

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** HB 331a

**49th Legislature, 1st Session, 2009**

**Short Title:** Public School Funding Formula

**Sponsor(s):** Representative Mimi Stewart and Others

**Analyst:** Kathleen Forrer

**Date:** March 10, 2009

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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**AS AMENDED**

**The House Appropriations and Finance Committee amendment:**

- in Section 15, Subsection D, inserts the phrase “except appropriations in the General Appropriation Act of 2009” after the word revenue to clarify that only appropriations designated for implementation of the proposed public school funding formula—not the appropriations made by the Legislature for FY 10 public school support—will be sequestered in the Public School Fund;
- extends from three to 10 years the length of time that a school district or charter school that receives less money under the new formula will be held harmless; and
- adds a contingency clause stating that HB 346, SB 389, or SB 412 must be enacted and result in at least \$350.0 million in additional state revenue for FY 11 or the proposed public school funding formula and all other provisions in the bill will not be implemented.

**The House Education Committee amendment:**

- in Section 4, *Educational Plan for Student Success – Educational Programming*, inserts the phrase “Beginning with the budget for the 2010-2011 school year” at the beginning of paragraph C to clarify that the Public Education Department will begin to use the EPSS as a means of ensuring accountability in the development and monitoring of a school district’s or charter school’s operating budget in conjunction with the implementation of the proposed public school funding formula;
- makes technical corrections in several sections to language referring to special education students;
- strikes Section 25, *Special Education*; Section 26, *Special Education – Responsibility*; and Section 27, *Special Education – Private*, in their entirety, and strikes the portion of the bill’s title—“Clarifying Financial Responsibility for Special Education”—that refers to those sections;
- inserts a new subsection in Section 31 to specify the base per-student costs, which were provided by the American Institutes for Research (AIR), that will be used during the beta testing of the proposed public school funding formula;
- removes Section 22-13-6 NMSA 1978 (Special education; definitions) from the repeal clause; and
- changes the effective dates for certain sections of the bill.

### **Revised Issues:**

**In order to eliminate any potential conflict with House Education Committee Substitute for House Bill 199 (CS/HB 199), Section 27 has been stricken from HB 331.**

**CS/HB 199 amends the *Public School Code* to clarify the responsibility of public school districts, the state, the Public Education Department, and parents for special education services provided in private training and residential treatment centers (RTCs). The bill also amends the *Children's Code* to require that Children, Youth and Families Department (CYFD) standards for RTCs include making reasonable provisions for space where school districts may provide the required free appropriate public education (FAPE).**

### **Original Bill Summary:**

HB 331 amends and repeals existing sections of and adds new sections to the *Public School Code* to provide for the implementation of a new funding formula for public schools in FY 11 that:

- incorporates four measures of student need – poverty, English language learners, special education, and mobility;
- recognizes costs associated with school district size and school size; and
- is based on the concept of educational sufficiency in that it enables schools and districts to provide a comprehensive instructional program designed to meet the needs of all students.

### **Original Fiscal Impact:**

HB 331 makes no appropriation.

### **Fiscal Issues:**

Because the proposed funding formula would not be implemented until FY 11 (school year 2010-2011), no appropriation is required for FY 10.

In January 2009, American Institutes for Research (AIR), the contractor for the funding formula study, provided an updated estimate of the additional cost of funding marginal sufficiency<sup>1</sup> and the first year of the three-year hold harmless provision for school districts and charter schools that may see their program cost reduced. This estimated additional cost is \$345.3 million.

Because of the major revisions to the school funding formula being proposed in HB 331, no credits are taken into account in these estimates. In its analysis of the bill, the Attorney General's Office notes the following:

It is unclear as to the effect the new public school formula established in this bill would have on New Mexico's designation by the United States Secretary of Education as an "equalized" state, thereby allowing the New Mexico State Department of Education to "take credit" or reduce operational state funding to an impacted district by the amount of the Federal Impact Aid subsidy. That

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<sup>1</sup> Marginal sufficiency is the difference between the projected statewide cost of providing a sufficient education as determined by the funding formula study and the current statewide program cost.

designation has been the subject of litigation against the United States Secretary of Education, which was ultimately decided by the United States Supreme Court on April 17, 2007 in favor of the Secretary, resulting in the continuation of New Mexico's status as an "equalized" state. *Zuni Public School District No. 89 v. Department of Education*, 550 U.S. 81 (2007), Case No. 05-1508. Although the bill does require consultation with the United States Department of Education to ensure that the funding formula meets impact aid requirements, the bill does not appear to provide a contingency plan in the event that the Secretary of the United States Department of Education determines that the funding formula does not comply with impact aid requirements, and/or that the new formula could jeopardize New Mexico's status as an "equalized" state.

However, Section 5 (below) addresses some of the issues involved in determining whether or not New Mexico is reaffirmed as an equalized state. It is important to note that even under the current public school funding formula, the state must apply annually to the US Department of Education (USDE) for recertification as an equalized state.

In addition, because the new formula will not be implemented until FY 11, the Public Education Department (PED) will have additional opportunities to work with the USDE, and the 2010 Legislature will have an opportunity to amend the formula if necessary.

### **Original Issues:**

The following section-by-section analysis is grouped by topic:

### **TOPIC: Purpose/Findings**

#### **Section 1 – Purpose of 2009 Education Reform (pp. 1-3)**

Section 1 reviews the "multiyear process" of education reform in New Mexico, beginning with the Education Initiatives and Accountability Task Force in 1999 and continuing with the series of reform bills:

- the vetoed reform legislation in 2001;
- the enacted reform legislation in 2003 (House Bill 212), which, among other provisions, sought to attract and retain highly qualified teachers for New Mexico's multicultural student population and to hold teachers and administrators accountable for student success; and
- the expanded reform legislation in 2007, which addressed the need for a "rigorous and relevant high school curriculum" as a means to prepare students for success in college and the workplace.

Addressing the current public school funding formula in particular, this section also notes the 2005 legislation authorizing the appointment of a task force of legislators and educators to study the formula. The product of that two-year study is a new, simplified funding formula for public schools that is based on student need, grade composition, and scale of operations for school districts and charter schools; that strengthens the 2003 reform legislation; and that links increased funding through the new formula to each district's and charter school's Educational Plan for Student Success.

## **Section 5 – 2009 Funding Formula – Findings and Purpose (pp. 18-21)**

Section 5 addresses the new funding formula more specifically and more extensively than Section 1, detailing the rationale for the new formula and specific cost factors. To begin, the Legislature finds that the new formula not only addresses those points noted above but also avoids unnecessary complexity, preserves equity among school districts, minimizes incentives to pursue funding not directly linked to student needs, and more precisely measures student need and scale.

The Legislature further finds that the new formula better measures and addresses such cost factors as poverty, English language learners, special education, student mobility, grade-level enrollment, and relative economies of scale, as measured by total district or charter school enrollment.

The final legislative finding is that the new formula better meets the requirements of the federal *No Child Left Behind Act of 2001* and the *Individuals with Disabilities Education Improvement Act (IDEA)* that states employ highly qualified teachers by replacing the training and experience index with an index of staff qualifications that covers the personnel costs of increased academic credentials and experience.

Section 5 is important because it provides a description of and the rationale for the cost differentials in the new public school funding formula. As noted in “Fiscal Impact,” above, if the new funding formula becomes law, the state will have to apply to the USDE Impact Aid Office for a determination of whether the state can retain its status as an equalized state for the purpose of taking credit for operational Impact Aid funds. The USDE allows certain factors to be excluded from the calculation if the state can show that they are directly related to a verifiable special need. Section 5 helps make the state’s argument for exclusion of the cost factors in the formula.

### **TOPIC: Definitions**

#### **Section 2 – Definitions (as used in the *Public School Code*) (pp. 3-9)**

The general definitions in Section 22-1-2 NMSA 1978 are updated to reflect the concepts used in the new funding formula, including:

- defining “special education” in a manner that is consistent with the federal IDEA;
- specifying fixed enrollment reporting dates (second Wednesday in October, December, and February); and
- specifying that the “cost factor demographic data” for a school district or a charter school include poverty, English language learners, special education, and mobility.

#### **Section 6 – Definitions (as used in the *Public School Finance Act*) (pp. 21-23)**

Section 6 repeals and reenacts Section 22-8-2 NMSA 1978, which includes definitions of terms specific to public school finance. (The *Public School Finance Act* is part of the *Public School Code*.) Some definitions remain; some that are no longer needed, such as “program unit,” have been eliminated; and the following terms, which pertain to the new formula and which are used in the calculation of program cost and the State Equalization Guarantee (SEG), have been added:

- “base per-student cost” means the reference value cost of providing an educational program to a qualified student attending the average size district with the average composition of enrollment across grade ranges kindergarten through 5, 6 through 8, and 9 through 12 and with no formula adjustments applied;
- “cost factor” means a measure of student need, grade level composition, scale of operations, or staff qualifications;
- “enrollment” means the number of qualified students on the current roll of a class or public school on a specified day;
- “formula adjustment” means a component of the funding formula that accounts for a differential cost associated with a cost factor;
- “growth” means that a school district’s or charter school’s current-year October total enrollment is greater than its prior-year October total enrollment;
- “mobility rate” means the district-level student-weighted average percentage of total enrollment that entered or left the school over the school year;
- “sufficient per-student cost” means the base per-student cost multiplied by the applicable formula adjustments;
- “total enrollment” means the number of qualified students on a regular public school’s or charter school’s roll on a specified day in all grade levels and in programs for three- and four-year-old developmentally disabled qualified students; and
- “total program cost” means the sufficient per-student cost multiplied by the number of students in a school district or charter school.

**TOPIC: Accountability**

**Educational Plan for Student Success**

**Section 4 – Educational Plan for Student Success – Educational Programming**  
(pp. 11-18)

Currently the requirements for implementing an Educational Plan for Student Success (EPSS) are outlined in rule of the Public Education Department (PED) (6.30.2 NMAC, Standards for Excellence), and many of the provisions in HB 331 are derived from that rule and from input received from PED staff. However, by adding the EPSS to statute and by tying the EPSS to the budget process, HB 331 enhances the importance of the EPSS and strengthens its role in holding school districts and charter schools accountable for the academic achievement of their students.

HB 331 requires each school district or charter school to develop, implement, and assess a district-level, student-centered EPSS as a long range strategic plan to improve academic achievement and success for all students. The local school board or, in the case of a charter school, the chartering authority must approve the EPSS. The plan must be updated annually for submission to PED. HB 331 details specific requirements that must be included in the EPSS.

The EPSS is to be implemented at the school level through individual school plans; and the district plan must specify how each school plan shall be evaluated and aligned with the district EPSS. School plans must be developed and evaluated with the involvement of school staff, parents, and community members.

HB 331 holds school districts and charter schools accountable through the approval process for the EPSS and the district operating budget, as follows:

- The Secretary of Public Education is charged with approving or disapproving the EPSS in whole or in part, based on whether it meets the requirements of the provisions of HB 331 or other sections of the *Public School Code*.
- In approving both the EPSS and the district operating budget, PED must consider how the district proposes to address specifically the needs of low-income students, students not proficient in English, those whose education is disrupted by mobility, students needing special education, and gifted students.
- Based on demographic profiles of students, academic achievement data, and state standards, every EPSS must include the following educational programming, some of which is currently offered at the discretion of districts or schools:
  - bilingual and multicultural education, including culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials;
  - health and wellness, including physical education, athletics, nutrition, and health education;
  - career-technical education;
  - visual and performing arts and music;
  - gifted education, Advanced Placement, and honors programs;
  - special education; and
  - distance education.
- If PED disapproves an EPSS in whole or in part, the Secretary must provide a written report to the local board and district specifying what parts of the EPSS are disapproved, the reasons, and suggestions for improvement. The district has 30 days to submit a revised plan, with PED assistance if it is requested.
- If the local board does not approve a revised plan or PED does not recommend approval of the revised plan, the Secretary must hold a public hearing within 20 days of the date the revised plan was due, appoint an impartial person to conduct the hearing, and give all parties including the public an opportunity to be heard. The impartial person must make recommendations to the Secretary within 10 days. The Secretary must make the final decision on whether to accept the district's original EPSS, the revised EPSS, or a department-developed EPSS for the district. The final plan must align with the PED-approved district operating budget.

During the 2008 interim, to ensure that the new money generated under the proposed funding formula is used to support the intended programs, the Legislative Education Study Committee (LESC) convened a subcommittee to determine how the EPSS could best be used as an accountability tool. Responding to a recommendation of the subcommittee, the Secretary of Public Education proposed to conduct a pilot project involving three school districts and three charter schools to assess the accountability-related use of the EPSS with the proposed funding formula.

### **Section 18 – Sufficient Per-Student Cost (pp. 42-45)**

Section 18 provides a list of expenditures that the funding formula study found to be important in supporting the EPSS. All of the items on the list were derived from recommendations made by the Professional Judgment Panels and the Project Advisory

Panel. Although not every school district or charter school will find a need to implement every program on the list, they are expected to include the ones that they do choose to implement in their EPSS, along with the means they will use to evaluate the efficacy of the programs:

1. extending the school year one or more days;
2. extending the school day for teachers or extending contract days for teachers up to four days beyond the school year;
3. offering summer school, credit recovery, and enhanced before- and after-school opportunities;
4. reducing class sizes and student-teacher ratios;
5. providing academic coaches, resource teachers and specialists, particularly in reading, mathematics, and English language learning programs;
6. enhancing intervention efforts for children who may be at risk of academic failure;
7. enhancing remediation programs in language arts and reading, mathematics, science, and social studies;
8. improving truancy prevention and intervention strategies, including establishing or enhancing truancy tracking systems, and employing truancy officers;
9. establishing or enhancing bilingual-multicultural programs;
10. offering visual and performing arts, music, and physical education to more students;
11. enhancing programs for gifted students;
12. enhancing career-technical education programs;
13. providing educational assistants, librarians, counselors, nurses, social workers, and student support service staff;
14. providing professional development opportunities for licensed school employees outside the instructional day or school year;
15. providing teaching English as a second language and bilingual endorsement courses for instructional staff;
16. providing stipends for instructional staff who have a teaching English as a second language or bilingual endorsement;
17. improving information technology services for students and staff, including employing information technology personnel or contracting with technical consultants;
18. improving the district's ability to collect and analyze student and staff data to improve education management;
19. improving student and school safety; or
20. other measures approved by the department that are tied to the educational plan.

## **School Year**

### **Section 3 – School Year – Length of School Day – Minimum (pp. 9-11)**

Section 3 amends Section 22-2-8.1 NMSA 1978 to include the definition of a school year, which currently appears only in the minimum requirements for a budget established in the *Public School Finance Act*. However, there are differences.

As set forth in Section 3, until 2012-2013, a school year consists of:

- at least 180 full instructional days for a regular school year calendar, exclusive of any release time for in-service training; and
- at least 151 full instructional days for a four-day school year calendar, exclusive of any release time for in-service training.

Beginning in 2012-2013, a school year will consist of:

- at least 185 full instructional days for a regular school calendar, exclusive of any release time for in-service training; and
- at least 156 full instructional days for a four-day school year calendar, exclusive of any release time for in-service training.

Section 3 also specifies that any days or parts of days that are lost to instruction due to weather, in-service training, or other events must be made up in such a way that students are given “a full school year.” Although the section retains language specifying the length of a school day in hours based on grade level, it removes language allowing an equivalent number of cumulative annual hours.

Currently, the number of days for a four-day school calendar is not specified in statute.

The Secretary of Public Instruction may continue to waive the minimum length of school days in districts in which those minimums would create a hardship; however, new language in Section 3 requires that the school year be adjusted “to ensure that students in those school districts receive the same total minimum instructional time as other students in the state.”

## **Operating Budgets**

### **Section 7 – Establishment of Enrollment (p. 23)**

For purposes of establishing “enrollment,” the substantive language for the definition of “membership” in the *Public School Finance Act* has been placed in this section. The methodology for calculating total enrollment remains the same.

### **Section 8 – Budgets – Submission – Failure to Submit – Disapproval (pp. 23-25)**

Section 8 specifies that “in order to receive final budget approval, the operating budget must be aligned to the school district’s approved educational plan [EPSS].”

### **Section 9 – Charter School Budgets (pp. 25-27)**

This section repeals and reenacts Section 22-8-6.1 NMSA 1978 to clarify that both district-chartered and state-chartered charter schools are subject to the same budget submission procedures. Current statute directs district-chartered charter schools to submit their budgets to the local school board; the local board is directed to submit the charter school’s budget along with the district’s budget to PED. Section 9 requires the district-chartered charter school to submit its budget to the local board and to PED at the same time. According to PED, this change reflects current practice.



## **Section 10 – Operating Budgets – Minimum Student Enrollment (p. 27)**

Current statute specifies that no local school board may maintain a school with fewer than eight students without permission of the Secretary. Section 10 clarifies that this provision also applies to charter schools.

## **Section 11 – Operating Budgets – Minimum Requirements (pp. 27-28)**

Section 11 specifies that PED may not approve any school district budget that does not provide for a school year as defined in Section 3 (HB 331, pp. 9-11). Beginning in 2012-2013, when the school year is increased to 185 days for a school district on a regular school year calendar and to 156 days for a school district on a four-day school year calendar, teachers must be paid for four days in addition to the school year for professional development or instructional planning.

## **Section 12 – Operating Budgets – Approval of Operating Budget (pp. 28-30)**

Section 12 specifies that PED cannot approve a budget that does not align with the EPSS and demonstrate parental involvement in the budget process. It also gives PED the authority to approve a conditional operating budget if a school district's or charter school's EPSS is in the process of being approved.

## **Reports**

### **Section 14 – Reports (pp. 32-34)**

Section 14 changes the reporting dates for school district and charter school enrollment from the 40<sup>th</sup>, 80<sup>th</sup>, and 120<sup>th</sup> days of the school year to the second Wednesday in October, the second Wednesday in December, and the second Wednesday in February, respectively. In addition, the department is given greater flexibility with regard to withholding funds from a school district or charter school that fails to comply with reporting requirements.

### **Section 16 – Total Program Cost Determination – Required Information (pp. 35-36)**

Section 16 changes the term “program cost” to “total program cost” to correspond with the definition in Section 6.

## **Other**

### **Section 21 – Restriction on Operational Funds – Emergency Accounts – Cash Balances (pp. 53-58)**

Section 21 eliminates the cash balance credit from the calculation of the State Equalization Guarantee (SEG), while maintaining the requirement that operational cash balances not be used for salaries and payroll (recurring expenditures). In addition, the section specifies that cash balances must be spent in accordance with a school district's or charter school's EPSS.

The elimination of the cash balance credit will have little fiscal impact. The FY 09 final funded report from PED indicates that the total statewide cash balance credit for school year 2008-2009 is \$102,325.

One of the recommendations made by AIR and accepted by the task force was that districts be able to retain any cash balances from year to year. AIR reasoned that “allowing districts discretion over the carry-over of cash balances encourages better planning in the use of funds and eliminates the ‘use it or lose it’ mentality, which may result in less than optimal use of funds.”

## **TOPIC: Public School Funding Formula**

### **Calculation**

#### **Section 17 – Projected Sufficient Per-Student Cost Calculation for School Districts and Charter Schools – Local Responsibility (pp. 36 -42)**

Section 17 establishes the new public school funding formula. The calculation begins with the base per-student cost, which is defined by AIR as the sufficient per-student cost for the average-sized district with average shares of K-5, 6-8, and 9-12 enrollment and no additional student needs. The original base per-student cost used by AIR in determining the necessary statewide level of sufficiency was derived from the models developed by the Professional Judgment Panels and the Project Advisory Panel; however, this amount will not be codified so that it can be adjusted as necessary.

Once the base per-student cost has been determined, it is then multiplied by a series of cost factors to arrive at the per-student cost that is sufficient for the needs of a particular school district or charter school. It “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.”

Subsection C of Section 17 includes two formulas used to calculate sufficient per-student cost, one for school districts and one for charter schools. The two formulas differ only with regard to scale; that is, the charter school formula recognizes that a single charter school does not have the complexity of a school district (see Attachment).

To determine total program cost for each school district and charter school, the sufficient per-student program cost is multiplied by the district’s or charter school’s total enrollment. For other than growth districts, total enrollment is the average of the prior year’s December and February enrollments. For a growth district (a district that has a higher current year than prior year October enrollment), total enrollment is the higher of the current year October enrollment or the average of the prior year December and February enrollments.

The cost factors used to determine the sufficient per-student cost for a school district or charter school are:

- poverty, which is measured by the percentage of qualified students in a school who qualified for free or reduced-price lunch as of September 30 of the prior school year;
- English language learners, which is measured by the percentage of qualified students designated as English language learners based on a department-approved English language proficiency assessment;
- special education, which, for school districts, is measured by 16 percent of the number of qualified students; and which, for charter schools, is measured by the actual percentage of qualified students who are required by the federal IDEA to have an individualized education program for the delivery of special education, including developmentally disabled three- and four-year-old qualified students; and
- mobility.

Other factors used in the calculation are:

- the percent of the district’s or charter school’s students enrolled in grades 6-8;
- the percent of the district’s or charter school’s students enrolled in grades 9-12; and
- the weighted Index of Staff Qualifications (see Section 19, below).

In outline form, the new public school funding formula may be represented as follows:

$$\begin{aligned}
 \text{Sufficient Per-Student Cost} &= \text{Base Per-Student Cost} \\
 &\times \text{Poverty Adjustment} \\
 &\times \text{English Learner Adjustment} \\
 &\times \text{Special Education Adjustment} \\
 &\times \text{Mobility Adjustment} \\
 &\times \text{Share 6-8 Enrollment Adjustment} \\
 &\times \text{Share 9-12 Enrollment Adjustment} \\
 &\times \text{Enrollment (Size) Adjustment} \\
 &\times \text{Weighted Index of Staff Qualifications} \\
 \text{Total Program Cost} &= \text{Sufficient Per-Student Cost} \times \text{Total District Enrollment}
 \end{aligned}$$

Section 17 also specifies that, beginning with FY 11, the Legislature and PED will use the new public school funding formula as the means of determining the appropriation for and the distribution of the SEG. There is a further stipulation that any school district or charter school that receives less money under the new formula than it had received prior to the formula’s implementation will be held harmless for no more than three years.

## **Index of Staff Qualifications (ISQ)**

### **Section 19 – Index of Staff Qualifications – National Board Certification Stipend (pp. 45-49)**

Section 19 replaces the current Training and Experience (T&E) matrix and index calculation with the Index of Staff Qualifications (ISQ). The ISQ incorporates two separate matrixes, one that reflects the three-tiered licensure system for teachers (Matrix A), and one that is a recalibrated version of the current T&E for other instructional staff who are not a part of the three-tiered system (Matrix B).

On the surface, the T&E and the ISQ appear similar: both are calculated in basically the same manner and both default to 1.0 if the actual calculation is less than 1.0. However, the differences are significant:

- First, the default “1.0” does not represent the same thing. With regard to the T&E, 1.0 represents the base level of funding, indicating an instructional staff with minimal experience and/or training. However, the value of 1.0 in the new ISQ corresponds to the average compensation levels used in the school prototypes developed by the Professional Judgment Panels and the Project Advisory Panel to develop the sufficiency cost estimates. Because the average educator in New Mexico has approximately 11 years of experience and a master’s degree, the AIR research team recalibrated the ISQ around this category. As a result, an ISQ of 1.0 corresponds to a T&E Index of 1.15.
- Second, the T&E Index is used as a multiplier to increase units, and, as such, is not directly tied to personnel costs. In contrast, the ISQ is directly tied to personnel costs because it is used to adjust projected sufficient per-pupil cost in proportion to the percentage of its budget that is expended for the salaries and benefits attributable to the individuals included in the calculation of the ISQ.

Section 19 also retains the salary differential for National Board-certified teachers, but it makes the funding categorical. Categorical funding is not included in the SEG distribution but must be separately appropriated by the Legislature on a yearly basis for the specific purpose intended.

## **State Equalization Guarantee**

### **Section 20 – State Equalization Guarantee Distribution – Definitions – Determination of Amount (pp. 49-53)**

Although the calculation remains basically the same, Section 20 amends the provisions of the *Public School Finance Act* to simplify the language prescribing the manner in which PED determines the amount of the SEG distribution.

To determine the amount of the SEG distribution, PED must determine the total program cost for each school district and charter school and subtract:

- the local and federal revenue (the credits);
- the total amount of guaranteed energy savings contract payments that PED determines will be made to the school district from the Public School Utility Conservation Fund for the year for which the SEG distribution is being computed; and
- 90 percent of the amount certified for the district by PED pursuant to the *Energy Efficiency and Renewable Bonding Energy Act*. The reduction pursuant to the act must cease when the district’s cumulative reductions equal its proportionate share of the cumulative debt service payments necessary to service the bonds issued pursuant to that act.

Although this section of the bill includes both federal and local credits in the calculation of SEG, the USDE will have to make a new determination regarding New Mexico’s status as an equalized state, because the new public school funding formula is different than the current funding formula.

## **TOPIC: Supporting the Formula**

### **Projections**

#### **Section 13 – Sufficient Per-Student Cost Projections and Budget Requests** (pp. 30-32)

Section 13 changes membership to enrollment by grade level and amends statute to add “cost factor demographic data by grade level” to the list of data elements that school districts and charter schools must submit to PED in order to project the succeeding fiscal year’s budget and to calculate total program cost. In addition, PED is required to submit its recommendations for any amendments to the funding formula and for public school support appropriations for the next fiscal year by November 20. (Current statute specifies November 30.)

### **Revenue**

#### **Section 15 – Public School Fund** (pp. 34-35)

Section 15 amends statute to:

- change the Public School Fund from a “pass-through” account in the General Fund to a non-reverting fund created “in the state treasury”; and
- credit to the fund appropriations, earmarked revenue, income from investment of the fund, and “any other money.”

In addition, Section 15 adds a new subsection requiring that, until the new public school funding formula is implemented:

- all revenue “dedicated to public school purposes by a law that is enacted or constitutional amendment that is approved” after January 1, 2009 be credited to a separate account in the Public School Fund; and
- money placed in that account be used only for the purpose of paying the marginal cost of implementing the funding formula.

### **Hold Harmless**

#### **Section 17 – Projected Sufficient Per-Student Cost Calculation for School Districts and Charter Schools – Local Responsibility** (p. 42)

This section includes a three-year hold-harmless provision for any school district or charter school adversely impacted by the new funding formula. (See Public School Funding Formula, Section 17, above for a complete summary of the section.)

## **TOPIC: Programs**

### **Special Education**

Sections 25, 26, and 27 are sections of law relating to the state requirements for providing educational and related services appropriate to meet the needs of special education students.

The proposed funding formula in HB 331 defines special education according to the federal IDEA, which excludes gifted education. Sections 25, 26, and 27 have been amended to align state requirements to federal requirements.

**Section 25 – Special Education** (pp. 64-66)

In Section 25, the HB 331 amendments:

- require a state institution to be responsible for providing educational services to a school-age person in such a facility; and
- provide that a school-age person receiving services in a mental health or developmental disabilities facility, whether placed in a facility by the person’s parent (or guardian) or by any court order; has the right to attend public school in the school district where a state institution is located.

**NOTE:** As defined in the *Public School Code*, the term “parent” includes a guardian or other person having custody and control of a school-age person.

**Section 26 – Special Education – Responsibility** (pp. 66-67)

In Section 26, the HB 331 amendments:

- make technical changes to the language to conform with the definitions in the bill; and
- add residential treatment centers (RTCs) for which a school district is responsible and the state institutions, including the juvenile justice sites, under the authority of the Children, Youth and Families Department to the list of facilities for which PED must set diagnostic, screening, and educational standards pertaining to qualified students and school-age persons receiving special education.

The major changes occur in Section 27 which relates to the state’s responsibility for providing special education and related services to public and non-public students residing in a private facility.

**Section 27 – Special Education – Private** (pp. 67-72)

Included in the HB 331 amendments to Section 27 are provisions to:

- clarify that a school district in which a private training center or RTC is located is not the resident school district of a non-public or out-of-state school student if residency is based solely on enrollment at the facility;
- require the school district where a student lives, whether in-state or out-of-state, to be responsible for the educational costs of a placement if the student was placed in a private training center or RTC by a school district or as a result of a due process decision;
- require the school district where the private training center or RTC is located to allocate and distribute the proportionate share of federal IDEA funded services for a student placed in a private training center or RTC if the student was placed in these facilities not as a result of a due process decision but by a

- parent who assumes the responsibility for such a placement. This provision would not require the state to distribute state funds for this student;
- require the school district where the private training center or RTC is located to be responsible for the planning and delivery of special education and related services for a school-age person who has been placed in the private training center or RTC by a New Mexico public agency with custody or control of the person or by a New Mexico court of competent jurisdiction, unless the school age person's resident school district has an agreement with the facility to provide the services;
  - require agreements between a local school board and private training centers or RTC to provide adequate classroom and other physical space that allows a school district to provide an appropriate education to special education students;
  - require a public school student in a private training center or RTC to be counted in the special education membership of the district responsible for providing educational services as identified in the student's Individualized Education Program (IEP); and
  - require the department to:
    - determine (1) which school district is responsible for the cost of educating a public school student receiving special education services in a private training center or RTC outside the student's resident school district and (2) a reasonable reimbursement amount owed to the receiving school district;
    - review and approve all agreements between local school boards and private training centers or RTCs;
    - report individual student data and costs into the Student Teacher Accountability Reporting System at the department; and
    - promulgate rules to carry out the provisions of Section 27.

The changes to Section 27 are the result of the interim work of the LESC. For a number of interims, the committee has heard testimony indicating that PED has not been able to provide clear guidance or direction on the issue of who is responsible for the costs of providing special education services to students residing in an RTC primarily because of inconsistencies in federal and state law. In the 2007 interim, the LESC office entered into a contract with the Washington, DC law firm of Brustein and Manasevit. After a series of discussions, written guidance was provided regarding the state's responsibility under the federal IDEA for the educational costs associated with a student placed in a private facility. As a result, the LESC has endorsed separate legislation (HB 199) that contains similar provisions for this section of law.

## **Section 22 – Special Education Catastrophic Aid Fund – Created – Distribution – Local Effort (pp. 58-59)**

This section establishes a contingency fund from which districts can apply for money to help pay for the cost of educating high-cost special education students. According to AIR, this type of contingency fund serves as an insurance provision to protect districts against extraordinarily high special education costs that may arise, especially for small districts.

AIR reports that, as of school year 1999-2000, 31 states had contingency funds for high-cost students. To define what constitutes a high-cost student, most states establish a threshold per-pupil cost based on a multiple of the average costs of a regular education student. Other states, like Kansas, reimburse expenditures over a base cost (say \$25,000) per student. Finally, the percentage of spending above this threshold covered by states varies from 65 to 80 percent.

HB 331 adds a new section to the *Public School Finance Act* to:

- define “high-cost special education” as special education and related services provided to a qualified student that exceed the established threshold amount above the base per-student cost;
- create the “special education catastrophic aid fund” as a non-reverting fund to be administered by the department and to provide grant assistance to school districts for costs associated with providing services to high-cost special education students;
- allow a school district to apply for assistance from the fund for high-cost special education services, but limit assistance to 75 percent of projected costs in any school year; and
- require the department annually to determine the threshold amount for high-cost special education, based on the legislative appropriation.

Maintenance of the fund will require an annual appropriation by the Legislature for the specific purpose intended.

## **Gifted Education**

### **Section 24 – Gifted Students – Standards – Determination – Multidisciplinary Teams – Student-Specific Gifted Education Plans – Advisory Committees** (pp. 61-64)

Section 24 is a new section of the *Public School Code* that:

- requires PED (1) to include standards for the identification, evaluation, and education of gifted students in its educational standards for schools; and (2) to monitor and oversee the implementation of gifted student standards;
- requires school districts offering a gifted education program to create one or more advisory committees composed of parents of gifted students, community members “with knowledge and concern about gifted education,” and school staff “who work in gifted education”;
- specifies that a multidisciplinary team from the school district will determine whether a student is gifted based on a specified set of criteria;
- directs the multidisciplinary team to designate a student as gifted, if the parent agrees, and to constitute a gifted education plan team made up of the gifted student’s parent, the gifted student, teachers, and other specialists that the multidisciplinary team considers necessary;
- directs the gifted education plan team to develop a student-specific plan and delineates what must be included in the plan; and



- specifies that, if the gifted student also has a disabling condition that requires an individualized educational plan pursuant to federal law (an IEP), that plan will be substituted for the gifted education plan.

**NOTE:** The current section of statute regarding gifted education is not repealed until July 1, 2010 to ensure that there is no period of time when gifted education is not included in the *Public School Code*.

During the 2008 interim, the LESC held a series of hearings around the state to solicit input regarding the proposed funding public school funding formula. A recurring theme throughout the testimony about the proposed funding formula was its effect on gifted education. Whereas current state law defines gifted education as a component of special education, the proposed funding formula defines special education according to the federal IDEA, which excludes gifted education. Although HB 241 (2008) required school districts and charter schools to offer educational programming for “gifted education, advanced placement and honors programs,” various advocates for gifted education objected to the absence of a specific provision in the proposed formula, fearing that services and programs for gifted students would be either ignored or under-funded. In response, committee members explained that, because gifted education is built into the base of the formula, the proposed formula would actually provide increased support for services for gifted students. This issue approached resolution toward the end of the interim, when advocates and committee members generally agreed to amend the 2008 bill to require an educational plan for gifted students. Section 24 of HB 331 is the result of that agreement.

## **Other**

### **Section 23 – Elementary Physical Education** (pp. 59-61)

Section 23 amends current statute to eliminate the funding approval process for elementary physical education programs because once the new formula has been implemented and fully funded, schools will no longer need to apply for the funding. However, elementary physical education programs will still be required to meet academic content and performance standards and be taught by teachers with a physical education licensure endorsement.

### **Section 28 – Distance Learning Students** (pp. 72-74)

In order to comply with the “Anti-Donation Clause” (Article 9, Section 14) of the New Mexico constitution, Section 28 amends the *Cyber Academy Act* to specify that non-public schools must pay tuition for any of their students who participate in the Statewide Cyber Academy. Article 9, Section 14 states in part, “Neither the state nor any county, school district or municipality...shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation....”

## **TOPIC: Other Provisions**

### **Section 29 – Temporary Provision – Enrollment Reports – MEM – Statutory References** (p. 74)

Section 29 states that all references in statute to the 40<sup>th</sup>, 80<sup>th</sup>, and 120<sup>th</sup> day memberships in the *Public School Code* are automatically references to the October, December, and February

enrollments established in HB 331; and that, likewise, all references to MEM or membership are to enrollment. According to the Legislative Council Service, this is a common type of provision used in legislation to eliminate the need for all such references to be amended at the same time, thereby allowing for future “clean-up” when other sections of the code are amended.

**Section 30 – Temporary Provision – Projections and Budget Preparation – Pre-2011 Formula** (pp. 74-75)

In order to avoid any potential conflicts with the July 1, 2010 implementation date for the new formula, Section 30 gives express authority to PED to begin using the new October, December, and February reporting dates during school year 2009-2010.

This section also:

- allows PED to require enrollment or any other reports at other times specified by the department; and
- directs that the definitions in Section 22-8-2 (see **Definitions**, Section 6, above) be used to project enrollments and prepare budgets for school year 2010-2011.

**Section 31 – Temporary Provision – Data Verification – Beta Testing of Funding Formula** (pp. 75-76)

Section 31, which has an effective date of June 19, 2009, specifies that the following activities are to take place in preparation for the implementation of the new funding formula in FY 11:

- for school year 2008-2009 and school year 2009-2010, PED and the school districts are required to collect and verify all data required for the new funding formula;
- the Office of Education Accountability (OEA) and the LESC will work with PED to review the data and to make recommendations regarding how to improve data collection and reporting;
- the data collected through the Student Teacher Accountability Reporting System (STARS) will be verified against the data used by the School Budget and Finance Analysis Bureau for the final funded run;
- PED, the school districts, OEA, and the LESC will verify that the data are accurate, and PED will make any necessary corrections; and
- the School Budget and Finance Analysis Bureau will test the new funding formula using verified data from school year 2008-2009 and school year 2009-2010.

In addition, Section 31 requires PED, during the testing period:

- to consult with USDE to ensure that the proposed funding formula meets federal Impact Aid requirements; and to keep the LESC and the Legislative Finance Committee (LFC) apprised of the results; and
- to work with the New Mexico Coalition of School Administrators to provide training to superintendents, business officers, principals, and other school staff involved in data collection, compilation, and verification at the school and district levels.

### **Section 32 – Repeal** (pp. 76-77)

Section 32 repeals the following sections of current statute:

- Section 22-8-3 NMSA 1978, which abolished the Office of Education at the Department of Finance and Administration when the responsibility for overseeing school district budget was moved by means of a constitutional amendment to PED;
- Section 22-8-7.1 NMSA 1978, which requires school districts with a membership greater than 30,000 (Albuquerque Public Schools) to do site-based budgeting. All school districts will be required to tie their budgets to their EPSS, which include individual school-level plans;
- Sections 22-8-19 and 22-8-20 through 22-8-23.8 NMSA 1978, which contain the formulas for calculating units included in the current funding formula;
- Section 22-8-25.1 NMSA 1978, which includes the calculation for an additional per unit distribution from the Public School Fund that, according to PED, is no longer used;
- Section 22-13-6 NMSA 1978, which defines special education terms and which is replaced by definitions and references throughout the act, particularly in Sections 2 and 17; and
- Section 22-13-6.1, which describes the procedures for identifying and providing programs for gifted students, and which has been replaced by a more detailed description of programs and services (see Gifted Education, Section 24).

### **Section 33 – Effective Date** (p. 77)

Section 33 provides effective dates for the provisions in the various sections of the act:

- July 1, 2009 for sections 2, 4, 5, 8, 9, 10, 11, 12, 13, and 22;
- July 1, 2010 for sections 3, 6, 7, 14, 16, 17, 18, 19, 20, 23, 24, 28, 29, and 32;
- June 19, 2009 for sections 1, 15, 21, 25, 26, 27, 30, and 31.

### **Background:**

After several vetoed appropriations to fund a study of the public school funding formula, in 2005, the LESC endorsed legislation that was enacted to create a Funding Formula Study Task Force. In 2006 the Legislature extended the term of the task force through December 2007 and appropriated dollars for an independent study of the funding formula.

In order to carry out its charge, in August 2006, the task force selected AIR, headquartered in Palo Alto, California, to conduct an independent study of the funding formula. Based on the tasks identified in the request for proposals (RFP) and other discussions, the contractor provided several recommendations and an estimate of the cost of implementing those recommendations to the task force. On January 7, 2008, the task force adopted a discussion draft of a bill that incorporated those recommendations. The LESC endorsed the task force recommendations on January 14, 2008.

House Bill 241 (2008), *Public School Funding Formula Changes*, proposed that the state move from a formula based on multiple program factors to a formula with fewer factors that are based on indicators of student need, including the percentage of students who are eligible for free and

reduced-fee lunch and the percentage of students classified as English language learners. Although the bill was amended several times during the session, it did not pass.

For the 2008 interim, all 89 school districts and 14 charter schools were invited to work with the LESC to examine the potential impact on school district programs and student achievement of the public school funding formula proposed in HB 241.

Prior to each meeting, the districts and charter schools scheduled to present were sent a memorandum that included a set of questions jointly developed by LESC staff and the Secretary of Public Education. The discussions between the LESC and the districts and charter schools centered around those questions. In addition, the school districts and charter schools were asked to provide written responses to the questions.

All 89 school districts provided written or oral testimony or both regarding the proposed public school funding formula. In almost all cases – Los Alamos Public Schools, Mosquero Municipal Schools, and Pecos Independent Schools excepted – school districts would receive more funding under the proposed formula than under the new one. Testimony from the school districts focused on their planned uses of these funds.

While there were some differences according to the size of school districts, overall – in both testimony to the committee and in their written responses – school districts shared many of the same plans and concerns. Regarding school programs and student services, for example, school districts identified such priorities as hiring additional instructional coaches, particularly in math and reading; providing high-quality, targeted professional development; extending the school day or year; enhancing services for gifted students and services in bilingual education or English as a second language; providing after-school programs; and adding nurses, counselors, social workers, or other instructional support personnel. Another frequent priority was to enhance the Response to Intervention program, an approach to instruction prescribed by PED rule to address the academic and behavioral needs of all students in a timely fashion.

Nine of the 14 charter schools invited to participate in the discussion with the LESC regarding the proposed funding formula came to the meeting in Albuquerque. Unlike most school districts, committee staff testified, a number of charter schools might lose substantial funding under the proposed formula. In fact, of the 58 charter schools for which AIR was able to calculate a program cost using the proposed formula, 22 indicated a loss. However, testimony by the charter schools and discussions with the committee revealed that this reduction in revenue would be mitigated or eliminated altogether if better means were developed to assist charter schools in collecting and reporting poverty data derived from applications for the free and reduced-fee lunch program.

**Related Bills:**

HB 140a *Public School Finance Reporting Dates*  
CS/HB 199 *School District & Training Center Agreements*  
HB 346 *Education Gross Receipts Surtax (0.5%)*  
HB 691a *Public School Year & Length of Day*  
SB 389 *Corporate Tax to Public School Fund*  
SB 412 *Education Gross Receipts Surtax (0.75%)*

<p align="center"><b>Proposed Funding Formula School Districts</b></p>	<p align="center"><b>Proposed Funding Formula Charter Schools</b></p>
<p><b>Base Per-Student Cost = \$5,202.82*</b></p> <ul style="list-style-type: none"> <li>× (Poverty Index)<sup>0.375</sup></li> <li>× (English Learner Index)<sup>0.094</sup></li> <li>× (Special Education Index: <b>Census-based</b>)<sup>1.723</sup></li> <li>× (Mobility Rate Index)<sup>0.190</sup></li> <li>× (Grade 6-8 Enrollment Index)<sup>0.291</sup>/<b>1.063</b></li> <li>× (Grade 9-12 Enrollment Index)<sup>0.608</sup>/<b>1.187</b></li> <li>× (Enrollment)<sup>-0.5750</sup> × exp((ln(Enrollment))<sup>2</sup>)<sup>0.0287</sup>/<b>0.0619</b></li> <li>× Weighted Index of Staff Qualifications (Not less than 1.000)</li> </ul> <p><b>= Sufficient Per-Student Cost</b></p>	<p><b>Base Per-Student Cost = \$7,038.11*</b></p> <ul style="list-style-type: none"> <li>× (Poverty Index)<sup>0.375</sup></li> <li>× (English Learner Index)<sup>0.094</sup></li> <li>× (Special Education Index: <b>Actual</b>)<sup>1.723</sup></li> <li>× (Mobility Rate Index)<sup>0.190</sup></li> <li>× (Grade 6-8 Enrollment Index)<sup>0.291</sup>/<b>1.074</b></li> <li>× (Grade 9-12 Enrollment Index)<sup>0.608</sup>/<b>1.241</b></li> <li>× (Enrollment)<sup>-0.3071</sup> × exp((ln(Enrollment))<sup>2</sup>)<sup>0.0122</sup>/<b>0.2881</b></li> <li>× Weighted Index of Staff Qualifications (Not less than 1.000)</li> </ul> <p><b>= Sufficient Per-Student Cost</b></p>
<p><b>Sufficient Per-Student Cost × Total District Enrollment =</b> <b>Sufficient Total Program Cost</b></p>	<p><b>Sufficient Per-Student Cost × Total District Enrollment =</b> <b>Sufficient Total Program Cost</b></p>

Pink denotes a difference between the two formulas.

In its final report to the Funding Formula Study Task Force, American Institutes for Research (AIR) explains the reason for the difference in size calculations as follows: “Because charter schools generally have enrollment levels that are far smaller than districts, the district-level formula adjustment for this cost factor is not applicable. Simply put, charter schools cannot be treated the same way districts are in analyzing the impact of scale. To address this difference, an additional regression procedure was run for charter schools that constrained all of the student need adjustments (i.e., for poverty, English learners, special education and mobility) and enrollment composition to be identical to those produced by the district-level equation, but estimated a different relationship between enrollment and sufficient per pupil cost.”

**Note:** “exp” is the inverse of the natural log (ln). Natural logarithms are based on the constant e (2.71828182845904).

\*In January 2009, AIR provided an updated cost estimate for implementing the proposed funding formula, including new base per student costs for both school districts and charter schools. The district and the charter school base per-student costs in the table are the estimated costs for 2008-2009.