F I S C A L   I M P A C T   R E P O R T

SPONSOR	Lundstrom/Egolf/ Alcon/Allison/ Garcia, H.	**ORIGINAL DATE** **LAST UPDATED**	2/4/2020 2/10/2020	**HB**	4/aHEC/aHAFC
SHORT TITLE	Federally Impacted Location Support PGM			**SB**	
				ANALYST	Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$18,867.1	$18,867.1	$18,867.1	$56,601.3	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB131, HB254, SB135, SB141, SB142, SB159, SB198
Relates to HAFC Substitute for HB2 and 3

SOURCES OF INFORMATION
LFC Files
Legislative Education Study Committee (LESC) Files

Responses Received From
Public Education Department (PED)
Public School Facilities Authority (PSFA)
Indian Affairs Department (IAD)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 4 strikes the $18.9 million appropriation and replaces the HEC amendment with the same amendment. The HAFC amendment adds a new provision requiring schools that receive a federally impacted location support program fund (FILSPF) distribution to engage in meaningful consultation with Indian nations, tribes, and pueblos located in New Mexico whose enrolled members are students.

Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 4 modifies the calculation for the FILSPF distribution to only include federal Impact Aid payments included in the calculation of the state equalization guarantee (SEG), effectively reducing the operational impact in future fiscal years. Additionally, the amendment clarifies that FILSPF distributions would be made to schools based on the average amount of Impact Aid for the preceding 5 fiscal years, not including the immediate fiscal year. Again, the distribution would ramp up over 3 years, providing the equivalent of one-third of credited Impact Aid payments in FY21, two-thirds in FY22, and the full amount in FY23 and subsequent fiscal years.

The HEC amendment also strikes the provision allowing FILSPF distributions to be spent on "purposes described in PED rule" and adds a provision requiring schools that receive the distribution to report detailed annual expenditures to PED, LESC, and LFC.

Synopsis of Original Bill

House Bill 4 creates a new federally impacted location support program fund (FILSPF) and appropriates $18.9 million from the general fund to FILSPF for distribution to public schools that receive federal Impact Aid payments for capital expenditures, debt service, community services, educating at-risk students, and other uses determined by PED. Schools cannot spend more than 50 percent of the distribution for capital expenditures and debt service.

The bill increases the annual FILSPF distribution to Impact Aid schools over 3 years. The distribution will be equivalent to 25 percent of the 5-year average of federal Impact Aid payments in FY21, 50 percent in FY22, and 75 percent in FY23 and subsequent years.

FISCAL IMPLICATIONS

The appropriation of $18.9 million contained in this bill is a recurring expense to the general fund. This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

PED notes the bill increases FILSPF distributions over a 3 year period, such that by FY23, school districts and state-chartered charter schools that receive federal Impact Aid payments would receive an additional categorical appropriation equal to 75 percent of their current Impact Aid payments.

While the bill appropriates $18.9 million for FILSPF in FY21 (which is equivalent to 25 percent of operational Impact Aid payments), LESC notes the bill refers to all Impact Aid received by schools. In addition to operational Impact Aid payments, schools receive other Impact Aid funds for Native American students, special education, and construction. As such, 25 percent of all Impact Aid payments would technically be $24.5 million in FY21, $5.6 million higher than the bill's current appropriation. PED indicates the department would prorate distributions to schools if appropriations to FILSPF fall short of required funding levels.

The bill increases the FILSPF distribution to 50 percent of Impact Aid payments in FY22. Assuming the calculation is based on 50 percent of all Impact Aid payments, the estimated budget impact would be an additional $24.5 million of recurring appropriations in FY22. Similarly, the Legislature would need to appropriate an additional $24.5 million in FY23 to meet the FILSPF distribution requirement in FY23 and subsequent fiscal years.

This bill would distribute funding to schools based on their preceding 5-year average of Impact Aid payments. Currently, only 25 school districts and three state-chartered charter schools have received Impact Aid payments for the last 5 consecutive years. Notably, three school districts (Gallup, Central, and Zuni) would receive over 76 percent of the entire FILSPF distribution (See Attachment 1) each year, given their share of statewide Impact Aid receipts.

Because Impact Aid payments are based on applications to the federal government, more schools may apply in future fiscal years to receive Impact Aid. If these schools submit new applications and receive federal Impact Aid payments for at least 5 years, they would also be eligible for an FILSPF distribution. While this could potentially create additional operating budget impacts in future years, this analysis does not consider those costs.

SIGNIFICANT ISSUES

Impact on Disparity Analysis. The federal government authorizes a state to “credit,” or supplant, a portion of state aid to local educational agencies (LEA) with federal Impact Aid payments if the state can demonstrate that disparities in per-student spending or per-student revenues between LEAs in the 95th and 5th percentile are less than 25 percent (i.e. there are minimal differences in funding per student between LEAs). States must account for (and also credit) other federal and local revenues in the same manner. If the state’s funding methodology passes this disparity test, the U.S. Department of Education classifies the state as having an “equalized” methodology and allows the state to adjust (credit) appropriations to minimize funding disparities between LEAs caused by differences in local or federal revenue sources.

Provisions of this bill would effectively provide additional state aid for LEAs equal to the amount of federal Impact Aid credited in the public school funding formula by FY23. PED notes, however, the bill prohibits LEAs from spending more than half of the FILSPF distribution for capital expenditures and debt service. Additionally, PED notes the bill restricts the use of FILSPF funding for the following purposes, which may not affect calculations in the federal disparity test:

- Capital expenditures, debt service, and community services (which are not considered revenue under the definition of “current expenditures” in the Every Student Succeeds Act (ESSA), Pub. L. No. 115-224, § 7013(4) (see p. 381));
- Expenditures associated with educating students who: (a) receive special education services; (b) have a disability; (c) are economically disadvantaged; (d) are English language learners; or (e) are participants in gifted education programs (which are “special cost differentials” excluded from the disparity calculation under 34 CFR Section 222.162, expanding on language in ESSA, Pub. L. No. 115-224, § 7009(b)(2)(B)(see p. 377)); and
- Purposes provided in PED rules.

Public School Capital Outlay History. PSFA notes Impact Aid school districts are already eligible for capital outlay funding awarded by the Public School Capital Outlay Council (PSCOC) and providing a FILSPF distribution could potentially impact equalization of operational funding. IAD notes the bill makes more funding available for capital expenditures but not to all school districts and state-chartered charter schools, which may be viewed as dis-equalizing capital funding statewide.

In 2000, the 11th Judicial District Court ruled in the *Zuni Public District v. State of New Mexico* lawsuit that New Mexico’s public school capital outlay system violated constitutional requirements to provide “a uniform system of free public schools, sufficient for the education of and open to, all the children of school age,” and ordered the state to establish and implement a uniform funding system for capital improvements and for correcting past inequities. The impact of the *Zuni* lawsuit and subsequent legislation resulted in the development and implementation of adequacy standards for schools, which represent the maximum educational facility space the state will finance with matching local capital outlay funds, and a standards-based process for assessing and prioritizing awards for school renovation and replacement overseen by PSCOC and administered by PSFA.

Since the *Zuni* lawsuit, the state has spent $2.5 billion to build school facilities up to the approved statewide adequacy standards (which evolved from considerations of critical corrective needs to a broader range of space types and site features). Despite significant improvements in statewide facility conditions, the *Zuni* lawsuit was never closed and, in 2015, plaintiff school districts asked the court for a status hearing on new claims of inequity. The major claim of the plaintiffs was their inability to raise sufficient local capital outlay revenue to maintain capital assets and build facilities that were outside of the statewide adequacy standards like other districts with available local resources. In May 2019, the court received testimony on the case and established a deadline in August 2019 for parties to submit evidence on the state's progress in implementing a uniform and sufficient system.

During the 2019 legislative session, several historically-impacted Native American school districts (Gallup, Grants, and Zuni) that were plaintiffs in the *Zuni* lawsuit and Central Consolidated School District (CCSD) sought legislative fixes for their capital outlay concerns that eliminated the 75 percent credit for federal Impact Aid payments in the public school funding formula (also known as the state equalization guarantee), which would have increased operational revenues for these districts. Provisions of this bill would achieve a similar result, albeit in the form of a direct categorical appropriation to Impact Aid schools rather than a change to the funding formula.

PSFA indicates other capital improvement expenditures allowed under this bill may allow Impact Aid schools to complete planning, design and construction of infrastructure and facilities outside of the state funding process through PSCOC. The bill will impact PSCOC's ranking of school facilities, which is used to prioritize funding to schools with the greatest facility needs.

Overview of Federal Impact Aid. According to IAD, Congress has provided financial assistance to local school districts through the Impact Aid program since 1950. Impact Aid was designed to provide financial support to school districts that lack local revenue through property taxes, due to the presence of tax-exempt federal property (i.e., tribal trust lands and military bases). School districts with increased expenditures due to the enrollment of federally-connected children (i.e. children who reside on Indian lands, military bases, low-rent housing properties, and other federal properties, or have parents in the military or employed on eligible federal properties) are also intended recipients of these funds.

Most Impact Aid funds, except for the additional payments for children with disabilities and construction payments, are considered general aid to the recipient school districts. These funds may be used in whatever manner the school districts choose, so long as it is in accordance with local and state requirements. Most recipients use funding for daily expenditures, but recipients may use the funds for other purposes such as capital expenditures. School districts are required by federal regulations to consult with tribal governments and parents under the Indian Policies and Procedures about how these monies are spent.

School districts use Impact Aid for a wide variety of expenses, including the salaries of teachers and teacher aides; purchasing textbooks, computers, and other equipment; after-school programs and remedial tutoring; advanced placement classes; and special enrichment programs. Payments for children with disabilities must be used solely for the extra costs of educating these children. School districts receive Impact Aid funds directly from the federal government through an application process, so states do not receive nor process these funds.

Discussion on Equalization. According to IAD, plaintiff districts and tribal nations have argued the state's public school funding formula shares operational wealth generated by federal Impact Aid for use throughout the state, which benefits all districts, including those that have wealthier local property tax bases for capital outlay. However, all local operational property tax is also redistributed in the formula, and Impact Aid schools receive 25 percent of uncredited operational Impact Aid payments and 100 percent of Impact Aid payments for children with disabilities and construction that most districts do not generate. Additionally, since the *Zuni* lawsuit, PSCOC's ranking and prioritization methodologies have allocated a larger share of state capital outlay funding to support districts with lower property wealth to account for differences in local taxable property values and areas. Overall, plaintiff school districts' facility conditions (as measured by PSFA's facilities condition index) are comparable or better than the statewide average.

LESC notes the bill would create inequities in the PSCOC process, and potentially exacerbate problems noted in the *Zuni* lawsuit, which is still ongoing. School districts that receive federal Impact Aid funds have argued these funds are essentially payments to replace lost property tax revenue because of federal activity. However, legislation has been enacted to provide additional state funding for school districts with low property tax bases. Laws 2018, Chapter 66 (SB30) changed PSCOC's state and local match calculation to be based on the net taxable value for a school district for the prior five years, the maximum allowable gross square footage per student pursuant to the adequacy planning guide, the cost per square foot of replacement facilities, and each school district's population density.

While litigant school districts have argued their Impact Aid is a payment in lieu of taxes and should be treated like property taxes and available for capital outlay, LESC notes the bill's federally impacted location support program payments would not be considered in PSCOC's state and local match calculation, which would introduce inequities into the state and local match calculation. The state and local match formula was put into place to provide equity in state funding of public school buildings and address the Zuni lawsuit. For this reason, the Legislature may want to consider including federally impacted location support program revenue that is used for capital outlay in the state and local match calculation, which would result in reducing the state share of projects at school districts that receive federally impacted location support program funds.

PERFORMANCE IMPLICATIONS

IAD notes Native American students have fallen behind in New Mexico's education system in relation to their non-Native peers, despite the objectives of the New Mexico Indian Education Act (2003). The act requires the state "to ensure equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for American Indian students enrolled in public schools." The act also ensures PED partners with tribes, nations, and pueblos to further support tribal self-determination in education.

ADMINISTRATIVE IMPLICATIONS

In the event that a shortfall arises between the amount of money appropriated and the annual awards that could be made under the program, PED would prorate the shortfall across all awards.

RELATIONSHIP

This bill relates to an $18.9 million appropriation for a federally impacted location support program in the HAFC substitute for House Bills 2 and 3. The bill also relates to House Bill 131, which increases the Public School Capital Improvements Act state program guarantee (also known as SB9); House Bill 254 and Senate Bill 159, which amends the SB9 calculation; Senate Bill 135, which allocates $29.8 million to schools that received at least $1 million in federal Impact Aid payments; Senate Bill 141, which allocates $86 million to schools for local and federal revenues credited in the funding formula; Senate Bill 142, which eliminates the 75 percent federal credit in the funding formula; and Senate Bill 198, which allocates an amount equal to Impact Aid payments back to schools that received at least $1 million in federal Impact Aid payments.

TECHNICAL ISSUES

PED notes the language in Section 1(A) (defining "annual award") and Section 1(C) (addressing qualification for an award) differs slightly, and alignment of that language could prevent discrepancies in calculating award amounts.

LESC notes the $18.9 million appropriation in the bill appears to be based on the amount of federal operational Impact Aid included in the calculation of credits from FY15 through FY19 for the state equalization guarantee (SEG) distribution. The sponsor may wish to consider an amendment to clarify that only Impact Aid considered in the calculation of the SEG credit be included in the calculation of the federally impacted location support award amount.

OTHER SUBSTANTIVE ISSUES

PSFA notes funds utilized by state-chartered chartered schools for capital expenditures may be in violation of the anti-donation clause if funds are used to refurbish or otherwise maintain private facilities or for the acquisition of facilities not authorized as lease purchase arrangements by the department.

PED notes a school district or state-chartered charter school is eligible to receive a "federally impacted location support grant" each year if it had federal Impact Aid basic payments taken as credits during the immediately preceding 5 school years, and the federal Impact Aid was included in the calculation of the school district's or state-chartered charter school's SEG distribution, as "federal revenue," as defined in the Public School Finance Act. Due to charter school closures or consolidation, there are some entities that would have an award calculated that are no longer legal governmental entities. As such, these entities would be removed from PED's calculations.

In addition to funding concerns and mechanisms, IAD notes a need to increase transparency on Impact Aid expenditures, which is typically not reported to tribes. According to IAD, tribes want more authority over the local school boards and districts to ensure that Native American students are being adequately served. Although consultation with tribes is required through the Indian Policies and Procedures, this process has not worked to the satisfaction of tribes.

ALTERNATIVES

During the 2019 interim, LFC and LESC staff held regional stakeholder engagement sessions to discuss ways to address concerns brought by Impact Aid districts. Some suggestions included:

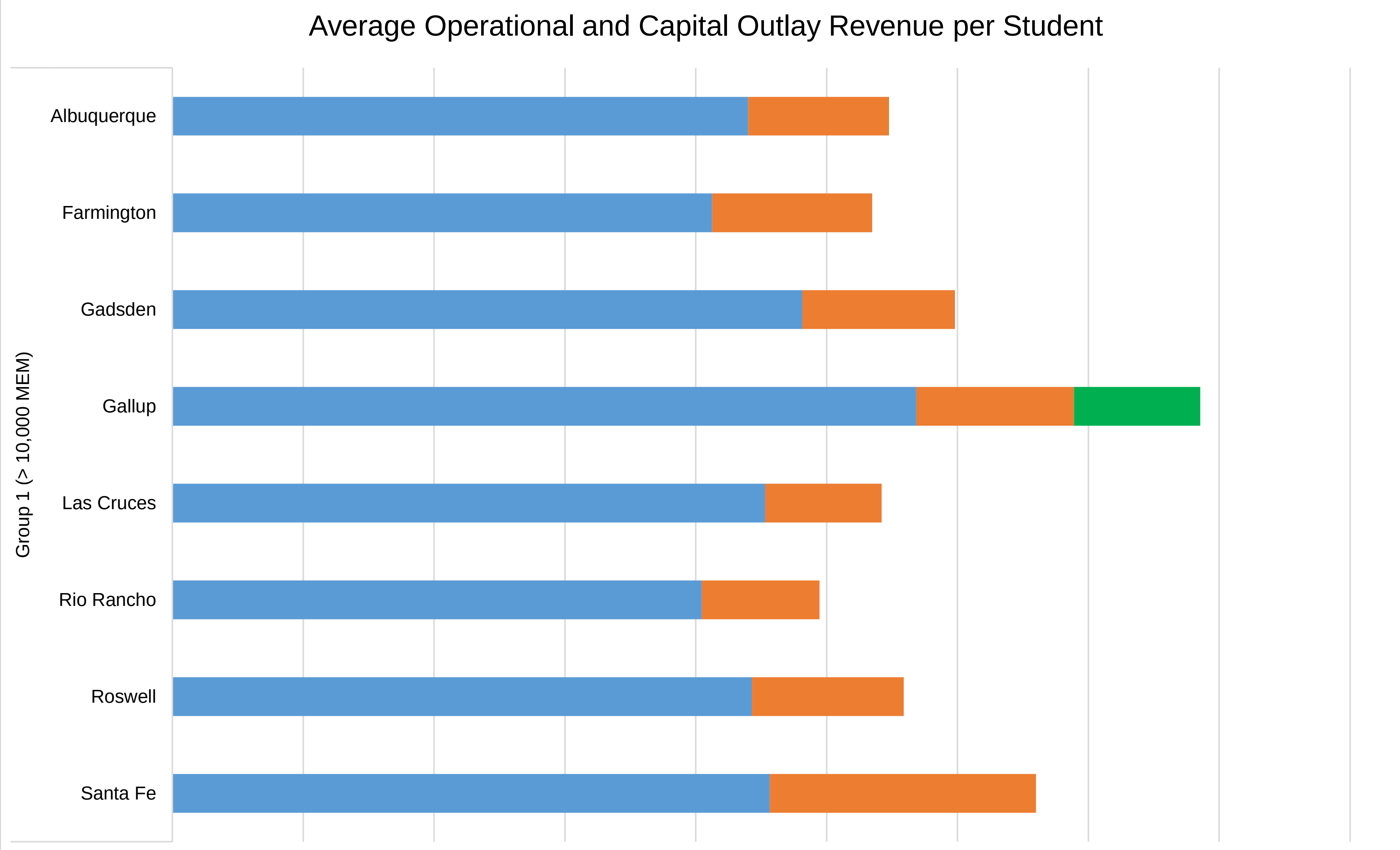
- Amending the Public School Capital Improvements Act (commonly known as SB-9) to shift more state funding to low property wealth districts,
- Increasing the SB9 state program guarantee, allowing PED to advance SEG payments to cover delayed federal Impact Aid payments,
- Creating a new PSCOC program to retroactively update schools that received an early standards-based award (given the evolution of adequacy standards since 2003),
- Reprioritizing existing PSCOC programs to support facilities needed by Impact Aid schools,
- Increasing emergency support for schools with declining enrollment or property valuation (Central Consolidated Schools anticipates significant revenue loss from the closure of the San Juan Generating Station),
- Centralizing all capital outlay project funding and oversight through the state,
- Restricting expenditures to specified revenue sources, and
- Changing the public school funding formula, including increased funding for at-risk students and reducing SEG credits.

SL/al/rl

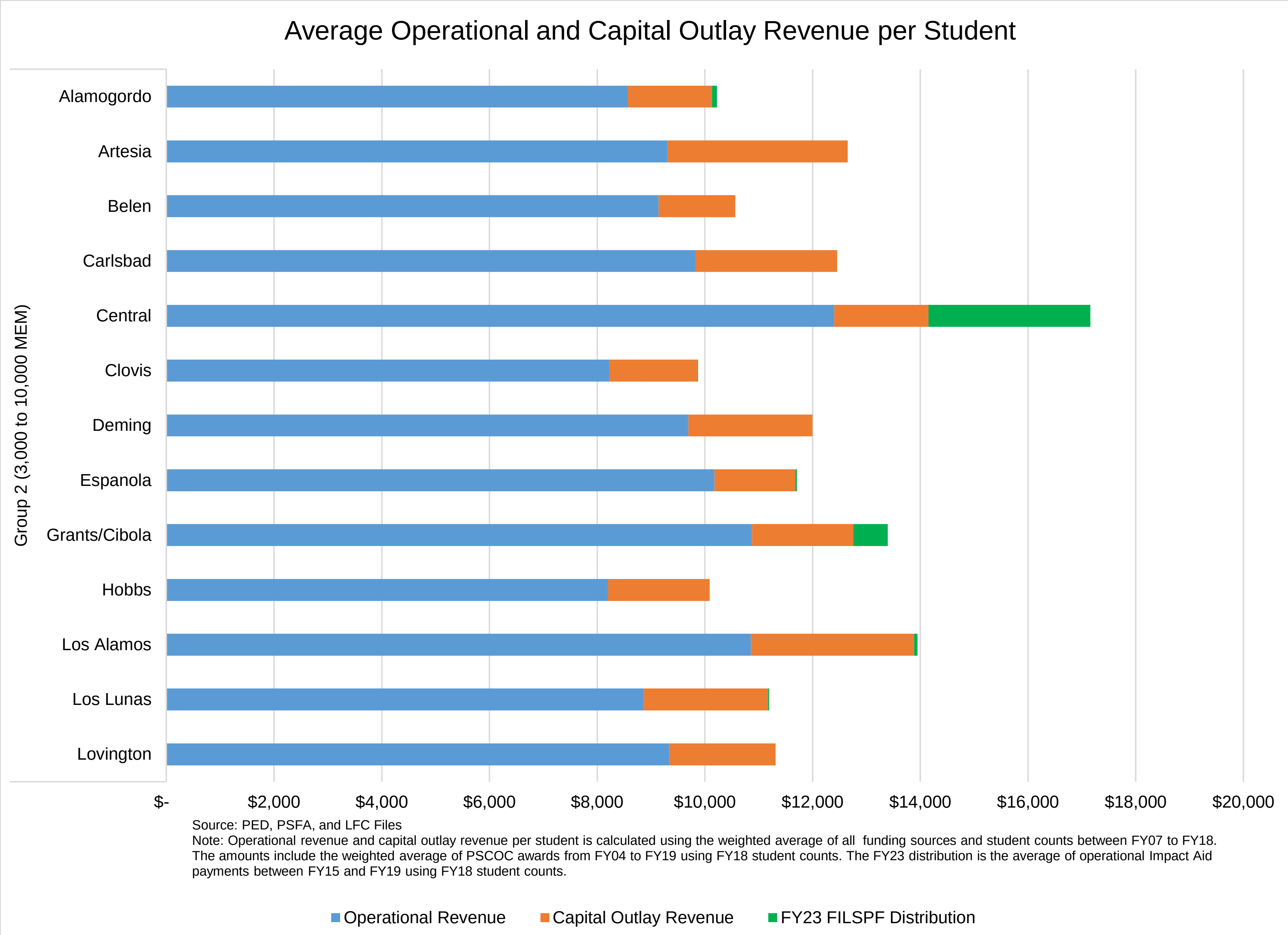
Average Operational Fund Impact Aid and Estimated Distributions of Federally Impacted Location Support

	School District or Charter School	FY15 to FY19 Average Total Impact Aid	Estimated FY21 Distribution	Estimated FY22 Distribution	Estimated FY23 Distribution	Estimated FY23 Distribution per Student	
1	Alamogordo Public Schools	$763,846	$190,962	$381,923	$572,885	$97	1
2	Albuquerque Public Schools	$111,815	$27,954	$55,907	$83,861	$1	2
3	Bernalillo Public Schools	$3,957,993	$989,498	$1,978,996	$2,968,494	$1,027	3
4	Bloomfield Schools	$616,328	$154,082	$308,164	$462,246	$161	4
5	Central Consolidated Schools	$22,872,755	$5,718,189	$11,436,377	$17,154,566	$3,006	5
6	Clovis Municipal Schools	$174,544	$43,636	$87,272	$130,908	$16	6
7	Cuba Independent Schools	$1,053,075	$263,269	$526,538	$789,806	$1,436	7
8	Dulce Independent Schools	$3,339,029	$834,757	$1,669,514	$2,504,272	$3,721	8
10	Española Public Schools	$122,096	$30,524	$61,048	$91,572	$26	10
11	Farmington Municipal Schools	$3,618	$904	$1,809	$2,713		11
12	Gallup-McKinley County Schools	$28,340,989	$7,085,247	$14,170,495	$21,255,742	$1,929	12
13	Grants-Cibola County Schools	$2,917,133	$729,283	$1,458,567	$2,187,850	$635	13
14	Jemez Mountain Public Schools	$246,487	$61,622	$123,244	$184,865	$943	14
15	Jemez Valley Public Schools	$1,192,586	$298,147	$596,293	$894,440	$3,125	15
16	Las Cruces Public Schools	$684	$171	$342	$513		16
17	Los Alamos Public Schools	$326,188	$81,547	$163,094	$244,641	$67	17
18	Los Lunas Public Schools	$198,269	$49,567	$99,134	$148,702	$18	18
19	Magdalena Municipal Schools	$456,050	$114,012	$228,025	$342,037	$1,074	19
20	Maxwell Municipal Schools	$419	$105	$209	$314	$3	20
21	McCurdy Charter School	$28,567	$7,142	$14,283	$21,425	$40	21
23	Peñasco Independent Schools	$25,489	$6,372	$12,744	$19,117	$56	23
24	Pojoaque Valley Public Schools	$1,244,873	$311,218	$622,437	$933,655	$474	24
25	Portales Municipal Schools	$6,923	$1,731	$3,461	$5,192	$2	25
26	Raton Public Schools	$12,679	$3,170	$6,339	$9,509	$11	26
27	Ruidoso Municipal Schools	$304,083	$76,021	$152,041	$228,062	$116	27
28	Southwest Aero., Math, and Science	$2,112	$528	$1,056	$1,584	$6	28
30	Southwest Primary Learning Center	$2,610	$652	$1,305	$1,957	$10	30
31	Southwest Secondary Learning Center	$2,010	$503	$1,005	$1,508	$6	31
32	Taos Municipal Schools	$36,931	$9,233	$18,466	$27,698	$12	32
33	Tularosa Municipal Schools	$345,969	$86,492	$172,984	$259,477	$310	33
34	Walatowa Charter High School	$98,802	$24,700	$49,401	$74,101	$1,577	34
35	Zuni Public Schools	$6,663,467	$1,665,867	$3,331,734	$4,997,600	$3,930	35
36	**Statewide Total**	**$75,468,418**	**$18,867,105**	**$37,734,209**	**$56,601,314**	**$372**	36

Source: LESC Files



Source: PED, PSFA, and LFC Files
Note: Operational revenue and capital outlay revenue per student is calculated using the weighted average of all funding sources and student counts between FY07 to FY18. The amounts include the weighted average of PSCOC awards from FY04 to FY19 using FY18 student counts. The FY23 distribution is the average of operational Impact Aid payments between FY15 and FY19 using FY18 student counts.



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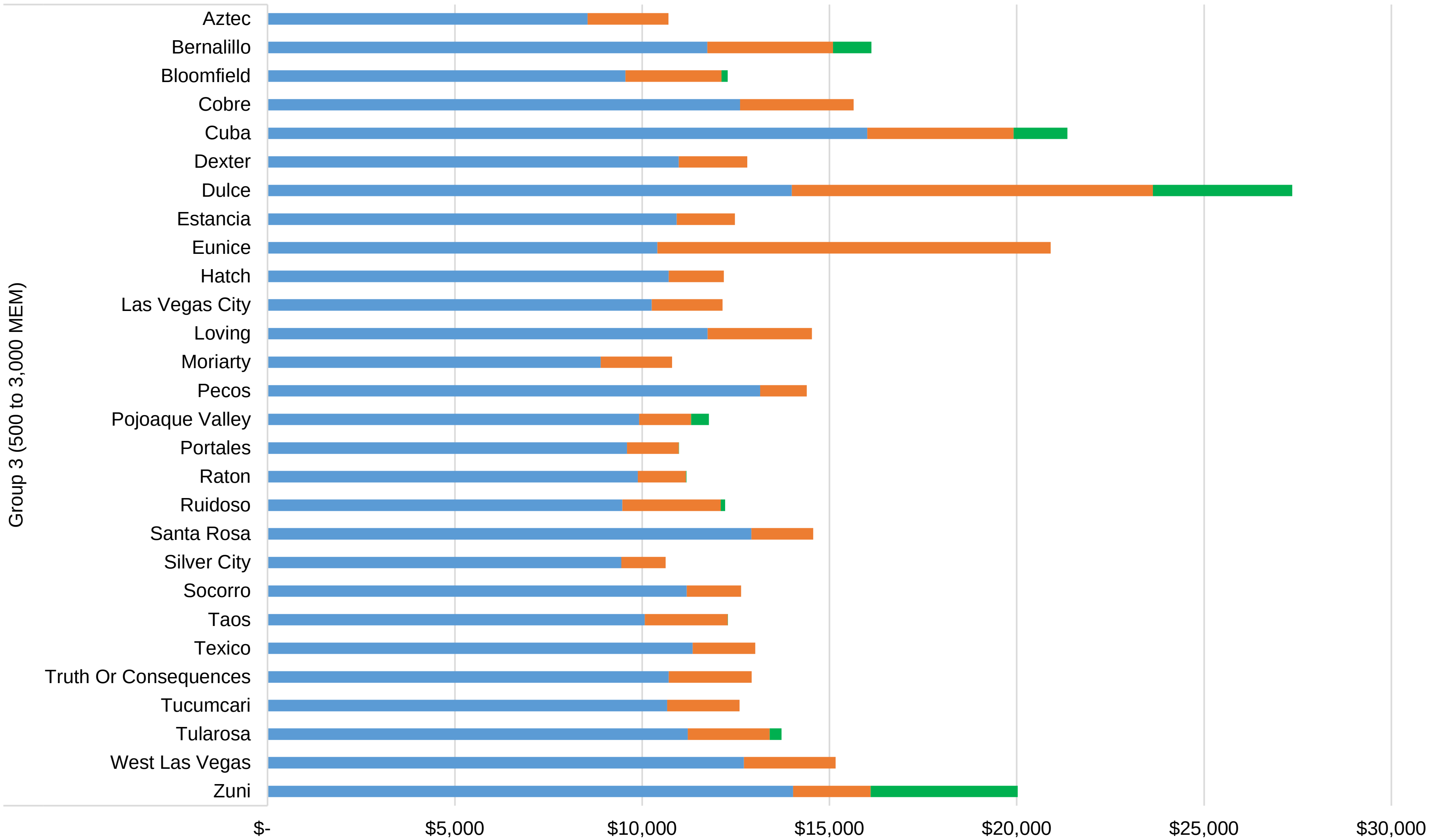
Average Operational and Capital Outlay Revenue per Student



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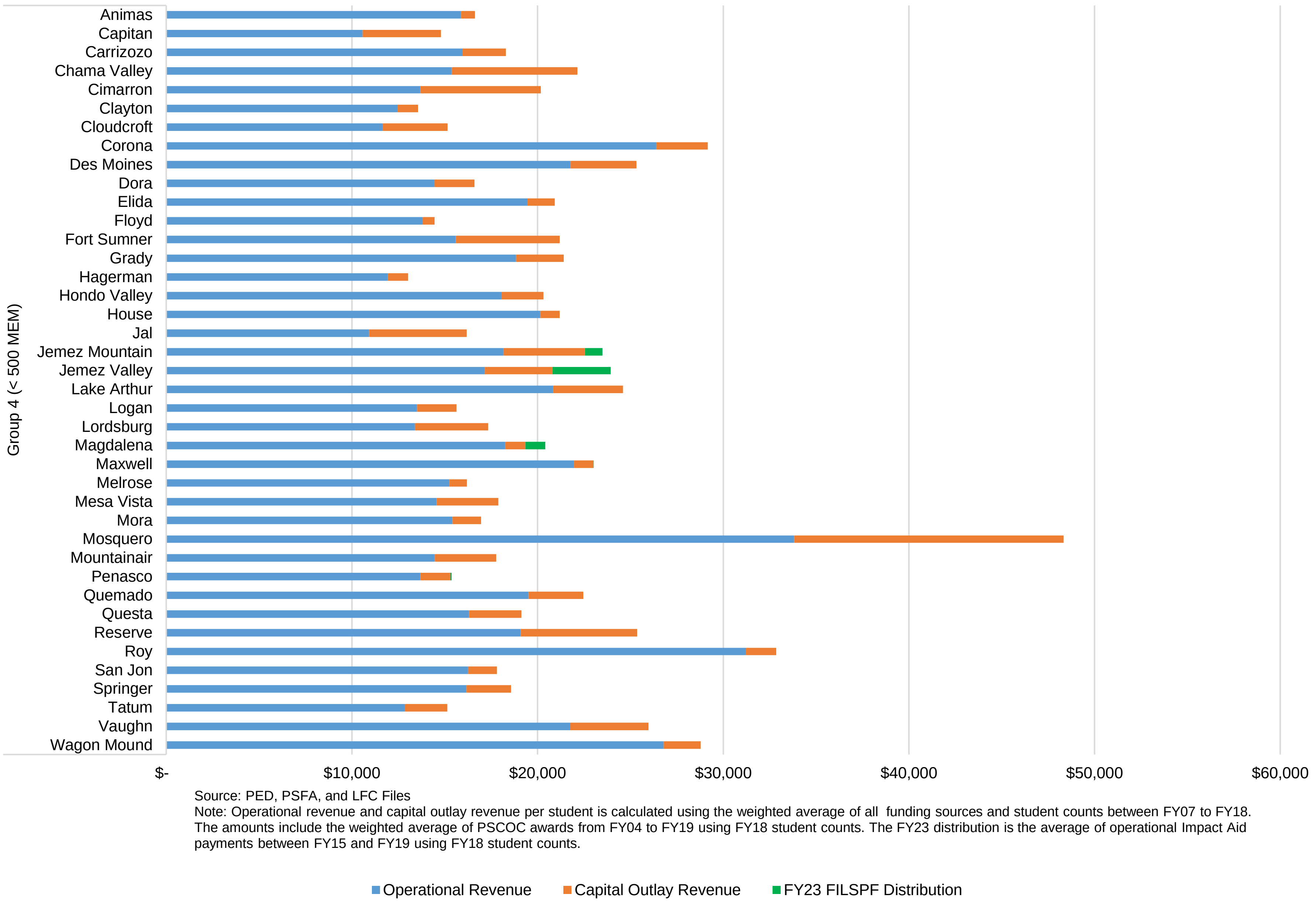

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