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FISCAL IMPACT REPORT

JOINT LFC-LESC ANALYSIS

SPONSOR House Floor **ORIGINAL DATE** 2/27/19 **CS/CS/672/HAFCS/HF**
LAST UPDATED 3/15/2019 **HB** LS

SHORT TITLE Funding for Certain Schools **SB** _____
ANALYST Rabin/Clark/
Rogne (LESC)

REVENUE (dollars in thousands)

					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	4 Year Total Cost		
\$35,100.0	\$34,200.0	\$34,300.0	\$33,500.0	\$137,100.0	Recurring	STB Revenue for Impact Aid School Districts and Charter Schools
(\$35,100.0)	(\$34,200.0)	(\$34,300.0)	(\$33,500.0)	(\$137,100.0)	Recurring	STB Revenue for Other Projects
\$16,075.2	\$16,416.0 ¹	\$16,836.5 ¹	\$17,280.1 ¹	\$66,607.8	Recurring	Public School Capital Improvements Fund
(\$16,075.2)	(\$16,416.0) ¹	(\$16,836.5) ¹	(\$17,280.1) ¹	(\$66,607.8)	Recurring	Public School Capital Outlay Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Proposed HAFS Substitute for HB686, HAFS Substitute for HB2 and HB3, HB5, HB325, HB326, HB634, SB1, SB170, SB172, SB245, SB280

SOURCES OF INFORMATION

LFC Files
LESC Files

Responses Received From

Public School Facilities Authority (PSFA)
Office of the Attorney General (NMAG)

¹ Subject to change based on adjustments to local tax revenue or number of program units.

SUMMARY

Synopsis of Bill

The House Floor Substitute for House appropriations and Finance Committee Substitute for House Bill 672 creates three different funding streams dedicated to school districts receiving federal Impact Aid. This bill does not make any changes to Impact Aid payments or the amount of Impact Aid credited in the public school funding formula for the state equalization guarantee (SEG), which is currently set at 75 percent. However, the bill does direct additional funding for capital projects, facility maintenance, and education technology to the schools most heavily impacted by the SEG's Impact Aid credit.

The bill earmarks 10 percent of the annual severance tax bonding (STB) capacity for capital outlay projects for Impact Aid school districts. The Legislature shall authorize the state Board of Finance to issue STBs in this amount for use by the Public School Capital Outlay Council (PSCOC) to fund these projects. An Impact Aid school districts shall receive proportionate shares of severance tax bonding capacity funding based on the amount of its credited operational Impact Aid payments. PSCOC shall receive project applications and rank projects in order of importance based on the school districts' five-year facilities plans. This revenue may be used for capital projects that exceed statewide adequacy standards or to provide the required local match for projects funded pursuant to the Public School Capital Outlay Act, but cannot not be used for indirect project costs. PSFA shall monitor and ensure proper reversions of excess bond proceeds. This provision of the bill has a delayed repeal date of June 30, 2034.

The bill further provides an additional minimum distribution under the Public School Capital Improvements Act (commonly referred to as "SB9") for all school districts receiving Impact Aid whose credited amount of Impact Aid in the SEG is equal to at least 2 percent of their program costs, and state- and locally-chartered charter schools within those districts. The additional school district distribution is calculated based on local tax rates and student membership (MEM), with adjustments for inflation, and guarantees a minimum annual distribution of \$500 thousand for each Impact Aid school district. Charter schools shall receive a share of the school district distribution proportionate to the charter schools' enrollment share of the district's total enrollment. The bill states that Impact Aid school districts should prioritize using this funding for maintenance projects, but may also use it payments toward lease with option to purchase (LWOP) arrangements or other capital projects under the Public School Capital Improvements Act. Charter schools may expend their distributions pursuant to the provisions of the Act, unless capital improvements for the charter school were not identified in a resolution approved by electors, in which case the charter school may expend the distribution for any capital improvements, including maintenance and payments toward LWOP arrangements.

Finally, the bill creates a new Impact Aid educational technology fund and establishes a formula by which those funds are to be distributed. As with the additional SB9 distribution contained in this bill, distributions from the Impact Aid educational technology fund are reserved for school districts receiving Impact Aid whose credited amount of Impact Aid in the SEG is equal to at least 2 percent of their program costs, and state- and locally-chartered charter schools within those districts. The bill does not contain an appropriation; however, portions of this analysis assume a \$10 million appropriation to the fund to illustrate how such funding would be distributed. Such an appropriation may be included in another bill.

The bill’s effective date is not specified, and as such will be 90 days after session ends (June 14).

FISCAL IMPLICATIONS

The increase in STB capacity for Impact Aid projects is offset by an equal reduction in capacity for other STB projects. These estimates are based on the most recent STB capacity estimates for the 2019 legislative session. The bill would incorporate a new earmark into the Board of Finance STB capacity estimates, which are to be sent to the Legislature each year by January 15. The next time this would occur after the effective date of the bill would be January 15, 2020, impacting FY20 and subsequent fiscal years but not impacting any issuance of STBs for FY19 in June 2019.

This bill would increase available capital funding for the 25 school districts and five state-chartered charter schools that receive Impact Aid payments. However, earmarking 10 percent of STB capacity for Impact Aid schools will significantly decrease the STB capacity available for annual appropriation to state agency and legislative capital outlay projects. In FY20, this would reduce the STB capacity available for such projects from an estimated \$287.8 million to \$252.7 million (see Attachment 1: Impact of HB672 of December 2018 Forecast of Capital Outlay Available, on Attachments, page 1).

The following table shows estimated STB capacity distributions to Impact Aid school districts:

Estimated STB Capacity Distributions to Impact Aid School Districts per HB672 Section 1¹

District	FY20	FY21	FY22	FY23	4 Year Total Distribution
Gallup-McKinley	\$13,185,261	\$12,847,178	\$12,884,742	\$12,584,224	\$51,501,405
Central Cons.	\$10,290,792	\$10,026,925	\$10,056,244	\$9,821,696	\$40,195,657
Zuni	\$3,292,486	\$3,208,064	\$3,217,444	\$3,142,402	\$12,860,395
Bernalillo	\$1,944,952	\$1,895,082	\$1,900,623	\$1,856,294	\$7,596,951
Dulce	\$1,551,673	\$1,511,887	\$1,516,308	\$1,480,942	\$6,060,810
Grants-Cibola	\$1,516,732	\$1,477,841	\$1,482,162	\$1,447,593	\$5,924,328
Pojoaque	\$521,408	\$508,038	\$509,524	\$497,640	\$2,036,610
Cuba	\$491,347	\$478,749	\$480,148	\$468,950	\$1,919,194
Jemez Valley	\$477,953	\$465,697	\$467,059	\$456,166	\$1,866,875
Alamogordo	\$380,981	\$371,212	\$372,297	\$363,614	\$1,488,104
Bloomfield	\$307,190	\$299,314	\$300,189	\$293,187	\$1,199,880
Magdalena	\$208,899	\$203,543	\$204,138	\$199,377	\$815,956
Los Alamos	\$178,913	\$174,325	\$174,835	\$170,757	\$698,830
Tularosa	\$159,567	\$155,476	\$155,930	\$152,294	\$623,267
Ruidoso	\$137,421	\$133,897	\$134,289	\$131,157	\$536,763
Jemez Mountain	\$109,551	\$106,742	\$107,054	\$104,558	\$427,906
Clovis	\$102,040	\$99,424	\$99,715	\$97,389	\$398,568
Los Lunas	\$100,558	\$97,980	\$98,266	\$95,974	\$392,778
Albuquerque	\$54,876	\$53,469	\$53,625	\$52,375	\$214,345
Española	\$45,619	\$44,450	\$44,580	\$43,540	\$178,189
Taos	\$19,088	\$18,599	\$18,653	\$18,218	\$74,557
Peñasco	\$13,362	\$13,019	\$13,057	\$12,753	\$52,191
Raton	\$6,105	\$5,948	\$5,966	\$5,827	\$23,845
Portales	\$2,990	\$2,914	\$2,922	\$2,854	\$11,681

Maxwell	\$234	\$228	\$229	\$224	\$915
Total	\$35,100,000	\$34,200,000	\$34,300,000	\$33,500,000	\$137,100,000

1. Assumes proportionate shares of credited Impact Aid in out-years are equivalent to FY18 proportions.

Source: LFC analysis of PED FY18 final funding formula data; STB capacity estimates from DFA and LFC files

This bill provides for continued funding by earmarking a percentage of STB funds. The LFC has concerns with creating new earmarks, as earmarking reduces the ability of the Legislature to establish spending priorities.

In addition, LFC recommended the Legislature not issue STBs for new capital projects this year due to significant non-recurring general fund revenues. Senate Bill 535 directs the STB capacity that would otherwise be used for debt service to the severance tax permanent fund. While this bill does not impede the Legislature’s ability to divert this funding this year, it would decrease the funding available to be redirected if the Legislature chose to repeat this process in future years.

The capital outlay bill (Senate Bill 280) includes \$34 million to address capital needs at Impact Aid schools. \$10 million is appropriated from the public school capital outlay fund to fund teacherages (teacher housing) and \$24 million is appropriated from the general fund to fund projects that exceed statewide adequacy standards.

This bill would increase the annual SB9 distribution for certain Impact Aid school districts by \$16.1 million in FY20. These funds are appropriated from supplemental severance tax bond (SSTB) capacity in addition to the SB9 distributions under current law for both Impact Aid and non-Impact Aid school districts, which would remain unchanged under this bill and total approximately \$18.4 million in FY20, for a total estimated FY20 SB9 distribution of \$34.5 million. This increase in the SB9 distribution would correspondingly decrease the available SSTB capacity for the public school capital outlay fund, which decreases the capital funding available for non-Impact Aid school districts and charter schools by \$16.1 million in FY20. If SSTB capacity is insufficient to make the increased SB9 distributions to Impact Aid school districts and charter schools pursuant to this bill, the SB9 distribution would be reduced. The FY19 SB9 distribution has already occurred. It does not appear this bill would require an additional FY19 distribution; however, without an effective date in FY20, it may (see Technical Issues, below).

The following table shows estimated additional SB9 distributions to Impact Aid school districts:

Estimated Additional SB9 Distribution to Impact Aid School Districts per HB672 Section 2¹

District ²	FY20	FY21	FY22	FY23	4 Year Total Distribution
Alamogordo	\$0	\$0	\$0	\$0	\$0
Albuquerque	\$0	\$0	\$0	\$0	\$0
Bernalillo	\$708,664	\$746,298	\$792,720	\$840,210	\$3,087,891
Bloomfield	\$500,000	\$500,000	\$500,000	\$500,000	\$2,000,000
Central Cons.	\$2,353,358	\$2,424,434	\$2,512,107	\$2,601,797	\$9,891,696
Clovis	\$0	\$0	\$0	\$0	\$0
Cuba	\$500,000	\$500,000	\$500,000	\$500,000	\$2,000,000
Dulce	\$500,000	\$500,000	\$500,000	\$500,000	\$2,000,000
Española	\$0	\$0	\$0	\$0	\$0
Gallup-McKinley	\$5,989,457	\$6,135,049	\$6,314,641	\$6,498,364	\$24,937,511

**Estimated Additional SB9 Distribution to Impact Aid School Districts
per HB672 Section 2¹**

District ²	FY20	FY21	FY22	FY23	4 Year Total Distribution
Grants-Cibola	\$1,707,290	\$1,752,640	\$1,808,581	\$1,865,807	\$7,134,319
Jemez Mountain	\$500,000	\$500,000	\$500,000	\$500,000	\$2,000,000
Jemez Valley	\$500,000	\$500,000	\$500,000	\$500,000	\$2,000,000
Los Alamos	\$0	\$0	\$0	\$0	\$0
Los Lunas	\$0	\$0	\$0	\$0	\$0
Magdalena	\$500,000	\$500,000	\$500,000	\$500,000	\$2,000,000
Maxwell	\$0	\$0	\$0	\$0	\$0
Peñasco	\$0	\$0	\$0	\$0	\$0
Pojoaque	\$880,760	\$904,112	\$932,917	\$962,384	\$3,680,172
Portales	\$0	\$0	\$0	\$0	\$0
Raton	\$0	\$0	\$0	\$0	\$0
Ruidoso	\$0	\$0	\$0	\$0	\$0
Taos	\$0	\$0	\$0	\$0	\$0
Tularosa	\$500,000	\$500,000	\$500,000	\$513,464	\$2,013,464
Zuni	\$935,650	\$953,512	\$975,545	\$998,085	\$3,862,792
Total	\$16,075,179	\$16,416,044	\$16,836,510	\$17,280,111	\$66,607,845

1. This analysis assumes SB9 recipients in FY20 through FY23 will be the same as in FY19. It does not account for districts that received SB9 funding in FY19 but have recently failed to pass a new SB9 mill levy or districts which may pass a new SB9 mill levy prior to FY23.

2. Includes locally- and state-chartered charter schools geographically located in the school district, which would receive proportionate shares of this revenue based on their student membership.

Source: LFC and LESC analysis of FY18 and FY19 final funding formula data and PED 2018 land valuation data

The following table shows the estimated total additional funding in FY20 for Impact Aid school districts and state-chartered charter schools from the new STB earmark distribution and the increased SB9 distribution. The table also assumes an additional \$10 million appropriation to the Impact Aid educational technology fund and Impact Aid educational technology distributions to Impact Aid school districts per the formula established under this bill, which may be included in another bill.

**Total Estimated Additional FY20 Funding for Impact Aid Districts
per HB672**

District ¹	STB Distribution per Section 1	Additional SB9 Distribution per Section 2	Educational Technology Distributions per Section 4 ²	Total Additional Funding
Alamogordo	\$380,981	\$0	\$0	\$380,981
Albuquerque	\$54,876	\$0	\$0	\$54,876
Bernalillo	\$1,944,952	\$708,664	\$856,535	\$3,510,151
Bloomfield	\$307,190	\$500,000	\$853,592	\$1,660,783
Central Cons.	\$10,290,792	\$2,332,658	\$1,705,598	\$14,329,048
Clovis	\$102,040	\$0	\$0	\$102,040
Cuba	\$491,347	\$500,000	\$165,763	\$1,157,111
Dulce	\$1,551,673	\$500,000	\$197,120	\$2,248,793
Española	\$45,619	\$0	\$8,517	\$54,136
Gallup-McKinley	\$13,185,261	\$5,818,900	\$3,304,351	\$22,308,512
Grants-Cibola	\$1,516,732	\$1,707,290	\$1,019,278	\$4,243,301
Jemez Mountain	\$109,551	\$500,000	\$64,184	\$673,735
Jemez Valley	\$477,953	\$500,000	\$112,457	\$1,090,410

**Total Estimated Additional FY20 Funding for Impact Aid Districts
per HB672**

District ¹	STB Distribution per Section 1	Additional SB9 Distribution per Section 2	Educational Technology Distributions per Section 4 ²	Total Additional Funding
Los Alamos	\$178,913	\$0	\$0	\$178,913
Los Lunas	\$100,558	\$0	\$0	\$100,558
Magdalena	\$208,899	\$500,000	\$95,386	\$804,285
Maxwell	\$234	\$0	\$0	\$234
Peñasco	\$13,362	\$0	\$0	\$13,362
Pojoaque	\$521,408	\$880,760	\$590,701	\$1,992,869
Portales	\$2,990	\$0	\$0	\$2,990
Raton	\$6,105	\$0	\$0	\$6,105
Ruidoso	\$137,421	\$0	\$0	\$137,421
Taos	\$19,088	\$0	\$0	\$19,088
Tularosa	\$159,567	\$500,000	\$247,484	\$907,051
Zuni	\$3,292,486	\$935,650	\$378,678	\$4,606,814
Total	\$35,100,000	\$15,883,921	\$10,000,000	\$69,792,542

1. Includes locally- and state-chartered charter schools, which receive a proportional distribution of the additional SB9 distribution and the educational technology distribution based on student membership.

2. Assumes an additional \$10 million appropriation to the Impact Aid educational technology fund, which may be included in another bill.

Source: LFC analysis of PED FY18 and FY19 final funding formula data and PED 2018 land valuation data; DFA and LFC files

SIGNIFICANT ISSUES

Impact Aid. Impact Aid is defined as grants from the federal government given as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code. Because New Mexico’s SEG distribution is intended to equalize education funding, the funding formula is based on MEM and other characteristics, and the state takes credit for 75 percent of local tax revenue and federal funding (including operational Impact Aid) when calculating state SEG funding for school districts and charter schools to account for differences in local property tax wealth and federal payments in lieu of taxes. In the calculation of the FY18 SEG, schools received \$78.2 million in operational Impact Aid revenue, and the state took credit for \$58.7 million of these revenues. Based on prior year trends, total operational Impact Aid revenue for FY19 is estimated to be \$72.3 million. In addition, the state does not take credit for Impact Aid funding for special education, Native American education, or construction, which totaled \$21.5 million in FY18 and are estimated to be \$30.6 million in FY19.²

Some school districts receiving Impact Aid contend that these payments are provided by the federal government in lieu of property taxes, which would have otherwise been used to generate funds for capital outlay projects. Operational Impact Aid can be used for any purpose, including operational expenses, transportation, and capital outlay. Impact Aid for construction can also be used for capital outlay projects.

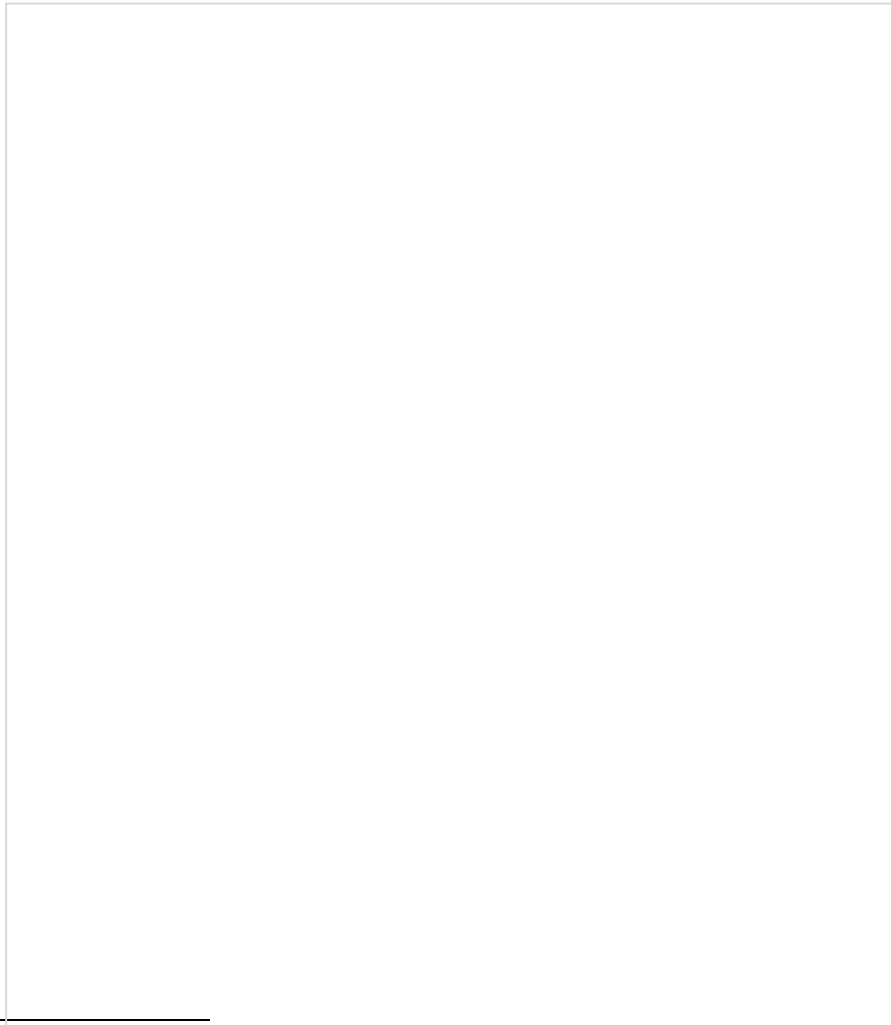
Despite retaining up to 40 percent of uncredited Impact Aid payments (including 25 percent of operational aid and 100 percent of Native American education, special education, and construction aid) received, Impact Aid school districts still report difficulties with addressing capital outlay needs. Fiscal constraints and capital outlay needs vary by district, but most Impact

² See Attachment 3: FY18 Impact Aid Payments by District, Attachments, page 3.

Aid school districts have experienced growth in school cash balances³ (despite the cash balance credit in 2017) and comparable improvements in school facility conditions.⁴

This bill attempts to address the concerns of Impact Aid school districts regarding their inability to build above adequacy by providing additional funding streams for capital projects. While the bill does not directly change the way Impact Aid is calculated in the public school funding formula for the SEG, it does direct additional funding at the schools affected by that credit.

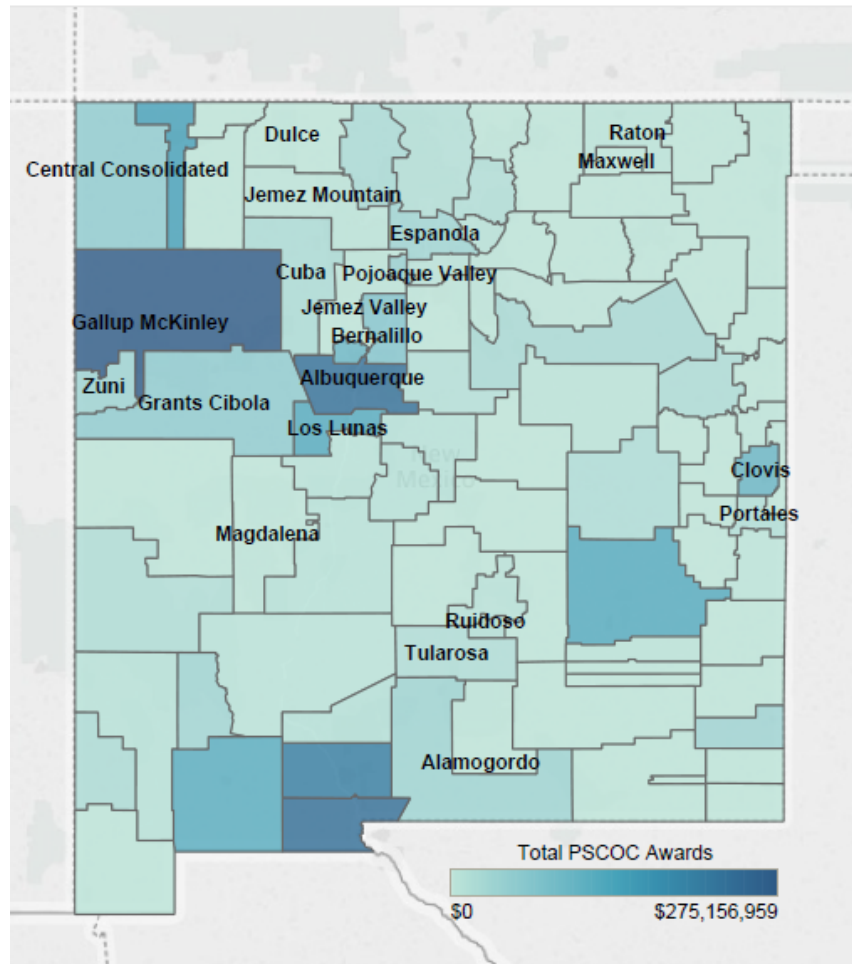
Zuni Lawsuit and Public School Capital Outlay Funding. The current public school capital outlay process is the result of the ruling in the *Zuni Public School District vs. State of New Mexico* lawsuit in 1999, and was approved by the court as sufficiently addressing the constitutional issues related to ensuring each school district has access to adequate facilities. As part of the system, the state developed “adequacy standards,” which represent the maximum facility space the state will allocate matching funds toward through the standards-based capital outlay process overseen by PSCOC. The following map illustrates the total capital funding that has been awarded to school districts, including Impact Aid districts, since the PSCOC funding programs were initiated in the early 2000s:



³ See Attachment 5: School District and Charter School Unrestricted Cash Balances, Attachments, pages 5 to 7.

⁴ The average facilities condition index (FCI) for Impact Aid districts is 50.4 percent. The average FCI for non-Impact Aid districts is 49.3 percent. See Attachment 6: Average District Facility Condition Index, Attachments, pages 8 to 9.

Distribution of Total Capital Funding Awarded through PSCOC to Date



Source: Public School Facilities Authority

The *Zuni* capital outlay lawsuit has never been closed, and these same plaintiff school districts asked the court for a status hearing on the merits of their renewed claims of inequity in 2015. The major concern of the plaintiffs appears to be their inability to raise sufficient local capital outlay revenue to build above adequacy facilities, while other school districts are able to build above adequacy with available local revenues.

To address the plaintiffs’ concerns that a number of school districts around the state have sufficient capacity to build facilities above the adequacy standards, Laws 2018, Chapter 66 (Senate Bill 30) was enacted. SB30 changed the state and local match calculation that is required for most projects that receive funding pursuant to the Public School Capital Outlay Act. The new, phase two formula effectively sets the state match percentage at the percentage of funding a school district is unable to raise to maintain their facilities to the statewide adequacy standards. This will be a significant shift from the phase one formula, which is not well-aligned with some school districts’ actual need for additional funding, and will result in many large, urban school districts seeing a significant reduction in the amount of funding they will receive for PSCOC-funded projects; this is an attempt to level the playing field and will likely impact their ability to build significantly above adequacy. The phase two formula will phase in over the next four years; FY20 awards will be based on 80 percent of the phase one formula and 20 percent of the phase two formula.

The additional annual funding of about \$50.8 million to Impact Aid school districts provided for in this bill, as well as a potential \$10 million appropriation to the Impact Aid educational technology fund, may help address the inequities alleged by the current plaintiffs in the *Zuni* lawsuit. The Legislature may wish to consider if enactment of this bill should be made contingent to dismissal of *Zuni Public School District vs. State of New Mexico*.

Equity of Capital Funding. While this bill may help alleviate the concerns of Impact Aid school districts by allowing them to build above adequacy, it may also create additional inequities statewide. There are some school districts that do not receive Impact Aid that also lack sufficient property tax base to allow them to build above adequacy. For example, Grady Municipal Schools will have the second highest state match under the phase two formula (92 percent in FY24), but does not receive Impact Aid. Other similarly situated districts include Hatch Valley Public Schools (89 percent state match in FY24) and Gadsden Independent Schools (75 percent state match in FY24). In addition, some school districts that do not currently receive Impact Aid, such as Cloudfcroft Municipal Schools and Carrizozo Municipal Schools, have significant local match requirements (90 percent in FY19, increasing to 94 percent in FY24) but have historically struggled to raise sufficient local revenue to meet their local match requirements.

Enactment of this bill may resolve issues in capital funding for some school districts, but may exacerbate inequities statewide. This bill will ensure significant sources of additional revenues for some schools over the next 15 years (for the STB distribution) on an ongoing basis (for the increased SB9 distribution); the Legislature may wish to consider including a sunset date for the increased SB9 distribution to ensure review of this provisions and its impact on equitable funding occurs.

Constitutional Concerns. By creating additional inequities in capital funding, this bill may violate the New Mexico Constitution. The *Zuni* lawsuit found that the constitution’s guarantee of “a uniform system of free public schools sufficient for the education of, and open to, all children of school age” (Section 1, Article XII) applies to capital funding.

In addition, this bill may violate Section 10, Article XII of the New Mexico Constitution, which states that “children of Spanish descent...shall never be classed in separate schools and shall forever enjoy perfect equality perfect equality with other children in all public schools.” Increasing funding to Impact Aid school districts would exacerbate inequalities between the students who attend those schools and children who attend non-Impact Aid schools, which include children of “Spanish descent.”

Severance Tax Bond Revenue (Section 1, Section 5)

STB Earmarks. This provision is similar to the existing earmarks of 9 percent for water projects, 4.5 percent for colonias projects, and 4.5 percent for tribal projects. If this bill is enacted, the unallocated portion of STB capacity will change from the current 82 percent to 72 percent.

Eligible Projects. It is unclear if the intent of this bill is to fund projects that could otherwise be funded under the Public School Capital Outlay Act, or if it intends to provide funding only to projects that are ineligible for such funding, such as projects that fall outside adequacy standards or for schools that do not qualify for awards under the Act in the current award cycle.

Eligible School Districts. For purposes of Section 1, this bill defines an Impact Aid school district as one that has applied for and received Impact Aid for the last three years. Under such a definition, all recipients of Impact Aid in FY18 would be eligible for funding under this bill, as they also received Impact Aid in FY16 and FY17. This includes school districts that do not face the same challenges regarding local property tax bases that initially prompted the *Zuni* lawsuit and currently receive very low Impact Aid payments, such as Albuquerque Public Schools. To ensure these funds are targeted to school districts that face significant property tax impacts from federal government activity, it may be desirable to restrict the funding available under this bill to school districts receiving a minimum total or per-MEM amount of Impact Aid funding. Attachment 3, FY18 Impact Aid Payments by District (Attachments, page 3), includes the amount of a district's FY18 total operational Impact Aid per-MEM.

Not all school districts that may be eligible for Impact Aid funding apply, as the amount of Impact Aid they expect to receive does not warrant the effort of applying. Because capacity is distributed proportionately based on a school district's amount of Impact Aid, it is unlikely that this bill would incentivize school districts to apply simply to be eligible for funding under this bill, diluting the funding available for heavily-impacted schools. However, a minimum threshold on Section 1 similar to that employed by Sections 2 and 4 could ensure funding flows to the most impacted schools, rather than some schools with small shares of Impact Aid receiving extremely small shares of STB capacity. For example, Maxwell is projected to receive only \$234 dollars in capacity under this bill in FY20.

Prioritization. This bill establishes a formula to calculate distributions of STB capacity under the earmark established in Section 1, but also states that PSCOC shall receive applications and shall rank projects in order of importance based on school districts' and charter schools' five-year facilities plans. It is unclear what purpose applications and project rankings serve if the distribution is determined by formula. If the intention of the bill is for PSCOC to participate in selecting which projects will be funded, this should be made clear.

It is also important to note that the priorities outlined on a school district or charter school's facilities master plan may not align with PSCOC's school condition rankings. It may be desirable to provide PSCOC with the authority and flexibility to evaluate applicant projects and determine funding priorities irrespective of their ranking on the facilities master plan.

Reversion and Reallocation of Funds. This bill provides that unexpended balances from projects awarded under this section shall revert to the severance tax bonding fund within six months of the project's completion; however, the bill does not provide a mechanism by which funds can be reverted or reallocated from projects that are not making progress or are not expected to complete. It may be desirable to include such a mechanism. It may also be desirable to specify a deadline by which unspent funds are automatically reverted. In general, STB proceeds used to fund capital outlay projects revert to the severance tax bonding fund four years after appropriation.

Above-Adequacy Funding Needs. The above-adequacy funding needs of Impact Aid school districts have not been defined, so it is unclear if the funding provided for in this bill will not fully cover, equal, or exceed need. The Legislature may wish to direct PSCOC and PSFA to study these needs before allocating funding.

Public School Capital Improvements Funding (Section 2)

Public School Capital Improvements Act (SB9). Also called the “two-mill levy,” this funding mechanism allows districts, with voter approval, to impose a levy of up to two mills for a maximum of six years. Participating school districts are guaranteed a certain level of funding supplemented with state funds if the local tax effort does not generate the guaranteed amount. The “program guarantee” is based on the school district’s 40th day total program units multiplied by the matching dollar amount (\$70 per program unit, plus consumer price index adjustments) multiplied by the mill rate stated in the voter approved resolution. The total revenue generated by the two-mill levy is subtracted to determine the amount of “matching,” or guarantee funds the school district will receive from the state (see also Public School Capital Improvements Act under “Local Support”). The Public School Capital Improvements Act also guarantees each school district whose voters agree to impose the levy a minimum distribution from state funds of approximately \$5 per mill per unit (with yearly adjustments based upon the consumer price index).

This bill alters these calculations for all school districts receiving Impact Aid whose credited amount of Impact Aid in the SEG is equal to at least 2 percent of their program costs to provide significantly more funding through SB9. The additional “program guarantee” is based on the average of the school district’s second and third reporting dates’ total program units multiplied by the matching dollar amount (\$175 per program unit, plus consumer price index adjustments) multiplied by the mill rate stated in the voter approved resolution. The total revenue generated by the two-mill levy is subtracted to determine the amount of “matching,” or guaranteed funds the district will receive from the state. The bill also guarantees each eligible school district a minimum distribution from state funds of approximately \$9.50 per mill per unit (with yearly adjustments based upon the consumer price index) and guarantees a minimum distribution of \$500 thousand dollars for every eligible school district. This ensures a minimum distribution of \$6.5 million annually, as there are 13 eligible school districts. The FY20 distribution is projected to be significantly higher, at \$15.9 million.

Under current law, state-chartered charter schools receive SB9 funding through the school district in which they are geographically located. This bill allocates locally- and state-chartered charter schools geographically located within the Impact Aid school district a distribution proportionate to the charter school’s enrollment share of the total district enrollment. This includes state-chartered charter schools that do not receive Impact Aid payments directly but are geographically located within a school district that receives such payments.

Funding for Standards-Based Public School Capital Outlay Awards. PSCOC’s current standards-based funding program was developed and established in response to the *Zuni Public School District vs. State of New Mexico* lawsuit. PSCOC was established to ensure sufficient and equitable capital funding for all New Mexico schools. While school facility conditions have improved since the council was established, it is essential to fully fund the standards-based and systems-based award programs to fulfill PSCOC’s core mission of ensuring educational adequacy. Increasing the SB9 distribution for Impact Aid school districts will significantly decrease funds available to make awards that support its core mission of addressing the inequities identified in the *Zuni* lawsuit. This is particularly concerning in low severance tax revenue years as supplemental severance tax revenues may be insufficient to cover all PSCOC’s programs.

Charter Schools in Private Facilities. The bill requires SB9 distributions be made to charter

schools geographically located within a school district based on their proportionate share of the district's total student membership. Many charter schools lease privately-owned facilities, and as such capital improvements could violate the New Mexico constitution's anti-donation clause. Charter schools could be very restricted in spending these funds.

Educational Technology Funding (Sections 3-4)

The bill creates a new Impact Aid educational technology fund with a distribution formula modeled after the educational technology fund, but restricted to school districts receiving Impact Aid whose credited amount of Impact Aid in the SEG is equal to at least 2 percent of their program costs. This targets appropriations to this fund to the schools most affected by federal government activity.

ADMINISTRATIVE IMPLICATIONS

PSCOC and PSFA may need to develop guidelines and a process to allocate funds under Section 1 of this bill, which may include developing an application and ranking methodology. It is unclear if this will be necessary (see Prioritization under Significant Issues, above).

PSFA notes it is unclear if the agency will be required to provide assistance and oversight on the capital projects funded through the additional STB capacity in the same manner it does for other PSCOC-awarded projects. PSCOC has awarded 256 new projects in fiscal year 2018-2019; additional efforts to directly support the districts with these projects may require additional staff.

CONFLICT, RELATIONSHIP

This bill conflicts with the proposed HAFCS Substitute for House Bill 686, which also creates an earmark for Impact Aid school districts' capital outlay projects but does not make charter schools eligible for this funding.

This bill relates to House Bill 325 and Senate Bill 172, which eliminate the state's ability to credit federal Impact Aid in the public school funding formula. This bill also relates House Bill 326 and Senate Bill 170, which phase out the Impact Aid credit over a three-year period.

This bill relates to House Bill 634, which would eliminate the local tax revenue credit in FY20; as a consequence of this reduction, federal law would prohibit the state crediting Impact Aid.

This bill relates to House Bill 5, Senate Bill 1, and the HAFCS Substitute for House Bills 2 and 3, which make changes to the public school funding formula and include a \$3 billion appropriation for the state equalization guarantee distribution, a \$488.7 million, or 18.9 percent, increase from FY19 funding levels. These changes are expected to result in substantial increases to school operational revenues, particularly for Impact Aid school districts like Central Consolidated Schools (23.9 percent), Gallup-McKinley County Schools (24.9 percent), and Zuni Public Schools (25.1 percent).

This bill relates to the capital outlay bill (Senate Bill 280), which includes a \$10 million appropriation for teacherages from the public school capital outlay fund and a \$24 million general fund appropriation for above-adequacy projects (see Fiscal Implications, above).

This provision of this bill that allows SB9 funding to be used for payments associated with LWOP arrangements relates to Senate Bill 245, which sets aside funds to pay off lease purchase arrangements for charter schools.

TECHNICAL ISSUES

Definitions. The bill does not include a definition of “capital outlay projects.” Section 7-27-10.1 NMSA 1978, which establishes the earmarks for the water project fund and tribal infrastructure fund, includes a definition for “water projects” and “tribal infrastructure project.” It may be desirable to include such a definition in this bill. In addition, PSFA notes that the bill does not specify capital projects must be related to educational facilities. It is possible that without a clearer definition of eligible capital projects, these funds could be used to support buildings that are not used by students, such as administration buildings. It is unclear if the intention of the bill is to provide funding for such projects; a detailed definition of “capital outlay projects” could resolve this issue.

Page 3, lines 15 to 17, the bill prohibits funds from the earmark established in Section 1 from being used to pay indirect project costs, but does not define “indirect project costs.”

Effective Dates. There is no effective date of this bill, and as such it will take effect 90 days after the end of this session (June 14); however, the distribution of SB9 funds from Impact Aid school districts to charter schools located within that district under Section 2.H of this bill specifically applies only to SB9 distributions made to school districts on or after July 1, 2019. In addition, it is unclear if this bill would require an additional SB9 distribution in FY19. The distribution under current law has already been made, and SSTBs would need to be recertified to ensure sufficient funds were available for such a distribution. An effective date in FY20 could ensure this does not become an issue.

OTHER SUBSTANTIVE ISSUES

The federal government provides Impact Aid funding to school districts and charter schools to compensate for property taxes not received from federal lands (including property owned by the U.S. Forest Service, the Bureau of Land Management, national laboratories, Indian reservations, and any other federally-owned property). School districts and charter schools receive different types of Impact Aid for school operations, special education, Native American education, and construction. Recipients directly receive 100 percent of federal Impact Aid payments, and the Indian Affairs Department notes operational Impact Aid may be used for a variety of purposes, including teacher salaries, utilities, facilities maintenance, supplies, and capital improvements.

Although New Mexico, unlike other states, has not relied much on local property taxes to fund education, 25 school districts and five state-chartered charter schools received \$78.2 million of Impact Aid in FY18. Because New Mexico’s funding formula is intended to equalize education funding, based on MEM and other characteristics, despite differences in local property tax wealth, the state takes credit for 75 percent of operational Impact Aid funding when calculating each district and charter school’s SEG distribution. In FY18, these schools received an additional \$19.6 million above their program cost from uncredited operational Impact Aid; in FY19, schools are expected to receive \$18.1 million in uncredited operational Impact Aid.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

Attachments

1. Impact of HB672 on December 2018 Forecast of Capital Outlay Available (pg. 1)
2. Fiscal Impact of HB672 (pg. 2)
3. FY18 Impact Aid Payments by District/State-Chartered Charter School (pg. 3)
4. History of Operational Impact Aid Payments (pg. 4)
5. School District and Charter School Unrestricted Cash Balances (pp. 5-7)
6. Average District Facility Condition Index (pg. 8-9)

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