

SENATE BILL 167

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Michael Padilla

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO EARLY CHILDHOOD FUNDING; TRANSFERRING THE BALANCE OF THE EARLY CHILDHOOD EDUCATION AND CARE FUND TO THE EARLY CHILDHOOD TRUST FUND; RECOMPILING AND AMENDING CERTAIN EARLY CHILDHOOD FUNDS; EXPANDING THE PURPOSES FOR WHICH MONEY IN THE FUNDS MAY BE USED TO INCLUDE PRENATAL PROGRAMS AND SERVICES; PROVIDING AN EFFECTIVE DATE CONTINGENT ON APPROVAL OF A CONSTITUTIONAL AMENDMENT CREATING THE EARLY CHILDHOOD TRUST FUND.

.229674.3SAAIC February 19, 2025 (9:10pm)

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

SECTION 1. Section 6-4-27 NMSA 1978 (being Laws 2020, Chapter 3, Section 4, as amended) is amended to read:

"6-4-27. EXCESS EXTRACTION TAXES SUSPENSE FUND--TRANSFER OF EXCESS OIL AND GAS EMERGENCY SCHOOL TAX REVENUE--TAX STABILIZATION RESERVE--EARLY CHILDHOOD [~~EDUCATION AND CARE~~] TRUST FUND--SEVERANCE TAX PERMANENT 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 calculate and transfer the balance of the fund attributable to that fiscal year as follows:

(1) if in the current fiscal year 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 exceed the annual average amount, the department shall distribute the excess amount above the annual average amount as follows:

(a) to the tax stabilization reserve, the amount necessary to bring the balance of state reserves to a level equal to twenty-five percent of the aggregate recurring appropriations for that fiscal year from the general fund, as

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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

(b) to the early childhood [~~education and care~~] trust fund, the balance of the excess amount above the annual average amount, if any, after the transfer is made pursuant to Subparagraph (a) of this paragraph; and

(2) the remaining balance of the fund, if any, shall be distributed to the severance tax permanent fund.

C. 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, 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 and the tax stabilization reserve."

**SECTION 2.** Section 9-29A-3 NMSA 1978 (being Laws 2020, Chapter 3, Section 3, as amended) is recompiled as Section 6-4-27.1 NMSA 1978 and is amended to read:

"6-4-27.1. DISTRIBUTION--EARLY CHILDHOOD [~~EDUCATION AND~~ .229674.3SAAIC February 19, 2025 (9:10pm)

~~CARE]~~ TRUST FUND--SEVERANCE TAX PERMANENT FUND--PAYMENTS  
PURSUANT TO FEDERAL MINERAL LEASING ACT.--

A. If, by June 30 of each fiscal year, 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 amount above the annual average amount shall be distributed to the early childhood ~~[education and care]~~ trust fund and attributed to that fiscal year.

B. If, by ~~[June 30, 2025, and by]~~ June 30 of each fiscal year, ~~[thereafter]~~ the remaining amount of the net receipts for that fiscal year of the money received by the state pursuant to the federal Mineral Leasing Act after the distribution pursuant to Subsection A of this section exceeds the threshold amount, the excess shall be distributed to the severance tax permanent fund.

C. The department of finance and administration shall make the calculations to determine if excess amounts shall be distributed pursuant to this section. 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.

D. As used in this section:

(1) "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

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preceding five fiscal years, divided by five; and

(2) "threshold amount" means the net receipts of the money received by the state pursuant to the federal Mineral Leasing Act distributed in fiscal year 2024 pursuant to Subsection B of Section 22-8-34 NMSA 1978."

SECTION 3. Section 9-29A-1 NMSA 1978 (being Laws 2020, Chapter 3, Section 1, as amended) recompiled as Section 6-4-34 NMSA 1978 and is amended to read:

"6-4-34. EARLY CHILDHOOD [~~EDUCATION AND CARE~~] TRUST FUND.--

A. The early childhood [~~education and care~~] trust fund [~~is created within the state treasury. The fund~~] created by Article 20, Section 23 of the constitution of New Mexico 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~~] authorized by Article 20, Section 23 of the constitution of New Mexico.

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~~] secretary of early childhood education and care.

C. The state investment officer shall report

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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.

D. On July 1 of each year, 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 [~~two hundred fifty million dollars (\$250,000,000)~~] five hundred million dollars (\$500,000,000).

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~~] the state-support reserve fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for [~~a~~] the current 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

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fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve and the tax stabilization reserve [~~and the tobacco settlement permanent fund~~] that exhaust those fund balances."

SECTION 4. Section 9-29A-2 NMSA 1978 (being Laws 2020, Chapter 3, Section 2, as amended) is recompiled as Section 6-4-35 NMSA 1978 and is amended to read:

"6-4-35. EARLY CHILDHOOD [~~EDUCATION AND CARE~~] PROGRAM FUND.--The "early childhood [~~education and care~~] program fund" is created 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 prenatal programs and services and for early childhood [~~education and care services and~~] programs and services for children until they are eligible for kindergarten SRC→.←SRC SRC→, and the expenses of administering those programs and services.←SRC 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. Any unexpended or unencumbered balance in the fund at the end of a fiscal year shall revert to the early childhood [~~education and~~ .229674.3SAAIC February 19, 2025 (9:10pm)

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care] trust fund."

SECTION 5. TEMPORARY PROVISION.--The balance of the early childhood education and care fund shall be transferred to the early childhood trust fund.

SECTION 6. CONTINGENT EFFECTIVE DATE.--The provisions of this act shall become effective upon certification by the secretary of state that the constitution of New Mexico has been amended as proposed by a joint resolution of the first session of the fifty-seventh legislature entitled "PROPOSING TO ADD A NEW SECTION 23 OF ARTICLE 20 OF THE CONSTITUTION OF NEW MEXICO TO CREATE THE EARLY CHILDHOOD TRUST FUND TO BE USED EXCLUSIVELY FOR PRENATAL AND EARLY CHILDHOOD PROGRAMS AND SERVICES, EXCEPT WHEN STATE FUNDS WILL NOT MEET PREVIOUSLY AUTHORIZED EXPENSES."