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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 2nd Session, 2020

Bill Number	<u>SB317/SECS</u>	Sponsor	<u>SEC</u>
Tracking Number	<u>.217688.1</u>	Committee Referrals	<u>SCC/SFC</u>
Short Title	<u>Public Peace, Health, Safety & Welfare (Fed Impacted Location Support Fund)</u>		
Analyst	<u>Andrews</u>	Original Date	<u>2/18/2020</u>
		Last Updated	<u>2/19/2020</u>

BILL SUMMARY

Synopsis of Bill

The Senate Education Committee Substitute for Senate Bill 317 (SB317/SECS) would establish a new state-funded grant program to provide school districts and state-chartered charter schools additional funding based on their amount of Impact Aid credited in the state equalization guarantee (SEG). SB317/SECS would amend the Public School Finance Act to create the federally impacted location support fund to allow the Public Education Department (PED) to provide annual awards to school districts and state-chartered charter schools that had Impact Aid payments included in the calculation of SEG credits in the immediately preceding five fiscal years, not including the immediately preceding fiscal year, and is receiving federal Impact Aid in the current fiscal year.

SB317/SECS creates the federally impacted location support fund, but does not set annual distribution amounts, but rather stipulates that awards cannot exceed the 75 percent of federal Impact Aid payments included in the calculation of the SEG.

The effective date of SB317/SECS would be July 1, 2020.

FISCAL IMPACT

SB317/SECS does not contain an appropriation.

The Senate Finance Committee Amendment to the House Appropriations and Finance Committee Substitute for House Bills 2 and 3 appropriates a total of \$18.9 million from the public school capital outlay fund to the Public School Facilities Authority (PSFA) for maintenance, repairs and other infrastructure expenditures in school districts and state-chartered charter schools that receive federal Impact Aid payments for students residing on Indian lands; PSFA will allocate an amount to eligible school districts and state-chartered charter schools based on the amount of federal Impact Aid credited in the SEG. It is important to note that school districts and state-chartered charter schools would only be eligible for this funding if they receive Indian Education Impact Aid revenue. See **Attachment 6, Federal Impact Aid Payments, FY19**.

It is difficult to estimate the fiscal impact of SB317/SECS as the bill provides for flexibility in appropriations to the federally impacted location support fund. While SB317/SECS specifies that grants from the federally impacted location support program fund must not exceed the 75 percent of federal Impact Aid funds credited in the SEG, SB317/SECS allows for grants to eligible school districts and state-chartered charter schools to be reduced proportionately to the amount credited in the SEG. See **Attachment 1, Operational Impact Aid Payments and Funding Formula Credits, FY19.**

SUBSTANTIVE ISSUES

Overview of SB317/SECS. SB317/SECS would create a new categorical grant program that anticipates an appropriation of state revenue to the federally impacted location support fund. PED would be allowed to make annual awards to school districts and state-chartered charter schools that had Impact Aid payments included in SEG credits for each of the preceding five fiscal years, not including the immediately preceding fiscal year, and is receiving federal Impact Aid in the current fiscal year. Award amounts would be based on the amount of funding available in the federally impacted location support fund, provided that grants cannot exceed the average amount of federal Impact Aid revenue included in the calculation of the SEG credits for the immediately preceding five fiscal years, not including the immediately preceding fiscal year. SB317/SECS specifies that if there is not enough funding available in the federally impacted location support fund to make awards to school districts and state-chartered charter schools in the average amount of federal Impact Aid revenue included in the calculation of the SEG, the secretary of PED must reduce each school district's and state-chartered charter school's grant proportionally. See **Fiscal Impact.**

SB317/SECS specifies that PED must not make federally impacted location support grants in any fiscal year in which PED has not received final certification from the United States Department of Education (USDE) that New Mexico has an equalized funding system. See **Disparity Analysis.**

To receive an allocation from the federally impacted location support fund, eligible school districts and state-chartered charter schools must apply to PED by March 1, and PED must notify applicants of a preliminary award no later than April 15. Each applicant must submit a budget to PED that shows planned expenditures consistent with allowable expenditures by May 1 of each year; PED must not award grants to applicants that fail to submit a budget, or that submit a budget that exceeds total projected amounts. Before July 1, PED must approve and certify to each applicable school district and state-chartered charter school a grant budget that complies with stipulations of SB317/SECS.

Uses of Federally Impacted Location Support Funds. School districts and state-chartered charter schools that have federal Impact Aid funds included in the calculation of the SEG will only be able to use federally impacted location award funds for capital expenditures; debt service; educating students who receive special education services, have a disability, are economically disadvantaged, are English learners, or are participants in gifted education programs; or community services. SB317/SECS specifies that no more than 50 percent of federally impacted location support award funds may be spent for capital expenditures and debt service.

The restrictions on how a school district or state-chartered charter school may spend an award from the federally impacted location support program appear to be based on the funding categories that are excluded when calculating disparity to certify a state as having an equalized funding system. See **Disparity Analysis.**

Separate appropriations to specific schools or school districts for operational expenditures circumvent the public school funding formula, which provides operational funds for all school districts, and they may compromise the equity of the formula. In addition, the *Martinez and Yazzie* consolidated lawsuit found New Mexico has failed its most at-risk populations – defined as low-income students, Native American students, English learners, and students with disabilities – and noted that some programs serving at-risk students had not been funded to the extent that all at-risk students could participate. SB317/SECS federally impacted location support fund would provide funding to some at-risk students, but not all, potentially exacerbating disparities in operational funding for at-risk students.

State Equalization. While Impact Aid is sent directly to the school district or state-chartered charter school by the federal government, federal law allows a state with an equalized system of school finance to consider these payments as local revenue sources when allocating state dollars to school districts and state-chartered charter schools. New Mexico is one of three states, along with Alaska and Kansas, that receives permission from the federal government to consider these payments. One additional state, Hawaii, receives federal Impact Aid at the state level because the entire state operates as one school district. New Mexico has taken a credit for 75 percent of federal Impact Aid when allocating the SEG distribution since the funding formula was adopted in the 1970s.

SEG Credit for Impact Aid. To maintain an equalized funding formula, New Mexico takes credit for 75 percent of operational Impact Aid – i.e. basic support payments – received by school districts and state-chartered charter schools in the SEG distribution. Under the Public School Finance Act, every school district and state-chartered charter school in the state is guaranteed to receive the program cost calculated by the funding formula, regardless of how much the school district or state-chartered charter school is able to raise in local taxes or other funding sources, including Impact Aid revenue. New Mexico receives approval from the U.S. secretary of education to consider Impact Aid as local revenue in its SEG because New Mexico's funding formula is equalized in that students across the state are funded in similar ways.

Disparity Analysis. To consider Impact Aid as local revenue when allocating state aid, the state must demonstrate to the U.S. secretary of education that the statewide disparity in per-student revenues is less than 25 percent, after eliminating the 5 percent of students with the highest per-student revenues and the 5 percent of students with the lowest per-student revenues. The calculation approved by the USDE also does not consider additional revenue provided to school districts and state-chartered charter schools based on the special needs of their student's population (such as special education funding or at-risk funding), or due to the geographic isolation of a school (such as the small school size adjustment). When performing the disparity test, federal regulations require the government to exclude amounts raised for capital outlay, debt service, and community service.

The disparity analysis approved by the USDE considers only unrestricted operational funding; however, some school districts receiving Impact Aid in New Mexico have challenged this calculation, arguing the disparity analysis should include funding for transportation, instructional materials, and other funding, including capital outlay funding. Additionally, making selective grants to certain school districts outside the public school funding formula could signal to the USDE a lack of commitment to equalized funding, potentially adding evidence to support the claims made by the school districts challenging the disparity calculation.

Public School Capital Outlay in SB317/SECS. SB317/SECS would create inequities in the Public School Capital Outlay (PSCOC) process, and potentially exacerbate 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, SB317/SECS' federally impacted location support 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.

PSCOC uses the weighted New Mexico Condition Index (wNMCI) to rank the condition of school facilities, with schools in the worst condition at the top of the list of eligibility for PSCOC funding. Depending on state revenues, PSCOC determines a funding pool for applications, for example inviting schools ranked in the top 75 wNMCI to apply for funding. The PSCOC state match determines how much the state participates in capital outlay funding for each school district. If SB317/SECS capital outlay revenues are not considered in the PSCOC state match, school districts that receive federally impacted support program funds will still be able to receive their current level of funding from the state as their schools become eligible for funding.

Public School Capital Outlay Funding. Litigant school districts have revived their claim that the capital outlay system is inequitable and argued that eliminating the 75 percent credit of Impact Aid funds would take care of the issue. The current standards-based public school capital outlay program was developed and established in response to a 1998 lawsuit filed in state district court by Zuni Public Schools and later joined by Gallup-McKinley County Schools (GMCS) and Grants-Cibola County Public Schools. Although the quality of school facilities has improved significantly since the lawsuit, and the state has awarded \$2.6 billion dollars in capital outlay funding to school districts, litigant school districts are still concerned the system is inequitable. See **Attachment 2, Total PSCOC Dollars Awarded**. These alleged ongoing disparities led GMCS to reopen the *Zuni* lawsuit – which had never been closed – and seek judicial intervention to cure what the school district characterizes as ongoing disparities in the current public school capital outlay funding system. For more information, see **LESC Annual Report** (https://www.nmlegis.gov/Entity/LESC/Documents/Reports_To_The_Legislature/LESCReportToLegislature_2020.pdf).

Work to Address Plaintiff Concerns. The reopening of the *Zuni* lawsuit and discussions during the 2019 legislative session prompted further consideration of the equity of the current public school capital outlay system. During the 2019 interim, multiple committees held legislative hearings on the issues with the current public school capital outlay system and potential solutions, including the feasibility of eliminating the operational credit the state takes for federal Impact Aid

funds. In addition, the House Majority Office held multiple well-attended statewide meetings to discuss capital outlay issues and potential solutions for the 2020 legislative session.

The state continues to work to ensure more equity in public school facility funding. A new state and local match formula, which adjusts the state and local shares of the PSCOC-funded projects based on a school district's ability to fund replacement of their schools, will be fully phased-in in FY24. In addition, PSCOC continues to adjust the public school capital outlay process. In response to plaintiff school district concerns, PSCOC directed the Public School Facilities Authority (PSFA), which staffs the council, to establish a process for funding teacher housing facilities. A separate retroactive standards-based award program allowed PSCOC to make awards to schools that received a standards-based award under an older version of the adequacy standards so they can "catch up" with current standards. PSFA reviewed past projects that received limited funding participation due to spaces being identified as "outside of adequacy" at the time of the award, but most requests from litigant school districts were for things within adequacy. In anticipation of another legislative authorization, PSFA will contact school districts eligible for retroactive standards-based awards and work to create an awards process.

OTHER SIGNIFICANT ISSUES

Impact Aid. Since 1950, the federal government has provided local school districts with funding to assist local schools with providing education to "federally connected children" and to compensate school districts with limited taxable property due to property acquired by the federal government after 1938. The federal government maintains a significant presence in New Mexico, in the form of national laboratories, military bases, and tribal lands. Because of this outsized presence, New Mexico has one of the highest allocations of federal Impact Aid funds on a per-capita basis in the nation. Each year, Congress makes appropriations for four types of Impact Aid: basic support payments, payments for federal property, payments for children with disabilities, and construction payments. Basic support payments fund operational Impact Aid – funds that can be spent at the discretion of the local school district or state-chartered charter school. In FY19, the most recent year for which data is available, New Mexico school districts and state-chartered charter schools received \$84.6 million in operational fund Impact Aid.

Arguments from School Districts that Receive Federal Impact Aid Funds. During the 2019 legislative session, school districts that were plaintiffs in the 1999 *Zuni* lawsuit claimed the capital outlay system was unfair because they could not raise sufficient local revenue to build above the statewide adequacy standards, unlike school districts with higher land valuations. Some school districts that receive Impact Aid funds indicated they are still struggling to generate enough local revenues for the local match for PSCOC projects, though they acknowledged the new state and local match calculation – which is currently being phased in through FY24 – is a step in the right direction. Plaintiff school districts proposed legislation to prohibit the state from taking credit for federal Impact Aid funds. They argued eliminating the credit would provide more general fund revenue to these school districts and would free up Impact Aid revenue for capital expenditures. However, Impact Aid payments are part of a school district's operational fund and eliminating the credit could create disproportional differences in operational funding without addressing capital outlay needs directly.

While some school districts that received federal Impact Aid funds indicated they would like to eliminate the SEG credit for operational Impact Aid payments for capital expenditures, some tribes indicated they would like to use these funds for operational expenditures. Increasing collaboration between tribal governments, PED, and school districts was echoed by a number of meeting

participants. One participant indicated the majority of Navajo students graduate from public schools; however, tribes have little collaboration with schools and little influence on how Impact Aid is used for Native American students. It appears more engagement between public school districts and the tribes is needed. For more information, see **2019 LESC Annual Report** (https://www.nmlegis.gov/Entity/LESC/Documents/Reports_To_The_Legislature/LESCReportToLegislature_2020.pdf).

RELATED BILLS

Relates to SB142, Federal Revenue in School Funding, which removes the requirement that PED must take credit for 75 percent of federal Impact Aid payments in calculating a school district's or state-chartered charter school's SEG.

Relates to SB141, School Funding & Uses, which appropriates \$86 million to PED to replace federal Impact Aid payments deducted from the distribution of state funds pursuant to the SEG.

Relates to SB135, Replace Some School Impact Aid Funding, which directs PED to distribute half of the federal Impact Aid credited under the SEG back to school districts that had at least \$1 million in federal Impact Aid funds credited against their SEG distribution and appropriates \$29.8 million to cover the distribution.

Relates to HB254 and SB159, Distributions to School Districts, which amends state funding calculations pursuant to the Public School Capital Improvements Act.

Relates to HB131, Distributions to Taxing School Districts, which would increase the state program guarantee pursuant to the Public School Capital Improvements Act.

Relates to SB198, School Impact Aid Credits Returned, which replaces the amount of federal Impact Aid credited under the SEG for school districts that had at least \$1 million in federal Impact Aid funds credited against their SEG distribution through a separate appropriation.

Relates to SB292, Changes to Impact Aid, which would establish a new state-funded grant program to provide school districts and state-chartered charter schools that have at least \$1 million in federal Impact Aid credited in the public school funding formula with additional funding.

SOURCES OF INFORMATION

- LESC Files

MCA/tb/mc/sgs

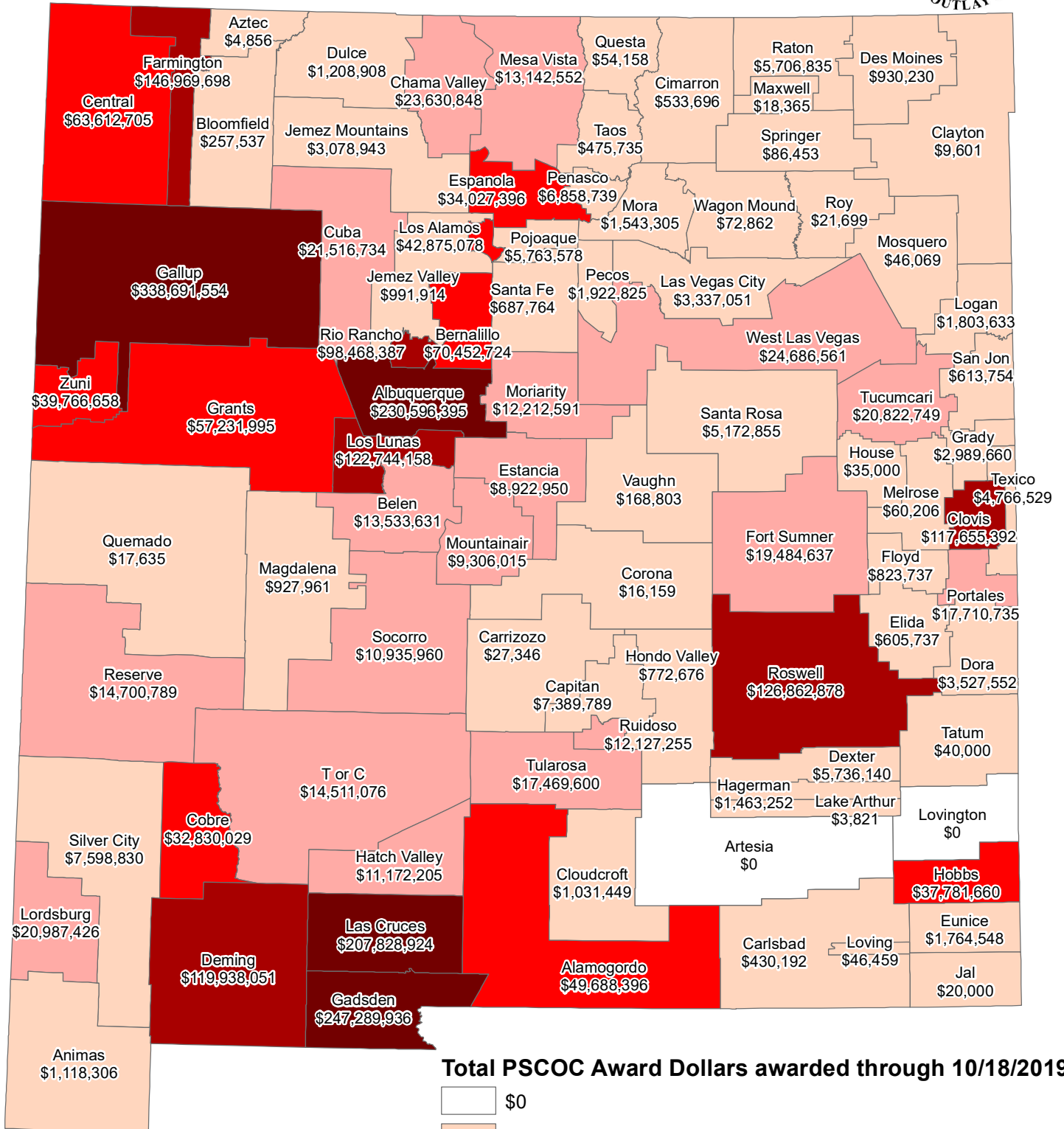
Operational Impact Aid Payments and Funding Formula Credits, FY19

School District or Charter School	Operational Fund Impact Aid	Amount of SEG Credit	Proportionate Share of Impact Aid Credit
1 Alamogordo Public Schools	\$979,075	\$734,306	1.2%
2 Albuquerque Public Schools	\$187,692	\$140,769	0.2%
3 Bernalillo Public Schools	\$4,866,177	\$3,649,632	5.7%
4 Bloomfield Schools	\$886,794	\$665,095	1.0%
5 Central Consolidated Schools	\$24,176,548	\$18,132,411	28.6%
6 Clovis Municipal Schools	\$379,641	\$284,731	0.4%
7 Cuba Independent Schools	\$1,499,528	\$1,124,646	1.8%
8 Dulce Independent Schools	\$4,162,714	\$3,122,036	4.9%
9 Española Public Schools	\$52,425	\$39,319	0.1%
10 Gallup-McKinley County Schools	\$29,456,661	\$22,092,495	34.8%
11 Grants-Cibola County Schools	\$3,889,156	\$2,916,867	4.6%
12 Jemez Mountain Public Schools	\$202,392	\$151,794	0.2%
13 Jemez Valley Public Schools	\$1,382,965	\$1,037,223	1.6%
14 Los Alamos Public Schools	\$508,652	\$381,489	0.6%
15 Los Lunas Public Schools	\$293,107	\$219,830	0.3%
16 Magdalena Municipal Schools	\$538,409	\$403,807	0.6%
17 Maxwell Municipal Schools	\$521	\$391	0.0%
18 McCurdy Charter School	\$60,630	\$45,472	0.1%
19 Peñasco Independent Schools	\$31,510	\$23,633	0.0%
20 Pojoaque Valley Public Schools	\$2,145,015	\$1,608,761	2.5%
21 Portales Municipal Schools	\$1,991	\$1,493	0.0%
22 Raton Public Schools	\$17,807	\$13,355	0.0%
23 Ruidoso Municipal Schools	\$236,695	\$177,521	0.3%
24 Southwest Aero., Math, and Science	\$5,380	\$4,035	0.0%
25 Southwest Preparatory	\$5,335	\$4,001	0.0%
26 Southwest Secondary	\$5,176	\$3,882	0.0%
27 Taos Municipal Schools	\$59,043	\$44,282	0.1%
28 Tularosa Municipal Schools	\$392,678	\$294,509	0.5%
29 Walatowa Charter High School	\$264,651	\$198,489	0.3%
30 Zuni Public Schools	\$7,971,807	\$5,978,855	9.4%
31 Statewide Total	\$84,660,172	\$63,495,129	

¹Only operational fund Impact Aid is considered when taking credit for Impact Aid in the public school funding formula.

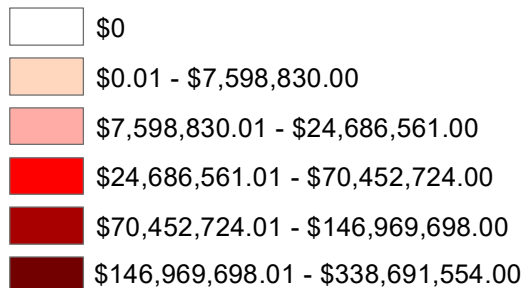


Total PSCOC Dollars Awarded



State Total PSCOC Dollars Awarded
\$2,554,769,480

Total PSCOC Award Dollars awarded through 10/18/2019



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Sources:PSFA