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SENATE BILL 255

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING PROCEDURES FOR THE
CONSOLIDATION OF SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL
OUTLAY ACT TO LIMIT THE NUMBER OF STUDENTS PER GRADE IN NEW
CONSTRUCTION PROJECTS AND CERTAIN RENOVATION PROJECTS, TO
REQUIRE CERTAIN ADDITIONAL INFORMATION TO ACCOMPANY GRANT
APPLICATIONS AND TO ESTABLISH PRIORITIES FOR RENOVATION
PROJECTS THAT WILL RESULT IN SMALLER SCHOOLS AND FOR PROJECTS
THAT WILL UTILIZE EXISTING COMMUNITY EDUCATIONAL FACILITIES.

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

Section 1. A new section of Chapter 22, Article 5 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SCHOOL CONSOLIDATION--PROCEDURES--APPROVAL
OF SECRETARY.--

A. A local school board may consolidate two or more

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1 schools within a school district only if it determines,
2 pursuant to the provisions of this section, that the
3 consolidation is in the best interest of students served by
4 each of the schools proposed to be consolidated.

5 B. The local school board shall prepare a
6 feasibility study examining the likely effects of the
7 consolidation on the education of students in the district and
8 on the community in which the schools are located, including
9 effects on student achievement, student participation in
10 co-curricular activities, student health and well-being,
11 student commuting time and patterns, parental participation in
12 school activities and student learning, annual cost per pupil
13 and total cost per graduate and other factors related to the
14 educational performance of the schools and students.

15 C. After the preparation of the feasibility study,
16 the local school board shall hold a public hearing in each of
17 the schools proposed to be consolidated in order to receive
18 input from the members of the community that will be affected
19 by the consolidation. Notice of each hearing shall be given by
20 the local school board at least thirty days prior to the
21 hearing date. Notice of each hearing shall be posted at every
22 school affected by the proposed consolidation and published in
23 two consecutive publications one week apart in a newspaper of
24 general circulation in the school district. The notice shall
25 state:

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- 1 (1) the subject of the hearing;
2 (2) the time and place of the hearing;
3 (3) where interested parties may obtain copies
4 of the feasibility study; and
5 (4) the manner in which interested persons may
6 present their views at the hearing.

7 D. At the public hearings, the local school board
8 shall allow all interested persons a reasonable opportunity to
9 submit data, views or arguments, orally or in writing, and to
10 examine witnesses testifying at the hearing.

11 E. Within twenty-one days of the last required
12 public hearing, the local school board, after considering the
13 conclusions of the feasibility study and all input received at
14 the hearings, shall, in writing, decide whether or not to
15 proceed with the proposed school consolidation. If the local
16 school board decides to proceed with the consolidation, it
17 shall forward its decision, the feasibility study and the
18 record of each public hearing to the secretary.

19 F. No school consolidation shall be carried out
20 without the approval of the secretary. The secretary shall
21 only approve the consolidation if the secretary determines that
22 it is reasonably supported by the feasibility study and the
23 public input."

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

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1 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
2 APPLICATION--GRANT ASSISTANCE.--

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

6 B. Except as provided in Sections 22-24-4.3,
7 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
8 govern grant assistance from the fund for a public school
9 capital outlay project not wholly funded pursuant to Section
10 22-24-4.1 NMSA 1978:

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

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

17 (a) the council shall apply the
18 standards to charter schools to the same extent that they are
19 applied to other public schools; [~~and~~]

20 (b) a project to renovate an existing
21 school that exceeds the grade sizes specified in Paragraph (1)
22 of this subsection shall be given priority over other
23 renovation projects if it will result in smaller, autonomous
24 separate schools within the same school facility and if none of
25 the resulting smaller schools exceeds the grade sizes specified

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1 in Paragraph (11) of this subsection;

2 (c) a construction project for a new
3 school that will utilize one or more community educational
4 facilities located within ten miles of the new school shall be
5 given priority over construction projects for new schools that
6 are located within ten miles of community educational
7 facilities but will not be utilizing any of those facilities;
8 and

9 ~~(b)~~ (d) in an emergency in which the
10 health or safety of students or school personnel is at
11 immediate risk or in which there is a threat of significant
12 property damage, the council may award grant assistance for a
13 project using criteria other than the statewide adequacy
14 standards;

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

19 (a) the feasibility of using design,
20 build and finance arrangements for public school capital outlay
21 projects;

22 (b) the potential use of more durable
23 construction materials that may reduce long-term operating
24 costs;

25 (c) concepts that promote efficient but

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1 flexible utilization of space; and

2 (d) any other financing or construction
3 concept that may maximize the dollar effect of the state grant
4 assistance;

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

8 (5) except as provided in Paragraph (6), (8)
9 or (9) of this subsection, the state share of a project
10 approved and ranked by the council shall be funded within
11 available resources pursuant to the provisions of this
12 paragraph. No later than May 1 of each calendar year, a value
13 shall be calculated for each school district in accordance with
14 the following procedure:

15 (a) the final prior year net taxable
16 value for a school district divided by the MEM for that school
17 district is calculated for each school district;

18 (b) the final prior year net taxable
19 value for the whole state divided by the MEM for the state is
20 calculated;

21 (c) excluding any school district for
22 which the result calculated pursuant to Subparagraph (a) of
23 this paragraph is more than twice the result calculated
24 pursuant to Subparagraph (b) of this paragraph, the results
25 calculated pursuant to Subparagraph (a) of this paragraph are

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1 listed from highest to lowest;

2 (d) the lowest value listed pursuant to
3 Subparagraph (c) of this paragraph is subtracted from the
4 highest value listed pursuant to that subparagraph;

5 (e) the value calculated pursuant to
6 Subparagraph (a) of this paragraph for the subject school
7 district is subtracted from the highest value listed in
8 Subparagraph (c) of this paragraph;

9 (f) the result calculated pursuant to
10 Subparagraph (e) of this paragraph is divided by the result
11 calculated pursuant to Subparagraph (d) of this paragraph;

12 (g) the sum of the property tax mill
13 levies for the prior tax year imposed by each school district
14 on residential property pursuant to Chapter 22, Article 18 NMSA
15 1978, the Public School Capital Improvements Act, the Public
16 School Buildings Act, the Education Technology Equipment Act
17 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
18 is calculated for each school district;

19 (h) the lowest value calculated pursuant
20 to Subparagraph (g) of this paragraph is subtracted from the
21 highest value calculated pursuant to that subparagraph;

22 (i) the lowest value calculated pursuant
23 to Subparagraph (g) of this paragraph is subtracted from the
24 value calculated pursuant to that subparagraph for the subject
25 school district;

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1 (j) the value calculated pursuant to
2 Subparagraph (i) of this paragraph is divided by the value
3 calculated pursuant to Subparagraph (h) of this paragraph;

4 (k) if the value calculated for a
5 subject school district pursuant to Subparagraph (j) of this
6 paragraph is less than five-tenths, then, except as provided in
7 Subparagraph (n) or (o) of this paragraph, the value for that
8 school district equals the value calculated pursuant to
9 Subparagraph (f) of this paragraph;

10 (l) if the value calculated for a
11 subject school district pursuant to Subparagraph (j) of this
12 paragraph is five-tenths or greater, then that value is
13 multiplied by five-hundredths;

14 (m) if the value calculated for a
15 subject school district pursuant to Subparagraph (j) of this
16 paragraph is five-tenths or greater, then the value calculated
17 pursuant to Subparagraph (l) of this paragraph is added to the
18 value calculated pursuant to Subparagraph (f) of this
19 paragraph. Except as provided in Subparagraph (n) or (o) of
20 this paragraph, the sum equals the value for that school
21 district;

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

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

5 (p) except as provided in Section
6 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
7 Paragraph (6), (8) or (9) of this subsection, the amount to be
8 distributed from the fund for an approved project shall equal
9 the total project cost multiplied by a fraction the numerator
10 of which is the value calculated for the subject school
11 district in the current year plus the value calculated for that
12 school district in each of the two preceding years and the
13 denominator of which is three; and

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

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1 (6) the amount calculated pursuant to
2 Subparagraph (p) of Paragraph (5) of this subsection shall be
3 reduced by the following procedure:

4 (a) the total of all legislative
5 appropriations made after January 1, 2003 for nonoperating
6 purposes either directly to the subject school district or to
7 another governmental entity for the purpose of passing the
8 money through directly to the subject school district, and not
9 rejected by the subject school district, is calculated;
10 provided that: 1) an appropriation made in a fiscal year shall
11 be deemed to be accepted by a school district unless, prior to
12 June 1 of that fiscal year, the school district notifies the
13 department of finance and administration and the public
14 education department that the district is rejecting the
15 appropriation; 2) the total shall exclude any educational
16 technology appropriation made prior to January 1, 2005 unless
17 the appropriation was on or after January 1, 2003 and not
18 previously used to offset distributions pursuant to the
19 Technology for Education Act; 3) the total shall exclude any
20 appropriation previously made to the subject school district
21 that is reauthorized for expenditure by another recipient; 4)
22 the total shall exclude one-half of the amount of any
23 appropriation made or reauthorized after January 1, 2007 if the
24 purpose of the appropriation or reauthorization is to fund, in
25 whole or in part, a capital outlay project that, when

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1 prioritized by the council pursuant to this section either in
2 the immediately preceding funding cycle or in the current
3 funding cycle, ranked in the top one hundred fifty projects
4 statewide; 5) the total shall exclude the proportionate share
5 of any appropriation made or reauthorized after January 1, 2008
6 for a capital project that will be jointly used by a
7 governmental entity other than the subject school district.

8 Pursuant to criteria adopted by rule of the council and based
9 upon the proposed use of the capital project, the council shall
10 determine the proportionate share to be used by the
11 governmental entity and excluded from the total; and 6) unless
12 the grant award is made to the state-chartered charter school
13 or unless the appropriation was previously used to calculate a
14 reduction pursuant to this paragraph, the total shall exclude
15 appropriations made after January 1, 2007 for nonoperating
16 purposes of a specific state-chartered charter school,
17 regardless of whether the charter school is a state-chartered
18 charter school at the time of the appropriation or later opts
19 to become a state-chartered charter school;

20 (b) the applicable fraction used for the
21 subject school district and the current calendar year for the
22 calculation in Subparagraph (p) of Paragraph (5) of this
23 subsection is subtracted from one;

24 (c) the value calculated pursuant to
25 Subparagraph (a) of this paragraph for the subject school

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1 district is multiplied by the amount calculated pursuant to
2 Subparagraph (b) of this paragraph for that school district;

3 (d) the total amount of reductions for
4 the subject school district previously made pursuant to
5 Subparagraph (e) of this paragraph for other approved public
6 school capital outlay projects is subtracted from the amount
7 calculated pursuant to Subparagraph (c) of this paragraph; and

8 (e) the amount calculated pursuant to
9 Subparagraph (p) of Paragraph (5) of this subsection shall be
10 reduced by the amount calculated pursuant to Subparagraph (d)
11 of this paragraph;

12 (7) as used in this subsection:

13 (a) "community educational facility"
14 means any non-classroom space designed to support educational
15 programs, including physical education facilities, sports
16 fields, gymnasiums, swimming pools, performing arts facilities,
17 fine arts facilities, libraries and media centers;

18 ~~(a)~~ (b) "governmental entity" includes
19 an Indian nation, tribe or pueblo; and

20 ~~(b)~~ (c) "subject school district"
21 means the school district that has submitted the application
22 for funding and in which the approved public school capital
23 outlay project will be located;

24 (8) the amount calculated pursuant to
25 Subparagraph (p) of Paragraph (5) of this subsection, after any

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1 reduction pursuant to Paragraph (6) of this subsection, may be
2 increased by an additional five percent if the council finds
3 that the subject school district has been exemplary in
4 implementing and maintaining a preventive maintenance program.
5 The council shall adopt such rules as are necessary to
6 implement the provisions of this paragraph;

7 (9) the council may adjust the amount of local
8 share otherwise required if it determines that a school
9 district has used all of its local resources. Before making
10 any adjustment to the local share, the council shall consider
11 whether:

12 (a) the school district has insufficient
13 bonding capacity over the next four years to provide the local
14 match necessary to complete the project and, for all
15 educational purposes, has a residential property tax rate of at
16 least ten dollars (\$10.00) on each one thousand dollars
17 (\$1,000) of taxable value, as measured by the sum of all rates
18 imposed by resolution of the local school board plus rates set
19 to pay interest and principal on outstanding school district
20 general obligation bonds;

21 (b) the school district: 1) has fewer
22 than an average of eight hundred full-time-equivalent students
23 on the eightieth and one hundred twentieth days of the prior
24 school year; 2) has at least seventy percent of its students
25 eligible for free or reduced-fee lunch; 3) has a share of the

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1 total project cost, as calculated pursuant to provisions of
2 this section, that would be greater than fifty percent; and 4)
3 for all educational purposes, has a residential property tax
4 rate of at least seven dollars (\$7.00) on each one thousand
5 dollars (\$1,000) of taxable value, as measured by the sum of
6 all rates imposed by resolution of the local school board plus
7 rates set to pay interest and principal on outstanding school
8 district general obligation bonds; or

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

19 (10) no application for grant assistance from
20 the fund shall be approved unless the council determines that:

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

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

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

4 (d) the school district has submitted a
5 five-year facilities plan that includes: 1) enrollment
6 projections; 2) a current preventive maintenance plan that has
7 been approved by the council pursuant to Section 22-24-5.3 NMSA
8 1978 and that is followed by each public school in the
9 district; 3) the capital needs of charter schools located in
10 the school district; and 4) projections for the facilities
11 needed in order to maintain a full-day kindergarten program;

12 (e) the school district is willing and
13 able to pay any portion of the total cost of the public school
14 capital outlay project that, according to Paragraph (5), (6),
15 (8) or (9) of this subsection, is not funded with grant
16 assistance from the fund; provided that school district funds
17 used for a project that was initiated after September 1, 2002
18 when the statewide adequacy standards were adopted, but before
19 September 1, 2004 when the standards were first used as the
20 basis for determining the state and school district share of a
21 project, may be applied to the school district portion required
22 for that project;

23 (f) the application includes the capital
24 needs of any charter school located in the school district or
25 the school district has shown that the facilities of the

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1 charter school have a smaller deviation from the statewide
2 adequacy standards than other district facilities included in
3 the application; ~~and~~

4 (g) the school district has agreed, in
5 writing, to comply with any reporting requirements or
6 conditions imposed by the council pursuant to Section 22-24-5.1
7 NMSA 1978; and

8 (h) if the application is for a new
9 school, the application includes: 1) an analysis of the
10 number, type, location and capacity of community educational
11 facilities located within ten miles of the proposed school; 2)
12 a plan for how the new school will utilize the community
13 educational facilities identified in Item 1) of this
14 subparagraph; and 3) if the new school will not be utilizing
15 any of the identified community educational facilities, an
16 explanation of why it will not be utilizing them;

17 (ll) an application for a new school shall not
18 be eligible for grant assistance from the fund unless the
19 school is designed to accommodate no more than the following
20 numbers of students per grade level:

21 (a) for pre-kindergarten and
22 kindergarten, no more than sixty students per grade;

23 (b) for first through third grade, no
24 more than sixty-six students per grade;

25 (c) for fourth through sixth grade, no

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1 more than seventy-two students per grade;

2 (d) for seventh and eighth grade, no
3 more than one hundred twenty students per grade; and

4 (e) for ninth through twelfth grade, no
5 more than two hundred twenty-five students per grade; and

6 (12) an application to enlarge the capacity of
7 an existing school shall not be eligible for grant assistance
8 from the fund if, after the renovation, the enrollment capacity
9 of the school will exceed any of the size limits specified in
10 Paragraph (11) of this subsection.

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

22 D. The acquisition of a facility by a school
23 district or charter school pursuant to a financing agreement
24 that provides for lease payments with an option to purchase for
25 a price that is reduced according to lease payments made may be

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1 considered a public school capital outlay project and eligible
2 for grant assistance under this section pursuant to the
3 following criteria:

4 (1) no grant shall be awarded unless the
5 council finds that, prior to the purchase of the facility by
6 the school district or charter school, the facility will equal
7 or exceed the statewide adequacy standards and the building
8 standards for public school facilities;

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

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

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

21 (5) the portion of the total project cost to
22 be paid by the school district or charter school may be paid
23 from time to time as lease payments become due; and

24 (6) neither a grant award nor any provision of
25 the Public School Capital Outlay Act creates a legal obligation

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1 for the school district or charter school to continue the lease
2 from year to year or to purchase the facility.

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

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

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

19 (3) the school district and the capital outlay
20 project meet all of the requirements for grant assistance
21 pursuant to the Public School Capital Outlay Act; provided
22 that, when determining the deviation from the statewide
23 adequacy standards for the purposes of evaluating and
24 prioritizing the project, the students using the facility shall
25 be deemed to be attending other schools in the school district.

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

8 G. Upon request, the council shall work with, and
9 provide assistance and information to, the public school
10 capital outlay oversight task force.

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

19 I. Upon the recommendation of the public school
20 facilities authority, the council shall develop building
21 standards for public school facilities and shall promulgate
22 other such rules as are necessary to carry out the provisions
23 of the Public School Capital Outlay Act.

24 J. No later than December 15 of each year, the
25 council shall prepare a report summarizing its activities

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1 during the previous fiscal year. The report shall describe in
2 detail all projects funded, the progress of projects previously
3 funded but not completed, the criteria used to prioritize and
4 fund projects and all other council actions. The report shall
5 be submitted to the public education commission, the governor,
6 the legislative finance committee, the legislative education
7 study committee and the legislature."

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