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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AMENDING THE LOCAL  
SHARE ADJUSTMENT WAIVER REQUIREMENTS FOR SCHOOL DISTRICTS.

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

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

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

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

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

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

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

1 (a) the council shall apply the  
2 standards to charter schools to the same extent that they are  
3 applied to other public schools;

4 (b) the council may award grants  
5 annually to school districts for the purpose of repairing,  
6 renovating or replacing public school building systems in  
7 existing buildings as identified in Section 22-24-4.6  
8 NMSA 1978;

9 (c) the council shall adopt and apply  
10 adequacy standards appropriate to the unique needs of the  
11 constitutional special schools; and

12 (d) in an emergency in which the health  
13 or safety of students or school personnel is at immediate  
14 risk or in which there is a threat of significant property  
15 damage, the council may award grant assistance for a project  
16 using criteria other than the statewide adequacy standards;

17 (3) the council shall establish criteria to  
18 be used in public school capital outlay projects that receive  
19 grant assistance pursuant to the Public School Capital  
20 Outlay Act. In establishing the criteria, the council shall  
21 consider:

22 (a) the feasibility of using design,  
23 build and finance arrangements for public school capital  
24 outlay projects;

25 (b) the potential use of more durable

1 construction materials that may reduce long-term operating  
2 costs;

3 (c) concepts that promote efficient but  
4 flexible utilization of space; and

5 (d) any other financing or construction  
6 concept that may maximize the dollar effect of the state  
7 grant assistance;

8 (4) no more than ten percent of the combined  
9 total of grants in a funding cycle shall be used for  
10 retrofitting existing facilities for technology  
11 infrastructure;

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

16 (a) the sum of the final prior five  
17 years net taxable value for a school district multiplied by  
18 nine ten-thousandths for that school district is calculated  
19 for each school district;

20 (b) the maximum allowable gross square  
21 foot per student multiplied by the replacement cost per  
22 square foot divided by forty-five is calculated for each  
23 school district;

24 (c) the value calculated pursuant to  
25 Subparagraph (a) of this paragraph divided by the value

1 calculated pursuant to Subparagraph (b) of this paragraph is  
2 calculated for each school district;

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

7 (e) in those instances in which the  
8 calculation pursuant to Subparagraph (c) of this paragraph  
9 yields a value of ninety-hundredths or more but less than  
10 one, the phase two formula value shall be one minus the value  
11 calculated in Subparagraph (c) of this paragraph; and

12 (f) in those instances in which the  
13 calculation pursuant to Subparagraph (c) of this paragraph  
14 yields a value less than ninety-hundredths, the phase two  
15 formula value shall be one minus the value calculated in  
16 Subparagraph (c) of this paragraph plus the school district  
17 population density factor;

18 (6) the state share of a project approved by  
19 the council shall be funded within available resources  
20 pursuant to the provisions of this paragraph. Except as  
21 provided in Section 22-24-5.7 NMSA 1978 and except as  
22 adjusted pursuant to Paragraph (8), (9) or (10) of this  
23 subsection, the amount to be distributed from the fund for an  
24 approved project shall equal the total project cost  
25 multiplied by the following percentage, except that in no

1 case shall the state share be less than six percent:

2 (a) for fiscal year 2024 through fiscal  
3 year 2026, the percentage shall be the phase two formula  
4 value plus a percentage equal to one-third of the difference  
5 between one and the phase two formula value; provided that,  
6 for school districts with fewer than 200 MEM, the percentage  
7 shall be the phase two formula value plus a percentage equal  
8 to one-half of the difference between one and the phase two  
9 formula; and

10 (b) for fiscal year 2027 and  
11 thereafter, the percentage shall be the phase two formula  
12 value;

13 (7) as used in this subsection:

14 (a) "governmental entity" includes an  
15 Indian nation, tribe or pueblo;

16 (b) "phase two formula value" for a  
17 state-chartered charter school means the phase two formula  
18 value calculated pursuant to Paragraph (5) of this subsection  
19 for the school district in which the state-chartered charter  
20 school is physically located;

21 (c) "subject school district" means the  
22 school district that has submitted the application for  
23 funding and in which the approved public school capital  
24 outlay project will be located; and

25 (d) "total project cost" means the

1 total amount necessary to complete the public school capital  
2 outlay project less any insurance reimbursement received by  
3 the school district for the project;

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

11 (9) the council may adjust the amount of  
12 local share otherwise required if it determines that a school  
13 district has made a good-faith effort to use all of its local  
14 resources. Before making any adjustment to the local share,  
15 the council shall consider whether:

16 (a) the school district has  
17 insufficient bonding capacity over the next four years to  
18 provide the local match necessary to complete the project  
19 and, for all educational purposes, has a residential property  
20 tax rate of at least ten dollars (\$10.00) on each one  
21 thousand dollars (\$1,000) of taxable value, as measured by  
22 the sum of all rates imposed by resolution of the local  
23 school board plus rates set to pay interest and principal on  
24 outstanding school district general obligation bonds;

25 (b) the school district: 1) has fewer

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

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

24 (10) the local match for the constitutional  
25 special schools shall be set at fifty percent for projects

1 that qualify under the educational adequacy category and one  
2 hundred percent for projects that qualify in the support  
3 spaces category; provided that the council may adjust or  
4 waive the amount of any direct appropriation offset to or  
5 local share required for the constitutional special schools  
6 if an applicant constitutional special school has  
7 insufficient or no local resources available; and

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

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

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

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

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

1 4) projections for the facilities needed in order to maintain  
2 a full-day kindergarten program;

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

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

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

18 C. After consulting with the public school capital  
19 outlay oversight task force and other experts, the council  
20 shall regularly review and update statewide adequacy  
21 standards applicable to all school districts. The standards  
22 shall establish the acceptable level for the physical  
23 condition and capacity of buildings, the educational  
24 suitability of facilities, the need for career-technical  
25 education facilities or classrooms and the need for education

1 technology infrastructure. Except as otherwise provided in  
2 the Public School Capital Outlay Act, the amount of  
3 outstanding deviation from the standards shall be used by the  
4 council in evaluating and prioritizing public school capital  
5 outlay projects.

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

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

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

23 (3) the total project cost shall equal the  
24 total payments that would be due under the agreement if the  
25 school district or charter school would eventually acquire

1 title to the facility;

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

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

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

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

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

25 (2) at the time of application, attendance

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

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

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

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

25 H. The council may establish committees or task

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

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

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

23 K. For any school district that received a  
24 standards- or systems-based award from the council in fiscal  
25 year 2023, the state share for any future phase of the

1 project for which funding has not yet been awarded shall be  
2 the amount calculated pursuant to Subsection B of this  
3 section for fiscal year 2024, regardless of the state share  
4 at the time of the initial award.

5 L. As used in this section:

6 (1) "MEM" means membership; and

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

18 SECTION 2. APPLICABILITY.--The provisions of this act  
19 apply to public school capital outlay awards made during the  
20 2023-2024 awards cycle and subsequent award cycles. \_\_\_\_\_