# LEGISLATIVE EDUCATION STUDY COMMITTEE BILL ANALYSIS 

55th Legislature, 1st Session, 2021
Bill Number SB131

Sponsor Stewart
Tracking Number 218403.2 Committee Referrals SEC/SFC
Short Title Discretionary Program Units
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## FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

## BILL SUMMARY

## Synopsis of Bill

Senate Bill 131 (SB131) makes technical changes in the Public School Capital Improvements Act state match calculation to correctly refer to prior year final funded program units. The bill also eliminates from the state match calculation units generated for discretionary public school programs, including Extended Learning Time Programs, K-5 Plus programs, elementary physical education programs, fine arts programs, and bilingual multicultural education programs.

## FISCAL IMPACT

The bill does not contain an appropriation.
The bill will reduce the state match required under the Public School Capital Improvements Act, commonly known as "SB9," by approximately $\$ 5$ million. In FY21, 86 school districts imposing a two-mill property tax levy required a total state match of $\$ 21.4$ million, an amount generated by final FY20 program units totaling 656 thousand. See Attachment 1, Current Law Capital Improvements Act Local and State Funding. SB131 would reduce the program units used to calculate the state match to approximately 608 thousand, reducing the total state match to $\$ 16.4$ million. See Attachment 2, SB131 Capital Improvements Act Local and State Funding. For a comparison of current law distributions and distributions under SB131, see Attachment 3, Comparison of Current Law and SB131 Scenario.

SB131 Impact on Public School Capital Improvements Act State Match

| Current Law |  | SB131 |  |  |
| :---: | :---: | :---: | :---: | :---: |
| Program <br> Units | Total State <br> Match | Program <br> Units | Total State <br> Match | Change |
| $656,370.9$ | $\$ 21,383.0$ | $608,429.6$ | $\$ 16,364.7$ | $(\$ 5,018.3)$ |

Source: LESC Files

A vast majority of the funding from the Capital Improvements Act is raised by local two-mill levies imposed by school districts. SB131 would not affect local two-mill levy revenues, which in FY21 totaled \$131.5 million statewide.

## SUBSTANTIVE ISSUES

Commonly known as "SB9" or "the two-mill levy," the Public School Capital Improvements Act allows school districts to ask voters to impose a two-mill levy, or a property tax of $\$ 2.00$ for every $\$ 1,000$ of taxable land, for public school buildings, grounds, maintenance of equipment, activity vehicles, computer software and hardware, and education technology improvements. The Public Education Department (PED) is required to provide matching funds to all school districts that impose a levy based on the school district's membership and the amount it generates from the twomill levy. The SB9 state match is funded from the public school capital outlay fund and by law must be allocated before the council can make standards- and systems-based awards.

Funding for Standards- and Systems-Based Awards. In recent years, the Legislature has increased program units in the public school funding formula for the K-5 Plus program, Extended Learning Time Programs, and bilingual and multicultural education programs. As an unintended consequence, program units used to calculate the SB9 state match have increased substantially, diluting the funding available for the Public School Capital Outlay Council (PSCOC) to make standards- and systems-based awards. Moreover, discretionary programs like those listed above do not align well with actual capital needs; school districts can use existing space to house K-5 Plus and Extended Learning Time Programs over the summer. Reducing the SB9 state match will increase the annual funds available for PSCOC to meet its constitutional obligations from the Zuni lawsuit.

Technical Change. Laws 2018, Chapter 38, (House Bill 48) changed the SB9 state match calculation from "first 40 days' total program units" to "average of prior year second and third reporting dates' total program units." The Legislature changed the calculation to rely on prior year data because it is available sooner than current year data, allowing school districts to receive and spend SB9 funds in a timely fashion and preventing large cash carryforwards. However, the changes introduced a technical issue; "total program units" are not calculated on the second or third reporting dates, but rather membership counts are collected on these dates and contribute to the calculation of final funded units. As noted by PED's original analysis on HB48, the law as written is impossible for PED to execute. Instead, PED has interpreted the law to refer to final funded program units - the technical change made by SB131 will correctly codify current practice.

## OTHER SIGNIFICANT ISSUES

Equitable Capital Outlay Revenues. SB131 does not address the equity of per-student revenues generated by the local two-mill levy, which in recent years has become an ongoing topic of debate. Local revenues generated by the Public School Capital Improvements Act vary widely from school district to school district when considered on a per-student basis. The inequities contributed to a determination by the U.S. Department of Education (USDE) that New Mexico could not take credit for Impact Aid payments in the FY20 state equalization guarantee. Because local SB9 dollars can be used to fund maintenance expenditures, USDE considered them to be discretionary funding for the purposes of the Impact Aid calculation. In FY18, the year considered by USDE when ruling on the FY20 Impact Aid credit, the Jal school district received approximately $\$ 7,500$ per student in local SB9 revenue, while Gallup received approximately $\$ 150$ per student, and school districts

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like Questa and Reserve, where the SB9 ballot issues failed to gain approval from voters, received nothing.

The Zuni Capital Outlay Lawsuit. SB131 amends the Public School Capital Improvements Act, a section of law recently found by the 11th Judicial District Court to be unconstitutional. In December 2020, the court issued a ruling in the Zuni lawsuit, finding the Public School Capital Improvements Act, along with the Public School Capital Outlay Act, has exacerbated "gross disparities" between property-wealthy and property-poor school districts. The plaintiff school districts, now including only Gallup-McKinley County and Zuni, argue the school districts' lack of taxable property makes it impossible for the districts to fund "outside-of-adequacy" spaces freely available to property-wealthy school districts with enough local revenue to construct them independent of the PSCOC awards project.

The 11th Judicial District Court ruling, however, leaves policymakers without a clear understanding of why the systems were found unconstitutional. The ruling did not cite specific evidence of disparities in the capital outlay funding system and instead adopted wholesale the plaintiff's findings of fact, which contained inaccuracies and inconsistencies. Further, the court did not review appropriations and changes made to the capital outlay system during the 2019 and 2020 legislative sessions attempting to create greater equity. The Legislature has attempted to address the plaintiffs concerns by amending the state- and local-match calculation and appropriating $\$ 53$ million for outside-of-adequacy spaces in school districts receiving federal Impact Aid for Native American students, but these efforts were not mentioned in the district court's eight-page ruling.

On January 28, 2021, the Legislature and PSCOC's recent actions were submitted as new evidence in the lawsuit, along with a motion to reconsider and a request for a stay of judgment. The court will deliberate the motion; after the court's decision, the state will have an additional 30 days to decide whether it will appeal the ruling to a higher court. The Office of the Attorney General does not believe that the language in the judge's decision and order prohibit PSCOC and PSFA from awarding funds and continuing construction projects pursuant to the Public School Capital Outlay Act and Public School Capital Improvements Act, but pending a decision on the state's motion to reconsider, the Legislature will need to continue to focus on policy options and statutory changes that continue to provide for increased equity in the capital outlay system.

## RELATED BILLS

Related to SB41, School Funding Changes, which amends the public school funding formula to eliminate credits for local and federal revenue, including federal Impact Aid revenue, federal forest reserve payments, and the local half-mill property tax levy, and amends the Public School Capital Outlay Act "phase two" state and local match calculation to consider a rolling 10-year average of any unrestricted revenue used for capital outlay expenditures.

## SOURCES OF INFORMATION

- LESC Files


## TB/mb

Current Law Capital Improvements Act Local and State Funding
(dollars in thousands)

(dollars in thousands)

(dollars in thousands)


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

|  | Baseline |  |  | Current Law |  |  | SB131 |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| School District | FY19 Assessed Land Valuation | Mill Rate | Projected <br> Local Tax | Prior Year Final Funded Units | State Distribution | Total Capital Improvements Act | Prior Year Final Funded Units Excluding Discretionary Units | State Distribution | Total Capital Improvements Act | Change |
| ALAMOGORDO | \$856,185.1 | 2.000 | \$1,712.4 | 10,160.6 | \$138.2 | \$1,850.6 | 9,980.2 | \$135.7 | \$1,848.1 | (\$2.5) |
| ALBUQUERQUE | \$17,478,081.2 | 2.000 | \$34,956.2 | 191,182.6 | \$2,600.1 | \$37,556.2 | 181,658.6 | \$2,470.6 | \$37,426.7 | (\$129.5) |
| ANIMAS | \$38,029.1 | 2.000 | \$75.9 | 517.7 | \$14.8 | \$90.7 | 513.8 | \$14.1 | \$90.0 | (\$0.7) |
| ARTESIA | \$1,876,126.0 | 2.000 | \$3,752.3 | 7,041.3 | \$95.8 | \$3,848.0 | 6,233.3 | \$84.8 | \$3,837.0 | (\$11.0) |
| AZTEC | \$644,352.6 | 1.886 | \$1,215.2 | 5,287.7 | \$67.8 | \$1,283.1 | 5,120.5 | \$65.7 | \$1,280.9 | (\$2.1) |
| BELEN | \$644,085.3 | 2.000 | \$1,288.2 | 7,535.5 | \$102.5 | \$1,390.7 | 7,165.7 | \$97.5 | \$1,385.6 | (\$5.0) |
| BERNALILLO | \$658,229.4 | 2.000 | \$1,316.5 | 6,291.6 | \$85.6 | \$1,402.0 | 5,446.6 | \$74.1 | \$1,390.5 | (\$11.5) |
| BLOOMFIELD | \$824,750.5 | 2.000 | \$1,649.5 | 5,134.2 | \$69.8 | \$1,719.3 | 4,654.9 | \$63.3 | \$1,712.8 | (\$6.5) |
| CAPITAN | \$443,091.5 | 2.000 | \$886.2 | 1,155.0 | \$15.7 | \$901.9 | 1,142.9 | \$15.5 | \$901.7 | (\$0.2) |
| CARLSBAD | \$4,183,309.3 | 2.000 | \$8,366.6 | 16,282.9 | \$221.4 | \$8,588.1 | 15,680.7 | \$213.3 | \$8,579.9 | (\$8.2) |
| CARRIZOZO | \$72,210.4 | 2.000 | \$144.4 | 532.3 | \$7.2 | \$151.7 | 503.4 | \$6.8 | \$151.3 | (\$0.4) |
| CENTRAL | \$838,052.5 | 2.000 | \$1,676.1 | 11,300.2 | \$303.5 | \$1,979.6 | 10,835.9 | \$222.1 | \$1,898.2 | (\$81.3) |
| CHAMA | \$150,314.8 | 2.000 | \$297.2 | 1,144.6 | \$15.6 | \$312.7 | 1,066.6 | \$14.5 | \$311.7 | (\$1.1) |
| CIMARRON | \$435,435.9 | 2.000 | \$870.9 | 1,178.8 | \$16.0 | \$886.9 | 1,165.3 | \$15.8 | \$886.7 | (\$0.2) |
| CLAYTON | \$137,487.7 | 2.000 | \$275.0 | 1,183.7 | \$16.1 | \$291.1 | 1,081.0 | \$14.7 | \$289.7 | (\$1.4) |
| CLOUDCROFT | \$212,893.7 | 2.000 | \$425.8 | 1,073.1 | \$14.6 | \$440.4 | 1,065.3 | \$14.5 | \$440.3 | (\$0.1) |
| CLOVIS | \$864,603.9 | 2.000 | \$1,729.2 | 14,436.0 | \$799.7 | \$2,528.9 | 14,108.2 | \$742.3 | \$2,471.5 | (\$57.4) |
| COBRE | \$228,904.4 | 2.000 | \$457.8 | 2,994.6 | \$66.8 | \$524.6 | 2,482.3 | \$33.8 | \$491.6 | (\$33.0) |
| CORONA | \$56,374.7 | 2.000 | \$112.7 | 339.9 | \$4.6 | \$117.4 | 338.2 | \$4.6 | \$117.3 | (\$0.0) |
| CUBA | \$143,234.8 | 2.000 | \$286.5 | 1,641.6 | \$22.3 | \$308.8 | 1,507.7 | \$20.5 | \$307.0 | (\$1.8) |
| DEMING | \$618,010.5 | 2.000 | \$1,236.0 | 11,404.9 | \$761.9 | \$1,997.9 | 8,960.0 | \$333.6 | \$1,569.6 | (\$428.3) |
| DES MOINES | \$38,777.8 | 2.000 | \$77.6 | 376.4 | \$5.1 | \$82.7 | 374.3 | \$5.1 | \$82.6 | (\$0.0) |
| DEXTER | \$81,670.8 | 2.000 | \$163.0 | 1,917.8 | \$173.0 | \$336.0 | 1,775.4 | \$148.0 | \$311.0 | (\$25.0) |
| DORA | \$28,986.9 | 2.000 | \$57.9 | 638.3 | \$54.0 | \$111.8 | 632.4 | \$52.9 | \$110.8 | (\$1.0) |
| DULCE | \$367,427.4 | 2.000 | \$734.9 | 1,592.3 | \$21.7 | \$756.5 | 1,412.1 | \$19.2 | \$754.1 | (\$2.5) |
| ELIDA | \$29,228.5 | 2.000 | \$57.5 | 515.2 | \$32.7 | \$90.3 | 511.3 | \$32.0 | \$89.6 | (\$0.7) |
| ESPANOLA | \$607,136.1 | 2.000 | \$1,214.3 | 8,060.2 | \$197.7 | \$1,412.0 | 7,625.8 | \$121.6 | \$1,335.9 | (\$76.1) |
| ESTANCIA | \$122,081.9 | 2.000 | \$244.2 | 1,599.7 | \$36.1 | \$280.2 | 1,556.7 | \$28.5 | \$272.7 | (\$7.5) |
| EUNICE | \$1,000,941.4 | 2.000 | \$2,001.9 | 1,764.1 | \$24.0 | \$2,025.9 | 1,683.8 | \$22.9 | \$2,024.8 | (\$1.1) |
| FARMINGTON | \$1,513,039.7 | 2.000 | \$3,026.1 | 19,610.7 | \$409.3 | \$3,435.4 | 18,992.5 | \$301.0 | \$3,327.1 | (\$108.3) |
| FLOYD | \$14,184.3 | 2.000 | \$28.2 | 631.8 | \$82.5 | \$110.7 | 613.0 | \$79.2 | \$107.4 | (\$3.3) |
| FT. SUMNER | \$93,632.5 | 2.000 | \$187.3 | 769.4 | \$10.5 | \$197.7 | 702.0 | \$9.5 | \$196.8 | (\$0.9) |
| GADSDEN | \$1,017,662.5 | 2.000 | \$2,035.3 | 27,820.3 | \$2,838.2 | \$4,873.6 | 22,914.6 | \$1,978.9 | \$4,014.2 | (\$859.4) |
| GALLUP | \$811,191.8 | 2.000 | \$1,622.4 | 24,831.4 | \$2,727.6 | \$4,350.0 | 21,120.7 | \$2,077.5 | \$3,699.9 | (\$650.0) |
| GRADY | \$10,494.1 | 2.000 | \$21.0 | 493.0 | \$65.4 | \$86.4 | 489.6 | \$64.8 | \$85.8 | (\$0.6) |
| GRANTS | \$349,597.1 | 2.000 | \$673.9 | 6,931.9 | \$540.4 | \$1,214.3 | 6,547.6 | \$473.1 | \$1,147.0 | (\$67.3) |
| HAGERMAN | \$37,917.0 | 2.000 | \$75.8 | 1,153.4 | \$126.2 | \$202.1 | 1,062.9 | \$110.4 | \$186.2 | (\$15.9) |
| HATCH | \$84,106.2 | 2.000 | \$168.2 | 2,523.4 | \$273.8 | \$442.0 | 2,172.4 | \$212.4 | \$380.6 | (\$61.5) |
| HOBBS | \$1,874,658.6 | 2.000 | \$3,749.3 | 18,902.7 | \$257.1 | \$4,006.4 | 18,249.2 | \$248.2 | \$3,997.5 | (\$8.9) |
| HONDO | \$36,900.7 | 2.000 | \$73.6 | 537.5 | \$20.5 | \$94.2 | 529.7 | \$19.2 | \$92.8 | (\$1.4) |
| HOUSE | \$16,616.1 | 2.000 | \$33.2 | 342.2 | \$26.7 | \$60.0 | 341.2 | \$26.5 | \$59.8 | (\$0.2) |
| JAL | \$3,282,220.2 | 2.000 | \$6,564.2 | 1,095.3 | \$14.9 | \$6,579.1 | 1,083.5 | \$14.7 | \$6,578.9 | (\$0.2) |
| JEMEZ MTN. | \$222,873.3 | 2.000 | \$445.7 | 710.3 | \$9.7 | \$455.4 | 659.1 | \$9.0 | \$454.7 | (\$0.7) |
| JEMEZ VALLEY | \$107,872.3 | 2.000 | \$215.7 | 1,139.1 | \$15.5 | \$231.2 | 1,070.9 | \$14.6 | \$230.3 | (\$0.9) |
| LAKE ARTHUR | \$57,516.7 | 2.000 | \$115.0 | 416.5 | \$5.7 | \$120.6 | 410.4 | \$5.6 | \$120.6 | (\$0.1) |
| LAS CRUCES | \$3,558,367.7 | 2.000 | \$7,116.7 | 48,883.9 | \$1,446.7 | \$8,563.5 | 43,403.2 | \$590.3 | \$7,707.0 | (\$856.5) |
| LAS VEGAS CITY | \$293,203.1 | 2.000 | \$586.4 | 3,176.8 | \$43.2 | \$629.6 | 2,934.4 | \$39.9 | \$626.3 | (\$3.3) |

(dollars in thousands)


