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HOUSE BILL 83

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

INTRODUCED BY

Doreen Y. Gallegos and John Arthur Smith

AN ACT

RELATING TO EARLY CHILDHOOD; CREATING THE EARLY CHILDHOOD EDUCATION AND CARE FUND; CREATING THE EARLY CHILDHOOD EDUCATION AND CARE PROGRAM FUND; DISTRIBUTING CERTAIN REVENUE RECEIVED BY THE STATE PURSUANT TO THE OIL AND GAS EMERGENCY SCHOOL TAX ACT TO THE EARLY CHILDHOOD EDUCATION AND CARE FUND; DISTRIBUTING CERTAIN REVENUE RECEIVED BY THE STATE PURSUANT TO THE FEDERAL MINERAL LEASING ACT TO THE EARLY CHILDHOOD EDUCATION AND CARE FUND; MAKING AN APPROPRIATION.

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

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

A. The "early childhood education and care fund" is created within the state treasury. The fund shall consist of distributions, appropriations, gifts, grants and donations.

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1 Income from investment of the fund shall be credited to the  
2 fund. Money in the fund shall be expended only as provided in  
3 this section.

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

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

9 (2) in consultation with the state treasurer.

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

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

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1 years or thirty million dollars (\$30,000,000).

2 E. In addition to the distribution pursuant to  
3 Subsection D of this section, money in the early childhood  
4 education and care fund may be expended in the event that  
5 general fund balances, including all authorized revenues and  
6 transfers to the general fund and balances in the general fund  
7 operating reserve, the appropriation contingency fund, the  
8 tobacco settlement permanent fund and the tax stabilization  
9 reserve, will not meet the level of appropriations authorized  
10 from the general fund for a fiscal year. In that event, to  
11 avoid an unconstitutional deficit, the legislature may  
12 appropriate from the early childhood education and care fund to  
13 the general fund only in the amount necessary to meet general  
14 fund appropriations for that fiscal year and only if the  
15 legislature has authorized transfers from the appropriation  
16 contingency fund, the tax stabilization reserve and the tobacco  
17 settlement permanent fund that exhaust those fund balances.

18 SECTION 2. [NEW MATERIAL] EARLY CHILDHOOD EDUCATION AND  
19 CARE PROGRAM FUND.--The "early childhood education and care  
20 program fund" is created as a nonreverting fund in the state  
21 treasury. The fund consists of distributions, appropriations,  
22 gifts, grants, donations and income from investment of the  
23 fund. The early childhood education and care department shall  
24 administer the fund. Money in the fund is subject to  
25 appropriation by the legislature for early childhood education

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1 and care services and programs. Expenditures from the fund  
2 shall be by warrant of the secretary of finance and  
3 administration pursuant to vouchers signed by the secretary of  
4 early childhood education and care or the secretary's  
5 authorized representative.

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

9 A. If, by June 30, 2021 and by June 30 of each  
10 fiscal year thereafter, the net receipts for that fiscal year  
11 of the money received by the state pursuant to the federal  
12 Mineral Leasing Act exceed the annual average amount, the  
13 excess shall be distributed to the early childhood education  
14 and care fund and attributed to that fiscal year. If there is  
15 an excess amount, the distribution shall be made as soon as  
16 practicable. If there is not an excess amount, no distribution  
17 shall be made to the fund. The department of finance and  
18 administration shall make the calculation to determine if an  
19 excess amount shall be distributed.

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

24 SECTION 4. Section 7-1-6.20 NMSA 1978 (being Laws 1985,  
25 Chapter 65, Section 6, as amended) is amended to read:

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

3           A. Except as provided in Subsection B of this  
4 section, after the necessary disbursements have been made from  
5 the extraction taxes suspense fund, the money remaining in the  
6 suspense fund as of the last day of the month shall be  
7 identified by tax source and distributed or transferred in  
8 accordance with the provisions of Sections 7-1-6.21 through  
9 7-1-6.23 [~~NMSA 1978~~] and [~~Section 3 of this 2017 act~~] 7-1-6.61  
10 NMSA 1978. After the necessary distributions and transfers,  
11 any balance, except for remittances unidentified as to source  
12 or disposition, shall be transferred to the general fund.

13           B. Payments on assessments issued by the department  
14 pursuant to the Oil and Gas Conservation Tax Act, the Oil and  
15 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem  
16 Production Tax Act and the Oil and Gas Severance Tax Act shall  
17 be held in the extraction taxes suspense fund until the  
18 secretary determines that there is no substantial risk of  
19 protest or other litigation, whereupon after the necessary  
20 disbursements have been made from the extraction taxes suspense  
21 fund, the money remaining in the suspense fund as of the last  
22 day of the month attributed to these payments shall be  
23 identified by tax source and distributed or transferred in  
24 accordance with the provisions of Sections 7-1-6.21 through  
25 7-1-6.23 [~~NMSA 1978~~] and [~~Section 3 of this 2017 act~~] 7-1-6.61

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1 NMSA 1978. After the necessary distributions and transfers,  
2 any balance, except for remittance unidentified as to source or  
3 disposition, shall be transferred to the general fund."

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

6 "7-1-6.61. DISTRIBUTION--TAX STABILIZATION RESERVE FROM  
7 THE OIL AND GAS EMERGENCY SCHOOL TAX--EARLY CHILDHOOD EDUCATION  
8 AND CARE FUND.--

9 A. A distribution pursuant to Section 7-1-6.20 NMSA  
10 1978 shall be made [~~to the tax stabilization reserve~~] in an  
11 amount as calculated pursuant to Subsection B of this section.

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

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

23 (2) less than twenty-five percent of the  
24 aggregate recurring appropriations for the current fiscal year  
25 from the general fund as determined by the department of

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1 finance and administration, then the excess amount distributed  
2 to the tax stabilization reserve shall be limited to the amount  
3 necessary to bring the balance equal to twenty-five percent of  
4 the aggregate recurring appropriations from the general fund as  
5 determined by the department of finance and administration and  
6 any remaining excess revenue shall be distributed to the early  
7 childhood education and care fund as soon as practicable.

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

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

14 [~~G.~~] E. As used in this section:

15 (1) "annual average amount" means the total  
16 net receipts attributable to the tax imposed pursuant to  
17 Section 7-31-4 NMSA 1978 and distributed pursuant to Section  
18 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal  
19 years, divided by five; [~~and~~]

20 (2) "state reserves" means the general fund  
21 balances, including all authorized revenues and transfers to  
22 the general fund and balances in the appropriation contingency  
23 fund, the general fund operating reserve, the tax stabilization  
24 reserve and the tobacco settlement permanent fund; and

25 [~~(2)~~] (3) "year-to-date amount" means the

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1 cumulative year-to-date net receipts attributable to the tax  
2 imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to  
3 the general fund in the prior months of the current fiscal  
4 year."

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

7 "22-8-34. FEDERAL MINERAL LEASING FUNDS.--

8 A. ~~[Except for an annual appropriation to the~~  
9 ~~instructional material fund and to the bureau of geology and~~  
10 ~~mineral resources of the New Mexico institute of mining and~~  
11 ~~technology, and except as provided in Subsection B of this~~  
12 ~~section, all other]~~ Money received by the state pursuant to the  
13 provisions of the federal Mineral ~~[Lands]~~ Leasing Act [~~30 USCA~~  
14 ~~181, et seq.~~] shall be distributed to the public school fund,  
15 except as follows:

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

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

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

23 (4) the distribution made pursuant to Section  
24 3 of this 2020 act.

25 B. ~~[All]~~ Money received by the state as its share

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1 of a prepayment of royalties pursuant to 30 U.S.C. 1726(b), as  
2 that section may be amended or renumbered, shall be distributed  
3 as follows:

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

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

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

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