

1 SENATE BILL 270

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 Cynthia Nava

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9  
10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL  
12 IMPROVEMENTS ACT AND THE PUBLIC SCHOOL BUILDINGS ACT TO CHANGE  
13 THE REQUIREMENTS FOR DISTRIBUTING TAX RECEIPTS AND STATE  
14 DISTRIBUTIONS TO CHARTER SCHOOLS.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 22-25-3 NMSA 1978 (being Laws 1975  
18 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

19 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT  
20 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

21 A. A local school board may adopt a resolution to  
22 submit to the qualified electors of the school district the  
23 question of whether a property tax should be imposed upon the  
24 net taxable value of property allocated to the school district  
25 under the Property Tax Code at a rate not to exceed that

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1 specified in the resolution for the purpose of capital  
2 improvements in the school district. The resolution shall:

- 3 (1) identify the capital improvements for  
4 which the revenue proposed to be produced will be used;
- 5 (2) specify the rate of the proposed tax,  
6 which shall not exceed two dollars (\$2.00) on each one thousand  
7 dollars (\$1,000) of net taxable value of property allocated to  
8 the school district under the Property Tax Code;
- 9 (3) specify the date an election will be held  
10 to submit the question of imposition of the tax to the  
11 qualified electors of the district; and
- 12 (4) limit the imposition of the proposed tax  
13 to no more than six property tax years.

14 B. On or after July 1, [2009] 2010, a resolution  
15 submitted to the qualified electors pursuant to Subsection A of  
16 this section shall [~~include capital improvements funding for a~~  
17 ~~locally chartered or state-chartered charter school located~~  
18 ~~within the school district if the charter school timely~~  
19 ~~provides the necessary information to the school district for~~  
20 ~~inclusion in the resolution that identifies the capital~~  
21 ~~improvements of the charter school for which the revenue~~  
22 ~~proposed to be produced will be used] state that a portion of  
23 the tax revenue will be distributed to locally chartered and  
24 state-chartered charter schools located within the school  
25 district; provided that:~~

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1                   (1) a specific charter school shall not be  
2 identified on the ballot unless the ballot also identifies each  
3 other public school that will receive tax receipts if the  
4 proposed property tax is imposed; and

5                   (2) a specific charter school shall not be  
6 identified in the resolution unless the charter school will  
7 receive revenue from the proposed tax that exceeds the amount  
8 that would be distributed pursuant to Subsection C of Section  
9 22-25-7 NMSA 1978."

10                   Section 2. Section 22-25-7 NMSA 1978 (being Laws 1975  
11 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

12                   "22-25-7. IMPOSITION OF TAX--LIMITATION ON  
13 EXPENDITURES.--

14                   A. If as a result of an election held in accordance  
15 with the Public School Capital Improvements Act a majority of  
16 the qualified electors voting on the question votes in favor of  
17 the imposition of the tax, the tax rate shall be certified,  
18 unless the local school board requests by resolution that a  
19 rate be discontinued, by the department of finance and  
20 administration at the rate specified in the resolution  
21 authorized under Section 22-25-3 NMSA 1978 or at any lower rate  
22 required by operation of the rate limitation provisions of  
23 Section 7-37-7.1 NMSA 1978 upon the rate specified in the  
24 resolution and be imposed at the rate certified in accordance  
25 with the provisions of the Property Tax Code.

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1           B. The revenue produced by the tax and, except as  
2 provided in Subsection F, G or H of Section 22-25-9 NMSA 1978,  
3 any state distribution resulting to the district under the  
4 Public School Capital Improvements Act shall be expended only  
5 for the capital improvements specified in the authorizing  
6 resolution.

7           C. For resolutions approved by the electors on or  
8 after July 1, 2009, [~~the amount of tax revenue to be~~  
9 ~~distributed to each charter school that was included in the~~  
10 ~~resolution]~~ an amount shall be distributed to each charter  
11 school in the district pursuant to the following guidelines:

12                   (1) the amount distributed shall be determined  
13 each year and shall be in the same proportion as the average  
14 full-time-equivalent enrollment of the charter school on the  
15 fortieth day of the prior school year is to the total such  
16 enrollment in the school district; [~~provided that~~]

17                   (2) no distribution shall be made to an  
18 approved charter school that had not commenced classroom  
19 instruction in the prior school year; [~~and, provided further,~~  
20 ~~that~~]

21                   (3) in determining a school district's total  
22 enrollment, students attending a state-chartered charter school  
23 within that school district shall be included;

24                   (4) subject to the requirement of Paragraph  
25 (2) of this subsection, if the amount distributed will be used

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1 for capital improvements specified in the authorizing  
2 resolution, the distribution shall also be made to a charter  
3 school that was not approved or open when the resolution was  
4 approved by the voters;

5 (5) each year, the department shall certify to  
6 the county treasurer of the county in which the eligible  
7 charter schools in the school district are located the  
8 percentage of the revenue to be distributed to each charter  
9 school and the county treasurer shall distribute the charter  
10 school's share of the property tax revenue directly to the  
11 charter school; and

12 (6) nothing in the Public School Capital  
13 Improvements Act prohibits a charter school and a school  
14 district from entering into an agreement under which the  
15 charter school agrees to forego one or more distributions under  
16 this subsection in return for a larger amount of tax receipts  
17 that will be used for a specific capital improvement identified  
18 in the authorizing resolution."

19 Section 3. Section 22-25-9 NMSA 1978 (being Laws 1975  
20 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

21 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING  
22 TAX UNDER CERTAIN CIRCUMSTANCES.--

23 A. Except as provided in Subsection C or G of this  
24 section, the secretary shall distribute to any school district  
25 that has imposed a tax under the Public School Capital

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1 Improvements Act an amount from the public school capital  
2 improvements fund that is equal to the amount by which the  
3 revenue estimated to be received from the imposed tax, at the  
4 rate certified by the department of finance and administration  
5 in accordance with Section 22-25-7 NMSA 1978, assuming a one  
6 hundred percent collection rate, is less than an amount  
7 calculated by multiplying the school district's first forty  
8 days' total program units by the amount specified in Subsection  
9 B of this section and further multiplying the product obtained  
10 by the tax rate approved by the qualified electors in the most  
11 recent election on the question of imposing a tax under the  
12 Public School Capital Improvements Act. The distribution shall  
13 be made each year that the tax is imposed in accordance with  
14 Section 22-25-7 NMSA 1978; provided that no state distribution  
15 from the public school capital improvements fund may be used  
16 for capital improvements to any administration building of a  
17 school district. In the event that sufficient funds are not  
18 available in the public school capital improvements fund to  
19 make the state distribution provided for in this section, the  
20 dollar per program unit figure shall be reduced as necessary.

21 B. In calculating the state distribution pursuant  
22 to Subsection A of this section, the following amounts shall be  
23 used:

24 (1) the amount calculated pursuant to  
25 Subsection D of this section per program unit; and

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1                   (2) an additional amount certified to the  
2 secretary by the public school capital outlay council. No  
3 later than June 1 of each year, the council shall determine the  
4 amount needed in the next fiscal year for public school capital  
5 outlay projects pursuant to the Public School Capital Outlay  
6 Act and the amount of revenue, from all sources, available for  
7 the projects. If, in the sole discretion of the council, the  
8 amount available exceeds the amount needed, the council may  
9 certify an additional amount pursuant to this paragraph;  
10 provided that the sum of the amount calculated pursuant to this  
11 paragraph plus the amount in Paragraph (1) of this subsection  
12 shall not result in a total statewide distribution that, in the  
13 opinion of the council, exceeds one-half of the total revenue  
14 estimated to be received from taxes imposed pursuant to the  
15 Public School Capital Improvements Act.

16                   C. For any fiscal year notwithstanding the amount  
17 calculated to be distributed pursuant to Subsections A and B of  
18 this section, except as provided in Subsection G of this  
19 section, a school district, the voters of which have approved a  
20 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a  
21 distribution less than the amount calculated pursuant to  
22 Subsection E of this section multiplied by the school  
23 district's first forty days' total program units and further  
24 multiplying the product obtained by the approved tax rate.

25                   D. For purposes of calculating the distribution

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1 pursuant to Subsection B of this section, the amount used in  
2 Paragraph (1) of that subsection shall equal seventy dollars  
3 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year  
4 shall equal the amount for the previous fiscal year adjusted by  
5 the percentage increase between the next preceding calendar  
6 year and the preceding calendar year of the consumer price  
7 index for the United States, all items, as published by the  
8 United States department of labor.

9 E. For purposes of calculating the minimum  
10 distribution pursuant to Subsection C of this section, the  
11 amount used in that subsection shall equal five dollars (\$5.00)  
12 through fiscal year 2005 and in each subsequent fiscal year  
13 shall equal the amount for the previous fiscal year adjusted by  
14 the percentage increase between the next preceding calendar  
15 year and the preceding calendar year of the consumer price  
16 index for the United States, all items, as published by the  
17 United States department of labor.

18 F. In expending distributions made pursuant to this  
19 section, school districts and charter schools shall give  
20 priority to maintenance projects, including payments under  
21 contracts with regional education cooperatives for maintenance  
22 support services. In addition, distributions made pursuant to  
23 this section may be expended by school districts and charter  
24 schools as follows:

25 (1) for the school district portion of the

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1 total project cost for roof repair or replacement required by  
2 Section 22-24-4.3 NMSA 1978; or

3 (2) for the school district portion of  
4 payments made under a financing agreement entered into by a  
5 school district or a charter school for the leasing of a  
6 building or other real property with an option to purchase for  
7 a price that is reduced according to the payments made, if the  
8 school district has received a grant for the state share of the  
9 payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

10 G. If a serious deficiency in a roof of a public  
11 school facility has been corrected pursuant to Section  
12 22-24-4.4 NMSA 1978 and the school district has refused to pay  
13 its share of the cost as determined by that section, until the  
14 public school capital outlay fund is reimbursed in full for the  
15 share attributed to the district, the distribution calculated  
16 pursuant to this section shall not be made to the school  
17 district but shall be made to the public school capital outlay  
18 fund.

19 H. A portion of each distribution made by the state  
20 pursuant to this section on or after July 1, [2009] 2010 shall  
21 be [~~further~~] distributed directly by the [~~school district~~]  
22 department to each locally chartered or state-chartered charter  
23 school located within the school district. The amount to be  
24 distributed to each charter school shall be in the same  
25 proportion as the average full-time-equivalent enrollment of

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1 the charter school on the fortieth day of the prior school year  
2 is to the total such enrollment in the school district;  
3 provided that no distribution shall be made to an approved  
4 charter school that had not commenced classroom instruction in  
5 the prior school year. ~~[Each year, the department shall~~  
6 ~~certify to the school district the amount to be distributed to~~  
7 ~~each charter school.]~~ Distributions received by a charter  
8 school pursuant to this subsection shall be expended pursuant  
9 to the provisions of the Public School Capital Improvements Act  
10 ~~[except that if capital improvements for the charter school~~  
11 ~~were not identified in a resolution approved by the electors,~~  
12 ~~the charter school may expend the distribution for any capital~~  
13 ~~improvements, including those specified in Subsection F of this~~  
14 ~~section].~~

15 I. In determining a school district's total program  
16 units pursuant to Subsections A and C of this section and a  
17 school district's total enrollment pursuant to Subsection H of  
18 this section, students attending a state-chartered charter  
19 school within the school district shall be included.

20 J. In making distributions pursuant to this  
21 section, the secretary shall include such reporting  
22 requirements and conditions as are required by rule of the  
23 public school capital outlay council. The council shall adopt  
24 such requirements and conditions as are necessary to ensure  
25 that the distributions are expended in the most prudent manner

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1 possible and are consistent with the original purpose as  
2 specified in the authorizing resolution. Copies of reports or  
3 other information received by the secretary in response to the  
4 requirements and conditions shall be forwarded to the council."

5 Section 4. Section 22-26-3 NMSA 1978 (being Laws 1983,  
6 Chapter 163, Section 3, as amended) is amended to read:

7 "22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT  
8 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

9 A. A local school board may adopt a resolution to  
10 submit to the qualified electors of the school district the  
11 question of whether a property tax at a rate not to exceed the  
12 rate specified in the resolution should be imposed upon the net  
13 taxable value of property allocated to the school district  
14 under the Property Tax Code for the purpose of capital  
15 improvements to public schools in the school district. The  
16 resolution shall:

17 (1) identify the capital improvements for  
18 which the revenue proposed to be produced will be used;

19 (2) specify the rate of the proposed tax,  
20 which shall not exceed ten dollars (\$10.00) on each one  
21 thousand dollars (\$1,000) of net taxable value of property  
22 allocated to the school district under the Property Tax Code;

23 (3) specify the date an election will be held  
24 to submit the question of imposition of the tax to the  
25 qualified electors of the district; and

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1 (4) limit the imposition of the proposed tax  
2 to no more than six property tax years.

3 B. After July 1, [2007] 2010, a resolution  
4 submitted to the qualified electors pursuant to Subsection A of  
5 this section shall [~~include capital improvements funding for a~~  
6 ~~locally chartered or state-chartered charter school located~~  
7 ~~within the school district if:~~

8 (1) ~~the charter school timely provides the~~  
9 ~~necessary information to the school district for inclusion on~~  
10 ~~the resolution that identifies the capital improvements of the~~  
11 ~~charter school for which the revenue proposed to be produced~~  
12 ~~will be used; and~~

13 (2) ~~the capital improvements are included in~~  
14 ~~the five-year facilities plan:~~

15 (a) ~~of the school district, if the~~  
16 ~~charter school is a locally chartered charter school; or~~

17 (b) ~~of the charter school, if the~~  
18 ~~charter school is a state-chartered charter school] state that  
19 a portion of the tax revenue will be distributed to locally  
20 chartered and state-chartered charter schools located within  
21 the school district, provided that:~~

22 (1) a specific charter school shall not be  
23 identified on the ballot unless the ballot also identifies each  
24 other public school that will receive tax receipts if the  
25 proposed property tax is imposed; and

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1                   (2) a specific charter school shall not be  
2 identified in the resolution unless the charter school will  
3 receive revenue from the proposed tax that exceeds the amount  
4 that would be distributed pursuant to Section 22-26-9 NMSA  
5 1978."

6                   Section 5. Section 22-26-9 NMSA 1978 (being Laws 2007,  
7 Chapter 366, Section 23) is amended to read:

8                   "22-26-9. CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY TAX  
9 REVENUE.--If, in an election held after July 1, 2007, the  
10 qualified electors of a school district have voted in favor of  
11 the imposition of a property tax as provided in Section  
12 22-26-3 NMSA 1978, [~~the amount of tax revenue to be distributed~~  
13 ~~to each charter school that was included in the resolution]~~ an  
14 amount shall be distributed to each charter school in the  
15 district pursuant to the following guidelines:

16                   A. the amount distributed shall be determined each  
17 year and shall be in the same proportion as the average  
18 full-time-equivalent enrollment of the charter school on the  
19 fortieth day of the prior school year is to the total such  
20 enrollment in the district; [~~provided that, in the case of an~~  
21 ~~approved charter school that had not commenced classroom~~  
22 ~~instruction in the prior school year, the estimated~~  
23 ~~full-time-equivalent enrollment in the first year of~~  
24 ~~instruction, as shown in the approved charter school~~  
25 ~~application, shall be used, subject to adjustment after the~~

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1 ~~fortieth day]~~

2 B. no distribution shall be made to an approved  
3 charter school that had not commenced classroom instruction in  
4 the prior school year;

5 C. in determining a school district's total  
6 enrollment, students attending a state-chartered charter school  
7 within that school district shall be included;

8 D. subject to the requirement of Subsection B of  
9 this section, if the amount distributed will be used for  
10 capital improvements specified in the authorizing resolution,  
11 the distribution shall also be made to a charter school that  
12 was not approved or open when the resolution was approved by  
13 the voters;

14 E. each year, the department shall certify to the  
15 county treasurer of the county in which the eligible charter  
16 schools in the school district are located the percentage of  
17 the revenue to be distributed to each charter school, and the  
18 county treasurer shall distribute the charter school's share of  
19 the property tax revenue directly to the charter school; and

20 F. nothing in the Public School Buildings Act  
21 prohibits a charter school and a school district from entering  
22 into an agreement under which the charter school agrees to  
23 forego one or more distributions under this section in return  
24 for a larger amount of tax receipts that will be used for a  
25 specific capital improvement identified in the authorizing

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resolution."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

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