

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 241

48th Legislature, 2nd Session, 2008

Short Title: Public School Funding Formula Changes

Sponsor (s): Representative Mimi Stewart and Others

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**FOR THE FUNDING FORMULA STUDY TASK FORCE
FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

Bill Summary:

HB 241 amends and repeals existing sections of and adds new sections to the *Public School Code* to provide for a three-year phase-in of a new funding formula for public schools 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.

With regard to the three-year phase-in of the new funding formula, HB 241:

- provides a phase-in planning year in FY 09;
- requires the use of the new formula in FY 10 to determine the appropriation and distribution of the State Equalization Guarantee distribution provided that the FY 10 appropriation is equal to at least one-third of the difference between the FY 10 projected program cost and the actual FY 09 program cost adjusted for inflation; and
- provides for full implementation of the new funding formula by FY 12.

Background

- After several vetoed appropriations to fund a study of the Public School Funding Formula, in 2005, the Legislative Education Study Committee (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 American Institutes for Research (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 LESG endorsed the task force recommendations on January 14, 2008.

Fiscal Impact:

The estimated cost of implementing the new funding formula varies with the length of the phase-in period. If the entire cost of reaching total sufficiency statewide were appropriated in a single year, AIR projected that approximately \$422.3 million in additional dollars above the FY 08 appropriated program cost would be required. To provide for a three-year phase-in of the formula beginning in FY 10, an additional \$579.5 million above appropriated program cost would be required to fully implement the new funding formula, as follows:

| | |
|-------|------------------------|
| FY 10 | \$208.7 million |
| FY 11 | \$190.1 million |
| FY 12 | <u>\$180.7 million</u> |
| | \$579.5 million |

The estimate takes into account an inflation rate of approximately 2.9 percent per year and a “hold harmless” provision for FY 10 and FY 11 for school districts and charter schools experiencing a loss in program cost adjusted for inflation (see Section 17 below).

Translated into the total annual appropriations required to implement the new formula and generate the funding necessary to provide a sufficient education for all students, the total program cost appropriations would be:

| | |
|-------|-------------------|
| FY 10 | \$2,575.4 million |
| FY 11 | \$2,765.5 million |
| FY 12 | \$2,946.2 million |

For comparison purposes, HB 3, as amended by the House Education Committee, includes a total FY 09 program cost appropriation of \$2,475.4 million, an increase of approximately \$146.5 million over the FY 08 program cost.

Because of the major revisions to the school funding formula being proposed in HB 241, 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 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 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*, No. 05-1508.

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.

Issues:

Section 1 – Purpose of 2008 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 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 – HB 241 – 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 (EPSS).

Section 2 – Definitions (*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 definitions for:

- “special education” that is consistent with the federal *Individuals with Disabilities Education Act*;
- enrollment reporting dates (second Wednesday in October, December, and February); and
- “cost factor demographic data” for a school district or a charter school (poverty, English language learners, special education, and mobility).

Section 3 – Length of School Day—Minimum (pp. 9-11)

Section 3 provides for an increase in the required number of total hours during a year which students must be in school-directed programs, exclusive of lunch, to track with the additional days being added to the school year in Section 11 (below).

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

While current rule requires school districts to create an EPSS, the Public Education Department (PED) has stated that it only closely monitors the EPSS in schools in need of improvement. Otherwise, short of denying accreditation, PED has no mechanism in current law to require districts and schools to offer instruction that addresses state standards. In contrast, the EPSS process set forth in HB 241 requires every district to engage in long-term

strategic decision making based on local district demographic and achievement data. It makes a direct link between the demographic factors that generate funds through the new funding formula, the needs and strategies identified in the planning process, and the district budget approval process. In this manner, the bill establishes an accountability mechanism that looks beyond the annual test scores reported in compliance with the *No Child Left Behind Act of 2001* to achieving district-identified goals that address the particular needs of a school's and district's population. Finally, the bill mandates parental and community involvement to help develop the plan, and to serve as resources in implementing it.

HB 241 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 241 details specific requirements that must be included in the EPSS plan.

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 241 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 241 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 a hearing officer, and give all parties including the public an opportunity to be heard. The hearing officer 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.

Section 5 – 2009 Funding Formula—Findings and Purpose (pp. 18-20)

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 learner, 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 Act* 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 federal 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 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.

Section 6 – Definitions (*Public School Finance Act in the Public School Code*) (pp. 21-22)

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 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 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.

Section 7 – Establishment of Enrollment (pp. 22-23)

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 (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 – 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 – Budgets—Minimum Requirements (pp. 27-28)

Section 11 adds days to the school calendar. The number will vary, depending upon current school district practice.

Current statute requires school districts to provide at least 180 full instructional days (or the equivalent in hours) and refers to the contract between a school district and a teacher as “a

standard nine and one-half month contract.” Traditionally, the standard teaching contract has consisted of 182 days, but many school districts’ teaching contracts are for 183 or more days. Current statute also defines “school year” as the total number of contract days in a 12-month period. However, HB 241 amends the definition of “school year” to mean the total number of instructional days in a 12-month period.

Section 11 specifies that, beginning with school year 2011-2012, PED is not permitted to approve any school district budget that does not provide for a minimum 185-day school year (meaning 185 instructional days). Provisions in this section also give teachers four paid days beyond the 185 instructional days for professional development or instructional planning. Thus, in school districts not on a variable calendar, the school calendar will consist of 189 days. School districts on a variable calendar must provide the equivalent.

Section 12 – 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 demonstrates 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.

Section 13 – Sufficient Per-Student Cost Projections and Budget Requests (pp. 30-31)

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.

Section 14 – Reports (pp. 31-34)

Section 14 changes the reporting dates for school district and charter school enrollment from the 40th, 80th, and 120th 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 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 an actual, non-reverting fund created “in the state treasury”; and
- credit to the fund appropriations, earmarked revenue (see “Fiscal Impact”), income from investment of the fund, and “any other money.”

Section 16 – Total Program Cost Determination—Required Information (p. 35)

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

Section 17 – Projected Sufficient Per-Student Cost Calculation for School Districts and Charter Schools—Local Responsibility (pp. 35-42)

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.

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 is measured by 16 percent of the number of qualified students for school districts and by the percentage of qualified students who are required by the federal *Individuals with Disabilities Education Act* to have an individualized education program for the delivery of special education and includes developmentally disabled three- and four-year-old qualified students for charter schools; 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).

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

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

Section 17 also specifies that, beginning with FY 10, 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, “provided that funding for the complete implementation of the provisions of this 2008 act may be phased in during a period not to exceed three years.” There is a further stipulation (a “hold harmless” provision) that for the first two years of the phase-in, if the total program cost calculated for a school district or charter school is less than that of the prior fiscal year, “the total program cost for the school district or charter school shall be calculated using the prior fiscal year’s total program cost adjusted for inflation.”

Section 18 – Formula Phase-in (pp. 42-45)

The previous section specifies how the program cost appropriation can be increased over a three-year period to reach total sufficient program cost. Section 18 provides a list of options from which districts and charter schools must choose in order to make best use of any additional SEG funding. (For the purpose of Section 18, additional funding is determined by subtracting the prior year SEG distribution from the current year SEG distribution less “the amount needed for increases in fixed costs and salaries pursuant to the budget approved by the department.”) All of the options on the list were derived from recommendations made by the Professional Judgment Panels and the Project Advisory Panel. These options include:

1. extending the instructional year one or more days;
2. extending the school day for teachers or extending contract days for teachers up to four days beyond the instructional year;
3. offering summer school, credit recovery and enhanced before- and after-school opportunities;
4. lower class sizes and student-teacher ratios;
5. employing 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. employing 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 year;
15. providing teaching English as a second language endorsement courses for instructional staff;
16. providing stipends for instructional staff who have a bilingual or teaching English as a second language 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 EPSS.

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 1.00 if the actual calculation is less than 1.00. However, the differences are significant:

- First of all, the default “1.00” does not represent the same thing. With regard to the T&E, 1.0 represents the base level of funding. However, the value of 1.00 in the ISQ corresponds to the average (not the lowest) compensation levels used in the models developed by the Professional Judgment Panels and the Project Advisory Panel and the sufficiency cost estimates.
- Second, the T&E Index is used as a multiplier to increase units, but there are no units in the new formula. Instead, the ISQ is used to adjust projected sufficient per-pupil cost in proportion to the compensation portions of a district's or charter school's expenditures.

Section 19 also retains the salary differential for National Board-certified teachers, but removes the calculation from program cost and 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.

Section 20 – State Equalization Guarantee Distributions—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 State Equalization Guarantee (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, because the new public school funding formula is different than the current funding formula, the US Department of Education will have to make a new determination regarding New Mexico’s status as an equalized state.

Section 21 – Restriction on Operational Funds—Emergency Accounts (pp. 53-58)

Section 21 eliminates the cash balance credit, while maintaining the requirement that operational cash balances not be used for salaries and payroll (recurring expenditures).

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.”

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 extraordinary 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 241 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 public school student that exceed the base per-student threshold amount;
- 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 costs of providing services to high-cost special education students, but limit assistance to 75 percent of projected costs in any school year; and
- require the department to determine the base per-student threshold amount for high-cost special education based on the legislative appropriation to the fund each year.

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

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.

Section 24 – Gifted Students—Determination (pp. 62-63)

Section 24 amends the section of statute pertaining to the determination of who is a gifted child to expand the concept of gifted programs: “Nothing in this section shall preclude a school district from offering additional gifted programs for students who fail to meet the eligibility criteria.”

Section 25 – Special Education (pp. 63-65); **Section 26 – Special Education—Responsibility** (pp. 65-66); and **Section 27 – Special Education—Private** (pp. 66-71)

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.

Because HB 241 includes a provision to use a census-based special education rate of 16 percent in the calculation of the new funding formula for public schools, Sections 25, 26, and 27 have been amended to align state requirements to federal requirements.

In Section 25, the HB 241 amendments:

- require a state institution to be responsible for providing educational services to a school-age person in such a facility; and
- provide 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; with the right to attend public school in the school district where a state institution is located.

In Section 26, the HB 241 amendments:

- make technical changes to the language to conform with the definitions in the bill; and
- add 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.

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 a residential treatment center (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 *Individuals with Disabilities Education Act of 2004* (IDEA) for the educational costs associated with a student placed in a private facility. As a result, the LESC has endorsed separate legislation (HB 414) that contains similar provisions for this section of law.

Included in the HB 241 amendments to Section 27 are provisions to:

- clarify that a school district in which a private training center or residential treatment center (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 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 in the class level 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 rule to carry out the provisions of Section 27.

Section 28 – Distance Learning Students (pp. 71-72)

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....”

Section 34 makes this change effective July 1, 2009. Because Section 28 addresses a constitutional issue, the Legislative Council Service has indicated that there will be a technical amendment changing the effective date to July 1, 2008.

Section 29 – Fund Created—Use—Calculation (pp. 72-74)

Section 29 amends the formula used to determine funding for educational services to residents of state institutions under the authority of the Department of Health (DOH) to bring the formula into conformity with the public school funding formula established in HB 241. The current DOH formula refers to the State Equalization Guarantee (SEG) unit value; the amendment substitutes “sufficient per-student cost.” According to the DOH analysis of HB 241, at the present time, this change will affect only two institutions: Sequoyah Adolescent Treatment Center and the New Mexico Behavioral Health Institute.

Section 30 – Temporary Provision—Enrollment Reports—MEM—Statutory References (p. 74)

Section 30 states that all references in statute to the 40th, 80th, and 120th day memberships in the *Public School Code* are automatically references to the October, December, and February enrollments established in HB 241. 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 31 – Temporary Provision—Projections and Budget Preparation—Pre-2010 Formula (pp. 74-75)

In order to avoid any potential conflicts with the July 1, 2009 implementation date for phasing in the new formula, Section 31 gives express authority to PED to begin using the new October, December, and February reporting dates during school year 2008-2009. This section also directs PED to use the current public school funding formula in the event that the Legislature does not appropriate sufficient funding to begin using the new funding formula as outlined in Section 17 above.

Section 32 – Temporary Provision—Implementation Committee (pp. 75-78)

Section 32 creates a 24-member Funding Formula Implementation Assistance Committee to “advise and assist school districts and [PED] in the implementation of the funding formula” and other provisions of HB 241. The committee will consist of the following individuals, with the co-chairs of the Funding Formula Study Task Force continuing as co-chairs of the committee:

- the voting members of the Funding Formula Study Task Force and the Project Advisory Panel of the task force (a total of 18);
- one superintendent from a rural, high-poverty, high English language learner school district, appointed by the Speaker of the House of Representatives;
- one superintendent from an urban school district, appointed by the President Pro Tempore of the Senate;
- the Secretary of Public Education;
- the chairperson of the Legislative Education Study Committee;
- the chairperson of the Indian Education Advisory Council or the chairperson's designee; and
- the president of the New Mexico Association of Bilingual Educators or the president's designee.

In addition to advising and assisting school districts and PED during the planning phase, the committee will monitor their progress; provide regular reports to the LESC, the Legislative Finance Committee, and the Governor; and report the committee's findings and recommendations, including recommendations for statutory changes, to the Legislature and the Governor by January 15, 2009.

Section 33 – Repeal (p. 78)

This Section 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; and
- 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, 17, and 24.

Section 34 – Effective Date (pp. 78-79)

Section 34 provides effective dates for the provisions in the various sections of the act:

- July 1, 2008 for Sections 2, 4, 5, 8, 9, 10, 11, 12, 13, and 22;
- July 1, 2009 for Sections 3, 6, 7, 14, 16, 17, 18, 19, 20, 23, 24, 28, 29, 30, and 33;
- May 14, 2008 for Sections 1, 15, 21, 25, 26, 27, 31, 32, and 34.

Related Bills:

When the Funding Formula Study Task Force endorsed legislation to implement a new public school funding formula, it also endorsed several measures designed to generate revenue to cover the estimated cost. As of January 24, 2008, four bills based on those measures have been introduced:

HJR 8 *Land Grant Fund Education Distribution, CA*

HB 51 *Corporate Income Tax to Public School Fund*

HB 229 *End Yield Control on School Mill Levy*

HB 311 *Increase Gross Receipts & Send to School Fund*

To provide additional support for the planning year and for the implementation of the new public school funding formula, the task force also recommended that funds be appropriated for the Special Education Catastrophic Aid Fund (see Section 22 above) and the Public Education Department. Those appropriations are included in the following bill:

HB 398 *Supplemental Public School Funding*