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HOUSE BILL 229

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; MAKING CHANGES TO THE PUBLIC SCHOOL FUNDING FORMULA; REQUIRING PERFORMANCE-BASED BUDGETS; PROVIDING FOR LEGISLATIVE APPROVAL FOR NEW CHARTER SCHOOLS; PROVIDING FOR FIRST-YEAR OPERATIONAL FUNDING; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1999.

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

**SECTION 1.** Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the

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1 addition of original entries and reentries minus withdrawals.  
2 Withdrawals of students, in addition to students formally  
3 withdrawn from the public school, include students absent from  
4 the public school for as many as ten consecutive school days;  
5 provided that withdrawals do not include students in need of  
6 early intervention and habitual truants the school district is  
7 required to intervene with and keep in an educational setting  
8 as provided in Section 22-12-9 NMSA 1978;

9 C. "basic program ADM" or "basic program MEM" means  
10 the MEM of qualified students but excludes the full-time-  
11 equivalent MEM in early childhood education and three- and  
12 four-year-old students receiving special education services;

13 D. "cost differential factor" is the numerical  
14 expression of the ratio of the cost of a particular segment of  
15 the school program to the cost of the basic program in grades  
16 four through six;

17 E. "department" or "division" means the public  
18 education department;

19 F. "early childhood education ADM" or "early  
20 childhood education MEM" means the full-time-equivalent MEM of  
21 students attending approved early childhood education programs;

22 G. "full-time-equivalent ADM" or "full-time-  
23 equivalent MEM" is that membership calculated by applying to  
24 the MEM in an approved public school program the ratio of the  
25 number of hours per school day devoted to the program to six

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1 hours or the number of hours per school week devoted to the  
2 program to thirty hours;

3 H. "operating budget" means the annual financial  
4 plan required to be submitted by a local school board or  
5 governing body of a state-chartered charter school;

6 I. "program cost" is the product of the total  
7 number of program units to which a school district is entitled  
8 multiplied by the dollar value per program unit established by  
9 the legislature;

10 J. "program element" is that component of a public  
11 school system to which a cost differential factor is applied to  
12 determine the number of program units to which a school  
13 district is entitled, including but not limited to MEM,  
14 full-time-equivalent MEM, teacher, classroom or public school;

15 K. "program unit" is the product of the program  
16 element multiplied by the applicable cost differential factor;

17 L. "public money" or "public funds" means all money  
18 from public or private sources received by a school district or  
19 state-chartered charter school or officer or employee of a  
20 school district or state-chartered charter school for public  
21 use;

22 M. "qualified student" means a public school  
23 student who:

24 (1) has not graduated from high school;

25 (2) is regularly enrolled full time in [~~one-~~

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1 ~~half or more of~~] the minimum course requirements approved by  
2 the department for public school students; and

3 (3) in terms of age:

4 (a) is at least five years of age prior  
5 to 12:01 a.m. on September 1 of the school year;

6 (b) is at least three years of age at  
7 any time during the school year and is receiving special  
8 education services pursuant to rules of the department; or

9 (c) has not reached the student's  
10 twenty-second birthday on the first day of the school year [~~and~~  
11 ~~is receiving special education services pursuant to rules of~~  
12 ~~the department~~]; and

13 N. "state superintendent" means the secretary of  
14 public education or the secretary's designee."

15 SECTION 2. Section 22-8-6 NMSA 1978 (being Laws 1967,  
16 Chapter 16, Section 60, as amended by Laws 1999, Chapter 281,  
17 Section 21 and by Laws 1999, Chapter 291, Section 2) is amended  
18 to read:

19 "22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

20 A. Prior to April 15 of each year, each local  
21 school board shall submit to the department an operating budget  
22 for the school district and any charter [~~schools~~] school in the  
23 school district for the ensuing fiscal year. Upon written  
24 approval of the [~~state superintendent~~] secretary, the date for  
25 the submission of the operating budget as required by this

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1 section may be extended to a later date fixed by the [~~state~~  
2 ~~superintendent~~] secretary.

3 B. The operating budget required by this section  
4 may include:

5 (1) estimates of the cost of insurance  
6 policies for periods up to five years if a lower rate may be  
7 obtained by purchasing insurance for the longer term; or

8 (2) estimates of the cost of contracts for the  
9 transportation of students for terms extending up to four  
10 years.

11 C. The operating budget required by this section  
12 shall include a budget for each charter school of the  
13 membership projected for each charter school, the total program  
14 units generated at that charter school and approximate  
15 anticipated disbursements and expenditures at each charter  
16 school.

17 D. If a local school board fails to submit a budget  
18 pursuant to this section, the department shall prepare the  
19 operating budget for the school district for the ensuing fiscal  
20 year. A local school board shall be considered as failing to  
21 submit a budget pursuant to this section if the budget  
22 submitted exceeds the total projected resources of the school  
23 district or if the budget submitted does not comply with the  
24 law or with rules and procedures of the department.

25 E. Beginning with the 2013-2014 school year, all

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1 school districts shall submit performance-based budgets that  
2 comply with the requirements of the Accountability in  
3 Government Act on forms prescribed by the department."

4 SECTION 3. Section 22-8-18 NMSA 1978 (being Laws 1974,  
5 Chapter 8, Section 8, as amended) is amended to read:

6 "22-8-18. PROGRAM COST CALCULATION--LOCAL  
7 RESPONSIBILITY.--

8 A. Except as otherwise provided in this section,  
9 the total program units for the purpose of computing the  
10 program cost shall be calculated by multiplying the sum of the  
11 program units itemized as Paragraphs (1) [~~through (6)~~] and (2)  
12 in this subsection by the instructional staff training and  
13 experience index and adding the program units itemized as  
14 Paragraphs [~~(7)~~] (3) through (13) in this subsection. The  
15 itemized program units are as follows:

- 16 (1) early childhood education;  
17 (2) basic education;  
18 (3) special education, adjusted by subtracting  
19 the units derived from membership in class D special education  
20 programs in private, nonsectarian, nonprofit training centers;  
21 (4) bilingual multicultural education;  
22 (5) fine arts education;  
23 (6) elementary physical education;  
24 (7) size adjustment;  
25 (8) at-risk program;

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1 (9) enrollment growth or new district  
2 adjustment;

3 (10) special education units derived from  
4 membership in class D special education programs in private,  
5 nonsectarian, nonprofit training centers;

6 (11) national board for professional teaching  
7 standards certification;

8 (12) home school student activities; and

9 (13) charter school student activities.

10 B. The total program cost calculated as prescribed  
11 in Subsection A of this section includes the cost of early  
12 childhood, special, bilingual multicultural, fine arts and  
13 vocational education and other remedial or enrichment programs.  
14 It is the responsibility of the local school board or governing  
15 body of a charter school to determine its priorities in terms  
16 of the needs of the community served by that board. Except as  
17 otherwise provided in this section, funds generated under the  
18 Public School Finance Act are discretionary to local school  
19 boards and governing bodies of charter schools; provided that  
20 the special program needs as enumerated in this section are  
21 met; and provided ~~[however]~~ further that if a public school has  
22 been rated D or F for two consecutive years, the department  
23 shall ensure that the local school board or governing body of a  
24 charter school is prioritizing resources for the public school  
25 toward proven programs and methods linked to improved student

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1 achievement until the public school earns a C or better for two  
2 consecutive years.

3 C. The total program cost for a charter school  
4 shall not exceed that of the school district in which it is  
5 located."

6 SECTION 4. Section 22-8-21 NMSA 1978 (being Laws 1974,  
7 Chapter 8, Section 11, as amended) is amended to read:

8 "22-8-21. SPECIAL EDUCATION PROGRAM UNITS.--

9 A. For the purpose of the Public School Finance  
10 Act, special education programs for exceptional children are  
11 those approved by the department and classified as follows:

12 (1) class A programs, in which department-  
13 certified individuals provide services to children whose  
14 individualized education programs require a minimal amount of  
15 special education and in which the ratio of students to  
16 professionals is regulated by the [~~state board~~] department;

17 (2) class B programs, in which department-  
18 certified individuals provide services to children whose  
19 individualized education programs require a moderate amount of  
20 special education and in which the ratio of students to  
21 professionals is regulated by the [~~state board~~] department;

22 (3) class C programs, in which department-  
23 certified individuals provide services to children whose  
24 individualized education programs require an extensive amount  
25 of special education and in which the ratio of students to

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1 professionals is regulated by the [~~state board~~] department;

2 (4) class D programs, in which department-  
3 certified individuals provide services to children whose  
4 individualized education programs require a maximum amount of  
5 special education and in which the ratio of students to  
6 professionals is regulated by the [~~state board~~] department.

7 Students in class D programs may be enrolled in private,  
8 nonsectarian, nonprofit educational training centers in  
9 accordance with the provisions of Section 22-13-8 NMSA 1978;  
10 and

11 (5) programs for developmentally disabled  
12 three- and four-year-old children meeting standards approved by  
13 the [~~state board~~] department.

14 B. All students assigned to the programs for  
15 exceptional children classified in Subsection A of this section  
16 shall have been so assigned as a result of diagnosis and  
17 evaluation performed in accordance with the standards of the  
18 department before the students may be counted in the  
19 determination of special education program units as provided in  
20 Subsection C of this section.

21 C. The number of special education program units is  
22 the sum of the following:

23 (1) the MEM in approved class A and B programs  
24 as defined in Subsection A of this section multiplied by the  
25 cost differential factor .7;

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1 (2) the MEM in approved class C programs as  
2 defined in Subsection A of this section multiplied by the cost  
3 differential factor 1.0;

4 (3) the MEM in approved class D programs as  
5 defined in Subsection A of this section multiplied by the cost  
6 differential factor 2.0;

7 (4) the MEM for developmentally disabled  
8 three- and four-year-old children as defined in Subsection A of  
9 this section multiplied by the cost differential factor 2.0;  
10 provided that no developmentally disabled three- or four-year-  
11 old student shall be counted for additional ancillary service  
12 units; and

13 (5) for related services ancillary to  
14 providing special education, the number of full-time-equivalent  
15 certified or licensed ancillary service and diagnostic service  
16 personnel multiplied by the cost differential factor 25.0;  
17 provided that the number of full-time-equivalent licensed  
18 ancillary service and diagnostic service personnel multiplied  
19 by the cost differential factor shall not exceed 1.0.

20 D. For the purpose of calculating membership in  
21 class C and class D programs, students shall be counted in  
22 actual grade placement or according to chronological age if not  
23 in actual grade placement.

24 E. The department shall promulgate rules specifying  
25 minimum case loads for ancillary personnel for the purpose of

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1 determining special education program units."

2 SECTION 5. Section 22-8-23 NMSA 1978 (being Laws 1975,  
3 Chapter 119, Section 1, as amended) is amended to read:

4 "22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

5 A. An approved public school with a MEM of less  
6 than 400, including early childhood education full-time-  
7 equivalent MEM but excluding membership in class C and class D  
8 programs and excluding full-time-equivalent membership in  
9 three- and four-year-old developmentally disabled programs, is  
10 eligible for additional program units. Public schools that are  
11 co-located in the same facility or on the same campus or five  
12 miles or less from a similar public school shall not be  
13 classified as a small school for purposes of size adjustment  
14 program units. Separate schools established to provide special  
15 programs, including but not limited to vocational and  
16 alternative education, shall not be classified as public  
17 schools for purposes of generating size adjustment program  
18 units. The number of additional program units to which a  
19 school district is entitled under this subsection is the sum of  
20 elementary-junior high units and senior high units computed in  
21 the following manner:

$$\begin{aligned} & \text{Elementary-Junior High Units} \\ & \underline{200 - \text{MEM}} \times 1.0 \times \text{MEM} = \text{Units} \\ & 200 \end{aligned}$$

25 where MEM is equal to the membership of an approved elementary  
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1 or junior high school, including early childhood education  
2 full-time-equivalent membership but excluding membership in  
3 class C and class D programs and excluding full-time-equivalent  
4 membership in three- and four-year-old developmentally disabled  
5 programs;

6 Senior High Units  
7  $200 - \text{MEM} \times 2.0 \times \text{MEM} = \text{Units}$   
8 200

9 or,

10 Senior High Units  
11  $400 - \text{MEM} \times 1.6 \times \text{MEM} = \text{Units}$   
12 400

13 whichever calculation for senior high units is higher, where  
14 MEM is equal to the membership of an approved senior high  
15 school excluding membership in class C and class D programs.

16 B. A school district with total MEM of less than  
17 4,000, including early childhood education full-time-equivalent  
18 MEM, is eligible for additional program units. The number of  
19 additional program units to which a school district is entitled  
20 under this subsection is the number of district units computed  
21 in the following manner:

22 District Units  
23  $4,000 - \text{MEM} \times 0.15 \times \text{MEM} = \text{Units}$   
24 4,000

25 where MEM is equal to the total district membership,

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1 including early childhood education full-time-equivalent  
2 membership.

3 C. A school district with over 10,000 MEM with a  
4 ratio of MEM to senior high schools less than 4,000:1 is  
5 eligible for additional program units based on the number of  
6 approved regular senior high schools that are not eligible for  
7 senior high units under Subsection A of this section. The  
8 number of additional program units to which an eligible school  
9 district is entitled under this subsection is the number of  
10 units computed in the following manner:

$$\frac{4,000 - \text{MEM}}{\text{Senior High Schools}} \times 0.50 = \text{Units}$$

13 where MEM is equal to the total district membership, including  
14 early childhood education full-time-equivalent membership, and  
15 where senior high schools are equal to the number of approved  
16 regular senior high schools in the school district."

17 SECTION 6. Section 22-8-24 NMSA 1978 (being Laws 1974,  
18 Chapter 8, Section 15, as amended by Laws 1993, Chapter 91,  
19 Section 1 and also by Laws 1993, Chapter 237, Section 3) is  
20 repealed and a new Section 22-8-24 NMSA 1978 is enacted to  
21 read:

22 "22-8-24. [NEW MATERIAL] INDEX OF STAFF QUALIFICATIONS.--

23 A. For the purpose of calculating the index of  
24 staff qualifications, the following definitions and limitations  
25 apply:

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1 (1) "instructional staff" means classroom  
2 teachers;

3 (2) the number of instructional staff to be  
4 counted in calculating the index of staff qualifications is the  
5 actual number of full-time-equivalent instructional staff on  
6 the October payroll of the prior year;

7 (3) the number of years of experience to be  
8 used in calculating the index of staff qualifications is the  
9 number of years of experience as determined by the department;  
10 and

11 (4) the academic degree and additional credit  
12 hours to be used in calculating the index of staff  
13 qualifications are the degree and additional semester credit  
14 hours allowed for salary increment purposes on the salary  
15 schedule of the school district or charter school.

16 B. The factors for each classification of academic  
17 training by years of experience are as follows:

18 Matrix of Staff Qualifications

|   | Years of Experience |      |      |          |      |      |         |           |      |         |
|---|---------------------|------|------|----------|------|------|---------|-----------|------|---------|
|   | Level I             |      |      | Level II |      |      |         | Level III |      |         |
| Academic Classification                         | 0-1                 | 2-3  | 4-5  | 4-6      | 7-8  | 9-15 | Over 15 | 7-8       | 9-15 | Over 15 |
| Bachelor's degree                               | 0.64                | 0.67 | 0.71 | 0.76     | 0.82 | 0.93 | 1.04    | 0.90      | 1.02 | 1.17    |
| Master's degree or national board certification | 0.68                | 0.72 | 0.76 | 0.81     | 0.88 | 1.00 | 1.11    | 0.96      | 1.09 | 1.25    |
| Master's degree plus 45 credit                  |                     |      |      |          |      |      |         |           |      |         |

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|--------------------------------------|------|------|------|------|------|------|------|------|------|------|
| hours or post-<br>master's<br>degree |      |      |      |      |      |      |      |      |      |      |
|                                      | 0.71 | 0.75 | 0.79 | 0.85 | 0.92 | 1.05 | 1.16 | 1.01 | 1.14 | 1.31 |

C. The index of staff qualifications for each school district and charter school shall be calculated in accordance with instructions issued by the department. The following calculation shall be made to compute the value of the index of staff qualifications:

(1) multiply the number of full-time-equivalent teachers in each academic classification and level in the matrix by the numerical factor in the appropriate "years of experience" column provided in Subsection B of this section;

(2) add the adjusted full-time-equivalent teachers calculated in Paragraph (1) of this subsection; and

(3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time-equivalent instructional staff.

D. If the result of the calculation of the index of staff qualifications for a school district or charter school is less than 1.0, its factor shall be 1.0.

E. If a new school district is created, the index of staff qualifications for that school district for the first year of operation shall be 1.0.

F. If a school district's or charter school's index of staff qualifications is greater than 1.0, the index of staff

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1 qualifications formula adjustment used to determine the adjusted  
2 per-student cost is equal to the amount determined in Subsection  
3 C of this section multiplied by the percentage of the prior  
4 year's budget for instructional staff salaries and benefits plus  
5 a factor equal to one hundred percent minus the percentage of  
6 the prior year's budget for instructional staff salaries and  
7 benefits."

8 SECTION 7. A new section of the Public School Finance Act  
9 is enacted to read:

10 "[NEW MATERIAL] NEW SCHOOL FUND--PURPOSES.--The "new school  
11 fund" is created in the state treasury. Money in the fund  
12 reverts to the general fund at the end of a fiscal year. The  
13 fund shall be administered by the department and money in the  
14 fund is subject to appropriation by the legislature to fund the  
15 first year of operations of new charter schools. The  
16 operational cost of a new charter school is subject to the  
17 availability of funds appropriated by the legislature. The  
18 department shall include a request for an appropriation from the  
19 fund as part of the department's September 1 budget request for  
20 the succeeding fiscal year."

21 SECTION 8. A new section of the Charter Schools Act is  
22 enacted to read:

23 "[NEW MATERIAL] NEW CHARTER SCHOOLS--FISCAL IMPACT  
24 STUDY--LEGISLATIVE APPROVAL FOR FUNDING PRIOR TO FINAL  
25 AUTHORIZATION.--

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