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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>SB131/aSEC/aSFC</u>	Sponsor	<u>Stewart/Brandt</u>
Tracking Number	<u>.223539.2</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Public School Funding Changes</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>1/20/23</u>
		Last Updated	<u>2/17/23</u>

**FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

BILL SUMMARY

Synopsis of Senate Finance Committee Amendment

The Senate Finance Committee amendment to Senate Bill 131 as amended by the Senate Education Committee (SB131/aSEC/aSFC) strikes the bill's appropriations for school security, career-technical education (CTE), prekindergarten, and local maintenance priorities. The amendment also strikes the Senate Education Committee amendment, which only modified the appropriations.

Synopsis of Senate Education Committee Amendment

The Senate Education Committee amendment to Senate Bill 131 (SB131/aSEC) ensures charter schools have access to the appropriations for security and career-technical education, prekindergarten, and local maintenance priorities. Locally chartered and state-chartered charter schools shall receive \$25 thousand for school security and \$50 thousand for CTE, prekindergarten or local maintenance priorities.

Synopsis of Original Bill

Senate Bill 131 (SB131) makes a number of changes to the Public School Capital Outlay Act to improve school districts' access to public school capital outlay funding. The bill also makes technical clean-up changes to simplify the Public School Capital Outlay Act.

The bill establishes a temporary one-third reduction to school districts' "local match," the share of the cost of a public school capital outlay project school districts are responsible for paying. For micro-districts with fewer than 200 MEM (public school student membership), the local match will be reduced by one half. Additionally, the local match for all prekindergarten facilities projects will be reduced by one half. The local match reductions will be retroactive for future phases of projects approved during FY23 and will apply to new projects approved in FY24 through FY26. In FY27, the calculation will revert to the phase two formula value.

The bill forgives outstanding offsets for direct legislative appropriations and eliminates offsets for future direct legislative appropriations.

The bill eliminates a provision that would have considered the amount of operational funding school districts spent on capital expenditures as “local revenue” in the phase two state match calculation. This provision was originally established to take credit for federal Impact Aid revenues used for capital expenditures after the long-standing Impact Aid credit was removed from the public school funding formula in 2021.

The bill appropriates \$25 million for school security projects and \$75 million for career-technical education facilities and equipment, prekindergarten facilities, or other local maintenance priorities. The amount of each school district’s distribution will equal the greater of (a) a minimum of \$50 thousand for security and \$100 thousand for local priorities, or (b) an amount proportional to the district’s share of total state match funds distributed pursuant to the Public School Capital Improvements Act, commonly known as SB9.

The bill sets the budget cap for the Public Schools Facilities Authority (PSFA) to five percent of the average annual grant assistance from the public school capital outlay fund in the previous five fiscal years, up from three fiscal years.

Finally, the bill makes a number of technical changes to eliminate unused provisions of the Public School Capital Outlay Act, including the “phase one” state match calculation, the phase-in of the “phase-two” state match calculation, and the expired school security program. Other technical changes throughout the bill eliminate references to calculations, paragraphs, and sub sections stricken in this bill.

FISCAL IMPACT

SB131/aSEC/aSFC does not contain an appropriation.

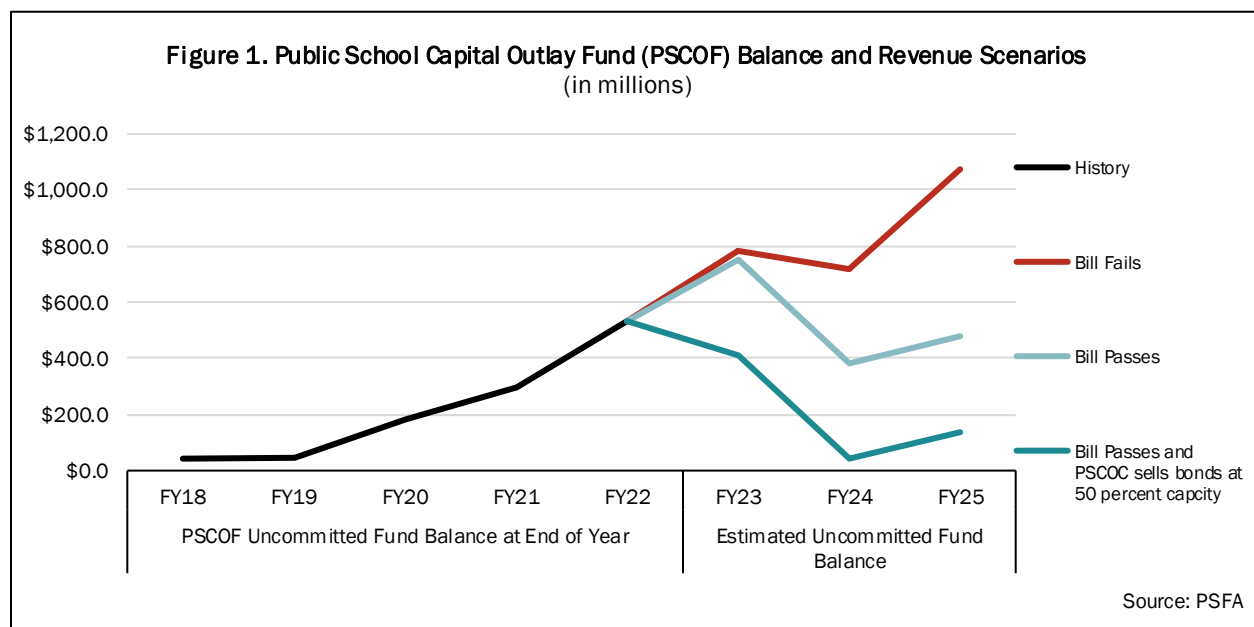
Forgiving outstanding direct legislative offsets improves school districts’ ability to pay for their local share of projects. For FY23, outstanding offsets totaled \$74 million, with most of this amount (\$36 million) held by Albuquerque Public Schools. See **Attachment 1, Outstanding Offsets for Direct Legislative Appropriations**.

A 33 percent reduction to the state and local match calculation for most districts, or 50 percent for micro-districts, will increase the state’s responsibility to fund projects awarded by the Public School Capital Outlay Council (PSCOC) and administered by PSFA. Currently, the estimated average state match for FY24 is 30 percent statewide; the bill would increase this average to 56 percent, varying among school districts. See **Attachment 2, Estimated State and Local Match Amounts**.

Appropriations previously included in this bill were removed by the Senate Finance Committee for inclusion in the annual capital projects bill. Of the \$100 million previously appropriated in this bill, \$25 million was earmarked for school safety and security projects and \$75 million for local priorities, which may include career-technical education infrastructure, prekindergarten facilities, or other local maintenance needs. The appropriations will authorize PSFA to develop and PSCOC to approve a methodology for the distribution of funds that ensures equity among school districts and charter schools and complies with the anti-donation clause of the New Mexico Constitution.

Eliminating the consideration of “operational revenue used for capital purposes” further improves school districts’ ability to pay for their local share of projects, particularly school districts with large areas of federal Indian reservation land, like Gallup and Zuni, which are also the plaintiff school districts in the ongoing *Zuni* lawsuit. During the 2021 legislative session, the Legislature amended the public school funding formula to return more than \$50 million in annual funding to school districts with large amounts of federal land. As the Legislature considered the elimination of the Impact Aid credit in 2021, school districts that receive Impact Aid explained they would spend a portion of their new revenue on long-standing capital needs.

Improving access to PSCOC funding will consequently increase demand for capital projects. Revenue to the public school capital outlay fund (PSCOF) is based primarily on sale of supplemental severance tax bonds (SSTBs), which can occur in December and June each year. PSCOC has prepared distinct revenue scenarios, entertaining the possibility of increased demand for PSCOC projects; Figure 1 shows each of these revenue scenarios visually. If SB131/aSEC/aSFC is enacted, PSCOC would likely need to utilize enough of its bonding capacity in July 2023 to guarantee sufficient revenue to handle the increased demand. If the bill does not pass and demand remains low, the uncommitted balance of the PSCOF could reach \$1 Billion in FY25.



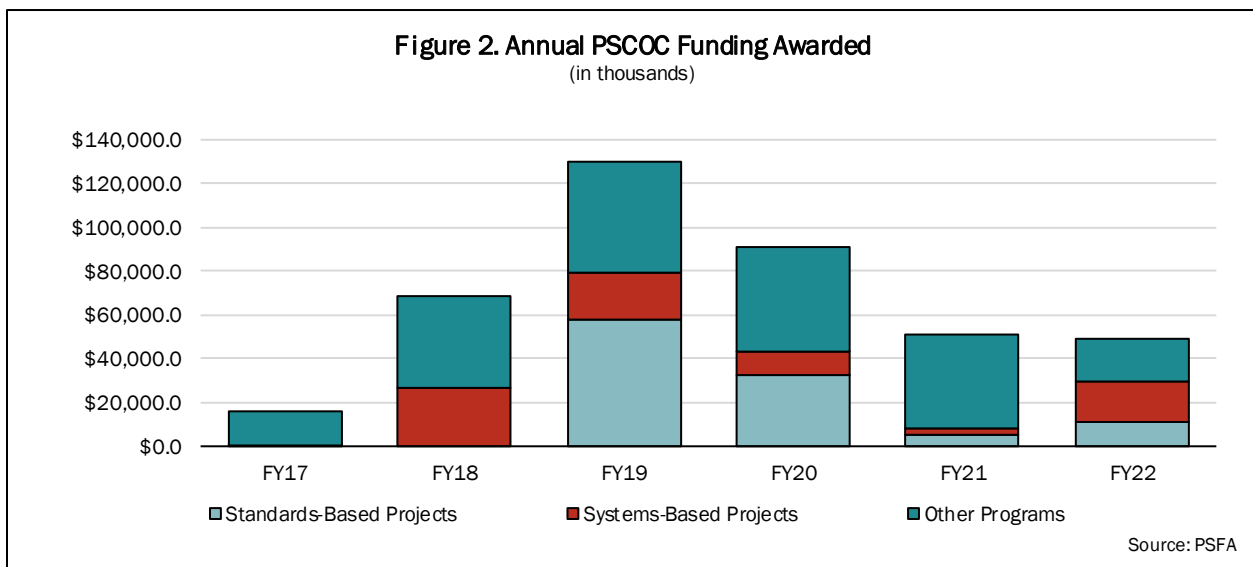
SUBSTANTIVE ISSUES

The bill is founded on three objectives that attempt to address issues in capital outlay funding identified during the 2022 legislative interim. Each of these objectives is discussed in a subheading below.

Increase Demand for Standards- and Systems-Based Awards. In recent years, the number of applications to the PSCOC for standards- and systems-based awards has fallen. Figure 2 shows that, while “other” PSCOC programs, like the prekindergarten facility initiative, maintained some demand, demand has fallen for both the standards-based program for large-scale school renovations and replacements and the systems-based program to replace building systems like HVAC and roofing. [An LESC staff presentation in September 2022](#) outlined three potential reasons for falling demand:

- A transition to the phase two state match calculation increased districts’ responsibility to pay beyond their actual ability to pay;
- Construction costs have increased substantially, especially in the wake of the Covid-19 pandemic; and
- Offsets for direct legislative appropriations have become cost prohibitive in many school districts.

The bill attempts to restore demand for standards- and systems-based projects in the short term by reducing the state match for all school districts by one third, or one half for micro-districts with fewer than 200 MEM (public school student membership). This temporary three-year provision buys time for the state to continue studying the complicated state and local match formula to find a better balance between state and local participation. If the bill passes and the Legislature does not act again before FY27, the state and local match calculation will revert to the phase two value, potentially reintroducing current problems with the local match.



Maintain Equity by Bringing All Districts Up. At the heart of New Mexico’s system for capital outlay funding is a principal objective to maintain equity and uniformity among public schools, as required by the *Zuni* capital outlay lawsuit (See “**Other Significant Issues**”). However, rather than pursuing equity by “lowering the ceiling” for school districts via complicated programmatic requirements, the omnibus bill maintains equity by “raising the floor,” removing unnecessary barriers and complications in the public school capital outlay system. The bill does this by eliminating legislative offsets and halting the implementation of an upcoming credit for Impact Aid revenues.

Under current law, legislative offsets attempt to maintain equity by requiring districts that receive direct appropriations from the Legislature to “pay back” the appropriation by reducing their award on a future project. Conversely, a provision enacted in Laws 2021, Chapter 52 (House Bill 6) will require school districts’ “operational revenue used on capital expenses” to be included in the calculation of school districts’ ability to pay for new facilities. This provision was originally intended to decrease awards to Impact Aid school districts that use their operational funding to build new facilities. The bill removes both of these critical barriers standing between districts and PSCOC projects.

Provide Funding for Local Priorities. The bill makes two appropriations: one for school security, and another for prekindergarten and career technical education (CTE) based on school districts' priorities. The appropriations are designed to be flexible with one string attached; school districts and charter schools would be required to notify PSFA and PSCOC in writing how the funds were used. School districts have identified local capital needs, but no two districts share identical needs. Many districts have asked for funding for CTE facilities and equipment, especially following the construction of the Career Technical Education Center – Hobbs (CTECH). CTECH's success is due in large part to investment from local business and industry, the City of Hobbs, and the school district itself, resulting in a state-of-the-art \$75 million facility that offers training to all regional school districts in welding, automotive, carpentry, plumbing, hospitality, and culinary fields. School districts and charter schools may choose to use state capital outlay funding for CTE through the standards-based awards process or from individual appropriations, but a truly integrated approach to CTE like that of CTECH will require deliberate partnership between each school district and the districts' regional workforce.

Other school districts and charter schools have requested funding for prekindergarten and early childhood facilities. While the prekindergarten classroom initiative has been largely successful, the initiative requires an application to PSCOC, a demonstration of need for prekindergarten, and the provision of a local match. School districts could benefit from flexible capital funding allocated outside of the prekindergarten initiative to construct facilities outside the PSCOC awards process or bolster local match requirements.

ADMINISTRATIVE IMPLICATIONS

The bill would require PSFA to author and PSCOC to adopt adequacy standards for career technical education facilities and classrooms, allowing the standards- and systems-based awards process to handle the construction of new career technical education spaces. PSFA recently conducted regional stakeholder engagement sessions in consultation for changes to the statewide adequacy standards; a similar process may be necessary to ensure the state's adequacy standards address students' need for career technical education facilities.

OTHER SIGNIFICANT ISSUES

The Zuni Lawsuit: History and Current Status. In 1999, the 11th Judicial District Court issued its initial ruling in the *Zuni* lawsuit, finding New Mexico did not have an equalized system of public school capital outlay funding, especially for historically Indian-impacted school districts such as the plaintiffs, Zuni Public Schools and Gallup McKinley County Schools. The court found the lack of equity in capital revenues violated the New Mexico Constitution, which requires a "uniform system of public schools sufficient for the education of all school age."

Between 1999 and 2004, the state designed a system of public school capital outlay based on "adequacy," such that schools in the worst condition in the state would be eligible for funding through a standards-based process. This system has been revised since 2004, but is still primarily based on the values of equity, uniformity, sufficiency, and adequacy. Between 2004 and 2013, no filings were made in the *Zuni* lawsuit, and the case was administratively dismissed.

The plaintiffs reopened the *Zuni* lawsuit shortly after it was closed, and a trial to hear new evidence began in 2016. However, the plaintiffs never concluded their case-in-chief and the trial was put on hold for nearly three years. The trial finally concluded in May 2019, with proposed Findings of

Fact and Conclusions of Law filed by both parties in October 2019. The 11th Judicial District Court's Decision and Order was issued more than a year later in December 2020.

The court's six-page verdict did not cite specific facts on which it was based, and did not address recent actions the state had taken to account for historic inequities in the state's capital outlay funding system. These actions included a host of standards- and systems-based awards for the plaintiff school districts as a result of the standards- and systems-based awards process, as well as direct legislative appropriations for "outside of adequacy" spaces and teacher housing. Following the ruling, the Legislature also eliminated the long-standing Impact Aid credit, returning more than \$80 million in annual revenue to Indian-impacted school districts.

The state filed a motion for the 11th Judicial District Court to reconsider its ruling given the new evidence in the case. The Court denied this motion. In July 2021, the state appealed the district court's ruling to the New Mexico Supreme Court. The opening brief for the appeal was filed in August 2022.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority (PSFA)

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Outstanding Offsets for Direct Legislative Appropriations

ATTACHMENT 1

FY23

	District	FY23 Offset Balance	FY23 Preliminary Program Cost (in thousands)	Offsets as a Percent of Program Cost	
1	Alamogordo	\$ 754,000	\$49,872.4	2%	1
2	Albuquerque	\$ 36,709,020	\$880,344.7	4%	2
3	Animas	\$ 73,750	\$2,694.3	3%	3
4	Artesia	\$ 3,430,828	\$35,859.1	10%	4
5	Aztec	\$ 638,100	\$26,287.1	2%	5
6	Belen	\$ -	\$37,195.1		6
7	Bernalillo	\$ -	\$31,900.9		7
8	Bloomfield	\$ 1,190,599	\$26,941.4	4%	8
9	Capitan	\$ -	\$6,132.2		9
10	Carlsbad	\$ 2,820,533	\$65,739.4	4%	10
11	Carrizozo	\$ -	\$2,867.4		11
12	Central	\$ -	\$54,649.7		12
13	Chama	\$ 154,857	\$5,827.5	3%	13
14	Cimarron	\$ 214,750	\$5,903.7	4%	14
15	Clayton	\$ 17,250	\$5,536.0	0%	15
16	Cloudcroft	\$ 1,356,435	\$5,709.9	24%	16
17	Clovis	\$ -	\$74,866.7		17
18	Cobre	\$ 939,950	\$13,629.9	7%	18
19	Corona	\$ 253,380	\$2,079.7	12%	19
20	Cuba	\$ 49,500	\$10,114.7	0.5%	20
21	Deming	\$ -	\$55,524.6		21
22	Des Moines	\$ -	\$2,049.6		22
23	Dexter	\$ -	\$9,673.9		23
24	Dora	\$ 199,150	\$3,170.5	6%	24
25	Dulce	\$ -	\$7,816.7		25
26	Elida	\$ 481,884	\$2,873.9	17%	26
27	Espanola	\$ 475,640	\$33,342.4	1%	27
28	Estancia	\$ 63,556	\$8,459.1	1%	28
29	Eunice	\$ -	\$7,690.1		29
30	Farmington	\$ -	\$104,419.4		30
31	Floyd	\$ 40,000	\$3,315.2	1%	31
32	Fort Sumner	\$ 66,450	\$3,815.2	2%	32
33	Gadsden	\$ -	\$133,807.6		33
34	Gallup	\$ -	\$129,430.0		34
35	Grady	\$ 9,000	\$2,641.5	0.3%	35
36	Grants	\$ 62,000	\$34,062.8	0.2%	36
37	Hagerman	\$ -	\$5,483.8		37
38	Hatch	\$ -	\$14,375.5		38
39	Hobbs	\$ 728,160	\$99,795.4	1%	39
40	Hondo	\$ 495,400	\$2,987.8	17%	40
41	House	\$ -	\$1,874.3		41
42	Jal	\$ 1,063,887	\$6,279.5	17%	42
43	Jemez Mountain	\$ 64,084	\$3,329.6	2%	43
44	Jemez Valley	\$ 22,490	\$5,550.1	0.4%	44
45	Lake Arthur	\$ 1,349,303	\$2,680.0	50%	45
46	Las Cruces	\$ 142,000	\$238,224.6	0.1%	46

Outstanding Offsets for Direct Legislative Appropriations

FY23

	District	FY23 Offset Balance	FY23 Preliminary Program Cost (in thousands)	Offsets as a Percent of Program Cost	
47	Las Vegas City	\$ 43,000	\$13,452.4	0.3%	47
48	Las Vegas West	\$ 213,160	\$16,924.4	1%	48
49	Logan	\$ 111,740	\$3,917.1	3%	49
50	Lordsburg	\$ -	\$6,026.9		50
51	Los Alamos	\$ -	\$35,841.9		51
52	Los Lunas	\$ -	\$78,377.6		52
53	Loving	\$ 757,430	\$7,583.0	10%	53
54	Lovington	\$ 3,132,409	\$37,352.5	8%	54
55	Magdalena	\$ -	\$4,709.6		55
56	Maxwell	\$ 161,604	\$2,478.5	7%	56
57	Melrose	\$ 212,392	\$3,564.7	6%	57
58	Mesa Vista	\$ 206,800	\$3,905.2	5%	58
59	Mora	\$ 1,165,506	\$5,779.1	20%	59
60	Moriarty	\$ 88,970	\$22,893.6	0.4%	60
61	Mosquero	\$ -	\$2,156.8		61
62	Mountainair	\$ 52,200	\$3,757.7	1%	62
63	Pecos	\$ 153,230	\$6,601.4	2%	63
64	Penasco	\$ 40,000	\$4,735.6	1%	64
65	Pojoaque	\$ 50,400	\$16,601.9	0.3%	65
66	Portales	\$ -	\$27,903.2		66
67	Quemado	\$ -	\$2,894.4		67
68	Questa	\$ 900,997	\$4,531.8	20%	68
69	Raton	\$ 238,290	\$9,056.7	3%	69
70	Reserve	\$ 94,000	\$2,464.8	4%	70
71	Rio Rancho	\$ 2,679,777	\$171,998.1	2%	71
72	Roswell	\$ -	\$92,910.1		72
73	Roy	\$ 61,081	\$1,856.3	3%	73
74	Ruidoso	\$ -	\$18,088.8		74
75	San Jon	\$ 13,200	\$2,247.4	1%	75
76	Santa Fe	\$ 5,986,640	\$118,523.5	5%	76
77	Santa Rosa	\$ 92,750	\$8,061.1	1%	77
78	Silver	\$ 544,100	\$25,869.3	2%	78
79	Socorro	\$ -	\$16,721.2		79
80	Springer	\$ 86,857	\$2,471.2	4%	80
81	Taos	\$ 1,709,832	\$25,638.0	7%	81
82	Tatum	\$ 610,552	\$4,588.2	13%	82
83	Texico	\$ 261,000	\$6,895.7	4%	83
84	T or C	\$ -	\$13,661.2		84
85	Tucumcari	\$ -	\$10,179.0		85
86	Tularosa	\$ -	\$11,284.4		86
87	Vaughn	\$ 414,000	\$1,949.5	21%	87
88	Wagon Mound	\$ 249,300	\$2,053.6	12%	88
89	Zuni	\$ -	\$13,708.4		89
90	STATEWIDE	\$ 74,197,173	\$ 3,139,041	2%	90

Estimated State and Local Match Amounts

FY24, Current Law vs. Bill Scenario

		Current Law		Bill Scenario			
District	FY23 MEM	Phase 2 State Match	Phase 2 Local Match	Adjusted State Match	Adjusted Local Match		
1 Alamogordo	5,391	36%	64%	57%	43%	1	
2 Albuquerque	89,117	6%	94%	37%	63%	2	
3 Animas	156	51%	49%	75%	25%	3	
4 Artesia	3,628	6%	94%	37%	63%	4	
5 Aztec	2,471	6%	94%	37%	63%	5	
6 Belen	3,522	22%	78%	47%	53%	6	
7 Bernalillo	2,687	6%	94%	37%	63%	7	
8 Bloomfield	2,468	6%	94%	37%	63%	8	
9 Capitan	456	6%	94%	37%	63%	9	
10 Carlsbad	8,653	6%	94%	37%	63%	10	
11 Carrizozo	144	6%	94%	53%	47%	11	
12 Central	4,907	43%	57%	62%	38%	12	
13 Chama	365	6%	94%	37%	63%	13	
14 Cimarron	375	6%	94%	37%	63%	14	
15 Clayton	369	6%	94%	37%	63%	15	
16 Cloudcroft	378	6%	94%	37%	63%	16	
17 Clovis	7,509	46%	54%	64%	36%	17	
18 Cobre	998	7%	93%	38%	62%	18	
19 Corona	70	6%	94%	53%	47%	19	
20 Cuba	650	31%	69%	54%	46%	20	
21 Deming	5,131	51%	49%	67%	33%	21	
22 Des Moines	87	6%	94%	53%	47%	22	
23 Dexter	770	71%	29%	80%	20%	23	
24 Dora	204	6%	94%	37%	63%	24	
25 Dulce	544	6%	94%	37%	63%	25	
26 Elida	158	68%	32%	84%	16%	26	
27 Espanola	3,513	10%	90%	40%	60%	27	
28 Estancia	521	49%	51%	66%	34%	28	
29 Eunice	702	6%	94%	37%	63%	29	
30 Farmington	10,936	29%	71%	52%	48%	30	
31 Floyd	213	89%	11%	93%	7%	31	
32 Fort Sumner	252	6%	94%	37%	63%	32	
33 Gadsden	12,193	58%	42%	72%	28%	33	
34 Gallup	12,496	80%	20%	87%	13%	34	
35 Grady	163	94%	6%	97%	3%	35	
36 Grants	3,082	61%	39%	74%	26%	36	
37 Hagerman	353	69%	31%	79%	21%	37	
38 Hatch	1,160	83%	17%	89%	11%	38	
39 Hobbs	9,581	10%	90%	40%	60%	39	
40 Hondo	139	38%	62%	69%	31%	40	
41 House	63	66%	34%	83%	17%	41	
42 Jal	488	6%	94%	37%	63%	42	
43 Jemez Mountain	178	6%	94%	53%	47%	43	
44 Jemez Valley	389	34%	66%	56%	44%	44	
45 Lake Arthur	119	6%	94%	53%	47%	45	
46 Las Cruces	24,001	19%	81%	46%	54%	46	
47 Las Vegas City	1,221	6%	94%	37%	63%	47	
48 Las Vegas West	1,450	65%	35%	76%	24%	48	

Estimated State and Local Match Amounts

FY24, Current Law vs. Bill Scenario

		Current Law		Bill Scenario	
District	FY23 MEM	Phase 2 State Match	Phase 2 Local Match	Adjusted State Match	Adjusted Local Match
49 Logan	267	8%	92%	39%	61%
50 Lordsburg	433	6%	94%	37%	63%
51 Los Alamos	3,571	6%	94%	37%	63%
52 Los Lunas	8,452	41%	59%	60%	40%
53 Loving	583	6%	94%	37%	63%
54 Lovington	3,399	23%	77%	49%	51%
55 Magdalena	266	72%	28%	81%	19%
56 Maxwell	116	66%	34%	83%	17%
57 Melrose	250	63%	37%	75%	25%
58 Mesa Vista	237	6%	94%	37%	63%
59 Mora	402	25%	75%	50%	50%
60 Moriarty	2,815	6%	94%	37%	63%
61 Mosquero	96	6%	94%	53%	47%
62 Mountainair	212	6%	94%	37%	63%
63 Pecos	480	6%	94%	37%	63%
64 Penasco	313	60%	40%	73%	27%
65 Pojoaque	1,674	61%	39%	74%	26%
66 Portales	2,561	50%	50%	67%	33%
67 Quemado	146	6%	94%	53%	47%
68 Questa	398	6%	94%	37%	63%
69 Raton	802	35%	65%	56%	44%
70 Reserve	104	6%	94%	53%	47%
71 Rio Rancho	17,556	10%	90%	40%	60%
72 Roswell	9,431	50%	50%	66%	34%
73 Roy	66	86%	14%	93%	7%
74 Ruidoso	1,756	6%	94%	37%	63%
75 San Jon	106	73%	27%	87%	13%
76 Santa Fe	14,879	6%	94%	37%	63%
77 Santa Rosa	587	45%	55%	63%	37%
78 Silver	2,416	6%	94%	37%	63%
79 Socorro	1,434	60%	40%	73%	27%
80 Springer	119	32%	68%	66%	34%
81 Taos	2,989	6%	94%	37%	63%
82 Tatum	303	6%	94%	37%	63%
83 Texico	529	51%	49%	67%	33%
84 Truth Or Consequences	1,173	6%	94%	37%	63%
85 Tucumcari	860	51%	49%	67%	33%
86 Tularosa	824	64%	36%	76%	24%
87 Vaughn	54	6%	94%	53%	47%
88 Wagon Mound	74	23%	77%	62%	38%
89 Zuni	1,123	100%	0%	100%	0%
90 TOTAL/AVERAGE	304,157	30%	70%	56%	44%

*Note: Districts highlighted in blue have fewer than 200 MEM.

Source: LESC Files