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**SENATE BILL 381**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Cynthia L. Nava**

**AN ACT**

**RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL  
OUTLAY ACT TO REQUIRE THAT, IF ECONOMICALLY AND TECHNICALLY  
FEASIBLE, PROJECT COSTS INCLUDE THE CAPITAL COSTS OF  
GEOTHERMAL COOLING OR HEATING SYSTEMS.**

**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. For project allocation cycles occurring before  
September 1, 2003, the council shall approve an application  
for grant assistance from the fund for a public school capital  
outlay project not wholly funded pursuant to Section 22-24-4.1  
NMSA 1978, when the council determines that:**

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- 1 (1) a need exists requiring action;
- 2 (2) the residents of the school district have
- 3 provided available resources to the school district to meet
- 4 its capital outlay requirements;
- 5 (3) the school district has used its capital
- 6 resources in a prudent manner;
- 7 (4) the school district has provided
- 8 insurance for buildings of the school district in accordance
- 9 with the provisions of Section 13-5-3 NMSA 1978;
- 10 (5) the school district:
- 11 (a) is indebted at not less than
- 12 sixty-five percent of the total general obligation debt
- 13 authorized by law; or
- 14 (b) within the last three years, was
- 15 indebted at the level required in Subparagraph (a) of this
- 16 paragraph and received a grant pursuant to this section for
- 17 the initial stages of a project and currently has a critical
- 18 need for an additional grant to complete the same project;
- 19 (6) the application includes:
- 20 (a) the capital needs of any charter
- 21 schools located in the school district or the school district
- 22 has shown that the capital needs of the charter schools are
- 23 not as great as the capital needs requested in the
- 24 application; and
- 25 (b) the facilities needed in the school

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1 district to implement a full-day kindergarten program or that  
2 the school district has shown that the need for facilities to  
3 implement the program is not as great as the capital needs  
4 requested in the application; provided that the total amount  
5 of assistance grants made in a fiscal year for the purpose of  
6 implementing full-day kindergarten programs shall not exceed  
7 five million dollars (\$5,000,000); and

8 (7) the school district has submitted a five-  
9 year facilities plan that includes:

10 (a) enrollment projections;

11 (b) a current preventive maintenance  
12 plan to which the school adheres for each public school in the  
13 district; and

14 (c) projections for the facilities  
15 needed in order to maintain a full-day kindergarten program.

16 B. The council shall consider all applications for  
17 assistance from the fund and, after a public hearing, shall  
18 either approve or deny the application. Applications for  
19 grant assistance shall only be accepted by the council after a  
20 school district has complied with the provisions of this  
21 section. The council shall list all applications in order of  
22 priority, and all allocations shall be made on a priority  
23 basis, except:

24 (1) twenty million dollars (\$20,000,000) of  
25 the proceeds from supplemental severance tax bonds available

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1 for the funding cycle in each of fiscal years 2002 and 2003  
2 shall be set aside for allocation solely for projects in  
3 school districts that are eligible for funding from the fund  
4 and that receive grants from the federal government as  
5 assistance to areas affected by federal activity authorized in  
6 accordance with Title 20 of the United States Code, commonly  
7 known as "PL 874 funds" or "impact aid"; and

8 (2) in the case of an emergency, the order of  
9 priority shall first reflect those projects that have been  
10 previously funded but are not as yet completed, excluding  
11 expansion of those projects and contingent upon maintenance of  
12 the required local support.

13 C. For allocation cycles beginning after  
14 September 1, 2003, the following provisions apply:

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

18 (2) priorities for funding shall be  
19 determined by using the statewide adequacy standards developed  
20 pursuant to Subsection D of this section; provided that the  
21 council shall apply the standards to charter schools to the  
22 same extent that they are applied to other public schools;

23 (3) after consulting with the staff architect  
24 of the property control division of the general services  
25 department, the council shall establish criteria to be used in

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1 public school capital outlay projects that receive grant  
2 assistance pursuant to the Public School Capital Outlay Act.

3 In establishing the criteria, the council shall consider:

4 (a) the feasibility of using design,  
5 build and finance arrangements for public school capital  
6 outlay projects;

7 (b) the potential use of more durable  
8 construction materials that may reduce long-term operating  
9 costs; [~~and~~]

10 (c) for projects that include heating  
11 or cooling systems, the potential use of geothermal energy as  
12 the energy source for the systems; and

13 [~~e~~] (d) any other financing or  
14 construction concept that may maximize the dollar effect of  
15 the state grant assistance;

16 (4) no more than ten percent of the combined  
17 total of grants in a funding cycle shall be used for  
18 retrofitting existing facilities for technology  
19 infrastructure;

20 (5) except as provided in Paragraph (6) of  
21 this subsection, a project approved and ranked by the council  
22 shall be funded within available resources in accordance with  
23 the following formula:

24 (school district final prior year  
25 assessed valuation per MEM ÷ the state

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1 average final prior year assessed  
2 valuation per MEM) x 0.5. The product  
3 is subtracted from 1.0 and the  
4 difference is then multiplied by  
5 seventy-five percent. The product of  
6 that calculation added to (the percent  
7 of bonding capacity used x 0.25) equals  
8 the percentage of the cost of the  
9 approved project to be funded from the  
10 fund. "MEM" means the total enrollment  
11 of students attending public school in a  
12 school district in the final funded  
13 prior school year, with kindergarten  
14 being counted as 0.5. In those  
15 instances in which the formula provides  
16 less than 0.1, 0.1 shall be used as the  
17 state's share;

18 (6) in those instances in which a school  
19 district has used all of its local resources, the council may  
20 fund the total amount of a project; and

21 (7) no application for grant assistance from  
22 the fund shall be approved unless the council determines that:

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

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

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

6 (d) the school district has submitted a  
7 five-year facilities plan that includes: 1) enrollment  
8 projections; 2) a current preventive maintenance plan to which  
9 the school adheres for each public school in the district; and  
10 3) projections for the facilities needed in order to maintain  
11 a full-day kindergarten program;

12 (e) the school district is willing and  
13 able to pay any portion of the total cost of the public school  
14 capital outlay project that, according to Paragraph (5) of  
15 this subsection established by law, is not funded with grant  
16 assistance from the fund;

17 (f) the application includes the  
18 capital needs of any charter schools located in the school  
19 district or the school district has shown that the facilities  
20 of the charter schools in the district meet the statewide  
21 adequacy standards; and

22 (g) the school district has agreed, in  
23 writing, to comply with any reporting requirements or  
24 conditions imposed by the council pursuant to Section  
25 22-24-5.1 NMSA 1978.

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1           D. After consulting with the public school capital  
2 outlay task force and other experts, no later than September  
3 1, 2002, the council shall develop statewide adequacy  
4 standards applicable to all school districts. The standards  
5 shall establish the minimum acceptable level for the physical  
6 condition and capacity of buildings, the educational  
7 suitability of facilities and the need for technological  
8 infrastructure. The amount of outstanding deviation from the  
9 standards shall be used by the council after September 1, 2003  
10 in evaluating and prioritizing public school capital outlay  
11 projects.

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

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

23           G. 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



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

6 H. The council shall promulgate such rules as are  
7 necessary to carry out the provisions of the Public School  
8 Capital Outlay Act.

9 I. No later than December 1 of each year, the  
10 council shall prepare a report summarizing its activities  
11 during the previous fiscal year. The report shall describe in  
12 detail all projects funded, the progress of projects  
13 previously funded but not completed, the criteria used to  
14 prioritize and fund projects and all other council actions.  
15 The report shall be submitted to the state board, the  
16 governor, the legislative finance committee, the legislative  
17 education study committee and each member of the legislature."

18 Section 2. A new section of the Public School Capital  
19 Outlay Act is enacted to read:

20 "[NEW MATERIAL] GEOTHERMAL HEATING OR COOLING SYSTEMS. --  
21 In any public school capital outlay project, funded in whole  
22 or in part pursuant to the Public School Capital Outlay Act,  
23 that includes a heating or cooling system, if economically and  
24 technically feasible, the council may require that the heating  
25 or cooling system utilize geothermal energy. No proposed

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1 project shall be denied assistance or the scope of the  
2 assistance diminished because the project includes a  
3 geothermal heating or cooling system. "

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