

1 SENATE BILL 441

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Cynthia Nava

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10 AN ACT

11 RELATING TO CERTAIN EDUCATIONAL FACILITIES; MAKING THE
12 FACILITIES AT THE NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY
13 IMPAIRED AND THE NEW MEXICO SCHOOL FOR THE DEAF ELIGIBLE FOR
14 PUBLIC SCHOOL CAPITAL OUTLAY FUNDING; EXEMPTING THESE
15 INSTITUTIONS FROM THE REQUIRED LOCAL SHARE OF PROJECT FUNDING.

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

18 SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
19 Chapter 235, Section 3, as amended) is amended to read:

20 "22-24-3. DEFINITIONS.--As used in the Public School
21 Capital Outlay Act:

22 A. "council" means the public school capital outlay
23 council;

24 B. "fund" means the public school capital outlay
25 fund; and

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1 C. "school district" includes state-chartered
2 charter schools and the New Mexico school for the blind and
3 visually impaired and the New Mexico school for the deaf."

4 SECTION 2. Section 22-24-5 NMSA 1978 (being Laws 1975,
5 Chapter 235, Section 5, as amended) is amended to read:

6 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
7 APPLICATION--GRANT ASSISTANCE.--

8 A. Applications for grant assistance, approval of
9 applications, prioritization of projects and grant awards shall
10 be conducted pursuant to the provisions of this section.

11 B. Except as provided in Sections 22-24-4.3,
12 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
13 govern grant assistance from the fund for a public school
14 capital outlay project not wholly funded pursuant to Section
15 22-24-4.1 NMSA 1978:

16 (1) all school districts are eligible to apply
17 for funding from the fund, regardless of percentage of
18 indebtedness;

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

22 (a) the council shall apply the
23 standards to charter schools to the same extent that they are
24 applied to other public schools; ~~and~~

25 (b) the council shall adopt and apply

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1 adequacy standards appropriate to the unique needs of the New
2 Mexico school for the blind and visually impaired and the New
3 Mexico school for the deaf; and

4 [~~(b)~~] (c) in an emergency in which the
5 health or safety of students or school personnel is at
6 immediate risk or in which there is a threat of significant
7 property damage, the council may award grant assistance for a
8 project using criteria other than the statewide adequacy
9 standards;

10 (3) the council shall establish criteria to be
11 used in public school capital outlay projects that receive
12 grant assistance pursuant to the Public School Capital Outlay
13 Act. In establishing the criteria, the council shall consider:

14 (a) the feasibility of using design,
15 build and finance arrangements for public school capital outlay
16 projects;

17 (b) the potential use of more durable
18 construction materials that may reduce long-term operating
19 costs;

20 (c) concepts that promote efficient but
21 flexible utilization of space; and

22 (d) any other financing or construction
23 concept that may maximize the dollar effect of the state grant
24 assistance;

25 (4) no more than ten percent of the combined

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1 total of grants in a funding cycle shall be used for
2 retrofitting existing facilities for technology infrastructure;

3 (5) except as provided in Paragraph (6), (8)
4 (9) or (10) of this subsection, the state share of a project
5 approved and ranked by the council shall be funded within
6 available resources pursuant to the provisions of this
7 paragraph. No later than May 1 of each calendar year, a value
8 shall be calculated for each school district in accordance with
9 the following procedure:

10 (a) the final prior year net taxable
11 value for a school district divided by the MEM for that school
12 district is calculated for each school district;

13 (b) the final prior year net taxable
14 value for the whole state divided by the MEM for the state is
15 calculated;

16 (c) excluding any school district for
17 which the result calculated pursuant to Subparagraph (a) of
18 this paragraph is more than twice the result calculated
19 pursuant to Subparagraph (b) of this paragraph, the results
20 calculated pursuant to Subparagraph (a) of this paragraph are
21 listed from highest to lowest;

22 (d) the lowest value listed pursuant to
23 Subparagraph (c) of this paragraph is subtracted from the
24 highest value listed pursuant to that subparagraph;

25 (e) the value calculated pursuant to

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1 Subparagraph (a) of this paragraph for the subject school
2 district is subtracted from the highest value listed in
3 Subparagraph (c) of this paragraph;

4 (f) the result calculated pursuant to
5 Subparagraph (e) of this paragraph is divided by the result
6 calculated pursuant to Subparagraph (d) of this paragraph;

7 (g) the sum of the property tax mill
8 levies for the prior tax year imposed by each school district
9 on residential property pursuant to Chapter 22, Article 18 NMSA
10 1978, the Public School Capital Improvements Act, the Public
11 School Buildings Act, the Education Technology Equipment Act
12 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
13 is calculated for each school district;

14 (h) the lowest value calculated pursuant
15 to Subparagraph (g) of this paragraph is subtracted from the
16 highest value calculated pursuant to that subparagraph;

17 (i) the lowest value calculated pursuant
18 to Subparagraph (g) of this paragraph is subtracted from the
19 value calculated pursuant to that subparagraph for the subject
20 school district;

21 (j) the value calculated pursuant to
22 Subparagraph (i) of this paragraph is divided by the value
23 calculated pursuant to Subparagraph (h) of this paragraph;

24 (k) if the value calculated for a
25 subject school district pursuant to Subparagraph (j) of this

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1 paragraph is less than five-tenths, then, except as provided in
2 Subparagraph (n) or (o) of this paragraph, the value for that
3 school district equals the value calculated pursuant to
4 Subparagraph (f) of this paragraph;

5 (l) if the value calculated for a
6 subject school district pursuant to Subparagraph (j) of this
7 paragraph is five-tenths or greater, then that value is
8 multiplied by five-hundredths;

9 (m) if the value calculated for a
10 subject school district pursuant to Subparagraph (j) of this
11 paragraph is five-tenths or greater, then the value calculated
12 pursuant to Subparagraph (l) of this paragraph is added to the
13 value calculated pursuant to Subparagraph (f) of this
14 paragraph. Except as provided in Subparagraph (n) or (o) of
15 this paragraph, the sum equals the value for that school
16 district;

17 (n) in those instances in which the
18 calculation pursuant to Subparagraph (k) or (m) of this
19 paragraph yields a value less than one-tenth, one-tenth shall
20 be used as the value for the subject school district;

21 (o) in those instances in which the
22 calculation pursuant to Subparagraph (k) or (m) of this
23 paragraph yields a value greater than one, one shall be used as
24 the value for the subject school district;

25 (p) except as provided in Section

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1 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
2 Paragraph (6), (8) or (9) of this subsection, the amount to be
3 distributed from the fund for an approved project shall equal
4 the total project cost multiplied by a fraction the numerator
5 of which is the value calculated for the subject school
6 district in the current year plus the value calculated for that
7 school district in each of the two preceding years and the
8 denominator of which is three; and

9 (q) as used in this paragraph: 1) "MEM"
10 means the average full-time-equivalent enrollment of students
11 attending public school in a school district on the eightieth
12 and one hundred twentieth days of the prior school year; 2)
13 "total project cost" means the total amount necessary to
14 complete the public school capital outlay project less any
15 insurance reimbursement received by the school district for the
16 project; and 3) in the case of a state-chartered charter school
17 that has submitted an application for grant assistance pursuant
18 to this section, the "value calculated for the subject school
19 district" means the value calculated for the school district in
20 which the state-chartered charter school is physically located;

21 (6) the amount calculated pursuant to
22 Subparagraph (p) of Paragraph (5) of this subsection shall be
23 reduced by the following procedure:

24 (a) the total of all legislative
25 appropriations made after January 1, 2003 for nonoperating

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1 purposes either directly to the subject school district or to
2 another governmental entity for the purpose of passing the
3 money through directly to the subject school district, and not
4 rejected by the subject school district, is calculated;
5 provided that: 1) an appropriation made in a fiscal year shall
6 be deemed to be accepted by a school district unless, prior to
7 June 1 of that fiscal year, the school district notifies the
8 department of finance and administration and the public
9 education department that the district is rejecting the
10 appropriation; 2) the total shall exclude any educational
11 technology appropriation made prior to January 1, 2005 unless
12 the appropriation was on or after January 1, 2003 and not
13 previously used to offset distributions pursuant to the
14 Technology for Education Act; 3) the total shall exclude any
15 appropriation previously made to the subject school district
16 that is reauthorized for expenditure by another recipient; 4)
17 the total shall exclude one-half of the amount of any
18 appropriation made or reauthorized after January 1, 2007 if the
19 purpose of the appropriation or reauthorization is to fund, in
20 whole or in part, a capital outlay project that, when
21 prioritized by the council pursuant to this section either in
22 the immediately preceding funding cycle or in the current
23 funding cycle, ranked in the top one hundred fifty projects
24 statewide; 5) the total shall exclude the proportionate share
25 of any appropriation made or reauthorized after January 1, 2008

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1 for a capital project that will be jointly used by a
2 governmental entity other than the subject school district.
3 Pursuant to criteria adopted by rule of the council and based
4 upon the proposed use of the capital project, the council shall
5 determine the proportionate share to be used by the
6 governmental entity and excluded from the total; and 6) unless
7 the grant award is made to the state-chartered charter school
8 or unless the appropriation was previously used to calculate a
9 reduction pursuant to this paragraph, the total shall exclude
10 appropriations made after January 1, 2007 for nonoperating
11 purposes of a specific state-chartered charter school,
12 regardless of whether the charter school is a state-chartered
13 charter school at the time of the appropriation or later opts
14 to become a state-chartered charter school;

15 (b) the total of all federal money
16 received by the subject school district for nonoperating
17 purposes pursuant to Title XIV of the American Recovery and
18 Reinvestment Act of 2009 is calculated; provided that: 1)
19 unless the grant award is made to the state-chartered charter
20 school or unless the federal money received was previously used
21 to calculate a reduction pursuant to this paragraph, before the
22 charter school became a state-chartered charter school, the
23 total shall exclude federal money received for nonoperating
24 purposes of a specific state-chartered charter school,
25 regardless of whether the charter school is a state-chartered

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1 charter school at the time of receiving the federal money or
2 later opts to become a state-chartered charter school; and 2)
3 the total shall exclude federal money distributed through the
4 fund as grant awards pursuant to the Public School Capital
5 Outlay Act;

6 (c) the value calculated pursuant to
7 Subparagraph (a) of this paragraph is added to the value
8 calculated pursuant to Subparagraph (b) of this paragraph;

9 (d) the applicable fraction used for the
10 subject school district and the current calendar year for the
11 calculation in Subparagraph (p) of Paragraph (5) of this
12 subsection is subtracted from one;

13 (e) the value calculated pursuant to
14 Subparagraph (c) of this paragraph for the subject school
15 district is multiplied by the amount calculated pursuant to
16 Subparagraph (d) of this paragraph for that school district;

17 (f) the total amount of reductions for
18 the subject school district previously made pursuant to
19 Subparagraph (g) of this paragraph for other approved public
20 school capital outlay projects is subtracted from the amount
21 calculated pursuant to Subparagraph (e) of this paragraph; and

22 (g) the amount calculated pursuant to
23 Subparagraph (p) of Paragraph (5) of this subsection shall be
24 reduced by the amount calculated pursuant to Subparagraph (f)
25 of this paragraph;

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1 (7) as used in this subsection:

2 (a) "governmental entity" includes an
3 Indian nation, tribe or pueblo; and

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

8 (8) the amount calculated pursuant to
9 Subparagraph (p) of Paragraph (5) of this subsection, after any
10 reduction pursuant to Paragraph (6) of this subsection, may be
11 increased by an additional five percent if the council finds
12 that the subject school district has been exemplary in
13 implementing and maintaining a preventive maintenance program.
14 The council shall adopt such rules as are necessary to
15 implement the provisions of this paragraph;

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

21 (a) the school district has insufficient
22 bonding capacity over the next four years to provide the local
23 match necessary to complete the project and, for all
24 educational purposes, has a residential property tax rate of at
25 least ten dollars (\$10.00) on each one thousand dollars

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1 (\$1,000) of taxable value, as measured by the sum of all rates
2 imposed by resolution of the local school board plus rates set
3 to pay interest and principal on outstanding school district
4 general obligation bonds;

5 (b) the school district: 1) has fewer
6 than an average of eight hundred full-time-equivalent students
7 on the eightieth and one hundred twentieth days of the prior
8 school year; 2) has at least seventy percent of its students
9 eligible for free or reduced-fee lunch; 3) has a share of the
10 total project cost, as calculated pursuant to provisions of
11 this section, that would be greater than fifty percent; and 4)
12 for all educational purposes, has a residential property tax
13 rate of at least seven dollars (\$7.00) on each one thousand
14 dollars (\$1,000) of taxable value, as measured by the sum of
15 all rates imposed by resolution of the local school board plus
16 rates set to pay interest and principal on outstanding school
17 district general obligation bonds; or

18 (c) the school district: 1) has an
19 enrollment growth rate over the previous school year of at
20 least two and one-half percent; 2) pursuant to its five-year
21 facilities plan, will be building a new school within the next
22 two years; and 3) for all educational purposes, has a
23 residential property tax rate of at least ten dollars (\$10.00)
24 on each one thousand dollars (\$1,000) of taxable value, as
25 measured by the sum of all rates imposed by resolution of the

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1 local school board plus rates set to pay interest and principal
2 on outstanding school district general obligation bonds; ~~and~~

3 (10) the council shall wholly fund all
4 projects awarded to the New Mexico school for the blind and
5 visually impaired and the New Mexico school for the deaf; and

6 ~~(10)~~ (11) no application for grant
7 assistance from the fund shall be approved unless the council
8 determines that:

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

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

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

17 (d) the school district has submitted a
18 five-year facilities plan that includes: 1) enrollment
19 projections; 2) a current preventive maintenance plan that has
20 been approved by the council pursuant to Section 22-24-5.3 NMSA
21 1978 and that is followed by each public school in the
22 district; 3) the capital needs of charter schools located in
23 the school district; and 4) projections for the facilities
24 needed in order to maintain a full-day kindergarten program;

25 (e) the school district is willing and

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1 able to pay any portion of the total cost of the public school
2 capital outlay project that, according to Paragraph (5), (6),
3 (8) or (9) of this subsection, is not funded with grant
4 assistance from the fund; provided that school district funds
5 used for a project that was initiated after September 1, 2002
6 when the statewide adequacy standards were adopted, but before
7 September 1, 2004 when the standards were first used as the
8 basis for determining the state and school district share of a
9 project, may be applied to the school district portion required
10 for that project;

11 (f) the application includes the capital
12 needs of any charter school located in the school district or
13 the school district has shown that the facilities of the
14 charter school have a smaller deviation from the statewide
15 adequacy standards than other district facilities included in
16 the application; and

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

21 C. After consulting with the public school capital
22 outlay oversight task force and other experts, the council
23 shall regularly review and update statewide adequacy standards
24 applicable to all school districts. The standards shall
25 establish the acceptable level for the physical condition and

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1 capacity of buildings, the educational suitability of
2 facilities and the need for technological infrastructure.
3 Except as otherwise provided in the Public School Capital
4 Outlay Act, the amount of outstanding deviation from the
5 standards shall be used by the council in evaluating and
6 prioritizing public school capital outlay projects.

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

14 (1) no grant shall be awarded unless the
15 council determines that, at the time of exercising the option
16 to purchase the facility by the school district or charter
17 school, the facility will equal or exceed the statewide
18 adequacy standards and the building standards for public school
19 facilities;

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

24 (3) the total project cost shall equal the
25 total payments that would be due under the agreement if the

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1 school district or charter school would eventually acquire
2 title to the facility;

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

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

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

14 E. In order to encourage private capital investment
15 in the construction of public school facilities, the purchase
16 of a privately owned school facility that is, at the time of
17 application, in use by a school district may be considered a
18 public school capital outlay project and eligible for grant
19 assistance pursuant to this section if the council finds that:

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

24 (2) at the time of application, attendance at
25 the facility to be purchased is at seventy-five percent or

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1 greater of design capacity and the attendance at other schools
2 in the school district that the students at the facility would
3 otherwise attend is at eighty-five percent or greater of design
4 capacity; and

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

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

20 G. Upon request, the council shall work with, and
21 provide assistance and information to, the public school
22 capital outlay oversight task force.

23 H. The council may establish committees or task
24 forces, not necessarily consisting of council members, and may
25 use the committees or task forces, as well as existing agencies

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1 or organizations, to conduct studies, conduct surveys, submit
2 recommendations or otherwise contribute expertise from the
3 public schools, programs, interest groups and segments of
4 society most concerned with a particular aspect of the
5 council's work.

6 I. Upon the recommendation of the public school
7 facilities authority, the council shall develop building
8 standards for public school facilities and shall promulgate
9 other such rules as are necessary to carry out the provisions
10 of the Public School Capital Outlay Act.

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

20 **SECTION 3.** Section 22-24-5.6 NMSA 1978 (being Laws 2006,
21 Chapter 95, Section 6, as amended) is amended to read:

22 "22-24-5.6. OUTSTANDING DEFICIENCIES AT CERTAIN STATE
23 EDUCATIONAL INSTITUTIONS.--

24 A. In consultation with the higher education
25 department and the applicable board of regents, and after

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1 reviewing the existing five-year facilities plan and the
2 facilities condition assessment, the public school facilities
3 authority shall verify the assessed outstanding health, safety
4 or infrastructure deficiencies at the New Mexico school for the
5 blind and visually impaired and the New Mexico school for the
6 deaf and shall develop a plan to correct the deficiencies.

7 B. The council may approve allocations from the
8 fund and, working with the higher education department and the
9 applicable board of regents, enter into construction contracts
10 to correct the deficiencies.

11 C. The council shall establish oversight functions
12 for the public school facilities authority and such other
13 guidelines and conditions as it deems necessary to ensure that
14 the allocations from the fund pursuant to this section are
15 expended in the most prudent manner possible and consistent
16 with the original purpose.

17 D. As used in the Public School Capital Outlay Act,
18 "public school capital outlay project", "capital outlay
19 project" or "project" includes a program for the correction of
20 deficiencies at the New Mexico school for the blind and
21 visually impaired or at the New Mexico school for the deaf
22 pursuant to this section.

23 ~~[E. As used in Sections 22-24-5.1, 22-24-5.3 and~~
24 ~~22-24-5.5 NMSA 1978 and in Paragraph (10) of Subsection B of~~
25 ~~Section 22-24-5 NMSA 1978, "school district" includes the New~~

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1 ~~Mexico school for the blind and visually impaired and the New~~
2 ~~Mexico school for the deaf.]"~~

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