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HOUSE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO REQUIRE THE PUBLIC EDUCATION DEPARTMENT TO USE PRIOR YEAR DATA FOR DETERMINATION OF DISTRIBUTION AMOUNTS TO SCHOOL DISTRICTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

"22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the

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1 revenue estimated to be received from the imposed tax, using  
2 prior year valuations, at the rate certified by the department  
3 of finance and administration in accordance with Section  
4 22-25-7 NMSA 1978, assuming a one hundred percent collection  
5 rate, is less than an amount calculated by multiplying an  
6 average of the school district's [~~first forty days~~] prior year  
7 second and third reporting dates' total program units by the  
8 amount specified in Subsection B of this section and further  
9 multiplying the product obtained by the tax rate approved by  
10 the qualified electors in the most recent election on the  
11 question of imposing a tax under the Public School Capital  
12 Improvements Act. The distribution shall be made each year  
13 that the tax is imposed in accordance with Section 22-25-7 NMSA  
14 1978; provided that no state distribution from the public  
15 school capital improvements fund may be used for capital  
16 improvements to any administration building of a school  
17 district. In the event that sufficient funds are not available  
18 in the public school capital improvements fund to make the  
19 state distribution provided for in this section, the dollar per  
20 program unit figure shall be reduced as necessary.

21 B. In calculating the state distribution pursuant  
22 to Subsection A of this section, the following amounts shall be  
23 used:

24 (1) the amount calculated pursuant to  
25 Subsection D of this section per program unit; and

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1 (2) an additional amount certified to the  
2 secretary by the public school capital outlay council. No  
3 later than June 1 of each year, the council shall determine the  
4 amount needed in the next fiscal year for public school capital  
5 outlay projects pursuant to the Public School Capital Outlay  
6 Act and the amount of revenue, from all sources, available for  
7 the projects. If, in the sole discretion of the council, the  
8 amount available exceeds the amount needed, the council may  
9 certify an additional amount pursuant to this paragraph;  
10 provided that the sum of the amount calculated pursuant to this  
11 paragraph plus the amount in Paragraph (1) of this subsection  
12 shall not result in a total statewide distribution that, in the  
13 opinion of the council, exceeds one-half of the total revenue  
14 estimated to be received from taxes imposed pursuant to the  
15 Public School Capital Improvements Act.

16 C. For any fiscal year notwithstanding the amount  
17 calculated to be distributed pursuant to Subsections A and B of  
18 this section, except as provided in Subsection G of this  
19 section, a school district, the voters of which have approved a  
20 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a  
21 distribution less than the amount calculated pursuant to  
22 Subsection E of this section multiplied by the average of the  
23 school district's [~~first forty days~~'] prior year second and  
24 third reporting dates' total program units and further  
25 multiplying the product obtained by the approved tax rate.

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1           D. For purposes of calculating the distribution  
2 pursuant to Subsection B of this section, the amount used in  
3 Paragraph (1) of that subsection shall equal seventy dollars  
4 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year  
5 shall equal the amount for the previous fiscal year adjusted by  
6 the percentage increase between the next preceding calendar  
7 year and the preceding calendar year of the consumer price  
8 index for the United States, all items, as published by the  
9 United States department of labor.

10           E. For purposes of calculating the minimum  
11 distribution pursuant to Subsection C of this section, the  
12 amount used in that subsection shall equal five dollars (\$5.00)  
13 through fiscal year 2005 and in each subsequent fiscal year  
14 shall equal the amount for the previous fiscal year adjusted by  
15 the percentage increase between the next preceding calendar  
16 year and the preceding calendar year of the consumer price  
17 index for the United States, all items, as published by the  
18 United States department of labor.

19           F. In expending distributions made pursuant to this  
20 section, school districts and charter schools shall give  
21 priority to maintenance projects, including payments under  
22 contracts with regional education cooperatives for maintenance  
23 support services. In addition, distributions made pursuant to  
24 this section may be expended by school districts and charter  
25 schools as follows:

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1 (1) for the school district portion of the  
2 total project cost for roof repair or replacement required by  
3 Section 22-24-4.3 NMSA 1978; or

4 (2) for the school district portion of  
5 payments made under a financing agreement entered into by a  
6 school district or a charter school for the leasing of a  
7 building or other real property with an option to purchase for  
8 a price that is reduced according to the payments made, if the  
9 school district has received a grant for the state share of the  
10 payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

11 G. If a serious deficiency in a roof of a public  
12 school facility has been corrected pursuant to Section  
13 22-24-4.4 NMSA 1978 and the school district has refused to pay  
14 its share of the cost as determined by that section, until the  
15 public school capital outlay fund is reimbursed in full for the  
16 share attributed to the district, the distribution calculated  
17 pursuant to this section shall not be made to the school  
18 district but shall be made to the public school capital outlay  
19 fund.

20 H. A portion of each distribution made by the state  
21 pursuant to this section on or after July 1, 2009 shall be  
22 further distributed by the school district to each locally  
23 chartered or state-chartered charter school located within the  
24 school district. The amount to be distributed to each charter  
25 school shall be in the same proportion as the average full-

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1 time-equivalent enrollment of the charter school on the  
2 [~~fortieth day~~] second and third reporting dates of the prior  
3 school year is to the total such enrollment in the school  
4 district; provided that no distribution shall be made to an  
5 approved charter school that had not commenced classroom  
6 instruction in the prior school year. Each year, the  
7 department shall certify to the school district the amount to  
8 be distributed to each charter school. Distributions received  
9 by a charter school pursuant to this subsection shall be  
10 expended pursuant to the provisions of the Public School  
11 Capital Improvements Act; except that if capital improvements  
12 for the charter school were not identified in a resolution  
13 approved by the electors, the charter school may expend the  
14 distribution for any capital improvements, including those  
15 specified in Subsection F of this section.

16 I. In determining a school district's total program  
17 units pursuant to Subsections A and C of this section and a  
18 school district's total enrollment pursuant to Subsection H of  
19 this section, students attending a state-chartered charter  
20 school within the school district shall be included.

21 J. In making distributions pursuant to this  
22 section, the secretary shall include such reporting  
23 requirements and conditions as are required by rule of the  
24 public school capital outlay council. The council shall adopt  
25 such requirements and conditions as are necessary to ensure

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1 that the distributions are expended in the most prudent manner  
2 possible and are consistent with the original purpose as  
3 specified in the authorizing resolution. Copies of reports or  
4 other information received by the secretary in response to the  
5 requirements and conditions shall be forwarded to the council."

6 SECTION 2. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2018.

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