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HOUSE BILL 232

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; ESTABLISHING STANDARDIZED
REPORTING DATES.

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

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

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

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

B. "adequate yearly progress" means the measure
adopted by the department based on federal requirements to
assess the progress that a public school or school district or
the state makes toward improving student achievement;

C. "commission" means the public education

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1 commission;

2 D. "department" means the public education
3 department;

4 ~~[E. "forty-day report" means the report of~~
5 ~~qualified student membership of each school district and of~~
6 ~~those eligible to be qualified students but enrolled in a~~
7 ~~private school or a home school for the first forty days of~~
8 ~~school;~~

9 F.] E. "home school" means the operation by the
10 parent of a school-age person of a home study program of
11 instruction that provides a basic academic educational program,
12 including reading, language arts, mathematics, social studies
13 and science;

14 ~~[G.]~~ F. "instructional support provider" means a
15 person who is employed to support the instructional program of
16 a school district, including educational assistant, school
17 counselor, social worker, school nurse, speech-language
18 pathologist, psychologist, physical therapist, occupational
19 therapist, recreational therapist, marriage and family
20 therapist, interpreter for the deaf and diagnostician;

21 ~~[H.]~~ G. "licensed school employee" means teachers,
22 school administrators and instructional support providers;

23 ~~[I.]~~ H. "local school board" means the policy-
24 setting body of a school district;

25 ~~[J.]~~ I. "local superintendent" means the chief

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1 executive officer of a school district;

2 [K.] J. "parent" includes a guardian or other
3 person having custody and control of a school-age person;

4 [L.] K. "private school" means a school, other than
5 a home school, that offers on-site programs of instruction and
6 that is not under the control, supervision or management of a
7 local school board;

8 [M.] L. "public school" means that part of a school
9 district that is a single attendance center in which
10 instruction is offered by one or more teachers and is
11 discernible as a building or group of buildings generally
12 recognized as either an elementary, middle, junior high or high
13 school or any combination of those and includes a charter
14 school;

15 [N.] M. "school" means a supervised program of
16 instruction designed to educate a student in a particular
17 place, manner and subject area;

18 [O.] N. "school administrator" means a person
19 licensed to administer in a school district and includes school
20 principals and central district administrators;

21 [P.] O. "school-age person" means a person who is
22 at least five years of age prior to 12:01 a.m. on September 1
23 of the school year and who has not received a high school
24 diploma or its equivalent. A maximum age of twenty-one shall
25 be used for a person who is classified as special education

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1 membership as defined in Section 22-8-21 NMSA 1978 or as a
2 resident of a state institution;

3 [Q.] P. "school building" means a public school, an
4 administration building and related school structures or
5 facilities, including teacher housing, that is owned, acquired
6 or constructed by the school district as necessary to carry out
7 the functions of the school district;

8 [R.] Q. "school bus private owner" means a person,
9 other than a school district, the department, the state or any
10 other political subdivision of the state, that owns a school
11 bus;

12 [S.] R. "school district" means an area of land
13 established as a political subdivision of the state for the
14 administration of public schools and segregated geographically
15 for taxation and bonding purposes;

16 [T.] S. "school employee" includes licensed and
17 nonlicensed employees of a school district;

18 [U.] T. "school principal" means the chief
19 instructional leader and administrative head of a public
20 school;

21 [V.] U. "school year" means the total number of
22 contract days offered by public schools in a school district
23 during a period of twelve consecutive months;

24 [W.] V. "secretary" means the secretary of public
25 education;

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1 ~~[X-]~~ W. "state agency" or "state institution" means
2 the New Mexico military institute, New Mexico school for the
3 blind and visually impaired, New Mexico school for the deaf,
4 New Mexico boys' school, girls' welfare home, New Mexico youth
5 diagnostic and development center, Sequoyah adolescent
6 treatment center, Carrie Tingley crippled children's hospital,
7 New Mexico behavioral health institute at Las Vegas and any
8 other state agency responsible for educating resident children;

9 ~~[Y-]~~ X. "state educational institution" means an
10 institution enumerated in Article 12, Section 11 of the
11 constitution of New Mexico;

12 ~~[Z-]~~ Y. "substitute teacher" means a person who
13 holds a certificate to substitute for a teacher in the
14 classroom;

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

21 ~~[BB-]~~ AA. "certified school instructor" means a
22 teacher or instructional support provider; and

23 ~~[CC-]~~ BB. "certified school employee" or "certified
24 school personnel" means a licensed school employee."

25 Section 2. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
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1 Chapter 227, Section 8, as amended) is amended to read:

2 "22-8-6.1. CHARTER SCHOOL BUDGETS.--

3 A. Each state-chartered charter school shall submit
4 to the charter schools division of the department a school-
5 based budget. For the first year of operation, the budget of
6 every state-chartered charter school shall be based on the
7 projected number of program units generated by that charter
8 school and its students, using the at-risk index and the
9 instructional staff training and experience index of the school
10 district in which it is geographically located. For second and
11 subsequent fiscal years of operation, the budgets of state-
12 chartered charter schools shall be based on the number of
13 program units generated using the average of the [~~eightieth and~~
14 ~~one hundred twentieth day~~] MEM on the second and third
15 reporting dates of the prior year and its own instructional
16 staff training and experience index and the at-risk index of
17 the school district in which the state-chartered charter school
18 is geographically located. The budget shall be submitted to
19 the division for approval or amendment pursuant to the Public
20 School Finance Act and the Charter Schools Act.

21 B. Each locally chartered charter school shall
22 submit to the local school board a school-based budget. For
23 the first year of operation, the budget of every locally
24 chartered charter school shall be based on the projected number
25 of program units generated by the charter school and its

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1 students, using the at-risk index and the instructional staff
2 training and experience index of the school district in which
3 it is geographically located. For second and subsequent fiscal
4 years of operation, the budgets of locally chartered charter
5 schools shall be based on the number of program units generated
6 using the average of the [~~eightieth and one hundred twentieth~~
7 ~~day~~] MEM on the second and third reporting dates of the prior
8 year and its own instructional staff training and experience
9 index and the at-risk index of the school district in which the
10 locally chartered charter school is geographically located.
11 The budget shall be submitted to the local school board for
12 approval or amendment. The approval or amendment authority of
13 the local school board relative to the charter school budget is
14 limited to ensuring that sound fiscal practices are followed in
15 the development of the budget and that the charter school
16 budget is within the allotted resources. The local school
17 board shall have no veto authority over individual line items
18 within the charter school's proposed budget, but shall approve
19 or disapprove the budget in its entirety. Upon final approval
20 of the local budget by the local school board, the individual
21 charter school budget shall be included separately in the
22 budget submission to the department required pursuant to the
23 Public School Finance Act and the Charter Schools Act.

24 C. For the first year of operation after a locally
25 chartered charter school converts to a state-chartered charter

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1 school or a state-chartered charter school converts to a
2 locally chartered charter school, the charter school's budget
3 shall be based on the number of program units generated using
4 the average of the ~~[eightieth and one hundred twentieth day]~~
5 MEM on the second and third reporting dates of the prior year
6 and the instructional staff training and experience index and
7 the at-risk index of the school district in which it is
8 geographically located. For second and subsequent fiscal years
9 of operation, the charter school shall follow the provisions of
10 Subsection A or B of this section, as applicable.

11 D. Notwithstanding the provisions of Subsections
12 A through C of this section, each charter school that was in
13 existence in fiscal year 2009 shall be held harmless in the
14 calculation of its instructional staff training and
15 experience index for two fiscal years. For fiscal years 2010
16 and 2011, the department shall use the greater of the charter
17 school's 2008-2009 funded instructional staff training and
18 experience index or the charter school's own instructional
19 staff training and experience index. Beginning in fiscal
20 year 2012, each charter school shall use its own
21 instructional staff training and experience index."

22 Section 3. 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 in the public school.

3 B. The dates for which MEM is reported are as
4 follows:

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

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

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

11 C. The department may require MEM or other
12 reports at other times specified by the department.

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

17 (1) the basic program MEM by grade in each
18 public school;

19 (2) the early childhood education MEM;

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

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

25 (5) the full-time-equivalent MEM for

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1 bilingual multicultural education programs.

2 ~~[B.]~~ E. The superintendent of each school
3 district and the head administrator of each state-chartered
4 charter school shall furnish all reports, including financial
5 reports required by the department, to the department
6 ~~[reports of the information required in Paragraphs (1)~~
7 ~~through (5) of Subsection A of this section for the first~~
8 ~~forty days of the school year. The forty-day report and all~~
9 ~~other reports required by law or by the department shall be~~
10 ~~furnished within five]~~ within ten days of the close of ~~[the]~~
11 each reporting period. Failure of the department to approve
12 timely submissions shall not cause a school district or
13 charter school to be found noncompliant with the requirements
14 of this section.

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

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

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1 continue until the superintendent or head administrator
2 complies with and agrees to continue complying with
3 requirements of this section.

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

13 Section 4. Section 22-8-23.1 NMSA 1978 (being Laws 1990
14 (1st S.S.), Chapter 3, Section 7, as amended) is amended to
15 read:

16 "22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

17 A. A school district or charter school with an
18 increase in MEM equal to or greater than one percent, when
19 compared with the immediately preceding year, is eligible for
20 additional program units. The increase in MEM shall be
21 calculated as follows:

22 (Current Year MEM - Previous Year MEM)

23 Previous Year MEM X 100 = Percent Increase.

24 The number of additional program units shall be calculated as
25 follows:

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1 ((Current Year MEM - Previous Year MEM) - (Current Year
2 MEM x .01)) X 1.5 = Units.

3 B. In addition to the units calculated in
4 Subsection A of this section, a school district or charter
5 school with an increase in MEM equal to or greater than one
6 percent, when compared with the immediately preceding year,
7 is eligible for additional program units. The increase in
8 MEM shall be calculated in the following manner:

9
$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM}} \times 100 = \text{Percent Increase.}$$

11 The number of additional program units to which an eligible
12 school district or charter school is entitled under this
13 subsection is the number of units computed in the following
14 manner:

15
$$(\text{Current Year MEM} - \text{Previous Year MEM}) \times .50 = \text{Units.}$$

16 C. As used in this section:

- 17 (1) "current year MEM" means MEM on the
18 [~~fortieth day~~] first reporting date of the current year;
19 (2) "MEM" means the total school district or
20 charter school membership, including early childhood
21 education full-time-equivalent membership and special
22 education membership, but excluding full-day kindergarten
23 membership for the first year that full-day kindergarten is
24 implemented in a school pursuant to Subsection D of Section
25 22-13-3.2 NMSA 1978; and

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1 (3) "previous year MEM" means MEM on the
2 [~~fortieth day~~] first reporting date of the previous year."

3 Section 5. Section 22-8-23.4 NMSA 1978 (being Laws
4 2003, Chapter 144, Section 2 and Laws 2003, Chapter 152,
5 Section 9, as amended) is amended to read:

6 "22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING
7 STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of
8 program units for teachers certified by the national board
9 for professional teaching standards is determined by
10 multiplying by one and one-half the number of teachers
11 certified by the national board for professional teaching
12 standards employed by the school district or charter school
13 on or before the [~~fortieth day~~] first reporting date of the
14 school year and verified by the department. Department
15 approval of these units shall be contingent on verification
16 by the school district or charter school that these teachers
17 are receiving a one-time salary differential equal to or
18 greater than the amount generated by the units multiplied by
19 the program unit value during the fiscal year in which the
20 school district or charter school will receive these units."

21 Section 6. Section 22-8-25 NMSA 1978 (being Laws 1981,
22 Chapter 176, Section 5, as amended) is amended to read:

23 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
24 DEFINITIONS--DETERMINATION OF AMOUNT.--

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

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

20 C. "Federal revenue", as used in this section,
21 means receipts to the school district, excluding amounts
22 that, if taken into account in the computation of the state
23 equalization guarantee distribution, result, under federal
24 law or regulations, in a reduction in or elimination of
25 federal school funding otherwise receivable by the school

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1 district, derived from the following:

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

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

10 D. To determine the amount of the state
11 equalization guarantee distribution, the department shall:

12 (1) calculate the number of program units to
13 which each school district or charter school is entitled
14 using an average of the MEM on the ~~[eightieth and one hundred~~
15 ~~twentieth days]~~ second and third reporting dates of the prior
16 year; or

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

22 (3) calculate the number of program units to
23 which a school district or charter school with a MEM of two
24 hundred or less is entitled by using an average of the MEM on
25 the ~~[eightieth and one hundred twentieth days]~~ second and

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1 third reporting dates of the prior year or the fortieth day
2 of the current year, whichever is greater; and

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

8 (5) for school districts, calculate the
9 local and federal revenues as defined in this section;

10 (6) deduct the sum of the calculations made
11 in Paragraph (5) of this subsection from the program cost
12 established in Paragraph (4) of this subsection;

13 (7) deduct the total amount of guaranteed
14 energy savings contract payments that the department
15 determines will be made to the school district from the
16 public school utility conservation fund during the fiscal
17 year for which the state equalization guarantee distribution
18 is being computed; and

19 (8) deduct ninety percent of the amount
20 certified for the school district by the department pursuant
21 to the Energy Efficiency and Renewable Energy Bonding Act.

22 E. Reduction of a school district's state
23 equalization guarantee distribution shall cease when the
24 school district's cumulative reductions equal its
25 proportional share of the cumulative debt service payments

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1 necessary to service the bonds issued pursuant to the Energy
2 Efficiency and Renewable Energy Bonding Act.

3 F. The amount of the state equalization guarantee
4 distribution to which a school district is entitled is the
5 balance remaining after the deductions made in Paragraphs (6)
6 through (8) of Subsection D of this section.

7 G. The state equalization guarantee distribution
8 shall be distributed prior to June 30 of each fiscal year.
9 The calculation shall be based on the local and federal
10 revenues specified in this section received from June 1 of
11 the previous fiscal year through May 31 of the fiscal year
12 for which the state equalization guarantee distribution is
13 being computed. In the event that a school district or
14 charter school has received more state equalization guarantee
15 funds than its entitlement, a refund shall be made by the
16 school district or charter school to the state general fund."

17 Section 7. Section 22-8-29 NMSA 1978 (being Laws 1967,
18 Chapter 16, Section 78, as amended) is amended to read:

19 "22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--
20 PAYMENTS.--

21 A. Prior to November 15 of each year, each local
22 school board of a school district and governing body of a
23 state-chartered charter school shall report to the state
24 transportation director, upon forms furnished by the state
25 transportation director, the following information concerning

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1 the school district's or state-chartered charter school's
2 operation on the [~~fortieth day of school~~] first reporting
3 date of the current year:

4 (1) the number and designation of school bus
5 routes in operation in the school district;

6 (2) the number of miles traveled by each
7 school bus on each school bus route, showing the route
8 mileage in accordance with the type of road surface traveled;

9 (3) the number of students transported on
10 the [~~fortieth day of school~~] first reporting date of the
11 current year and adjusted for special education students on
12 December 1;

13 (4) the projected number of students to be
14 transported in the next school year;

15 (5) the seating capacity, age and mileage of
16 each bus used in the school district for student
17 transportation; and

18 (6) the number of total miles traveled for
19 each school district's or state-chartered charter school's
20 per capita feeder routes.

21 B. Each local school board of a school district
22 and governing body of a state-chartered charter school
23 maintaining a school bus route shall make further reports to
24 the state transportation director at other times specified by
25 the state transportation director.

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1 C. The state transportation director shall
2 certify to the secretary that the allocations from the
3 transportation distributions to each school district and
4 state-chartered charter school are based upon the
5 transportation distribution formula established in the Public
6 School Code. The allocations for the first six months of a
7 school year shall be based upon the tentative transportation
8 budget of the school district or state-chartered charter
9 school for the current fiscal year. Allocations to a school
10 district or state-chartered charter school for the remainder
11 of the school year shall adjust the amount received by the
12 school district or state-chartered charter school so that it
13 equals the amount the school district or state-chartered
14 charter school is entitled to receive for the entire school
15 year based upon the November 15 report and subject to audit
16 and verification.

17 D. The department shall make periodic installment
18 payments to school districts and state-chartered charter
19 schools during the school year from the transportation
20 distributions, based upon the allocations certified by the
21 state transportation director."

22 Section 8. Section 22-26-9 NMSA 1978 (being Laws 2007,
23 Chapter 366, Section 23) is amended to read:

24 "22-26-9. CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY
25 TAX REVENUE.--If, in an election held after July 1, 2007, the
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1 qualified electors of a school district have voted in favor
2 of the imposition of a property tax as provided in Section
3 22-26-3 NMSA 1978, the amount of tax revenue to be
4 distributed to each charter school that was included in the
5 resolution shall be determined each year and shall be in the
6 same proportion as the average full-time-equivalent
7 enrollment of the charter school on the [~~fortieth day~~] first
8 reporting date of the prior school year is to the total such
9 enrollment in the district; provided that, in the case of an
10 approved charter school that had not commenced classroom
11 instruction in the prior school year, the estimated
12 full-time-equivalent enrollment in the first year of
13 instruction, as shown in the approved charter school
14 application, shall be used, subject to adjustment after the
15 [~~fortieth day~~] first reporting date. Each year, the
16 department shall certify to the county treasurer of the
17 county in which the eligible charter schools in the school
18 district are located the percentage of the revenue to be
19 distributed to each charter school. The county treasurer
20 shall distribute the charter school's share of the property
21 tax revenue directly to the charter school."

22 Section 9. TEMPORARY PROVISION--STATUTORY REFERENCES TO
23 PUBLIC SCHOOL FORTIETH-, EIGHTIETH- AND ONE-HUNDRED-
24 TWENTIETH- DAY REPORTS--PROJECTIONS AND BUDGET PREPARATION.--

25 A. References in the Public School Code

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