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SENATE BILL 167

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO EARLY CHILDHOOD FUNDING; TRANSFERRING THE BALANCE OF THE EARLY CHILDHOOD EDUCATION AND CARE FUND TO THE EARLY CHILDHOOD TRUST FUND; RECOMPILING AND AMENDING CERTAIN EARLY CHILDHOOD FUNDS; EXPANDING THE PURPOSES FOR WHICH MONEY IN THE FUNDS MAY BE USED TO INCLUDE PRENATAL PROGRAMS AND SERVICES; PROVIDING AN EFFECTIVE DATE CONTINGENT ON APPROVAL OF A CONSTITUTIONAL AMENDMENT CREATING THE EARLY CHILDHOOD TRUST FUND.

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

SECTION 1. Section 6-4-27 NMSA 1978 (being Laws 2020, Chapter 3, Section 4, as amended) is amended to read:

"6-4-27. EXCESS EXTRACTION TAXES SUSPENSE FUND--TRANSFER OF EXCESS OIL AND GAS EMERGENCY SCHOOL TAX REVENUE--TAX STABILIZATION RESERVE--EARLY CHILDHOOD [EDUCATION AND CARE]

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1 TRUST FUND--SEVERANCE TAX PERMANENT FUND.--

2 A. The "excess extraction taxes suspense fund" is
3 created as a nonreverting fund in the state treasury. Money in
4 the fund shall only be used to make transfers by the department
5 of finance and administration as required by this section.

6 B. At the end of each fiscal year, the department
7 of finance and administration shall calculate and transfer the
8 balance of the fund attributable to that fiscal year as
9 follows:

10 (1) if in the current fiscal year the total
11 net receipts attributable to the tax imposed pursuant to
12 Section 7-31-4 NMSA 1978 and distributed pursuant to Section
13 7-1-6.20 NMSA 1978 exceed the annual average amount, the
14 department shall distribute the excess amount above the annual
15 average amount as follows:

16 (a) to the tax stabilization reserve,
17 the amount necessary to bring the balance of state reserves to
18 a level equal to twenty-five percent of the aggregate recurring
19 appropriations for that fiscal year from the general fund, as
20 determined by the department; provided that, if the balance in
21 the excess extraction taxes suspense fund is not sufficient to
22 meet that level, the entire balance shall be transferred to the
23 tax stabilization reserve; and

24 (b) to the early childhood ~~[education~~
25 ~~and care]~~ trust fund, the balance of the excess amount above

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1 the annual average amount, if any, after the transfer is made
2 pursuant to Subparagraph (a) of this paragraph; and

3 (2) the remaining balance of the fund, if any,
4 shall be distributed to the severance tax permanent fund.

5 C. As used in this section:

6 (1) "annual average amount" means the total
7 net receipts attributable to the tax imposed pursuant to
8 Section 7-31-4 NMSA 1978 and distributed pursuant to Section
9 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal
10 years, divided by five; and

11 (2) "state reserves" means the general fund
12 balances, as determined by the department of finance and
13 administration, including all authorized revenues and transfers
14 to the general fund and balances in the appropriation
15 contingency fund, the general fund operating reserve, the
16 state-support reserve fund and the tax stabilization reserve."

17 SECTION 2. Section 9-29A-3 NMSA 1978 (being Laws 2020,
18 Chapter 3, Section 3, as amended) is recompiled as Section
19 6-4-27.1 NMSA 1978 and is amended to read:

20 "6-4-27.1. DISTRIBUTION--EARLY CHILDHOOD [~~EDUCATION AND~~
21 ~~CARE~~] TRUST FUND--SEVERANCE TAX PERMANENT FUND--PAYMENTS
22 PURSUANT TO FEDERAL MINERAL LEASING ACT.--

23 A. If, by June 30 of each fiscal year, the net
24 receipts for that fiscal year of the money received by the
25 state pursuant to the federal Mineral Leasing Act exceed the
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1 annual average amount, the excess amount above the annual
2 average amount shall be distributed to the early childhood
3 [~~education and care~~] trust fund and attributed to that fiscal
4 year.

5 B. If, by [~~June 30, 2025, and by~~] June 30 of each
6 fiscal year, [~~thereafter~~] the remaining amount of the net
7 receipts for that fiscal year of the money received by the
8 state pursuant to the federal Mineral Leasing Act after the
9 distribution pursuant to Subsection A of this section exceeds
10 the threshold amount, the excess shall be distributed to the
11 severance tax permanent fund.

12 C. The department of finance and administration
13 shall make the calculations to determine if excess amounts
14 shall be distributed pursuant to this section. If there is an
15 excess amount, the distribution shall be made as soon as
16 practicable. If there is not an excess amount, no distribution
17 shall be made.

18 D. As used in this section:

19 (1) "annual average amount" means the total
20 net receipts attributable to money received by the state
21 pursuant to the federal Mineral Leasing Act in the immediately
22 preceding five fiscal years, divided by five; and

23 (2) "threshold amount" means the net receipts
24 of the money received by the state pursuant to the federal
25 Mineral Leasing Act distributed in fiscal year 2024 pursuant to

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1 Subsection B of Section 22-8-34 NMSA 1978."

2 SECTION 3. Section 9-29A-1 NMSA 1978 (being Laws 2020,
3 Chapter 3, Section 1, as amended) recompiled as Section 6-4-34
4 NMSA 1978 and is amended to read:

5 "6-4-34. EARLY CHILDHOOD [~~EDUCATION AND CARE~~] TRUST
6 FUND.--

7 A. The early childhood [~~education and care~~] trust
8 fund [~~is created within the state treasury. The fund~~] created
9 by Article 20, Section 23 of the constitution of New Mexico
10 shall consist of distributions, appropriations, gifts, grants
11 and donations. Income from investment of the fund shall be
12 credited to the fund. Money in the fund shall be expended only
13 as [~~provided in this section~~] authorized by Article 20, Section
14 23 of the constitution of New Mexico.

15 B. The state investment officer, subject to the
16 approval of the state investment council, shall invest money in
17 the [~~early childhood education and care~~] fund:

18 (1) in accordance with the prudent investor
19 rule set forth in the Uniform Prudent Investor Act; and

20 (2) in consultation with the [~~state treasurer~~]
21 secretary of early childhood education and care.

22 C. The state investment officer shall report
23 quarterly to the legislative finance committee and the state
24 investment council on the investments made pursuant to this
25 section. Annually, a report shall be submitted no later than

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1 October 1 each year to the legislative finance committee, the
2 revenue stabilization and tax policy committee and any other
3 appropriate interim committees.

4 D. On July 1 of each year, a distribution shall be
5 made from the [~~early childhood education and care~~] fund to the
6 early childhood [~~education and care~~] program fund in an amount
7 equal to the greater of five percent of the average of the
8 year-end market values of the fund for the immediately
9 preceding three calendar years or [~~two hundred fifty million~~
10 ~~dollars (\$250,000,000)~~] five hundred million dollars
11 (\$500,000,000).

12 E. In addition to the distribution pursuant to
13 Subsection D of this section, money in the [~~early childhood~~
14 ~~education and care~~] fund may be expended in the event that
15 general fund balances, including all authorized revenues and
16 transfers to the general fund and balances in the general fund
17 operating reserve, the appropriation contingency fund, [~~the~~
18 ~~tobacco settlement permanent fund~~] the state-support reserve
19 fund and the tax stabilization reserve, will not meet the level
20 of appropriations authorized from the general fund for [~~a~~] the
21 current fiscal year. In that event, to avoid an
22 unconstitutional deficit, the legislature may appropriate from
23 the [~~early childhood education and care~~] fund to the general
24 fund only in the amount necessary to meet general fund
25 appropriations for that fiscal year and only if the legislature

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1 has authorized transfers from the appropriation contingency
2 fund, the general fund operating reserve and the tax
3 stabilization reserve [~~and the tobacco settlement permanent~~
4 ~~fund~~] that exhaust those fund balances."

5 SECTION 4. Section 9-29A-2 NMSA 1978 (being Laws 2020,
6 Chapter 3, Section 2, as amended) is recompiled as Section
7 6-4-35 NMSA 1978 and is amended to read:

8 "6-4-35. EARLY CHILDHOOD [~~EDUCATION AND CARE~~] PROGRAM
9 FUND.--The "early childhood [~~education and care~~] program fund"
10 is created in the state treasury. The fund consists of
11 distributions, appropriations, gifts, grants, donations and
12 income from investment of the fund. The early childhood
13 education and care department shall administer the fund. Money
14 in the fund is subject to appropriation by the legislature for
15 prenatal programs and services and for early childhood
16 [~~education and care services and~~] programs and services for
17 children until they are eligible for kindergarten.

18 Expenditures from the fund shall be by warrant of the secretary
19 of finance and administration pursuant to vouchers signed by
20 the secretary of early childhood education and care or the
21 secretary's authorized representative. Any unexpended or
22 unencumbered balance in the fund at the end of a fiscal year
23 shall revert to the early childhood [~~education and care~~] trust
24 fund."

25 SECTION 5. TEMPORARY PROVISION.--The balance of the early
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1 childhood education and care fund shall be transferred to the
2 early childhood trust fund.

3 SECTION 6. CONTINGENT EFFECTIVE DATE.--The provisions of
4 this act shall become effective upon certification by the
5 secretary of state that the constitution of New Mexico has been
6 amended as proposed by a joint resolution of the first session
7 of the fifty-seventh legislature entitled "PROPOSING TO ADD A
8 NEW SECTION 23 OF ARTICLE 20 OF THE CONSTITUTION OF NEW MEXICO
9 TO CREATE THE EARLY CHILDHOOD TRUST FUND TO BE USED EXCLUSIVELY
10 FOR PRENATAL AND EARLY CHILDHOOD PROGRAMS AND SERVICES, EXCEPT
11 WHEN STATE FUNDS WILL NOT MEET PREVIOUSLY AUTHORIZED
12 EXPENSES."