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November 19, 2015

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Craig

RE: ADMINISTRATIVE RULEMAKING: PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

In the October 29, 2015 issue of the *New Mexico Register*, the Public School Capital Outlay Council (PSCOC) published Notice of Proposed Rulemaking, announcing proposed changes to:

- **6.27.3 NMAC, Application and Grant Assistance Procedures and Requirements Relating to Preventive Maintenance Plans.**

The notice solicited comments and announced a public hearing on the proposed rules was held Friday, November 6, 2015, at the University of New Mexico, Science and Technology Park Auditorium. The PSCOC is scheduled to act on the proposed rule amendment on its December 14, 2015. (See **Attachment 1, Notice of Proposed Rulemaking, 6.27.3 NMAC, 10/29/15.**) The proposed rule relates to a building system repair, renovation, or replacement initiative enacted by Laws 2015, Chapter 93.

6.27.3 NMAC, Application and Grant Assistance Procedures and Requirements Relating to Preventive Maintenance Plans

The proposed amendments to 6.27.3.12 NMAC:

- remove references to the expired roof replacement initiative;
- require submittal of an application to the Public School Facilities Authority (PSFA) for funding under the building system initiative;
- require an assessment of the building system in the application that indicates how the repair, renovation, or replacement would extend the useful life of the building;
- indicate PSCOC will rank building system applications for assistance; and
- indicate that funds awarded must be spent in three years.

These amendments implement the building system repair, renovation, or replacement initiative using a process that mirrors the previous procedures that were used for the expired defunct roof replacement initiative.

Provisions of the enacting legislation (an excerpt of which is included as **Attachment 2**) allow for annual allocations of up to \$15 million from the Public School Capital Outlay Fund between FY 16 and FY 20 for expenditure on projects awarded by PSCOC for the building system repair, renovation, or replacement initiative. According to the PSFA, examples of building systems that could be repaired, renovated, or replaced include: roofs; heating, ventilation, and air conditioning (HVAC) systems; classroom lighting and branch circuits; special systems including information technology; exterior doors and windows; and site drainage.

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TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL
PART 3 APPLICATION AND GRANT ASSISTANCE PROCEDURES AND REQUIREMENTS
RELATING TO PREVENTIVE MAINTENANCE PLANS

6.27.3.1 ISSUING AGENCY: Public School Capital Outlay Council
 [6.27.3.1 NMAC - Rp, 6.27.2.1 NMAC, 06/15/04]

6.27.3.2 SCOPE: Public school capital outlay council, public school facilities authority, and public school districts
 [6.27.3.2 NMAC - Rp, 6.27.2.2 NMAC, 06/15/04]

6.27.3.3 STATUTORY AUTHORITY: The Public School Capital Outlay Act, Sections 22-24-1 to 22-24-11 NMSA 1978.
 [6.27.3.3 NMAC - Rp, 6.27.2.3 NMAC, 06/15/04; A, 07/15/10]

6.27.3.4 DURATION: Permanent
 [6.27.3.4 NMAC - Rp, 6.27.2.4 NMAC, 06/15/04]

6.27.3.5 EFFECTIVE DATE: June 15, 2004, unless a later date is cited at the end of a section.
 [6.27.3.5 NMAC - Rp, 6.27.2.5 NMAC, 06/15/04]

6.27.3.6 OBJECTIVE: The objective of the rule is to establish application and grant assistance procedures pursuant to the Public School Capital Outlay Act.
 [6.27.3.6 NMAC - Rp, 6.27.2.6 NMAC, 06/15/04]

6.27.3.7 DEFINITIONS: [Reserved]
 [6.27.3.7 NMAC - Rp, 6.27.2.7 NMAC, 06/15/04]

6.27.3.8 GENERAL PROCEDURES:

A. The authority shall present a proposed calendar and proposed application to the council prior to the beginning of the allocation cycle for a given year.

B. The council shall determine the estimated available funding for the allocation cycle for a given year. The authority, at the direction of the council, shall advise school districts of the funding available for each allocation cycle and the resultant potential applicant pool. In making the determination, the council shall consider prior awards for phased projects, contingencies, and phasing requirements as they pertain to current rankings and estimated funding.

C. Condition index ranking:

(1) In accordance with the calendar established by the council, the authority shall report to the council regarding the methodology used to determine the condition index ranking, including any recommendations for affirming or refining the methodology.

(2) The authority, in cooperation with school districts, shall regularly review and update the statewide data used to determine the condition index ranking. School districts shall regularly review and provide corrections of inaccurate or missing data to the authority with respect to the statewide data used to determine the condition index rating. In accordance with the timelines established by the council, the authority shall transmit the application, the calendar, the condition index rankings, and such other information as the council deems relevant to all school districts.

(3) A school district aggrieved by a determination of the authority regarding the condition index ranking of a public school under the authority of the district may appeal the matter to the council in accordance with the procedures established in 6.27.1.10 NMAC. The appeal must specify the data that the school district believes to be erroneous.

D. The authority shall provide assistance to school districts with respect to the application process and requirements, and preparation of the application, if necessary.

E. The authority shall provide on-going analyses and technical assistance to school districts with regard to:

(1) adequacy standards;

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- (2) master plans;
 - (3) educational specifications;
 - (4) preventive maintenance programs, including the implementation and maintenance of the facility information management system (FIMS);
 - (5) assessments used to determine whether a school building is renovated or replaced;
 - (6) space utilization; and
 - (7) phasing, financing and cost benefit analyses.
- F. The authority shall establish procedures to ensure consultation with the secretary in the event of any potential or perceived conflict between a proposed action of the authority and an educational program. [6.27.3.8 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.9 STATE/LOCAL MATCH DETERMINATION. The department shall notify the council and each school district of the state/local match for each school district for every allocation cycle in accordance with the calendar established by the council.

A. The match shall be calculated annually in accordance with the requirements of Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978. In calculating the match:

- (1) the final prior year net taxable value for the school district means the net taxable value for the calendar year immediately preceding the calendar year in which the allocation is made;
- (2) the MEM for the school district is the average full-time-equivalent enrollment of students attending public schools, including charter schools, in a school district on the eightieth and one hundred twentieth days of the prior school year; the state MEM is the total final funded MEM for the prior school year as reported by the department.

B. The notification shall include the net taxable value, the sum of the property tax mill levies, and the MEM used to determine the state/local match.

C. If a school district believes that either the prior year net taxable value for the school district or the MEM used to calculate the state/local match is incorrect, the school district shall notify the department within thirty (30) days of receiving the notification and shall provide documentation as to the data the school district believes to be correct. The department shall review the information provided by the school district and notify the school district and the council of its determination within thirty (30) days of receiving the school district's objections.

D. A school district recognized by the council for conducting an exemplary preventive maintenance program pursuant to Subsection G of 6.27.3.11 NMAC, may be eligible for a reduction in local match of up to five percent (5%) on capital outlay awards.

E. Projects which receive phased project funding over multiple award cycles will maintain the state/local match ratio of the year when the project was initially awarded, except in extraordinary circumstances as determined by the council.

[6.27.3.9 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.10 SPECIAL APPROPRIATION REJECTION: OFFSET.

A. The school district must determine whether to accept or reject any legislative appropriation made after January 1, 2003 for non-operating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, but excluding educational technology appropriations made prior to January 1, 2005 and reauthorizations of appropriations previously made to the school district. This includes determinations with regard to direct appropriations for charter schools within the school district. After January 1, 2007, determinations regarding appropriations for non-operating purposes to a specific state-chartered charter school shall be made by the charter school unless the appropriation was previously used to calculate a reduction pursuant to this section regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later becomes a state-chartered school.

(1) The school district must notify the department of finance and administration and the public education department in writing that it is rejecting an appropriation prior to June 1 of the fiscal year during which the appropriation is made.

(2) The rejection of the direct appropriation must be supported by the affirmative action of the local school board.

(3) Submission of the completed questionnaire for a project funded by a direct legislative appropriation and the corresponding sale of the bonds will be deemed to constitute the school district's acceptance of the project.

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B. Any direct appropriation not otherwise excepted from this requirement and not rejected by the school district shall result in the application of the offset as calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978. The total of direct appropriations shall include an amount, certified to the council by the department, equal to the educational technology appropriations made to the subject school district on or after January 1, 2003 and prior to January 1, 2005 and not previously used to offset distributions pursuant to the Technology for Education Act. All federal money disbursed to a school district for non-operating purposes pursuant to Title XIV of the American Recovery and Reinvestment Act of 2009 shall also result in the application of the offset pursuant to this subsection.

(1) The total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred and fifty projects statewide.

(2) The total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. A school district proposing to jointly use a facility funded from a capital outlay appropriation shall submit a joint-use agreement executed between the district and governmental entity which details the terms of the proportional use as well as any future capital, operational and maintenance costs associated with the facility. The council shall determine the proportionate share to be used by the district and provide this information to the department to include in the calculation of the applicable offset. Joint-use agreements requests received prior to June 1 of the fiscal year will be calculated into the offset applicable to each school district for the current standards-based award cycle. Joint-use agreements requests received after June 1 of the fiscal year will carry-forward and be applicable to future award cycles under the standards-based process.

[6.27.3.10 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.11 PREVENTIVE MAINTENANCE PROGRAM

A. Each school district, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act, shall develop and implement a preventive maintenance plan meeting the requirements of this section.

B. A school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

(1) the school district has implemented a preventive maintenance plan that has been approved by the council; and which plan has subsequently been updated within the last twelve (12) months for any changes in facilities, equipment, available resources, new policies, new procedures, and added capabilities; and

(2) the school district is effectively using the facility information management system (FIMS).

C. The preventive maintenance plan for each public school building, including portable classrooms and any charter school buildings under the authority of the school district, must at a minimum include:

(1) the maintenance mission statement and maintenance goals which specify the broad purpose of the maintenance department and list the goals to be undertaken during the next twelve (12) months;

(2) the maintenance organization and staffing responsibilities, by providing an organization chart depicting the supervisory chain for directing maintenance and custodial activities, and listing the general responsibilities of each group;

(3) the maintenance priorities and procedures, by listing the priorities for the accomplishment of maintenance related work and providing implemented procedures for the conduct of the maintenance program, such as work order processing, material and equipment acquisition, contractor oversight, safety, staff professional development, equipment upgrades and data updates;

(4) equipment inspection and maintenance schedules which shall provide the schedule for the reoccurring inspection and maintenance, at prescribed frequencies, for all facility systems and equipment;

(5) scheduled preventive maintenance tasks which detail the specific inspection and maintenance requirements to be employed;

(6) established custodial duties, responsibilities, and a schedule of tasks performed at each of its schools; and

(7) major maintenance, repair and replacement projects required to be in its current facility master plan that the school district will execute under the capital renewal program.

D. The school district's preventive maintenance program includes scheduled activities intended to provide fully functional and reliable building systems aimed at advancing the learning process, providing healthy, safe conditions and preventing breakdowns and premature failures. Common tasks consist of diagnostic tests,

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inspections, cleaning, lubrication, calibration and replacement of expendable components of building systems and equipment to address each of the following school facility systems and elements:

- (1) substructure; including foundations and floor slabs;
- (2) shell; including exterior walls, doors, windows, roof coverings and openings;
- (3) interior; floors, walls, partitions, ceilings, interior doors, equipment rooms and restrooms;
- (4) services; including electrical distribution, lighting, fire and life safety equipment, heating; ventilation, air conditioning and refrigeration equipment, plumbing fixtures, elevators and lifts;
- (5) equipment; including kitchen equipment and furnishings; and
- (6) sitework; including roadways and parking lots, fencing and walls, sidewalks, grounds drainage, signage, playgrounds and exterior utility distribution.

E. All school districts shall participate in the facility information management system (FIMS) in accordance with the schedule and policies adopted by the council. The facility information management system shall:

- (1) provide for a comprehensive and systematized process for identifying maintenance requirements, scheduling work and documenting completed work; and
- (2) provide a database of maintenance and related service activities to allow for analysis and decision making for school district and statewide maintenance efforts, with maintenance measures established and periodic analysis conducted by both school districts and the authority to identify opportunities for improved school facilities.

F. Commensurate with the above provisions, school districts shall provide comprehensive professional development programs for its maintenance personnel to provide requisite skills and the authority will assist as necessary with implementing such programs.

G. A school district identified by the council to have an exemplary preventive maintenance program may be eligible for up to a five percent (5%) reduction in its local match on a capital outlay award.

(1) Exemplary maintenance is demonstrated by achieving and sustaining optimum performance of all building systems expected useful life anticipated to be met or exceeded through highly efficient use of resources.

(2) The council shall annually review and adopt the specific criteria and process for confirming that a district is demonstrating exemplary maintenance.

[6.27.2.11 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.12 APPLICATIONS: MINIMUM REQUIREMENTS

A. The application must verify that the school district has submitted a five-year facilities plan. The facilities plan must include:

- (1) enrollment projections, which are updated at the beginning of each fiscal year and reflect the final funded membership for the prior school year;
- (2) projections for facilities needed to maintain a full-day kindergarten program;
- (3) the school district's mission statement, facility goals and objectives, and the steps taken by the school district to address the priority of needs. The goals and objectives should address how the master plan supports the educational programs and needs of the district;
- (4) a prioritization of the district's capital needs, including maintenance-related capital renewal;
- (5) description of community involvement in the development of the master plan;
- (6) if the application or master plan establish ranked priorities for public school capital outlay projects within the district that do not conform with the condition index rankings of public school buildings within the school district, the school district must provide a detailed explanation as to the rationale for the difference;
- (7) a map of the school district addressing, at a minimum, the following factors: location of all current sites, land owned by the school district, location of any planned expansion (indicating whether the site is owned by the school district), school district growth areas and other school district facilities; and
- (8) addressing of the facilities needs of charter schools located within the school district.

B. The application must assure that the school district is willing and able to pay any portion of the public school capital outlay project that is not funded with grant assistance from the fund and must provide information on the anticipated source of the local share, the timelines for ensuring the local share and any known contingencies in ensuring the local share.

C. The application must address the needs of any charter school located in the school district or provide documentation that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application.

D. The application must include a preventive maintenance program meeting the requirements of 6.27.3.11 NMAC.

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E. The application must address how the school district preventive maintenance program complies with the requirements of 6.27.3.11 NMAC.

F. If the proposed project exceeds the statewide adequacy standards, the application must provide a detailed explanation of the variance and a cost analysis of the cost of meeting the statewide adequacy standards and the excess costs associated with exceeding the statewide adequacy standards.

G. If the application is for a charter school located in privately owned facilities, the district must include documentation sufficient to ensure that the provisions of Article IX, Section 14 of the Constitution of New Mexico (the “anti-donation clause”) are not violated and that there were no violations of any conflict of interest laws.

H. Special provision: ~~[roof repair and replacement]~~ building systems initiative

(1) A school district desiring a grant award for ~~[roof repair or replacement]~~ building system repair, renovation or replacement shall submit an application on a form approved by the council. The application shall include an assessment of ~~[roofs on school district buildings that create a threat of significant property damage]~~ the building system that the repair, renovation or replacement of which would extend the useful life of the building itself.

(2) The authority shall verify the assessment. The council shall prioritize applications for assistance pursuant to the ~~[roof repair and replacement]~~ building systems initiative using a special condition ranking index ~~[for roofs]~~.

(3) The council shall approve applications on the established priority basis to the extent of available funds. No project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total project cost not funded with grant assistance from the fund. The state share of the cost of an approved project is calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

(4) ~~[Roof repairs]~~ Building system repair, renovation or replacement funded under this program shall be expeditiously completed. Any grants made pursuant to this subsection shall be expended by the school district ~~[on or before to the date specified by the council]~~ within three years of the grant allocation.
[6.27.3.12 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10; A, XX/XX/XX]

6.27.3.13 GRANT ASSISTANCE DETERMINATIONS

A. The council shall consider all applications meeting the requirements of this rule and, after public hearing and consideration of recommendations by the authority and by any subcommittee that may be appointed by the chair for this purpose, approve those applications selected for grant assistance during the allocation cycle.

B. The council shall prioritize all applications using the statewide adequacy standards. The amount of outstanding deviation from the standards as shown in the New Mexico condition index ranking shall be used by the council in evaluating and prioritizing public school capital outlay projects; provided however, that the council may fashion such solutions to the needs established by the rankings as appropriate and also, in making its awards based on the priorities, the council may consider:

- (1) the timeliness of a district’s ability to provide its match;
- (2) phasing possibilities or the ability to totally fund and complete a project;
- (3) the need for additional planning time;
- (4) the inability of a district to be able to effectuate multiple awards in terms of actual construction;
- (5) the status of the district’s financial audits;
- (6) the impact on its educational program; and
- (7) such other factors as the council may deem relevant or appropriate.

C. Notwithstanding the provisions of subsection B of this section[:], in an emergency in which the council determines that the health or safety of students or school personnel is at immediate risk or where there is a threat of significant property damage if immediate action is not taken, the council may award emergency grant assistance pursuant to Subsection C of 6.27.2.9 NMAC for a project using criteria other than the statewide adequacy standards.

D. The council shall make its allocations for grant assistance in a manner that the council determines will maximize the utilization of the available funding for any given allocation cycle. This determination may include allocations for grant assistance for one or more phases of a project upon the recommendation of the authority and any subcommittee of the council appointed by the chair for this purpose.

E. An application for grant assistance shall not be approved unless the council makes a determination that:

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- (1) the public school capital outlay project is needed and is included in the school district's top priorities;
- (2) the school district has used its resources in a prudent manner as demonstrated by the school district's adherence to the priorities established in its master plan, its implementation of a preventive maintenance plan and such other information as the council finds relevant;
- (3) the school district has provided insurance for buildings of the local school district in accordance with the provisions of Section 13-5-3 NMSA 1978;
- (4) the school district has submitted a five-year facilities plan that meets the requirements of Subsection A of Section 6.27.3.12 of this rule;
- (5) the school district has implemented an updated preventive maintenance plan and is effectively utilizing the facility information management system (FIMS) to meet the requirements of 6.27.3.11 of this rule;
- (6) school district is willing and able to pay any portion of the total cost of the public school capital outlay project not funded with grant assistance from the fund;
- (7) the school district has addressed the capital needs of any charter schools located in the district by including the needs in the application or demonstrating that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and
- (8) the school district has agreed in writing to comply with any reporting requirements or conditions established by the council pursuant to Section 22-24-5.1 NMSA 1978. The school district must acknowledge that the council may direct that the authority manage and provide direct administration of the project, either as a condition of approval of the project or upon a finding by the council that the project is repeatedly in substantial noncompliance with any reporting requirement or condition.

F. Upon recommendation of the authority, the council shall determine whether direct or indirect project management by the authority shall apply to the project. In making its recommendation, the authority shall consider:

- (1) the district's preference and financial capabilities, including a determination by the council authorizing direct payment to the contractor;
- (2) the district's capacity, including training and certification in procurement and contract requirements; and
- (3) the authority's staffing capacity.

G. Approval of a project by the council may include such necessary and reasonable conditions or contingencies imposed by the council to ensure that the project meets the requirements of law and rule and is effectively and prudently administered and managed.

[6.27.3.13 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.14 CALCULATION OF GRANT ASSISTANCE

A. The amount of an award for grant assistance for a project shall be determined as follows:

- (1) Total project cost means the total amount necessary to complete the public school capital outlay project less:
 - (a) any insurance reimbursement received by the school district for the project; and
 - (b) any amount attributable to costs associated with aspects of a project that exceed the statewide adequacy standards.
- (2) The final state share amount of the total project cost is determined by:
 - (a) applying the ratio calculated pursuant to 6.27.3.9 NMAC in accordance with the requirements of Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 to the total project cost to produce the state share amount;
 - (b) subtracting from the state share amount the amount calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; and
 - (c) in instances where a project will utilize a lease with option to purchase arrangement, the final state share amount may be in the form of additional lease costs for leasehold improvements.

B. Notwithstanding the requirements of Subsection A of this section:

- (1) If the council determines that a district has used all of its local resources and that the district is not expected to have any available local resources by a date determined annually by the council, the council may adjust the amount of local share otherwise required. Before making any adjustment to the local share, the council shall consider whether:

- (a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of

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

(b) the school district

(i) has fewer than an average of eight hundred full-time-equivalent students on the fortieth, eightieth and one hundred twentieth days of the prior school year;

(ii) has at least seventy percent of its students eligible for free or reduced fee lunch;

(iii) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and

(iv) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district has:

(i) an enrollment growth rate over the previous school year of at least two and one-half percent;

(ii) pursuant to its five-year facilities plan, will be building a new school within the next two years; and

(iii) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

(2) Allocations from the fund made by the council for the purpose of demolishing abandoned school district facilities provide that the council may enter into an agreement with the school district under which an amount equal to the savings to the district in lower insurance premiums are used to reimburse the fund fully or partially for the demolition costs allocated to the district.

C. Amounts awarded to school districts may be adjusted if the council determines that a previous award is insufficient to bring a project to statewide adequacy standards. A school district may apply for an adjustment to a previous award of grant assistance by submitting an application on the current, approved, and designated form detailing the additional state and local match funds necessary to bring the school to adequacy.

D. In instances where the district lacks the additional funds to meet the local share of the project, the award may be adjusted by the council upon approval of an application submitted by the district on the current, approved, and designated form. The authority, in consultation with the public education department shall review the applicant school district's financial position presented in the application and make a recommendation to the council whether an awards adjustment should be considered. The council shall use the criteria provided in Section 22-24-5(B)(8)(a) and (b) NMSA 1978 to determine whether an adjustment be made. An adjustment may include increasing the state share together with an increase for the local match for the project.

E. In addition to considering an adjustment of the local share pursuant to Subsections B or D of this section, the council may consider granting a local share advance if the council determines that a need exists to complete the project in a timely manner and the school district affirms its willingness and ability to repay the advance within 48 months of the granting of the advance.

[6.27.3.14 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.3.15 PORTABLE CLASSROOMS

A. The council may authorize expenditures from the public school capital outlay fund to purchase portable classroom buildings for loan to school districts to meet a temporary requirement. The council has authorized the authority to administer its portable classroom loan program in the manner set forth in this rule. Purchases of portable classroom buildings not associated with a capital outlay project award require specific authorization by the council. When an award includes provisions to use allocations from the public school capital outlay fund to purchase portable classroom buildings as part of that project, no further approval is required from the council for the portables to be purchased. Such portables, however, remain the property of the council, and when they are no longer needed by a school district because of the construction of permanent facilities, the school district shall return the portables to the authority. Nothing in this rule applies to portable classroom buildings purchased with school district funds. Should a school district find that it no longer needs a portable classroom building purchased with school district funds, the authority, may purchase the portable classroom building from the school

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district. Such a purchase would need council approval only if the purchase is not associated with a capital outlay award for another district.

B. The authority shall develop applications for loan, transfer or return of state-owned portable classroom buildings. Applications shall be signed by the school district superintendent and shall be delivered to the authority regional manager of the region in which the school district is located. The application for loan of portable classrooms shall address, at a minimum:

- (1) the need for loan of portable classrooms, including explanation of why the needs of district cannot be met using existing facilities;
- (2) description of the proposed use of portable classrooms;
- (3) the anticipated duration of the loan;
- (4) the ability of the district to maintain and provide insurance of the portable classrooms while in the custody of the district, and that the portable classrooms will be included in the district preventive maintenance program;
- (5) the number of units requested; and
- (6) the anticipated duration of the loan.

C. The application for return or transfer of portable classrooms shall address, at a minimum:

- (1) the reason(s) the district no longer needs the portable classrooms or no longer needs the portable classroom at its present location but needs them elsewhere;
- (2) the manner in which the district is addressing the need(s) that occasioned the request for portable classrooms;
- (3) the effective date of the proposed return or transfer; and
- (4) a detailed description of the current condition of the portable classrooms.

D. Applications for loan, transfer or return of state owned portable classroom buildings shall be submitted to the authority. The application will be reviewed by the director of the authority, who shall make a determination of approval or denial, and notify the school district of the determination in writing. The director shall periodically report to the council with respect to the applications granted or denied.

E. A portable classroom use agreement shall be required for portable classroom units loaned for each school site. The agreement shall require the signatures of the district superintendent and the director, or their designees. The term of use shall not exceed five (5) years. Such agreements may be renewed and the term extended for additional five (5) year intervals if the district makes a written request to the authority no later than sixty (60) days prior to the end of the term of the current agreement. If the school district determines that a portable classroom is no longer required during the term of the current agreement, the school district must provide written notification to the authority at least one hundred twenty (120) days prior to the date the portable classroom is no longer required. All rights and responsibilities of the parties to the portable classroom use agreement shall remain in effect under the terms of the agreement until such time as the authority determines to allow early release of the school district from the terms of the agreement.

F. The school district is responsible for making the arrangements for and paying all expenses related to disconnecting and transporting the portable classroom from its current location, and all site preparation, utility extensions, permits and other costs for placement at a new location. Additionally, the relocation of the portable must comply with the requirements of 6.27.2.12 NMAC.

G. The school district, at its sole expense shall keep, repair and maintain the portable classroom and all related improvements in a reasonable state of repair and preservation and shall not suffer or permit any continuing nuisance thereon. The portable classroom shall be maintained in an as is or better condition as existed when the district took possession of the building. This will include preventive maintenance on the building systems and installed equipment in accordance with the school district's preventive maintenance plan. All renovations, upgrades and building modifications shall become the responsibility of the receiving school district.

H. The council may, in its discretion, authorize the authority to permanently transfer portable classrooms to the district or otherwise permanently dispose of the portable classrooms in accordance with Chapter 13, Article 6 NMSA 1978.

[6.27.3.15 NMAC – Rp, 6.27.2.13 NMAC, 06/15/04; A, 07/15/10]

6.27.3.16 ASSISTANCE FOR PUBLIC SCHOOL LEASE PAYMENTS

A. Applications for assistance to school districts for the purpose of making lease payments for classroom facilities shall be made to the authority by the school district. Classroom facilities include the space needed, as determined by the minimum required under statewide adequacy standards for the direct administration of school activities. Only charter schools are eligible to receive grants for the purpose of assistance with making lease

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payments for classroom facilities pursuant to a lease purchase agreement. Applications for such lease assistance on behalf of locally chartered charter schools shall be made to the authority through the school district; provided, however, that if the school district fails to make an application on behalf of a charter school, the charter school may submit its application directly to the authority. A state chartered charter school shall submit its application directly to the authority. The application must contain all supporting documentation, including:

- (1) a copy of the lease or lease purchase agreement;
- (2) the annualized cost of the lease for the fiscal year for which the school seeks assistance; and
- (3) the MEM using leased classroom facilities, as determined by calculating:
 - (a) the average full-time-equivalent enrollment using leased classroom facilities on the

eightieth and one hundred twentieth days of the prior school year; or
(b) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased classroom facilities in the first year of instruction, as shown in the approved charter school application, provided that, after the eightieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date.

B. The amount of a grant to a school district shall not exceed:

(1) the actual annual lease payments owed for leasing classroom space for schools, including charter schools, in the district; or

(2) seven hundred dollars (\$700) multiplied by the number of MEM using the leased classroom facilities; provided that in fiscal year 2009 and in each subsequent fiscal year, this amount shall be adjusted by the percentage increase between the penultimate calendar year and the immediately preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

C. A grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants.

D. At the end of each fiscal year, any unexpended or unencumbered balance of the appropriation shall revert to the fund.

E. The authority shall consult with the department regarding applications for charter school lease assistance and provide recommendations to the council regarding the applications.

[6.27.3.16 NMAC - N, 06/15/04; A, 08/31/05, A, 07/15/10]

6.27.3.17 ASSISTANCE FOR FACILITY MASTER PLANNING

A. All facility master plans are required to meet the requirements and guidelines of the authority's school district facilities master plan components and guidelines.

B. Council assistance will be granted only to create a new facility master plan and upon expiration of a current plan, except in cases of high growth within a school district which may warrant modification of the plan prior to expiration of its five-year term. Annual updates to existing master plans are the responsibility of the school district.

C. The school district shall not be under current contract with a facilities master plan contractor prior to award by the council to be eligible for funding in the award cycle.

D. The facilities master plan shall be completed and reviewed by the authority within one year of the grant award or awarded funds may revert.

E. Except as provided in Paragraph (1) below, no grant for facilities master planning shall be made unless the council determines that the school district is willing and able to pay the local portion of the total cost of developing or updating the facility master plan. The local portion shall be determined pursuant to 6.27.3.9 NMAC.

(1) An allocation from the fund may be used to pay the total cost of developing or updating the facility master plan if;

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school year; or

(b) the school district meets all of the following requirements;

(i) the school district has fewer than an average of one thousand full-time equivalent students on the eightieth and one hundred twentieth days of the prior school year;

(ii) the school district has at least seventy percent of its students eligible for free or reduced-fee lunch;

(iii) the state share of the total cost, if calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978, would be less than fifty percent; and

(iv) for all educational purposes, the school district has a residential property tax rate of at least seven dollars on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates

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imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

(2) If reduction/waiver or advance of local match is being requested, a school district must submit an application on the current, approved, and designated form and certify that no other funds are available.

[6.27.3.17 NMAC - N, 08/31/05; 6.27.3.17 NMAC - N, 07/15/10]

6.27.3.18 CHARTER SCHOOL FACILITIES: REQUIREMENTS AND GRANT ASSISTANCE

A. The facilities of a charter school approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes. Existing facilities of a charter school approved prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools; provided that for charter schools in leased facilities, grants may only be used as additional lease payments for leasehold improvements.

B. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public facility that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Subparagraph (a) of Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either:

(i) public buildings are not available or adequate for the educational program of the charter school; or

(ii) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

C. When a charter school proposes to use a public facility, prior to the occupancy of the public facility by the charter school the charter school shall notify the council of the intended use, together with such other information as requested by the authority.

(1) Within sixty days of the notification to the council, the authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

(2) Once assessed pursuant to Paragraph (1) of this subsection, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

D. All charter schools shall have an established preventive maintenance program, either through its host school district, the property owner or its own resources. The established preventive maintenance procedures shall be in writing, be updated annually, and must include provisions for the timely inspection of life safety systems. [6.27.3.18 NMAC - Rn & A, 6.27.3.17 NMAC, 07/15/10]

HISTORY OF 6.27.3 NMAC:

HISTORY OF REPEALED MATERIAL:

6.27.2 NMAC, Application and Award Procedures, filed 11/1/2000 - Repealed effective 06/15/04.

22-24-4.6. Building system repair, renovation or replacement.

A. The council shall develop guidelines for a building system repair, renovation or replacement initiative pursuant to the provisions of this section.

B. A school district desiring a grant award pursuant to this section shall submit an application to the council. The application shall include an assessment of the building system that, in the opinion of the school district, the repair, renovation or replacement of which would extend the useful life of the building itself.

C. The public school facilities authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve building system repair, renovation or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund.

E. The state share of the cost of an approved building system repair, renovation or replacement project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district within three years of the grant allocation.

History: Laws 2015, ch. 93, § 3.

Effective dates. — Laws 2015, ch. 93, § 5 made Laws 2015, ch. 93, § 3 effective July 1, 2015.