

SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CHANGING THE CAPITAL
OUTLAY FUNDING FORMULA FOR DETERMINATION OF STATE-LOCAL
MATCHES; ADDING DEFINITIONS.

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

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School
Capital Outlay Act:

A. "authority" means the public school facilities
authority;

~~[A.]~~ B. "building system" means a set of
interacting parts that makes up a single, nonportable or fixed
component of a facility and that, together with other building
systems, makes up an entire integrated facility or property,

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underscored material = new
[bracketed material] = delete

1 including ~~[but not limited to]~~ roofing, electrical
2 distribution, electronic communication, plumbing, lighting,
3 mechanical, fire prevention, facility shell, interior finishes
4 and heating, ventilation and air conditioning systems, as
5 defined by the council;

6 ~~[B.]~~ C. "constitutional special schools" means the
7 New Mexico school for the blind and visually impaired and the
8 New Mexico school for the deaf;

9 ~~[C.]~~ D. "constitutional special schools support
10 spaces" means all facilities necessary to support the
11 constitutional special schools' educational mission that are
12 not included in the constitutional special schools' educational
13 adequacy standards, including ~~[but not limited to]~~ performing
14 arts centers, facilities for athletic competition, school
15 district administration and facility and vehicle maintenance;

16 ~~[D.]~~ E. "council" means the public school capital
17 outlay council;

18 ~~[E.]~~ F. "education technology infrastructure" means
19 the physical hardware used to interconnect education technology
20 equipment for school districts and school buildings necessary
21 to support broadband connectivity as determined by the council;

22 ~~[F.]~~ G. "fund" means the public school capital
23 outlay fund; ~~and~~

24 H. "maximum allowable gross square foot per
25 student" means a determination made by applying the established

1 maximum allowable square foot guidelines for educational
2 facilities based on type of school and number of students in
3 the current published New Mexico public school adequacy
4 planning guide to the department's current year certified first
5 reporting date membership;

6 I. "replacement cost per square foot" means the
7 statewide cost per square foot as established by the council;

8 ~~[G-]~~ J. "school district" includes state-chartered
9 charter schools and the constitutional special schools;

10 K. "school district population density" means the
11 population density on a per square mile basis of a school
12 district as estimated by the authority based on the most
13 current tract level population estimates published by the
14 United States census bureau; and

15 L. "school district population density factor"
16 means zero when the school district population density is
17 greater than fifty people per square mile, six-hundredths when
18 the school district population density is greater than fifteen
19 but less than fifty-one persons per square mile and twelve-
20 hundredths when the school district population density is less
21 than sixteen persons per square mile."

22 **SECTION 2.** Section 22-24-5 NMSA 1978 (being Laws 1975,
23 Chapter 235, Section 5, as amended) is amended to read:

24 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
25 APPLICATION--GRANT ASSISTANCE.--

1 A. Applications for grant assistance, approval of
2 applications, prioritization of projects and grant awards shall
3 be conducted pursuant to the provisions of this section.

4 B. Except as provided in Sections 22-24-4.3,
5 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
6 govern grant assistance from the fund for a public school
7 capital outlay project not wholly funded pursuant to Section
8 22-24-4.1 NMSA 1978:

9 (1) all school districts are eligible to apply
10 for funding from the fund, regardless of percentage of
11 indebtedness;

12 (2) priorities for funding shall be determined
13 by using the statewide adequacy standards developed pursuant to
14 Subsection C of this section; provided that:

15 (a) the council shall apply the
16 standards to charter schools to the same extent that they are
17 applied to other public schools;

18 (b) the council may award grants
19 annually to school districts for the purpose of repairing,
20 renovating or replacing public school building systems in
21 existing buildings as identified in Section ~~[3 of this 2015~~
22 ~~act]~~ 22-24-4.6 NMSA 1978;

23 (c) the council shall adopt and apply
24 adequacy standards appropriate to the unique needs of the
25 constitutional special schools; and

1 (d) in an emergency in which the health
2 or safety of students or school personnel is at immediate risk
3 or in which there is a threat of significant property damage,
4 the council may award grant assistance for a project using
5 criteria other than the statewide adequacy standards;

6 (3) the council shall establish criteria to be
7 used in public school capital outlay projects that receive
8 grant assistance pursuant to the Public School Capital Outlay
9 Act. In establishing the criteria, the council shall consider:

10 (a) the feasibility of using design,
11 build and finance arrangements for public school capital outlay
12 projects;

13 (b) the potential use of more durable
14 construction materials that may reduce long-term operating
15 costs;

16 (c) concepts that promote efficient but
17 flexible utilization of space; and

18 (d) any other financing or construction
19 concept that may maximize the dollar effect of the state grant
20 assistance;

21 (4) no more than ten percent of the combined
22 total of grants in a funding cycle shall be used for
23 retrofitting existing facilities for technology infrastructure;

24 (5) ~~[except as provided in Paragraph (6), (8),~~
25 ~~(9) or (10) of this subsection, the state share of a project~~

1 ~~approved and ranked by the council shall be funded within~~
2 ~~available resources pursuant to the provisions of this~~
3 ~~paragraph]~~ no later than May 1 of each calendar year, ~~[a value]~~
4 the phase one formula shall be calculated for each school
5 district in accordance with the following procedure:

6 (a) the final prior year net taxable
7 value for a school district divided by the MEM for that school
8 district is calculated for each school district;

9 (b) the final prior year net taxable
10 value for the whole state divided by the MEM for the state is
11 calculated;

12 (c) excluding any school district for
13 which the result calculated pursuant to Subparagraph (a) of
14 this paragraph is more than twice the result calculated
15 pursuant to Subparagraph (b) of this paragraph, the results
16 calculated pursuant to Subparagraph (a) of this paragraph are
17 listed from highest to lowest;

18 (d) the lowest value listed pursuant to
19 Subparagraph (c) of this paragraph is subtracted from the
20 highest value listed pursuant to that subparagraph;

21 (e) the value calculated pursuant to
22 Subparagraph (a) of this paragraph for the subject school
23 district is subtracted from the highest value listed in
24 Subparagraph (c) of this paragraph;

25 (f) the result calculated pursuant to

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1 Subparagraph (e) of this paragraph is divided by the result
2 calculated pursuant to Subparagraph (d) of this paragraph;

3 (g) the sum of the property tax mill
4 levies for the prior tax year imposed by each school district
5 on residential property pursuant to Chapter 22, Article 18 NMSA
6 1978, the Public School Capital Improvements Act, the Public
7 School Buildings Act, the Education Technology Equipment Act
8 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
9 is calculated for each school district;

10 (h) the lowest value calculated pursuant
11 to Subparagraph (g) of this paragraph is subtracted from the
12 highest value calculated pursuant to that subparagraph;

13 (i) the lowest value calculated pursuant
14 to Subparagraph (g) of this paragraph is subtracted from the
15 value calculated pursuant to that subparagraph for the subject
16 school district;

17 (j) the value calculated pursuant to
18 Subparagraph (i) of this paragraph is divided by the value
19 calculated pursuant to Subparagraph (h) of this paragraph;

20 (k) if the value calculated for a
21 subject school district pursuant to Subparagraph (j) of this
22 paragraph is less than five-tenths, then, except as provided in
23 Subparagraph (n) or (o) of this paragraph, the value for that
24 school district equals the value calculated pursuant to
25 Subparagraph (f) of this paragraph;

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1 (1) if the value calculated for a
2 subject school district pursuant to Subparagraph (j) of this
3 paragraph is five-tenths or greater, then that value is
4 multiplied by five-hundredths;

5 (m) if the value calculated for a
6 subject school district pursuant to Subparagraph (j) of this
7 paragraph is five-tenths or greater, then the value calculated
8 pursuant to Subparagraph (1) of this paragraph is added to the
9 value calculated pursuant to Subparagraph (f) of this
10 paragraph. Except as provided in Subparagraph (n) or (o) of
11 this paragraph, the sum equals the value for that school
12 district;

13 (n) in those instances in which the
14 calculation pursuant to Subparagraph (k) or (m) of this
15 paragraph yields a value less than one-tenth, one-tenth shall
16 be used as the value for the subject school district;

17 (o) in those instances in which the
18 calculation pursuant to Subparagraph (k) or (m) of this
19 paragraph yields a value greater than one, one shall be used as
20 the value for the subject school district;

21 (p) except as provided in Section
22 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
23 Paragraph (6), [~~(8), (9) or~~] (10), (11) or (12) of this
24 subsection, the amount to be distributed from the fund for an
25 approved project shall equal the total project cost multiplied

1 by a fraction the numerator of which is the value calculated
2 for the subject school district in the current year plus the
3 value calculated for that school district in each of the two
4 preceding years and the denominator of which is three; and

5 (q) as used in this paragraph: 1) "MEM"
6 means the average full-time-equivalent enrollment of students
7 attending public school in a school district on the eightieth
8 and one hundred twentieth days of the prior school year; 2)
9 "total project cost" means the total amount necessary to
10 complete the public school capital outlay project less any
11 insurance reimbursement received by the school district for the
12 project; and 3) in the case of a state-chartered charter school
13 that has submitted an application for grant assistance pursuant
14 to this section, the "value calculated for the subject school
15 district" means the value calculated for the school district in
16 which the state-chartered charter school is physically located;

17 (6) the amount calculated pursuant to
18 Subparagraph (p) of Paragraph (5) of this subsection shall be
19 reduced by the following procedure:

20 (a) the total of all legislative
21 appropriations made after January 1, 2003 for nonoperating
22 purposes either directly to the subject school district or to
23 another governmental entity for the purpose of passing the
24 money through directly to the subject school district, and not
25 rejected by the subject school district, is calculated;

1 provided that: 1) an appropriation made in a fiscal year shall
2 be deemed to be accepted by a school district unless, prior to
3 June 1 of that fiscal year, the school district notifies the
4 department of finance and administration and the public
5 education department that the school district is rejecting the
6 appropriation; 2) the total shall exclude any education
7 technology appropriation made prior to January 1, 2005 unless
8 the appropriation was on or after January 1, 2003 and not
9 previously used to offset distributions pursuant to the
10 Technology for Education Act; 3) the total shall exclude any
11 appropriation previously made to the subject school district
12 that is reauthorized for expenditure by another recipient; 4)
13 the total shall exclude one-half of the amount of any
14 appropriation made or reauthorized after January 1, 2007 if the
15 purpose of the appropriation or reauthorization is to fund, in
16 whole or in part, a capital outlay project that, when
17 prioritized by the council pursuant to this section either in
18 the immediately preceding funding cycle or in the current
19 funding cycle, ranked in the top one hundred fifty projects
20 statewide; 5) the total shall exclude the proportionate share
21 of any appropriation made or reauthorized after January 1, 2008
22 for a capital project that will be jointly used by a
23 governmental entity other than the subject school district.
24 Pursuant to criteria adopted by rule of the council and based
25 upon the proposed use of the capital project, the council shall

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1 determine the proportionate share to be used by the
2 governmental entity and excluded from the total; and 6) unless
3 the grant award is made to the state-chartered charter school
4 or unless the appropriation was previously used to calculate a
5 reduction pursuant to this paragraph, the total shall exclude
6 appropriations made after January 1, 2007 for nonoperating
7 purposes of a specific state-chartered charter school,
8 regardless of whether the charter school is a state-chartered
9 charter school at the time of the appropriation or later opts
10 to become a state-chartered charter school;

11 (b) the applicable fraction used for the
12 subject school district and the current calendar year for the
13 calculation in Subparagraph (p) of Paragraph (5) of this
14 subsection is subtracted from one;

15 (c) the value calculated pursuant to
16 Subparagraph (a) of this paragraph for the subject school
17 district is multiplied by the amount calculated pursuant to
18 Subparagraph (b) of this paragraph for that school district;

19 (d) the total amount of reductions for
20 the subject school district previously made pursuant to
21 Subparagraph (e) of this paragraph for other approved public
22 school capital outlay projects is subtracted from the amount
23 calculated pursuant to Subparagraph (c) of this paragraph; and

24 (e) the amount calculated pursuant to
25 Subparagraph (p) of Paragraph (5) of this subsection shall be

1 reduced by the amount calculated pursuant to Subparagraph (d)
2 of this paragraph;

3 (7) no later than May 1 of each calendar year,
4 the phase two formula shall be calculated for each school
5 district in accordance with the following procedure:

6 (a) the sum of the final prior five
7 years net taxable value for a school district multiplied by
8 nine ten thousandths for that school district is calculated for
9 each school district;

10 (b) the maximum allowable gross square
11 foot per student multiplied by the replacement cost per square
12 foot divided by forty-five is calculated for each school
13 district;

14 (c) the value calculated pursuant to
15 Subparagraph (a) of this paragraph divided by the value
16 calculated pursuant to Subparagraph (b) of this paragraph is
17 calculated for each school district;

18 (d) in those instances in which the
19 calculation pursuant to Subparagraph (c) of this paragraph
20 yields a value greater than one, the phase two formula value
21 shall be zero for the subject school district;

22 (e) in those instances in which the
23 calculation pursuant to Subparagraph (c) of this paragraph
24 yields a value greater than eighty-nine hundredths but less
25 than one, the phase two formula value shall be one minus the

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1 value calculated in Subparagraph (c) of this paragraph; and

2 (f) in those instances in which the
3 calculation pursuant to Subparagraph (c) of this paragraph
4 yields a value less than ninety-hundredths, the phase two
5 formula value shall be one minus the value calculated in
6 Subparagraph (c) of this paragraph plus the school district
7 population density factor;

8 (8) except as provided in Paragraph (6), (10),
9 (11) or (12) of this subsection, the state share of a project
10 approved by the council shall be funded within available
11 resources pursuant to the provisions of this paragraph. The
12 school district calculation for grant awards made in accordance
13 with this section shall be pursuant to the following procedure:

14 (a) for fiscal year 2020, the school
15 district calculation shall be the sum of eight-tenths
16 multiplied by the calculation in Paragraph (5) of this
17 subsection and two-tenths multiplied by the calculation in
18 Paragraph (7) of this subsection;

19 (b) for fiscal year 2021, the school
20 district calculation shall be the sum of six-tenths multiplied
21 by the calculation in Paragraph (5) of this subsection and
22 four-tenths multiplied by the calculation in Paragraph (7) of
23 this subsection;

24 (c) for fiscal year 2022, the school
25 district calculation shall be the sum of four-tenths multiplied

1 by the calculation in Paragraph (5) of this subsection and six-
2 tenths multiplied by the calculation in Paragraph (7) of this
3 subsection;

4 (d) for fiscal year 2023, the school
5 district calculation shall be the sum of two-tenths multiplied
6 by the calculation in Paragraph (5) of this subsection and
7 eight-tenths multiplied by the calculation in Paragraph (7) of
8 this subsection; and

9 (e) for fiscal year 2024 and thereafter,
10 the school district calculation shall be the calculation
11 specified in Paragraph (7) of this subsection;

12 [~~(7)~~] (9) as used in this subsection:

13 (a) "governmental entity" includes an
14 Indian nation, tribe or pueblo; and

15 (b) "subject school district" means the
16 school district that has submitted the application for funding
17 and in which the approved public school capital outlay project
18 will be located;

19 [~~(8)~~] (10) the amount calculated pursuant to
20 Subparagraph (p) of Paragraph (5) of this subsection, after any
21 reduction pursuant to Paragraph (6) of this subsection, may be
22 increased by an additional five percent if the council finds
23 that the subject school district has been exemplary in
24 implementing and maintaining a preventive maintenance program.
25 The council shall adopt such rules as are necessary to

1 implement the provisions of this paragraph;

2 [~~(9)~~] (11) the council may adjust the amount
3 of local share otherwise required if it determines that a
4 school district has made a good-faith effort to use all of its
5 local resources. Before making any adjustment to the local
6 share, the council shall consider whether:

7 (a) the school district has insufficient
8 bonding capacity over the next four years to provide the local
9 match necessary to complete the project and, for all
10 educational purposes, has a residential property tax rate of at
11 least ten dollars (\$10.00) on each one thousand dollars
12 (\$1,000) of taxable value, as measured by the sum of all rates
13 imposed by resolution of the local school board plus rates set
14 to pay interest and principal on outstanding school district
15 general obligation bonds;

16 (b) the school district: 1) has fewer
17 than an average of eight hundred full-time-equivalent students
18 on the eightieth and one hundred twentieth days of the prior
19 school year; 2) has at least seventy percent of its students
20 eligible for free or reduced-fee lunch; 3) has a share of the
21 total project cost, as calculated pursuant to provisions of
22 this section, that would be greater than fifty percent; and 4)
23 for all educational purposes, has a residential property tax
24 rate of at least seven dollars (\$7.00) on each one thousand
25 dollars (\$1,000) of taxable value, as measured by the sum of

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1 all rates imposed by resolution of the local school board plus
2 rates set to pay interest and principal on outstanding school
3 district general obligation bonds; or

4 (c) the school district: 1) has an
5 enrollment growth rate over the previous school year of at
6 least two and one-half percent; 2) pursuant to its five-year
7 facilities plan, will be building a new school within the next
8 two years; and 3) for all educational purposes, has a
9 residential property tax rate of at least ten dollars (\$10.00)
10 on each one thousand dollars (\$1,000) of taxable value, as
11 measured by the sum of all rates imposed by resolution of the
12 local school board plus rates set to pay interest and principal
13 on outstanding school district general obligation bonds;

14 [~~(10)~~] (12) the local match for the
15 constitutional special schools shall be set at fifty percent
16 for projects that qualify under the educational adequacy
17 category and one hundred percent for projects that qualify in
18 the support spaces category; provided that the council may
19 adjust or waive the amount of any direct appropriation offset
20 to or local share required for the constitutional special
21 schools if an applicant constitutional special school has
22 insufficient or no local resources available; and

23 [~~(11)~~] (13) no application for grant
24 assistance from the fund shall be approved unless the council
25 determines that:

1 (a) the public school capital outlay
2 project is needed and included in the school district's five-
3 year facilities plan among its top priorities;

4 (b) the school district has used its
5 capital resources in a prudent manner;

6 (c) the school district has provided
7 insurance for buildings of the school district in accordance
8 with the provisions of Section 13-5-3 NMSA 1978;

9 (d) the school district has submitted a
10 five-year facilities plan that includes: 1) enrollment
11 projections; 2) a current preventive maintenance plan that has
12 been approved by the council pursuant to Section 22-24-5.3 NMSA
13 1978 and that is followed by each public school in the
14 district; 3) the capital needs of charter schools located in
15 the school district; and 4) projections for the facilities
16 needed in order to maintain a full-day kindergarten program;

17 (e) the school district is willing and
18 able to pay any portion of the total cost of the public school
19 capital outlay project that, according to Paragraph (5), (6),
20 [~~(8) or (9)~~] (10) or (11) of this subsection, is not funded
21 with grant assistance from the fund; provided that school
22 district funds used for a project that was initiated after
23 September 1, 2002 when the statewide adequacy standards were
24 adopted, but before September 1, 2004 when the standards were
25 first used as the basis for determining the state and school

1 district share of a project, may be applied to the school
2 district portion required for that project;

3 (f) the application includes the capital
4 needs of any charter school located in the school district or
5 the school district has shown that the facilities of the
6 charter school have a smaller deviation from the statewide
7 adequacy standards than other district facilities included in
8 the application; and

9 (g) the school district has agreed, in
10 writing, to comply with any reporting requirements or
11 conditions imposed by the council pursuant to Section 22-24-5.1
12 NMSA 1978.

13 C. After consulting with the public school capital
14 outlay oversight task force and other experts, the council
15 shall regularly review and update statewide adequacy standards
16 applicable to all school districts. The standards shall
17 establish the acceptable level for the physical condition and
18 capacity of buildings, the educational suitability of
19 facilities and the need for education technology
20 infrastructure. Except as otherwise provided in the Public
21 School Capital Outlay Act, the amount of outstanding deviation
22 from the standards shall be used by the council in evaluating
23 and prioritizing public school capital outlay projects.

24 D. The acquisition of a facility by a school
25 district or charter school pursuant to a financing agreement

1 that provides for lease payments with an option to purchase for
2 a price that is reduced according to lease payments made may be
3 considered a public school capital outlay project and eligible
4 for grant assistance under this section pursuant to the
5 following criteria:

6 (1) no grant shall be awarded unless the
7 council determines that, at the time of exercising the option
8 to purchase the facility by the school district or charter
9 school, the facility will equal or exceed the statewide
10 adequacy standards and the building standards for public school
11 facilities;

12 (2) no grant shall be awarded unless the
13 school district and the need for the facility meet all of the
14 requirements for grant assistance pursuant to the Public School
15 Capital Outlay Act;

16 (3) the total project cost shall equal the
17 total payments that would be due under the agreement if the
18 school district or charter school would eventually acquire
19 title to the facility;

20 (4) the portion of the total project cost to
21 be paid from the fund may be awarded as one grant, but
22 disbursements from the fund shall be made from time to time as
23 lease payments become due;

24 (5) the portion of the total project cost to
25 be paid by the school district or charter school may be paid

1 from time to time as lease payments become due; and

2 (6) neither a grant award nor any provision of
3 the Public School Capital Outlay Act creates a legal obligation
4 for the school district or charter school to continue the lease
5 from year to year or to purchase the facility.

6 E. In order to encourage private capital investment
7 in the construction of public school facilities, the purchase
8 of a privately owned school facility that is, at the time of
9 application, in use by a school district may be considered a
10 public school capital outlay project and eligible for grant
11 assistance pursuant to this section if the council finds that:

12 (1) at the time of the initial use by the
13 school district, the facility to be purchased equaled or
14 exceeded the statewide adequacy standards and the building
15 standards for public school facilities;

16 (2) at the time of application, attendance at
17 the facility to be purchased is at seventy-five percent or
18 greater of design capacity and the attendance at other schools
19 in the school district that the students at the facility would
20 otherwise attend is at eighty-five percent or greater of design
21 capacity; and

22 (3) the school district and the capital outlay
23 project meet all of the requirements for grant assistance
24 pursuant to the Public School Capital Outlay Act; provided
25 that, when determining the deviation from the statewide

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1 adequacy standards for the purposes of evaluating and
2 prioritizing the project, the students using the facility shall
3 be deemed to be attending other schools in the school district.

4 F. It is the intent of the legislature that grant
5 assistance made pursuant to this section allows every school
6 district to meet the standards developed pursuant to Subsection
7 C of this section; provided, however, that nothing in the
8 Public School Capital Outlay Act or the development of
9 standards pursuant to that act prohibits a school district from
10 using other funds available to the district to exceed the
11 statewide adequacy standards.

12 G. Upon request, the council shall work with, and
13 provide assistance and information to, the public school
14 capital outlay oversight task force.

15 H. The council may establish committees or task
16 forces, not necessarily consisting of council members, and may
17 use the committees or task forces, as well as existing agencies
18 or organizations, to conduct studies, conduct surveys, submit
19 recommendations or otherwise contribute expertise from the
20 public schools, programs, interest groups and segments of
21 society most concerned with a particular aspect of the
22 council's work.

23 I. Upon the recommendation of the [~~public school~~
24 ~~facilities~~] authority, the council shall develop building
25 standards for public school facilities and shall promulgate

1 other such rules as are necessary to carry out the provisions
2 of the Public School Capital Outlay Act.

3 J. No later than December 15 of each year, the
4 council shall prepare a report summarizing its activities
5 during the previous fiscal year. The report shall describe in
6 detail all projects funded, the progress of projects previously
7 funded but not completed, the criteria used to prioritize and
8 fund projects and all other council actions. The report shall
9 be submitted to the public education commission, the governor,
10 the legislative finance committee, the legislative education
11 study committee and the legislature."

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