

FISCAL IMPLICATIONS

SB82 would increase the state share of some potential PSCOC funded projects, by making potential local match reductions (waivers) to the local share more attainable for some districts. When a district requests and receives a waiver, the district is expected to fund the maximum amount they can afford. The portion of the local match that is waived is added to the state match of the PSCOC project, thereby increasing the state funding.

School district requests for waivers have increased in recent years. Until FY23, waiver requests and approvals were rare. However, in recent years requests and approvals have significantly increased. The PSCOC has granted a total of 54 waivers for PSCOC funded projects, since FY05. The waiver amounts for individual school projects have ranged from \$31,600 to \$87million.

PSCOC Granted Waivers		
Fiscal Year	Count of Districts	Sum of WAIVER AMOUNT
FY05	2	\$ 4,743,216
FY06	6	\$ 18,526,419
FY07	10	\$ 5,452,278
FY08	1	\$ 1,836,848
FY09	1	\$ 746,654
FY13	1	\$ 70,256
FY15	2	\$ 4,906,426
FY20	3	\$ 403,615
FY21	1	\$ 3,571,922
FY22	1	\$ 369,608
FY23	6	\$ 63,611,676
FY24	6	\$ 115,688,543
FY25	8	\$111,997,315
FY26*	6	\$ 187,657,346
Grand Total	54	\$ 519,582,123

Source: PSCOC Financial Plan and project Memorandum or Understandings

**includes anticipated waiver amounts for future project phases*

It is difficult to ascertain or predict the increased state funding that may occur year over year, based on the potential passage of SB82. The following variables would factor into the increase in state funding in a given year:

- Quantity of districts that may apply for capital funding
- Quantity of districts requiring a waiver to fund the project
- Quantity of districts eligible for a waiver (passage of a GO bond)
- Each district's available funding to contribute to the local match for a project, based on bonding capacity and other available funding sources.
- The size, scope and cost of the projects needing a waiver

Given the historic data on projects receiving waiver in the past three years, it can be assumed that the potential waiver amount could range between \$100,000,000 and \$200,000,000 within a fiscal year.

The PSFA's funding capacity is dependent on the issuance of Supplemental Severance Tax Bonding (SSTBs), which are issued by New Mexico Board of Finance (BOF), and paid for by revenue derived from taxes levied on natural resource products severed and saved from the soil.

The BOF allows two issuances per fiscal year, occurring every June and December via bond sale. Currently, as of December 2024, BOF estimates that revenues will increase on average at 5% each year over the next 5 years. This number is only an estimate.

Dependent on the number of applications and waiver requests within a given fiscal year, the fund has the capacity to accommodate additional waivers for school districts and schools meeting eligibility thresholds. If the amount and cost of waiver requests exceeds the Public School Capital Outlay Fund's capacity in a given year, the PSCOC has the option to prioritize projects accordingly (i.e. award schools in the top 50 of the annual wNMCI ranking, rather than top 100) or deny requests to accommodate the budgeted amount of funding available for that year.

SIGNIFICANT ISSUES

History of the State/Local Funding Formula

The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by Zuni Public Schools and later joined by Gallup-McKinley County Public Schools and Grants-Cibola County Public Schools. State District Court Judge Joseph Rich found, in a partial summary judgment rendered in October 1999, that through its public school capital outlay funding system, which relied primarily upon local property tax wealth to fund public school capital outlay, the state was violating that portion of the state constitution that guarantees establishment and maintenance of a “uniform system of free public schools sufficient for the education of, and open to, all children of school age” in the state. The court ordered the state to “establish and implement a uniform funding system for capital improvements... and for correcting past inequities” and set a deadline at the end of the 2001 legislative session. The court appointed a special master to review the state's progress.

In 2001, the Legislature created the Deficiencies Corrections Program (DCP) to “establish and implement a uniform funding system for capital improvements... and for correcting past inequities,” as well as identify and correct serious deficiencies in all public school buildings and grounds that may adversely affect the health or safety of students and school personnel. The following year the court-appointed special master reported the state was making a good faith effort to comply with the court's order and “has made great strides.”

Phase 1 Formula

The 2003 Legislature enacted state / local share funding formula, following concern that additional state funding through DCP would not change less wealthy districts' bonding capacity, while allowing wealthy districts to build superior facilities. The original state / local match formula (phase 1) was originally created to objectively calculate the local match percentages for all districts, based on what was determined to be their ability to afford, as well as the districts' “need.” The formula considered the availability of school district revenues from both bond levies and direct mill levies, relative property tax wealth, measured by assessed property tax valuation per student, and total mill levy applicable to residential property of the district.

Phase 2 Formula

The 2018 Legislature passed Senate Bill 30, which changed the proportion of state / local funding to potentially allow the state to fund more projects by intentionally increasing the local match and decreased the state match. The phase 2 formula was gradually phased in from the phase 1 formula as follows:

- FY19 100% of phase one formula
- FY20 80% of phase one formula and 20% of phase two formula
- FY21 60% of phase one formula and 40% of phase two formula
- FY22 40% of phase one formula and 60% of phase two formula
- FY23 20% of phase one formula and 80% of phase two formula
- FY24 100% of phase two formula

Operation of the Current State / Local Match Formula (Phase 2)

The local match formula includes the following data points:

- Three parameters, which are the same for each district:
 - Amortization Period (45 years)
 - Bonding Multiplier (0.0009)
 - Cost per Square Foot (\$307.47)
- Two district specific variables:
 - District Property Valuation
 - Total Maximum Allowable Gross Square Footage (TMAGSF)

$$\text{Unweighted Local Match} = \frac{\text{District Property Valuation} \times \text{Bonding Multiplier} \times \text{Amortization Period}}{\text{TMAGSF} \times \text{cost per Square Foot}}$$

After the Unweighted Local Match percentages are calculated, logical rules are applied to ensure that the maximum local match percentage that is applied is no greater than 94% and that some medium and low population density districts have reduced local match percentages. Per Section 22-24-5 B(6), “in no case shall the state share be less than six percent.”

As of FY24, phase 2 is in full effect. The current formula calculates local match percentages such that a school’s physical space needs, including estimated costs to replace or repair infrastructure, are related to a district’s ability to pay for repairs and replacement. However, there is recognition that the current formula results in elevated local match percentages, which are beyond affordable for certain districts. Overall, the transition has resulted in higher local matches and lower state matches. In FY25, over half of the school districts are at the maximum local match of 94%.

	FY20	FY21	FY22	FY23	FY24	FY25
Average local match	60%	61%	64%	68%	70%	72%
Districts with maximum 94% local match	0	19	23	28	41	46

2023 Senate Bill 131

The 2023 Legislature passed Senate Bill 131, which temporarily reduced the local match for fiscal year 2024 through fiscal year 2026, as follows: Standards and Systems-based awards: 1/3 reduction for school districts with more than 200 MEM, and 1/2 for school districts with less than 200 MEM. All pre-Kindergarten awards: 1/2 reduction or all districts. Additionally, all offsets (the accumulated amount of direct legislative appropriations a district received overtime, added to the local share at the time of a PSCOC capital funding award) were eliminated. The temporary provision was intended to allow time for a thorough study of the state / local match formula and develop potential solutions to modify or replace the formula. Additionally, the bill was intended to make the local match for PSCOC projects more affordable to districts, and alleviate the burden caused by increased construction costs in recent years.

SB82 would extend the temporary provision to fiscal year 2027 to allow additional time for evaluation of potential formula changes and solutions, while continuing to allow for the decreased local match for school districts that apply for and are awarded PSCOC funding.

The SB131 decrease to local matches helped some districts afford their local match. However, for many districts, the reduction was not sufficient to make the local match for potential projects affordable, necessitating waivers to afford a project.

Local Match Reduction (Waiver)

Many districts cannot afford their local match for current or potential projects due to their bonding capacity and available funds. If a district cannot afford the local match, they can request the PSCOC grant a waiver to fund the portion of the local match they cannot support. Districts must meet statute criteria (below) prior to requesting the waiver. Districts are expected to fund the maximum amount they can afford. The amount waived is added to the state match for the project.

Section 22-24-5 NMSA, B (9) stipulates that the PSCOC “may adjust the amount of local share otherwise required if it determines that a school district has made a good-faith effort to use all of its local resources.” The PSCOC shall consider whether the one of the waiver options is met by the school districts:

Option 1 (all districts):

- insufficient bonding capacity over the next 4 years
- mill levy is at least 10

Option 2 (small districts):

- fewer than 800 MEM
- at least 70% of students eligible for free or reduced-fee lunch
- local match is greater than 50% (phase 2 only, not the SB131 reduction)
- mill levy at least 7

Option 3 (growth districts):

- enrollment growth rate of at least 2.5%
- facility master plan, will be building a new school within the next two years
- the mill levy is at least 10

** Mill Levy - sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bond*

School District Need

Many districts cannot afford their local match for current or potential projects due to their low bonding capacity and available funds that can be put toward funding a PSCOC funded project. A district may request the PSCOC consider granting a waiver at the time of award to fund the portion of the local match they cannot support, if the district has made a good faith effort to use its local resources to fund the project, and if the district meets all of the requirements of one of the three waiver options, per Section 22-24-5 NMSA, B (9), as listed above. Districts are expected to fund the maximum amount they can afford, and the remainder of the local match may be waived by the PSCOC. The amount waived is added to the state match for the project.

Example: If a school is eligible for and needs a \$30M project, with a local match of \$10M, but can only bond for \$2M, a waiver is necessary for the application/project to move forward.

School district requests for waivers have increased in recent years. Until FY23, waiver requests and approvals were rare. However, in recent years requests and approvals have increased for

several reasons:

- 1) The phase 2 formula raised the local matches, often making the portion the district is required to pay unaffordable. Over half of the school districts have a local match of 94% (the maximum allowable).
- 2) 2023 SB131 reduced local matches, making the portion a district must fund smaller, but often still not affordable. Districts desire to take advantage of this reduction to reduce the requested amount to be waived.
- 3) Increased construction and project costs for all projects.
- 4) PSFA has increased outreach efforts to work with districts with highly ranked schools. Many districts have increased interest in applying for PSCOC funding as they become educated on funding opportunities and understand the poor condition of school facilities.
- 5) The PSCOC has shown willingness to grant the waivers through careful consideration of district finances and project costs and understanding of districts' inability to fund much needed projects.

Historically, the PSCOC has granted a total of 54 waivers for PSCOC funded projects. waivers for individual school projects have ranged from \$31,600 to \$87million. Most waivers go towards standards-based projects, which are typically full school replacements with high project costs.

Issue with Current Criteria

It is difficult for some districts to meet the waiver statute criteria, despite not being able to afford the local match for a potential PSCOC project. In particular, small districts with less than 800 MEM, have difficulty meeting the following two statute requirements:

1. Free / Reduced Lunch \geq 70%: This data point changes annually and is dependent on families completing the federal forms to qualify for assistance. The district cannot control this rate, despite efforts to receive sufficient submitted forms to reach the 70% threshold. The 2023 legislature passed the Healthy Hunger-Free Students Bill of Rights Act, which resulted in the state providing free healthy school meals to all students in all schools. Since its passage, districts report it has been more difficult to receive the necessary forms to increase the percentage rate.
2. Local match must \leq 50%: The local matches are calculated annually and can shift out of the requirement threshold without warning. The formula's factors are not within district control. Many districts cannot afford local matches that are less than 50%; therefore, this factor does not equate to affordability.

The school districts are unable to control either of these requirements. If a district does not meet one of these requirements, they must achieve a mill levy of \geq 10 (option 1), rather than a mil levy of \geq 7 (option 2), which is much harder to achieve for small districts, and causes districts to bond above their means to meet the Mil Levy requirements.

In some instances, a small district may be planning on applying for a PSCOC project and working towards meeting the 7 mill levy requirement in order to meet eligibility for a waiver. However, the district's free and reduced lunch may not exceed the 70% threshold, and/or the local match may be adjusted at the turn of the fiscal year to no longer exceed 50%. Therefore, the district is unable to pursue the waiver for a PSCOC project, which will likely make the application unviable.

Example: Mesa Vista Consolidated School District applied for a standards-based PSCOC project in 2024 to fully replace Mesa Vista High School (currently ranked #78). The district successfully passed a GO Bond to achieve a mill levy of 7.11. The district's calculated Phase 2 local match is 94% (used to determine waiver eligibility), with a SB131 reduced local share of 63%. However, the district's free and reduced lunch is

63%, which does not meet the criteria. The district reports that it is difficult to receive the submitted forms from families to qualify, since all NM school meals are free to students. Therefore, the district is unable to proceed with their application for a replacement school at this time, and is unable to increase the mill levy to 10.

Additionally, the option 3 (growth districts) statute criteria is not used for district eligibility due to the fact that most applicant districts are not experiencing growth, and the mill levy requirement is the same as option 1 (all districts). Therefore this option is not necessary.

Potential Amended Criteria

SB82 amends the statute criteria for the waiver option 2 (small districts) by removing the requirements for the free / reduced lunch and the local match, as well as removing option 3 (growth districts) all together. The changes to option 2 would increase the number of districts eligible of potential waivers, from 8 to 26. This would provide 18 districts the opportunity to meet eligibility for a waiver, which could assist these districts achieve successful applications for PSCOC capital funded projects. This could include full school replacement for several highly ranked schools.

	Current Statute Requirements	Proposed Statute Requirements
Option 1 (all districts)	33	33 (no change)
Option 2 (small districts)	8	26
Option 3 (growth districts)	5	N/A

Additional small districts could become eligible for a waiver by increasing their mill levy above 7 (successful passage of a GO bond to demonstrate “good faith effort” in contributing local resources to a PSCOC project).

Eligibility for Waiver Option 2: Small Districts (<800 MEM)

District	MEM Count	Free / Reduced Lunch	State Share	Mill Levy	Current Statute Requirements	Proposed Statute Requirements
ANIMAS	158	51%	55%	2.40		
CAPITAN	460	43%	6%	4.52		
CARRIZOZO	175	70%	6%	7.51	Eligible	Eligible
CHAMA	322	53%	6%	5.31		
CIMARRON	373	50%	6%	4.94		
CLAYTON	401	93%	6%	7.50	Eligible	Eligible
CLOUDCROFT	419	23%	6%	7.53		Eligible
CORONA	85	18%	6%	5.97		
CUBA	734	100%	6%	12.38	Eligible	Eligible
DES MOINES	136	29%	34%	10.50		Eligible
DORA	212	38%	6%	7.93		Eligible
DULCE	544	81%	6%	3.55		
ELIDA	151	33%	64%	2.32		
ESTANCIA	575	80%	24%	8.04	Eligible	Eligible
EUNICE	724	40%	6%	5.89		
FLOYD	217	70%	80%	2.41		
FT. SUMNER	264	66%	6%	7.37		Eligible
GRADY	177	35%	96%	10.06		Eligible
HAGERMAN	409	51%	60%	10.14		Eligible
HONDO	126	79%	31%	9.54	Eligible	Eligible
HOUSE	63	56%	64%	8.52		Eligible
JAL	551	37%	6%	2.93		
JEMEZ MTN	184	69%	6%	2.30		
JEMEZ VALLEY	316	76%	6%	11.15	Eligible	Eligible
LAKE ARTHUR	126	60%	6%	7.60		Eligible
LOGAN	231	37%	6%	9.20		Eligible
LORDSBURG	419	91%	6%	9.16	Eligible	Eligible
LOVING	703	49%	6%	5.80		
MAGDALENA	296	81%	74%	10.68		Eligible
MAXWELL	102	67%	60%	10.31		Eligible
MELROSE	289	32%	68%	6.32		
MESA VISTA	259	63%	6%	7.11		Eligible
MORA	443	73%	24%	2.26		
MOSQUERO	97	50%	6%	13.43		Eligible
MOUNTAINAIR	191	72%	6%	5.95		
PECOS	456	64%	6%	4.57		
PEÑASCO	270	70%	53%	11.64		Eligible
QUEMADO	178	44%	6%	4.92		
QUESTA	333	64%	6%	5.00		
RESERVE	89	51%	6%	4.07		
ROY	75	26%	86%	7.22		Eligible
SAN JON	118	57%	78%	10.20		Eligible
SANTA ROSA	590	75%	39%	7.19	Eligible	Eligible
SPRINGER	117	66%	36%	8.26		Eligible
TATUM	308	33%	6%	6.89		
TEXICO	567	33%	54%	9.61		Eligible
VAUGHN	46	85%	6%	6.68		
WAGON MOUND	72	83%	6%	6.18		

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Although the PSCOF funding formula is a direct result of the Zuni Lawsuit, it continues to be litigated.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Several districts will not be able to meet eligibility for a waiver of the local match for PSCOC awarded projects.

AMENDMENTS

N/A