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## FISCAL IMPACT REPORT

SPONSOR SIAC ORIGINAL DATE 2/17/2020  
 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Changes to Impact Aid SB 292/SIACS

ANALYST Liu

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$56,214.4	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$7,482.4	\$65,253.9	\$72,736.3	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB135

Relates to HB4, HB131, HB254, SB141, SB142, SB159, SB198

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The Senate Indian and Cultural Affairs Committee Substitute for Senate Bill 292 appropriates \$56.2 million to seven school districts, which had more than \$1 million of federal Impact Aid credits in the FY20 public school funding formula. The bill requires recipients of the credit replacement appropriation to consult with the Indian Affairs Department on expenditure of the funding, which shall be used for student-focused operational expenditures and local match requirements for capital outlay awards from the Public School Capital Outlay Council (PSCOC).

### FISCAL IMPLICATIONS

The appropriation of \$56.2 million contained in this bill is a recurring expense to the general fund. According to the U.S. Department of Education, the 2020 federal Impact Aid appropriation

will increase by 2.8 percent from 2019, implying future state general fund impacts if this bill is enacted.

The bill effectively appropriates funding to school districts or charter schools that had more than \$1 million credited for federal Impact Aid payments in the FY20 public school funding formula, also known as the state equalization guarantee (SEG) distribution. Preliminary FY20 budget data suggests only seven school districts (out of 25 districts and 5 state-chartered charter schools that receive Impact Aid) would be eligible for this additional general fund appropriation:

**Estimated SB292 Distribution to Eligible Entities**  
(in thousands)

District/Charter	FY20 Preliminary SEG Distribution	FY20 Budgeted Federal and Local Revenue	SB292 Appropriation (75% Impact Aid Credit)	Total Estimated Appropriation
Bernalillo	\$24,915.2	\$4,648.4	\$3,356.1	\$32,919.7
Central	\$35,626.2	\$21,017.6	\$15,483.3	\$72,127.1
Cuba	\$6,394.3	\$1,460.1	\$1,045.1	\$8,899.6
Dulce	\$4,139.0	\$3,986.4	\$2,878.3	\$11,003.7
Gallup	\$85,084.1	\$29,830.7	\$22,092.5	\$137,007.3
Grants	\$28,917.1	\$3,698.2	\$2,655.9	\$35,271.2
Zuni	\$7,142.1	\$6,984.1	\$5,237.2	\$19,363.4
<b>Statewide</b>	<b>\$277,391.7</b>	<b>\$76,985.4</b>	<b>\$56,214.4</b>	<b>\$410,591.5</b>

Source: LFC Files

Notably, about two-thirds (or \$37.6 million) of this annual credit replacement appropriation would go to two school districts: Gallup and Central. Federal Impact Aid revenues are often understated in preliminary budgets, given substantial variance in the timing of payments from the federal government. As such, the total fiscal impacts displayed here may be understated.

**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 some LEAs equal to the amount (75 percent) of their federal Impact Aid credited in the public school funding formula. Because provisions of this bill authorize LEAs to use the appropriation for instruction and support services, the state runs the risk of failing the federal disparity test. The federal definition for current expenditures, which are included in the disparity test calculation, include expenditures for instruction and other operational costs.

The credit replacement appropriation in this bill would increase Gallup’s per-student funding ranking above the 95th percentile in the disparity test, which alone could widen the disparity to 46 percent between LEAs in the 95th percentile (Gallup in this case) and 5th percentile (Clovis in FY20). If New Mexico fails the disparity test, the state would not be able to credit federal revenues in the SEG, effectively obligating the state to appropriate an additional amount (about

\$7.5 million) to all LEAs that received Impact Aid payments in FY21.

Although not contemplated by this bill, an inadvertent elimination of the Impact Aid credit would likely increase pressure to also eliminate the SEG credit on local revenues (i.e. 0.5 mill levy) for LEAs. While not reflected in the estimated additional operating budget impact section of this analysis, the potential additional costs of removing local revenue credits would be \$18.5 million.

## SIGNIFICANT ISSUES

***Public School Capital Outlay History.*** While the bill authorizes the use of the credit replacement appropriation for capital improvements, maintenance, and local match funding for state capital funds, Impact Aid school districts are already eligible for capital outlay funding awarded by the Public School Capital Outlay Council (PSCOC). This bill makes more funding available for capital expenditures but not to all school districts and state-chartered charter schools, which could 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 the Public School Facilities Authority (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 appropriation to Impact Aid schools rather than a change to the funding formula.

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.*** 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.*** 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 other 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.

Provisions of this bill could create inequities in the PSCOC process and potentially exacerbate problems noted in the *Zuni* lawsuit, which is still ongoing. 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, this bill's distribution 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 the appropriation in this bill that is used for capital outlay in the state and local match calculation, which would result in reducing the state share of projects at Impact Aid school districts.

Notably, 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.

## **PERFORMANCE IMPLICATIONS**

On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* education sufficiency lawsuits, and found that New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk, English language learner, Native American, and special education students. The court's findings suggested overall public school funding levels, financing methods, and Public Education Department (PED) oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students. Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students.

Provisions of this bill would increase funding for some districts with substantial populations of Native American students, a student subgroup highlighted by the court as being at risk of performing academically worse than other peer subgroups. Providing additional resources for Native American students could lead to improve outcomes if schools use funds strategically on evidence-based practices. However, Impact Aid is only associated with students residing on tribal lands or federally-connected children (i.e. children with parents working or residing on federal property). As such, this distribution would not be targeted to Native American students that do not reside on tribal or federal property.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill require each school district and state-chartered charter school that receives a credit replacement appropriation to submit an annual report to PED and appropriate legislative interim committees on expenditures and student achievement.

## **CONFLICT, RELATIONSHIP**

This bill conflicts with Senate Bill 135, which allocates half of credited Impact Aid payments to schools that received at least \$1 million in federal Impact Aid payments.

This bill relates to House Bill 4, which creates a federally impacted location support program that appropriates an amount to schools equal to Impact Aid payments; House Bill 131, which increases the Public School Capital Improvements Act state program guarantee (also known as SB-9); House Bill 254 and Senate Bill 159, which amends the SB9 calculation; 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.

## **ALTERNATIVES**

During the 2019 interim, LFC and Legislative Education Study Committee 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 SB-9 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.

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