during a period of twelve consecutive months;

11 [W.] BB. "secretary" means the secretary of public
12 education;

13 CC. "special education" means the provision of
14 services additional to, supplementary to or different from
15 those provided in the general school program of a public school
16 to students who are required by the federal Individuals with
17 Disabilities Education Act to have an individualized education
18 program, and including developmentally disabled three- and
19 four-year-old children attending public school;

20 [X.] DD. "state agency" or "state institution"
21 means the New Mexico military institute, New Mexico school for
22 the blind and visually impaired, New Mexico school for the
23 deaf, New Mexico boys' school, girls' welfare home, New Mexico
24 youth diagnostic and development center, Sequoyah adolescent
25 treatment center, Carrie Tingley crippled children's hospital,

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1 New Mexico behavioral health institute at Las Vegas and any
2 other state agency responsible for educating resident children;

3 ~~[Y.]~~ EE. "state educational institution" means an
4 institution enumerated in Article 12, Section 11 of the
5 constitution of New Mexico;

6 FF. "student" means a school-age person who is a
7 public school student;

8 ~~[Z.]~~ GG. "substitute teacher" means a person who
9 holds a certificate to substitute for a teacher in the
10 classroom;

11 ~~[AA.]~~ HH. "teacher" means a person who holds a
12 level one, two or three-A license and whose primary duty is
13 classroom instruction or the supervision, below the school
14 principal level, of an instructional program or whose duties
15 include curriculum development, peer intervention, peer
16 coaching or mentoring or serving as a resource teacher for
17 other teachers;

18 ~~[BB.]~~ II. "certified school instructor" means a
19 teacher or instructional support provider; and

20 ~~[CC.]~~ JJ. "certified school employee" or "certified
21 school personnel" means a licensed school employee."

22 Section 3. Section 22-2-8.1 NMSA 1978 (being Laws 1986,
23 Chapter 33, Section 2, as amended) is amended to read:

24 "22-2-8.1. LENGTH OF SCHOOL DAY--MINIMUM.--

25 A. Except as otherwise provided in this section,

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1 ~~[regular]~~ general students shall be in school-directed
2 programs, exclusive of lunch, for a minimum of the following:

3 (1) kindergarten, for half-day programs, two
4 and one-half hours per day or four hundred fifty hours per
5 year, ~~[or]~~ and, for full-day programs, five and one-half hours
6 per day or nine hundred ninety hours per year;

7 (2) grades one through six, five and one-half
8 hours per day or nine hundred ninety hours per year; and

9 (3) grades seven through twelve, six hours per
10 day or one thousand eighty hours per year.

11 B. Beginning with the 2011-2012 school year,
12 general students shall be in school-directed programs,
13 exclusive of lunch, for a minimum of the following:

14 (1) kindergarten, for half-day programs, two
15 and one-half hours per day or four hundred sixty-two and one-
16 half hours per year, and, for full-day programs, five and one-
17 half hours per day or one thousand seventeen and one-half hours
18 per year;

19 (2) grades one through six, five and one-half
20 hours per day or one thousand seventeen and one-half hours per
21 year; and

22 (3) grades seven through twelve, six hours per
23 day or one thousand one hundred ten hours per year.

24 ~~[B-]~~ C. Thirty-three hours of the full-day
25 kindergarten program may be used for home visits by the teacher

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1 or for parent-teacher conferences. Twenty-two hours of grades
2 one through five programs may be used for home visits by the
3 teacher or for parent-teacher conferences.

4 [~~G.~~] D. Nothing in this section precludes a local
5 school board from setting length of school days in excess of
6 the minimum requirements established by Subsection A or B of
7 this section.

8 [~~D.~~] E. The [~~state superintendent~~] secretary may
9 waive the minimum length of school days in those districts
10 where such minimums would create undue hardships as defined by
11 the [~~state board~~] department."

12 Section 4. A new section of the Assessment and
13 Accountability Act is enacted to read:

14 "[NEW MATERIAL] EDUCATIONAL PLAN FOR STUDENT SUCCESS--
15 EDUCATIONAL PROGRAMMING.--

16 A. As used in this section:

17 (1) "demographic data" means a school
18 district's funding formula cost factor demographic data and any
19 other demographic data or health status data required by the
20 department or collected by the school district for the purposes
21 of determining educational programming and focusing the
22 educational plan;

23 (2) "educational programming" includes
24 curricula; support services, including library and media,
25 school counseling, health services and athletic and activity

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1 programs; and academic improvement strategies, including
2 extended instructional days and year, before- and after-school
3 programs, credit recovery and summer school courses, tutoring
4 and other response to intervention or remediation programs;

5 (3) "local school board" includes governing
6 bodies of charter schools; and

7 (4) "school district" includes charter
8 schools.

9 B. The department shall adopt and promulgate rules
10 to implement the provisions of this section.

11 C. The department shall verify, monitor and
12 evaluate educational plans through the budget approval process
13 and otherwise throughout the year. The department shall ensure
14 that each educational plan is developed and implemented as
15 provided in this section and the rules of the department and
16 that results are evaluated for effectiveness each year.

17 D. Under the policy direction of the local school
18 board, each school district shall:

19 (1) develop, implement and assess a district-
20 level, student-centered "educational plan for student success"
21 as a long-range strategic plan to improve academic achievement
22 and success for all students;

23 (2) use a strategic planning model that is
24 approved by the department; and

25 (3) include the required school plans of

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1 public schools that are part of the school district, excluding
2 charter schools, and ensure that those plans are aligned with
3 the educational plan.

4 E. The chartering authority shall approve a charter
5 school's educational plan based on the plan's alignment with
6 the charter.

7 F. The educational plan shall:

8 (1) be specific, measurable, realistic and
9 attainable and include the school plan of each public school in
10 the school district, excluding charter schools, and specify how
11 each of the school plans shall be evaluated and aligned with
12 the educational plan;

13 (2) solicit the input of school district
14 staff, students, parents, businesses, post-secondary
15 educational institutions, tribal governments within the school
16 district and other interested citizens in the community at
17 large;

18 (3) address the major core issues identified
19 through the public input process;

20 (4) implement the department's standards of
21 excellence, including the content standards and benchmarks, and
22 other programmatic requirements of state and federal law and
23 rules adopted in accordance with those laws;

24 (5) include focus areas and goals that address
25 student needs based on demographic data and student academic

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1 achievement data;

2 (6) identify areas of student need that must
3 be addressed to ensure that students meet the educational
4 benchmarks specified in the state content standards and
5 benchmarks;

6 (7) identify resources to address student
7 needs, including such items as:

8 (a) highly qualified teachers, academic
9 coaches, resource teachers, interventionists, specialists,
10 counselors, educational assistants and other instructional
11 support personnel, and how staffing assignments of these
12 personnel shall be used in a proactive manner to assist
13 students in need of particular services;

14 (b) professional development and time
15 for in-school collaboration for instructional staff;

16 (c) administrative and classroom
17 technology and access to distance learning opportunities for
18 students and staff;

19 (d) parental involvement and outreach
20 initiatives;

21 (e) involvement by post-secondary
22 educational institutions, tribal governments and the business
23 community; and

24 (f) other resources identified by the
25 school district or department;

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1 (8) implement the state and district
2 assessment systems;

3 (9) demonstrate student progress toward the
4 educational plan's focus areas and goals;

5 (10) provide for a comprehensive and periodic
6 evaluation of the educational plan by the school district; and

7 (11) be updated annually and submitted to the
8 department by March 1 or another date determined by the
9 department.

10 G. Each school district shall oversee the
11 development, implementation, assessment and evaluation of all
12 site-level school plans and shall ensure that those plans are
13 aligned with the school district's educational plan.

14 H. School plans shall include:

15 (1) data-based strategies and activities to
16 support each of the school district-level focus areas and
17 goals;

18 (2) identification of persons responsible for
19 the implementation of the strategies and activities;

20 (3) time lines for the start and completion of
21 those strategies and activities;

22 (4) the educational programming targeted to
23 the school's demographic data and student academic achievement;

24 (5) formal and informal professional
25 development activities that support each of the school

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1 district-level focus areas and goals; and

2 (6) availability of school, district,
3 community and family resources that support each of the school
4 district-level focus areas and goals.

5 I. Each public school shall involve school staff,
6 parents and community members in the development and evaluation
7 of the school plan.

8 J. The educational plan shall include the cost
9 factor demographic data of each public school and the school
10 district and shall link educational programming to those and
11 other demographic data and the student academic achievement
12 data reported pursuant to the Assessment and Accountability
13 Act.

14 K. Educational programming shall be assessed
15 through the educational plan. As part of the approval process
16 of the educational plan and the operating budget of a school
17 district, the department shall consider how the school district
18 proposes to address specifically the needs of low-income
19 students, students who are not proficient in English, students
20 whose education is disrupted by mobility, students in need of
21 special education and gifted students.

22 L. Based on the demographic profiles of students,
23 student academic achievement data and the department's
24 standards of excellence, the educational plan shall include
25 educational programming for:

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1 (1) bilingual and multicultural education,
2 including culturally relevant learning environments,
3 educational opportunities and culturally relevant instructional
4 materials;

5 (2) health and wellness, including physical
6 education, athletics, nutrition and health education;

7 (3) career-technical education;

8 (4) visual and performing arts and music;

9 (5) gifted education, advanced placement and
10 honors programs;

11 (6) special education; and

12 (7) distance education.

13 M. The local school board shall approve the
14 educational plan and submit it to the department.

15 N. The secretary shall disapprove an educational
16 plan in whole or in part if it does not meet the requirements
17 of this section or other provisions of the Public School Code.
18 The secretary shall provide the local school board and the
19 school district with a written report that specifies which
20 parts of the educational plan the secretary is disapproving,
21 reasons for the disapproval and suggestions for improvement.
22 The school district has thirty days to submit a revised
23 educational plan, during which time the department shall assist
24 the school district as requested.

25 O. If the local school board does not approve a

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1 revised educational plan or if the department does not
2 recommend approval of the revised educational plan, the
3 secretary shall hold a public hearing within twenty days after
4 the revised educational plan was due.

5 P. The secretary shall appoint a hearing officer to
6 conduct the public hearing. All parties, including the public,
7 shall be given an opportunity to present their views about the
8 original educational plan and any revisions to that plan. The
9 hearing officer shall make recommendations to the secretary
10 within ten days of the public hearing. The secretary shall
11 make the final decision on whether to accept the school
12 district's original plan, the revised plan or a department-
13 developed educational plan. The final educational plan shall
14 be aligned with the department-approved operating budget."

15 Section 5. A new section of the Public School Finance Act
16 is enacted to read:

17 "[NEW MATERIAL] 2009 FUNDING FORMULA--FINDINGS AND
18 PURPOSE.--

19 A. The legislature finds that based on a two-year
20 study to determine the best method of funding a sufficient
21 public education for New Mexico's children, the state, school
22 districts and charter schools would be better served by a new
23 funding formula that incorporates:

24 (1) a smaller and simplified set of student-
25 needs weighting factors to achieve a more equitable

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1 distribution of the state's equalization guarantee;

2 (2) a simplified set of programmatic weights
3 that accounts for student grade level composition for
4 elementary, middle and high school students; and

5 (3) a weighting schedule that accounts
6 separately for the scale of school district and charter school
7 operations.

8 B. The legislature finds further that the 2009
9 funding formula:

10 (1) avoids unnecessary complexity by focusing
11 directly on the factors associated with student needs and
12 scale;

13 (2) appropriately promotes and preserves both
14 vertical and horizontal equity across school districts;

15 (3) minimizes incentives to pursue funding not
16 directly linked to student needs; and

17 (4) captures components in the pre-2009
18 funding formula and is more precise in measuring student need
19 and scale.

20 C. The legislature finds further that the cost
21 factors used in the 2009 funding formula better measure need by
22 addressing special cost differentials associated with students
23 that have special educational needs as well as particular types
24 of local educational agency. The poverty, English language
25 learner and special education cost factors measure those

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1 federally recognized attributes that unambiguously reflect the
2 special educational needs of students. The cost factor for
3 mobility recognizes the significant impact of disruption on
4 students' educational experience. The cost factors for grade
5 level enrollment address the knowledge gained from educational
6 research and experience that educating students becomes more
7 expensive as they progress through the educational system from
8 elementary through secondary school. Total school district or
9 charter school enrollment is included as a cost factor that
10 accounts for relative economies of scale in the delivery of
11 educational services.

12 D. The legislature finds further that the federal
13 No Child Left Behind Act of 2001 requires states to employ
14 highly qualified teachers to teach students in core academic
15 subjects. The federal Individuals with Disabilities Education
16 Act requires highly qualified personnel to provide holistic
17 services for students in need of special education, as well as
18 staff who are qualified to intervene before students are
19 classified as needing special education. To carry out these
20 mandates, and to continue encouraging school districts to hire
21 and retain highly qualified teachers and instructional support
22 providers, the 2009 funding formula replaces the training and
23 experience index with an index of staff qualifications to
24 provide the means to cover the costs associated with increased
25 academic qualifications and experience for these personnel."

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1 Section 6. Section 22-8-2 NMSA 1978 (being Laws 1978,
2 Chapter 128, Section 3, as amended) is repealed and a new
3 Section 22-8-2 NMSA 1978 is enacted to read:

4 "22-8-2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Public School Finance Act:

6 A. "base per-student cost" means the reference
7 value cost of providing an educational program to a qualified
8 student attending the average size district with the average
9 composition of enrollment across grade ranges kindergarten
10 through five, six through eight and nine through twelve and
11 with no formula adjustments applied;

12 B. "cost factor" means a measure of student need,
13 grade level composition, scale of operations or staff
14 qualifications;

15 C. "enrollment" means the number of qualified
16 students on the current roll of a class or public school on a
17 specified day;

18 D. "formula adjustment" means a component of the
19 funding formula that accounts for a differential cost
20 associated with a cost factor;

21 E. "governing body" means the governing body of a
22 charter school;

23 F. "growth" means that a school district's or
24 charter school's current-year October total enrollment is
25 greater than its prior-year October total enrollment;

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1 G. "head administrator" means the person
2 responsible for the day-to-day operations of a charter school;

3 H. "mobility rate" means the district-level
4 student-weighted average percentage of total enrollment that
5 entered or left the school over the school year;

6 I. "operating budget" means the annual financial
7 plan required to be submitted by a local school board or
8 governing body;

9 J. "public money" or "public funds" means all money
10 from public or private sources received by a school district or
11 governing body or officer or employee of a school district or
12 governing body for public use;

13 K. "sufficient per-student cost" means the base
14 per-student cost multiplied by the applicable formula
15 adjustments;

16 L. "total enrollment" means the number of qualified
17 students on a school's or charter school's roll on a specified
18 day in all grade levels and in programs for three- and four-
19 year-old developmentally disabled qualified students; and

20 M. "total program cost" means the sufficient per-
21 student cost multiplied by the number of students in a school
22 district or charter school."

23 Section 7. A new section of the Public School Finance Act
24 is enacted to read:

25 "[NEW MATERIAL] ESTABLISHMENT OF ENROLLMENT.--The current
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1 roll of a class, public school and school district or charter
2 school is established by the addition of original entries and
3 re-entries minus withdrawals. Withdrawals of qualified
4 students, in addition to qualified students formally withdrawn
5 from the public school, include qualified students absent from
6 the public school for as many as ten consecutive school days;
7 provided that withdrawals do not include truants and habitual
8 truants with whom the school district or charter school is
9 required to intervene and keep in an educational setting as
10 provided in Section 22-12-9 NMSA 1978."

11 Section 8. Section 22-8-6 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 60, as amended by Laws 1999, Chapter 281,
13 Section 21 and by Laws 1999, Chapter 291, Section 2) is amended
14 to read:

15 "22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

16 A. Prior to April 15 of each year, each local
17 school board shall submit to the department [~~an~~] a proposed
18 operating budget for the school district [~~and any charter~~
19 ~~schools in the district~~] for the ensuing fiscal year. Upon
20 written approval of the [~~state superintendent~~] secretary, the
21 date for the submission of the operating budget as required by
22 this section may be extended to a later date fixed by the
23 [~~state superintendent~~] secretary.

24 B. In order to receive final budget approval, the
25 operating budget must be aligned to the school district's

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1 approved educational plan.

2 [B-] C. The proposed operating budget required by
3 this section may include:

4 (1) estimates of the cost of insurance
5 policies for periods up to five years if a lower rate may be
6 obtained by purchasing insurance for the longer term; [or] and

7 (2) estimates of the cost of contracts for the
8 transportation of students for terms extending up to four
9 years.

10 [~~G. The operating budget required by this section
11 shall include a budget for each charter school of the
12 membership projected for each charter school, the total program
13 units generated at that charter school and approximate
14 anticipated disbursements and expenditures at each charter
15 school.~~]

16 D. If a local school board fails to submit [a] its
17 budget pursuant to this section, the department shall prepare
18 the operating budget for the school district for the ensuing
19 fiscal year. A local school board shall be considered as
20 failing to submit a budget pursuant to this section if the
21 budget submitted:

22 (1) exceeds the total projected resources of
23 the school district [~~or if the budget submitted~~];

24 (2) does not comply with the law or with rules
25 and procedures of the department; or

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1 (3) except as provided in Subsection D of
2 Section 22-8-11 NMSA 1978, is not aligned with the school
3 district's approved educational plan."

4 Section 9. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
5 Chapter 227, Section 8, as amended) is repealed and a new
6 Section 22-8-6.1 NMSA 1978 is enacted to read:

7 "22-8-6.1. [NEW MATERIAL] CHARTER SCHOOL BUDGETS.--

8 A. Prior to April 15 of each year, the governing
9 body of each state-chartered charter school shall submit its
10 proposed operating budget to the charter schools division of
11 the department for its approval or amendment pursuant to the
12 Public School Finance Act and the Charter Schools Act. In
13 order to receive final budget approval, the proposed budget
14 must be aligned to the school's approved educational plan.

15 B. Prior to April 15 of each year, the governing
16 body of each locally chartered charter school shall submit its
17 proposed operating budget at the same time to the department
18 and the school district that chartered it. In order to be
19 approved, the proposed budget must be aligned to the school's
20 approved educational plan. The budget shall be submitted to
21 the local school board for approval. The approval authority of
22 the local school board is limited to ensuring that sound fiscal
23 practices are followed in the development of the budget and
24 that the budget is within the allotted resources. The local
25 school board shall have no veto authority over individual line

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1 items within the budget, but shall approve or disapprove the
2 budget only in its entirety. The local school board shall
3 notify the department of its approval or disapproval of the
4 budget, including its reasons for disapproval.

5 C. Upon written approval of the secretary, the date
6 for submission of a proposed budget may be extended to a later
7 date fixed by the secretary. If the governing body fails to
8 submit its proposed operating budget pursuant to this section,
9 the department shall prepare the budget for the charter school
10 for the ensuing fiscal year. A governing body shall be
11 considered as failing to submit a budget pursuant to this
12 section if the budget submitted:

13 (1) exceeds the total projected resources of
14 the charter school;

15 (2) does not comply with the law or with rules
16 and procedures of the department; or

17 (3) except as provided in Subsection D of
18 Section 22-8-11 NMSA 1978, is not aligned with the charter
19 school's approved educational plan.

20 D. For the first year of operation, the proposed
21 operating budget of a charter school shall be based on the
22 projected enrollment and cost factor demographic data of that
23 charter school and the index of staff qualifications of the
24 school district in which the charter school is geographically
25 located. The operating budget shall be adjusted based on the

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1 actual October enrollment and cost factor demographic data.
2 For second and subsequent years of operation, the operating
3 budget shall be based on the charter school's own cost factor
4 demographic data and index of staff qualifications."

5 Section 10. Section 22-8-8 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 62, as amended) is amended to read:

7 "22-8-8. BUDGETS--MINIMUM STUDENT [~~MEMBERSHIP~~]
8 ENROLLMENT.--Without prior approval of the [~~state~~
9 ~~superintendent~~] secretary, no local school board or governing
10 body shall maintain or provide a budget allowance for a public
11 school having an [~~average daily membership~~] enrollment of
12 [~~less~~] fewer than eight."

13 Section 11. Section 22-8-9 NMSA 1978 (being Laws 1967,
14 Chapter 16, Section 63, as amended) is amended to read:

15 "22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

16 A. A budget for a school district shall not be
17 approved by the department that does not provide for:

18 (1) a school year consisting of at least one
19 hundred eighty full instructional days or the equivalent
20 thereof, exclusive of any release time for in-service training;
21 or

22 (2) a variable school year consisting of a
23 minimum number of instructional hours established by the [~~state~~
24 ~~board~~] department; and

25 (3) a pupil-teacher ratio or class or teaching

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1 load as provided in Section 22-10A-20 NMSA 1978.

2 B. Beginning with the 2011-2012 school year, a
3 budget for a school district shall not be approved by the
4 department that does not provide for a school year consisting
5 of at least one hundred eighty-five full instructional days or
6 the equivalent on a variable calendar. Teachers and
7 instructional support staff shall be paid for at least four
8 days additional to the school year for professional development
9 or instructional planning.

10 ~~[B.]~~ C. The ~~[state board]~~ department shall, by
11 rule, establish the requirements for an instructional day, the
12 standards for an instructional hour and the standards for a
13 full-time teacher and for the equivalent thereof."

14 Section 12. Section 22-8-11 NMSA 1978 (being Laws 1967,
15 Chapter 16, Section 66, as amended) is amended to read:

16 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

17 A. On or before June 30 of each year, the
18 department shall ~~[(1) on or before July 1 of each year]~~
19 approve and certify ~~[to]~~ the operating budget for each [local]
20 school ~~[board]~~ district and ~~[governing body of a state-~~
21 ~~chartered]~~ charter school ~~[an operating budget for use by the~~
22 ~~school district or state-chartered charter school; and (2)].~~
23 The department may make corrections, revisions and amendments
24 to the operating budgets fixed by the local school boards or
25 governing bodies ~~[of state-chartered charter schools and the~~

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1 ~~secretary~~] to conform the budgets to the requirements of law
2 and to the department's rules and procedures.

3 B. No school district or [~~state-chartered~~] charter
4 school or officer or employee of a school district or [~~state-~~
5 ~~chartered~~] charter school shall make any expenditure or incur
6 any obligation for the expenditure of public [~~funds~~] money
7 unless that expenditure or obligation is made in accordance
8 with an operating budget approved by the department. This
9 prohibition does not prohibit the transfer of [~~funds~~] money
10 pursuant to the department's rules and procedures.

11 C. The department shall not approve and certify an
12 operating budget of any school district or [~~state-chartered~~]
13 charter school that [~~fails to~~] does not align with the
14 educational plan and demonstrate that parental involvement in
15 the budget process was solicited.

16 D. The department may approve a conditional
17 operating budget if a school district's or charter school's
18 educational plan is in the process of being approved as
19 provided in Section 4 of this 2008 act. After the secretary's
20 final decision on the educational plan, the conditional
21 operating budget shall be aligned with the department-approved
22 educational plan and become the operating budget for the
23 applicable fiscal year. If the approved operating budget
24 requires a decrease or increase in the school district's state
25 equalization guarantee distribution, the department shall

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1 adjust the monthly allotments accordingly."

2 Section 13. Section 22-8-12.1 NMSA 1978 (being Laws 1978,
3 Chapter 128, Section 5, as amended) is amended to read:

4 "22-8-12.1. [~~MEMBERSHIP~~] SUFFICIENT PER-STUDENT COST
5 PROJECTIONS AND BUDGET REQUESTS.--

6 A. Beginning with projections for the 2009-2010
7 school year, each [~~local school board or governing body of a~~
8 ~~state-chartered~~] school district and charter school shall
9 submit annually, on or before October 15, to the department:

10 (1) an estimate for the succeeding fiscal year
11 of:

12 (a) the [~~membership of qualified~~
13 ~~students to be enrolled in the basic program~~] enrollment by
14 grade level;

15 (b) the full-time-equivalent [~~membership~~
16 ~~of students to be enrolled~~] enrollment in approved early
17 childhood education programs; [~~and~~]

18 (c) the [~~membership of students to be~~
19 ~~enrolled~~] enrollment in approved special education programs;
20 and

21 (d) the cost factor demographic data by
22 grade level;

23 (2) all other information necessary to
24 calculate total program [~~costs~~] cost; and

25 (3) any other information related to the

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

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

7 C. The department shall:

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

11 (2) submit annually, on or before November 30,
12 to the secretary of finance and administration the
13 recommendations of the department for:

14 (a) amendments to the public school
15 [~~finance~~] funding formula;

16 (b) appropriations for the succeeding
17 fiscal year to the public school fund for inclusion in the
18 executive budget document; and

19 (c) appropriations for the succeeding
20 fiscal year for [~~pupil~~] student transportation and
21 instructional materials."

22 Section 14. Section 22-8-13 NMSA 1978 (being Laws 1974,
23 Chapter 8, Section 3, as amended) is amended to read:

24 "22-8-13. REPORTS.--

25 A. Each public school [~~in a school district and~~

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1 ~~each state-chartered charter school]~~ shall keep accurate
2 records concerning [~~membership~~] enrollment in the public school
3 [~~The superintendent of~~].

4 B. The dates for which enrollment is reported are
5 as follows:

6 (1) first reporting date, second Wednesday in
7 October;

8 (2) second reporting date, second Wednesday in
9 December; and

10 (3) third reporting date, second Wednesday in
11 February.

12 C. The department may require enrollment or other
13 reports at other times specified by the department.

14 D. Each school district or [~~head administrator of a~~
15 ~~state-chartered~~] charter school shall maintain the following
16 reports for each [~~twenty-day~~] enrollment reporting period:

17 (1) the [~~basic program MEM~~] enrollment and
18 cost factor demographic data by grade in each public school;

19 (2) the early childhood education [~~MEM~~]
20 enrollment;

21 (3) the special education [~~MEM in each public~~
22 ~~school in class C and class D programs as defined in Section~~
23 ~~22-8-21 NMSA 1978;~~

24 (~~4) the number of class A and class B programs~~
25 ~~as defined in Section 22-8-21 NMSA 1978; and~~] enrollment; and

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1 [~~(5)~~] (4) the [~~full-time equivalent MEM for~~]
2 bilingual multicultural education [~~programs~~] enrollment.

3 [~~B. The superintendent of~~] E. Each school district
4 and [~~the head administrator of each state-chartered~~] charter
5 school shall furnish all reports, including financial reports
6 required by the department, to the department [~~reports of the~~
7 ~~information required in Paragraphs (1) through (5) of~~
8 ~~Subsection A of this section for the first forty days of the~~
9 ~~school year. The forty-day report and all other reports~~
10 ~~required by law or by the department shall be furnished~~] within
11 five days of the close of [~~the~~] each reporting period.

12 [~~G.~~] F. All information required pursuant to this
13 section shall be on forms prescribed and furnished by the
14 department. A copy of any report made pursuant to this section
15 shall be kept as a permanent record of the school district or
16 charter school and shall be subject to inspection and audit at
17 any reasonable time.

18 [~~D.~~] G. The department [~~shall~~] may withhold up to
19 one hundred percent of the allotments of funds to any school
20 district or [~~state-chartered~~] charter school [~~where~~] when the
21 local superintendent or head administrator has failed to comply
22 with the requirements of this section. Withholding may
23 continue until the local superintendent or head administrator
24 complies with and agrees to continue complying with the
25 requirements of this section.

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1 [~~E-~~] H. The provisions of this section may be
2 modified or suspended by the department for any school district
3 or [~~school or state-chartered~~] charter school operating under
4 the Variable School Calendar Act. The department shall require
5 [~~MEM~~] the reports consistent with the calendar of operations of
6 [~~such~~] the school district or [~~school or state-chartered~~]
7 charter school and shall calculate an equivalent [~~MEM~~]
8 enrollment for use in projecting school district or charter
9 school revenue."

10 Section 15. Section 22-8-14 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 69, as amended) is amended to read:

12 "22-8-14. PUBLIC SCHOOL FUND.--

13 A. The "public school fund" is created in the state
14 treasury. The fund consists of appropriations, earmarked
15 revenue, income from investment of the fund and any other money
16 credited to the fund.

17 B. The public school fund shall be distributed to
18 school districts and state-chartered charter schools in the
19 following parts:

- 20 (1) state equalization guarantee distribution;
- 21 (2) transportation distribution; and
- 22 (3) supplemental distributions:
 - 23 (a) out-of-state tuition to school
 - 24 districts;
 - 25 (b) emergency; and

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(c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall not revert to the general fund [~~unless otherwise provided by law~~]."

Section 16. Section 22-8-17 NMSA 1978 (being Laws 1974, Chapter 8, Section 7, as amended) is amended to read:

"22-8-17. TOTAL PROGRAM COST DETERMINATION--REQUIRED INFORMATION.--

A. The department shall calculate the total program cost for each school district and charter school [~~shall be determined by the department~~] in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information necessary to make an accurate determination of the district's or charter school's total program cost."

Section 17. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended by Laws 2007, Chapter 347, Section 1 and by Laws 2007, Chapter 348, Section 2 and also by Laws 2007, Chapter 365, Section 1) is repealed and a new Section 22-8-18 NMSA 1978 is enacted to read:

"22-8-18. [NEW MATERIAL] PROJECTED SUFFICIENT PER-STUDENT COST CALCULATION FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS--

1 LOCAL RESPONSIBILITY.--

2 A. As used in this section:

3 (1) "ENR" means total enrollment;

4 (2) "exp" means the exponential function with
5 its base being the mathematical constant e; and

6 (3) "ln" means natural logarithm.

7 B. The cost factors used to determine the
8 sufficient per-student cost for a school district or charter
9 school are:

10 (1) poverty, which is measured by the
11 percentage of qualified students in a school who qualified for
12 free or reduced-price lunch as of September 30 of the prior
13 school year;

14 (2) English language learners, which is
15 measured by the percentage of qualified students designated as
16 English language learners based on a department-approved
17 English language proficiency assessment;

18 (3) special education, which is measured by
19 sixteen percent of the number of qualified students for school
20 districts and by the percentage of qualified students who are
21 required by the federal Individuals with Disabilities Education
22 Act to have an individualized education program for the
23 delivery of special education and includes developmentally
24 disabled three- and four-year-old qualified students for
25 charter schools;

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1 (4) mobility, which is the mobility rate
2 determined by the following formula: $1 - (1 \div (1 + \text{statewide}$
3 $\text{mobility ratio}))$, where the mobility ratio is determined
4 annually by the department;

5 (5) the percent of total district enrollment
6 in grades six through eight;

7 (6) the percent of total district enrollment
8 in grades nine through twelve;

9 (7) the total district enrollment; and

10 (8) the weighted index of staff
11 qualifications.

12 C. The sufficient per-student cost for school
13 districts is determined by multiplying the base per-student
14 cost by a series of formula adjustments as follows:

15 "base per-student cost x
16 $[(1 + \text{percent free/reduced-fee lunch})^{0.375}] \times$
17 $[(1 + \text{percent English language learners})^{0.094}] \times$
18 $[(1 + \text{percent special education})^{1.723}] \times$
19 $[(1 + \text{mobility rate})^{0.190}] \times$
20 $[(1 + \text{enrollment percent in grades six-eight})^{0.291} \div$
21 $1.063] \times$
22 $[(1 + \text{enrollment percent in grades nine-twelve})^{0.608} \div$
23 $1.187] \times$
24 $[(\text{ENR})^{-0.575} \times \exp((\ln(\text{ENR}))^2)^{0.029} \div 0.062] \times$
25 weighted index of staff qualifications formula

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1 adjustment determined pursuant to Section 22-8-24
2 NMSA 1978".

3 D. The funding formula equation used to determine
4 the sufficient per-student cost for charter schools is
5 determined by multiplying the base per-student cost by a series
6 of formula adjustments as follows:

7 "base per-student cost x
8 $[(1 + \text{percent free/reduced-fee lunch})^{0.375}] \times$
9 $[(1 + \text{percent English language learners})^{0.094}] \times$
10 $[(1 + \text{percent special education})^{1.723}] \times$
11 $[(1 + \text{mobility rate})^{0.190}] \times$
12 $[(1 + \text{enrollment percent in grades six-eight})^{0.291} \div$
13 $1.074] \times$
14 $[(1 + \text{enrollment percent in grades nine-twelve})^{0.608} \div$
15 $1.241] \times$
16 $[(\text{ENR})^{-0.307} \times \exp((\ln(\text{ENR}))^2)^{0.012} \div 0.288] \times$

17 weighted index of staff qualifications adjustment as
18 determined pursuant to Section 22-8-24 NMSA 1978".

19 E. The exponents and denominators used in the
20 formula adjustments shall remain constant until they are
21 redetermined after the required periodic funding formula study.

22 F. Except as otherwise provided in this section,
23 cost factor demographic data and total enrollment are based on
24 the average of the prior year's total enrollment reported in
25 December and February and the prior-year cost factor

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1 demographic data.

2 G. A school district or charter school that is
3 experiencing growth may elect to use the greater of the prior-
4 year average December and February total enrollment or the
5 current-year October total enrollment, as determined by the
6 difference in the prior-year October total enrollment and the
7 current-year October total enrollment.

8 H. A new school district or charter school shall
9 use the current-year October cost factor demographic data and
10 total enrollment for the first year.

11 I. The special education formula adjustment for a
12 school district is calculated using sixteen percent of the
13 number of qualified students in the school district. In the
14 2008-2009 school year, a school district with an actual special
15 education identification rate over sixteen percent shall
16 reassess its special education students to determine whether:

17 (1) there is a significant disproportionality
18 in the identification rate based on ethnic or racial
19 background; and

20 (2) individual students should be reevaluated
21 to determine the most appropriate education and related
22 services needed.

23 J. The special education formula adjustment for a
24 charter school is calculated using the actual number of
25 appropriately identified special education qualified students

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1 who are receiving special education on the October enrollment
2 report. The legislature finds that charter schools are
3 designed for unique populations and the range of variation in
4 special education in charter schools is wider and often well
5 below school district averages; therefore, it is rational and
6 reasonable to differentiate between school districts and
7 charter schools in the special education cost factor.

8 K. The department shall assist school districts to
9 implement response to intervention strategies to lower their
10 special education identification rates. It is the intent of
11 the legislature that all school districts and charter schools
12 accurately identify students needing special education and that
13 they implement response to intervention strategies to provide
14 students with the most appropriate services required for their
15 educational success. The department shall report to the
16 legislature by September 1 of each year on:

17 (1) the prior year's special education
18 identification rates in school districts and charter schools;
19 and

20 (2) the adoption and efficacy of response to
21 intervention strategies for each school district and charter
22 school.

23 L. To maintain the funding formula each year, the
24 department shall:

25 (1) update the cost factors of each school

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1 district and charter school to determine their respective
2 formula adjustments for that year; and

3 (2) adjust the base per-student cost according
4 to legislative appropriation, including inflation. As used in
5 this paragraph, inflation is determined by the percentage
6 increase, if any:

7 (a) of the prior-year legislative
8 appropriation for salary increases applied to that statewide
9 portion of the budget designated for salaries and benefits; and

10 (b) of the prior-year consumer price
11 index for all urban consumers for the remaining statewide
12 portions of the budget funded through the formula.

13 M. The department shall undertake a thorough
14 funding formula study every ten years, or more frequently if
15 the secretary or the legislature determines a need, to update
16 the current funding formula to determine the formula's equation
17 exponents and denominators.

18 N. The sufficient per-student cost is based on a
19 comprehensive instructional program that includes the cost of
20 core academic programs, career-technical education, gifted
21 programs, bilingual-multicultural programs, arts and music,
22 health and physical education and special education and
23 appropriate staff. It is the responsibility of the local
24 school board or governing body to determine its priorities in
25 terms of the needs of the community served by that board or

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1 body. Money distributed through the provisions of the Public
2 School Finance Act is discretionary to local school boards and
3 governing bodies to provide the programs identified in their
4 educational plans.

5 0. Beginning with fiscal year 2010, the legislature
6 and the department shall use the funding formula provided in
7 this section as the method for determining the appropriation
8 for and distribution of the state equalization guarantee;
9 provided that funding for complete implementation of the
10 provisions of this 2008 act may be phased in during a period
11 not to exceed three years; and provided further that the
12 funding formula shall not be initiated in fiscal year 2010
13 unless the 2010 appropriation is equal to at least one-third of
14 the difference between the projected total program cost for
15 fiscal year 2010 and the actual program cost for fiscal year
16 2009 inflated to fiscal year 2010. For the first two years of
17 phase-in, if the total program cost for a school district or
18 charter school is less than that of the prior fiscal year, the
19 total program cost for the school district or charter school
20 shall be calculated using the prior fiscal year's total program
21 cost adjusted for inflation."

22 Section 18. A new section of the Public School Finance
23 Act is enacted to read:

24 "[NEW MATERIAL] FORMULA PHASE-IN.--

25 A. During the phase-in of the funding formula, a

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1 school district or charter school shall use its state
2 equalization guarantee distribution, above the amount it
3 received in the prior fiscal year and the amount needed for
4 increases in fixed costs and salaries pursuant to the budget
5 approved by the department, for one or more of the following
6 purposes that support the educational plan:

7 (1) extending the instructional year one or
8 more days;

9 (2) extending the school day for teachers or
10 extending contract days for teachers up to four days beyond the
11 instructional year;

12 (3) offering summer school, credit recovery
13 and enhanced before- and after-school opportunities;

14 (4) lower class sizes and student-teacher
15 ratios;

16 (5) employing academic coaches, resource
17 teachers and specialists, particularly in reading, mathematics
18 and English language learning programs;

19 (6) enhancing intervention efforts for
20 children who may be at risk of academic failure;

21 (7) enhancing remediation programs in language
22 arts and reading, mathematics, science and social studies;

23 (8) improving truancy prevention and
24 intervention strategies, including establishing or enhancing
25 truancy tracking systems and employing truancy officers;

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- 1 (9) establishing or enhancing bilingual-
2 multicultural programs;
- 3 (10) offering visual and performing arts,
4 music and physical education to more students;
- 5 (11) enhancing programs for gifted students;
- 6 (12) enhancing career-technical education
7 programs;
- 8 (13) employing educational assistants,
9 librarians, counselors, nurses, social workers and student
10 support service staff;
- 11 (14) providing professional development
12 opportunities for licensed school employees outside the
13 instructional day or year;
- 14 (15) providing teaching English as a second
15 language endorsement courses for instructional staff;
- 16 (16) providing stipends for instructional
17 staff who have a bilingual or teaching English as a second
18 language endorsement;
- 19 (17) improving information technology services
20 for students and staff, including employing information
21 technology personnel or contracting with technical consultants;
- 22 (18) improving the district's ability to
23 collect and analyze student and staff data to improve education
24 management;
- 25 (19) improving student and school safety; or

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1 (20) other measures approved by the department
2 that are tied to the educational plan.

3 B. The use to which increased funding is put
4 pursuant to Subsection A of this section shall be incorporated
5 into the school district's or charter school's educational plan
6 and approved by the department. The educational plan shall
7 provide detailed information:

8 (1) describing the purposes to which increased
9 funding will be applied;

10 (2) the specific outcomes expected from such
11 increased funding;

12 (3) the performance measures to be used to
13 evaluate the efficacy of the purposes to which increased
14 funding was applied; and

15 (4) any other information requested by the
16 department to assist the department and the school district or
17 charter school to evaluate its educational programs or
18 administrative efficiency."

19 Section 19. Section 22-8-24 NMSA 1978 (being Laws 1974,
20 Chapter 8, Section 15, as amended by Laws 1993, Chapter 91,
21 Section 1 and also by Laws 1993, Chapter 237, Section 3) is
22 repealed and a new Section 22-8-24 NMSA 1978 is enacted to
23 read:

24 "22-8-24. [NEW MATERIAL] INDEX OF STAFF QUALIFICATIONS--
25 NATIONAL BOARD CERTIFICATION STIPEND.--

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1 A. For the purpose of calculating the index of
2 staff qualifications, the following definitions and limitations
3 apply:

4 (1) "instructional staff" means the personnel
5 assigned to the instructional program of a school district or
6 charter school, including instructional support providers, and
7 excluding principals, substitute teachers, educational
8 assistants, secretaries and clerks;

9 (2) the number of instructional staff to be
10 counted in calculating matrix A and matrix B of the index of
11 staff qualifications is the actual number of full-time
12 equivalent instructional staff on the October payroll of the
13 prior year;

14 (3) the number of years of experience within a
15 level for matrix A or the number of years of experience for
16 matrix B to be used in calculating the index of staff
17 qualifications is that number of years of experience allowed
18 for salary increment purposes on the salary schedule of the
19 school district or charter school; and

20 (4) the academic degree and additional credit
21 hours to be used in calculating the index of staff
22 qualifications are the degree and additional semester credit
23 hours allowed for salary increment purposes on the salary
24 schedule of the school district or charter school.

25 B. The factors for each classification of academic

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1 training by years of experience are provided in the following
 2 matrix for teachers:

3 Matrix of Staff Qualifications A - Teachers

Academic Classification	Years of Experience Within Level									
	Level I			Level II				Level III		
	0-1	2-3	4-5	4-6	7-8	9-15	Over 15	7-8	9-15	Over 15
Bachelor's degree	0.64	0.67	0.71	0.76	0.82	0.93	1.04	0.90	1.02	1.17
Master's degree	0.68	0.72	0.76	0.81	0.88	1.00	1.11	0.96	1.09	1.25
Master's degree plus 45 credit hours or post-master's degree	0.71	0.75	0.79	0.85	0.92	1.05	1.16	1.01	1.14	1.31

12 C. The factors for each classification of academic
 13 training by years of experience are provided in the following
 14 matrix for other instructional staff:

15 Matrix of Staff Qualifications B - Other Instructional Staff

Academic Classification	Years of Experience				
	0-2	3-5	6-8	9-15	Over 15
Bachelor's degree or less	0.65	0.78	0.87	0.91	0.91
Bachelor's degree plus 15 credit hours	0.70	0.83	0.87	0.96	1.00
Bachelor's degree plus 45 credit hours or master's degree	0.74	0.87	0.91	1.00	1.04
Master's degree plus 15 credit hours	0.78	0.91	1.00	1.13	1.17
Master's degree plus 45 or post-master's degree	0.87	1.00	1.13	1.22	1.30

23 D. The index of staff qualifications for each
 24 school district and charter school shall be calculated in
 25 accordance with instructions issued by the secretary. The

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1 following calculation shall be made to compute the value of
2 the index of staff qualifications:

3 (1) multiply the number of full-time-
4 equivalent teachers in each academic classification and level
5 in matrix A by the numerical factor in the appropriate "years
6 of experience within the level" column provided in Subsection
7 B of this section;

8 (2) multiply the number of full-time
9 equivalent other instructional staff in each classification
10 and level in matrix B by the numerical factor in the
11 appropriate "years of experience" column provided in
12 Subsection C of this section;

13 (3) add the adjusted full-time-equivalents
14 calculated in Paragraphs (1) and (2) of this subsection; and

15 (4) divide the total obtained in Paragraph
16 (3) of this subsection by the total number of full-time-
17 equivalent instructional staff.

18 E. If the result of the calculation of the index
19 of staff qualifications for a school district or charter
20 school is less than 1.0, its factor shall be 1.0.

21 F. If a new school district is created, the index
22 of staff qualifications for that school district for the first
23 year of operation shall be 1.0.

24 G. If a school district's or charter school's
25 index of staff qualifications is greater than 1.0, the index

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1 of staff qualifications formula adjustment used to determine
2 the sufficient per-student cost is equal to the amount
3 determined in Subsection D of this section multiplied by the
4 percentage of the prior year's budget for instructional staff
5 salaries and benefits plus a factor equal to one hundred
6 percent minus the percentage of the prior year's budget for
7 instructional staff salaries and benefits.

8 H. In addition to the sufficient per-student cost,
9 each school district and charter school shall calculate the
10 amount of national board for professional teaching standards
11 certification salary differential due to each national board-
12 certified teacher employed by the school district or charter
13 school on the October report date. The department shall
14 calculate the amount of the salary differential for
15 legislative appropriation based on the amount paid to board-
16 certified teachers in the 2007-2008 base school year adjusted
17 yearly by the same overall percentage increase in teacher
18 salary provided by the legislature. The department shall
19 verify the certification and current employment of board-
20 certified teachers. Department approval of any allocations
21 for this item shall be contingent on verification by the
22 school district or charter school that these teachers will
23 receive the one-time salary differential for the school year
24 equal to the amount calculated."

25 Section 20. Section 22-8-25 NMSA 1978 (being Laws 1981,
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1 Chapter 176, Section 5, as amended) is amended to read:

2 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
3 DEFINITIONS--DETERMINATION OF AMOUNT.--

4 A. The state equalization guarantee distribution
5 is that amount of money distributed to each school district to
6 ensure that its operating revenue, including its local and
7 federal revenues as defined in this section, is at least equal
8 to the school district's total program cost. For [~~state-~~
9 ~~chartered~~] charter schools, the state equalization guarantee
10 distribution is the difference between the [~~state-chartered~~]
11 charter school's total program cost and the two percent
12 withheld by the school district or the department for
13 administrative services.

14 B. "Local revenue", as used in this section, means
15 seventy-five percent of receipts to the school district
16 derived from that amount produced by a school district
17 property tax applied at the rate of fifty cents (\$.50) to each
18 one thousand dollars (\$1,000) of net taxable value of property
19 allocated to the school district and to the assessed value of
20 products severed and sold in the school district as determined
21 under the Oil and Gas Ad Valorem Production Tax Act and upon
22 the assessed value of equipment in the school district as
23 determined under the Oil and Gas Production Equipment Ad
24 Valorem Tax Act.

25 C. "Federal revenue", as used in this section,

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1 means receipts to the school district, excluding amounts that,
2 if taken into account in the computation of the state
3 equalization guarantee distribution, result, under federal law
4 or regulations, in a reduction in or elimination of federal
5 school funding otherwise receivable by the school district,
6 derived from the following:

7 (1) seventy-five percent of the school
8 district's share of forest reserve funds distributed in
9 accordance with Section 22-8-33 NMSA 1978; and

10 (2) seventy-five percent of grants from the
11 federal government as assistance to those areas affected by
12 federal activity authorized in accordance with Title 20 of the
13 United States Code, commonly known as "PL 874 funds" or
14 "impact aid".

15 D. To determine the amount of the state
16 equalization guarantee distribution, the department shall

17 ~~[(1) calculate the number of program units to~~
18 ~~which each school district or charter school is entitled using~~
19 ~~an average of the MEM on the eightieth and one hundred~~
20 ~~twentieth days of the prior year; or~~

21 ~~(2) calculate the number of program units to~~
22 ~~which a school district or charter school operating under an~~
23 ~~approved year-round school calendar is entitled using an~~
24 ~~average of the MEM on appropriate dates established by the~~
25 ~~department; or~~

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1 ~~(3)~~ calculate the number of program units to
2 which a school district or charter school with a MEM of two
3 hundred or less is entitled by using an average of the MEM on
4 the eightieth and one hundred twentieth days of the prior year
5 or the fortieth day of the current year, whichever is greater;
6 and

7 ~~(4)~~ using the results of the calculations in
8 Paragraph ~~(1), (2) or (3)~~ of this subsection and the
9 instructional staff training and experience index from the
10 October report of the prior school year, establish a total
11 program cost of the school district or charter school;

12 ~~(5)~~ for school districts, calculate the local
13 and federal revenues as defined in this section;

14 ~~(6)~~ deduct the sum of the calculations made
15 in Paragraph ~~(5)~~ of this subsection from the program cost
16 established in Paragraph ~~(4)~~ of this subsection;

17 ~~(7)~~ determine the total program cost for each
18 school district and charter school and subtract the local and
19 federal revenue. The department shall then deduct the total
20 amount of guaranteed energy savings contract payments that the
21 department determines will be made to the school district from
22 the public school utility conservation fund during the fiscal
23 year for which the state equalization guarantee distribution
24 is being computed and ~~[(8)]~~ deduct ninety percent of the
25 amount certified for the school district by the department

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1 pursuant to the Energy Efficiency and Renewable Energy Bonding
2 Act.

3 E. Reduction of a school district's state
4 equalization guarantee distribution pursuant to the Energy
5 Efficiency and Renewable Energy Bonding Act shall cease when
6 the school district's cumulative reductions equal its
7 proportional share of the cumulative debt service payments
8 necessary to service the bonds issued pursuant to [~~the Energy~~
9 ~~Efficiency and Renewable Energy Bonding~~] that act.

10 [~~F. The amount of the state equalization guarantee~~
11 ~~distribution to which a school district is entitled is the~~
12 ~~balance remaining after the deductions made in Paragraphs (6)~~
13 ~~through (8) of Subsection D of this section.~~

14 G.] F. The state equalization guarantee
15 distribution shall be distributed prior to June 30 of each
16 fiscal year. The calculation shall be based on the local and
17 federal revenues specified in this section received from June
18 1 of the previous fiscal year through May 31 of the fiscal
19 year for which the state equalization guarantee distribution
20 is being computed. In the event that a school district or
21 charter school has received more state equalization guarantee
22 funds than its entitlement, a refund shall be made by the
23 school district or charter school to the [~~state general~~]
24 public school fund."

25 Section 21. Section 22-8-41 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 99, as amended) is amended to read:

2 "22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY
3 ACCOUNTS [~~CASH BALANCES~~].--

4 A. A school district shall not expend money from
5 its operational fund for the acquisition of a building site or
6 for the construction of a new structure, unless the school
7 district has bonded itself to practical capacity or the
8 secretary determines and certifies to the legislative finance
9 committee that the expending of money from the operational
10 fund for this purpose is necessary for [~~an adequate~~] a
11 sufficient public educational program and will not unduly
12 hamper the school district's current operations.

13 B. A school district or charter school may budget
14 out of cash balances carried forward from the previous fiscal
15 year an amount not to exceed five percent of its proposed
16 operational fund expenditures for the ensuing fiscal year as
17 an emergency account. Money in the emergency account shall be
18 used only for unforeseen expenditures incurred after the
19 annual budget [~~was~~] is approved and shall not be expended
20 without the prior written approval of the secretary.

21 C. In addition to the emergency account, school
22 districts or charter schools may also budget operational fund
23 cash balances carried forward from the previous fiscal year
24 for operational expenditures, exclusive of salaries and
25 payroll, upon specific prior approval of the secretary. The

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1 secretary shall notify the legislative finance committee in
2 writing of the secretary's approval of such proposed
3 expenditures. [~~For fiscal years 2004 and 2005, with the~~
4 ~~approval of the secretary, a school district or charter school~~
5 ~~may budget so much of its operational cash balance as is~~
6 ~~needed for nonrecurring expenditures, including capital~~
7 ~~outlay.~~

8 D. ~~Beginning with fiscal year 2007, prior to~~
9 ~~approval of a school district's or charter school's budget,~~
10 ~~the secretary shall verify that the reductions from the state~~
11 ~~equalization guarantee distribution have been taken pursuant~~
12 ~~to this section.~~

13 E. ~~The allowable limit for a school district's or~~
14 ~~charter school's ending operational cash balance is:~~

15 (1) ~~if the current year program cost is less~~
16 ~~than five million dollars (\$5,000,000), eighteen percent of~~
17 ~~the budgeted expenditures;~~

18 (2) ~~if the current year program cost is five~~
19 ~~million dollars (\$5,000,000) or more but less than ten million~~
20 ~~dollars (\$10,000,000), twelve percent of the budgeted~~
21 ~~expenditures;~~

22 (3) ~~if the current year program cost is ten~~
23 ~~million dollars (\$10,000,000) or more but less than twenty-~~
24 ~~five million dollars (\$25,000,000), ten percent of the~~
25 ~~budgeted expenditures;~~

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1 ~~(4) if the current year program cost is~~
2 ~~twenty-five million dollars (\$25,000,000) or more but less~~
3 ~~than two hundred million dollars (\$200,000,000), eight percent~~
4 ~~of the budgeted expenditures; and~~

5 ~~(5) if the current year program cost is two~~
6 ~~hundred million dollars (\$200,000,000) or more, five percent~~
7 ~~of the budgeted expenditures.~~

8 ~~F. Except as otherwise provided in this section,~~
9 ~~for the 2006 and subsequent fiscal years, the secretary shall~~
10 ~~reduce the state equalization guarantee distribution,~~
11 ~~calculated pursuant to Section 22-8-25 NMSA 1978, to each~~
12 ~~school district or charter school by an amount equal to the~~
13 ~~school district's or charter school's excess cash balance. As~~
14 ~~used in this section, "excess cash balance" means the~~
15 ~~difference between a school district's or a charter school's~~
16 ~~actual operational cash balance and the allowable limit~~
17 ~~calculated pursuant to Subsection E of this section. However:~~

18 ~~(1) for a school district or charter school~~
19 ~~with a current year program cost that exceeds two hundred~~
20 ~~million dollars (\$200,000,000), if the excess cash balance is~~
21 ~~greater than twenty percent of the allowable, unrestricted,~~
22 ~~unreserved operational cash balance and the emergency reserve,~~
23 ~~the reduction pursuant to this subsection shall equal twenty~~
24 ~~percent of the allowable, unrestricted, unreserved operational~~
25 ~~cash balance and the emergency reserve; and~~

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1 ~~(2) for other school districts and charter~~
2 ~~schools, if the excess cash balance is greater than eighteen~~
3 ~~percent of the allowable, unrestricted, unreserved operational~~
4 ~~cash balance and the emergency reserve, the reduction pursuant~~
5 ~~to this subsection shall equal eighteen percent of the~~
6 ~~allowable unrestricted, unreserved operational cash balance~~
7 ~~and the emergency reserve.~~

8 G.] D. In developing budgets, school districts and
9 charter schools shall not budget current year cash balances
10 without the approval of the secretary. Cash balances shall be
11 expended pursuant to the school district's or charter school's
12 educational plan.

13 ~~[H. A school district or charter school whose~~
14 ~~enrollment growth exceeds one percent from the prior year and~~
15 ~~whose facility master plan includes the addition of a new~~
16 ~~school within two years may request from the secretary a~~
17 ~~waiver of up to fifty percent of the reduction otherwise~~
18 ~~required by Subsection F of this section.~~

19 ~~I.]~~ E. Upon application by a school district or
20 charter school, the secretary may ~~[waive all or a portion of~~
21 ~~the reduction otherwise required by Subsection F of this~~
22 ~~section if the secretary finds that the]~~ approve the use of a
23 school district's [excess] or charter school's cash balance
24 ~~[is needed]~~ to provide the local match required under the
25 Public School Capital Outlay Act or to recoup an amount paid

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1 as the district's share pursuant to Section 22-24-5.7 NMSA
2 1978.

3 ~~[J. Notwithstanding the provisions of Subsection F~~
4 ~~of this section, for fiscal year 2004, the reduction from the~~
5 ~~state equalization guarantee distribution shall be the greater~~
6 ~~of the amount calculated pursuant to that subsection or ten~~
7 ~~dollars (\$10.00) per MEM.~~

8 ~~K. For the purposes of this section, "operational~~
9 ~~cash balance" means the allowable, unrestricted, unreserved~~
10 ~~operational cash balance and the emergency reserve.~~

11 ~~L. For the purposes of this section, "allowable,~~
12 ~~unrestricted, unreserved operational cash balance and the~~
13 ~~emergency reserve" means the proportional share not~~
14 ~~attributable to revenue derived from the school district~~
15 ~~property tax, forest reserve funds and impact aid for which~~
16 ~~the state takes credit in determining a school district's or~~
17 ~~charter school's state equalization guarantee distribution.]"~~

18 Section 22. A new section of the Public School Finance
19 Act is enacted to read:

20 "[NEW MATERIAL] SPECIAL EDUCATION CATASTROPHIC AID FUND--
21 CREATED--DISTRIBUTION--LOCAL EFFORT.--

22 A. As used in this section, "high-cost special
23 education" means the provision of special education and
24 related services to a qualified student that exceeds the
25 threshold amount above the base per-student cost as determined

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1 by the department pursuant to appropriation by the
2 legislature.

3 B. The "special education catastrophic aid fund"
4 is created as a nonreverting fund in the state treasury. The
5 fund consists of appropriations, gifts, grants, donations,
6 income from investment of the fund and any other money
7 credited to the fund. The fund shall be administered by the
8 department, and money in the fund is appropriated to the
9 department to provide grants to school districts to assist
10 them in paying costs associated with high-cost special
11 education students.

12 C. A school district may apply to the department
13 for a grant from the fund to help defray the cost of providing
14 high-cost special education. The application shall be in a
15 form approved by the department and shall include the
16 documentation required by the department. A single grant
17 shall not exceed seventy-five percent of the projected cost of
18 providing the high-cost special education for a given school
19 year.

20 D. Based on legislative appropriation each year,
21 the department shall determine the threshold amount for high-
22 cost special education."

23 Section 23. Section 22-13-1.7 NMSA 1978 (being Laws
24 2007, Chapter 348, Section 3) is amended to read:

25 "22-13-1.7. ELEMENTARY PHYSICAL EDUCATION.--

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1 A. As used in this section:

2 (1) "eligible students" means students in
3 kindergarten through grade six in a public school classified
4 by the department as an elementary school; and

5 (2) "physical education" includes programs of
6 education through which students participate in activities
7 related to fitness education and assessment; active games and
8 sports; and development of physical capabilities such as motor
9 skills, strength and coordination.

10 B. Elementary physical education programs [~~that~~
11 ~~serve eligible students are eligible for funding if those~~
12 ~~programs]~~ shall meet academic content and performance
13 standards for elementary physical education programs.

14 ~~[C. In granting approval for funding of elementary~~
15 ~~physical education programs, the department shall provide that~~
16 ~~programs are first implemented in public schools that have the~~
17 ~~highest proportion of students most in need based on the~~
18 ~~percentage of students eligible for free or reduced-fee lunch~~
19 ~~or grade-level schools that serve an entire school district~~
20 ~~and in public schools with available space. If the department~~
21 ~~determines that an elementary physical education program is~~
22 ~~not meeting the academic content and performance standards for~~
23 ~~elementary physical education programs, the department shall~~
24 ~~notify the school district that the public school's failure to~~
25 ~~meet the academic content and performance standards will~~

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1 ~~result in the cessation of funding for the following school~~
2 ~~year. The department shall compile the program results~~
3 ~~submitted by the school districts each year and make an annual~~
4 ~~report to the legislative education study committee and the~~
5 ~~legislature.~~

6 ~~D. As they become eligible for elementary physical~~
7 ~~education program funding, public schools shall submit to the~~
8 ~~department their elementary physical education program plans~~
9 ~~that meet academic content and performance standards and other~~
10 ~~guidelines of the department. At a minimum, the plan shall~~
11 ~~include the elementary physical education program being taught~~
12 ~~and an evaluation component. To be eligible for state~~
13 ~~financial support, an elementary physical education program~~
14 ~~shall:~~

15 ~~(1) provide for the physical education needs~~
16 ~~of students defined in this section; and~~

17 ~~(2) use teachers with a license endorsement~~
18 ~~for physical education.~~

19 ~~E. The department shall annually determine the~~
20 ~~programs and the consequent number of students in elementary~~
21 ~~physical education that will receive state financial support~~
22 ~~in accordance with funding available in each school year.]"~~

23 Section 24. Section 22-13-6.1 NMSA 1978 (being Laws
24 1994, Chapter 25, Section 2, as amended) is recompiled as
25 Section 22-13-1.8 NMSA 1978 and is amended to read:

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1 "22-13-1.8. GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

2 A. The department shall adopt standards pertaining
3 to the determination of who is a gifted [~~child~~] student and
4 shall publish those standards as part of the educational
5 standards for New Mexico schools.

6 B. In adopting standards to determine who is a
7 gifted [~~child~~] student, the department shall provide for the
8 evaluation of selected [~~school-age children~~] students by
9 multidisciplinary teams from each [~~child's~~] student's school
10 district. That team shall be vested with the authority to
11 designate a [~~child~~] student as gifted. The team shall
12 consider information regarding a [~~child's~~] student's cultural
13 and linguistic background and socioeconomic background in the
14 identification, referral and evaluation process. The team
15 also shall consider any disabling condition in the
16 identification, referral and evaluation process.

17 C. Each school district offering a gifted
18 education program shall create one or more advisory committees
19 of parents, community members, students and school staff
20 members. The school district may create as many advisory
21 committees as there are high schools in the district or may
22 create a single districtwide advisory committee. The
23 membership of each advisory committee shall reflect the
24 cultural diversity of the enrollment of the school district or
25 the schools the committee advises. The advisory committee

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1 shall regularly review the goals and priorities of the gifted
2 program, including the operational plans for student
3 identification, evaluation, placement and service delivery and
4 shall demonstrate support for the gifted program.

5 D. In determining whether a [~~child~~] student is
6 gifted, the multidisciplinary team shall consider diagnostic
7 or other evidence of the [~~child's~~] student's:

- 8 (1) creativity or divergent-thinking ability;
9 (2) critical-thinking or problem-solving
10 ability;
11 (3) intelligence; and
12 (4) achievement.

13 E. Nothing in this section shall preclude a school
14 district from offering additional gifted programs for students
15 who fail to meet the eligibility criteria."

16 Section 25. Section 22-13-5 NMSA 1978 (being Laws 1972,
17 Chapter 95, Section 1, as amended) is amended to read:

18 "22-13-5. SPECIAL EDUCATION.--

19 A. School districts shall provide special
20 education and related services appropriate to meet the needs
21 of [~~all children~~] students requiring special education and
22 related services. [~~Regulations~~] Rules and standards shall be
23 developed and established by the [~~state board~~] department for
24 the provision of special education in the schools and classes
25 of the public school system in the state and in all

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1 institutions wholly or partly supported by the state. The
2 [~~state board~~] department shall monitor and enforce the
3 [~~regulations~~] rules and standards.

4 B. Except as otherwise provided in this section,
5 the state institution in which a school-age person is detained
6 or enrolled shall be responsible for providing educational
7 services for the school-age person. A school-age person who
8 is a client as defined in Section 43-1-3 NMSA 1978 in a state
9 institution under the authority of the secretary of health has
10 a right to attend public school in the school district in
11 which the state institution in which the person is a client is
12 located if:

13 (1) the school-age person has been
14 recommended for placement in a public school by the
15 educational appraisal and review committee of the school
16 district in which the institution is located; or

17 (2) the school-age person has been
18 recommended for placement in a public school as a result of
19 the appeal process as provided in the special education rules
20 of the department.

21 C. School districts shall also provide services
22 for three-year-old and four-year-old [~~preschool~~] children with
23 disabilities, unless the parent [~~or guardian~~] chooses not to
24 enroll [~~his~~] the child. If a child receiving services in the
25 department of health's family infant toddler program has [~~his~~]

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1 a third birthday during the school year, the child's [~~parents~~]
2 parent shall have the option of having the child complete the
3 school year in the family infant toddler program or enrolling
4 the child in the public school's preschool program. A child
5 with a disability who enrolls in the public school's preschool
6 program and who has [~~his~~] a third birthday during a school
7 year may receive special education and related services from
8 the beginning of that school year.

9 D. Services for students age three through twenty-
10 one may include, but are not limited to, evaluating particular
11 needs, providing learning experiences that develop cognitive
12 and social skills, arranging for or providing related services
13 as defined by the [~~state board~~] department and providing
14 parent education. The services may be provided by [~~certified~~]
15 licensed school [~~personnel~~] employees or contracted for [~~with~~
16 ~~other community agencies~~] and shall be provided in age-
17 appropriate, integrated settings, including home, daycare
18 centers, head start programs, schools or community-based
19 settings."

20 Section 26. Section 22-13-7 NMSA 1978 (being Laws 1972,
21 Chapter 95, Section 3, as amended) is amended to read:

22 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

23 A. The [~~state board~~] department shall make, adopt
24 and keep current a state plan for special education policy,
25 programs and standards.

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1 B. The department [~~of education with the approval~~
2 ~~of the state board~~] shall set standards for diagnosis and
3 screening of and educational offerings for [~~exceptional~~]
4 qualified students and school-age persons receiving special
5 education in public schools; in private, nonsectarian,
6 nonprofit training centers; and in state institutions under
7 the authority of the secretary of health or the secretary of
8 children, youth and families.

9 C. The [~~state board~~] department shall establish
10 and maintain a program of evaluation of the implementation
11 and impact of all programs for [~~exceptional children~~]
12 qualified students receiving special education in the public
13 schools. [~~This~~] The evaluation program shall be operated with
14 the cooperation of [~~local~~] school districts, and portions of
15 the evaluation program may be subcontracted [~~and~~]. Periodic
16 reports regarding the efficacy of educational programs for
17 [~~exceptional children~~] qualified students receiving special
18 education shall be made to the legislative education study
19 committee.

20 D. The department [~~of education~~] shall coordinate
21 programming related to the transition of [~~persons with~~
22 ~~disabilities~~] qualified students receiving special education
23 from secondary and post-secondary education programs to
24 employment or vocational placement."

25 Section 27. Section 22-13-8 NMSA 1978 (being Laws 1972,

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1 Chapter 95, Section 4, as amended) is amended to read:

2 "22-13-8. SPECIAL EDUCATION--PRIVATE.--

3 A. The responsibility of school districts, state
4 institutions and the state to provide a free public education
5 for ~~[exceptional children]~~ qualified students who need special
6 education is not diminished by the availability of private
7 schools and services. ~~[Whenever such schools or services are~~
8 ~~utilized, it continues to be]~~ It is a state responsibility to
9 ~~[assure]~~ ensure that all ~~[exceptional children]~~ qualified
10 students who need special education receive the education to
11 which ~~[the]~~ federal and state laws ~~[of the state]~~ entitle them
12 whether provided by public or private schools and services.

13 B. A school district in which a private,
14 nonsectarian, nonprofit training center or residential
15 treatment center is located shall not be considered the
16 resident school district of a school-age person in need of
17 special education if residency is based solely on the school-
18 age person's enrollment at the facility and the school-age
19 person would not otherwise be considered a resident of the
20 state.

21 C. For a qualified student or school-age person in
22 need of special education who is placed in a private,
23 nonsectarian, nonprofit training center or residential
24 treatment center by a school district or by a due process
25 decision, the school district in which the qualified student

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1 or school-age person lives, whether in-state or out-of-state,
2 is responsible for the educational costs of that placement.

3 D. For a school-age person in need of special
4 education placed in a private, nonsectarian, nonprofit
5 training center or residential treatment center not as a
6 result of a due process decision but by a parent who assumes
7 the responsibility for such placement, the department shall
8 ensure that the school district in which the facility is
9 located is allocating and distributing the school-age person's
10 proportionate share of the federal Individuals with
11 Disabilities Education Act Part B funds, but the state is not
12 required to distribute state funds for that school-age person.

13 E. The department shall determine which school
14 district is responsible for the cost of educating a qualified
15 student in need of special education who has been placed in a
16 private, nonsectarian, nonprofit training center or
17 residential treatment center outside the qualified student's
18 resident school district. The department shall determine the
19 reasonable reimbursement owed to the receiving school
20 district.

21 [~~B.~~] F. A local school board, in consultation with
22 the department, may make an agreement with a private,
23 nonsectarian, nonprofit educational training [~~centers~~] center
24 or residential treatment center for educating [~~exceptional~~
25 children] qualified students for whom the school district is

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1 responsible for providing a free appropriate public education
2 under the federal Individuals with Disabilities Education Act
3 and for providing [~~for~~] payment for [~~such~~] that education.

4 All financial agreements between local school boards and
5 private, nonsectarian, nonprofit educational training centers
6 and residential treatment centers must be negotiated in
7 accordance with [~~regulations~~] rules promulgated by the
8 [~~director~~] department. Payment for education and services
9 under [~~such~~] those agreements shall be made by the local
10 school board [~~of education~~] in which the qualified student
11 lives from available funds [~~available~~].

12 [~~G.~~] G. All agreements between local school boards
13 and private, nonsectarian, nonprofit educational training
14 centers and residential treatment centers must be reviewed and
15 approved by the [~~state superintendent~~] secretary. The
16 agreements shall ensure that all qualified students placed in
17 a private, nonsectarian, nonprofit training center or
18 residential treatment center receive the education to which
19 they are entitled pursuant to federal and state laws. All
20 agreements must provide for:

21 (1) diagnosis [~~and~~];
22 (2) an educational program for each [~~child~~
23 ~~which~~] qualified student that meets state standards for such
24 programs, except that teachers employed by private schools are
25 not required to be highly qualified;

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1 (3) special education and related services
2 in conformance with an individualized education program that
3 meets the requirements of federal and state law; and

4 (4) adequate classroom and other physical
5 space provided at the training center or residential treatment
6 center that allows the school district to provide an
7 appropriate education.

8 H. The agreements must also acknowledge the
9 authority and responsibility of the local school board and the
10 department [~~of education~~] to conduct on-site evaluations of
11 programs and [~~pupil~~] student progress to [~~insure~~] ensure that
12 the education provided to the qualified student is meeting
13 state standards.

14 [~~D. Exceptional children~~] I. A qualified student
15 for whom the state is required by federal law to provide a
16 free appropriate public education and who is attending a
17 private, nonsectarian, nonprofit training center or a
18 residential treatment center is a public school student and
19 shall be counted in the special education membership of the
20 school district [~~as enrolled in the Class D special education~~
21 program] that is responsible for the costs of educating the
22 student and in the class level identified as appropriate in
23 the individualized educational program for the student.

24 J. The department shall adopt the format to report
25 individual student data and costs for any school-age person

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1 attending public or private training centers or residential
2 treatment programs and shall include those reports in the
3 student teacher accountability reporting system by using the
4 same student identification number issued to a public school
5 student pursuant to Section 22-2C-11 NMSA 1978 or by assigning
6 a unique student identifier for school-age persons, including
7 those who are not residents of this state but who are
8 attending a private training center or residential treatment
9 program in this state. Every public and private training
10 center and every public and private residential treatment
11 program that serves school-age persons in this state shall
12 comply with this provision.

13 K. The department shall promulgate rules to carry
14 out the provisions of this section."

15 Section 28. Section 22-30-6 NMSA 1978 (being Laws 2007,
16 Chapter 292, Section 6 and Laws 2007, Chapter 293, Section 6)
17 is amended to read:

18 "22-30-6. DISTANCE LEARNING STUDENTS.--

19 A. A student must be enrolled in a public school
20 or a state-supported school and must have the permission of
21 the student's local distance education learning site to enroll
22 in a distance learning course. A distance learning student
23 shall [~~only~~] be counted only in the student's primary
24 enrolling district for the purpose of determining the
25 [~~membership~~] enrollment used to calculate a school district's

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1 state equalization guarantee. A student shall have only one
2 primary enrolling district.

3 B. A home school [~~student~~] school-age person may
4 participate in the statewide cyber academy by enrolling for
5 one-half or more of the minimum course requirements approved
6 by the department for public school students in the school
7 district in which the student resides; or, if the student is
8 enrolled for less than one-half of the minimum course
9 requirements, the student may participate in the statewide
10 cyber academy by paying not more than thirty-five percent of
11 the current [~~unit value per curricular unit~~] base per-student
12 cost.

13 C. A student enrolled in a nonpublic school may
14 participate in the statewide cyber academy if the school in
15 which the student is enrolled enters into a contract with the
16 school district in which the nonpublic school is located to
17 pay the required tuition.

18 D. A student who is detained in or committed to a
19 juvenile detention facility or a facility for the long-term
20 care and rehabilitation of delinquent children may participate
21 in the statewide cyber academy if the facility in which the
22 student is enrolled enters into a contract with the school
23 district in which the facility is located."

24 Section 29. Section 24-3B-4 NMSA 1978 (being Laws 1978,
25 Chapter 211, Section 4) is amended to read:

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1 "24-3B-4. FUND CREATED--USE--CALCULATION.--

2 A. There is created the "department of health [~~and~~
3 ~~environment department~~] education fund" in the state treasury.

4 B. The fund shall be used solely to provide
5 educational services to institution-bound residents of the
6 state institutions under the authority of the secretary.

7 C. The secretary shall distribute the fund to
8 institutions under [~~his~~] the secretary's authority within
9 limits established by law.

10 D. The secretary shall determine the allocation to
11 each institution from the fund according to the annual program
12 cost of that institution as calculated on September 15 of the
13 fiscal year.

14 E. The annual program cost for each institution
15 shall be determined by the following calculation:

16 number of dollar value annual
17 institution-bound x 3.9 x per = program
18 residents [~~program unit~~] cost.
19 sufficient per-
20 student cost

21 F. The dollar value per program unit shall be the
22 same as the dollar value [~~per program unit as~~] of sufficient
23 per-student cost established by the legislature for the state
24 equalization guarantee.

25 G. Each director of each state institution under

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1 the authority of the secretary shall submit annually, on or
2 before October 15, to the secretary an estimate for the
3 succeeding fiscal year of the number of institution-bound
4 residents and any other information necessary to calculate
5 annual program cost.

6 H. The secretary shall submit annually, on or
7 before November 15, to the department of finance and
8 administration the recommendations of the department regarding
9 the fund for the succeeding fiscal year, for inclusion in the
10 executive budget document."

11 Section 30. TEMPORARY PROVISION--ENROLLMENT REPORTS--
12 MEM--STATUTORY REFERENCES.--

13 A. References in the Public School Code to the
14 fortieth day membership shall be deemed to be references to
15 the total enrollment on the second Wednesday in October.

16 B. References in the Public School Code to the
17 eightieth day membership shall be deemed to be references to
18 the total enrollment on the second Wednesday in December.

19 C. References in the Public School Code to the one
20 hundred twentieth day membership shall be deemed to be
21 references to the total enrollment on the second Wednesday in
22 February.

23 D. References in the Public School Code to MEM or
24 membership shall be deemed to be references to enrollment.

25 Section 31. TEMPORARY PROVISION--PROJECTIONS AND BUDGET

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1 PREPARATION--PRE-2010 FORMULA.--

2 A. Section 22-8-13 NMSA 1978 notwithstanding, the
3 public education department may institute new reporting dates
4 for the 2008-2009 school year as follows:

5 (1) first reporting date, second Wednesday
6 in October;

7 (2) second reporting date, second Wednesday
8 in December; and

9 (3) third reporting date, second Wednesday
10 in February.

11 B. The public education department may require
12 enrollment or other reports at other times specified by the
13 department.

14 C. The effective date of sections in this act
15 notwithstanding, the definitions set out in Section 22-8-2
16 NMSA 1978 as enacted in this act shall be used to project
17 enrollments and prepare budgets for the 2009-2010 school year.

18 D. If the legislature does not appropriate a
19 sufficient amount to begin using the funding formula as
20 provided in Subsection 0 of Section 22-8-18 NMSA 1978, as that
21 section is repealed and re-enacted in this 2008 act, the
22 public education department shall use the funding formula in
23 place on January 1, 2008 to determine and distribute the state
24 equalization guarantee in fiscal year 2010.

25 Section 32. TEMPORARY PROVISION--IMPLEMENTATION

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1 COMMITTEE.--

2 A. The "funding formula implementation assistance
3 committee" is created to advise and assist school districts
4 and the public education department in the implementation of
5 the funding formula and other provisions of this 2008 act.

6 B. Members of the committee shall be:

7 (1) the voting members of the funding
8 formula study task force and the project advisory panel of the
9 task force;

10 (2) one superintendent of schools from a
11 rural, high-poverty, high English language learner school
12 district, appointed by the speaker of the house of
13 representatives;

14 (3) one superintendent of schools from an
15 urban school district, appointed by the president pro tempore
16 of the senate;

17 (4) the secretary of public education;

18 (5) the chairperson of the legislative
19 education study committee;

20 (6) the chairperson of the Indian education
21 advisory council or the chairperson's designee; and

22 (7) the president of the New Mexico
23 association of bilingual educators or the president's
24 designee.

25 C. The co-chairs of the funding formula study task

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1 force shall be the co-chairs of the funding formula
2 implementation assistance committee.

3 D. Members who are not state employees are
4 entitled to receive per diem and mileage expenses as provided
5 in the Per Diem and Mileage Act.

6 E. Staff for the committee shall be provided by
7 the legislative council service, the legislative education
8 study committee, the legislative finance committee, the public
9 education department and the office of education
10 accountability. The legislative council service or other
11 staff may contract for expert and technical assistance for the
12 committee as needed.

13 F. The committee shall:

14 (1) develop a work plan and budget for
15 approval by the New Mexico legislative council;

16 (2) advise, assist and monitor the progress
17 of school districts and the public education department in the
18 planning phase of this 2008 act;

19 (3) meet with and provide assistance to the
20 public education department's staff or other planning and
21 implementation groups established by the secretary of public
22 education;

23 (4) provide regular reports to the
24 legislative education study committee, the legislative finance
25 committee and the governor, which reports may be in person or

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1 written as requested; and

2 (5) report its findings and recommendations,
3 including recommendations for statutory changes, to the
4 legislature and the governor by January 15, 2009.

5 Section 33. REPEAL.--Sections 22-8-3, 22-8-7.1,
6 22-8-19, 22-8-20 through 22-8-23.8, 22-8-25.1 and
7 22-13-6 NMSA 1978 (being Laws 1988, Chapter 64, Section 14;
8 Laws 1993, Chapter 224, Section 1; Laws 1974, Chapter 8,
9 Section 9; Laws 1991, Chapter 85, Section 3; Laws 1969,
10 Chapter 180, Section 17; Laws 1974, Chapter 8, Section 13;
11 Laws 1975, Chapter 119, Section 1; Laws 1990 (1st S.S.),
12 Chapter 3, Sections 7 and 8; Laws 1993, Chapter 237, Section
13 2; Laws 1997, Chapter 40, Section 7; Laws 2003, Chapter 144,
14 Section 2 and Laws 2003 Chapter 152, Section 9; Laws 2003,
15 Chapter 144, Section 3 and Laws 2003, Chapter 152, Section 8;
16 Laws 2006, Chapter 94, Section 15; Laws 2007, Chapter 348,
17 Section 1; Laws 2007, Chapter 365, Section 2; Laws 1985 (1st
18 S.S.), Chapter 15, Section 17; and Laws 1972, Chapter 95,
19 Section 2, as amended) are repealed.

20 Section 34. EFFECTIVE DATE.--

21 A. The effective date of the provisions of
22 Sections 2, 4, 5, 8, 9, 10, 11, 12, 13 and 22 of this act is
23 July 1, 2008.

24 B. The effective date of the provisions of
25 Sections 3, 6, 7, 14, 16, 17, 18, 19, 20, 23, 24, 28, 29, 30

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1 and 33 of this act is July 1, 2009.

2 C. The effective date of the provisions of
3 Sections 1, 15, 21, 25, 26, 27, 31, 32 and 34 of this act is
4 May 14, 2008.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE GROSS RECEIPTS
TAX AND THE COMPENSATING TAX; DISTRIBUTING THE INCREASED
REVENUE TO THE PUBLIC SCHOOL FUND.

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

Section 1. A new section of the Tax Administration Act is
enacted to read:

"[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND--GROSS
RECEIPTS.--A distribution pursuant to Section 7-1-6.1 NMSA 1978
shall be made to the public school fund in an amount equal to
nine and nine hundredths percent of the net receipts
attributable to the gross receipts tax prior to any other
distributions."

Section 2. A new section of the Tax Administration Act is
enacted to read:

.170674.3

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1 "[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND--
2 COMPENSATING TAX.--A distribution pursuant to Section 7-1-6.1
3 NMSA 1978 shall be made to the public school fund in an amount
4 equal to nine and nine hundredths percent of the net receipts
5 attributable to the compensating tax prior to any other
6 distributions."

7 Section 3. Section 7-9-4 NMSA 1978 (being Laws 1966,
8 Chapter 47, Section 4, as amended) is amended to read:

9 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
10 "GROSS RECEIPTS TAX".--

11 A. For the privilege of engaging in business, an
12 excise tax equal to five and one-half percent of gross receipts
13 is imposed on any person engaging in business in New Mexico.

14 B. The tax imposed by this section shall be
15 referred to as the "gross receipts tax".

16 Section 4. Section 7-9-7 NMSA 1978 (being Laws 1966,
17 Chapter 47, Section 7, as amended) is amended to read:

18 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
19 "COMPENSATING TAX".--

20 A. For the privilege of using tangible property in
21 New Mexico, there is imposed on the person using the property
22 an excise tax equal to five and one-half percent of the value
23 of tangible property that was:

24 (1) manufactured by the person using the
25 property in the state;

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1 (2) acquired outside this state as the result
2 of a transaction that would have been subject to the gross
3 receipts tax had it occurred within this state; or

4 (3) acquired as the result of a transaction
5 [~~which~~] that was not initially subject to the compensating tax
6 imposed by Paragraph (2) of this subsection or the gross
7 receipts tax but which transaction, because of the buyer's
8 subsequent use of the property, should have been subject to the
9 compensating tax imposed by Paragraph (2) of this subsection or
10 the gross receipts tax.

11 B. For the purpose of Subsection A of this section,
12 value of tangible property shall be the adjusted basis of the
13 property for federal income tax purposes determined as of the
14 time of acquisition or introduction into this state or of
15 conversion to use, whichever is later. If no adjusted basis
16 for federal income tax purposes is established for the
17 property, a reasonable value of the property shall be used.

18 C. For the privilege of using services rendered in
19 New Mexico, there is imposed on the person using such services
20 an excise tax equal to five and one-half percent of the value
21 of the services at the time they were rendered. The services,
22 to be taxable under this subsection, must have been rendered as
23 the result of a transaction [~~which~~] that was not initially
24 subject to the gross receipts tax but which transaction,
25 because of the buyer's subsequent use of the services, should

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have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

MAKING APPROPRIATIONS TO SUPPLEMENT PUBLIC SCHOOL FUNDING, TO
SUPPORT EXISTING LAW AND TO PROVIDE REQUIRED RESOURCES TO THE
PUBLIC EDUCATION DEPARTMENT TO IMPLEMENT PROVISIONS OF
EDUCATION REFORM AND PUBLIC SCHOOL FINANCE REFORM.

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

Section 1. SPECIAL EDUCATION CATASTROPHIC AID FUND
APPROPRIATION.--Seven million dollars (\$7,000,000) is
appropriated from the general fund to the special education
catastrophic aid fund for expenditure in fiscal year 2009 and
subsequent fiscal years to carry out the purposes of the fund.
Any unexpended or unencumbered balance remaining at the end of
a fiscal year shall not revert to the general fund.

Section 2. FAMILY AND YOUTH RESOURCE APPROPRIATION.--
Three million dollars (\$3,000,000) is appropriated from the

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1 general fund to the family and youth resource fund for
2 expenditure in fiscal year 2009 and subsequent fiscal years to
3 provide grants to public-education department-approved school
4 programs pursuant to the Family and Youth Resource Act. Any
5 unexpended or unencumbered balance remaining at the end of a
6 fiscal year shall not revert to the general fund.

7 Section 3. NEW SCHOOL DEVELOPMENT FUND APPROPRIATION.--
8 Three million dollars (\$3,000,000) is appropriated from the
9 general fund to the new school development fund for expenditure
10 in fiscal years 2008 and subsequent fiscal years to carry out
11 the purposes of the fund. Any unexpended or unencumbered
12 balance remaining at the end of a fiscal year shall not revert
13 to the general fund.

14 Section 4. PUBLIC EDUCATION DEPARTMENT APPROPRIATIONS.--
15 The following amounts are appropriated from the general fund to
16 the public education department for expenditure in fiscal year
17 2009 for the following purposes, and any unexpended or
18 unencumbered balance remaining at the end of fiscal year 2009
19 shall revert to the general fund:

20 A. two hundred fifty thousand dollars (\$250,000)
21 for expenses related to planning and implementing the new
22 funding formula and the statutory accountability measures,
23 including contractual services;

24 B. two hundred fifty thousand dollars (\$250,000)
25 for personnel and other expenses related to collecting and

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1 confirming school district data that are required to be
2 reported for the student teacher accountability report system
3 or other data required by the department; and

4 C. four hundred thousand dollars (\$400,000) for
5 program managers to evaluate, monitor and provide technical
6 assistance to school districts in the development and execution
7 of educational plans for student success and other
8 accountability indicators.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; AMENDING THE OIL AND GAS EMERGENCY SCHOOL TAX ACT TO EQUALIZE AT FOUR PERCENT THE RATE OF TAX ON ALL PRODUCTS SUBJECT TO THE TAX; DISTRIBUTING A PORTION OF THE REVENUE FROM THE OIL AND GAS EMERGENCY SCHOOL TAX TO THE PUBLIC SCHOOL FUND.

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

Section 1. Section 7-31-4 NMSA 1978 (being Laws 1959, Chapter 54, Section 4, as amended) is amended to read:

"7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall

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1 be four percent of the taxable value determined pursuant to
2 Section 7-31-5 NMSA 1978 [~~(1)~~] on oil and on oil and other
3 liquid hydrocarbons removed from natural gas at or near the
4 wellhead; [~~except as provided in Paragraphs (4) and (5) of this~~
5 ~~subsection, three and fifteen hundredths percent of the taxable~~
6 ~~value determined pursuant to Section 7-31-5 NMSA 1978;~~

7 ~~(2)] on carbon dioxide, helium and non-~~
8 ~~hydrocarbon gases; [three and fifteen hundredths percent of the~~
9 ~~taxable value determined pursuant to Section 7-31-5 NMSA 1978;~~

10 ~~(3)] and on natural gas. [except as provided~~
11 ~~in Paragraphs (6) and (7) of this subsection, four percent of~~
12 ~~the taxable value determined pursuant to Section 7-31-5 NMSA~~
13 ~~1978;~~

14 ~~(4) on the oil and on other liquid~~
15 ~~hydrocarbons removed from natural gas at or near the wellhead~~
16 ~~from a stripper well property, one and fifty-eight hundredths~~
17 ~~percent of the taxable value determined pursuant to Section~~
18 ~~7-31-5 NMSA 1978, provided that the average annual taxable~~
19 ~~value of oil was equal to or less than fifteen dollars (\$15.00)~~
20 ~~per barrel in the calendar year preceding July 1 of the fiscal~~
21 ~~year in which the tax rate is to be imposed;~~

22 ~~(5) on the oil and on other liquid~~
23 ~~hydrocarbons removed from natural gas at or near the wellhead~~
24 ~~from a stripper well property, two and thirty-six hundredths~~
25 ~~percent of the taxable value determined pursuant to Section~~

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1 ~~7-31-5 NMSA 1978, provided that the average annual taxable~~
2 ~~value of oil was greater than fifteen dollars (\$15.00) per~~
3 ~~barrel but not more than eighteen dollars (\$18.00) per barrel~~
4 ~~in the calendar year preceding July 1 of the fiscal year in~~
5 ~~which the tax rate is to be imposed;~~

6 ~~(6) on the natural gas removed from a stripper~~
7 ~~well property, two percent of the taxable value determined~~
8 ~~pursuant to Section 7-31-5 NMSA 1978, provided that the average~~
9 ~~annual taxable value of natural gas was equal to or less than~~
10 ~~one dollar fifteen cents (\$1.15) per thousand cubic feet in the~~
11 ~~calendar year preceding July 1 of the fiscal year in which the~~
12 ~~tax rate is to be imposed; and~~

13 ~~(7) on the natural gas removed from a stripper~~
14 ~~well property, three percent of the taxable value determined~~
15 ~~pursuant to Section 7-31-5 NMSA 1978, provided that the average~~
16 ~~annual taxable value of natural gas was greater than one dollar~~
17 ~~fifteen cents (\$1.15) per thousand cubic feet but not more than~~
18 ~~one dollar thirty-five cents (\$1.35) per thousand cubic feet in~~
19 ~~the calendar year preceding July 1 of the fiscal year in which~~
20 ~~the tax rate is to be imposed.]~~

21 B. Every interest owner, for the purpose of levying
22 this tax, is deemed to be in the business of severing products
23 and is liable for this tax to the extent of [his] the owner's
24 interest in the value of the products or to the extent of [his]
25 the owner's interest as may be measured by the value of the

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1 products.

2 C. Any Indian tribe, Indian pueblo or Indian is
3 liable for this tax to the extent authorized or permitted by
4 law."

5 Section 2. 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 from
11 the extraction taxes suspense fund, the money remaining in the
12 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 7-1-6.59 NMSA 1978. After the necessary
16 distributions and transfers, any balance, except for
17 remittances unidentified as to source or disposition, shall be
18 transferred to the general fund.

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

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1 disbursements have been made from the extraction taxes suspense
2 fund, the money remaining in the suspense fund as of the last
3 day of the month attributed to these payments shall be
4 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 7-1-6.59 NMSA 1978. After the necessary
7 distributions and transfers, any balance, except for remittance
8 unidentified as to source or disposition, shall be transferred
9 to the general fund."

10 Section 3. A new section of the Tax Administration Act,
11 Section 7-1-6.59 NMSA 1978, is enacted to read:

12 "7-1-6.59. [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL
13 FUND.--A distribution pursuant to Section 7-1-6.20 NMSA 1978
14 shall be made to the public school fund in an amount equal to
15 twelve and one-half percent of the net receipts attributable to
16 the tax imposed pursuant to the Oil and Gas Emergency School
17 Tax Act."

18 Section 4. APPLICABILITY.--The distribution pursuant to
19 Section 3 of this act applies to revenue earned on a modified
20 accrual basis after June 30, 2008.

21 Section 5. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2008.

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HOUSE JOINT RESOLUTION

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 7 OF THE
CONSTITUTION OF NEW MEXICO TO INCREASE THE DISTRIBUTIONS FROM
THE LAND GRANT PERMANENT FUNDS TO BENEFIT THE PUBLIC SCHOOLS
AND SECURE EDUCATIONAL REFORMS AND FUNDING FOR PUBLIC EDUCATION
AND TO BENEFIT OTHER RECIPIENTS.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 12, Section 7
of the constitution of New Mexico to read:

"A. As used in this section, "fund" means the
permanent school fund described in Section 2 of this article
and all other permanent funds derived from lands granted or
confirmed to the state by the act of congress of June 20, 1910,
entitled "An act to enable the people of New Mexico to form a
constitution and state government and be admitted into the

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1 union on an equal footing with the original states".

2 B. The fund shall be invested by the state
3 investment officer in accordance with policy regulations
4 promulgated by the state investment council.

5 C. In making investments, the state investment
6 officer, under the supervision of the state investment council,
7 shall exercise the judgment and care under the circumstances
8 then prevailing that [~~businessmen~~] businesspersons of ordinary
9 prudence, discretion and intelligence exercise in the
10 management of their own affairs not in regard to speculation
11 but in regard to the permanent disposition of their funds,
12 considering the probable income as well as the probable safety
13 of their capital.

14 D. The legislature may establish criteria for
15 investing the fund if the criteria are enacted by a
16 three-fourths' vote of the members elected to each house, but
17 investment of the fund is subject to the following
18 restrictions:

19 (1) not more than sixty-five percent of the
20 book value of the fund shall be invested at any given time in
21 corporate stocks;

22 (2) not more than ten percent of the voting
23 stock of a corporation shall be held;

24 (3) stocks eligible for purchase shall be
25 restricted to those stocks of businesses listed upon a national

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1 stock exchange or included in a nationally recognized list of
2 stocks; and

3 (4) not more than fifteen percent of the book
4 value of the fund may be invested in international securities
5 at any single time.

6 E. All additions to the fund and all earnings,
7 including interest, dividends and capital gains from investment
8 of the fund shall be credited to the fund.

9 F. Except as provided in Subsection G of this
10 section, the annual distributions from the fund shall be [~~five~~]
11 six and one-half percent of the average of the year-end market
12 values of the fund for the immediately preceding five calendar
13 years.

14 [~~G. In addition to the annual distribution made~~
15 ~~pursuant to Subsection F of this section, unless suspended~~
16 ~~pursuant to Subsection H of this section, an additional annual~~
17 ~~distribution shall be made pursuant to the following schedule;~~
18 ~~provided that no distribution shall be made pursuant to the~~
19 ~~provisions of this subsection in any fiscal year if the average~~
20 ~~of the year-end market values of the fund for the immediately~~
21 ~~preceding five calendar years is less than five billion eight~~
22 ~~hundred million dollars (\$5,800,000,000):~~

23 (1) ~~in fiscal years 2005 through 2012, an~~
24 ~~amount equal to eight-tenths percent of the average of the~~
25 ~~year-end market values of the fund for the immediately~~

.171384.1

underscored material = new
[bracketed material] = delete

1 ~~preceding five calendar years; provided that any additional~~
2 ~~distribution from the permanent school fund pursuant to this~~
3 ~~paragraph shall be used to implement and maintain educational~~
4 ~~reforms as provided by law; and~~

5 ~~(2) in fiscal years 2013 through 2016, an~~
6 ~~amount equal to one-half percent of the average of the year-end~~
7 ~~market values of the fund for the immediately preceding five~~
8 ~~calendar years; provided that any additional distribution from~~
9 ~~the permanent school fund pursuant to this paragraph shall be~~
10 ~~used to implement and maintain educational reforms as provided~~
11 ~~by law.~~

12 ~~H. The legislature, by a three-fifths' vote of the~~
13 ~~members elected to each house, may suspend any additional~~
14 ~~distribution provided for in Subsection G of this section.]~~

15 G. The distribution from the permanent school fund
16 for aid to public schools shall be used to supplement the
17 state's efforts to provide a sufficient education pursuant to
18 Article 12, Section 1 of this constitution."

19 Section 2. The amendment proposed by this resolution
20 shall be submitted to the people for their approval or
21 rejection at the next general election or at any special
22 election prior to that date that may be called for that
23 purpose.

HOUSE JOINT RESOLUTION

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 2 OF THE
CONSTITUTION OF NEW MEXICO TO AUTHORIZE AN ADDITIONAL STATEWIDE
MILLAGE RATE THAT WILL BE DEDICATED TO PUBLIC SCHOOL FUNDING.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 8, Section 2
of the constitution of New Mexico to read:

"Taxes levied upon real or personal property for state
revenue shall not exceed four mills annually on each dollar of
the assessed valuation thereof except for the support of the
educational, penal and charitable institutions of the state and
payment of the state debt and interest [~~thereon~~] on the debt;
and the total annual tax levy upon such property for all state
purposes exclusive of necessary levies for the state debt shall
not exceed ten mills [~~provided, however, that~~]. Taxes levied

.171981.1

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underscoring material = new
[bracketed material] = delete

1 upon real or personal tangible property for all purposes,
2 except special levies on specific classes of property and
3 except necessary levies for public debt, shall not exceed
4 [~~twenty~~] twenty-five mills annually on each dollar of the
5 assessed valuation thereof, but laws may be passed authorizing
6 additional taxes to be levied outside of such limitation when
7 approved by at least a majority of the qualified electors of
8 the taxing district [~~who paid a property tax therein during the~~
9 ~~preceding year~~] voting on such proposition. Five mills of the
10 twenty-five mill limit shall be imposed statewide and
11 distributed to public schools through the state's public school
12 fund."

13 Section 2. The amendment proposed by this resolution
14 shall be submitted to the people for their approval or
15 rejection at the next general election or at any special
16 election prior to that date that may be called for that
17 purpose.