LFC Requester:	Carswell

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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SECTION I: GENERAL INFORMATION
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *February 8, 2025* *Check all that apply:*
Bill Number: *HB277* Original *X* Correction __
Amendment __ Substitute __

Sponsor: Mirabal Moya, Dow, Lara, Vincent, Chatfield
Short Title: Millage for Certain Schools
Agency Name and Code Number: New Mexico Public School Facilities Authority 940
Person Writing Alyce Ramos
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SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB82

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 277 (HB277) amends Section 22-24-5 B(9)(a) NMSA 1978 of the Public School Capital Outlay Act (PSCOA). Paragraph B(9) addresses the option for the Public School Capital Outlay Council (PSCOC) to adjust the amount of the local share required for an awarded project, if one of the three options for eligibility, as defined in subparagraphs a, b, and c, is met. HB277 amends Section 22-24-5 B(9)(a), referred to as "option 1," to alter the requirement for the residential property tax rate from $10.00 to $8.00.

FISCAL IMPLICATIONS

HB277 would increase the state share of some potential PSCOC funded projects, by making potential local match reductions (waivers) to the local share more attainable for some districts. When a district requests and receives a waiver, the district is expected to fund the maximum amount they can afford with local resources (typically a general obligation bond). The portion of the local match that is waived is added to the state match of the PSCOC project, thereby increasing the state funding.

School district requests for waivers have increased in recent years. Until FY23, waiver requests and approvals were rare. However, in recent years requests and approvals have significantly increased. The PSCOC has granted a total of 54 waivers for PSCOC funded projects, since FY05. The waiver amounts for individual school projects have ranged from $31,600 to $87million.

PSCOC Granted Waivers		
Fiscal Year	**Count of Districts**	**Sum of WAIVER AMOUNT**
FY05	2	$ 4,743,216
FY06	6	$ 18,526,419
FY07	10	$ 5,452,278
FY08	1	$ 1,836,848
FY09	1	$ 746,654
FY13	1	$ 70,256
FY15	2	$ 4,906,426
FY20	3	$ 403,615
FY21	1	$ 3,571,922
FY22	1	$ 369,608
FY23	6	$ 63,611,676
FY24	6	$ 115,688,543
FY25	8	$111,997,315
FY26*	6	$ 187,657,346
Grand Total	**54**	**$ 519,582,123**

Source: PSCOC Financial Plan and project Memorandum or Understandings
**includes anticipated waiver amounts for future project phases*

It is difficult to ascertain or predict the increased state funding that may occur year over year, based on the potential passage of HB277. The following variables would factor into the increase in state funding in a given year:

- Quantity of districts that may apply for capital funding
- Quantity of districts requiring a waiver to fund the project
- Quantity of districts eligible for a waiver – mill levy
- Each district's available funding to contribute to the local match for a project, based on bonding capacity and other available funding sources.
- The size, scope and cost of the projects needing a waiver

Given the historic data on projects receiving waiver in the past three years, it can be assumed that the potential total waiver amount could range between $100,000,000 and $200,000,000 within a fiscal year.

The PSCOC's funding capacity is dependent on the issuance of Supplemental Severance Tax Bonding (SSTBs), which are issued by New Mexico Board of Finance (BOF), and paid for by revenue derived from taxes levied on natural resource products severed and saved from the soil. The BOF allows two issuances per fiscal year, occurring every June and December via bond sale. Currently, as of December 2024, BOF estimates that revenues will increase on average at 5% each year over the next 5 years. This number is only an estimate.

Dependent on the number of applications for capital funding and waiver requests within a given fiscal year, the fund has the capacity to accommodate additional waivers for school districts and schools meeting eligibility thresholds. If the amount and cost of waiver requests exceeds the Public School Capital Outlay Fund's capacity in a given year, the PSCOC has the option to prioritize projects accordingly (i.e. award schools in the top 50 of the annual wNMCI ranking, rather than top 100) or deny requests to accommodate the budgeted amount of funding available for that year.

SIGNIFICANT ISSUES

History of the State/Local Funding Formula

The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by Zuni Public Schools and later joined by Gallup-McKinley County Public Schools and Grants-Cibola County Public Schools. State District Court Judge Joseph Rich found, in a partial summary judgment rendered in October 1999, that through its public school capital outlay funding system, which relied primarily upon local property tax wealth to fund public school capital outlay, the state was violating that portion of the state constitution that guarantees establishment and maintenance of a "uniform system of free public schools sufficient for the education of, and open to, all children of school age" in the state. The court ordered the state to "establish and implement a uniform funding system for capital improvements… and for correcting past inequities" and set a deadline at the end of the 2001 legislative session. The court appointed a special master to review the state's progress.

In 2001, the Legislature created the Deficiencies Corrections Program (DCP) to "establish and implement a uniform funding system for capital improvements… and for correcting past inequities," as well as identify and correct serious deficiencies in all public school buildings and grounds that may adversely affect the health or safety of students and school personnel. The following year the court-appointed special master reported the state was making a good faith effort to comply with the court's order and "has made great strides."

Phase 1 Formula

The 2003 Legislature enacted state / local share funding formula, following concern that additional state funding through DCP would not change less wealthy districts' bonding capacity, while allowing wealthy districts to build superior facilities. The original state / local match formula (phase 1) was originally created to objectively calculate the local match percentages for all districts, based on what was determined to be their ability to afford, as well as the districts' "need." The formula considered the availability of school district revenues from both bond levies and direct mill levies, relative property tax wealth, measured by assessed property tax valuation per student, and total mill levy applicable to residential property of the district.

Phase 2 Formula

The 2018 Legislature passed Senate Bill 30, which changed the proportion of state / local funding to potentially allow the state to fund more projects by intentionally increasing the local match and decreased the state match. The phase 2 formula was gradually phased in from the phase 1 formula as follows:

- FY19 100% of phase one formula
- FY20 80% of phase one formula and 20% of phase two formula
- FY21 60% of phase one formula and 40% of phase two formula
- FY22 40% of phase one formula and 60% of phase two formula
- FY23 20% of phase one formula and 80% of phase two formula
- FY24 100% of phase two formula

Operation of the Current State / Local Match Formula (Phase 2)

The local match formula includes the following data points:

- Three parameters, which are the same for each district:
  - Amortization Period (45 years)
  - Bonding Multiplier (0.0009)
  - Cost per Square Foot ($307.47)
- Two district specific variables:
  - District Property Valuation
  - Total Maximum Allowable Gross Square Footage (TMAGSF)

$$\text{Unweighted Local Match} = \frac{\text{District Property Valuation x Bonding Multiplier x Amortization Period}}{\text{TMAGSF x cost per Square Foot}}$$

After the Unweighted Local Match percentages are calculated, logical rules are applied to ensure that the maximum local match percentage that is applied is no greater than 94% and that some medium and low population density districts have reduced local match percentages. Per Section 22-24-5 B(6), “in no case shall the state share be less than six percent.”

As of FY24, phase 2 is in full effect. The current formula calculates local match percentages such that a school’s physical space needs, including estimated costs to replace or repair infrastructure, are related to a district’s ability to pay for repairs and replacement. However, there is recognition that the current formula results in elevated local match percentages, which are beyond affordable for certain districts. Overall, the transition has resulted in higher local matches and lower state matches. In FY25, over half of the school districts are at the maximum local match of 94%.

	FY20	**FY21**	**FY22**	**FY23**	**FY24**	**FY25**
Average local match	60%	61%	64%	68%	70%	72%
Districts with maximum 94% local match	0	19	23	28	41	46

2023 Senate Bill 131

The 2023 Legislature passed Senate Bill 131, which temporarily reduced the local match for fiscal year 2024 through fiscal year 2026, as follows: Standards and Systems-based awards: 1/3 reduction for school districts with more than 200 MEM, and ½ for school districts with less than 200 MEM. All pre-Kindergarten awards: ½ reduction or all districts. Additionally, all offsets (the accumulated amount of direct legislative appropriations a district received overtime, added to the local share at the time of a PSCOC capital funding award) were eliminated. The temporary provision was intended to allow time for a thorough study of the state / local match formula and develop potential solutions to modify or replace the formula. Additionally, the bill was intended to make the local match for PSCOC projects more affordable to districts, and alleviate the burden caused by increased construction costs in recent years. Additional time to evaluated potential formula changes and solutions is necessary, as proposed in SB82.

The SB131 decrease to local matches helped some districts afford their local match. However, for many districts, the reduction was not sufficient to make the local match for potential projects affordable, necessitating waivers to afford a project.

Local Match Reduction (Waiver)

Many districts cannot afford their local match for current or potential PSCOC funded projects due to their bonding capacity and available funds. If a district cannot afford the local match, they can request the PSCOC grant a waiver to fund the *portion* of the local match they cannot support. Districts must meet statute criteria (below) prior to requesting the waiver.

Section 22-24-5 NMSA, B (9) stipulates that the PSCOC "may adjust the amount of local share otherwise required if it determines that a school district has made a good-faith effort to use all of its local resources." The PSCOC shall consider whether the one of the waiver options is met by the school districts:

Option 1 (all districts):

- insufficient bonding capacity over the next 4 years
  (PSFA interprets as the funding needed for the local match of a PSCOC project)
- mill levy is at least $10.00

Option 2 (small districts):

- fewer than 800 MEM
- at least 70% of students eligible for free or reduced-fee lunch
- local match is greater than 50% (phase 2 only, not the SB131 reduction)
- mill levy at least 7

Option 3 (growth districts):

- enrollment growth rate of at least 2.5%
- facility master plan, will be building a new school within the next two years
- the mill levy is at least $10.00

** Mill Levy - sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bond*

The statute requires the school district to make a "good faith effort" to use all its local resources, toward the potential award. This includes asking voters for authorization to use general obligation bonds and/or levying SB-9 and HB-33 mill levies to have available funding to contribute to the awarded project. *Districts are expected to fund the maximum amount they can afford*, which is often achieved with the passage of a general obligation bond election. It is also important that the district adequately plans for financial and capital outlay needs. The general obligation bond should be intended and prioritized for the specified project the district is applying for. The timing of the bonds and usage of general obligation bond funding may impact the appropriate timing for a school district to apply for a PSCOC project and waiver.

School District Need

Many districts cannot afford their local match for current or potential projects due to their low bonding capacity and available funds that can be put toward funding a PSCOC funded project. A district may request the PSCOC consider granting a waiver at the time of award to fund the portion of the local match they cannot support, if the district has made a good faith effort to use its local resources to fund the project, and if the district meets all of the requirements of one of the three waiver options, per Section 22-24-5 NMSA, B (9), as listed above. Districts are expected to fund the maximum amount they can afford, and the remainder of the local match may be waived by the PSCOC. The amount waived is added to the state match for the project.

Example: If a school is eligible for and needs a $30M project, with a local match of $10M, but can only bond for $2M, a waiver is necessary for the application/project to move forward.

School district requests for waivers have increased in recent years. Until FY23, waiver requests and approvals were rare. However, in recent years requests and approvals have increased for several reasons:

1) The phase 2 formula raised the local matches, often making the portion the district is required to pay unaffordable. Over half of the school districts have a local match of 94% (the maximum allowable).
2) 2023 SB131 reduced local matches, making the portion a district must fund smaller, but often still not affordable. Districts desire to take advantage of this reduction to reduce the requested amount to be waived.
3) Increased construction and project costs for all projects.
4) PSFA has increased outreach efforts to work with districts with highly ranked schools. Many districts have increased interest in applying for PSCOC funding as they become educated on funding opportunities and understand the poor condition of school facilities.
5) The PSCOC has shown willingness to grant the waivers through careful consideration of district finances and project costs and understanding of districts' inability to fund much needed projects.

Historically, the PSCOC has granted a total of 54 waivers for PSCOC funded projects. Waivers for individual school projects have ranged from $31,600 to $87million. Most waivers go towards standards-based projects, which are typically full school replacements with high project costs.

<u>Issue with Current Criteria</u>

It is difficult for some districts to meet the waiver statute criteria, despite not being able to afford the local match for a potential PSCOC project. In recent years, PSFA has worked closely with school districts interested in application for PSCOC funding and in need of a waiver to afford the local match. PSFA has determined that districts have difficulty meeting the statute criteria for one of the following reasons:

1.) District has not attempted or passed voter approval of a General Obligation Bond, SB-9 or HB-33 to increase the residential property tax rate (mill levy).
   - This is typically a timing issue, between the passage of bonds, and can be resolved at the appropriate time for a special or general election.
   - Districts that are not small (800 MEM of more) do not have difficulty raising their mill levy above 10 with proper financial planning and prioritization, with voter approval.
   - This also results in insufficient available funding to contribute to the project, and therefore an increased need for a waiver, and the amount to be waived.

2.) Small districts cannot meet the free/reduced lunch (≥70%) the local match (≤ 50%) requirement.
   - Districts are unable to control either of these requirements. If a district does not meet one of these requirements, they must achieve a mill levy of ≥ 10 (option 1), rather than a mil levy of ≥ 7 (option 2), which is much harder to achieve for small districts, and causes districts to bond above their means to meet the mill levy requirements.
   - This is the prevalent issue regarding district's ability to meet the waiver requirements.
   - Small districts do not have difficulty reaching a mill levy of 7 or more, with appropriate financial planning and the passage of general

<u>Potential Amended Criteria</u>

HB277 amends the statute criteria for the waiver option 1 by changing the requirement for the residential property tax, from $10 to $8.

The changes to option 1 would increase the number of districts eligible for potential waivers under option 1, from 33 to 52. This would provide 19 districts the opportunity to meet eligibility for a waiver. However, it is important to note that although a district may meet the suggested $8 mill levy requirement, this may not equate to the district achieving the “good faith effort” to seek voter authorization to pass general obligation bonds and/or levying SB-9 and HB-33 mill levies to have available funding to contribute to the awarded project.

	Current Statute Requirements	Proposed Statute Requirements
Option 1 (all districts)	**33**	**52**
Option 2 (small districts)	8	8
Option 3 (growth districts)	5	5

Several school districts have mill levies above $8, due to previously approved general obligation bonds, SB-9 and HB-33, which were intended and used for purposes other than PSCOC funded projects. Applying for a PSCOC project and waiver, due to low available funds after funding other prioritized projects, does not constitute the “good faith effort” or “insufficient bonding capacity.” The PSCOC will analyze these factors in the consideration of a waiver request.

In the past several years, multiple districts have gained voter approval of general obligation bonds for the purpose of raising the mill levy to $10, in order to achieve eligibility for the waiver and apply for a capital outlay project. Several small districts with less than 800 MEM, could not qualify for a waiver using option 2 due to inability to meet the free/reduced lunch and/or local match requirements; therefore, the $7.00 mill levy requirement for small districts was not sufficient. These districts were required to bond above their means to meet the mill levy requirement exceeding $10.00.

PERFORMANCE IMPLICATIONS
N/A

ADMINISTRATIVE IMPLICATIONS
N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
Senate Bill 82 also amends Section 22-24-5 NMSA 1978 of the Public School Capital Outlay Act (PSCOA) to extend the timeframe that the temporary provision to reduce the phase 2 formula for state / local matches lasts until fiscal year 2027, rather than fiscal year 2026 as determined by Senate Bill 131, enacted in 2023. The bill also amends the eligibility requirements for a school district to meet in order for the Council to grant a waiver of a school district’s local match, in accordance with Section 22-24-5 B(9)(b), referred to as “option 2,” This option 2 intended for small districts with less than 800 MEM, the requirements for free or reduced-fee lunch and the local match percentage threshold have been removed. Section 22-24-5 B(9)(c), which is referred to as “option 3” which is intended for growing districts. This option 3 is removed in its entirety in SB82.

- This amendment provides a solution to small school districts having difficulty meeting waiver criteria, which PSFA has identified as a problem in need of a solution.
- This conflicts with the amended waiver criteria provided in HB277, which changes the residential property tax rate for option 1, from $10 to $8. This does not solve the problem small districts have meeting waiver criteria.

TECHNICAL ISSUES
N/A

OTHER SUBSTANTIVE ISSUES
N/A

ALTERNATIVES
N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Section 22-24-5 B(9)(a) NMSA 1978 will not be amended to change the mill levy requirement from $10 to $8. The 19 school districts that would become eligible with this changed requirement will not be eligible for a PSCOC waiver, until they achieve voter authorization to uses general obligation bonds and/or levying SB-9 and HB-33.

AMENDMENTS
N/A

APPENDIX

District	Eligibility for Waiver Option 1: All Districts				Meets Option 2
	Bonding Capacity	Residential Mill Levy	Current Statute Requirements	Proposed Statute Requirements	
ALAMOGORDO	$ 19,808,922	9.80		Eligible	
ALBUQUERQUE	$ 694,399,832	10.48	Eligible	Eligible	
ANIMAS	$ 2,322,409	2.40			
ARTESIA	$ 62,440,508	5.75			
AZTEC	$ 27,414,120	12.25	Eligible	Eligible	
BELEN	$ 19,281,124	11.81	Eligible	Eligible	
BERNALILLO	$ 15,508,776	11.51	Eligible	Eligible	
BLOOMFIELD	$ 22,436,521	12.02	Eligible	Eligible	
CAPITAN	$ 28,251,241	4.52			
CARLSBAD	$ 195,491,357	10.26	Eligible	Eligible	
CARRIZOZO	$ 2,435,272	7.51			Eligible
CENTRAL	$ 25,301,196	9.25		Eligible	
CHAMA	$ 5,707,266	5.31			
CIMARRON	$ 17,443,799	4.94			
CLAYTON	$ 2,795,135	7.50			Eligible
CLOUDCROFT	$ 9,046,958	7.53			
CLOVIS	$ 12,070,820	7.43			
COBRE	$ 2,623,086	10.09	Eligible	Eligible	
CORONA	$ 3,881,647	5.97			
CUBA	$ 1,993,527	12.38	Eligible	Eligible	Eligible
DEMING	$ 14,691,276	8.26			
DES MOINES	$ 283,592	10.50	Eligible	Eligible	
DEXTER	$ (67,575)	12.16	Eligible	Eligible	
DORA	$ 7,494,928	7.93			
DULCE	$ 3,745,286	3.55			
ELIDA	$ 1,802,918	2.32			
ESPANOLA	$ 21,799,960	8.90		Eligible	
ESTANCIA	$ 7,783,916	8.04		Eligible	Eligible
EUNICE	$ (553,202)	5.89			
FARMINGTON	$ 34,510,766	9.76		Eligible	
FLOYD	$ 1,120,207	2.41			
FT. SUMNER	$ 4,809,158	7.37			
GADSDEN	$ 34,537,522	16.57	Eligible	Eligible	
GALLUP-McKINLEY	$ 9,769,677	10.61	Eligible	Eligible	
GRADY	$ 30,171	10.06	Eligible	Eligible	
GRANTS-CIBOLA	$ 2,346,694	12.10	Eligible	Eligible	
HAGERMAN	$ 2,507,049	10.14	Eligible	Eligible	
HATCH	$ 1,890,609	12.68	Eligible	Eligible	
HOBBS	$ 31,562,626	11.63	Eligible	Eligible	
HONDO	$ 1,233,588	9.54		Eligible	Eligible
HOUSE	$ 327,351	8.52		Eligible	
JAL	$ 60,017,554	2.93			
JEMEZ MOUNTAIN	$ 5,757,699	2.30			
JEMEZ VALLEY	$ 2,859,336	11.15	Eligible	Eligible	Eligible
LAKE ARTHUR	$ 1,849,848	7.60			
LAS CRUCES	$ 134,756,890	9.36		Eligible	
LAS VEGAS CITY	$ 7,092,614	12.04	Eligible	Eligible	
LAS VEGAS WEST	$ 2,449,319	12.69	Eligible	Eligible	
LOGAN	$ 2,928,137	9.20		Eligible	
LORDSBURG	$ 3,203,230	9.16		Eligible	Eligible
LOS ALAMOS	$ 14,650,868	11.96	Eligible	Eligible	

LOS LUNAS	$ 24,463,683	13.19	Eligible	Eligible	
LOVING MUNICIPAL	$ (14,760,354)	5.80			
LOVINGTON	$ 2,924,785	11.36	Eligible	Eligible	
MAGDALENA	$ 997,572	10.68	Eligible	Eligible	
MAXWELL	$ 166,478	10.31	Eligible	Eligible	
MELROSE	$ 1,952,432	6.32			
MESA VISTA	$ 1,033,312	7.11			
MORA	$ 6,999,085	2.26			
MORIARTY	$ 17,819,534	10.52	Eligible	Eligible	
MOSQUERO	$ 939,963	13.43	Eligible	Eligible	
MOUNTAINAIR	$ 4,316,951	5.95			
PECOS	$ 6,778,799	4.57			
PEÑASCO	$ 1,533,907	11.64	Eligible	Eligible	
POJOAQUE	$ 7,324,308	11.41	Eligible	Eligible	
PORTALES	$ 7,650,367	9.55		Eligible	
QUEMADO	$ 5,941,882	4.92			
QUESTA	$ 11,239,419	5.00			
RATON	$ 4,083,130	10.52	Eligible	Eligible	
RESERVE	$ 2,766,449	4.07			
RIO RANCHO	$ 89,838,288	10.64	Eligible	Eligible	
ROSWELL	$ 42,419,860	7.82			
ROY	$ 301,577	7.22			
RUIDOSO	$ 21,571,736	8.24			
SAN JON	$ 246,361	10.20	Eligible	Eligible	
SANTA FE	$ 314,648,902	8.77		Eligible	
SANTA ROSA	$7,811,718	7.19			Eligible
SILVER CITY	$ 20,882,659	5.95			
SOCORRO	$ 3,695,225	8.68		Eligible	
SPRINGER	$ 479,938	8.26		Eligible	
T OR C	$ 12,678,047	8.10		Eligible	
TAOS	$ 65,972,324	5.44			
TATUM	$ 2,011,196	6.89			
TEXICO	$ 569,883	9.61		Eligible	
TUCUMCARI	$ 2,479,979	9.41		Eligible	
TULAROSA	$ 2,592,991	10.87	Eligible	Eligible	
VAUGHN	$ 4,621,396	6.68			
WAGON MOUND	$ 1,948,119	6.18			
ZUNI	$ 189,097	2.50			
		Totals	**33**	**56**	**8**

*Bonding capacity and residential mill levy data source: NMPED, as of Sept. 1024