

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE JOINT MEMORIAL 27

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

George K. Munoz

A JOINT MEMORIAL

REQUESTING THE LEGISLATIVE FINANCE COMMITTEE, TOGETHER WITH THE
LEGISLATIVE EDUCATION STUDY COMMITTEE, THE PUBLIC SCHOOL
CAPITAL OUTLAY COUNCIL AND THE PUBLIC EDUCATION DEPARTMENT, TO
CONDUCT A THOROUGH STUDY OF THE PUBLIC SCHOOL CAPITAL OUTLAY
FUNDING FORMULA AS IT HAS EVOLVED SINCE ITS ENACTMENT IN 2001
AND ASSESS WHETHER THE FUNDING FORMULA IS MEETING THE
REQUIREMENTS OF ARTICLE 12, SECTION 1 OF THE CONSTITUTION OF
NEW MEXICO.

WHEREAS, in 1973, the United States supreme court found,
in *San Antonio Independent School District v. Rodriguez*, that a
free public education was not a federal constitutional right;
and

WHEREAS, in a dissenting opinion, however, one of the
justices stated that "nothing in the Court's decision. . .

underscoring material = new
~~[bracketed material] = delete~~

1 should inhibit further review of State educational funding
2 schemes under State constitutional provisions"; and

3 WHEREAS, Article 12, Section 1 of the constitution of New
4 Mexico provides that a "uniform system of free public schools
5 sufficient for the education of, and open to, all children of
6 school age in the state shall be established and maintained";
7 and

8 WHEREAS, New Mexico courts have not yet specifically
9 construed the meaning of either "uniform" or "sufficient" in
10 this constitutional provision; and

11 WHEREAS, in 1974, New Mexico was one of the first states
12 in the nation to adopt a school financing system to fund
13 operational expenses; and

14 WHEREAS, this system became a national model of equitable
15 school finance and was based on a studied, deliberate attempt
16 to create an equitable system; and

17 WHEREAS, this system applied, however, only to funding a
18 school district's operational expenses and not capital outlay
19 expenses; and

20 WHEREAS, for nearly the next three decades, New Mexico had
21 two separate financing systems for funding its schools:
22 operational expenditures, which were dependent on the combined
23 wealth of the entire state divided equitably among all school
24 districts; and capital outlay funding, which was dependent
25 almost entirely on local property tax wealth, an inherently

.206364.1

underscored material = new
~~[bracketed material] = delete~~

1 unequal method for funding school expenses; and

2 WHEREAS, at that time, the state took credit in its state
3 equalization guarantee for ninety-five percent of school
4 districts' impact aid funds, which are federal funds provided
5 to school districts in lieu of property taxes for children
6 living on or near tribal and federal lands; and

7 WHEREAS, as a result, the affected school districts were
8 left with only five percent of impact aid funds for capital
9 outlay expenses; and

10 WHEREAS, establishing an equitable method for distributing
11 operational funds had, some asserted, resulted in a unequal
12 effect on capital outlay funding for school districts with
13 little taxable property; and

14 WHEREAS, a 1998 study of New Mexico school facilities by a
15 nationally recognized research organization revealed a one-
16 billion-five-hundred-million-dollar (\$1,500,000,000) deficiency
17 statewide for public schools; and

18 WHEREAS, in 1998, three school districts, the Zuni,
19 Gallup-McKinley county and Grants-Cibola county school
20 districts, filed suit in state district court; and

21 WHEREAS, the plaintiff school districts based their suit
22 on the premise that the state's financing of public school
23 capital outlay needs violated rights under the constitution of
24 New Mexico's guarantee of a "uniform" system "sufficient" for
25 the education of all the state's children; and

.206364.1

underscoring material = new
~~[bracketed material] = delete~~

1 WHEREAS, the school districts argued that all they were
2 seeking was a system that approached equity in the funding of
3 capital improvements; and

4 WHEREAS, in 1999, State District Court Judge Joseph L.
5 Rich granted the plaintiffs' motion for a partial summary
6 judgement and held that the then-current system for funding
7 capital improvements violated Article 12, Section 1 of the
8 constitution of New Mexico and ordered the state to "establish
9 and implement a uniform funding system for capital
10 improvements" and to correct "existing current inequities"; and

11 WHEREAS, when the state appeals court denied the state's
12 request for an appeal, the legislature established the public
13 school capital outlay task force, which had the task of
14 designing a new public school capital outlay funding system;
15 and

16 WHEREAS, the task force chose as its guiding philosophy
17 the concept of adequacy, which was defined as the minimum
18 acceptable level for the physical condition and capacity of
19 school buildings, the educational suitability of education
20 facilities and the need for technological infrastructure; and

21 WHEREAS, the task force did consider equity, but because
22 equity did not necessarily result in equal education, the task
23 force endorsed the concept of adequacy and recommended that to
24 the legislature; and

25 WHEREAS, in 2001, the legislature passed a measure that

.206364.1

underscored material = new
~~[bracketed material] = delete~~

1 covered both the short-term deficiencies and the long-term
2 critical capital outlay needs with funding for public school
3 capital outlay projects being shared between school districts
4 and the state on a formula basis, with awards granted to school
5 districts based on adequacy standards; and

6 WHEREAS, later in 2001, the court appointed a special
7 master to review the state's progress in developing a uniform
8 system for public school capital improvements; and

9 WHEREAS, the following year, after having conducted
10 hearings to take testimony, the special master found that the
11 legislature had passed "one of the most dramatic actions ever
12 taken by the state to remedy disparities of capital funding"
13 and "is in good faith and with substantial resources,
14 attempting to comply with requirements" of the court; and

15 WHEREAS, the special master also found that "because the
16 use of direct [legislative] appropriations necessarily removes
17 substantial funds from the capital outlay process where merit
18 and need on a priority basis dictate how funds are to be
19 distributed, the state should take into account in its funding
20 formula these appropriations as an element thereof"; and

21 WHEREAS, Judge Rich ordered the approval of the special
22 master's report; and

23 WHEREAS, the judge's order recognized that the legislature
24 had made some progress and should continue its work but
25 reserved the right to review subsequent legislative activity;

.206364.1

underscored material = new
[bracketed material] = delete

1 and

2 WHEREAS, in a 2007 article in the *New Mexico Law Review*
3 entitled "No Cake for Zuni: The Constitutionality of New
4 Mexico's Public School Capital Finance System", the late Lynn
5 Carillon Cruz made a strong case for reviewing and making
6 changes to the public school capital outlay funding formula;
7 and

8 WHEREAS, no further judicial review of the *Zuni* lawsuit
9 occurred, except for status conferences held in March 2006 and
10 March 2014, until July 2015, when the Gallup-McKinley county
11 school district filed an unopposed motion to amend the original
12 complaint; and

13 WHEREAS, in the amended complaint the plaintiffs asserted
14 that the "adequacy standards" for public school construction as
15 established and amended by the public school capital outlay
16 council violated Article 12, Section 1 of the constitution of
17 New Mexico because they were not sufficient for the education
18 of all the children of school age; and

19 WHEREAS, among the necessary costs to make facilities
20 sufficient for students in the plaintiff school districts that
21 were not covered in the adequacy standards were the following:

22 A. extension of utilities to school construction
23 sites in isolated rural areas;

24 B. construction and maintenance of teacherages for
25 schools in isolated rural areas;

.206364.1

underscored material = new
~~[bracketed material] = delete~~

1 C. required payment of the Navajo business tax for
2 construction on Navajo tribal lands;

3 D. security measures that are more secure than
4 magnetic locks, which are required in the adequacy standards;

5 E. fixtures, furniture and equipment that are not
6 included in the adequacy standards; and

7 F. athletic fields beyond multipurpose practice
8 fields; and

9 WHEREAS, other costs to meet standards required by the
10 state of New Mexico and the federal government include the
11 following:

12 A. facilities for Navajo language and culture
13 classes required by the state's Indian Education Act;

14 B. federally required Title IX athletic fields;

15 C. facilities required for pre-kindergarten-related
16 parent education programs;

17 D. facilities for "response-to-intervention" at-
18 risk students; and

19 E. computers and computer stations for mandated
20 computer-based assessments; and

21 WHEREAS, the plaintiff school districts also assert that
22 the current adequacy standards do not establish an "acceptable
23 level for the physical condition and capacity of buildings, the
24 educational suitability of facilities and the need for
25 technological infrastructure" as required by statute; and

.206364.1

underscored material = new
~~[bracketed material] = delete~~

1 WHEREAS, in addition, the plaintiff school districts
2 assert that the state-share portion of the public school
3 capital outlay funding formula is skewed to benefit property-
4 tax-rich school districts, allowing them to regularly exceed
5 adequacy standards, while property-tax-poor school districts do
6 not have the same ability; and

7 WHEREAS, as examples, the plaintiffs cite amounts of
8 funding for above-adequate facilities that are bigger, more
9 specialized and more amenity-filled in the Albuquerque, Clovis
10 municipal, Eunice, Hobbs municipal and Ruidoso municipal public
11 school districts; and

12 WHEREAS, the complaint also asserts that some school
13 districts receive substantial capital outlay funding through
14 direct legislative appropriations, while the Gallup-McKinley
15 county and Zuni public school districts receive none; and

16 WHEREAS, the complaint also asserts that "Gallup-McKinley
17 and the individual plaintiffs are victims of discrimination and
18 are being denied the uniform and sufficient education rights,
19 opportunities and protection mandated by Article 12, Section 1,
20 of the state constitution"; and

21 WHEREAS, in late 2016, the eleventh judicial district
22 court held evidentiary hearings in Gallup; and

23 WHEREAS, the case has been continued until spring 2017;

24 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
25 STATE OF NEW MEXICO that the legislative finance committee,

.206364.1

underscoring material = new
~~[bracketed material]~~ = delete

1 together with the legislative education committee, the public
2 school capital outlay council and the public education
3 department, be requested to conduct a thorough study of the New
4 Mexico public school capital outlay funding formula as it
5 relates to the requirements of Article 12, Section 1 of the
6 constitution of New Mexico and report its findings to the
7 legislature and the governor before the second session of the
8 fifty-third legislature; and

9 BE IT FURTHER RESOLVED that copies of this memorial be
10 transmitted to the directors of the legislative finance
11 committee and the legislative education study committee, the
12 chair of the public school capital outlay council and the
13 secretary of public education.