

1 SENATE BILL 41

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Mimi Stewart

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7
8 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FINANCE; ELIMINATING LOCAL AND
12 FEDERAL CREDITS WHEN DETERMINING THE STATE EQUALIZATION
13 GUARANTEE DISTRIBUTION; CHANGING THE PHASE TWO FORMULA VALUE
14 CALCULATION WHEN DETERMINING THE LOCAL AND STATE MATCH FOR
15 CAPITAL OUTLAY PROJECTS; INCLUDING PROPOSED USE OF FEDERAL AND
16 LOCAL REVENUE IN EDUCATIONAL PLANS AND REPORTING STUDENT
17 OUTCOMES FROM THOSE USES; PROVIDING A CONTINGENT EFFECTIVE
18 DATE.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 6-23-7 NMSA 1978 (being Laws 1993,
22 Chapter 231, Section 7, as amended) is amended to read:

23 "6-23-7. PUBLIC SCHOOL UTILITY CONSERVATION FUND
24 CREATED--USE.--

25 A. The "public school utility conservation fund" is

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1 created as a special fund in the state treasury. The fund
2 shall consist of money transferred to the fund, from year to
3 year, from the distribution of the permanent fund and land
4 income of which the common schools are the beneficiary. No
5 other money from any school district or state source shall be
6 deposited or paid into the public school utility conservation
7 fund.

8 B. Annually, after the calculation of the state
9 equalization guarantee distribution has been made, the
10 [~~superintendent of public instruction~~] secretary of public
11 education shall determine the sum of the deductions made in the
12 state equalization guarantee distribution of school districts
13 pursuant to [~~Paragraph (7) of Subsection D of~~] Section 22-8-25
14 NMSA 1978 and shall certify that amount to the secretary of
15 finance and administration. Distributions from the permanent
16 fund and land income of which the common schools are the
17 beneficiary equal to that amount shall be transferred from the
18 common school current fund to the public school utility
19 conservation fund.

20 C. Money in the public school utility conservation
21 fund is appropriated to the [~~state department of~~] public
22 education department solely for the purpose of disbursing money
23 to school districts to make payments pursuant to any guaranteed
24 utility savings contract between the school district and a
25 qualified provider or any installment contract or lease-

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1 purchase agreement for the purchase and installation of energy
2 or water conservation measures pursuant to that guaranteed
3 utility savings contract.

4 D. Disbursements from the public school utility
5 conservation fund shall be made only to school districts and
6 only upon certification by the ~~[superintendent of public~~
7 ~~instruction]~~ secretary of public education that the
8 disbursement is for a payment authorized by the Public Facility
9 Energy Efficiency and Water Conservation Act.

10 E. The ~~[superintendent of public instruction]~~
11 secretary of public education shall submit to the legislative
12 finance committee and the legislative education study committee
13 prior to each regular legislative session a list of school
14 districts proposing to enter into approved guaranteed utility
15 savings contracts in the succeeding fiscal year. The list
16 shall include information on the amount of the school
17 district's proposed annual payments and specific amounts that
18 utility and operational budget items are guaranteed to be
19 reduced to achieve the savings to make the payments.

20 F. Any unexpended or unencumbered balance remaining
21 in the public school utility conservation fund at the end of
22 any fiscal year shall be transferred to the public school
23 fund."

24 SECTION 2. Section 22-8-6 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 60, as amended by Laws 2019, Chapter 206,
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1 Section 8 and by Laws 2019, Chapter 207, Section 8) is amended
2 to read:

3 "22-8-6. OPERATING BUDGETS--EDUCATIONAL PLANS--
4 SUBMISSION--CERTAIN REPORTS--FAILURE TO SUBMIT.--

5 A. Prior to April 15 of each year, each local
6 school board shall submit to the department an operating budget
7 for the school district and any locally chartered charter
8 school in the school district for the ensuing fiscal year.

9 B. The date for the submission of the operating
10 budget for each school district and each charter school as
11 required by this section may be extended to a later date fixed
12 by the secretary.

13 C. The operating budget required by this section
14 may include:

15 (1) estimates of the cost of insurance
16 policies for periods up to five years if a lower rate may be
17 obtained by purchasing insurance for the longer term; or

18 (2) estimates of the cost of contracts for the
19 transportation of students for terms extending up to four
20 years.

21 D. The operating budget required by this section
22 shall include a budget for each charter school of the
23 membership projected for each charter school, the total program
24 units generated at that charter school and approximate
25 anticipated disbursements and expenditures at each charter

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1 school.

2 E. For fiscal year 2021 and subsequent fiscal
3 years, each school district's and each locally chartered or
4 state-chartered charter school's educational plan shall
5 include:

6 (1) information on the instructional time
7 offered by the school district or charter school, including the
8 number of instructional days by school site and the number of
9 hours in each instructional day and the frequency of early-
10 release days;

11 (2) a narrative explaining the identified
12 services to improve the academic success of at-risk students;

13 (3) a narrative explaining the services
14 provided to students enrolled in the following programs:

15 (a) extended learning time programs,
16 including a report of how the extended learning time is used to
17 improve the academic success of students and professional
18 learning of teachers; and

19 (b) K-5 plus programs;

20 (4) a narrative explaining the school
21 district's or charter school's beginning teacher mentorship
22 programs as well as class size and teaching load information;

23 (5) a narrative explaining supplemental
24 programs or services offered by the school district or charter
25 school to ensure that the Bilingual Multicultural Education

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1 Act, the Indian Education Act and the Hispanic Education Act
2 are being implemented by the school district or charter school;

3 (6) a narrative describing the amount of
4 program cost generated for services to students with
5 disabilities and the spending of these revenues on services to
6 students with disabilities, which shall include the following:

7 (a) program cost generated for students
8 enrolled in approved special education programs;

9 (b) budgeted expenditures of program
10 cost, for students enrolled in approved special education
11 programs, on students with disabilities;

12 (c) the amount of program cost generated
13 for personnel providing ancillary and related services to
14 students with disabilities;

15 (d) budgeted expenditures of program
16 cost for personnel providing ancillary and related services to
17 students with disabilities, on special education ancillary and
18 related services personnel; and

19 (e) a description of the steps taken to
20 ensure that students with disabilities have access to a free
21 and appropriate public education; and

22 (7) a common set of performance targets and
23 performance measures, as determined by the department in
24 consultation with the department of finance and administration,
25 the legislative finance committee and the legislative education

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1 study committee.

2 F. In addition to the requirements of Subsection E
3 of this section, a school district or charter school that
4 receives federal or local revenue shall include in its
5 educational plan a narrative explaining how the school district
6 or charter school will use the federal or local revenue to
7 improve outcomes for students. No later than October 1 of each
8 year, a school district or charter school that received federal
9 or local revenue in the prior fiscal year shall report to the
10 department on the actual uses of that revenue, including a
11 comprehensive evaluation of how the programs and services
12 provided with that revenue improved outcomes for students. A
13 school district or charter school that is required under
14 federal law to consult with tribal entities as a condition of
15 receiving impact aid shall include in its educational plan a
16 detailed narrative of its consultations with tribal entities
17 and the results of those consultations. The school district or
18 charter school shall transmit the October 1 spending and
19 outcomes report to the appropriate tribal authorities. No
20 later than November 15 of each year, the department shall
21 compile the federal and local revenue outcomes reports into a
22 statewide report to the legislative education study committee
23 and the legislative finance committee that includes an analysis
24 and identification of effective programs and strategies that
25 improve outcomes for students.

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1 ~~[F.]~~ G. If a local school board or governing board
2 of a charter school fails to submit an operating budget
3 pursuant to this section, the department shall prepare the
4 operating budget for the school district or charter school for
5 the ensuing fiscal year. A local school board or governing
6 board of a charter school shall be considered as failing to
7 submit an operating budget pursuant to this section if the
8 budget submitted exceeds the total projected resources of the
9 school district or charter school or if the budget submitted
10 does not comply with the law or with rules and procedures of
11 the department.

12 H. As used in this section:

13 (1) "federal revenue" means revenue derived
14 from:

15 (a) federal forest reserve funds
16 distributed in accordance with Section 22-8-33 NMSA 1978; or

17 (b) federal assistance to those areas
18 affected by federal activity authorized in accordance with
19 Title 20 of the United States Code, commonly known as "PL 874
20 funds" or "impact aid funds"; and

21 (2) "local revenue" means revenue from a
22 school district one-half mill school district property tax and
23 revenue from the Oil and Gas Ad Valorem Production Tax Act and
24 the Oil and Gas Production Equipment Ad Valorem Tax Act."

25 SECTION 3. Section 22-8-25 NMSA 1978 (being Laws 1981,
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1 Chapter 176, Section 5, as amended) is amended to read:

2 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
3 DEFINITIONS--DETERMINATION OF AMOUNT.--

4 ~~[A. The state equalization guarantee distribution~~
5 ~~is that amount of money distributed to each school district to~~
6 ~~ensure that its operating revenue including its local and~~
7 ~~federal revenues as defined in this section is at least equal~~
8 ~~to the school district's program cost. For state-chartered~~
9 ~~charter schools, the state equalization guarantee distribution~~
10 ~~is the difference between the state-chartered charter school's~~
11 ~~program cost and the two percent withheld by the department for~~
12 ~~administrative services.~~

13 B. ~~"Local revenue", as used in this section, means~~
14 ~~seventy-five percent of receipts to the school district derived~~
15 ~~from that amount produced by a school district property tax~~
16 ~~applied at the rate of fifty cents (\$.50) to each one thousand~~
17 ~~dollars (\$1,000) of net taxable value of property allocated to~~
18 ~~the school district and to the assessed value of products~~
19 ~~severed and sold in the school district as determined under the~~
20 ~~Oil and Gas Ad Valorem Production Tax Act and upon the assessed~~
21 ~~value of equipment in the school district as determined under~~
22 ~~the Oil and Gas Production Equipment Ad Valorem Tax Act.~~

23 C. ~~"Federal revenue", as used in this section,~~
24 ~~means receipts to the school district or state-chartered~~
25 ~~charter school, excluding amounts that, if taken into account~~

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1 ~~in the computation of the state equalization guarantee~~
2 ~~distribution, result, under federal law or regulations, in a~~
3 ~~reduction in or elimination of federal school funding otherwise~~
4 ~~receivable by the school district, derived from the following:~~

5 ~~(1) seventy-five percent of the school~~
6 ~~district's share of forest reserve funds distributed in~~
7 ~~accordance with Section 22-8-33 NMSA 1978; and~~

8 ~~(2) seventy-five percent of grants from the~~
9 ~~federal government as assistance to those areas affected by~~
10 ~~federal activity authorized in accordance with Title 20 of the~~
11 ~~United States Code, commonly known as "PL 874 funds" or "impact~~
12 ~~aid".~~

13 ~~D.]~~ A. To determine the amount of the state
14 equalization guarantee distribution, the department shall:

15 (1) calculate the number of program units to
16 which each school district or charter school is entitled using
17 an average of the MEM on the second and third reporting dates
18 of the prior year; or

19 (2) calculate the number of program units to
20 which a school district or charter school operating under an
21 approved year-round school calendar is entitled using an
22 average of the MEM on appropriate dates established by the
23 department; or

24 (3) calculate the number of program units to
25 which a school district or charter school with a MEM of two

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1 hundred or less is entitled by using an average of the MEM on
2 the second and third reporting dates of the prior year or the
3 fortieth day of the current year, whichever is greater; ~~[and]~~

4 (4) using the results of the calculations in
5 Paragraph (1), (2) or (3) of this subsection and the staffing
6 cost multiplier from the October report of the prior school
7 year, establish a total program cost of the school district or
8 charter school;

9 ~~[(5) for school districts and state-chartered~~
10 ~~charter schools, calculate the local and federal revenues as~~
11 ~~defined in this section;~~

12 ~~(6) deduct the sum of the calculations made in~~
13 ~~Paragraph (5) of this subsection from the program cost~~
14 ~~established in Paragraph (4) of this subsection;~~

15 ~~(7)]~~ (5) deduct the total amount of guaranteed
16 energy savings contract payments that the department determines
17 will be made to the school district from the public school
18 utility conservation fund during the fiscal year for which the
19 state equalization guarantee distribution is being computed;
20 and

21 ~~[(8)]~~ (6) deduct ninety percent of the amount
22 certified for the school district by the department pursuant to
23 the Energy Efficiency and Renewable Energy Bonding Act.

24 ~~[E.]~~ B. Reduction of a school district's state
25 equalization guarantee distribution shall cease when the school

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1 district's cumulative reductions equal its proportional share
2 of the cumulative debt service payments necessary to service
3 the bonds issued pursuant to the Energy Efficiency and
4 Renewable Energy Bonding Act.

5 ~~[F.]~~ C. The amount of the state equalization
6 guarantee distribution to which a school district is entitled
7 is the balance remaining after the deductions made in
8 Paragraphs ~~[(6) through (8)]~~ (5) and (6) of Subsection ~~[D]~~ A of
9 this section.

10 D. The amount of the state equalization guarantee
11 distribution to which a state-chartered charter school is
12 entitled is the difference between the state-chartered charter
13 school's program cost and the two percent withheld by the
14 department for administrative services.

15 ~~[G.]~~ E. The state equalization guarantee
16 distribution shall be distributed prior to June 30 of each
17 fiscal year. ~~[The calculation shall be based on the local and~~
18 ~~federal revenues specified in this section received from June 1~~
19 ~~of the previous fiscal year through May 31 of the fiscal year~~
20 ~~for which the state equalization guarantee distribution is~~
21 ~~being computed]~~ In the event that a school district or charter
22 school has received more state equalization guarantee funds
23 than its entitlement, a refund shall be made by the school
24 district or charter school to the state general fund."

25 SECTION 4. Section 22-8-31 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 84, as amended) is amended to read:

2 "22-8-31. STATE-SUPPORT RESERVE FUND.--

3 A. The "state-support reserve fund" is created.

4 B. The state-support reserve fund shall be used
5 only to augment the appropriations for the state equalization
6 guarantee distribution in order to [~~insure~~] ensure, to the
7 extent of the amount undistributed in the fund, that the
8 maximum figures for such distribution established by law shall
9 not be reduced.

10 C. The undistributed money in the state-support
11 reserve fund shall be invested by the state treasurer in
12 interest-bearing securities of the United States government or
13 in certificates of deposit in qualified banks and in savings
14 and [~~loans~~] loan associations whose deposits are insured with
15 an agency of the United States. The state treasurer may
16 deposit money from the state-support reserve fund or any other
17 fund in one or more accounts with any such bank or federally
18 insured savings and loan association, but the state treasurer,
19 in any official capacity, shall not deposit money from [~~said~~]
20 that fund or any other fund in any one [~~such~~] federally insured
21 savings and loan association the aggregate of which would
22 exceed the amount of federal savings and loan insurance
23 corporation insurance for a single public account. Income from
24 these investments shall be periodically credited to the general
25 fund.

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1 D. At least forty-five days before the money is
2 needed, the chief shall notify the state treasurer in writing
3 of the amount that will be needed for distribution.

4 ~~[E. In the event that local or federal revenues as~~
5 ~~defined in Section 77-6-19 NMSA 1953 are received after May 31~~
6 ~~of the fiscal year for which the state equalization guarantee~~
7 ~~distribution is being computed and it is therefore necessary to~~
8 ~~use money from the state-support reserve fund to augment the~~
9 ~~appropriation for the state equalization guarantee~~
10 ~~distribution, the chief, upon receipt by the school district of~~
11 ~~the delayed local or federal revenues, shall deduct the~~
12 ~~appropriate amount from the current state equalization~~
13 ~~guarantee distribution to that school district and reimburse~~
14 ~~the state-support reserve fund in the amount of the deduction.~~

15 F.] E. It is the intent of the legislature that the
16 state-support reserve fund be reimbursed in the amount of the
17 yearly distribution by appropriation in the year following the
18 distribution so that the fund at the beginning of each fiscal
19 year shall have a credit balance of at least ten million
20 dollars (\$10,000,000).

21 ~~[G.]~~ F. Distribution from ~~[this]~~ the state-support
22 reserve fund shall be made in the same manner and on the same
23 basis as the state equalization guarantee distribution."

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

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1 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
2 APPLICATION--GRANT ASSISTANCE.--

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

6 B. Except as provided in Sections 22-24-4.3,
7 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
8 govern grant assistance from the fund for a public school
9 capital outlay project not wholly funded pursuant to Section
10 22-24-4.1 NMSA 1978:

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

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

17 (a) the council shall apply the
18 standards to charter schools to the same extent that they are
19 applied to other public schools;

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

25 (c) the council shall adopt and apply

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1 adequacy standards appropriate to the unique needs of the
2 constitutional special schools;

3 (d) the council may award school
4 security system project grants to school districts pursuant to
5 the provisions of Section 22-24-4.7 NMSA 1978; and

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

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

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

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

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

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

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1 (4) no more than ten percent of the combined
2 total of grants in a funding cycle shall be used for
3 retrofitting existing facilities for technology infrastructure;

4 (5) no later than May 1 of each calendar year,
5 the phase one formula value shall be calculated for each school
6 district in accordance with the following procedure:

7 (a) the final prior year net taxable
8 value for a school district divided by the MEM for that school
9 district is calculated for each school district;

10 (b) the final prior year net taxable
11 value for the whole state divided by the MEM for the state is
12 calculated;

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

19 (d) the lowest value listed pursuant to
20 Subparagraph (c) of this paragraph is subtracted from the
21 highest value listed pursuant to that subparagraph;

22 (e) the value calculated pursuant to
23 Subparagraph (a) of this paragraph for the subject school
24 district is subtracted from the highest value listed in
25 Subparagraph (c) of this paragraph;

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1 (f) the result calculated pursuant to
2 Subparagraph (e) of this paragraph is divided by the result
3 calculated pursuant to Subparagraph (d) of this paragraph;

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

11 (h) the lowest value calculated pursuant
12 to Subparagraph (g) of this paragraph is subtracted from the
13 highest value calculated pursuant to that subparagraph;

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

18 (j) the value calculated pursuant to
19 Subparagraph (i) of this paragraph is divided by the value
20 calculated pursuant to Subparagraph (h) of this paragraph;

21 (k) if the value calculated for a
22 subject school district pursuant to Subparagraph (j) of this
23 paragraph is less than five-tenths, then, except as provided in
24 Subparagraph (n) or (o) of this paragraph, the value for that
25 school district equals the value calculated pursuant to

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1 Subparagraph (f) of this paragraph;

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

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

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

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

22 (p) the phase one formula value shall
23 equal a fraction the numerator of which is the value for the
24 subject school district in the current year plus the value for
25 that school district in each of the two preceding years and the

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1 denominator of which is three; and

2 (q) as used in this paragraph, "MEM"
3 means the average full-time-equivalent enrollment of students
4 attending public school in a school district on the second and
5 third reporting dates of the prior school year;

6 (6) no later than May 1 of each calendar year,
7 the phase two formula value shall be calculated for each school
8 district in accordance with the following procedure:

9 (a) the sum of the final prior five
10 years net taxable value for a school district multiplied by
11 nine [~~ten thousandths~~] ten-thousandths for that school district
12 is calculated for each school district;

13 (b) the value calculated pursuant to
14 Subparagraph (a) of this paragraph is added to a value equal to
15 any unrestricted revenue used to make capital outlay
16 expenditures and the amount of any interfund transfers from an
17 unrestricted fund into a fund restricted to capital outlay
18 expenditures as certified by the department, averaged over the
19 prior ten years;

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

24 [~~(e)~~] (d) the value calculated pursuant
25 to Subparagraph [~~(a)~~] (b) of this paragraph divided by the

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1 value calculated pursuant to Subparagraph [~~(b)~~] (c) of this
2 paragraph is calculated for each school district;

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

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

14 [~~(f)~~] (g) in those instances in which
15 the calculation pursuant to Subparagraph [~~(e)~~] (d) of this
16 paragraph yields a value less than ninety-hundredths, the phase
17 two formula value shall be one minus the value calculated in
18 Subparagraph [~~(e)~~] (d) of this paragraph plus the school
19 district population density factor;

20 (7) the state share of a project approved by
21 the council shall be funded within available resources pursuant
22 to the provisions of this paragraph. Except as provided in
23 Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
24 Paragraph (9), (10), (11) or (12) of this subsection, the
25 amount to be distributed from the fund for an approved project

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1 shall equal the total project cost multiplied by the following
2 percentage, except that in no case shall the state share be
3 less than six percent:

4 (a) for fiscal years prior to fiscal
5 year 2020, the percentage shall be the phase one formula value;

6 (b) for fiscal year 2020, the percentage
7 shall be the sum of eight-tenths multiplied by the phase one
8 formula value and two-tenths multiplied by the phase two
9 formula value;

10 (c) for fiscal year 2021, the percentage
11 shall be the sum of six-tenths multiplied by the phase one
12 formula value and four-tenths multiplied by the phase two
13 formula value;

14 (d) for fiscal year 2022, the percentage
15 shall be the sum of four-tenths multiplied by the phase one
16 formula value and six-tenths multiplied by the phase two
17 formula value;

18 (e) for fiscal year 2023, the percentage
19 shall be the sum of two-tenths multiplied by the phase one
20 formula value and eight-tenths multiplied by the phase two
21 formula value; and

22 (f) for fiscal year 2024 and thereafter,
23 the percentage shall be the phase two formula value;

24 (8) as used in this subsection:

25 (a) "governmental entity" includes an

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1 Indian nation, tribe or pueblo;

2 (b) "phase one formula value" for a
3 state-chartered charter school means the phase one formula
4 value calculated pursuant to Paragraph (5) of this subsection
5 for the school district in which the state-chartered charter
6 school is physically located;

7 (c) "phase two formula value" for a
8 state-chartered charter school means the phase two formula
9 value calculated pursuant to Paragraph (6) of this subsection
10 for the school district in which the state-chartered charter
11 school is physically located;

12 (d) "subject school district" means the
13 school district that has submitted the application for funding
14 and in which the approved public school capital outlay project
15 will be located; and

16 (e) "total project cost" means the total
17 amount necessary to complete the public school capital outlay
18 project less any insurance reimbursement received by the school
19 district for the project;

20 (9) the amount to be distributed from the fund
21 for an approved project pursuant to Paragraph (7) of this
22 subsection shall be reduced by the following procedure:

23 (a) the total of all legislative
24 appropriations made after January 1, 2003 for nonoperating
25 purposes either directly to the subject school district or to

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

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

14 (b) the percentage used for the subject
15 school district for the applicable fiscal year pursuant to
16 Paragraph (7) of this subsection is subtracted from one;

17 (c) the value calculated pursuant to
18 Subparagraph (a) of this paragraph for the subject school
19 district is multiplied by the amount calculated pursuant to
20 Subparagraph (b) of this paragraph for that school district;

21 (d) the total amount of reductions for
22 the subject school district previously made pursuant to
23 Subparagraph (e) of this paragraph for other approved public
24 school capital outlay projects is subtracted from the amount
25 calculated pursuant to Subparagraph (c) of this paragraph; and

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1 (e) the amount to be distributed from
2 the fund pursuant to Paragraph (7) of this subsection shall be
3 reduced by the amount calculated pursuant to Subparagraph (d)
4 of this paragraph;

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

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

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

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1 general obligation bonds;

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

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

25 (12) the local match for the constitutional

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

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

11 (a) the public school capital outlay
12 project is needed and included in the school district's five-
13 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 has
22 been approved by the council pursuant to Section 22-24-5.3 NMSA
23 1978 and that is followed by each public school in the
24 district; 3) the capital needs of charter schools located in
25 the school district; and 4) projections for the facilities

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1 needed in order to maintain a full-day kindergarten program;

2 (e) the school district is willing and
3 able to pay any portion of the total cost of the public school
4 capital outlay project that, according to Paragraph (7), (9),
5 (10) or (11) of this subsection, is not funded with grant
6 assistance from the fund;

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

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

17 C. After consulting with the public school capital
18 outlay oversight task force and other experts, the council
19 shall regularly review and update statewide adequacy standards
20 applicable to all school districts. The standards shall
21 establish the acceptable level for the physical condition and
22 capacity of buildings, the educational suitability of
23 facilities and the need for education technology
24 infrastructure. Except as otherwise provided in the Public
25 School Capital Outlay Act, the amount of outstanding deviation

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1 from the standards shall be used by the council in evaluating
2 and prioritizing public school capital outlay projects.

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

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

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

20 (3) the total project cost shall equal the
21 total payments that would be due under the agreement if the
22 school district or charter school would eventually acquire
23 title to the facility;

24 (4) the portion of the total project cost to
25 be paid from the fund may be awarded as one grant, but

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1 disbursements from the fund shall be made from time to time as
2 lease payments become due;

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

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

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

16 (1) at the time of the initial use by the
17 school district, the facility to be purchased equaled or
18 exceeded the statewide adequacy standards and the building
19 standards for public school facilities;

20 (2) at the time of application, attendance at
21 the facility to be purchased is at seventy-five percent or
22 greater of design capacity and the attendance at other schools
23 in the school district that the students at the facility would
24 otherwise attend is at eighty-five percent or greater of design
25 capacity; and

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

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

16 G. Upon request, the council shall work with, and
17 provide assistance and information to, the public school
18 capital outlay oversight task force.

19 H. The council may establish committees or task
20 forces, not necessarily consisting of council members, and may
21 use the committees or task forces, as well as existing agencies
22 or organizations, to conduct studies, conduct surveys, submit
23 recommendations or otherwise contribute expertise from the
24 public schools, programs, interest groups and segments of
25 society most concerned with a particular aspect of the

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1 council's work.

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

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

16 SECTION 6. CONTINGENT EFFECTIVE DATE--NOTIFICATION TO THE
17 NEW MEXICO COMPILATION COMMISSION AND THE LEGISLATURE.--

18 A. The provisions of this act shall be effective
19 the later of July 1, 2021 or the date when both the dismissal
20 of *Zuni Public School District, et al. v. State of New Mexico*,
21 No. D-1113-CV-98-00014-11 and the withdrawal from the
22 consolidated case of *Martinez, et al. v. State of New Mexico*,
23 No. D-101-CV-2014-00793 and *Yazzie, et al. v. State of New*
24 *Mexico*, No. D-101-CV-2014-02224 of all the school districts
25 receiving grants from the federal government as assistance to
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1 those areas affected by federal activity authorized in
2 accordance with Title 20 of the United States Code, commonly
3 known as "PL 874 funds" or "impact aid funds", has been
4 accomplished.

5 B. The public education department shall notify the
6 New Mexico compilation commission and the legislature of the
7 effective date of this act based on the conditions provided in
8 Subsection A of this section being met. Notice to the
9 legislature shall be given by notice to the legislative council
10 service.