

1 AN ACT
2 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; EXTENDING THROUGH
3 FISCAL YEAR 2027 THE PROVISION THAT REDUCES LOCAL SHARES BY
4 ONE-THIRD FOR SOME SCHOOL DISTRICTS AND ONE-HALF FOR CERTAIN
5 SMALL SCHOOL DISTRICTS; ELIMINATING SOME OF THE CRITERIA THE
6 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL IS REQUIRED TO CONSIDER
7 BEFORE MAKING AN ADJUSTMENT TO A SCHOOL DISTRICT'S LOCAL
8 SHARE; MAKING CONFORMING AMENDMENTS.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. Section 22-24-5 NMSA 1978 (being Laws 1975,
12 Chapter 235, Section 5, as amended) is amended to read:

13 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
14 APPLICATION--GRANT ASSISTANCE.--

15 A. Applications for grant assistance, approval of
16 applications, prioritization of projects and grant awards
17 shall be conducted pursuant to the provisions of this
18 section.

19 B. Except as provided in Sections 22-24-4.3,
20 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
21 govern grant assistance from the fund for a public school
22 capital outlay project not wholly funded pursuant to
23 Section 22-24-4.1 NMSA 1978:

24 (1) all school districts are eligible to
25 apply for funding from the fund, regardless of percentage of

1 indebtedness;

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

6 (a) the council shall apply the
7 standards to charter schools to the same extent that they are
8 applied to other public schools;

9 (b) the council may award grants
10 annually to school districts for the purpose of repairing,
11 renovating or replacing public school building systems in
12 existing buildings as identified in Section 22-24-4.6
13 NMSA 1978;

14 (c) the council shall adopt and apply
15 adequacy standards appropriate to the unique needs of the
16 constitutional special schools; and

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

22 (3) the council shall establish criteria to
23 be used in public school capital outlay projects that receive
24 grant assistance pursuant to the Public School Capital
25 Outlay Act. In establishing the criteria, the council shall

1 consider:

2 (a) the feasibility of using design,
3 build and finance arrangements for public school capital
4 outlay projects;

5 (b) the potential use of more durable
6 construction materials that may reduce long-term operating
7 costs;

8 (c) concepts that promote efficient but
9 flexible utilization of space; and

10 (d) any other financing or construction
11 concept that may maximize the dollar effect of the state
12 grant assistance;

13 (4) no more than ten percent of the combined
14 total of grants in a funding cycle shall be used for
15 retrofitting existing facilities for technology
16 infrastructure;

17 (5) no later than May 1 of each calendar
18 year, the phase two formula value shall be calculated for
19 each school district in accordance with the following
20 procedure:

21 (a) the sum of the final prior five
22 years net taxable value for a school district multiplied by
23 nine ten-thousandths for that school district is calculated
24 for each school district;

25 (b) the maximum allowable gross square

1 foot per student multiplied by the replacement cost per
2 square foot divided by forty-five is calculated for each
3 school district;

4 (c) the value calculated pursuant to
5 Subparagraph (a) of this paragraph divided by the value
6 calculated pursuant to Subparagraph (b) of this paragraph is
7 calculated for each school district;

8 (d) in those instances in which the
9 calculation pursuant to Subparagraph (c) of this paragraph
10 yields a value equal to or greater than one, the phase two
11 formula value shall be zero for the subject school district;

12 (e) in those instances in which the
13 calculation pursuant to Subparagraph (c) of this paragraph
14 yields a value of ninety-hundredths or more but less than
15 one, the phase two formula value shall be one minus the value
16 calculated in Subparagraph (c) of this paragraph; and

17 (f) in those instances in which the
18 calculation pursuant to Subparagraph (c) of this paragraph
19 yields a value less than ninety-hundredths, the phase two
20 formula value shall be one minus the value calculated in
21 Subparagraph (c) of this paragraph plus the school district
22 population density factor;

23 (6) the state share of a project approved by
24 the council shall be funded within available resources
25 pursuant to the provisions of this paragraph. Except as

1 provided in Section 22-24-5.7 NMSA 1978 and except as
2 adjusted pursuant to Paragraph (8), (9) or (10) of this
3 subsection, the amount to be distributed from the fund for an
4 approved project shall equal the total project cost
5 multiplied by the following percentage, except that in no
6 case shall the state share be less than six percent:

7 (a) for fiscal year 2024 through fiscal
8 year 2027, the percentage shall be the phase two formula
9 value plus a percentage equal to one-third of the difference
10 between one and the phase two formula value; provided that,
11 for school districts with fewer than 200 MEM, the percentage
12 shall be the phase two formula value plus a percentage equal
13 to one-half of the difference between one and the phase two
14 formula; and

15 (b) for fiscal year 2028 and
16 thereafter, the percentage shall be the phase two formula
17 value;

18 (7) as used in this subsection:

19 (a) "governmental entity" includes an
20 Indian nation, tribe or pueblo;

21 (b) "phase two formula value" for a
22 state-chartered charter school means the phase two formula
23 value calculated pursuant to Paragraph (5) of this subsection
24 for the school district in which the state-chartered charter
25 school is physically located;

1 (c) "subject school district" means the
2 school district that has submitted the application for
3 funding and in which the approved public school capital
4 outlay project will be located; and

5 (d) "total project cost" means the
6 total amount necessary to complete the public school capital
7 outlay project less any insurance reimbursement received by
8 the school district for the project;

9 (8) the amount calculated pursuant to
10 Paragraph (6) of this subsection may be increased by an
11 additional five percent if the council finds that the subject
12 school district has been exemplary in implementing and
13 maintaining a preventive maintenance program. The council
14 shall adopt such rules as are necessary to implement the
15 provisions of this paragraph;

16 (9) the council may adjust the amount of a
17 school district's local share otherwise required if it
18 determines that the school district has made a good-faith
19 effort to use all of its local resources. Before making any
20 adjustment to the local share, the council shall consider
21 whether:

22 (a) the school district has
23 insufficient bonding capacity over the next four years to
24 provide the local match necessary to complete the project
25 and, for all educational purposes, has a residential property

1 tax rate of at least ten dollars (\$10.00) on each one
2 thousand dollars (\$1,000) of taxable value, as measured by
3 the sum of all rates imposed by resolution of the local
4 school board plus rates set to pay interest and principal on
5 outstanding school district general obligation bonds; or

6 (b) the school district has fewer than
7 an average of one thousand five hundred full-time-equivalent
8 students on the second and third reporting dates of the prior
9 school year and, for all educational purposes, has a
10 residential property tax rate of at least seven dollars
11 (\$7.00) on each one thousand dollars (\$1,000) of taxable
12 value, as measured by the sum of all rates imposed by
13 resolution of the local school board plus rates set to pay
14 interest and principal on outstanding school district general
15 obligation bonds;

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

25 (11) no application for grant assistance

1 from the fund shall be approved unless the council determines
2 that:

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

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

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

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

20 (e) the school district is willing
21 and able to pay any portion of the total cost of the
22 public school capital outlay project that, according to
23 Paragraph (6), (8) or (9) of this subsection, is not funded
24 with grant assistance from the fund;

25 (f) the application includes the

1 capital needs of any charter school located in the school
2 district or the school district has shown that the facilities
3 of the charter school have a smaller deviation from the
4 statewide adequacy standards than other district facilities
5 included in the application; and

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

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

23 D. The acquisition of a facility by a school
24 district or charter school pursuant to a financing agreement
25 that provides for lease payments with an option to purchase

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

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

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

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

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

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

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

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

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

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

23 (3) the school district and the capital
24 outlay project meet all of the requirements for grant
25 assistance pursuant to the Public School Capital Outlay Act;

1 provided that, when determining the deviation from the
2 statewide adequacy standards for the purposes of evaluating
3 and prioritizing the project, the students using the facility
4 shall be deemed to be attending other schools in the school
5 district.

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

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

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

25 I. Upon the recommendation of the authority, the

1 council shall develop building standards for public school
2 facilities and shall promulgate other such rules as are
3 necessary to carry out the provisions of the Public School
4 Capital Outlay Act.

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

15 K. For any school district that received a
16 standards- or systems-based award from the council in fiscal
17 year 2023, the state share for any future phase of the
18 project for which funding has not yet been awarded shall be
19 the amount calculated pursuant to Subsection B of this
20 section for fiscal year 2024, regardless of the state share
21 at the time of the initial award.

22 L. As used in this section:

23 (1) "MEM" means membership; and

24 (2) "membership" means the total enrollment
25 of qualified students on the current roll of a class or school

1 on a specified day. The current roll is established by the
2 addition of original entries and reentries minus withdrawals.
3 Withdrawals of students, in addition to students formally
4 withdrawn from the public school, include students absent from
5 the public school for as many as ten consecutive school days;
6 provided that withdrawals do not include students in need of
7 early intervention and habitual truants the school district is
8 required to intervene with and keep in an educational
9 setting."
