

SENATE BILL

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

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

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

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

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

A. Applications for grant assistance, approval of  
applications, prioritization of projects and grant awards shall

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1 be conducted pursuant to the provisions of this section.

2 B. Except as provided in Sections 22-24-4.3,  
3 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions  
4 govern grant assistance from the fund for a public school  
5 capital outlay project not wholly funded pursuant to Section  
6 22-24-4.1 NMSA 1978:

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

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

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

16 (b) the council may award grants  
17 annually to school districts for the purpose of repairing,  
18 renovating or replacing public school building systems in  
19 existing buildings as identified in Section 22-24-4.6  
20 NMSA 1978;

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

24 (d) in an emergency in which the health  
25 or safety of students or school personnel is at immediate risk

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1 or in which there is a threat of significant property damage,  
2 the council may award grant assistance for a project using  
3 criteria other than the statewide adequacy standards;

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

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

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

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

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

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

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

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1 (a) the sum of the final prior five  
2 years net taxable value for a school district multiplied by  
3 nine ten-thousandths for that school district is calculated for  
4 each school district;

5 (b) the maximum allowable gross square  
6 foot per student multiplied by the replacement cost per square  
7 foot divided by forty-five is calculated for each school  
8 district;

9 (c) the value calculated pursuant to  
10 Subparagraph (a) of this paragraph divided by the value  
11 calculated pursuant to Subparagraph (b) of this paragraph is  
12 calculated for each school district;

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

17 (e) in those instances in which the  
18 calculation pursuant to Subparagraph (c) of this paragraph  
19 yields a value of ninety-hundredths or more but less than one,  
20 the phase two formula value shall be one minus the value  
21 calculated in Subparagraph (c) of this paragraph; and

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

1 Subparagraph (c) of this paragraph plus the school district  
2 population density factor;

3 (6) the state share of a project approved by  
4 the council shall be funded within available resources pursuant  
5 to the provisions of this paragraph. Except as provided in  
6 Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to  
7 Paragraph (8), (9) or (10) 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 the following percentage,  
10 except that in no case shall the state share be less than six  
11 percent:

12 (a) for fiscal year 2024 through fiscal  
13 year ~~[2026]~~ 2027, the percentage shall be the phase two formula  
14 value plus a percentage equal to one-third of the difference  
15 between one and the phase two formula value; provided that, for  
16 school districts with fewer than 200 MEM, the percentage shall  
17 be the phase two formula value plus a percentage equal to one-  
18 half of the difference between one and the phase two formula;  
19 and

20 (b) for fiscal year ~~[2027]~~ 2028 and  
21 thereafter, the percentage shall be the phase two formula  
22 value;

23 (7) as used in this subsection:

24 (a) "governmental entity" includes an  
25 Indian nation, tribe or pueblo;

1 (b) "phase two formula value" for a  
2 state-chartered charter school means the phase two formula  
3 value calculated pursuant to Paragraph (5) of this subsection  
4 for the school district in which the state-chartered charter  
5 school is physically located;

6 (c) "subject school district" means the  
7 school district that has submitted the application for funding  
8 and in which the approved public school capital outlay project  
9 will be located; and

10 (d) "total project cost" means the total  
11 amount necessary to complete the public school capital outlay  
12 project less any insurance reimbursement received by the school  
13 district for the project;

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

21 (9) the council may adjust the amount of a  
22 school district's local share otherwise required if it  
23 determines that [~~a~~] the school district has made a good-faith  
24 effort to use all of its local resources. Before making any  
25 adjustment to the local share, the council shall consider

1 whether:

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

11 (b) the school district [~~1~~] has fewer  
12 than an average of eight hundred full-time-equivalent students  
13 on the second and third reporting dates of the prior school  
14 year [~~2~~] ~~has at least seventy percent of its students eligible~~  
15 ~~for free or reduced-fee lunch; 3) has a phase two formula value~~  
16 ~~calculated pursuant to Paragraph (5) of this subsection that~~  
17 ~~would be greater than fifty percent; and 4)] and, for all~~  
18 educational purposes, has a residential property tax rate of at  
19 least seven dollars (\$7.00) on each one thousand dollars  
20 (\$1,000) of taxable value, as measured by the sum of all rates  
21 imposed by resolution of the local school board plus rates set  
22 to pay interest and principal on outstanding school district  
23 general obligation bonds; [~~or~~

24 ~~(c) the school district: 1) has an~~  
25 ~~enrollment growth rate over the previous school year of at~~

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

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

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

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

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

25 (c) the school district has provided



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

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

11 (e) the school district is willing and  
12 able to pay any portion of the total cost of the public school  
13 capital outlay project that, according to Paragraph (6), (8) or  
14 (9) of this subsection, is not funded with grant assistance  
15 from the fund;

16 (f) the application includes the capital  
17 needs of any charter school located in the school district or  
18 the school district has shown that the facilities of the  
19 charter school have a smaller deviation from the statewide  
20 adequacy standards than other district facilities included in  
21 the application; and

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

1           C. After consulting with the public school capital  
2 outlay oversight task force and other experts, the council  
3 shall regularly review and update statewide adequacy standards  
4 applicable to all school districts. The standards shall  
5 establish the acceptable level for the physical condition and  
6 capacity of buildings, the educational suitability of  
7 facilities, the need for career-technical education facilities  
8 or classrooms and the need for education technology  
9 infrastructure. Except as otherwise provided in the Public  
10 School Capital Outlay Act, the amount of outstanding deviation  
11 from the standards shall be used by the council in evaluating  
12 and prioritizing public school capital outlay projects.

13           D. The acquisition of a facility by a school  
14 district or charter school pursuant to a financing agreement  
15 that provides for lease payments with an option to purchase for  
16 a price that is reduced according to lease payments made may be  
17 considered a public school capital outlay project and eligible  
18 for grant assistance under this section pursuant to the  
19 following criteria:

20                   (1) no grant shall be awarded unless the  
21 council determines that, at the time of exercising the option  
22 to purchase the facility by the school district or charter  
23 school, the facility will equal or exceed the statewide  
24 adequacy standards and the building standards for public school  
25 facilities;

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

5                   (3) the total project cost shall equal the  
6 total payments that would be due under the agreement if the  
7 school district or charter school would eventually acquire  
8 title to the facility;

9                   (4) the portion of the total project cost to  
10 be paid from the fund may be awarded as one grant, but  
11 disbursements from the fund shall be made from time to time as  
12 lease payments become due;

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

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

20                   E. In order to encourage private capital investment  
21 in the construction of public school facilities, the purchase  
22 of a privately owned school facility that is, at the time of  
23 application, in use by a school district may be considered a  
24 public school capital outlay project and eligible for grant  
25 assistance pursuant to this section if the council finds that:

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

5                   (2) at the time of application, attendance at  
6 the facility to be purchased is at seventy-five percent or  
7 greater of design capacity and the attendance at other schools  
8 in the school district that the students at the facility would  
9 otherwise attend is at eighty-five percent or greater of design  
10 capacity; and

11                   (3) the school district and the capital outlay  
12 project meet all of the requirements for grant assistance  
13 pursuant to the Public School Capital Outlay Act; provided  
14 that, when determining the deviation from the statewide  
15 adequacy standards for the purposes of evaluating and  
16 prioritizing the project, the students using the facility shall  
17 be deemed to be attending other schools in the school district.

18                   F. It is the intent of the legislature that grant  
19 assistance made pursuant to this section allows every school  
20 district to meet the standards developed pursuant to Subsection  
21 C of this section; provided, however, that nothing in the  
22 Public School Capital Outlay Act or the development of  
23 standards pursuant to that act prohibits a school district from  
24 using other funds available to the district to exceed the  
25 statewide adequacy standards.

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1           G. Upon request, the council shall work with, and  
2 provide assistance and information to, the public school  
3 capital outlay oversight task force.

4           H. The council may establish committees or task  
5 forces, not necessarily consisting of council members, and may  
6 use the committees or task forces, as well as existing agencies  
7 or organizations, to conduct studies, conduct surveys, submit  
8 recommendations or otherwise contribute expertise from the  
9 public schools, programs, interest groups and segments of  
10 society most concerned with a particular aspect of the  
11 council's work.

12           I. Upon the recommendation of the authority, the  
13 council shall develop building standards for public school  
14 facilities and shall promulgate other such rules as are  
15 necessary to carry out the provisions of the Public School  
16 Capital Outlay Act.

17           J. No later than December 15 of each year, the  
18 council shall prepare a report summarizing its activities  
19 during the previous fiscal year. The report shall describe in  
20 detail all projects funded, the progress of projects previously  
21 funded but not completed, the criteria used to prioritize and  
22 fund projects and all other council actions. The report shall  
23 be submitted to the public education commission, the governor,  
24 the legislative finance committee, the legislative education  
25 study committee and the legislature.

1 K. For any school district that received a  
2 standards- or systems-based award from the council in fiscal  
3 year 2023, the state share for any future phase of the project  
4 for which funding has not yet been awarded shall be the amount  
5 calculated pursuant to Subsection B of this section for fiscal  
6 year 2024, regardless of the state share at the time of the  
7 initial award.

8 L. As used in this section:

9 (1) "MEM" means membership; and

10 (2) "membership" means the total enrollment of  
11 qualified students on the current roll of a class or school on  
12 a specified day. The current roll is established by the  
13 addition of original entries and reentries minus withdrawals.  
14 Withdrawals of students, in addition to students formally  
15 withdrawn from the public school, include students absent from  
16 the public school for as many as ten consecutive school days;  
17 provided that withdrawals do not include students in need of  
18 early intervention and habitual truants the school district is  
19 required to intervene with and keep in an educational setting."