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## FISCAL IMPACT REPORT

SPONSOR Romero, GA ORIGINAL DATE 1/25/22  
LAST UPDATED \_\_\_\_\_ HB 119  
SHORT TITLE Adjust Certain School Distributions SB \_\_\_\_\_  
ANALYST Liu

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$10,955.7	\$10,955.7	\$21,911.4	Recurring	Public School Capital Outlay Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB43, SB78

### SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

#### Responses Received From

Public Education Department (PED)

#### No Response Received

Public School Facilities Authority (PSFA)

### SUMMARY

#### Synopsis of Bill

House Bill 119 changes the calculation of the state distribution for school districts levying the public school capital improvements tax (colloquially referred to as “SB-9” or the “two-mill levy”). The bill changes the formula for the program guarantee, a level of “guaranteed” funding that districts generate through a combination of local SB-9 revenues and state SB-9 funds. The bill also provides an additional distribution from the public school capital outlay fund to districts imposing a local SB-9 levy, repeals statutory provisions requiring districts to prioritize excess SB-9 funds toward correcting serious roof repair deficiencies, and authorizes the Public School Capital Outlay Council (PSCOC) to reduce SB-9 state distributions if funding is insufficient. The effective date of this bill is July 1, 2022.

## FISCAL IMPLICATIONS

The bill does not contain an appropriation; however, changes to the SB-9 state formula and the additional distribution authorized in the bill would effectively increase SB-9 state distributions in FY23 to a total of \$31.7 million if all school districts imposed a two-mill levy. Currently, the estimated SB-9 state distribution is \$20.8 million, making the operating budget impact of this bill an additional \$11 million each year from the public school capital outlay fund.

***SB-9 Distribution Formula.*** The state SB-9 program guarantee for each district is calculated by multiplying the number of program units from the public school funding formula (also known as the state equalization guarantee) with the two-mill levy rate and a unit value of \$86.92. If a district's local SB-9 revenue exceeds the program guarantee level, the state distributes an "SB-9 minimum," calculated by multiplying the district's program units and two-mill levy rate with a unit value of \$6.98. Otherwise, the district receives a state SB-9 distribution that is the greater of the SB-9 minimum or the difference between the program guarantee and two-mill levy revenue generated. On average, PSCOC makes a \$20 million state SB-9 distribution each year.

***Proposed Formula.*** Provisions of this bill would change the SB-9 formula, removing discretionary program units, and establishing new unit values—\$89.25 for the program guarantee and \$5.00 for the SB-9 minimum. The change would eliminate about 60 thousand program units, or 9 percent of total units, and reduce the state SB-9 distribution to \$15.1 million, a 7 percent decline. The bill further creates an additional distribution calculated by multiplying the adjusted program units with the two-mill levy, a unit value of \$53.00, and the district's phase 2 state match rate. The additional distribution would allocate \$16.6 million to districts, bringing the total estimated state distribution to \$31.7 million (see Attachment 1).

The fiscal impact of this bill may increase if the U.S. Consumer Price Index (CPI) rises sharply, as the new unit values (\$89.25 and \$5.00) are annually adjusted to the CPI for all items. PED's estimated fiscal impact indicates provisions of this bill could cost as much as \$17 million annually.

## SIGNIFICANT ISSUES

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 \$2.7 billion to build school facilities up to the 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 2021, the Legislature removed credits for federal Impact Aid payments to school districts with federal property from the public school funding formula, allocating \$66 million in new money primarily to *Zuni* plaintiff districts for capital outlay, Indian Education Act programs, and community school initiatives. Following these changes, however, the court ruled New Mexico's system remained unconstitutional and dismissed the state's motion to close the case, noting legislative changes to remove the Impact Aid credit were positive but did not resolve issues of uniformity and sufficiency in the system.

Despite claiming a significant portion of state aid for facility construction and improvements in recent years, *Zuni* plaintiffs contend the capital outlay system continues to be inequitable. In 2019, the Legislature created a new (phase 2) formula that shifted more of the burden for financing public school capital outlay to property-rich districts and set the formula for full implementation by FY24. In 2021, the Legislature once again amended the formula to account for new unrestricted revenue (such as uncredited Impact Aid dollars) in determining the local share of construction funding, beginning in FY25. This bill uses the phase 2 formula to calculate the additional distribution.

Significant growth in supplemental severance tax bond (SSTB) capacity and fewer construction awards from PSCOC have contributed to growth in the balance of the public school capital outlay fund. As of January 10, 2022, PSCOC reports uncommitted balances in the fund for FY22 will reach \$395.6 million, which the council anticipates will further increase to \$795.4 million by FY26. This estimated balance is attributable to projected SSTB capacity as of December 12, 2021, showing \$267.1 million available for new PSCOC awards, and anticipated expenditures from current construction projects.

School districts continue to request waivers of the local match requirement for PSCOC awards, particularly smaller districts that lack economies of scale to front local revenues for larger projects. Most districts generate local capital improvements (SB-9) revenue for local capital outlay priorities and receive a state SB-9 match for these dollars. However, the basis of the state SB-9 match calculation is primarily student enrollment. As such, many small districts only generate enough funding for small projects.

## **PERFORMANCE IMPLICATIONS**

Provisions of this bill will increase discretionary capital outlay funding for school districts, which could increase the number of locally-determined capital outlay projects and maintenance costs. New Mexico's school facility conditions have significantly improved since the *Zuni* lawsuit. PSCOC uses two indices to measure the condition of a school building—the facility condition index (FCI) and the weighted New Mexico condition index (wNMCI). The FCI reflects a ratio of the cost of repair and improvement against the cost to replace the facility; a lower number reflects a building in better condition. Generally, PSCOC considers replacing rather than renovating and repairing a building with an FCI greater than 60 percent. The wNMCI functions similarly to the FCI, but further considers the cost to correct deficiencies based on educational adequacy standards. PSCOC uses the wNMCI to rank and prioritize school facilities for project funding.

The state's investment has improved the statewide average FCI from 70 percent in FY04 to 52.4 percent in FY21. Furthermore, the average wNMCI for all school districts has improved from 40.5 percent in FY05 to 21 percent in FY21, and more schools are leveraging tools provided by PSFA to improve maintenance. PSFA's facility maintenance assessment report suggests statewide average maintenance quality is meeting 72.2 percent of benchmark practices—meaning most

facilities are maintained at a level that will help systems reach their full expected building life.

PED notes recent assessments show the state's facility life cycle repair and replacement needs total over \$1 billion. A majority of these costs can be sourced to inadequate or deferred maintenance. The additional capital funding allocated to districts under this bill would help schools maximize public resources for maintenance purposes and reduce demand for smaller PSCOC projects.

### **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill would change the calculation for SB-9 state distributions and require PSFA to update estimates for SB-9 distributions using a new formula. The agency would likely partner with PED on receiving a separate funding formula calculation for this purpose.

Expenditures allowed under this bill may allow districts to complete planning, design, and construction of infrastructure and facilities that are not eligible for state funding through the PSCOC funding programs, excluding public school administrative offices. Capital improvements completed with these funds may also impact the ranking of the improved school facilities, which PSFA would need to track regularly.

### **RELATIONSHIP**

This bill relates to House Bill 43 and Senate Bill 78, which provide charter schools additional options for financing and acquiring facilities.

### **OTHER SUBSTANTIVE ISSUES**

The bill makes changes to the Public School Capital Improvements Act (SB-9), altering the current formula for distributing capital improvements funding to school districts and adding a new distribution to all school districts tied to their district match rates under the Public School Capital Outlay Act. The bill also changes the definition of program units used to calculate SB-9 distributions to include only nondiscretionary program units from the public school funding formula (early childhood education, basic education, special education, size adjustment, enrollment growth, at-risk, and the staffing cost multiplier).

The bill repeals Section 22-24-4.4 NMSA 1978, a section of the Public School Capital Outlay Act that provides a mechanism to address serious roof deficiencies in public school facilities and specifies that, if a school district refuses to pay its share of the cost of correcting such roof deficiencies, distributions from the public school capital improvements fund will be made to the public school capital outlay fund to reimburse the fund for the school district's share. This bill also removes the provisions of the Public School Capital Improvements Act that provide for these funds to be redirected for the purpose of reimbursement.

### **ALTERNATIVES**

Given extreme revenue volatility from oil and gas and its impact on SSTB capacity, the Legislature could consider providing a one-time, nonrecurring appropriation, distributed proportionately to each district based on their state SB-9 distribution.

Attachment

1. Additional Distributions

SL/al

## House Bill 119 Attachment 1

District Name	FY22 Program Units	HB119 Program Units	Est. FY22 Local SB-9	Est. FY22 State SB-9	HB119 State SB-9	HB119 Additional Distribution
Alamogordo	10,046	9,041	\$ 1,738,433	\$ 140,247	\$ 90,407	\$ 469,576
Albuquerque	185,908	171,969	\$ 35,971,322	\$ 2,595,277	\$ 1,719,691	\$ 1,458,298
Animas	472	463	\$ 76,423	\$ 6,583	\$ 6,224	\$ 27,484
Artesia	6,602	6,083	\$ 3,413,760	\$ 92,160	\$ 60,831	\$ 38,689
Aztec	5,203	4,687	\$ 1,092,441	\$ 72,636	\$ 46,868	\$ 29,808
Belen	7,443	6,539	\$ 1,310,454	\$ 103,910	\$ 65,393	\$ 228,743
Bernalillo	5,952	5,522	\$ 1,350,140	\$ 83,085	\$ 55,222	\$ 35,121
Bloomfield	4,837	4,625	\$ 1,440,158	\$ 67,531	\$ 46,249	\$ 29,414
Capitan	1,077	1,025	\$ 906,775	\$ 15,040	\$ 10,247	\$ 6,517
Carlsbad	15,812	14,390	\$ 10,612,672	\$ 220,742	\$ 143,901	\$ 91,521
Carrizozo	513	480	\$ 150,548	\$ 7,162	\$ 4,798	\$ 3,052
Central	11,476	9,654	\$ 1,610,517	\$ 384,507	\$ 112,752	\$ 532,138
Chama	1,228	1,106	\$ 237,668	\$ 17,143	\$ 11,057	\$ 7,032
Cimarron	1,098	1,044	\$ 869,356	\$ 15,321	\$ 10,436	\$ 6,637
Clayton	1,086	1,034	\$ 319,490	\$ 15,158	\$ 10,343	\$ 6,578
Cloudcroft	1,041	944	\$ 435,634	\$ 14,530	\$ 9,444	\$ 6,007
Clovis	13,994	13,344	\$ 1,751,176	\$ 681,460	\$ 630,793	\$ 723,652
Cobre	2,687	2,454	\$ 455,559	\$ 37,510	\$ 24,539	\$ 69,509
Corona	356	340	\$ 114,031	\$ 4,965	\$ 3,396	\$ 2,160
Cuba	1,901	1,653	\$ 319,086	\$ 26,541	\$ 16,533	\$ 46,106
Deming	11,252	9,409	\$ 1,241,277	\$ 714,762	\$ 438,162	\$ 569,526
Des Moines	377	367	\$ 79,546	\$ 5,263	\$ 3,665	\$ 10,698
Dexter	1,823	1,702	\$ 155,810	\$ 161,068	\$ 147,938	\$ 131,973
Dora	605	551	\$ 146,897	\$ 8,443	\$ 5,507	\$ 41,959
Dulce	1,585	1,396	\$ 474,674	\$ 22,126	\$ 13,960	\$ 8,879
Elida	520	495	\$ 55,319	\$ 35,142	\$ 33,119	\$ 37,194
Espanola	7,836	5,919	\$ 1,241,804	\$ 120,493	\$ 59,189	\$ 143,211
Estancia	1,576	1,464	\$ 247,510	\$ 26,412	\$ 14,637	\$ 58,732
Eunice	1,581	1,501	\$ 2,895,838	\$ 22,075	\$ 15,013	\$ 9,548
Farmington	18,960	17,709	\$ 3,025,051	\$ 270,928	\$ 177,094	\$ 560,302
Floyd	591	537	\$ 27,608	\$ 75,109	\$ 68,296	\$ 49,253
Fort Sumner	722	684	\$ 188,039	\$ 10,075	\$ 6,838	\$ 5,778
Gadsden	26,764	23,705	\$ 2,118,883	\$ 2,533,827	\$ 2,112,517	\$ 1,752,829
Gallup	26,029	22,625	\$ 1,635,892	\$ 2,888,975	\$ 2,402,755	\$ 1,885,925
Grady	525	503	\$ 20,953	\$ 70,305	\$ 68,910	\$ 50,112
Grants	7,157	5,983	\$ 661,318	\$ 582,902	\$ 406,574	\$ 441,251
Hagerman	1,098	967	\$ 75,564	\$ 115,302	\$ 97,037	\$ 82,111
Hatch	2,784	2,526	\$ 176,486	\$ 307,453	\$ 274,376	\$ 223,522
Hobbs	19,438	17,158	\$ 3,758,310	\$ 271,357	\$ 171,579	\$ 294,559
Hondo	529	483	\$ 75,861	\$ 16,044	\$ 10,443	\$ 21,005
House	336	323	\$ 33,590	\$ 24,833	\$ 24,072	\$ 24,391
Jal	1,136	1,035	\$ 8,416,540	\$ 15,854	\$ 10,349	\$ 6,582
Jemez Mountain	718	618	\$ 385,670	\$ 10,018	\$ 6,176	\$ 3,928
Jemez Valley	1,238	1,123	\$ 223,300	\$ 17,280	\$ 11,234	\$ 51,185
Lake Arthur	481	442	\$ 127,294	\$ 6,715	\$ 4,424	\$ 2,814
Las Cruces	46,329	41,262	\$ 7,369,045	\$ 684,849	\$ 412,617	\$ 1,263,873

## House Bill 119 Attachment 1

District Name	FY22 Program Units	HB119 Program Units	Est. FY22 Local SB-9	Est. FY22 State SB-9	HB119 State SB-9	HB119 Additional Distribution
Las Vegas City	3,197	2,802	\$ 608,436	\$ 44,628	\$ 28,021	\$ 88,239
Las Vegas West	3,226	3,102	\$ 428,179	\$ 132,683	\$ 125,518	\$ 224,959
Logan	762	692	\$ 139,184	\$ 10,642	\$ 6,925	\$ 23,771
Lordsburg	1,120	1,066	\$ 296,228	\$ 15,637	\$ 10,656	\$ 28,916
Los Alamos	6,657	6,138	\$ -	\$ 1,157,197	\$ 1,095,695	\$ 51,255
Los Lunas	16,053	13,158	\$ 1,939,444	\$ 851,160	\$ 409,325	\$ 697,711
Loving	1,382	1,304	\$ 1,482,535	\$ 19,292	\$ 13,042	\$ 8,294
Lovington	7,657	6,865	\$ 1,318,295	\$ 106,886	\$ 68,654	\$ 43,664
Magdalena	899	852	\$ 62,654	\$ 93,572	\$ 89,419	\$ 70,740
Maxwell	443	425	\$ 43,970	\$ 33,106	\$ 31,855	\$ 32,853
Melrose	668	620	\$ 76,760	\$ 39,406	\$ 33,839	\$ 46,375
Mesa Vista	739	703	\$ 169,790	\$ 10,314	\$ 7,033	\$ 19,029
Mora	1,180	1,016	\$ 219,385	\$ 16,467	\$ 10,157	\$ 34,353
Moriarty	5,267	3,868	\$ 1,233,418	\$ 73,531	\$ 38,679	\$ 24,600
Mosquero	401	389	\$ 139,710	\$ 5,604	\$ 3,894	\$ 2,477
Mountainair	701	676	\$ 141,527	\$ 9,791	\$ 6,764	\$ 16,065
Pecos	1,219	1,124	\$ 290,213	\$ 17,019	\$ 11,240	\$ 11,795
Penasco	914	844	\$ 116,557	\$ 42,325	\$ 34,088	\$ 59,588
Pojoaque	3,314	3,051	\$ 365,989	\$ 210,142	\$ 178,574	\$ 213,068
Portales	5,143	4,796	\$ 628,343	\$ 265,747	\$ 227,678	\$ 289,412
Quemado	539	515	\$ 194,273	\$ 7,527	\$ 5,154	\$ 3,278
Questa	1,184	795	\$ -	\$ 205,847	\$ 141,833	\$ 5,054
Raton	1,885	1,692	\$ 307,768	\$ 26,320	\$ 16,916	\$ 74,759
Reserve	439	425	\$ -	\$ 76,237	\$ 75,788	\$ 3,355
Rio Rancho	33,939	28,553	\$ 4,858,708	\$ 1,041,175	\$ 285,526	\$ 720,731
Roswell	18,125	16,548	\$ 2,199,271	\$ 951,505	\$ 754,496	\$ 996,802
Roy	311	303	\$ 18,203	\$ 35,775	\$ 35,902	\$ 27,607
Ruidoso	3,318	3,080	\$ 1,539,179	\$ 46,324	\$ 30,802	\$ 19,590
San Jon	424	396	\$ 32,563	\$ 41,108	\$ 38,048	\$ 33,618
Santa Fe	24,460	26,879	\$ 14,160,422	\$ 341,458	\$ 268,786	\$ 170,948
Santa Rosa	1,534	1,417	\$ 259,453	\$ 21,416	\$ 14,174	\$ 85,932
Silver	5,051	4,308	\$ 1,178,759	\$ 70,507	\$ 43,077	\$ 27,397
Socorro	3,527	3,035	\$ 383,983	\$ 229,145	\$ 157,814	\$ 229,688
Springer	504	471	\$ 83,892	\$ 7,037	\$ 4,715	\$ 23,508
Taos	6,968	6,118	\$ 2,441,395	\$ 97,278	\$ 61,179	\$ 38,910
Tatum	898	796	\$ 403,606	\$ 12,537	\$ 7,960	\$ 5,063
Texico	1,264	1,136	\$ 169,357	\$ 50,303	\$ 33,382	\$ 64,725
Truth or Consequences	2,533	2,395	\$ 642,691	\$ 35,365	\$ 23,945	\$ 15,229
Tucumcari	1,911	1,778	\$ 259,065	\$ 73,103	\$ 58,336	\$ 115,018
Tularosa	1,986	1,808	\$ 211,921	\$ 133,280	\$ 110,855	\$ 119,413
Vaughn	337	326	\$ 179,108	\$ 4,709	\$ 3,264	\$ 2,076
Wagon Mound	402	376	\$ 69,687	\$ 5,617	\$ 3,759	\$ 9,771
Zuni	2,844	2,554	\$ 5,345	\$ 489,033	\$ 450,617	\$ 270,767
<b>Total</b>	<b>636,046</b>	<b>576,079</b>	<b>\$ 138,332,990</b>	<b>\$ 20,776,872</b>	<b>\$ 15,132,984</b>	<b>\$ 16,599,583</b>

Source: PSFA, LESC, and LFC Files