



Public School Construction

The Public School Capital Outlay Act and companion legislation establish a mechanism for funding public school capital outlay and a process for distributing funds. The legislation was enacted in 2001 in response to the so-called Zuni lawsuit challenging the adequacy and fairness of the way the state paid for school construction and equipment.

Constitutional Guarantees

The New Mexico Constitution requires that “a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.” This clause was interpreted to extend to capital funding in *The Zuni Public School District et al. v. The State of New Mexico*, filed in 1998. Historically, the ability of districts to fund public school capital improvements varied across the state because of differences in taxable land values and bonding capacity.

The purpose of the Public School Capital Outlay Act is to ensure that, through a standards-based process, the physical condition and capacity, educational suitability, and technology infrastructure of all public school facilities are adequate and support learning.

Funding

Until the adoption of the act, local school districts had primary responsibility for funding the construction and improvements of public school facilities, raising funds mostly through general obligation bonds. Because general obligation bonds are repaid with proceeds from local property taxes, this gave an advantage to districts that were property rich.

The act created a public school capital outlay program that includes cost-sharing based on a state and district formula that recognizes the differing ability of districts to raise funds for capital projects. The process is administered by the Public School Facilities Authority and funding is awarded by the Public School Capital Outlay Council, with members from legislative and executive agencies and other stakeholders.

Companion legislation earmarked a portion of the bonding capacity of the severance tax permanent fund for public school capital outlay, establishing a new, permanent, state-level funding source specifically for public schools. Of note, severance tax revenue, and consequently the revenue available for capital projects, can be volatile from year to year.

The Public School Capital Outlay Council considers three primary factors when awarding capital outlay to public

schools: the size of the state match for which the district is eligible, the cost of bringing the school up to adequacy standards, and the eligibility for funding based on school condition. Projects are ranked by condition and educational adequacy and schools identified with the most critical needs top the list.

The program assumes a 50 percent state match and a 50 percent local match on average, with the state contributing no less than 10 percent and up to 100 percent on individual projects. The state only funds its share of the state/local match to the level of adequacy; districts must pay the full cost of any additional facilities.

The Public Education Department, using a statutorily established formula that considers taxable land value and bonding capacity in the district, determines the matching requirement for the local district. However, statute allows adjustments of the local match for districts that can demonstrate a good-faith effort to use all its local resources.

Adequacy

Key to the distribution of state dollars is the concept of “adequacy,” defined as the minimum acceptable level for the physical condition and capacity of school buildings to be educationally suitable and meet technological infrastructure needs. Adequacy standards include a maximum allowable gross square footage for the total number of students attending a school, as well as the types of spaces the state will fund, such as cafeterias, gymnasiums, and classrooms.

Since the onset of the program, the condition of public school facilities has improved significantly. Today, most facilities need minor repair rather than major overhauls.

For More Information:

- The Public School Capital Outlay Act is Chapter 22, Article 24 NMSA 1978.
- The Public School Facilities Authority website is nmpsfa.org.
- To learn more about severance tax bonds, see the Finance Facts on bonding at <http://www.nmlegis.gov/lcs/lfc/lfcfinance-facts.aspx>.