Funding Formula Study
Task Force

REPORT
to the
LEGISLATURE
and the
GOVERNOR

June 2008
New Mexico Legislative Council Service
File No. 205.214
June 2008

The funding formula study task force is pleased to submit its final report to the legislature and Governor Richardson. The American institutes for research (AIR), a national leader in public education and school finance, has completed its study of public school funding in New Mexico, and its report is available in the legislative library and online at AIR's web site, www.nmschoolfunding.org.

The task force wishes to thank all the participants in the study, particularly the members of the professional judgment panels and the stakeholder panel. Their input was the basis of the study, and the work could not have been done without them. The task force also gratefully acknowledges the assistance of the public education department in providing data and fiscal expertise to AIR and the task force.

The project advisory panel, a subset of the task force, worked long hours over many days and months advising the contractor and serving as the external review panel for the work of the professional judgment panels and the contractor, and the task force appreciates the work of these dedicated members.

In addition, the task force extends its thanks to the legislative council service, legislative education study committee, legislative finance committee, public education department and office of education accountability for staff support.

If you have any questions concerning this report or the work of the committee, please feel free to talk to us or other members of the task force.

Sincerely,

MIMI STEWART  
State Representative, District 21  
Co-Chair, Funding Formula Study Task Force

DICK POOL  
Superintendent, Silver Consolidated Schools  
Co-Chair, Funding Formula Study Task Force
# Table of Contents

Background of the Task Force ................................................................. 1

Task Force Membership ........................................................................... 2

2005 Interim Study .................................................................................. 4

2005 Task Force Legislation and Recommendations ............................. 5

2006 Activities ......................................................................................... 7

Request for Proposals ............................................................................ 8

American Institutes for Research ........................................................... 8

Project Advisory Panel Membership ..................................................... 9

Study Components .................................................................................. 9

Public Engagement and Project Web Site .............................................. 10

2007 Activities ......................................................................................... 12

Development of Final Recommendations .............................................. 21

Overall Recommendations ..................................................................... 21

Phase-In of Funding Formula ............................................................... 28

Accountability ......................................................................................... 30

Updating the Funding Formula ............................................................. 32

Possible Revenue Sources ..................................................................... 32

2008 Task Force Legislation ................................................................. 33

Appendix:
1. Task Force Minutes
2. AIR Executive Summary
3. Example of Phase-In Using AIR-Recommended Funding Formula
4. Section-by-Section of HB 241, the funding formula bill
5. Selected Legislation
6. Other Analyses of Introduced Legislation
Background of the Task Force

New Mexico's public school funding formula was enacted by the legislature in 1974. The two critical objectives of the formula were to: (1) equalize funding statewide; and (2) retain local autonomy in budgeting and expending state support. The formula was designed to distribute operational funds to local school districts in an objective manner, based on the educational needs of individual students and the costs of programs designed to meet those needs. The program cost differentials in the original formula were based on nationwide data regarding relative costs of various school programs as well as experience in New Mexico. The current funding formula is divided into three basic parts:

(1) educational program units that reflect the different costs of identified programs;

(2) training and experience (T&E) units that provide additional money so districts may hire and retain more highly educated and experienced instructional staff; and

(3) size adjustment units that recognize local school and district needs, economies of scale, marginal cost increases for growth in enrollment and adjustments for the creation of new districts.

As expected, the funding formula was amended over time as issues and problems arose. By 1995, the legislature recognized the need for another study of the formula. The legislature, governor and state board of education appointed a public school funding formula task force to develop a request for proposals (RFP) and select a consultant to carry out the funding formula study. The task force's charge to the consultant, Forbis Jordan and associates, was to:

(1) perform a formula equity analysis;

(2) identify areas of perceived unfairness in the formula;

(3) propose alternative factors for the formula; and

(4) review a number of nonformula educational finance issues, particularly in the areas of program and department accountability, capital outlay funding and needs and rewards for schools performing higher than expected.

In the principal finding, the consultant concluded that:

when evaluated on the basis of generally accepted standards of equity, the New Mexico public school funding formula is a highly
equitable formula. State law does not permit local school districts to levy additional taxes to supplement formula distributions. As a result, spending disparities are less than in other states and statistically insignificant.

The consultant also concluded that, given the relatively low per-capita income of the state and the relatively high level of state support, New Mexico is a "high-effort, low-ability state" in terms of elementary and secondary education. Proposed changes to the formula revolved around three major issues:

(1) abolition of the size adjustment factor for large school districts (density) and creation of an at-risk factor to provide additional program units to school districts with students at risk of academic failure to replace density;

(2) revision of special education formula indices, the separate funding of special education ancillary services and the counting of special education students in regular membership; and

(3) infusion of $55 million into the formula to pay for the changes and to hold harmless districts adversely affected by the changes, including the phase-out of the T&E waivers.

In 1997, the legislature passed House Education Committee Substitute for House Bill 215, which became Chapter 40 of Laws 1997.

During the period from 1997 to 2005, there were significant changes in public school laws. The U.S. congress passed and the president signed the No Child Left Behind Act of 2001 (NCLB). The New Mexico legislature, at the behest of its education initiatives and accountability task force, passed a major education reform bill in 2003 that included the enabling legislation for a three-tier licensure system and minimum salaries for teachers and school administrators. Legislators and educators recognized that the education reform changes would necessitate changes to the funding formula, and Laws 2005, Chapter 49 provided the framework for a new, comprehensive study of the formula. That law created the funding formula study task force (FFTF) and provided for its powers and duties. Members were appointed by the legislative council and the governor.

**Task Force Membership**

The original task force membership changed slightly in 2006 when Jack Jenkins, chief financial officer of the Las Cruces school district, retired and the governor did not appoint his replacement. Karen White, former Gallup-McKinley county school district superintendent, was replaced by Kilino Marquez, Grants-Cibola county school district superintendent. Advisory
members also changed in 2007: Senator Ben D. Altamirano removed himself as a member; Representatives William "Ed" Boykin and Terry T. Marquardt did not return to the legislature; and Representatives Antonio "Moe" Maestas and Shirley A. Tyler were added.

The task force was composed of the following:

**Members:**
- Rep. Mimi Stewart, co-chair
- Dick Pool, co-chair, Silver consolidated schools superintendent
- Robert Archuleta, Mesa Vista consolidated school superintendent
- Sen. Vernon D. Asbill
- Charles Bowyer (2006-2007), NEA-NM executive director
- Dr. V. Sue Cleveland, Rio Rancho public schools superintendent
- Rep. Roberto "Bobby" J. Gonzales
- Jack Jenkins (2005-2006), Las Cruces public schools CFO
- Randy Manning, Central consolidated schools board member
- Kilino Marquez (2006-2007), Grants-Cibola county schools superintendent
- Rep. Brian K. Moore
- Sen. Cynthia Nava
- Lilliemae Ortiz, Pojoaque Valley public schools board member
- Dennis Roch, PEC chair, Tucumcari public schools assistant superintendent
- Sen. James G. Taylor
- Karen White (2005-2006), Gallup-McKinley county public schools superintendent

**Advisory members:**
- Sen. Mark Boitano
- Sen. Pete Campos
- Rep. Gail Chasey
- Rep. Joni M. Gutierrez
- Rep. Jimmie C. Hall
- Sen. Gay G. Kernan
- Sen. Linda M. Lopez
- Rep. Rick Miera
- Sen. Mary Kay Papen
- James M. Phipps, Artesia public schools superintendent
- Sen. Bernadette M. Sanchez
- Manuel F. Valdez, Chama Valley independent schools superintendent
- Rep. Richard D. Vigil
- Rep. Teresa A. Zanetti
Task Force Staff:
Jonelle Maison and Sharon Ball, legislative council service (LCS)
Frances Maestas and Dr. Kathleen Forrer, legislative education study committee (LESC)
Paul Aguilar, legislative finance committee (LFC)
Scott Hughes, office of education accountability (OEA)
Steve Burrell, public education department (PED).

2005 Interim Study
As specified in the law, the funding formula study was a three-year process that culminated in final recommendations to the forty-eighth legislature, second session. The first year, the task force educated itself on the formula and took testimony, particularly from school districts, on problems and issues concerning public school funding in New Mexico.

The task force:
(1) reviewed previous studies of the New Mexico funding formula and piecemeal amendments to the formula since the last major revisions in 1997;

(2) reviewed processes undertaken by other states in their funding formula studies and the costs of those studies;

(3) heard testimony from school districts in the southwestern, southeastern and central areas of New Mexico; sent representatives to meet with the school districts of the northern network and the northwest superintendents; and developed issues of concern preparatory to developing the RFP;

(4) considered public education policy decisions that affect the formula;

(5) identified education reform policies and decisions that the state either supports or ignores in the public school budget; and

(6) developed recommendations to the legislature on critical transitional issues, including how funding for required three-tier salaries should be handled in the general appropriation act; the need to increase the unit value, emergency supplemental and growth funding prior to the study; and the need to raise the cash balance caps to enable school districts to meet obligations year over year.
At its second meeting, in August, the task force invited Dr. Richard King, former university of New Mexico professor and current professor and coordinator of the program on educational leadership at the university of northern Colorado, to present testimony on New Mexico public school finance. Dr. King reiterated the guiding principles of the governor’s advisory committee on school finance in 1973:

1. School district funding should reflect need, not wealth or effort;

2. The formula should achieve fiscal neutrality via credits for uniform levy and noncategorical federal aid; and

3. All operating funds should be noncategorical.

Dr. King posed several questions, which are included in the minutes of the second meeting, for the task force’s and consultant’s consideration during the formula study. The task force also heard testimony from staff on how the state equalization guarantee (SEG) is computed; formula adjustments; credits; unit value and budget; and history of program cost reductions. Staff gave a funding formula workshop for the members to illustrate how school district program cost is developed.

2005 Task Force Legislation and Recommendations

After its interim study, the task force made the following recommendations.

Study and Task Force Appropriation:
A bill was recommended to extend the life of the task force and to fund it and the funding formula study. The appropriation request was for $1 million of nonrecurring revenue for expenditure in fiscal years 2006 through 2008.

Other Recommendations:
The task force decided early on that it did not want to make or support any legislative proposals that would change the funding formula until after the study was completed. However, there were still several areas in public school finance that could be improved upon while the state waited for the results of the comprehensive study. Legislative action in those areas would have addressed many of the sufficiency problems the task force heard during the 2005 interim.

Information provided to the task force showed that program cost funding reductions had been substantial since 2000, totaling $46 million from 2000 through 2004: $5 million in 2000;
$4 million of enrollment growth vetoed in 2001; $4 million in fixed costs not funded in 2002; $3.4 million lost to sanding in HB 2 in 2002; $18 million as a one percent program cost reduction in 2003; and $11.6 million in the cash balance credit. Those cuts resulted in a 2.3 percent reduction in the unit value. In 2005, the governor proposed $46.6 million in program cost reductions, including no funding increases for fixed costs and underfunding for growth. While rejecting those more draconian cuts, the legislature still underfunded certain areas; for example, growth was projected to cost an additional $16 million in 2005, but the legislature provided only $14 million.

After funding for the formula study, the number one recommendation of the task force was to increase the unit value — substantially increase the unit value. The task force proposed a 10 percent increase, which would have cost $196 million. That increase would have been in addition to the funding required to "open the doors"; i.e., on top of fixed cost increases, insurance and the level 2 minimum salary increase of $51.8 million, which would have been rolled into the base.

At the time of the 2005 final report, it had been 25 years since the unit value had seen the kind of infusion the task force sought, and that had been during the last big oil and gas boom. It seemed fitting to the task force that the legislature again show its commitment to public schools when the state was in another boom cycle.

The task force noted that the increase in the unit value was not the ultimate solution for small school districts that are required to subsist on emergency supplemental funding or for growth districts that do not have the funds to open new schools or for any district trying to meet NCLB requirements in the face of inadequate special education and bilingual education resources. But it did believe that the increase would solve some, perhaps many, problems with which school districts on the financial edge are faced.

In conjunction with the recommendation to increase the unit value, the task force recommended that the next year's minimum salary implementation be funded through the formula. As part of the recommendation, the task force hoped to endorse and support an LESC bill to accelerate the implementation of minimum salaries for level three-A teachers and level three-B school principals/assistant principals.

One of the unkindest cuts for school districts was the bill in 2003 to take credit for cash balances. The measure had disastrous results. Chronic underfunding of program costs, the lack of funding for federal and state mandates and the cash balance credit left many school districts on the brink of disaster. Several small school districts were forced to apply for emergency supplemental funding simply to pay regular operating costs. At least one school district, Rio Rancho public schools, had its bond rating downgraded by Standard & Poor's and Moody's because they considered the lower reserves to constitute "poor financial practices". The task force endorsed and supported a bill to raise the cash balance caps as a way to ease the fiscal crises faced by many districts.

Small districts simply have not received enough income through the SEG. The task force heard testimony from over 20 school districts, including those represented on the task force, and
the budget and educational issues of small districts were discussed at almost every meeting. The task force agreed that if the LESC proposed a bill to increase emergency supplemental funding, or otherwise provide small district funding, the task force would co-endorse and support it during the legislative session.

The task force also recognized problems on the opposite end of the spectrum, the growth districts that have trouble finding the money required to open needed new schools. The task force supported the public school capital outlay oversight task force (PSCOOTF) and LESC bills to create a start-up fund for new schools and asked to co-endorse them.

**Other Effects:**
There were two issues noted by the task force that greatly affect public schools but that are not funding formula problems, per se. One is the requirement that school districts pay local impact fees; the other is that school districts have no say when local governments decide to issue industrial revenue bonds (IRBs) and take real property off the tax rolls. The task force supported the PSCOOTF proposal to exempt school districts from the payment of impact fees and its proposal to require input from school districts before IRBs are issued.

![2005 Recommendations at a Glance](image)

### 2006 Activities
In its second year, the task force issued its RFP and selected the American institutes for research (AIR) to conduct the funding formula study.

The 2006 legislature passed the task force-endorsed measure to extend the life of the task force until December 15, 2007 and to include as a voting member one representative of a statewide teacher organization appointed by the legislative council. Although funding for the task force was included in the General Appropriation Act of 2006, the legislature reduced the task force's requested amount of $1 million to $500,000. Given the importance of the study, the legislative council contributed $100,000, plus the per diem and mileage expenses of the task force; other
legislative committees and the executive also agreed to contribute to the study. Of special note is the contribution of school districts, which contributed $200,000 toward the cost of the study.

Request for Proposals

Just as New Mexico was in the forefront of the national move toward equitable public school funding back in the 1970s, it was now in the forefront of the national debate over what a sufficient educational program should consist of and how to balance equitable and sufficient funding for public schools. Unlike other states that had been forced into hurried studies through lawsuits or been forced to take the results of plaintiff studies, New Mexico was being proactive by providing approximately 16 months to complete an independent, comprehensive study of public school funding.

The RFP requested that the contractor develop options and recommendations on what constitutes the components of an appropriately sufficient basic educational program for New Mexico public schools, recognizing the realities of New Mexico's economy and the tax burden of New Mexico taxpayers.

The RFP was issued on May 26 and had a closing date of June 26. The task force received 32 requests for the RFP, and six groups responded with proposals. The co-chairs named members of the task force to serve on an evaluation panel that met June 28-30 to read and evaluate the proposals. Each member read each proposal, and the panel ranked the proposals on qualifications of the offeror, description of services and cost. The three finalists were AIR; Augenblick, Palaich and associates; and Craig Wood and associates. After hearing oral presentations at its July 24-26 meeting, the task force awarded the contract to AIR. (Copies of all proposals are in the permanent task force files.)

American Institutes for Research

AIR is a not-for-profit organization devoted to improving policy research and practice in social policy arenas, including education, with an emphasis on helping disadvantaged and other special need populations. The AIR team was led by Dr. Jay G. Chambers, who is a senior research fellow at AIR and who has three decades of experience working in collaboration with local, state and federal policymakers in the area of school finance. Dr. Jesse Levin was project director. AIR was committed to collaborating with key individuals representing a wide range of critical constituencies to produce an independent analysis of the policy issues inherent in re-examining the foundation for the school funding system in New Mexico. It was also committed to the transparency of the process so that the legislature and the public could understand the rationale for the recommendations and how they were crafted to meet the needs of New Mexico public schools and the students they serve.
Project Advisory Panel Membership
AIR requested that a smaller group of the task force be designated as the project advisory panel (PAP) to assist it during the study. The co-chairs named the members and included representation from the New Mexico coalition of school administrators (NMCSA), which provided $200,000 toward the study costs, and PED.

Project advisory panel members:
Rep. Mimi Stewart, co-chair; Dick Pool, co-chair; Robert Archuleta; Sen. Vernon D. Asbill; Dr. V. Sue Cleveland; Randy Manning; Rep. Brian K. Moore; Don Moya, deputy secy, finance and operations, PED; James "Bud" Mulcock, NMCSA; Sen. Cynthia Nava; James M. Phipps; Dennis Roch; Tom Sullivan, NMCSA

Study Components
The ultimate goals of the study contemplated by AIR included: (1) determining what it would cost to provide a sufficient education for all New Mexico students; (2) examining and potentially modifying or replacing the current funding formula to distribute the necessary resources; and (3) assessing available revenue sources to fund these changes. To accomplish these goals, AIR proposed four major phases:

Phase One: Setting Goals
The purpose of phase one was three-fold: (1) to inform the public about the project; (2) to identify how New Mexicans envision the goals of their public schools; and (3) to seek public input on what needs to be done to achieve those goals. To identify these goals, the AIR research team examined the existing definition of educational sufficiency as implied by state law, and it solicited input through surveys of key constituencies and a series of town hall meetings that were held around the state.

Phase Two: Costing-Out
The second phase involved determining the costs of ensuring that all students in New Mexico have access to the programs and resources necessary to achieve the goals set out in phase one of the project. AIR proposed to work with teams of programmatic experts and New Mexico educators to design instructional programs, to specify the resources to deliver those programs to the diversity of students across the state and to estimate a range of costs for these programs and resources. This comprehensive cost analysis took into account variations in student needs, e.g., student poverty, English language skills, disabilities, exceptionalities, vocational interests and
mobility; the scale of school and district operations; and variations in the cost of comparable resources, e.g., teachers and other school personnel, across different regions of the state.

**Phase Three: Developing a Funding Formula**

In the third phase, AIR used the results of the costing-out exercise as the foundation for recommending changes or modifications to the way schools are funded in New Mexico. The task force believed that it was critical that any new funding formula address how best to distribute resources to ensure the provision of a sufficient education to all students, regardless of circumstance or location.

**Phase Four: Assessing Revenues**

AIR proposed to conduct an analysis of existing revenue sources and identify potential revenue sources that might be called upon to provide the necessary funding to support a sufficient education across all school districts.

Section 12, Article 1 of the constitution of New Mexico provides that:
[a] uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

**Public Engagement and Project Web Site**

Dr. Karen DeMoss, assistant professor in the educational leadership program at the university of New Mexico, was recruited by AIR to be part of its research team and to conduct the public engagement component of the study. AIR fulfilled the study requirement for public engagement by targeted computer and paper surveys and by town hall meetings. A targeted, secure web-based survey was provided to a group of 225 informed representatives of the state, including legislators, school and district leaders and business and cultural group leaders. In addition, AIR posted the survey on its web site, www.nmschoolfunding.org, and well over 1,000 New Mexicans responded. Twenty-five town halls were held around the state, many more than the eight originally anticipated in discussions with the PAP. Results of the public engagement component are available in Volume 2 of AIR's final report.

Town hall meetings were held in Shiprock, Vaughn, Los Alamos, Clayton, Crownpoint, Gallup, Taos, Gallina, Clovis, Moriarty, Rio Rancho, Animas, Santa Fe (three meetings, one in Spanish), Las Vegas, Albuquerque, Albuquerque's west side, Roswell and Socorro. Meetings were also held with the northern network, school boards association, UNM college of education and the Albuquerque chamber of commerce. Meetings in Alamogordo and Las Cruces were canceled because of weather, and those districts were asked to encourage interested persons to fill out online surveys.

AIR, with the assistance of the PAP, task force staff and various educators and educational organizations, named a stakeholder panel of business people, educators and legislators to assist
AIR in the development of the goal statement that would inform the deliberations of the professional judgment panels (PJPs). The stakeholder panel met with the PJPs to hear each panel's findings and recommendations and then discussed issues raised by the PJP process.

**Stakeholder panel members:**
Loretta Armenta, president, USWest NM; Hispano roundtable
Dr. Jim Anderson, Los Alamos superintendent; PJP suburban 1 panel
Del Archuleta, president and CEO, Molzen-Corbin
Robert Archuleta, FFTF/PAP; Mesa Vista superintendent
Sen. Vernon D. Asbill, FFTF/PAP; former Carlsbad superintendent
Carlos Atencio, executive director, northern network
Robert Baade, RFK charter school principal
Gerry Bradley, voices for children
John Carey; Dr. Beverlee McClure, association of commerce and industry
Dr. V. Sue Cleveland, FFTF/PAP; Rio Rancho superintendent
Terri Cole, president, greater Abq chamber of commerce; chair, state workforce dev board
Elynn Cowden, school ancillary staff representative
Larry Emerson, chairman, Indian education advisory council (invited)
Larry Fuller, associate director, parents reaching out
James Gallegos, assoc for supervision and curriculum; Cimarron asst super; PJP remote-rural 1
Dr. Veronica Garcia, secretary of public education
Sandy Gladden, director, regional education cooperative #9
Dr. Jim Holloway, PED asst secretary for rural education
I.B. Hoover, Abq businessman, co-chair of education initiatives and accountability task force
Janet Hunt, PJP suburban 1 panel representative
Justin Jones, BHP Billiton (invited)
Sen. Gay G. Kernan, FFTF/SEC/LESC; retired educator
Rep. Rhonda S. King, HAFC/HEC
Ruth LeBlanc, academy for technology and the classics principal; PJP urban 1 panel
Bernadette LeRouge, Santa Fe school board member
Edward Lujan, Albuquerque businessman
Ernest Mackel, Zuni school board president
Rep. James Roger Madalena
Paula Maes, Albuquerque school board president
Randy Manning, FFTF/PAP; Central school board member
Gene McCraken, Jemez mountain school district teacher, American federation of teachers
Sheryl McNellis, PJP remote-rural 2 panel representative; Wagon Mound elementary principal
Rick Miera, FFTF; LESC chair
Rep. Brian K. Moore, FFTF/LFC/HAFC
Debbie Morgan, New Mexico parent teachers association (NMPTA) (invited)
Don Moya, PED deputy secy, finance and operations; PAP
Bud Mulcock, PAP; NMCSA
Rep. Cynthia Nava, FFTF/PAP; Gadsden assistant superintendent
Eduardo Olguin, president, national education association New Mexico
Laura Owens, APS health/mental health dept; counselors association
Mike Phipps, FFTF/PAP; Artesia superintendent
Dick Pool, FFTF/PAP co-chair; Silver consolidated superintendent
Dr. Gloria Rendon, PJP urban 2 panel representative; former Santa Fe superintendent; NMCSA
Dennis Roch, FFTF/PAP; PEC chair; teacher; Tucumcari asst superintendent
Reina Romero, ENLACE
Rita Santistevan, school ancillary staff representative (invited)
Loretta Shriver, PJP urban 1 panel representative
Sen. John Arthur Smith, LFC/SFC
Vicki Smith, Cobre school board president
Dr. Kurt Steinhaus, governor's education advisor
Rep. Mimi Stewart, FFTF/PAP co-chair; APS resource teacher
Tom Sullivan, PAP; NMCSA
Damon Terry, PJP remote-rural 1 panel representative; Floyd elementary principal
Michael Thompson, PJP suburban 2 panel representative; Bloomfield high school teacher
Bill Warren, former legislator
Dr. Katherine Winograd, CNM president
Peyton Yates, Yates petroleum, Artesia

The task force appreciates and thanks the stakeholder panel members for their interest in and dedication to public education in New Mexico.

2007 Activities

In 2007, the task force continued to monitor the funding formula study, which was ongoing.

After its meeting with the stakeholder panel and the development of the goals statement, AIR convened six professional judgment panels (PJPs) on April 18-20, 2007 consisting of two urban, two suburban-small town and two rural-remote panels. Each PJP had two teachers, three principals, a superintendent, a school business official, an English learner (EL) specialist and a special education specialist. Panels were asked to imagine that they were no longer at their current schools and districts and were charged with creating an instructional design for a new school. The instructional program was to be designed to meet the expectations of the goals statement. The PJPs were asked to design base-model instructional programs for elementary, middle and high school and then to modify those program based on poverty, English language learners, mobility, special education and small school size. Each PJP was then asked to redesign its programs based on a 10 percent budget reduction.

There are four districts in New Mexico that meet the federal definition of urban: Albuquerque, Santa Fe, Las Cruces and Farmington. Forty-three districts are considered suburban-small town, and forty-two districts are considered rural-remote. Forty-eight districts in the state have 1,000 or fewer students.

Funding Formula Study Task Force
Report to the Legislature and Governor
The PJPs considered early childhood education costs separately from K-12 because pre-school is not funded through the current funding formula. The PJPs considered pre-school to be important to the overall educational goal, particularly for at-risk students, as research shows its efficacy in student success and graduation rates. The teacher-student ratio recommended was 1:10, with adjustments for special education, poverty, family services and rurality. The per-child cost was predicated on half- and full-day school for three and four year olds. Panels recommended targeting early childhood educational opportunities to poverty and at-risk children rather than offering universal programs.

At its ninth meeting, in June, the task force heard a progress report from AIR. Dr. Chambers explained that in considering the criteria for evaluating state education funding formulas, formulas must:

- be understandable;
- be equitable;
- be adequate;
- be predictable;
- be flexible;
- be identification-neutral (special education);
- have a reasonable reporting burden and be low-cost to administer;
- have fiscal accountability;
- be cost-based;
- have cost control (special education);
- be placement-neutral (special education);
- have outcome accountability;
- have a connection between regular and special education; and
- be politically acceptable.

At the time of the progress report, Phase 2, the cost analysis, was still being conducted. The expert research briefs had been written and were available on the AIR study's web site and the PJPs had met to design their ideas of a sufficient educational program. AIR was working on Phase 3, and the team was working to refine the PED data that would be used to run simulations.

The public engagement process had been completed, and the report was provided to the task force. The process used a web-based survey and town hall meetings to gather information from New Mexicans on their thoughts about the public education system. The survey, used in both venues, sought citizen input on the state's educational priorities by asking them to reflect on....
the goals and standards specified by PED in its current rules. The rules divide New Mexico public education goals into two categories: (1) knowledge and skills; and (2) personal qualities. Participants were asked to rate the importance of each of the eight knowledge and skills items and the seven personal qualities items. The ratings, on a scale of 1 to 9, ranged from low importance to high importance. Participants were also asked to rank the importance of a balance between knowledge and skills and personal qualities.

The quantitative data from the public engagement process showed the following themes:

- Participants felt very strongly that students should leave the K-12 education system prepared for either higher education or a career. The public consistently noted that the lack of career readiness and vocational training was a serious concern and that schools favoring a vocational education were unfairly stigmatized. They believed that the economy needs workers with a wide range of skills and that students need options, including vocational education, to engage them in school.

- Participants were clear that they did not want a "tracked" system in which students must choose either a higher education or vocational track. They expressed the need for a basic education that will enable college entry without remediation and that provides students the capacity to enter skilled trades immediately upon graduation, if they so choose.

- In knowledge and skills, citizens valued all knowledge and skills items encompassed in PED rules, but a student's proficiency in English and ability to think critically were the most highly valued. Overall, 74 percent of respondents ranked proficiency in English as highly important; 70 percent ranked a student's ability to integrate content knowledge and demonstrate understanding through reading, writing and other forms of communication as highly important.

- Those personal qualities surrounding the idea of self-responsibility were rated of highest importance by respondents. Citizens ranked students' acceptance of personal responsibility, and their understanding of the importance of honesty, dependability, integrity and hard work, of highest importance by 80 percent and 78 percent, respectively. Respect for self, others and the environment followed, with 70 percent identifying this item as critically important.

- Citizens noted that the current education system emphasizes acquisition of content knowledge in specific areas (reading and math) at the expense of the development of other content areas and the development of personal qualities. They indicated that they would prefer a better balance between the two. Overall, citizens ranked the balance at 60 percent knowledge and skills and 40 percent personal qualities. Respondents noted that these areas were not necessarily exclusive of each other and a greater balance could be, and often is, achieved through a more holistic approach to instruction. Interestingly, the general public placed a slightly higher emphasis on knowledge and skills than did school and district employees. School employees ranked knowledge and skills at roughly 56 percent, while citizens prioritized these elements at 61 percent.

- Both town hall and online respondents were asked to rank the importance of specific programmatic elements for student success. On a scale of 1 to 9, respondents noted several
elements as highly critical to student success. The broader categories were: early childhood, academic opportunities, health and wellness opportunities, opportunities for special education students, teacher quality and school environment. Of the 80 elements grouped into the nine categories, more than half the sample rated the following items as a 9:

- under early childhood: full-day kindergarten;
- under academic opportunities: access to technology; intensive early grade reading and math interventions; and tutoring or other individualized support of students needing help;
- under health and wellness opportunities: physical education;
- under opportunities for special education students: full-time access to teachers with special education training; access to supplemental supports such as speech and physical therapy; opportunities for individualized academic support in special education classrooms; and intensive early interventions for students identified as possible special education candidates;
- under teacher quality: teachers certified in the subjects they teach; teachers knowledgeable about the most current teaching methods; teachers with expertise in special education; teachers who understand child development; and sustained professional development opportunities for teachers; and
- under school environment: a safe building; small classes; learning environments characterized by respect, good communications and positive interactions; close connections between students and teachers; respectful interactions among staff, students and parents; an up-to-date facility; a safe, drug- and violence-free environment; and an environment that seeks to constantly improve using input from parents, teachers and the community.

Qualitative feedback on programmatic elements showed the following:

- support services, including health, nutrition, counseling and physical therapy, need to be available for all students;
- special-education, English-language-learner and high-poverty students require additional resources, and funding for these supports should be attached to policy guidelines that ensure that appropriated dollars are tied to the students needing extra support;
- programs available for at-risk students are not comprehensive;
- class sizes should be kept small through a cap on actual class size, not by averaging class sizes across grade levels;
- counselors, nurses and librarians should be included in all schools;
- arts, music and physical education programs should be available for all students; and
- high-quality technology should be available to all students and schools.

The following themes also emerged from the qualitative data gathered through the public engagement component of the study:

- citizens want to keep the funding formula equitable;
- there should be additional local control in order to meet local needs;
- educators are working hard, but there are issues surrounding licensure and ample pay; and
- current funding does not provide adequate learning opportunities for all students.

Emerging themes for citizens in rural areas of the state included the following:

- the uniform three-tiered pay scale has worked inconsistently in rural districts, and they have difficulty modifying their budgets to reflect the law and rules of the three-tiered licensure system;
- there is a shortage of highly qualified teachers in rural areas, as that is defined by NCLB, and teachers coming from urban to rural areas often do not understand the local culture or leave the area within a short period;
- quality substitutes are equally hard to come by in rural areas and make it difficult to provide a continuous curricular program;
- rural schools generally perform well on state assessments, but feel unrecognized for their academic successes;
- transportation costs adversely affect programming;
- unfunded mandates hit rural districts harder; and
- rural school employees wear multiple hats, and the basic number of tasks required of rural districts is equivalent to those in large districts, with no commensurate staffing.

Respondents believed that the current funding formula was equitable and an effective way to distribute funds. However, there were several concerns that respondents had with the current formula itself, with the distribution of funds or with the policy implications surrounding implementation of the formula. Following are resounding themes that emerged from the online surveys and town hall meetings:
• remove fixed costs, particularly insurance and utilities, from the formula as a way to ease fiscal pressures on school districts;

• stop unfunded mandates;

• provide incentives for teachers to hold multiple licenses;

• schools serving children with additional needs should have more resources than currently available through the formula;

• school sites should receive higher proportions of district budgets;

• districts should distribute money to schools proportionately to the formula dollars the schools generate;

• T & E benefits should be productively merged with the three-tiered licensure plan;

• low-incidence, high-cost situations, e.g., enrollment of a severely disabled child or significant legal challenges, should not be funded out of operating budgets;

• school leadership should be paid and appropriately supported;

• districts should be able to retain cash balances;

• issues of mobility and immigration should be considered separately from other risk factors for students;

• alternative schools should qualify for small school adjustments;

• the formula should take cost of living into account; and

• technology should be explicitly addressed in the formula.

Special policy and implementation issues included the following:

• parents should also be accountable for their children's education;

• programmatic initiatives are often linked with capital funding, but capital funding is not linked with operational funding;

• allowing SB 9 and HB 33 (capital upkeep funding) to be used for personnel costs associated with maintenance could alleviate some pressures on some districts;
accountability is important, but testing and adequate yearly progress (AYP) measures as currently implemented place too much emphasis on performance accountability;

- NCLB accountability cells affect small schools and large schools differently; and

- districts should also be held accountable, and fiscal and personnel performance within a district should be open to more public discussion.

**Highlights of Public Engagement**

- Participants felt strongly that all students should leave the K-12 education system prepared for either higher education or a career; however, participants were equally vocal that they did not want a tracked system in which students are forced to choose either higher education or a career.
- English proficiency, critical thinking, and the ability to integrate content knowledge and demonstrate that knowledge through reading, writing and other forms of communication were the most valued components of the PED knowledge and skills category.
- Personal responsibility, honesty, dependability, integrity and hard work were the most highly valued personal qualities.
- In determining the relative importance of knowledge and skills and personal qualities, participants determined a 60-40 balance, with knowledge and skills being the more important outcome of a public school education. Participants noted that the two were not mutually exclusive and that a greater balance should be achieved through a holistic approach to instruction.
- Support services, including health, nutrition, counseling and physical therapy, should be available to all students who need them.
- Art, music and physical education programs should be available to all students.
- High-quality technology should be available to all students and all schools.
- Rural schools have particular problems with recruitment and retention of school personnel, including substitute teachers. Transportation costs adversely affect educational programming in rural schools, and they have a more difficult time dealing with unfunded mandates.
- There were other resounding themes that emerged from the online surveys and town hall meetings that are included in the report narrative.

Dr. Levin reported on the process of data collection and analysis and provided information on school-level data with district operating costs and maintenance and operations added back. AIR stressed that any findings the team was reporting were preliminary and would change as the analysis was refined. All data would be compared with data from the national center for educational statistics. The analysis was set to compare existing funding allocations to predicted expenditures, and AIR planned to suggest modifications to the existing formula and provide input on how to achieve the goals of the formula. The preliminary projected per-student costs of elementary, middle and high school instructional programs, averaged from the two panels each for urban, suburban and rural schools, differed based on the type of school (urban, suburban, rural) and the characteristics of the school, such as high poverty, high poverty with a significant EL population, high mobility, high special education and school size. AIR assumed that there would be schools that spend more than the projected sufficiency levels, but that analysis was still too
preliminary to report. In addition, results varied depending on whether a comparable wage index (CWI) or a geographic cost of education index (GCEI) was applied. Dr. Chambers discussed the labor market analysis that was done by Dr. Lori Taylor. The purpose of the analysis was to isolate factors outside district control and to determine the actual purchasing power of the educational dollar. The geographic cost adjustments, either CWI or GCEI, were intended to pick up variations in factors beyond local control, such as cost-of-living and other factors affecting the supply of teachers in local markets. The AIR team reported an outside preliminary cost of $800 million, but cautioned that the process was not complete since the cost models had not been subjected to external review.
**Final Goals Statement**

**Background:**
It is the purpose of New Mexico schools, in partnership with families, to:

1. prepare all students to be responsible citizens and family members;
2. prepare all students for educational success; and
3. prepare all students to obtain and maintain gainful employment.

By "all" students, it is implied that each student will be provided an opportunity to meet these goals, regardless of classification (English language learners, poverty, special education or otherwise) or location. To accomplish these goals, public schools shall follow the PED Commitment to Excellence, which acknowledges that developing an educated citizenry requires all partners of the educational community to share and support a vision of excellence (NMAC Title 6, Ch. 30, Part 2).

**Four Critical Elements:** This Goals Statement encompasses four indispensable and interrelated elements, each of which is described below. Details for each of these elements are provided in the Public Engagement Report found in Volume II, Section 2.1 of the AIR report.

1. **Underlying Philosophies**
   State-level goals of excellence should coexist and be balanced with appropriate individual and local goals. Students shall have access to a multicultural education, diverse and highly qualified teachers, necessary supports to achieve these goals and a range of enhancement opportunities offered in local communities.

2. **Content Standards**
   All public school students shall make positive and measurable gains through appropriate instructional programs aligned to state content standards and benchmarks. Children will be challenged to learn and succeed, drawing on their strengths through diverse and multiple learning styles.

3. **Knowledge, Skills and Personal Qualities**
   New Mexico high school graduates shall exhibit a range of knowledge, skills and personal qualities that enable them to be successful, productive members of their communities, the nation and the world. Schools, in partnership with families and communities, seek to promote personal qualities in ways that integrate with content curriculum and in conjunction with curricular and co-curricular activities.

4. **Performance Goals**
   All students in New Mexico's public education system should have the opportunity to make demonstrable, appropriate growth each year on a wide range of measures. Students should be provided the opportunity to demonstrate learning outcomes aligned with standardized measures reflective of state, national and international standards and to demonstrate growth in areas not captured by standardized tests. In addition, students graduating from New Mexico high schools should have the requisite skills to enable entry into community college or the work force without remedial needs.
External Review Process

During the late summer and fall of 2007, over the course of eight days, including weekends, the PAP functioned as the study's external review body to review and refine the recommendations of the PJPs. The PAP met with representatives of the six panels, who described the educational programs each panel had specified and discussed the decisions made by each panel. Based on the work of all the panels, the PAP specified singular cost models that AIR used to arrive at the final funding formula and its cost.

Development of Final Recommendations

At its November meeting, the task force heard final recommendations from AIR, including the proposed new funding formula. AIR calculated the cost of achieving sufficiency by using extant 2006-2007 PED data and PAP specifications. The proposed public school funding formula was built through an analysis of cost variations related to student need and scale, and the sufficiency estimates were derived by costing out resource specifications generated by the PJP/PAP process and by measuring how the calculated costs of a sufficient educational program varied across ranges of student needs and school size. By using measures of variations in sufficient program cost with respect to student needs and school size, AIR was able to project a unique sufficient cost for every public school and district in New Mexico.

Final sufficiency estimates took into account: (1) student needs (poverty, English language learners, special education and mobility); (2) differential costs across elementary, middle and high schools, including alternative and charter schools; and (3) school and district size.

Final sufficiency estimates included: (1) the school-level resources necessary to deliver a sufficient instructional program to all students; (2) support for central district administration and maintenance and operations; (3) ancillary services; and (4) funding to hire highly qualified staff.

Overall Recommendations

Following is a summary of AIR's findings and recommendations.

(1) Increase state funding by approximately 15 percent (marginal sufficiency cost with hold harmless is $354 million, using 2007-2008 preliminary demographic data).

(2) Adopt a new simplified funding formula.

Special Education:

(1) Fund using a single weight.

(2) Use census-based funding versus funding on actual special education identifications.

(3) Establish a contingency fund for high-need/high-cost students.
Training and Experience:
(1) Replace the current T&E index with the index of staff qualifications (ISQ), which complements the three-tier licensure system.

(2) Recalibrate to reflect qualifications built into the cost estimates and adjust to reflect the percent expended on ISQ-eligible staff.

Growth and Decline:
(1) Fund based on maximum of this year's versus last year's enrollment.

(2) Provide separate support to fund new schools.

Following are the details of the AIR presentation.

Topic 1: Sufficient Levels of Funding and Modification of Existing Formula.
RFP Question: What is the cost of a sufficient K-12 educational program, and how should the state distribute these resources to meet the needs of New Mexico's diverse districts, schools and students?

Recommendation 1: Increase State Funding to Achieve Sufficiency. Based on the analysis, AIR and the PAP recommended to the task force that the state increase funding for public K-12 education by approximately 15 percent in order to provide support for sufficient educational services to all students.

Recommendation 2: Adopt a Simplified Basic Funding Formula. AIR and the PAP recommended to the task force that the state adopt a revised formula that incorporates the following elements:

- a smaller, simplified set of four weighting adjustment factors to achieve an equitable distribution of funds according to student need;

- a simplified set of weights to account for the cost difference in providing instructional programs at the elementary, middle and high school grade levels; and

- separate weight adjustments that account for the wide range in size at which districts and charter schools operate.

The merits of the proposed formula are that it is:

- simple — it avoids unnecessary complexity by focusing directly on the factors associated with student need and scale;

- fair — it promotes and preserves strict vertical funding equity across districts;
- safe — it makes use of adjustment factors that are largely beyond a district's control and thus minimizes incentives to "formula chase"; and

- comprehensive — most of the adjustments in the current funding formula are either accounted for in the sufficient base per-student cost or contained explicitly in the suggested formula.

Using simple statistical analysis, AIR was able to determine the impact of various student need and scale factors on sufficient per-student program costs. From this analysis, AIR developed the following formula for distributing state aid to local districts and charter schools:

\[
\text{"Sufficient Per-Student Cost} = \text{Base Per-Student Cost} \times \text{Poverty Adjustment} \times \text{English Learner Adjustment} \times \text{Special Education Adjustment} \times \text{Mobility Adjustment} \times \text{Grade 6-8 Enrollment Share Adjustment} \times \text{Grade 9-12 Enrollment Share Adjustment} \times \text{Total Enrollment Adjustment}.\]

The formula is "centered" around a base figure representing the per-student cost for a district or charter school of average size and average grade composition with no additional needs. The series of weighting adjustment factors is then applied in a multiplicative fashion.

The technical formula is:1

\[
\text{"Sufficient Per-Student Cost} = 5,106 \times \left(1 + \frac{\text{Proportion Free/Reduced Lunch}}{0.375}\right) \times \left(1 + \frac{\text{Proportion English Learners}}{0.094}\right) \times \left(1 + \frac{\text{Proportion Special Education}}{1.723}\right) \times \left(1 + \frac{\text{Mobility Rate}}{0.190}\right) \times \left(1 + \frac{\text{Enrollment Share Grades 6-8}}{0.291} \div 1.063\right) \times \left(1 + \frac{\text{Enrollment Share Grades 9-12}}{0.608} \div 1.187\right) \times \left(\text{ENR}^{0.576} \times \exp(\ln(\text{ENR})^2)^{0.029} \right) \div 0.062 \times \text{ISQ}.\]

Exponents represent percentage increases in sufficient per-student cost resulting from a one percent increase in each cost factor index.

---

1 The technical formula changed slightly after AIR reported to the task force. The formula in this report is the final version as described in HB 241.
**Example 1** — Hypothetical district with the following characteristics:

Poverty = 40.3%
English learners = 20.1%
Special education = 18.3%
Mobility = 17.9%
Enrollment share in grades 6-8 = 21.3%
Enrollment share in grades 9-12 = 37.0%
Total enrollment = 13,423
ISQ = 1.028

Sufficient Per-Student Cost =

$5,106 \times 1.135 \times 1.017 \times 1.291 \times 1.032 \times 0.995 \times 1.020 \times 0.913 \times 1.028 = $7,487

**Example 2** — High-poverty/EL district with all other factors equal to Example 1 (changes in italics):

Poverty = 80.6%
English learners = 40.3%
Special education = 18.3%
Mobility = 17.9%
Enrollment share in grades 6-8 = 21.3%
Enrollment share in grades 9-12 = 37.0%
Total enrollment = 13,423
ISQ = 1.028

Sufficient Per-Student Cost =

$5,106 \times 1.248 \times 1.032 \times 1.291 \times 1.032 \times 0.995 \times 1.020 \times 0.913 \times 1.028 = $8,352

**Charter Schools.** AIR and the PAP recommended to the task force a separate formula for charter schools, which is very similar to that of districts. In fact, the estimated regression equation purposefully constrains all coefficients except those for enrollment to be equal. This is done because charter schools operate on a much smaller range than districts so that the district-level coefficients could not be applied. A comparison of the enrollment adjustment factor profiles for districts and charter schools shows that the resulting difference is that the drop in the adjustment value for charter schools is much steeper than that of districts. However, this is offset (compensated) by a higher base per-student expenditure for charter schools.

In calculating sufficient funding each year, the demographic data of districts and charter schools will be used. The seven key demographics — poverty, ELs, special education, mobility, grades 6-8 and 9-12 shares of enrollment and total enrollment – are based on the PED's student teacher accountability reporting system (STARS). The appropriate inflation factor is applied to the base per-student cost.
**Topic 2: Funding Special Education Services.**  
**RFP Question:** How should the state fund special education services for students?

During the task force's first year, it heard from many superintendents who were concerned about sufficient funding for special education students. AIR was asked to analyze and evaluate the weights for services for students in need of special education, including gifted students.

In 2005-2006, New Mexico had an identification rate just under 16 percent for special education students (Individuals with Disabilities Education Act (IDEA) only), which was higher than the national average of 14 percent. Rates have been declining, but still remain relatively high when compared to national numbers. Moreover, special education identification rates also exhibit a fairly wide range across the 89 school districts, with a low of six percent to a high of 31 percent.

**Recommendation 1: Use a Single, Overall Weight.**  AIR and the PAP recommended to the task force that special education be funded using a single, overall weight rather than three separate weights corresponding to the A/B, C and D categories. The weighting factor in the simplified funding formula would be 1.723. This weight indicates that a district with a 10 percent special education identification rate compared to a district with a zero percent special education identification rate would require an additional 17.8 percent in overall per-student funding. Funding for special education in the proposed formula is only for disabled students; gifted students are funded in the base model.

A single weight simplifies the formula and minimizes fiscal incentives for identifying more severe students. A higher, single weight (1.723) takes into account:

- the costs associated with all levels of severity;
- the costs of ancillary services; and
- the costs of three- and four-year-old developmentally delayed students.

**Recommended Option — Use a Census-Based Approach to Fund Special Education.**  AIR and the PAP recommended to the task force that special education students be funded using a single weight and a fixed identification rate of a certain percent (e.g., 16 percent) that would be used to determine funding for each district. In line with federal requirements that states reduce incentives for over-identification, the goal of a census-based approach is to ratchet down the census over time.

A district with identification rates below the designated rate would still receive funding to support special education as if it had that designated rate. Similarly, a district with higher identification rates would be funded at the designated, lower identification rate. Funds could be used for pre-referral, response to intervention (RTI) and early intervention programs.
Option 2, which was not recommended by the PAP, would fund special education using actual identification rates and the single weight. Using actual counts continues to create a fiscal incentive to identify more students as requiring special education services.

**Recommendation 2 — Create Contingency Fund for High-Cost Students.** AIR and the PAP recommended to the task force that the state establish a contingency fund to help districts pay the cost of educating high-cost students with disabilities, particularly those students that move into a district and for which the district had not planned. The contingency fund will insure districts against extraordinarily high special education costs that may arise and may be particularly difficult for small districts to fund. Thirty-one states have established this type of fund. The fund would be designed to be used rarely, since it would be for catastrophic cases that overwhelm a district's budget. Districts would be eligible to apply for funds for students for whom they can document costs of more than, for example, three or four times the average per-student cost of regular education students in their districts. AIR recommended that there be some district responsibility (i.e., a co-pay) for the excess costs for these high-cost students. Using the PED data, AIR calculated the amount of the contingency fund at just over $7 million.

**Topic 3: Accounting for Compensation of Instructional Staff.**

RFP Question: How should the state provide an opportunity for all districts to hire and retain highly qualified teachers, school principals and instructional support providers?

The current funding formula's T&E index uses a matrix of 25 cells to adjust the value of the student unit on the basis of the training and experience of instructional personnel. In 2004, the state adopted a three-tiered licensure system that is based on the attainment and demonstration of PED-adopted competencies. The PJP and PAP specifications and projected sufficiency levels include costs associated with a more experienced and highly educated work force.

**Recommendation 1: Adopt a New ISQ to Replace the T&E Index.**

AIR and the PAP recommended to the task force that the state adopt an ISQ to replace the current T&E index and to account for the costs associated with training and experience for instructional staff and the three-tiered licensure system. The use of the ISQ ensures that the cost estimates do not double count the costs already built into the basic cost model that support instructional staff qualifications.

The ISQ is bifurcated to reflect the adoption in 2003 of the three-tiered licensure system for teachers and school administrators. Matrix A is the teachers' index and Matrix B is for the other, non-tiered instructional staff that had been covered by the T&E index. In most cases, the years of experience remained the same as the T&E index while the academic classifications were simplified. Extant data were used to identify the average experience of New Mexico staff and to determine the differentials in pay for each year of experience, tier and academic degree. Similar to the implementation now, all districts would have a minimum ISQ value of 1.00. The ISQ value would be adjusted to reflect the percent of budgets expended on applicable personnel. With the ISQ is calibrated around a higher level of training and experience, 31 of the 89 districts would
receive additional adjustments through the ISQ. In the aggregate, these adjustments distributed to the districts would total approximately $11 million.

**Topic 4: Accounting for Growth and Decline.** Over the past decade, New Mexico's student population has remained relatively constant. There have, however, been shifts in the distribution of this student population. All four urban areas and many of their neighboring districts have experienced neutral or positive growth while a number of rural-remote districts and small towns have experienced steady decline. There are several issues of concern for both growing and declining districts.

**Recommendation 1: Fund on Maximum Enrollment.** AIR and the PAP recommended to the task force that funding for growth districts be based on the greater of the previous year's 80/120-day average enrollment or the current year's enrollment, as determined by the 40-day count.

Currently, growing districts do not receive funding for growth below one percent of their student population unless growth is more than one percent over the previous year. Under this recommendation, growing districts would receive allocations more representative of the actual enrollments faced in the current year. This recommendation would continue to guarantee that declining districts would, at the very least, receive funding according to their previous years' enrollment. In terms of overall costs to the state, the state would continue to absorb the costs for supporting declining districts under the "save harmless" clause for one year, while providing funding for growing districts based on current year enrollment. Analysis shows this additional cost equal to approximately $16 million for districts that grew from 2005-2006 to 2006-2007.

**Recommendation 2: One-Time Fund for Opening New Schools.** Section 22-8-48 NMSA 1978 created the "new school development fund" to be used to help school districts pay for supplies, equipment and operating costs unique to the first year of operation of a new school. AIR and the PAP recommended to the task force that the state apply nonpersonnel ratios associated with these expenses to the counts of students enrolled in these new schools. In 2005-2006, allocations for nonpersonnel instructional expenditures averaged 4.9 percent of teachers salaries and benefits. Therefore, a school with an enrollment of 500, with 37 teachers and with approximately $2.2 million in salaries and benefits would be eligible for $108,000.
Phase-In of Funding Formula

The sufficient per-student cost is based on a comprehensive instructional program that includes the cost of core academic programs, career-technical education, gifted programs, bilingual-multicultural programs, arts and music, health and physical education and special education and appropriate staff. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board or governing body. Just as provided now under current law and the current formula, the money distributed through the provisions of the Public School Act would be discretionary to local school boards and governing bodies to provide the programs identified in their EPSS that meet state standards.

AIR noted that adding significant amounts of funding to educational budgets will require a great deal of planning at both the state and local levels to ensure that new revenues are expended in the most cost-effective manner. The PAP and AIR recommended to the task force that the new formula be phased in over four years; the first year for planning and the next three years for stepped funding increases. The phase-in will allow the state to leverage other potential revenue sources over time and minimize the immediate impact to and burden on the general fund. A phase-in also gives school districts time to collect accurate student demographic data upon which funding will be based; to make gradual programmatic adjustments; and to recruit and train new personnel to deliver those programs.

If sufficiency were fully funded in 2009-2010, AIR estimated that it would cost a total of $2,782.6 million to provide a sufficient education to all students statewide. However, that is the amount of money that would just provide a sufficient education; there are a few school districts and charter schools whose actual program costs exceed what the study deemed sufficient. Therefore, the PAP and AIR recommended to the task force that there be a hold-harmless for those districts and charter schools over the first two years of phase-in (not counting the planning year). In addition, in comparison with full one-year funding, there will be districts and charter schools that need to be held harmless during phase-in simply because each year's funding will be only a portion of the total necessary to achieve full sufficiency. With the hold-harmless, if the bill had passed, the total appropriation for the single-year implementation in 2009-2010 would have been $2,789 million, using 2007-2008 demographic data. That amount breaks down to a marginal sufficiency cost of $354.2 million, which includes $6.3 million hold-harmless and which is a 14.5 percent relative increase over actual program cost plus emergency supplemental; the actual dollar change from 2008-2009 is $422.3 million. In a three-year phase-in, making assumptions about inflation and holding demographics constant, the estimated marginal sufficiency funding cost with hold-harmless for the first two years would be $140.6 million in 2009-2010, $115.5 million in 2010-2011 and $100.6 million in 2011-2012. The hold-harmless ends with full roll-out of the formula and all districts and charter schools should be receiving sufficient funding based on student need, grade level composition and scale of district and charter school operations.
The cost estimates provided by AIR necessarily did not account for future demographic changes. AIR began the study with 2005-2006 student data, went to 2006-2007 data as it became available and ended with 2007-2008 data. The prevailing wisdom of the task force and others involved in the study was that poverty is undercounted in some districts and special education and EL are overcounted in some. As implementation of the funding formula moves forward, the necessity of having accurate, verified student data is critical. PED has been working hard to improve its student teacher accountability reporting system (STARS), and districts and charter schools will recognize the importance of reporting accurately and ensuring that the STARS reports reflect those accurate reports. In addition, the cost estimates obviously did not take into account actions by the 2008 legislature that will change the calculations. For example, during the 2008 session, the legislature provided for one additional instructional day; that cost, approximately $14 million, would necessarily change the marginal sufficiency estimates.

During the phase-in period, the task force considered a number of ways school districts could use additional revenue. The measures listed here are those considered by the public, the PJPs, the PAP, the stakeholder panel and the task force to be the most important for improving student success.
The list was not considered to be exhaustive, and the task force foresaw school districts and charter schools considering and applying additional best practices that would serve their students.

**Accountability**

It is important to note that the request for proposals for the funding formula study did not include an accountability study. That said, however, it was never the intention of the task force to recommend funding increases without attendant accountability. AIR recommended the "educational plan for student success" (EPSS), currently required by PED rule, as a useful tool to
align academic plans with district and charter school budgets. The EPSS already serves as a good blueprint to guide resource allocation and staffing at the school and district levels, since it requires districts to identify areas for improvement in effective leadership, quality teaching and learning, collaborative relationships and support for systemwide improvements. In addition, AIR noted that as part of an accountability study, PED should develop a structure and information system that links student performance with school resources. By "student performance", AIR meant not only reading and math scores, but some of the dimensions that are reflected in the goals statement developed for the study. AIR suggested several questions to be asked relative to accountability.

★ What is the rate of growth of student achievement test scores over time?
★ To what extent are student attendance rates and rates of expulsions or suspensions changing over time?
★ How are graduation rates changing?
★ To what extent are these outcomes changing for various subpopulations of students?
★ What are the rates at which students are enrolling in advanced placement classes or career-technical classes in high schools, and to what extent are these classes available in all districts?

In addition, AIR suggested that PED work with policymakers to consider alternative mechanisms for assessing the success of the education system in developing responsible citizens and family members. While that success might be measured through evaluation of progress in subjects such as history, government, economics and political science, other more specialized surveys and assessment instruments might address outcomes found in the PED's standards of excellence for personal qualities, such as:

★ individual creativity;
★ student self-concept;
★ willingness to accept personal responsibility;
★ ability to make decisions to promote good health;
★ respect for oneself, others and the environment;
★ honesty;
★ dependability; and
★ strong work ethic.

AIR also expected that PED would track the resources being expended at the state, district and school levels. AIR saw PED's key responsibility to take the mass of data it collects and develop standardized reports that link fiscal, personnel and student outcome data at the school level to allow policymakers and educators to track how well the education system is functioning. According to AIR, most states, including New Mexico, have the data, but few take the next step to turn data into valuable information that can be used for decision-making. With such a system, the state would be able to see how schools and districts in different communities were allocating resources and could track the extent to which types of resources make a difference in terms of student performance across various student subpopulations and communities. Such a system will also help the state identify which schools appear to be using resources most effectively and shed
light on how resources are used at successful schools; that knowledge can then be shared across the state.

**Updating the Funding Formula**

As noted by AIR, the formula adjustment factors, discussed earlier in this report, represent incremental increases over the projected base per-student sufficiency costs. They are intended to remain relatively stable over a reasonable period of time, although AIR recognizes that as population demographics shift, as we learn more about what works in education and as the federal role in education funding changes, it will be important for the state to periodically review the assumptions upon which the school district and charter school funding formulas are predicated. However, AIR cautions that it is important for policymakers to allow sufficient time for the new funding levels to have an effect. If the legislature chooses a three-year, or longer, phase-in of the formula, there needs to be an additional five to seven years to be able to detect a significant impact. As provided in House Bill 241, PED was directed to undertake a thorough funding formula study every 10 years to update the formula and determine the formula's equation exponents and denominators. AIR recommends the use of a professional judgment approach much like the one it used in this study.

To maintain the formula on an annual basis, PED would be required to:

1. update the cost factors of each school district and charter school to determine their respective formula adjustments for the year; and
2. adjust the base per-student cost according to legislative appropriation, including inflation.

**Possible Revenue Sources**

The LCS, with which AIR has its contract, did not find that the subcontracted study of existing and potential revenue sources was presented in a way that was useful to the task force and so did not accept the draft report from the subcontractor. In its stead, LCS staff developed revenue estimates on several options and presented those options to the PAP, which, in turn, provided them to the task force. Although a consensus was not reached on each item, the task force agreed to consider legislation on the following:

1. mandatory combined or consolidated corporate reporting for corporate income tax (estimated conservatively at approximately $60 million for FY10 and beyond);
2. equalize the school tax rate for oil and carbon dioxide with natural gas (four percent) (estimated at $33 million in FY09 and declining slightly over time);
3. repeal yield control for school property tax (estimated at $5 million to the general fund and $2 million to local schools in FY09 and remaining relatively stable over time);
(4) increase property tax valuation from 33.3 percent to 40 percent (constitutional amendment required); which is the equivalent of four mills; recalibrate municipal and county share; require schools to impose 3.34 mills; and have the state take credit for 75 percent, as it does now on the .5-mill levy (estimated at $168 million to the general fund and $56 million to local schools in FY10, with a continued rise; estimated total in FY13 is $237 million total);

(5) increase the property tax to 22 mills (constitutional amendment required), and dedicate the additional two mills to school districts, subject to the SEG credit and yield control, if applicable (estimate at $112 million in FY13 with yield control or $123 million without);

(6) propose a constitutional amendment to repeal the forthcoming distribution reduction in the land grant permanent fund and increase distribution to 6.5 percent ($125 million to beneficiaries in FY13, with $21 million to beneficiaries other than public schools); and

(7) increase state gross receipts tax to 5.5 percent ($244 million FY09 and $282 million in FY13).

2008 Task Force Legislation

At the end of the three-year process, the FFTF accepted the AIR study and its recommendation for a new, simplified funding formula for public schools in New Mexico, along with several other legislative proposals. The task force sought, and received, endorsement from the LESC for the public school funding reform bill.

House Bill 241, endorsed by both the task force and LESC, was the culmination of the legislature's public education reform efforts begun in 1999 with the creation of the educational initiatives and accountability task force. The purpose of HB 241 was to establish a new, simplified funding formula for public schools based on student need, grade composition and scale of operations for school districts and charter schools. The formula, and the attendant accountability that was provided, would strengthen the goals of the overall education reform specified in Section 22-1-1.2 NMSA 1978. The bill linked the increased funding that would be provided under the new formula with each school district's and charter school's educational plan for student success (EPSS). The formula began with base funding that provided for all of the programs that school districts and charter schools had currently, such as core academic subjects, art, music, physical education, programs for gifted students, bilingual-multicultural programs and career-technical education. District demographics then came into play by providing additional funding depending on the make-up of the student body.
Funding and accountability were linked through each school district's EPSS, which was required to be specific, measurable, realistic and attainable and required to include focus areas and goals that addressed student needs based on demographic data and student academic achievement data. Individual school plans, as part of the district EPSS, were required to include data-based strategies and activities that supported each of the focus areas and goals. The bill required each school plan to include the persons responsible for ensuring that each of the plan's strategies and activities were carried out. School district budgets were required to be aligned to the EPSS in order to be approved by the department. The bill included other measures the task force had determined to be important, such as the ability of school districts to retain cash balances.

The task force and LESC endorsed a supplemental appropriation bill to support public school funding. **House Bill 398** provided appropriations to PED to carry out its responsibilities under HB 241, including $250,000 for planning and implementing the new formula and accountability; $250,000 for data collection and verification; and $400,000 for EPSS program managers. The bill also included $3 million for the new school development fund and $7 million for the catastrophic aid fund for use by school districts that have very expensive special education students. The PJP's all recognized the importance of providing services, such as parent academies and literacy classes, for families of students, particularly those high-poverty students, English language learners and highly mobile students. The PAP agreed and recommended additional funding through the Family and Youth Resource Act; the task force agreed, and the bill included $3 million for those nonformula needs.

Six revenue measures were eventually introduced in the 2008 session. **House Joint Resolution 8** was a constitutional amendment to increase the land grant permanent fund distribution to public schools (other beneficiaries would also benefit). As introduced, the permanent increase would be 6.5 percent of the average of the year-end market values of the fund for the immediately preceding five calendar years (estimated at approximately $103 million in FY13). **House Joint Resolution 10** was a constitutional amendment to increase the property tax to 25 mills and have the first five mills be a statewide rate for public schools (estimated at approximately $260 million in FY10, which was approximately 70 percent of revenue needed for
the new formula). **House Bill 51** would have required combined reporting of corporate income tax and would distribute 20 percent of that amount to the public school fund (estimated at approximately $108 million in FY10). **House Bill 229** would have removed yield control on the one-half mill levy for public schools (estimated at approximately $6 million in FY10). **House Bill 311** would have raised the state gross receipts and compensating tax by one-half percent, to 5.5 percent (estimated at approximately $270 million in FY10). **House Bill 626** would have equalized the tax on oil and carbon dioxide with natural gas; all would be at four percent (estimated at approximately $33 million in FY09).

---

**2008 Recommendations at a Glance**

- Increase noncategorical funding for public schools by approximately 15% to achieve sufficiency. Cost for full implementation in 2009, based on 2007-2008 preliminary demographics, is approximately $354 million in marginal increase and approximately $422 million in actual year-over-year cost (includes inflation).
- Adopt a simplified funding formula based on student need and differences in type of school and grade and district size.
- Fund special education using a single weight and census of 16% of each district's enrollment. Create a contingency fund for high-cost special education students.
- Replace the T&E with the ISQ, which is aligned with three-tiered licensure.
- Fund growth and protect declining districts by funding on either the prior-year 80/120 or the current-year 40-day enrollment. Provide one-time funding for opening new schools.
- Require accountability through each district's EPSS.
- Possible revenue sources to fund sufficiency include:
  - increasing the distribution from the land grant permanent fund;
  - increase the state property tax and dedicate the first five mills to public schools;
  - require combined reporting of corporate income tax and distribute 20% to the public school fund;
  - remove yield control on the one-half mill levy for public schools;
  - increase the state gross receipts and compensating tax by one-half percent; and
  - equalize tax on oil and carbon dioxide with natural gas.
APPENDIX
HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; DISTRIBUTING A PORTION OF CORPORATE
INCOME TAX REVENUE TO THE PUBLIC SCHOOL FUND; AMENDING THE
CORPORATE INCOME AND FRANCHISE TAX ACT TO MANDATE COMBINED
REPORTING; REPEALING A SECTION OF THE NMSA 1978 PERTAINING TO
CONSOLIDATED RETURNS.

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

Section 1. [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL
FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978
shall be made to the public school fund in an amount equal to
twenty percent of the net receipts attributable to the
corporate income tax.

Section 2. Section 7-2A-8.3 NMSA 1978 (being Laws 1983,
Chapter 213, Section 12, as amended by Laws 1993, Chapter 307,
Section 4 and also by Laws 1993, Chapter 309, Section 2) is
.170616.1
amended to read:

"7-2A-8.3. COMBINED RETURNS.--

A. A unitary corporation that is subject to
taxation under the Corporate Income and Franchise Tax Act [and
that has not previously filed a combined return pursuant to
this section or a consolidated return pursuant to Section
7-2A-8.4 NMSA 1978 may elect to] shall file a combined return
with other unitary corporations as though the entire combined
net income were that of one corporation. The return filed
under this method of reporting shall include the net income of
all the unitary corporations. Transactions among the unitary
corporations may be eliminated by applying the appropriate
rules for reporting income for a consolidated federal income
tax return. [Any corporation that has filed an income tax
return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978
shall not file pursuant to this section unless the secretary
gives prior permission to file on a combined return basis.]

B. Once corporations have reported net income
through a combined return for any taxable year, they shall file
combined returns for subsequent taxable years, so long as they
remain unitary corporations, [unless the corporations elect to
file pursuant to Section 7-2A-8.4 NMSA 1978 or] unless the
secretary grants prior permission for one or more of the
corporations to file individually.

[C. For taxable years beginning on or after January
1, 1993, no unitary corporation once included in a combined return may elect, or be granted permission by the secretary, for any subsequent taxable year to separately account pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978."

Section 3. REPEAL.--Section 7-2A-8.4 NMSA 1978 (being Laws 1983, Chapter 213, Section 13, as amended) is repealed.

Section 4. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2008.
HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; REMOVING THE SCHOOL DISTRICT ONE-HALF-MILL LEVY FOR OPERATING PURPOSES FROM YIELD CONTROL LIMITATIONS ON PROPERTY TAX RATES.

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

Section 1. Section 7-37-7.1 NMSA 1978 (being Laws 1979, Chapter 268, Section 1, as amended) is amended to read:

"7-37-7.1. ADDITIONAL LIMITATIONS ON PROPERTY TAX RATES.--

A. Except as provided in Subsections D and E of this section, in setting the general property tax rates for residential and nonresidential property authorized in Paragraphs (1) and (3) of Subsection B of Section 7-37-7 NMSA 1978, the other rates and impositions authorized in Paragraphs (2) and (3) of Subsection C of Section 7-37-7 NMSA 1978, except
the portion of the rate authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 used to meet the requirements of Section 27-10-4 NMSA 1978, and benefit assessments authorized by law to be levied upon net taxable value of property, assessed value or a similar term, neither the department of finance and administration nor any other entity authorized to set or impose a rate or assessment shall set a rate or impose a tax or assessment that will produce revenue from either residential or nonresidential property in a particular governmental unit in excess of the sum of a dollar amount derived by multiplying the appropriate growth control factor by the revenue due from the imposition on residential or nonresidential property, as appropriate, for the prior property tax year in the governmental unit of the rate, imposition or assessment for the specified purpose plus, for the calculation for the rate authorized for county operating purposes by Subsection B of Section 7-37-7 NMSA 1978 with respect to residential property, any applicable tax rebate adjustment. The calculation described in this subsection shall be separately made for residential and nonresidential property. Except as provided in Subsections D and E of this section, no tax rate or benefit assessment that will produce revenue from either class of property in a particular governmental unit in excess of the dollar amount allowed by the calculation shall be set or imposed. The rates imposed pursuant to Sections 7-32-4
and 7-34-4 NMSA 1978 shall be the rates for nonresidential property that would have been imposed but for the limitations in this section. As used in this section, "growth control factor" is a percentage equal to the sum of "percent change I" plus V where:

\[
V = \left( \frac{\text{base year value} + \text{net new value}}{\text{base year value}} \right),
\]

expressed as a percentage, but if the percentage calculated is less than one hundred percent, then V shall be set and used as one hundred percent;

(2) "base year value" means the value for property taxation purposes of all residential or nonresidential property, as appropriate, subject to valuation under the Property Tax Code in the governmental unit for the specified purpose in the prior property tax year;

(3) "net new value" means the additional value of residential or nonresidential property, as appropriate, for property taxation purposes placed on the property tax schedule in the current year resulting from the elements in Subparagraphs (a) through (d) of this paragraph reduced by the value of residential or nonresidential property, as appropriate, removed from the property tax schedule in the current year and, if applicable, the reductions described in Subparagraph (e) of this paragraph:

(a) residential or nonresidential
property, as appropriate, valued in the current year that was
not valued at all in the prior year;

(b) improvements to existing residential
or nonresidential property, as appropriate;

c) additions to residential or
nonresidential property, as appropriate, or values that were
omitted from previous years' property tax schedules even if
part or all of the property was included on the schedule, but
no additions of values attributable to valuation maintenance
programs or reappraisal programs shall be included;

d) additions to nonresidential property
due to increases in annual net production values of mineral
property valued in accordance with Section 7-36-23 or 7-36-25
NMSA 1978 or due to increases in market value of mineral
property valued in accordance with Section 7-36-24 NMSA 1978;
and

e) reductions to nonresidential
property due to decreases in annual net production values of
mineral property valued in accordance with Section 7-36-23 or
7-36-25 NMSA 1978 or due to decreases in market value of
mineral property valued in accordance with Section 7-36-24 NMSA
1978; and

(4) "percent change I" means a percent not in
excess of five percent that is derived by dividing the annual
implicit price deflator index for state and local government
purchases of goods and services, as published in the United States department of commerce monthly publication entitled "survey of current business" or any successor publication, for the calendar year next preceding the prior calendar year into the difference between the prior year's comparable annual index and that next preceding year's annual index if that difference is an increase, and if the difference is a decrease, the "percent change I" is zero. In the event that the annual implicit price deflator index for state and local government purchases of goods and services is no longer prepared or published by the United States department of commerce, the department shall adopt by regulation the use of any comparable index prepared by any agency of the United States.

B. If, as a result of the application of the limitation imposed under Subsection A of this section, a property tax rate for residential or nonresidential property, as appropriate, authorized in Subsection B of Section 7-37-7 NMSA 1978 is reduced below the maximum rate authorized in that subsection, no governmental unit or entity authorized to impose a tax rate under Paragraph (2) of Subsection C of Section 7-37-7 NMSA 1978 shall impose any portion of the rate representing the difference between a maximum rate authorized under Subsection B of Section 7-37-7 NMSA 1978 and the reduced rate resulting from the application of the limitation imposed under Subsection A of this section.
C. If the net new values necessary to make the computation required under Subsection A of this section are not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall use a zero amount for net new values when making the computation for the governmental unit.

D. Any part of the maximum tax rate authorized for each governmental unit for residential and nonresidential property by Subsection B of Section 7-37-7 NMSA 1978 that is not imposed for a governmental unit for any property tax year for reasons other than the limitation required under Subsection A of this section may be authorized by the department of finance and administration to be imposed for that governmental unit for residential and nonresidential property for the following tax year subject to the restriction of Subsection D of Section 7-38-33 NMSA 1978.

E. If the base year value necessary to make the computation required under Subsection A of this section is not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall set a rate for residential and nonresidential property that will produce in that governmental unit a dollar amount that is not in excess of the property tax revenue due for all property for the prior property tax year for the specified purpose of that rate in that governmental unit.
F. For the purposes of this section:

(1) "nonresidential property" does not include any property upon which taxes are imposed pursuant to the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas Production Equipment Ad Valorem Tax Act or the Copper Production Ad Valorem Tax Act; and

(2) "tax rebate adjustment" means, for those counties that have an ordinance in effect providing the property tax rebate pursuant to the Income Tax Act for the property tax year and that have not imposed for the property tax year either a property tax, the revenue from which is pledged for payment of the income tax revenue reduction resulting from the provision of the property tax rebate, or a property transfer tax, the estimated amount of the property tax rebate to be allowed with respect to the property tax year, and for any other governmental unit or purpose, zero; provided that any estimate of property tax rebate to be allowed is subject to review for appropriateness and approval by the department of finance and administration."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.
HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE AND FOR THE
LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING A NEW PUBLIC SCHOOL
FUNDING FORMULA; PROVIDING FOR MAINTENANCE AND PERIODIC
RECALIBRATION OF THE FORMULA; REQUIRING ACCOUNTABILITY; USING A
CENSUS-BASED SPECIAL EDUCATION IDENTIFICATION RATE FOR SCHOOL
DISTRICTS; CLARIFYING FINANCIAL RESPONSIBILITY FOR SPECIAL
EDUCATION; CREATING A FUND; CHANGING REPORTING TIMES TO
SPECIFIED DATES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTIONS OF LAW IN A SINGLE YEAR; AMENDING, REPEALING, ENACTING

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

Section 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] PURPOSE OF 2008 EDUCATION REFORM.--

A. The legislature finds that education reform in

.170626.6
New Mexico has been a multiyear process that began in 1999 with the creation of the education initiatives and accountability task force. That task force reported the results of its work to the 2001 legislative session, and the legislature passed a bill that was subsequently vetoed by the governor. In 2003, the legislature again passed the bill, commonly referred to as "House Bill 212", and the governor signed it. That bill enacted the first part of education reform, which was based on the need to attract and retain highly qualified teachers to teach New Mexico's multicultural student population and to hold teachers and administrators accountable for student success. That educational reform recognized the importance of integrating the cultural strengths of New Mexico into the curriculum with high expectations for all students. In 2007, the legislature and governor addressed the need for a rigorous and relevant high school curriculum, as expressed in House Bill 212, by enacting what is popularly known as "high school redesign". The goal of that legislation is to prepare students for success in college and the workplace.

B. The legislature finds that the next step toward true educational reform was taken in 2005, when the legislature passed, and the governor signed, legislation to appoint a task force of legislators and educators to direct an independent study of the state's funding formula.

C. The purpose of this 2008 act is to establish a
new, simplified funding formula for public schools that is
based on student need, grade composition and scale of
operations for school districts and charter schools. The
formula, and the attendant accountability that is provided,
strengthen the goals of the overall education reform begun in
House Bill 212 and specified in Section 22-1-1.2 NMSA 1978.
This 2008 reform links the increased funding that will be
provided through the adoption and implementation of the new
funding formula to each school district's and charter school's
educational plan for student success. The educational plan and
the attendant site-specific school plans are the means to
enliven statutory provisions such as the Assessment and
Accountability Act, kindergarten plus and K-3 plus, high school
redesign, the Indian Education Act, the Bilingual Multicultural
Education Act, the Fine Arts Education Act, the Mathematics and
Science Education Act and other curricula-specific provisions
of the Public School Code."

Section 2. Section 22-1-2 NMSA 1978 (being Laws 2003,
Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "academic proficiency" means mastery of the
subject-matter knowledge and skills specified in state academic
content and performance standards for a student's grade level;

B. "adequate yearly progress" means the measure
adopted by the department based on federal requirements to
assess the progress that a public school or school district or
the state makes toward improving student achievement;

C. "cost factor demographic data" means a school
district's or charter school's student-need data pertaining to
poverty, English language learners, special education and
mobility;

D. "commission" means the public education
commission;

E. "December enrollment" means the total enrollment
in a public school or school district on the second Wednesday
in December;

F. "department" means the public education
department;

G. "forty-day report" means the report of
qualified student membership of each school district and of
those eligible to be qualified students but enrolled in a
private school or a home school for the first forty days of
school;

H. "February enrollment" means the total enrollment
in a public school or school district on the second Wednesday
in February;

I. "home school" means the operation by the
parent of a school-age person of a home study program of

.170626.6
instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

[J.] "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician;

[K.] "licensed school employee" means teachers, school administrators and instructional support providers;

[L.] "local school board" means the policy-setting body of a school district;

[M.] "local superintendent" means the chief executive officer of a school district;

N. "October enrollment" means the total enrollment in a public school or school district on the second Wednesday in October;

O. "parent" includes a guardian or other person having custody and control of a school-age person;

P. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;
"public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

"qualified student" means a public school student who:

1. has not graduated from high school; and
2. is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
3. is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in an extended-year kindergarten program that begins prior to the start of the regular school year; or
4. is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or
5. has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education in accordance with federal law;
"school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

"school administrator" means a person licensed to administer in a school district and includes school principals and central district administrators;

"school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a school-age person who is classified as receives special education [as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution] as provided in Sections 22-13-5, 22-13-7 and 22-13-8 NMSA 1978;

"school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

"school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

"school district" means an area of land established as a political subdivision of the state for the
administration of public schools and segregated geographically
for taxation and bonding purposes;

[T\textsuperscript{T}][Y\textsubscript{T}] "school employee" includes licensed and
nonlicensed employees of a school district;

[U\textsuperscript{T}][Z\textsubscript{T}] "school principal" means the chief
instructional leader and administrative head of a public
school;

[V\textsuperscript{T}][AA\textsubscript{T}] "school year" means the total number of
[contract] instructional days offered by public schools in a
school district during a period of twelve consecutive months;

[W\textsuperscript{T}][BB\textsubscript{T}] "secretary" means the secretary of public
education;

CC. "special education" means the provision of
services additional to, supplementary to or different from
those provided in the general school program of a public school
to students who are required by the federal Individuals with
Disabilities Education Act to have an individualized education
program, and including developmentally disabled three- and
four-year-old children attending public school;

[X\textsuperscript{T}][DD\textsubscript{T}] "state agency" or "state institution"
means the New Mexico military institute, New Mexico school for
the blind and visually impaired, New Mexico school for the
deaf, New Mexico boys' school, girls' welfare home, New Mexico
youth diagnostic and development center, Sequoyah adolescent
treatment center, Carrie Tingley crippled children's hospital,
New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

[YY-] EE. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

FF. "student" means a school-age person who is a public school student;

[ZZ-] GG. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

[AA-] HH. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

[BB-] II. "certified school instructor" means a teacher or instructional support provider; and

[GG-] JJ. "certified school employee" or "certified school personnel" means a licensed school employee."

Section 3. Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2, as amended) is amended to read:

"22-2-8.1. LENGTH OF SCHOOL DAY--MINIMUM.--

A. Except as otherwise provided in this section,
general students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

   (1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year, and, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

   (2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

   (3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Beginning with the 2011-2012 school year, general students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

   (1) kindergarten, for half-day programs, two and one-half hours per day or four hundred sixty-two and one-half hours per year, and, for full-day programs, five and one-half hours per day or one thousand seventeen and one-half hours per year;

   (2) grades one through six, five and one-half hours per day or one thousand seventeen and one-half hours per year; and

   (3) grades seven through twelve, six hours per day or one thousand one hundred ten hours per year.

B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher.
or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.

[D.] Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A or B of this section.

[D.] E. The [state superintendent] secretary may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the [state board] department."

Section 4. A new section of the Assessment and Accountability Act is enacted to read:

"[NEW MATERIAL] EDUCATIONAL PLAN FOR STUDENT SUCCESS--EDUCATIONAL PROGRAMMING.--

A. As used in this section:

(1) "demographic data" means a school district's funding formula cost factor demographic data and any other demographic data or health status data required by the department or collected by the school district for the purposes of determining educational programming and focusing the educational plan;

(2) "educational programming" includes curricula; support services, including library and media, school counseling, health services and athletic and activity
programs; and academic improvement strategies, including extended instructional days and year, before- and after-school programs, credit recovery and summer school courses, tutoring and other response to intervention or remediation programs;

(3) "local school board" includes governing bodies of charter schools; and

(4) "school district" includes charter schools.

B. The department shall adopt and promulgate rules to implement the provisions of this section.

C. The department shall verify, monitor and evaluate educational plans through the budget approval process and otherwise throughout the year. The department shall ensure that each educational plan is developed and implemented as provided in this section and the rules of the department and that results are evaluated for effectiveness each year.

D. Under the policy direction of the local school board, each school district shall:

(1) develop, implement and assess a district-level, student-centered "educational plan for student success" as a long-range strategic plan to improve academic achievement and success for all students;

(2) use a strategic planning model that is approved by the department; and

(3) include the required school plans of
public schools that are part of the school district, excluding charter schools, and ensure that those plans are aligned with the educational plan.

E. The chartering authority shall approve a charter school's educational plan based on the plan's alignment with the charter.

F. The educational plan shall:

(1) be specific, measurable, realistic and attainable and include the school plan of each public school in the school district, excluding charter schools, and specify how each of the school plans shall be evaluated and aligned with the educational plan;

(2) solicit the input of school district staff, students, parents, businesses, post-secondary educational institutions, tribal governments within the school district and other interested citizens in the community at large;

(3) address the major core issues identified through the public input process;

(4) implement the department's standards of excellence, including the content standards and benchmarks, and other programmatic requirements of state and federal law and rules adopted in accordance with those laws;

(5) include focus areas and goals that address student needs based on demographic data and student academic
achievement data;

(6) identify areas of student need that must be addressed to ensure that students meet the educational benchmarks specified in the state content standards and benchmarks;

(7) identify resources to address student needs, including such items as:

(a) highly qualified teachers, academic coaches, resource teachers, interventionists, specialists, counselors, educational assistants and other instructional support personnel, and how staffing assignments of these personnel shall be used in a proactive manner to assist students in need of particular services;

(b) professional development and time for in-school collaboration for instructional staff;

(c) administrative and classroom technology and access to distance learning opportunities for students and staff;

(d) parental involvement and outreach initiatives;

(e) involvement by post-secondary educational institutions, tribal governments and the business community; and

(f) other resources identified by the school district or department;
(8) implement the state and district assessment systems;

(9) demonstrate student progress toward the educational plan's focus areas and goals;

(10) provide for a comprehensive and periodic evaluation of the educational plan by the school district; and

(11) be updated annually and submitted to the department by March 1 or another date determined by the department.

G. Each school district shall oversee the development, implementation, assessment and evaluation of all site-level school plans and shall ensure that those plans are aligned with the school district's educational plan.

H. School plans shall include:

(1) data-based strategies and activities to support each of the school district-level focus areas and goals;

(2) identification of persons responsible for the implementation of the strategies and activities;

(3) time lines for the start and completion of those strategies and activities;

(4) the educational programming targeted to the school's demographic data and student academic achievement;

(5) formal and informal professional development activities that support each of the school
district-level focus areas and goals; and

   (6) availability of school, district,

community and family resources that support each of the school
district-level focus areas and goals.

   I. Each public school shall involve school staff,

parents and community members in the development and evaluation
of the school plan.

   J. The educational plan shall include the cost

factor demographic data of each public school and the school
district and shall link educational programming to those and
other demographic data and the student academic achievement
data reported pursuant to the Assessment and Accountability
Act.

   K. Educational programming shall be assessed

through the educational plan. As part of the approval process
of the educational plan and the operating budget of a school
district, the department shall consider how the school district
proposes to address specifically the needs of low-income
students, students who are not proficient in English, students
whose education is disrupted by mobility, students in need of
special education and gifted students.

   L. Based on the demographic profiles of students,

student academic achievement data and the department's
standards of excellence, the educational plan shall include
educational programming for:
(1) bilingual and multicultural education, including culturally relevant learning environments, educational opportunities and culturally relevant instructional materials;
(2) health and wellness, including physical education, athletics, nutrition and health education;
(3) career-technical education;
(4) visual and performing arts and music;
(5) gifted education, advanced placement and honors programs;
(6) special education; and
(7) distance education.

M. The local school board shall approve the educational plan and submit it to the department.

N. The secretary shall disapprove an educational plan in whole or in part if it does not meet the requirements of this section or other provisions of the Public School Code. The secretary shall provide the local school board and the school district with a written report that specifies which parts of the educational plan the secretary is disapproving, reasons for the disapproval and suggestions for improvement. The school district has thirty days to submit a revised educational plan, during which time the department shall assist the school district as requested.

O. If the local school board does not approve a
revised educational plan or if the department does not recommend approval of the revised educational plan, the secretary shall hold a public hearing within twenty days after the revised educational plan was due.

P. The secretary shall appoint a hearing officer to conduct the public hearing. All parties, including the public, shall be given an opportunity to present their views about the original educational plan and any revisions to that plan. The hearing officer shall make recommendations to the secretary within ten days of the public hearing. The secretary shall make the final decision on whether to accept the school district's original plan, the revised plan or a department-developed educational plan. The final educational plan shall be aligned with the department-approved operating budget."

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

"[NEW MATERIAL] 2009 FUNDING FORMULA--FINDINGS AND PURPOSE.--

A. The legislature finds that based on a two-year study to determine the best method of funding a sufficient public education for New Mexico's children, the state, school districts and charter schools would be better served by a new funding formula that incorporates:

(1) a smaller and simplified set of student-needs weighting factors to achieve a more equitable
distribution of the state's equalization guarantee;

(2) a simplified set of programmatic weights
that accounts for student grade level composition for
elementary, middle and high school students; and

(3) a weighting schedule that accounts
separately for the scale of school district and charter school
operations.

B. The legislature finds further that the 2009
funding formula:

(1) avoids unnecessary complexity by focusing
directly on the factors associated with student needs and
scale;

(2) appropriately promotes and preserves both
vertical and horizontal equity across school districts;

(3) minimizes incentives to pursue funding not
directly linked to student needs; and

(4) captures components in the pre-2009
funding formula and is more precise in measuring student need
and scale.

C. The legislature finds further that the cost
factors used in the 2009 funding formula better measure need by
addressing special cost differentials associated with students
that have special educational needs as well as particular types
of local educational agency. The poverty, English language
learner and special education cost factors measure those
federally recognized attributes that unambiguously reflect the special educational needs of students. The cost factor for mobility recognizes the significant impact of disruption on students' educational experience. The cost factors for grade level enrollment address the knowledge gained from educational research and experience that educating students becomes more expensive as they progress through the educational system from elementary through secondary school. Total school district or charter school enrollment is included as a cost factor that accounts for relative economies of scale in the delivery of educational services.

D. The legislature finds further that the federal No Child Left Behind Act of 2001 requires states to employ highly qualified teachers to teach students in core academic subjects. The federal Individuals with Disabilities Education Act requires highly qualified personnel to provide holistic services for students in need of special education, as well as staff who are qualified to intervene before students are classified as needing special education. To carry out these mandates, and to continue encouraging school districts to hire and retain highly qualified teachers and instructional support providers, the 2009 funding formula replaces the training and experience index with an index of staff qualifications to provide the means to cover the costs associated with increased academic qualifications and experience for these personnel."
Section 6. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is repealed and a new Section 22-8-2 NMSA 1978 is enacted to read:

"22-8-2. [NEW MATERIAL] DEFINITIONS.--As used in the Public School Finance Act:

A. "base per-student cost" means the reference value cost of providing an educational program to a qualified student attending the average size district with the average composition of enrollment across grade ranges kindergarten through five, six through eight and nine through twelve and with no formula adjustments applied;

B. "cost factor" means a measure of student need, grade level composition, scale of operations or staff qualifications;

C. "enrollment" means the number of qualified students on the current roll of a class or public school on a specified day;

D. "formula adjustment" means a component of the funding formula that accounts for a differential cost associated with a cost factor;

E. "governing body" means the governing body of a charter school;

F. "growth" means that a school district's or charter school's current-year October total enrollment is greater than its prior-year October total enrollment;
G. "head administrator" means the person responsible for the day-to-day operations of a charter school;

H. "mobility rate" means the district-level student-weighted average percentage of total enrollment that entered or left the school over the school year;

I. "operating budget" means the annual financial plan required to be submitted by a local school board or governing body;

J. "public money" or "public funds" means all money from public or private sources received by a school district or governing body or officer or employee of a school district or governing body for public use;

K. "sufficient per-student cost" means the base per-student cost multiplied by the applicable formula adjustments;

L. "total enrollment" means the number of qualified students on a school's or charter school's roll on a specified day in all grade levels and in programs for three- and four-year-old developmentally disabled qualified students; and

M. "total program cost" means the sufficient per-student cost multiplied by the number of students in a school district or charter school."

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

"[NEW MATERIAL] ESTABLISHMENT OF ENROLLMENT.--The current
roll of a class, public school and school district or charter school is established by the addition of original entries and re-entries minus withdrawals. Withdrawals of qualified students, in addition to qualified students formally withdrawn from the public school, include qualified students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include truants and habitual truants with whom the school district or charter school is required to intervene and keep in an educational setting as provided in Section 22-12-9 NMSA 1978."

Section 8. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended by Laws 1999, Chapter 281, Section 21 and by Laws 1999, Chapter 291, Section 2) is amended to read:

"22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department [an] a proposed operating budget for the school district [and any charter schools in the district] for the ensuing fiscal year. Upon written approval of the [state superintendent] secretary, the date for the submission of the operating budget as required by this section may be extended to a later date fixed by the [state superintendent] secretary.

B. In order to receive final budget approval, the operating budget must be aligned to the school district's
approved educational plan.

[B.] C. The proposed operating budget required by this section may include:

1. estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; and
2. estimates of the cost of contracts for the transportation of students for terms extending up to four years.

[C. The operating budget required by this section shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.]

D. If a local school board fails to submit its budget pursuant to this section, the department shall prepare the operating budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted:

1. exceeds the total projected resources of the school district; or
2. does not comply with the law or rules and procedures of the department; or
(3) except as provided in Subsection D of Section 22-8-11 NMSA 1978, is not aligned with the school district's approved educational plan."

Section 9. Section 22-8-6.1 NMSA 1978 (being Laws 1993, Chapter 227, Section 8, as amended) is repealed and a new Section 22-8-6.1 NMSA 1978 is enacted to read:

"22-8-6.1. [NEW MATERIAL] CHARTER SCHOOL BUDGETS.--

A. Prior to April 15 of each year, the governing body of each state-chartered charter school shall submit its proposed operating budget to the charter schools division of the department for its approval or amendment pursuant to the Public School Finance Act and the Charter Schools Act. In order to receive final budget approval, the proposed budget must be aligned to the school's approved educational plan.

B. Prior to April 15 of each year, the governing body of each locally chartered charter school shall submit its proposed operating budget at the same time to the department and the school district that chartered it. In order to be approved, the proposed budget must be aligned to the school's approved educational plan. The budget shall be submitted to the local school board for approval. The approval authority of the local school board is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the budget is within the allotted resources. The local school board shall have no veto authority over individual line
items within the budget, but shall approve or disapprove the budget only in its entirety. The local school board shall notify the department of its approval or disapproval of the budget, including its reasons for disapproval.

C. Upon written approval of the secretary, the date for submission of a proposed budget may be extended to a later date fixed by the secretary. If the governing body fails to submit its proposed operating budget pursuant to this section, the department shall prepare the budget for the charter school for the ensuing fiscal year. A governing body shall be considered as failing to submit a budget pursuant to this section if the budget submitted:

   (1) exceeds the total projected resources of the charter school;

   (2) does not comply with the law or with rules and procedures of the department; or

   (3) except as provided in Subsection D of Section 22-8-11 NMSA 1978, is not aligned with the charter school's approved educational plan.

D. For the first year of operation, the proposed operating budget of a charter school shall be based on the projected enrollment and cost factor demographic data of that charter school and the index of staff qualifications of the school district in which the charter school is geographically located. The operating budget shall be adjusted based on the...
actual October enrollment and cost factor demographic data.
For second and subsequent years of operation, the operating
budget shall be based on the charter school's own cost factor
demographic data and index of staff qualifications."

Section 10. Section 22-8-8 NMSA 1978 (being Laws 1967,
Chapter 16, Section 62, as amended) is amended to read:

"22-8-8. BUDGETS--MINIMUM STUDENT [MEMBERSHIP]
ENROLLMENT.--Without prior approval of the [state
superintendent] secretary, no local school board or governing
body shall maintain or provide a budget allowance for a public
school having an [average daily membership] enrollment of
[less] fewer than eight."

Section 11. Section 22-8-9 NMSA 1978 (being Laws 1967,
Chapter 16, Section 63, as amended) is amended to read:

"22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--
A. A budget for a school district shall not be
approved by the department that does not provide for:

(1) a school year consisting of at least one
hundred eighty full instructional days or the equivalent
thereof, exclusive of any release time for in-service training;
or

(2) a variable school year consisting of a
minimum number of instructional hours established by the [state
board] department; and

(3) a pupil-teacher ratio or class or teaching
load as provided in Section 22-10A-20 NMSA 1978.

B. Beginning with the 2011-2012 school year, a
budget for a school district shall not be approved by the
department that does not provide for a school year consisting
of at least one hundred eighty-five full instructional days or
the equivalent on a variable calendar. Teachers and
instructional support staff shall be paid for at least four
days additional to the school year for professional development
or instructional planning.

C. The [state board] department shall, by
rule, establish the requirements for an instructional day, the
standards for an instructional hour and the standards for a
full-time teacher and for the equivalent thereof."

Section 12. Section 22-8-11 NMSA 1978 (being Laws 1967,
Chapter 16, Section 66, as amended) is amended to read:

"22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

A. On or before June 30 of each year, the
department shall [(1) on or before July 1 of each year]
approve and certify [to the operating budget for each [local]
school [board] district and [governing body of a state-
chartered] charter school [an operating budget for use by the
school district or state-chartered charter school; and (2)].
The department may make corrections, revisions and amendments
to the operating budgets fixed by the local school boards or
governing bodies [of state-chartered charter schools and the
secretary] to conform the budgets to the requirements of law and to the department's rules and procedures.

B. No school district or [state-chartered] charter school or officer or employee of a school district or [state-chartered] charter school shall make any expenditure or incur any obligation for the expenditure of public [funds] money unless that expenditure or obligation is made in accordance with an operating budget approved by the department. This prohibition does not prohibit the transfer of [funds] money pursuant to the department's rules and procedures.

C. The department shall not approve and certify an operating budget of any school district or [state-chartered] charter school that [fails to] does not align with the educational plan and demonstrate that parental involvement in the budget process was solicited.

D. The department may approve a conditional operating budget if a school district's or charter school's educational plan is in the process of being approved as provided in Section 4 of this 2008 act. After the secretary's final decision on the educational plan, the conditional operating budget shall be aligned with the department-approved educational plan and become the operating budget for the applicable fiscal year. If the approved operating budget requires a decrease or increase in the school district's state equalization guarantee distribution, the department shall
adjust the monthly allotments accordingly."

Section 13. Section 22-8-12.1 NMSA 1978 (being Laws 1978,
Chapter 128, Section 5, as amended) is amended to read:

"22-8-12.1. [MEMBERSHIP] SUFFICIENT PER-STUDENT COST

PROJECTIONS AND BUDGET REQUESTS.--

A. Beginning with projections for the 2009-2010
school year, each [local school board or governing body of a
state-chartered] school district and charter school shall
submit annually, on or before October 15, to the department:

(1) an estimate for the succeeding fiscal year
of:

(a) the [membership of qualified
students to be enrolled in the basic program] enrollment by
grade level;

(b) the full-time-equivalent [membership
of students to be enrolled] enrollment in approved early
childhood education programs; [and]

(c) the [membership of students to be
enrolled] enrollment in approved special education programs;
and

(d) the cost factor demographic data by
grade level;

(2) all other information necessary to
calculate total program costs; and

(3) any other information related to the
financial needs of the school district or [state-chartered]
charter school as may be requested by the department.

B. All information requested pursuant to Subsection
A of this section shall be submitted on forms prescribed and
furnished by the department and shall comply with the
department's rules and procedures.

C. The department shall:

   (1) review the financial needs of each school
district [or state-chartered] and charter school for the
succeeding fiscal year; and

   (2) submit annually, on or before November 30,
to the secretary of finance and administration the
recommendations of the department for:

       (a) amendments to the public school
[finance] funding formula;

       (b) appropriations for the succeeding
fiscal year to the public school fund for inclusion in the
executive budget document; and

       (c) appropriations for the succeeding
fiscal year for [pupil] student transportation and
instructional materials."

Section 14. Section 22-8-13 NMSA 1978 (being Laws 1974,
Chapter 8, Section 3, as amended) is amended to read:

"22-8-13. REPORTS.--

   A. Each public school [in a school district and
each state-chartered charter school] shall keep accurate
records concerning [membership] enrollment in the public school
[The superintendent of].

B. The dates for which enrollment is reported are
as follows:

(1) first reporting date, second Wednesday in
October;

(2) second reporting date, second Wednesday in
December; and

(3) third reporting date, second Wednesday in
February.

C. The department may require enrollment or other
reports at other times specified by the department.

D. Each school district or [head administrator of a
state-chartered] charter school shall maintain the following
reports for each [twenty-day] enrollment reporting period:

(1) the [basic-program MEM] enrollment and
cost factor demographic data by grade in each public school;

(2) the early childhood education [MEM]
enrollment;

(3) the special education [MEM in each public
school in class C and class D programs as defined in Section
22-8-21 NMSA 1978];

(4) the number of class A and class B programs
as defined in Section 22-8-21 NMSA 1978; and] enrollment; and
{(5)} (4) the [full-time-equivalent MEM for]
bilingual multicultural education [programs] enrollment.

[B. The superintendent of] E. Each school district
and [the head administrator of each state-chartered] charter
school shall furnish all reports, including financial reports
required by the department, to the department [reports of the
information required in Paragraphs (1) through (5) of
Subsection A of this section for the first forty days of the
school year. The forty-day report and all other reports
required by law or by the department shall be furnished] within
five days of the close of [the] each reporting period.

[G.] F. All information required pursuant to this
section shall be on forms prescribed and furnished by the
department. A copy of any report made pursuant to this section
shall be kept as a permanent record of the school district or
charter school and shall be subject to inspection and audit at
any reasonable time.

[D.] G. The department [shall] may withhold up to
one hundred percent of the allotments of funds to any school
district or [state-chartered] charter school [where] when the
local superintendent or head administrator has failed to comply
with the requirements of this section. Withholding may
continue until the local superintendent or head administrator
complies with and agrees to continue complying with the
requirements of this section.
The provisions of this section may be modified or suspended by the department for any school district or charter school operating under the Variable School Calendar Act. The department shall require the reports consistent with the calendar of operations of such school district or charter school and shall calculate an equivalent enrollment for use in projecting school district or charter school revenue."

Section 15. Section 22-8-14 NMSA 1978 (being Laws 1967, Chapter 16, Section 69, as amended) is amended to read:

"22-8-14. PUBLIC SCHOOL FUND.--

A. The "public school fund" is created in the state treasury. The fund consists of appropriations, earmarked revenue, income from investment of the fund and any other money credited to the fund.

B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:

(1) state equalization guarantee distribution;

(2) transportation distribution; and

(3) supplemental distributions:

(a) out-of-state tuition to school districts;

(b) emergency; and
(c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall not revert to the general fund [unless otherwise provided by law]."

Section 16. Section 22-8-17 NMSA 1978 (being Laws 1974, Chapter 8, Section 7, as amended) is amended to read:

"22-8-17. TOTAL PROGRAM COST DETERMINATION--REQUIRED INFORMATION.--

A. The department shall calculate the total program cost for each school district and charter school [shall be determined by the department] in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information necessary to make an accurate determination of the district's or charter school's total program cost."

Section 17. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended by Laws 2007, Chapter 347, Section 1 and by Laws 2007, Chapter 348, Section 2 and also by Laws 2007, Chapter 365, Section 1) is repealed and a new Section 22-8-18 NMSA 1978 is enacted to read:

"22-8-18. [NEW MATERIAL] PROJECTED SUFFICIENT PER-STUDENT COST CALCULATION FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS--"
LOCAL RESPONSIBILITY.--

A. As used in this section:

(1) "ENR" means total enrollment;

(2) "exp" means the exponential function with its base being the mathematical constant e; and

(3) "ln" means natural logarithm.

B. The cost factors used to determine the sufficient per-student cost for a school district or charter school are:

(1) poverty, which is measured by the percentage of qualified students in a school who qualified for free or reduced-price lunch as of September 30 of the prior school year;

(2) English language learners, which is measured by the percentage of qualified students designated as English language learners based on a department-approved English language proficiency assessment;

(3) special education, which is measured by sixteen percent of the number of qualified students for school districts and by the percentage of qualified students who are required by the federal Individuals with Disabilities Education Act to have an individualized education program for the delivery of special education and includes developmentally disabled three- and four-year-old qualified students for charter schools;
(4) mobility, which is the mobility rate determined by the following formula: \(1 - \left(1 + \frac{1}{\text{statewide mobility ratio}}\right)\), where the mobility ratio is determined annually by the department;

(5) the percent of total district enrollment in grades six through eight;

(6) the percent of total district enrollment in grades nine through twelve;

(7) the total district enrollment; and

(8) the weighted index of staff qualifications.

C. The sufficient per-student cost for school districts is determined by multiplying the base per-student cost by a series of formula adjustments as follows:

\[ \text{"base per-student cost } \times \left(1 + \text{percent free/reduced-fee lunch}\right)^{0.375} \times \left(1 + \text{percent English language learners}\right)^{0.094} \times \left(1 + \text{percent special education}\right)^{1.723} \times \left(1 + \text{mobility rate}\right)^{0.190} \times \left(1 + \text{enrollment percent in grades six-eight}\right)^{0.291} \div 1.063 \times \left(1 + \text{enrollment percent in grades nine-twelve}\right)^{0.608} \div 1.187 \times \left(\text{ENR}^{-0.575} \times \exp((\ln(\text{ENR}))^2)^{0.029} + 0.062\right) \times \text{weighted index of staff qualifications formula} \]

170626.6
adjustment determined pursuant to Section 22-8-24
NMSA 1978".

D. The funding formula equation used to determine the sufficient per-student cost for charter schools is determined by multiplying the base per-student cost by a series of formula adjustments as follows:

"base per-student cost x

[((1+ percent free/reduced-fee lunch)$^{0.375}$] x

[((1+ percent English language learners)$^{0.094}$] x

[((1+ percent special education)$^{1.723}$] x

[((1+ mobility rate)$^{0.190}$] x

[((1+ enrollment percent in grades six-eight)$^{0.291}$ ÷ 1.074] x

[((1+ enrollment percent in grades nine-twelve)$^{0.608}$ ÷ 1.241] x

[((ENR)$^{0.307}$ x exp((ln(ENR))^2) $^{0.012}$ ÷ 0.288] x

weighted index of staff qualifications adjustment as determined pursuant to Section 22-8-24 NMSA 1978".

E. The exponents and denominators used in the formula adjustments shall remain constant until they are redetermined after the required periodic funding formula study.

F. Except as otherwise provided in this section, cost factor demographic data and total enrollment are based on the average of the prior year's total enrollment reported in December and February and the prior-year cost factor .170626.6
demographic data.

   G. A school district or charter school that is experiencing growth may elect to use the greater of the prior-year average December and February total enrollment or the current-year October total enrollment, as determined by the difference in the prior-year October total enrollment and the current-year October total enrollment.

   H. A new school district or charter school shall use the current-year October cost factor demographic data and total enrollment for the first year.

   I. The special education formula adjustment for a school district is calculated using sixteen percent of the number of qualified students in the school district. In the 2008-2009 school year, a school district with an actual special education identification rate over sixteen percent shall reassess its special education students to determine whether:

   (1) there is a significant disproportionality in the identification rate based on ethnic or racial background; and

   (2) individual students should be reevaluated to determine the most appropriate education and related services needed.

   J. The special education formula adjustment for a charter school is calculated using the actual number of appropriately identified special education qualified students.
who are receiving special education on the October enrollment
report. The legislature finds that charter schools are
designed for unique populations and the range of variation in
special education in charter schools is wider and often well
below school district averages; therefore, it is rational and
reasonable to differentiate between school districts and
charter schools in the special education cost factor.

K. The department shall assist school districts to
implement response to intervention strategies to lower their
special education identification rates. It is the intent of
the legislature that all school districts and charter schools
accurately identify students needing special education and that
they implement response to intervention strategies to provide
students with the most appropriate services required for their
educational success. The department shall report to the
legislature by September 1 of each year on:

(1) the prior year's special education
identification rates in school districts and charter schools;
and

(2) the adoption and efficacy of response to
intervention strategies for each school district and charter
school.

L. To maintain the funding formula each year, the
department shall:

(1) update the cost factors of each school
district and charter school to determine their respective 
formula adjustments for that year; and 

   (2) adjust the base per-student cost according 
to legislative appropriation, including inflation. As used in 
this paragraph, inflation is determined by the percentage 
increase, if any: 

   (a) of the prior-year legislative 
appropriation for salary increases applied to that statewide 
portion of the budget designated for salaries and benefits; and 

   (b) of the prior-year consumer price 
index for all urban consumers for the remaining statewide 
portions of the budget funded through the formula. 

M. The department shall undertake a thorough 
funding formula study every ten years, or more frequently if 
the secretary or the legislature determines a need, to update 
the current funding formula to determine the formula's equation 
exponents and denominators. 

N. The sufficient per-student cost is based on a 
comprehensive instructional program that includes the cost of 
core academic programs, career-technical education, gifted 
programs, bilingual-multicultural programs, arts and music, 
health and physical education and special education and 
appropriate staff. It is the responsibility of the local 
school board or governing body to determine its priorities in 
terms of the needs of the community served by that board or

.170626.6  
- 41 -
body. Money distributed through the provisions of the Public School Finance Act is discretionary to local school boards and governing bodies to provide the programs identified in their educational plans.

O. Beginning with fiscal year 2010, the legislature and the department shall use the funding formula provided in this section as the method for determining the appropriation for and distribution of the state equalization guarantee; provided that funding for complete implementation of the provisions of this 2008 act may be phased in during a period not to exceed three years; and provided further that the funding formula shall not be initiated in fiscal year 2010 unless the 2010 appropriation is equal to at least one-third of the difference between the projected total program cost for fiscal year 2010 and the actual program cost for fiscal year 2009 inflated to fiscal year 2010. For the first two years of phase-in, if the total program cost for a school district or charter school is less than that of the prior fiscal year, the total program cost for the school district or charter school shall be calculated using the prior fiscal year's total program cost adjusted for inflation."

Section 18. A new section of the Public School Finance Act is enacted to read:

"[NEW MATERIAL] FORMULA PHASE-IN.--

A. During the phase-in of the funding formula, a
school district or charter school shall use its state equalization guarantee distribution, above the amount it received in the prior fiscal year and the amount needed for increases in fixed costs and salaries pursuant to the budget approved by the department, for one or more of the following purposes that support the educational plan:

1. extending the instructional year one or more days;
2. extending the school day for teachers or extending contract days for teachers up to four days beyond the instructional year;
3. offering summer school, credit recovery and enhanced before- and after-school opportunities;
4. lower class sizes and student-teacher ratios;
5. employing academic coaches, resource teachers and specialists, particularly in reading, mathematics and English language learning programs;
6. enhancing intervention efforts for children who may be at risk of academic failure;
7. enhancing remediation programs in language arts and reading, mathematics, science and social studies;
8. improving truancy prevention and intervention strategies, including establishing or enhancing truancy tracking systems and employing truancy officers;
(9) establishing or enhancing bilingual-multicultural programs;

(10) offering visual and performing arts, music and physical education to more students;

(11) enhancing programs for gifted students;

(12) enhancing career-technical education programs;

(13) employing educational assistants, librarians, counselors, nurses, social workers and student support service staff;

(14) providing professional development opportunities for licensed school employees outside the instructional day or year;

(15) providing teaching English as a second language endorsement courses for instructional staff;

(16) providing stipends for instructional staff who have a bilingual or teaching English as a second language endorsement;

(17) improving information technology services for students and staff, including employing information technology personnel or contracting with technical consultants;

(18) improving the district's ability to collect and analyze student and staff data to improve education management;

(19) improving student and school safety; or
(20) other measures approved by the department that are tied to the educational plan.

B. The use to which increased funding is put pursuant to Subsection A of this section shall be incorporated into the school district's or charter school's educational plan and approved by the department. The educational plan shall provide detailed information:

(1) describing the purposes to which increased funding will be applied;

(2) the specific outcomes expected from such increased funding;

(3) the performance measures to be used to evaluate the efficacy of the purposes to which increased funding was applied; and

(4) any other information requested by the department to assist the department and the school district or charter school to evaluate its educational programs or administrative efficiency."

Section 19. Section 22-8-24 NMSA 1978 (being Laws 1974, Chapter 8, Section 15, as amended by Laws 1993, Chapter 91, Section 1 and also by Laws 1993, Chapter 237, Section 3) is repealed and a new Section 22-8-24 NMSA 1978 is enacted to read:

"22-8-24. [NEW MATERIAL] INDEX OF STAFF QUALIFICATIONS--NATIONAL BOARD CERTIFICATION STIPEND.--
A. For the purpose of calculating the index of staff qualifications, the following definitions and limitations apply:

(1) "instructional staff" means the personnel assigned to the instructional program of a school district or charter school, including instructional support providers, and excluding principals, substitute teachers, educational assistants, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating matrix A and matrix B of the index of staff qualifications is the actual number of full-time equivalent instructional staff on the October payroll of the prior year;

(3) the number of years of experience within a level for matrix A or the number of years of experience for matrix B to be used in calculating the index of staff qualifications is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district or charter school; and

(4) the academic degree and additional credit hours to be used in calculating the index of staff qualifications are the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district or charter school.

B. The factors for each classification of academic
training by years of experience are provided in the following matrix for teachers:

Matrix of Staff Qualifications A - Teachers

<table>
<thead>
<tr>
<th>Academic Classification</th>
<th>Level I</th>
<th>Level II</th>
<th>Level III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor's degree</td>
<td>0.64</td>
<td>0.67</td>
<td>0.71</td>
</tr>
<tr>
<td>Master's degree</td>
<td>0.68</td>
<td>0.72</td>
<td>0.76</td>
</tr>
<tr>
<td>Master's degree plus 45 credit hours or post-master's degree</td>
<td>0.71</td>
<td>0.75</td>
<td>0.79</td>
</tr>
</tbody>
</table>

C. The factors for each classification of academic training by years of experience are provided in the following matrix for other instructional staff:

Matrix of Staff Qualifications B - Other Instructional Staff

<table>
<thead>
<tr>
<th>Academic Classification</th>
<th>Years of Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor's degree or less</td>
<td>0.65 0.78 0.87 0.91 0.91</td>
</tr>
<tr>
<td>Bachelor's degree plus 15 credit hours</td>
<td>0.70 0.83 0.87 0.96 1.00</td>
</tr>
<tr>
<td>Bachelor's degree plus 45 credit hours or master's degree</td>
<td>0.74 0.87 0.91 1.00 1.04</td>
</tr>
<tr>
<td>Master's degree plus 15 credit hours</td>
<td>0.78 0.91 1.00 1.13 1.17</td>
</tr>
<tr>
<td>Master's degree plus 45 or post-master's degree</td>
<td>0.87 1.00 1.13 1.22 1.30</td>
</tr>
</tbody>
</table>

D. The index of staff qualifications for each school district and charter school shall be calculated in accordance with instructions issued by the secretary. The
following calculation shall be made to compute the value of
the index of staff qualifications:

(1) multiply the number of full-time-
equivalent teachers in each academic classification and level
in matrix A by the numerical factor in the appropriate "years
of experience within the level" column provided in Subsection
B of this section;

(2) multiply the number of full-time
equivalent other instructional staff in each classification
and level in matrix B by the numerical factor in the
appropriate "years of experience" column provided in
Subsection C of this section;

(3) add the adjusted full-time-equivalents
calculated in Paragraphs (1) and (2) of this subsection; and

(4) divide the total obtained in Paragraph
(3) of this subsection by the total number of full-time-
equivalent instructional staff.

E. If the result of the calculation of the index
of staff qualifications for a school district or charter
school is less than 1.0, its factor shall be 1.0.

F. If a new school district is created, the index
of staff qualifications for that school district for the first
year of operation shall be 1.0.

G. If a school district's or charter school's
index of staff qualifications is greater than 1.0, the index
of staff qualifications formula adjustment used to determine
the sufficient per-student cost is equal to the amount
determined in Subsection D of this section multiplied by the
percentage of the prior year's budget for instructional staff
salaries and benefits plus a factor equal to one hundred
percent minus the percentage of the prior year's budget for
instructional staff salaries and benefits.

H. In addition to the sufficient per-student cost,
each school district and charter school shall calculate the
amount of national board for professional teaching standards
certification salary differential due to each national board-
certified teacher employed by the school district or charter
school on the October report date. The department shall
calculate the amount of the salary differential for
legislative appropriation based on the amount paid to board-
certified teachers in the 2007-2008 base school year adjusted
yearly by the same overall percentage increase in teacher
salary provided by the legislature. The department shall
verify the certification and current employment of board-
certified teachers. Department approval of any allocations
for this item shall be contingent on verification by the
school district or charter school that these teachers will
receive the one-time salary differential for the school year
equal to the amount calculated."

Section 20. Section 22-8-25 NMSA 1978 (being Laws 1981,
Chapter 176, Section 5, as amended) is amended to read:

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

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

B. "Local revenue", as used in this section, means
seventy-five percent of receipts to the school district
derived from that amount produced by a school district
property tax applied at the rate of fifty cents ($0.50) to each
one thousand dollars ($1,000) of net taxable value of property
allocated to the school district and to the assessed value of
products severed and sold in the school district as determined
under the Oil and Gas Ad Valorem Production Tax Act and upon
the assessed value of equipment in the school district as
determined under the Oil and Gas Production Equipment Ad

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

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

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

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

(1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on the eightieth and one hundred twentieth days of the prior year, or

(2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or
(3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year, whichever is greater, and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district or charter school;

(5) for school districts, calculate the local and federal revenues as defined in this section;

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

(7) determine the total program cost for each school district and charter school and subtract the local and federal revenue. The department shall then deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed and [(8)] deduct ninety percent of the amount certified for the school district by the department.
pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

E. Reduction of a school district's state equalization guarantee distribution pursuant to the Energy Efficiency and Renewable Energy Bonding Act shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to [the Energy Efficiency and Renewable Energy Bonding] that act.

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

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

Section 21. Section 22-8-41 NMSA 1978 (being Laws 1967, .170626.6
Chapter 16, Section 99, as amended) is amended to read:

"22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY ACCOUNTS [CASH BALANCES].--

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the secretary determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for a sufficient public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget [was] is approved and shall not be expended without the prior written approval of the secretary.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The
secretary shall notify the legislative finance committee in writing of the secretary's approval of such proposed expenditures. [For fiscal years 2004 and 2005, with the approval of the secretary, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay.

D. Beginning with fiscal year 2007, prior to approval of a school district's or charter school's budget, the secretary shall verify that the reductions from the state equalization guarantee distribution have been taken pursuant to this section.

E. The allowable limit for a school district's or charter school's ending operational cash balance is:

1. if the current year program cost is less than five million dollars ($5,000,000), eighteen percent of the budgeted expenditures;
2. if the current year program cost is five million dollars ($5,000,000) or more but less than ten million dollars ($10,000,000), twelve percent of the budgeted expenditures;
3. if the current year program cost is ten million dollars ($10,000,000) or more but less than twenty-five million dollars ($25,000,000), ten percent of the budgeted expenditures;
(4) if the current year program cost is twenty-five million dollars ($25,000,000) or more but less than two hundred million dollars ($200,000,000), eight percent of the budgeted expenditures; and

(5) if the current year program cost is two hundred million dollars ($200,000,000) or more, five percent of the budgeted expenditures.

F. Except as otherwise provided in this section, for the 2006 and subsequent fiscal years, the secretary shall reduce the state equalization guarantee distribution, calculated pursuant to Section 22-8-25 NMSA 1978, to each school district or charter school by an amount equal to the school district's or charter school's excess cash balance. As used in this section, "excess cash balance" means the difference between a school district's or a charter school's actual operational cash balance and the allowable limit calculated pursuant to Subsection E of this section. However:

(1) for a school district or charter school with a current year program cost that exceeds two hundred million dollars ($200,000,000), if the excess cash balance is greater than twenty percent of the allowable, unrestricted, unreserved operational cash balance and the emergency reserve, the reduction pursuant to this subsection shall equal twenty percent of the allowable, unrestricted, unreserved operational cash balance and the emergency reserve; and
(2) for other school districts and charter schools, if the excess cash balance is greater than eighteen percent of the allowable, unrestricted, unreserved operational cash balance and the emergency reserve, the reduction pursuant to this subsection shall equal eighteen percent of the allowable unrestricted, unreserved operational cash balance and the emergency reserve.

D. In developing budgets, school districts and charter schools shall not budget current year cash balances without the approval of the secretary. Cash balances shall be expended pursuant to the school district's or charter school's educational plan.

H. A school district or charter school whose enrollment growth exceeds one percent from the prior year and whose facility master plan includes the addition of a new school within two years may request from the secretary a waiver of up to fifty percent of the reduction otherwise required by Subsection F of this section.

E. Upon application by a school district or charter school, the secretary may approve the use of a school district's [excess] or charter school's cash balance [is needed] to provide the local match required under the Public School Capital Outlay Act or to recoup an amount paid.
as the district's share pursuant to Section 22-24-5.7 NMSA 1978.

[J. Notwithstanding the provisions of Subsection F of this section, for fiscal year 2004, the reduction from the state equalization guarantee distribution shall be the greater of the amount calculated pursuant to that subsection or ten dollars ($10.00) per MEM.

K. For the purposes of this section, "operational cash balance" means the allowable, unrestricted, unreserved operational cash balance and the emergency reserve.

L. For the purposes of this section, "allowable, unrestricted, unreserved operational cash balance and the emergency reserve" means the proportional share not attributable to revenue derived from the school district property tax, forest reserve funds and impact aid for which the state takes credit in determining a school district's or charter school's state equalization guarantee distribution.]

Section 22. A new section of the Public School Finance Act is enacted to read:

"[NEW MATERIAL] SPECIAL EDUCATION CATASTROPHIC AID FUND--CREATED--DISTRIBUTION--LOCAL EFFORT.--

A. As used in this section, "high-cost special education" means the provision of special education and related services to a qualified student that exceeds the threshold amount above the base per-student cost as determined
by the department pursuant to appropriation by the legislature.

B. The "special education catastrophic aid fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, income from investment of the fund and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide grants to school districts to assist them in paying costs associated with high-cost special education students.

C. A school district may apply to the department for a grant from the fund to help defray the cost of providing high-cost special education. The application shall be in a form approved by the department and shall include the documentation required by the department. A single grant shall not exceed seventy-five percent of the projected cost of providing the high-cost special education for a given school year.

D. Based on legislative appropriation each year, the department shall determine the threshold amount for high-cost special education."

Section 23. Section 22-13-1.7 NMSA 1978 (being Laws 2007, Chapter 348, Section 3) is amended to read:

"22-13-1.7. ELEMENTARY PHYSICAL EDUCATION.--
A. As used in this section:

(1) "eligible students" means students in kindergarten through grade six in a public school classified by the department as an elementary school; and

(2) "physical education" includes programs of education through which students participate in activities related to fitness education and assessment; active games and sports; and development of physical capabilities such as motor skills, strength and coordination.

B. Elementary physical education programs [that serve eligible students are eligible for funding if those programs] shall meet academic content and performance standards for elementary physical education programs.

[C. In granting approval for funding of elementary physical education programs, the department shall provide that programs are first implemented in public schools that have the highest proportion of students most in need based on the percentage of students eligible for free or reduced-fee lunch or grade-level schools that serve an entire school district and in public schools with available space. If the department determines that an elementary physical education program is not meeting the academic content and performance standards for elementary physical education programs, the department shall notify the school district that the public school's failure to meet the academic content and performance standards will...}

.170626.6

- 60 -
result in the cessation of funding for the following school year. The department shall compile the program results submitted by the school districts each year and make an annual report to the legislative education study committee and the legislature.

D. As they become eligible for elementary physical education program funding, public schools shall submit to the department their elementary physical education program plans that meet academic content and performance standards and other guidelines of the department. At a minimum, the plan shall include the elementary physical education program being taught and an evaluation component. To be eligible for state financial support, an elementary physical education program shall:

(1) provide for the physical education needs of students defined in this section; and

(2) use teachers with a license endorsement for physical education.

E. The department shall annually determine the programs and the consequent number of students in elementary physical education that will receive state financial support in accordance with funding available in each school year.

Section 24. Section 22-13-6.1 NMSA 1978 (being Laws 1994, Chapter 25, Section 2, as amended) is recompiled as Section 22-13-1.8 NMSA 1978 and is amended to read:
"22-13-1.8. GIFTED [CHILDREN] STUDENTS--DETERMINATION.--

A. The department shall adopt standards pertaining
to the determination of who is a gifted [child] student and
shall publish those standards as part of the educational
standards for New Mexico schools.

B. In adopting standards to determine who is a
gifted [child] student, the department shall provide for the
evaluation of selected [school-age children] students by
multidisciplinary teams from each [child's] student's school
district. That team shall be vested with the authority to
designate a [child] student as gifted. The team shall
consider information regarding a [child's] student's cultural
and linguistic background and socioeconomic background in the
identification, referral and evaluation process. The team
also shall consider any disabling condition in the
identification, referral and evaluation process.

C. Each school district offering a gifted
education program shall create one or more advisory committees
of parents, community members, students and school staff
members. The school district may create as many advisory
committees as there are high schools in the district or may
create a single districtwide advisory committee. The
membership of each advisory committee shall reflect the
cultural diversity of the enrollment of the school district or
the schools the committee advises. The advisory committee
shall regularly review the goals and priorities of the gifted
program, including the operational plans for student
identification, evaluation, placement and service delivery and
shall demonstrate support for the gifted program.

D. In determining whether a [child] student is
gifted, the multidisciplinary team shall consider diagnostic
or other evidence of the [child's] student's:

(1) creativity or divergent-thinking ability;
(2) critical-thinking or problem-solving
ability;
(3) intelligence; and
(4) achievement.

E. Nothing in this section shall preclude a school
district from offering additional gifted programs for students
who fail to meet the eligibility criteria."

Section 25. Section 22-13-5 NMSA 1978 (being Laws 1972,
Chapter 95, Section 1, as amended) is amended to read:

"22-13-5. SPECIAL EDUCATION.--

A. School districts shall provide special
education and related services appropriate to meet the needs
of [all children] students requiring special education and
related services. [Regulations] Rules and standards shall be
developed and established by the [state board] department for
the provision of special education in the schools and classes
of the public school system in the state and in all
.170626.6

- 63 -
institutions wholly or partly supported by the state. The [state board] department shall monitor and enforce the [regulations] rules and standards.

B. Except as otherwise provided in this section, the state institution in which a school-age person is detained or enrolled shall be responsible for providing educational services for the school-age person. A school-age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of health has a right to attend public school in the school district in which the state institution in which the person is a client is located if:

(1) the school-age person has been recommended for placement in a public school by the educational appraisal and review committee of the school district in which the institution is located; or

(2) the school-age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education rules of the department.

C. School districts shall also provide services for three-year-old and four-year-old [preschool] children with disabilities, unless the parent [or guardian] chooses not to enroll [his] the child. If a child receiving services in the department of health's family infant toddler program has [his]
a third birthday during the school year, the child's [parents] parent shall have the option of having the child complete the school year in the family infant toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has [his] a third birthday during a school year may receive special education and related services from the beginning of that school year.

D. Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the [state board] department and providing parent education. The services may be provided by [certified] licensed school [personnel] employees or contracted for [with other community agencies] and shall be provided in age-appropriate, integrated settings, including home, daycare centers, head start programs, schools or community-based settings."

Section 26. Section 22-13-7 NMSA 1978 (being Laws 1972, Chapter 95, Section 3, as amended) is amended to read:

"22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--
A. The [state board] department shall make, adopt and keep current a state plan for special education policy, programs and standards.
B. The department [of education with the approval of the state board] shall set standards for diagnosis and screening of and educational offerings for [exceptional qualified students and school-age persons receiving special education] in public schools; in private, nonsectarian, nonprofit training centers; and in state institutions under the authority of the secretary of health or the secretary of children, youth and families.

C. The [state board] department shall establish and maintain a program of evaluation of the implementation and impact of all programs for [exceptional children] qualified students receiving special education in the public schools. [This] The evaluation program shall be operated with the cooperation of [local] school districts, and portions of the evaluation program may be subcontracted [and]. Periodic reports regarding the efficacy of educational programs for [exceptional children] qualified students receiving special education shall be made to the legislative education study committee.

D. The department [of education] shall coordinate programming related to the transition of [persons with disabilities] qualified students receiving special education from secondary and post-secondary education programs to employment or vocational placement."

Section 27. Section 22-13-8 NMSA 1978 (being Laws 1972, .170626.6
Chapter 95, Section 4, as amended) is amended to read:

"22-13-8. SPECIAL EDUCATION--PRIVATE.--

A. The responsibility of school districts, state institutions and the state to provide a free public education for [exceptional children] qualified students who need special education is not diminished by the availability of private schools and services. [Whenever such schools or services are utilized, it continues to be] It is a state responsibility to [ensure] assure that all [exceptional children] qualified students who need special education receive the education to which [the] federal and state laws [of the state] entitle them whether provided by public or private schools and services.

B. A school district in which a private, nonsectarian, nonprofit training center or residential treatment center is located shall not be considered the resident school district of a school-age person in need of special education if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

C. For a qualified student or school-age person in need of special education who is placed in a private, nonsectarian, nonprofit training center or residential treatment center by a school district or by a due process decision, the school district in which the qualified student
or school-age person lives, whether in-state or out-of-state, is responsible for the educational costs of that placement.

D. For a school-age person in need of special education placed in a private, nonsectarian, nonprofit training center or residential treatment center not as a result of a due process decision but by a parent who assumes the responsibility for such placement, the department shall ensure that the school district in which the facility is located is allocating and distributing the school-age person's proportionate share of the federal Individuals with Disabilities Education Act Part B funds, but the state is not required to distribute state funds for that school-age person.

E. The department shall determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private, nonsectarian, nonprofit training center or residential treatment center outside the qualified student's resident school district. The department shall determine the reasonable reimbursement owed to the receiving school district.

[F. A local school board, in consultation with the department, may make an agreement with a private, nonsectarian, nonprofit educational training center or residential treatment center for educating qualified students for whom the school district is]
responsible for providing a free appropriate public education
under the federal Individuals with Disabilities Education Act
and for providing [for] payment for [such] that education.
All financial agreements between local school boards and
private, nonsectarian, nonprofit educational training centers
and residential treatment centers must be negotiated in
accordance with [regulations] rules promulgated by the
director department. Payment for education and services
under [such] those agreements shall be made by the local
school board [of education] in which the qualified student
lives from available funds [available].

[C.] G. All agreements between local school boards
and private, nonsectarian, nonprofit educational training
centers and residential treatment centers must be reviewed and
approved by the [state superintendent] secretary. The
agreements shall ensure that all qualified students placed in
a private, nonsectarian, nonprofit training center or
residential treatment center receive the education to which
they are entitled pursuant to federal and state laws. All
agreements must provide for:

(1) diagnosis [and];

(2) an educational program for each [child
which] qualified student that meets state standards for such
programs, except that teachers employed by private schools are
not required to be highly qualified;
(3) special education and related services in conformance with an individualized education program that meets the requirements of federal and state law; and

(4) adequate classroom and other physical space provided at the training center or residential treatment center that allows the school district to provide an appropriate education.

H. The agreements must also acknowledge the authority and responsibility of the local school board and the department [of education] to conduct on-site evaluations of programs and [pupil] student progress to [insure] ensure that the education provided to the qualified student is meeting state standards.

[D. Exceptional children] I. A qualified student for whom the state is required by federal law to provide a free appropriate public education and who is attending a private, nonsectarian, nonprofit training center or a residential treatment center is a public school student and shall be counted in the special education membership of the school district [as enrolled in the Class D special education program] that is responsible for the costs of educating the student and in the class level identified as appropriate in the individualized educational program for the student.

J. The department shall adopt the format to report individual student data and costs for any school-age person.
attending public or private training centers or residential
treatment programs and shall include those reports in the
student teacher accountability reporting system by using the
same student identification number issued to a public school
student pursuant to Section 22-2C-11 NMSA 1978 or by assigning
a unique student identifier for school-age persons, including
those who are not residents of this state but who are
attending a private training center or residential treatment
program in this state. Every public and private training
center and every public and private residential treatment
program that serves school-age persons in this state shall
comply with this provision.

K. The department shall promulgate rules to carry
out the provisions of this section."

Section 28. Section 22-30-6 NMSA 1978 (being Laws 2007,
Chapter 292, Section 6 and Laws 2007, Chapter 293, Section 6)
is amended to read:

"22-30-6. DISTANCE LEARNING STUDENTS.--

A. A student must be enrolled in a public school
or a state-supported school and must have the permission of
the student's local distance education learning site to enroll
in a distance learning course. A distance learning student
shall [only] be counted only in the student's primary
enrolling district for the purpose of determining the
[membership] enrollment used to calculate a school district's
state equalization guarantee. A student shall have only one primary enrolling district.

B. A home school [student] school-age person may participate in the statewide cyber academy by enrolling for one-half or more of the minimum course requirements approved by the department for public school students in the school district in which the student resides; or, if the student is enrolled for less than one-half of the minimum course requirements, the student may participate in the statewide cyber academy by paying not more than thirty-five percent of the current [unit value per curricular unit] base per-student cost.

C. A student enrolled in a nonpublic school may participate in the statewide cyber academy if the school in which the student is enrolled enters into a contract with the school district in which the nonpublic school is located to pay the required tuition.

D. A student who is detained in or committed to a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children may participate in the statewide cyber academy if the facility in which the student is enrolled enters into a contract with the school district in which the facility is located."

Section 29. Section 24-3B-4 NMSA 1978 (being Laws 1978, Chapter 211, Section 4) is amended to read:
"24-3B-4. FUND CREATED--USE--CALCULATION.--

A. There is created the "department of health [and environment department] education fund" in the state treasury.

B. The fund shall be used solely to provide educational services to institution-bound residents of the state institutions under the authority of the secretary.

C. The secretary shall distribute the fund to institutions under [his] the secretary's authority within limits established by law.

D. The secretary shall determine the allocation to each institution from the fund according to the annual program cost of that institution as calculated on September 15 of the fiscal year.

E. The annual program cost for each institution shall be determined by the following calculation:

\[
\text{number of institution-bound x 3.9 x per } \frac{\text{dollar value annual}}{\text{residents}} \times \frac{3.9}{\text{program unit cost}} = \text{program sufficient per-student cost}
\]

F. The dollar value per program unit shall be the same as the dollar value [per program unit as] of sufficient per-student cost established by the legislature for the state equalization guarantee.

G. Each director of each state institution under
the authority of the secretary shall submit annually, on or
before October 15, to the secretary an estimate for the
succeeding fiscal year of the number of institution-bound
residents and any other information necessary to calculate
annual program cost.

H. The secretary shall submit annually, on or
before November 15, to the department of finance and
administration the recommendations of the department regarding
the fund for the succeeding fiscal year, for inclusion in the
executive budget document."

Section 30. TEMPORARY PROVISION--ENROLLMENT REPORTS--
MEM--STATUTORY REFERENCES.--

A. References in the Public School Code to the
fortieth day membership shall be deemed to be references to
the total enrollment on the second Wednesday in October.

B. References in the Public School Code to the
eightieth day membership shall be deemed to be references to
the total enrollment on the second Wednesday in December.

C. References in the Public School Code to the one
hundred twentieth day membership shall be deemed to be
references to the total enrollment on the second Wednesday in
February.

D. References in the Public School Code to MEM or
membership shall be deemed to be references to enrollment.

Section 31. TEMPORARY PROVISION--PROJECTIONS AND BUDGET
PREPARATION--PRE-2010 FORMULA.--

A. Section 22-8-13 NMSA 1978 notwithstanding, the public education department may institute new reporting dates for the 2008-2009 school year as follows:

(1) first reporting date, second Wednesday in October;

(2) second reporting date, second Wednesday in December; and

(3) third reporting date, second Wednesday in February.

B. The public education department may require enrollment or other reports at other times specified by the department.

C. The effective date of sections in this act notwithstanding, the definitions set out in Section 22-8-2 NMSA 1978 as enacted in this act shall be used to project enrollments and prepare budgets for the 2009-2010 school year.

D. If the legislature does not appropriate a sufficient amount to begin using the funding formula as provided in Subsection O of Section 22-8-18 NMSA 1978, as that section is repealed and re-enacted in this 2008 act, the public education department shall use the funding formula in place on January 1, 2008 to determine and distribute the state equalization guarantee in fiscal year 2010.

Section 32. TEMPORARY PROVISION--IMPLEMENTATION
COMMITTEE.--

A. The "funding formula implementation assistance committee" is created to advise and assist school districts and the public education department in the implementation of the funding formula and other provisions of this 2008 act.

B. Members of the committee shall be:

1. the voting members of the funding formula study task force and the project advisory panel of the task force;

2. one superintendent of schools from a rural, high-poverty, high English language learner school district, appointed by the speaker of the house of representatives;

3. one superintendent of schools from an urban school district, appointed by the president pro tempore of the senate;

4. the secretary of public education;

5. the chairperson of the legislative education study committee;

6. the chairperson of the Indian education advisory council or the chairperson's designee; and

7. the president of the New Mexico association of bilingual educators or the president's designee.

C. The co-chairs of the funding formula study task
force shall be the co-chairs of the funding formula
implementation assistance committee.

D. Members who are not state employees are
entitled to receive per diem and mileage expenses as provided
in the Per Diem and Mileage Act.

E. Staff for the committee shall be provided by
the legislative council service, the legislative education
study committee, the legislative finance committee, the public
education department and the office of education
accountability. The legislative council service or other
staff may contract for expert and technical assistance for the
committee as needed.

F. The committee shall:

(1) develop a work plan and budget for
approval by the New Mexico legislative council;

(2) advise, assist and monitor the progress
of school districts and the public education department in the
planning phase of this 2008 act;

(3) meet with and provide assistance to the
public education department's staff or other planning and
implementation groups established by the secretary of public
education;

(4) provide regular reports to the
legislative education study committee, the legislative finance
committee and the governor, which reports may be in person or
written as requested; and

(5) report its findings and recommendations, including recommendations for statutory changes, to the legislature and the governor by January 15, 2009.

Section 33. REPEAL.--Sections 22-8-3, 22-8-7.1, 22-8-19, 22-8-20 through 22-8-23.8, 22-8-25.1 and 22-13-6 NMSA 1978 (being Laws 1988, Chapter 64, Section 14; Laws 1993, Chapter 224, Section 1; Laws 1974, Chapter 8, Section 9; Laws 1991, Chapter 85, Section 3; Laws 1969, Chapter 180, Section 17; Laws 1974, Chapter 8, Section 13; Laws 1975, Chapter 119, Section 1; Laws 1990 (1st S.S.), Chapter 3, Sections 7 and 8; Laws 1993, Chapter 237, Section 2; Laws 1997, Chapter 40, Section 7; Laws 2003, Chapter 144, Section 2 and Laws 2003 Chapter 152, Section 9; Laws 2003, Chapter 144, Section 3 and Laws 2003, Chapter 152, Section 8; Laws 2006, Chapter 94, Section 15; Laws 2007, Chapter 348, Section 1; Laws 2007, Chapter 365, Section 2; Laws 1985 (1st S.S.), Chapter 15, Section 17; and Laws 1972, Chapter 95, Section 2, as amended) are repealed.

Section 34. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 2, 4, 5, 8, 9, 10, 11, 12, 13 and 22 of this act is July 1, 2008.

B. The effective date of the provisions of Sections 3, 6, 7, 14, 16, 17, 18, 19, 20, 23, 24, 28, 29, 30
and 33 of this act is July 1, 2009.

C. The effective date of the provisions of Sections 1, 15, 21, 25, 26, 27, 31, 32 and 34 of this act is May 14, 2008.
HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE GROSS RECEIPTS TAX AND THE COMPENSATING TAX; DISTRIBUTING THE INCREASED REVENUE TO THE PUBLIC SCHOOL FUND.

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

   Section 1. A new section of the Tax Administration Act is enacted to read:

   "[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND--GROSS RECEIPTS.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public school fund in an amount equal to nine and nine hundredths percent of the net receipts attributable to the gross receipts tax prior to any other distributions."

   Section 2. A new section of the Tax Administration Act is enacted to read:

.170674.3
"[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND--
COMPENSATING TAX.--A distribution pursuant to Section 7-1-6.1
NMSA 1978 shall be made to the public school fund in an amount
equal to nine and nine hundredths percent of the net receipts
attributable to the compensating tax prior to any other
distributions."

Section 3. Section 7-9-4 NMSA 1978 (being Laws 1966,
Chapter 47, Section 4, as amended) is amended to read:

"7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
"GROSS RECEIPTS TAX".--

A. For the privilege of engaging in business, an
excise tax equal to five and one-half percent of gross receipts
is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be
referred to as the "gross receipts tax"."

Section 4. Section 7-9-7 NMSA 1978 (being Laws 1966,
Chapter 47, Section 7, as amended) is amended to read:

"7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
"COMPENSATING TAX".--

A. For the privilege of using tangible property in
New Mexico, there is imposed on the person using the property
an excise tax equal to five and one-half percent of the value
of tangible property that was:

(1) manufactured by the person using the
property in the state;
(2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or

(3) acquired as the result of a transaction [which] that was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five and one-half percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction [which] that was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should
have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.

- 4 -
HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008
INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT
MAKING APPROPRIATIONS TO SUPPLEMENT PUBLIC SCHOOL FUNDING, TO
SUPPORT EXISTING LAW AND TO PROVIDE REQUIRED RESOURCES TO THE
PUBLIC EDUCATION DEPARTMENT TO IMPLEMENT PROVISIONS OF
EDUCATION REFORM AND PUBLIC SCHOOL FINANCE REFORM.

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

Section 1. SPECIAL EDUCATION CATASTROPHIC AID FUND
APPROPRIATION.--Seven million dollars ($7,000,000) is
appropriated from the general fund to the special education

catastrophic aid fund for expenditure in fiscal year 2009 and
subsequent fiscal years to carry out the purposes of the fund.
Any unexpended or unencumbered balance remaining at the end of
a fiscal year shall not revert to the general fund.

Section 2. FAMILY AND YOUTH RESOURCE APPROPRIATION.--
Three million dollars ($3,000,000) is appropriated from the
general fund to the family and youth resource fund for expenditure in fiscal year 2009 and subsequent fiscal years to provide grants to public-education department-approved school programs pursuant to the Family and Youth Resource Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 3. NEW SCHOOL DEVELOPMENT FUND APPROPRIATION.-- Three million dollars ($3,000,000) is appropriated from the general fund to the new school development fund for expenditure in fiscal years 2008 and subsequent fiscal years to carry out the purposes of the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 4. PUBLIC EDUCATION DEPARTMENT APPROPRIATIONS.-- The following amounts are appropriated from the general fund to the public education department for expenditure in fiscal year 2009 for the following purposes, and any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall revert to the general fund:

A. two hundred fifty thousand dollars ($250,000) for expenses related to planning and implementing the new funding formula and the statutory accountability measures, including contractual services;

B. two hundred fifty thousand dollars ($250,000) for personnel and other expenses related to collecting and
confirming school district data that are required to be
reported for the student teacher accountability report system
or other data required by the department; and

C. four hundred thousand dollars ($400,000) for
program managers to evaluate, monitor and provide technical
assistance to school districts in the development and execution
of educational plans for student success and other
accountability indicators.

- 3 -
INTRODUCED BY

FOR THE FUNDING FORMULA STUDY TASK FORCE

AN ACT

RELATING TO TAXATION; AMENDING THE OIL AND GAS EMERGENCY SCHOOL TAX ACT TO EQUALIZE AT FOUR PERCENT THE RATE OF TAX ON ALL PRODUCTS SUBJECT TO THE TAX; DISTRIBUTING A PORTION OF THE REVENUE FROM THE OIL AND GAS EMERGENCY SCHOOL TAX TO THE PUBLIC SCHOOL FUND.

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

Section 1. Section 7-31-4 NMSA 1978 (being Laws 1959, Chapter 54, Section 4, as amended) is amended to read: "7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall

.170670A.3
be four percent of the taxable value determined pursuant to
Section 7-31-5 NMSA 1978 [(1)] on oil and on oil and other
liquid hydrocarbons removed from natural gas at or near the
wellhead; [except as provided in Paragraphs (4) and (5) of this
subsection, three and fifteen hundredths percent of the taxable
value determined pursuant to Section 7-31-5 NMSA 1978;]

(2)] on carbon dioxide, helium and non-
hydrocarbon gases; [three and fifteen hundredths percent of the
taxable value determined pursuant to Section 7-31-5 NMSA 1978;]

(3)] and on natural gas. [except as provided
in Paragraphs (6) and (7) of this subsection, four percent of
the taxable value determined pursuant to Section 7-31-5 NMSA
1978;]

(4) on the oil and on other liquid
hydrocarbons removed from natural gas at or near the wellhead
from a stripper well property, one and fifty-eight hundredths
percent of the taxable value determined pursuant to Section
7-31-5 NMSA 1978, provided that the average annual taxable
value of oil was equal to or less than fifteen dollars ($15.00)
per barrel in the calendar year preceding July 1 of the fiscal
year in which the tax rate is to be imposed;]

(5) on the oil and on other liquid
hydrocarbons removed from natural gas at or near the wellhead
from a stripper well property, two and thirty-six hundredths
percent of the taxable value determined pursuant to Section
7-31-5 NMSA 1978, provided that the average annual taxable
value of oil was greater than fifteen dollars ($15.00) per
barrel but not more than eighteen dollars ($18.00) per barrel
in the calendar year preceding July 1 of the fiscal year in
which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper
well property, two percent of the taxable value determined
pursuant to Section 7-31-5 NMSA 1978, provided that the average
annual taxable value of natural gas was equal to or less than
one dollar fifteen cents ($1.15) per thousand cubic feet in the
calendar year preceding July 1 of the fiscal year in which the
tax rate is to be imposed; and

(7) on the natural gas removed from a stripper
well property, three percent of the taxable value determined
pursuant to Section 7-31-5 NMSA 1978, provided that the average
annual taxable value of natural gas was greater than one dollar
fifteen cents ($1.15) per thousand cubic feet but not more than
one dollar thirty-five cents ($1.35) per thousand cubic feet in
the calendar year preceding July 1 of the fiscal year in which
the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying
this tax, is deemed to be in the business of severing products
and is liable for this tax to the extent of [his] the owner's
interest in the value of the products or to the extent of [his]
the owner's interest as may be measured by the value of the
.170670A.3
products.

C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law."

Section 2. 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 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 and 7-1-6.59 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 and 7-1-6.59 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."

Section 3. A new section of the Tax Administration Act, Section 7-1-6.59 NMSA 1978, is enacted to read:

"7-1-6.59. [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND.--A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the public school fund in an amount equal to twelve and one-half percent of the net receipts attributable to the tax imposed pursuant to the Oil and Gas Emergency School Tax Act."

Section 4. APPLICABILITY.--The distribution pursuant to Section 3 of this act applies to revenue earned on a modified accrual basis after June 30, 2008.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.
A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 7 OF THE
CONSTITUTION OF NEW MEXICO TO INCREASE THE DISTRIBUTIONS FROM
THE LAND GRANT PERMANENT FUNDS TO BENEFIT THE PUBLIC SCHOOLS
AND SECURE EDUCATIONAL REFORMS AND FUNDING FOR PUBLIC EDUCATION
AND TO BENEFIT OTHER RECIPIENTS.

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

Section 1. It is proposed to amend Article 12, Section 7 of the
constitution of New Mexico to read:

"A. As used in this section, "fund" means the
permanent school fund described in Section 2 of this article
and all other permanent funds derived from lands granted or
confirmed to the state by the act of congress of June 20, 1910,
entitled "An act to enable the people of New Mexico to form a
constitution and state government and be admitted into the

union on an equal footing with the original states".

B. The fund shall be invested by the state investment officer in accordance with policy regulations promulgated by the state investment council.

C. In making investments, the state investment officer, under the supervision of the state investment council, shall exercise the judgment and care under the circumstances then prevailing that [businessmen] businesspersons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

D. The legislature may establish criteria for investing the fund if the criteria are enacted by a three-fourths' vote of the members elected to each house, but investment of the fund is subject to the following restrictions:

(1) not more than sixty-five percent of the book value of the fund shall be invested at any given time in corporate stocks;

(2) not more than ten percent of the voting stock of a corporation shall be held;

(3) stocks eligible for purchase shall be restricted to those stocks of businesses listed upon a national
stock exchange or included in a nationally recognized list of
stocks; and

(4) not more than fifteen percent of the book
value of the fund may be invested in international securities
at any single time.

E. All additions to the fund and all earnings,
including interest, dividends and capital gains from investment
of the fund shall be credited to the fund.

F. Except as provided in Subsection G of this
section, the annual distributions from the fund shall be [five]
six and one-half percent of the average of the year-end market
values of the fund for the immediately preceding five calendar
years.

[6. In addition to the annual distribution made
pursuant to Subsection F of this section, unless suspended
pursuant to Subsection H of this section, an additional annual
distribution shall be made pursuant to the following schedule;
provided that no distribution shall be made pursuant to the
provisions of this subsection in any fiscal year if the average
of the year-end market values of the fund for the immediately
preceding five calendar years is less than five billion eight
hundred million dollars ($5,800,000,000):

(1) in fiscal years 2005 through 2012, an
amount equal to eight tenths percent of the average of the
year-end market values of the fund for the immediately
preceding five calendar years; provided that any additional
distribution from the permanent school fund pursuant to this
paragraph shall be used to implement and maintain educational
reforms as provided by law; and

(2) in fiscal years 2013 through 2016, an
amount equal to one-half percent of the average of the year-end
market values of the fund for the immediately preceding five
calendar years; provided that any additional distribution from
the permanent school fund pursuant to this paragraph shall be
used to implement and maintain educational reforms as provided
by law.

H. The legislature, by a three-fifths' vote of the
members elected to each house, may suspend any additional
distribution provided for in Subsection C of this section.

G. The distribution from the permanent school fund
for aid to public schools shall be used to supplement the
state's efforts to provide a sufficient education pursuant to
Article 12, Section 1 of this constitution."

Section 2. The amendment proposed by this resolution
shall be submitted to the people for their approval or
rejection at the next general election or at any special
election prior to that date that may be called for that
purpose.

- 4 -
HOUSE JOINT RESOLUTION

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 2 OF THE
CONSTITUTION OF NEW MEXICO TO AUTHORIZE AN ADDITIONAL STATEWIDE
MILLAGE RATE THAT WILL BE DEDICATED TO PUBLIC SCHOOL FUNDING.

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

Section 1. It is proposed to amend Article 8, Section 2 of the constitution of New Mexico to read:

"Taxes levied upon real or personal property for state revenue shall not exceed four mills annually on each dollar of the assessed valuation thereof except for the support of the educational, penal and charitable institutions of the state and payment of the state debt and interest [thereon] on the debt; and the total annual tax levy upon such property for all state purposes exclusive of necessary levies for the state debt shall not exceed ten mills [provided, however, that]. Taxes levied
upon real or personal tangible property for all purposes, except special levies on specific classes of property and except necessary levies for public debt, shall not exceed twenty-five mills annually on each dollar of the assessed valuation thereof, but laws may be passed authorizing additional taxes to be levied outside of such limitation when approved by at least a majority of the qualified electors of the taxing district who paid a property tax therein during the preceding year voting on such proposition. Five mills of the twenty-five mill limit shall be imposed statewide and distributed to public schools through the state's public school fund."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.