

HOUSE BILL 83

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO EARLY CHILDHOOD; CREATING THE EARLY CHILDHOOD EDUCATION AND CARE FUND; CREATING THE EARLY CHILDHOOD EDUCATION AND CARE PROGRAM FUND; HAFc→~~DISTRIBUTING CERTAIN REVENUE RECEIVED BY THE STATE PURSUANT TO THE OIL AND GAS EMERGENCY SCHOOL TAX ACT~~←HAFc HAFc→CREATING THE EXCESS EXTRACTION TAXES SUSPENSE FUND; DISTRIBUTING EXCESS OIL AND GAS EMERGENCY SCHOOL TAX REVENUE TO THE EXCESS EXTRACTION TAXES SUSPENSE FUND; TRANSFERRING REVENUE IN THE EXCESS EXTRACTION TAXES SUSPENSE FUND TO THE TAX STABILIZATION RESERVE AND←HAFc TO THE EARLY CHILDHOOD EDUCATION AND CARE FUND; DISTRIBUTING CERTAIN REVENUE

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RECEIVED BY THE STATE PURSUANT TO THE FEDERAL MINERAL LEASING
ACT TO THE EARLY CHILDHOOD EDUCATION AND CARE FUND ~~HAFC~~;

~~MAKING AN APPROPRIATION~~ ← HAFC.

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

SECTION 1. [NEW MATERIAL] EARLY CHILDHOOD EDUCATION AND
CARE FUND.--

A. The "early childhood education and care fund" is
created within the state treasury. The fund shall consist of
distributions, appropriations, gifts, grants and donations.
Income from investment of the fund shall be credited to the
fund. Money in the fund shall be expended only as provided in
this section.

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

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

(2) in consultation with the state treasurer.

C. The state investment officer shall report
quarterly to the legislative finance committee and the state
investment council on the investments made pursuant to this
section. Annually, a report shall be submitted no later than
October 1 each year to the legislative finance committee, the
revenue stabilization and tax policy committee and any other
appropriate interim committees.

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D. On July 1, 2021, a distribution shall be made from the early childhood education and care fund to the early childhood education and care program fund in the amount of twenty million dollars (\$20,000,000) and on July 1, 2022 and on each July 1 thereafter, a distribution shall be made from the early childhood education and care fund to the early childhood education and care program fund in an amount equal to the greater of five percent of the average of the year-end market values of the fund for the immediately preceding three calendar years or thirty million dollars (\$30,000,000).

E. In addition to the distribution pursuant to Subsection D of this section, money in the early childhood education and care fund may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund ~~H AFC → HEC →, the statesupport reserve fund ← HEC ← H AFC H AFC →, the state-support reserve fund ← H AFC~~ and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to avoid an unconstitutional deficit, the legislature may appropriate from the early childhood education and care fund to the general fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized

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transfers from the appropriation contingency fund, H AFC → the
general fund operating reserve, ← H AFC the tax stabilization
reserve and the tobacco settlement permanent fund that exhaust
those fund balances.

SECTION 2. [NEW MATERIAL] EARLY CHILDHOOD EDUCATION AND
CARE PROGRAM FUND.--The "early childhood education and care
program fund" is created as a nonreverting fund in the state
treasury. The fund consists of distributions, appropriations,
gifts, grants, donations and income from investment of the
fund. The early childhood education and care department shall
administer the fund. Money in the fund is subject to
appropriation by the legislature for early childhood education
and care services and programs. Expenditures from the fund
shall be by warrant of the secretary of finance and
administration pursuant to vouchers signed by the secretary of
early childhood education and care or the secretary's
authorized representative.

SECTION 3. [NEW MATERIAL] DISTRIBUTION--EARLY CHILDHOOD
EDUCATION AND CARE FUND--PAYMENTS PURSUANT TO FEDERAL MINERAL
LEASING ACT.--

A. If, by June 30, H EC → 2021 ← H EC H EC → 2022 ← H EC and
by June 30 of each fiscal year thereafter, the net receipts for
that fiscal year of the money received by the state pursuant to
the federal Mineral Leasing Act exceed the annual average
amount, the excess shall be distributed to the early childhood

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education and care fund and attributed to that fiscal year. If there is an excess amount, the distribution shall be made as soon as practicable. If there is not an excess amount, no distribution shall be made to the fund. The department of finance and administration shall make the calculation to determine if an excess amount shall be distributed.

B. As used in this section, "annual average amount" means the total net receipts attributable to money received by the state pursuant to the federal Mineral Leasing Act in the immediately preceding five fiscal years, divided by five.

HAFC→SECTION 4. A new section of Chapter 6, Article 4 NMSA 1978 is enacted to read:

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

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

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

(1) to the tax stabilization reserve, the amount necessary to bring the balance of state reserves to a

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level equal to twenty-five percent of the aggregate recurring appropriations for that fiscal year from the general fund, as determined by the department; provided that, if the balance in the excess extraction taxes suspense fund is not sufficient to meet that level, the entire balance shall be transferred to the tax stabilization reserve; and

(2) to the early childhood education and care fund, the balance remaining in the excess extraction taxes suspense fund, if any, after the transfer is made pursuant to Paragraph (1) of this subsection.

C. As used in this section, "state reserves" means the general fund balances, as determined by the department of finance and administration, including all authorized revenues and transfers to the general fund and balances in the appropriation contingency fund, the general fund operating reserve, the state-support reserve fund, the tax stabilization reserve and the tobacco settlement permanent fund."←H AFC

SECTION H AFC→4←H AFC H AFC→5←H AFC. Section 7-1-6.20 NMSA 1978 (being Laws 1985, Chapter 65, Section 6, as amended) is amended to read:

"7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES SUSPENSE FUND--DISTRIBUTION.--

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the

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suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 [~~NMSA 1978~~] and [~~Section 3 of this 2017 act~~] 7-1-6.61 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittances unidentified as to source or disposition, shall be transferred to the general fund.

B. Payments on assessments issued by the department pursuant to the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Severance Tax Act shall be held in the extraction taxes suspense fund until the secretary determines that there is no substantial risk of protest or other litigation, whereupon after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month attributed to these payments shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 [~~NMSA 1978~~] and [~~Section 3 of this 2017 act~~] 7-1-6.61 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund."

HAFC→~~SECTION 5. Section 7-1-6.61 NMSA 1978 (being Laws 2017 (1st S.S.), Chapter 3, Section 3) is amended to read:~~

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~~"7-1-6.61. DISTRIBUTION--TAX STABILIZATION RESERVE FROM THE OIL AND GAS EMERGENCY SCHOOL TAX--EARLY CHILDHOOD EDUCATION AND CARE FUND.--"~~

~~A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made [to the tax stabilization reserve] in an amount as calculated pursuant to Subsection B of this section.~~

~~B. If the year-to-date amount plus the current net receipts exceeds the annual average amount, the excess revenue shall be distributed to the tax stabilization reserve; provided that if the balance in the state reserves for the current fiscal year prior to the distribution is:~~

~~(1) equal to or greater than twenty-five percent of the aggregate recurring appropriations for the current fiscal year from the general fund as determined by the department of finance and administration, then the excess revenue shall be distributed to the early childhood education and care fund as soon as practicable; or~~

~~(2) less than twenty-five percent of the aggregate recurring appropriations for the current fiscal year from the general fund as determined by the department of finance and administration, then the excess amount distributed to the tax stabilization reserve shall be limited to the amount necessary to bring the balance equal to twenty-five percent of the aggregate recurring appropriations from the general fund as~~

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~~determined by the department of finance and administration and any remaining excess revenue shall be distributed to the early childhood education and care fund as soon as practicable.~~

~~C. If there is not an excess amount, no distribution shall be made [to the tax stabilization reserve. Each month].~~

~~D. The department of finance and administration shall make the calculation to determine if an excess amount should be distributed.~~

~~[C.] E. As used in this section:~~

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

~~(2) "state reserves" means the general fund balances, including all authorized revenues and transfers to the general fund and balances in the appropriation contingency fund, the general fund operating reserve, HAFC → HEC → the state-support reserve fund, ← HEC ← HAFC the tax stabilization reserve and the tobacco settlement permanent fund; and~~

~~[(2)] (3) "year-to-date amount" means the cumulative year-to-date net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to~~

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~~the general fund in the prior months of the current fiscal year."~~↔H AFC

H AFC→SECTION 6. Section 7-1-6.61 NMSA 1978 (being Laws 2017 (1st S.S.), Chapter 3, Section 3) is amended to read:

"7-1-6.61. DISTRIBUTION--~~[TAX STABILIZATION RESERVE FROM THE]~~ OIL AND GAS EMERGENCY SCHOOL TAX--EXCESS EXTRACTION TAXES SUSPENSE FUND.--

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the ~~[tax stabilization reserve]~~ excess extraction taxes suspense fund in an amount as calculated pursuant to Subsection B of this section.

B. If the year-to-date amount plus the current net receipts exceeds the annual average amount, the excess shall be distributed by the taxation and revenue department to the [tax stabilization reserve] excess extraction taxes suspense fund. Each month the department of finance and administration shall make the calculation to determine the excess amount to be distributed. If there is not an excess amount, no distribution shall be made ~~[to the tax stabilization reserve. Each month the department shall make the calculation to determine if an excess amount should be distributed].~~

C. As used in this section:

(1) "annual average amount" means the total net receipts attributable to the tax imposed pursuant to

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Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal years, divided by five; and

(2) "year-to-date amount" means the cumulative year-to-date net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in the prior months of the current fiscal year." ←H AFC

SECTION H AFC → 6 ← H AFC H AFC → 7 ← H AFC. Section 22-8-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 90, as amended) is amended to read:

"22-8-34. FEDERAL MINERAL LEASING FUNDS.--

A. [~~Except for an annual appropriation to the instructional material fund and to the bureau of geology and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other~~] Money received by the state pursuant to the provisions of the federal Mineral [~~Lands~~] Leasing Act [~~30 USCA 181, et seq.~~] shall be distributed to the public school fund, except as follows:

(1) an annual appropriation to the instructional material fund;

(2) an annual appropriation to the board of regents of the New Mexico institute of mining and technology for the bureau of geology and mineral resources;

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(3) the distribution made pursuant to Subsection B of this section; and

(4) the distribution made pursuant to Section 3 of this 2020 act.

B. [All] Money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b), as that section may be amended or renumbered, shall be distributed as follows:

(1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and

(2) the remainder shall be distributed to the common school permanent fund."

HAFC → ~~SECTION 7. APPROPRIATION. -- Three hundred twenty million dollars (\$320,000,000) is appropriated from the general fund to the early childhood education and care fund for expenditure in fiscal year 2021 and subsequent fiscal years to provide initial funding to the early childhood education and care fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.~~ ← HAFC

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.

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