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HOUSE BILL 188

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

George Dodge, Jr.

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; AMENDING THE PUBLIC SCHOOL  
FINANCE ACT TO ESTABLISH A PHASED-IN TEACHER COST INDEX;  
REQUIRING A STUDY TO EVALUATE THE INDEX'S SUFFICIENCY; MAKING A  
PHASED-IN ADJUSTMENT TO THE AT-RISK INDEX; REPEALING THE  
SECTION OF LAW CREATING THE FUNDING FORMULA STUDY TASK FORCE;  
MAKING AN APPROPRIATION.

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

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5 withdrawn from the public school, include students absent from  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

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

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

19 E. "department" or "division" means the public  
20 education department;

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

24 G. "full-time-equivalent ADM" or "full-time-  
25 equivalent MEM" is that membership calculated by applying to

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1 the MEM in an approved public school program the ratio of the  
2 number of hours per school day devoted to the program to six  
3 hours or the number of hours per school week devoted to the  
4 program to thirty hours;

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

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

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

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

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

24 M. "qualified student" means a public school  
25 student who:

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1 (1) has not graduated from high school;  
2 (2) is regularly enrolled in one-half or more  
3 of the minimum course requirements approved by the department  
4 for public school students; and

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

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

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

15 N. "staffing cost multiplier" means:

16 (1) for fiscal year 2019, the instructional  
17 staff training and experience index;

18 (2) for fiscal year 2020, the weighted average  
19 of the instructional staff training and experience index at  
20 seventy-five percent and the teacher cost index at twenty-five  
21 percent;

22 (3) for fiscal year 2021, the weighted average  
23 of the instructional staff training and experience index at  
24 fifty percent and the teacher cost index at fifty percent;

25 (4) for fiscal year 2022, the weighted average

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1 of the instructional staff training and experience index at  
2 twenty-five percent and the teacher cost index at seventy-five  
3 percent; and

4 (5) for fiscal year 2023 and subsequent fiscal  
5 years, the teacher cost index; and

6 [N.] 0. "state superintendent" means the secretary  
7 of public education or the secretary's designee."

8 SECTION 2. Section 22-8-6.1 NMSA 1978 (being Laws 1993,  
9 Chapter 227, Section 8, as amended) is amended to read:

10 "22-8-6.1. CHARTER SCHOOL BUDGETS.--

11 A. Each state-chartered charter school shall submit  
12 to the charter schools division of the department a school-  
13 based budget. ~~[For the first year of operation, the budget of~~  
14 ~~every state-chartered charter school shall be based on the~~  
15 ~~projected number of program units generated by that charter~~  
16 ~~school and its students, using the at-risk index and the~~  
17 ~~instructional staff training and experience index of the school~~  
18 ~~district in which it is geographically located. For second and~~  
19 ~~subsequent fiscal years of operation, the budgets of state-~~  
20 ~~chartered charter schools shall be based on the number of~~  
21 ~~program units generated using the average of the MEM on the~~  
22 ~~second and third reporting dates of the prior year and its own~~  
23 ~~instructional staff training and experience index and the at-~~  
24 ~~risk index of the school district in which the state-chartered~~  
25 ~~charter school is geographically located.] The budget shall be~~

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1 submitted to the division for approval or amendment pursuant to  
2 the Public School Finance Act and the Charter Schools Act.  
3 Thereafter, the budget shall be submitted to the public  
4 education commission for review.

5 B. Each locally chartered charter school shall  
6 submit to the local school board a school-based budget [~~For the~~  
7 ~~first year of operation, the budget of every locally chartered~~  
8 ~~charter school shall be based on the projected number of~~  
9 ~~program units generated by the charter school and its students,~~  
10 ~~using the at-risk index and the instructional staff training~~  
11 ~~and experience index of the school district in which it is~~  
12 ~~geographically located. For second and subsequent fiscal years~~  
13 ~~of operation, the budgets of locally chartered charter schools~~  
14 ~~shall be based on the number of program units generated using~~  
15 ~~the average of the MEM on the second and third reporting dates~~  
16 ~~of the prior year and its own instructional staff training and~~  
17 ~~experience index and the at-risk index of the school district~~  
18 ~~in which the locally chartered charter school is geographically~~  
19 ~~located. The budget shall be submitted to the local school~~  
20 ~~board]~~ for approval or amendment. The approval or amendment  
21 authority of the local school board relative to the charter  
22 school budget is limited to ensuring that sound fiscal  
23 practices are followed in the development of the budget and  
24 that the charter school budget is within the allotted  
25 resources. The local school board shall have no veto authority

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1 over individual line items within the charter school's proposed  
2 budget, but shall approve or disapprove the budget in its  
3 entirety. Upon final approval of the local budget by the local  
4 school board, the individual charter school budget shall be  
5 included separately in the budget submission to the department  
6 required pursuant to the Public School Finance Act and the  
7 Charter Schools Act.

8 C. For ~~[the]~~ its first year of operation, ~~[after a~~  
9 ~~locally chartered charter school converts to a state-chartered~~  
10 ~~charter school or a state-chartered charter school converts to~~  
11 ~~a locally chartered charter school, the charter school's budget~~  
12 ~~shall be based on the number of program units generated using~~  
13 ~~the average of the MEM on the second and third reporting dates~~  
14 ~~of the prior year and the instructional staff training and~~  
15 ~~experience index and the at-risk index of the school district~~  
16 ~~in which it is geographically located. For second and~~  
17 ~~subsequent fiscal years of operation, the charter school shall~~  
18 ~~follow the provisions of Subsection A or B of this section, as~~  
19 ~~applicable]~~ a charter school's budget shall be based on the  
20 projected number of program units generated by the school and  
21 its students using the at-risk index and the staffing cost  
22 multiplier of the school district in which the school is  
23 located, and the school's budget shall be adjusted using the  
24 qualified MEM on the first reporting date of the current school  
25 year. For its second and subsequent fiscal years of operation,

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1 a charter school's budget shall be based on the number of  
2 program units generated by the school and its students using  
3 the average of the MEM on the second and third reporting dates  
4 of the prior year, the at-risk index of the school district in  
5 which the school is located and the school's staffing cost  
6 multiplier."

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

9 "22-8-18. PROGRAM COST CALCULATION--LOCAL  
10 RESPONSIBILITY.--

11 A. For fiscal year 2019, the total program units  
12 for the purpose of computing the program cost shall be  
13 calculated by multiplying the sum of the program units itemized  
14 as Paragraphs (1) through (6) in this subsection by the  
15 [~~instructional staff training and experience index~~] staffing  
16 cost multiplier and adding the program units itemized as  
17 Paragraphs (7) through (14) in this subsection. For fiscal  
18 year 2020 and subsequent fiscal years, the total program units  
19 for the purpose of computing the program cost shall be  
20 calculated by multiplying the sum of the program units itemized  
21 as Paragraphs (1) and (2) in this subsection by the staffing  
22 cost multiplier and adding the program units itemized as  
23 Paragraphs (3) through (14) in this subsection. The itemized  
24 program units are as follows:

25 (1) early childhood education;

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- 1 (2) basic education;
- 2 (3) special education, adjusted by subtracting
- 3 the units derived from membership in class D special education
- 4 programs in private, nonsectarian, nonprofit training centers;
- 5 (4) bilingual multicultural education;
- 6 (5) fine arts education;
- 7 (6) elementary physical education;
- 8 (7) size adjustment;
- 9 (8) at-risk program;
- 10 (9) enrollment growth or new district
- 11 adjustment;
- 12 (10) special education units derived from
- 13 membership in class D special education programs in private,
- 14 nonsectarian, nonprofit training centers;
- 15 (11) national board for professional teaching
- 16 standards certification;
- 17 (12) home school student program unit;
- 18 (13) home school student activities; and
- 19 (14) charter school student activities.

20 B. The total program cost calculated as prescribed  
21 in Subsection A of this section includes the cost of early  
22 childhood, special, bilingual multicultural, fine arts and  
23 vocational education and other remedial or enrichment programs.  
24 It is the responsibility of the local school board or, for a  
25 charter school, the governing body of the charter school to

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1 determine its priorities in terms of the needs of the community  
2 served by that board. Except as otherwise provided in this  
3 section, funds generated under the Public School Finance Act  
4 are discretionary to local school boards and governing bodies  
5 of charter schools; provided that the special program needs as  
6 enumerated in this section are met; and provided further that  
7 if a public school has been rated D or F for two consecutive  
8 years, the department shall ensure that the local school board  
9 or, for a charter school, the governing body of the charter  
10 school is prioritizing resources for the public school toward  
11 proven programs and methods linked to improved student  
12 achievement until the public school earns a C or better for two  
13 consecutive years."

14 SECTION 4. Section 22-8-23.3 NMSA 1978 (being Laws 1997,  
15 Chapter 40, Section 7, as amended) is amended to read:

16 "22-8-23.3. AT-RISK PROGRAM UNITS.--

17 A. A school district is eligible for additional  
18 program units if it establishes within its department-approved  
19 educational plan identified services to assist students to  
20 reach their full academic potential. A school district  
21 receiving additional at-risk program units shall include a  
22 report of specified services implemented to improve the  
23 academic success of at-risk students. The report shall  
24 identify the ways in which the school district and individual  
25 schools use funding generated through the at-risk index and the

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1 intended outcomes. For purposes of this section, "at-risk  
2 student" means a student who meets the criteria to be included  
3 in the calculation of the three-year average total rate in  
4 Subsection B of this section. The number of additional units  
5 to which a school district is entitled under this section is  
6 computed in the following manner:

$$7 \quad \text{At-Risk Index} \times \text{MEM} = \text{Units}$$

8 where MEM is equal to the total district membership, including  
9 early childhood education, full-time-equivalent membership and  
10 special education membership and where the at-risk index is  
11 calculated in the following manner:

12 (1) for fiscal year 2019,

13 Three-Year Average Total Rate x [0.106] 0.130 = At-Risk Index;

14 (2) for fiscal year 2020,

15 Three-Year Average Total Rate x 0.140 = At-Risk Index; and

16 (3) for fiscal year 2021 and subsequent fiscal  
17 years,

18 Three-Year Average Total Rate x 0.150 = At-Risk Index.

19 B. To calculate the three-year average total rate,  
20 the department shall compute a three-year average of the school  
21 district's percentage of membership used to determine its Title  
22 I allocation, a three-year average of the percentage of  
23 membership classified as English language learners using  
24 criteria established by the federal office of civil rights and  
25 a three-year average of the percentage of student mobility.

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1 The department shall then add the three-year average rates.  
2 The number obtained from this calculation is the three-year  
3 average total rate.

4 C. The department shall recalculate the at-risk  
5 index for each school district every year."

6 SECTION 5. A new section of the Public School Finance Act  
7 is enacted to read:

8 "[NEW MATERIAL] TEACHER COST INDEX--LICENSURE-EXPERIENCE  
9 FACTOR--REPORT.--

10 A. The teacher cost index for each school district  
11 or charter school shall be calculated in accordance with  
12 instructions issued by the department. The teacher cost index  
13 for a school district in its first year of operations is 1.0.  
14 The teacher cost index for a school district or charter school  
15 in its second or subsequent year of operations is the greater  
16 of 1.0 or the average of the licensure-experience factors of  
17 all full-time-equivalent teachers on the school district's or  
18 charter school's payroll in October of that year who are  
19 assigned classroom teaching responsibilities. The licensure-  
20 experience factor of a teacher corresponds to the teacher's  
21 licensure level and years of experience and is as follows:

22 Licensure

23	<u>Level</u>	<u>Years of Experience</u>				
24		0 to 2	3 to 5	6 to 8	9 to 15	Over 15
25	1	0.755	0.785	0.800		

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1           2                           0.994           1.023           1.050           1.123  
2           3                           1.184           1.208           1.277.

3                   B. Beginning in 2021, the department, legislative  
4 education study committee staff and legislative finance  
5 committee staff shall jointly prepare and submit a report by  
6 November 1 of each year to the governor, the legislative  
7 education study committee and the legislative finance committee  
8 that includes:

9                   (1) data on the relationship of licensure-  
10 experience factors to actual teacher costs;

11                   (2) an analysis of the relationships among a  
12 teacher's licensure level, educational attainment, years of  
13 experience and salary; and

14                   (3) recommended changes, if any, to this section  
15 of the Public School Finance Act.

16                   C. As used in this section:

17                   (1) "licensure level" is the teaching licensure  
18 level as defined in the School Personnel Act; and

19                   (2) "years of experience" is as defined by  
20 department rule."

21                   SECTION 6. Section 22-8-25 NMSA 1978 (being Laws 1981,  
22 Chapter 176, Section 5, as amended) is amended to read:

23                   "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--  
24 DEFINITIONS--DETERMINATION OF AMOUNT.--

25                   A. The state equalization guarantee distribution is  
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1 that amount of money distributed to each school district to  
2 ensure that its operating revenue, including its local  
3 and federal revenues as defined in this section, is at least  
4 equal to the school district's program cost. For state-  
5 chartered charter schools, the state equalization guarantee  
6 distribution is the difference between the state-chartered  
7 charter school's program cost and the two percent withheld by  
8 the department for administrative services.

9 B. "Local revenue", as used in this section, means  
10 seventy-five percent of receipts to the school district derived  
11 from that amount produced by a school district property tax  
12 applied at the rate of fifty cents (\$.50) to each one thousand  
13 dollars (\$1,000) of net taxable value of property allocated to  
14 the school district and to the assessed value of products  
15 severed and sold in the school district as determined under the  
16 Oil and Gas Ad Valorem Production Tax Act and upon the assessed  
17 value of equipment in the school district as determined under  
18 the Oil and Gas Production Equipment Ad Valorem Tax Act.

19 C. "Federal revenue", as used in this section,  
20 means receipts to the school district or state-chartered  
21 charter school, excluding amounts that, if taken into account  
22 in the computation of the state equalization guarantee  
23 distribution, result, under federal law or regulations, in a  
24 reduction in or elimination of federal school funding otherwise  
25 receivable by the school district, derived from the following:

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1                   (1) seventy-five percent of the school  
2 district's share of forest reserve funds distributed in  
3 accordance with Section 22-8-33 NMSA 1978; and

4                   (2) seventy-five percent of grants from the  
5 federal government as assistance to those areas affected by  
6 federal activity authorized in accordance with Title 20 of the  
7 United States Code, commonly known as "PL 874 funds" or "impact  
8 aid".

9                   D. To determine the amount of the state  
10 equalization guarantee distribution, the department shall:

11                   (1) calculate the number of program units to  
12 which each school district or charter school is entitled using  
13 an average of the MEM on the second and third reporting dates  
14 of the prior year; or

15                   (2) calculate the number of program units to  
16 which a school district or charter school operating under an  
17 approved year-round school calendar is entitled using an  
18 average of the MEM on appropriate dates established by the  
19 department; or

20                   (3) calculate the number of program units to  
21 which a school district or charter school with a MEM of two  
22 hundred or less is entitled by using an average of the MEM on  
23 the second and third reporting dates of the prior year or the  
24 fortieth day of the current year, whichever is greater; and

25                   (4) using the results of the calculations in

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1 Paragraph (1), (2) or (3) of this subsection and the  
2 [~~instructional staff training and experience index~~] staffing  
3 cost multiplier from the October report of the prior school  
4 year, establish a total program cost of the school district or  
5 charter school;

6 (5) for school districts and state-chartered  
7 charter schools, calculate the local and federal revenues as  
8 defined in this section;

9 (6) deduct the sum of the calculations made in  
10 Paragraph (5) of this subsection from the program cost  
11 established in Paragraph (4) of this subsection;

12 (7) deduct the total amount of guaranteed energy  
13 savings contract payments that the department determines will  
14 be made to the school district from the public school utility  
15 conservation fund during the fiscal year for which the state  
16 equalization guarantee distribution is being computed; and

17 (8) deduct ninety percent of the amount  
18 certified for the school district by the department pursuant to  
19 the Energy Efficiency and Renewable Energy Bonding Act.

20 E. Reduction of a school district's state  
21 equalization guarantee distribution shall cease when the school  
22 district's cumulative reductions equal its proportional share  
23 of the cumulative debt service payments necessary to service  
24 the bonds issued pursuant to the Energy Efficiency and  
25 Renewable Energy Bonding Act.

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1           F. The amount of the state equalization guarantee  
2 distribution to which a school district is entitled is the  
3 balance remaining after the deductions made in Paragraphs (6)  
4 through (8) of Subsection D of this section.

5           G. The state equalization guarantee distribution  
6 shall be distributed prior to June 30 of each fiscal year. The  
7 calculation shall be based on the local and federal revenues  
8 specified in this section received from June 1 of the previous  
9 fiscal year through May 31 of the fiscal year for which the  
10 state equalization guarantee distribution is being computed.  
11 In the event that a school district or charter school has  
12 received more state equalization guarantee funds than its  
13 entitlement, a refund shall be made by the school district or  
14 charter school to the state general fund."

15           **SECTION 7. TEMPORARY PROVISION--PROTECTION FROM PROGRAM**  
16 **COST REDUCTIONS.--**

17           A. Using funds appropriated by the legislature for  
18 fiscal years 2020 through 2022, the public education department  
19 shall supplement a school district's or charter school's  
20 calculated program cost in each of those fiscal years:

21                   (1) if, for the fiscal year, the school  
22 district's or charter school's calculated program cost is less  
23 than its final program cost in the previous fiscal year, not  
24 considering any supplement the school district or charter  
25 school receives under this subsection; and

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(2) as follows:

(a) for fiscal year 2020, in an amount equal to one hundred percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less;

(b) for fiscal year 2021, in an amount equal to seventy-five percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; and

(c) for fiscal year 2022, in an amount equal to fifty percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; but

(3) if, in a fiscal year, the appropriation for the purpose of implementing this subsection is insufficient to supplement school districts and charter schools in accordance with Paragraphs (1) and (2) of this subsection, then in an amount equal to the school district's or charter school's prorated share of the total appropriation.

B. On or before February 1 of 2020 through 2022, the public education department shall submit a report to the legislative education study committee and the legislative

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1 finance committee that states, regarding the current fiscal  
2 year:

3 (1) the sum needed to supplement school  
4 districts and charter schools in accordance with this section;

5 (2) a list of the school districts and charter  
6 schools eligible to receive a supplement in accordance with  
7 this section; and

8 (3) the supplement amount of each of those  
9 school districts and charter schools.

10 SECTION 8. APPROPRIATION.--Twenty-two million five  
11 hundred forty-one thousand four hundred dollars (\$22,541,400)  
12 is appropriated from the general fund to the state equalization  
13 guarantee distribution for expenditure in fiscal year 2019 to  
14 offset the rise in costs from the increase in the at-risk index  
15 effected by this act. Any unexpended or unencumbered balance  
16 remaining at the end of fiscal year 2019 shall revert to the  
17 general fund.

18 SECTION 9. REPEAL.--Section 22-8-46 NMSA 1978 (being Laws  
19 2005, Chapter 49, Section 1, as amended) is repealed.

20 SECTION 10. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2018.

