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SENATE BILL 247

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING A NEW SECTION OF THE
PUBLIC SCHOOL CAPITAL OUTLAY ACT TO CREATE A PROGRAM FOR
BUILDING SCHOOL FACILITIES IN HIGH-GROWTH AREAS OF THE STATE;
MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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, the approval
of applications, the prioritization of projects and grant
awards shall be conducted pursuant to the provisions of this
section [~~provided, however, that the order of priority in the
two years beginning July 1, 2004 shall first reflect those~~

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1 ~~specific projects that were partially funded by the council in~~
2 ~~September 2003 but are not as yet completed, excluding any~~
3 ~~expansion of the scope of those projects and contingent upon~~
4 ~~maintenance of the required local support. In that transition~~
5 ~~period, such projects shall be funded regardless of any~~
6 ~~deviation from the statewide adequacy standards; provided that~~
7 ~~the amount of the award received shall not exceed the amount~~
8 ~~necessary to meet the statewide adequacy standards, including~~
9 ~~projected enrollment growth].~~

10 B. Except as provided in [~~Subsection A of this~~
11 ~~section and in~~] Sections 22-24-4.3, [~~and~~] 22-24-5.4 and
12 22-24-5.7 NMSA 1978, the following provisions govern grant
13 assistance from the fund for a public school capital outlay
14 project not wholly funded pursuant to Section 22-24-4.1 NMSA
15 1978:

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

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

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

25 (b) in an emergency in which the health

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1 or safety of students or school personnel is at immediate risk
2 or in which there is a threat of significant property damage,
3 the council may award grant assistance for a project using
4 criteria other than the statewide adequacy standards;

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

9 (a) the feasibility of using design,
10 build and finance arrangements for public school capital outlay
11 projects;

12 (b) the potential use of more durable
13 construction materials that may reduce long-term operating
14 costs; and

15 (c) any other financing or construction
16 concept that may maximize the dollar effect of the state grant
17 assistance;

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

21 (5) except as provided in Paragraph (6) or (8)
22 of this subsection, the state share of a project approved and
23 ranked by the council shall be funded within available
24 resources pursuant to the provisions of this paragraph. No
25 later than May 1 of each calendar year, a value shall be

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1 calculated for each school district in accordance with the
2 following procedure:

3 (a) the final prior year net taxable
4 value for a school district divided by the MEM for that school
5 district is calculated for each school district;

6 (b) the final prior year net taxable
7 value for the whole state divided by the MEM for the state is
8 calculated;

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

15 (d) the lowest value listed pursuant to
16 Subparagraph (c) of this paragraph is subtracted from the
17 highest value listed pursuant to that subparagraph;

18 (e) the value calculated pursuant to
19 Subparagraph (a) of this paragraph for the subject school
20 district is subtracted from the highest value listed in
21 Subparagraph (c) of this paragraph;

22 (f) the result calculated pursuant to
23 Subparagraph (e) of this paragraph is divided by the result
24 calculated pursuant to Subparagraph (d) of this paragraph;

25 (g) the sum of the property tax mill

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1 levies for the prior tax year imposed by each school district
2 on residential property pursuant to Chapter 22, Article 18 NMSA
3 1978, the Public School Capital Improvements Act, the Public
4 School Buildings Act, the Education Technology Equipment Act
5 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
6 is calculated for each school district;

7 (h) the lowest value calculated pursuant
8 to Subparagraph (g) of this paragraph is subtracted from the
9 highest value calculated pursuant to that subparagraph;

10 (i) the lowest value calculated pursuant
11 to Subparagraph (g) of this paragraph is subtracted from the
12 value calculated pursuant to that subparagraph for the subject
13 school district;

14 (j) the value calculated pursuant to
15 Subparagraph (i) of this paragraph is divided by the value
16 calculated pursuant to Subparagraph (h) of this paragraph;

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

23 (l) if the value calculated for a
24 subject school district pursuant to Subparagraph (j) of this
25 paragraph is five-tenths or greater, then that value is

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1 multiplied by five-hundredths;

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

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

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

18 (p) except as reduced pursuant to
19 Paragraph (6) of this subsection, the amount to be distributed
20 from the fund for an approved project: 1) in calendar year
21 2005, shall equal the total project cost multiplied by a
22 fraction the numerator of which is the value calculated for the
23 subject school district in 2005 plus the value calculated for
24 that district in 2004 and the denominator of which is two; and
25 2) in calendar year 2006 and each subsequent calendar year,

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1 shall equal the total project cost multiplied by a fraction the
2 numerator of which is the value calculated for the subject
3 school district in the current year plus the value calculated
4 for that school district in each of the two preceding years and
5 the denominator of which is three; and

6 (q) as used in this paragraph: 1) "MEM"
7 means the average full-time-equivalent enrollment of students
8 attending public school in a school district on the fortieth,
9 eightieth and one hundred twentieth days of the prior school
10 year; and 2) "total project cost" means the total amount
11 necessary to complete the public school capital outlay project
12 less any insurance reimbursement received by the school
13 district for the project;

14 (6) the amount calculated pursuant to
15 Subparagraph (p) of Paragraph (5) of this subsection shall be
16 reduced by the following procedure:

17 (a) the total of all legislative
18 appropriations made after January 1, 2003 for nonoperating
19 purposes either directly to the subject school district or to
20 another governmental entity for the purpose of passing the
21 money through directly to the subject school district, and not
22 rejected by the subject school district, but excluding
23 educational technology appropriations made prior to January 1,
24 2005 and reauthorizations of appropriations previously made to
25 the subject school district, is calculated; provided that an

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1 appropriation made in a fiscal year shall be deemed to be
2 accepted by a school district unless, prior to June 1 of that
3 fiscal year, the school district notifies the department of
4 finance and administration and the public education department
5 that the district is rejecting the appropriation; provided
6 further that the total shall be increased by an amount,
7 certified to the council by the department, equal to the
8 educational technology appropriations made to the subject
9 school district on or after January 1, 2003 and prior to
10 January 1, 2005 and not previously used to offset distributions
11 pursuant to the Technology for Education Act;

12 (b) the applicable fraction used for the
13 subject school district and the current calendar year for the
14 calculation in Subparagraph (p) of Paragraph (5) of this
15 subsection is subtracted from one;

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

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

25 (e) the amount calculated pursuant to

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1 Subparagraph (p) of Paragraph (5) of this subsection shall be
2 reduced by the amount calculated pursuant to Subparagraph (d)
3 of this paragraph;

4 (7) as used in Paragraphs (5) and (6) of this
5 subsection, "subject school district" means the school district
6 that has submitted the application for funding and in which the
7 approved public school capital outlay project will be located;

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

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

22 (b) the school district: 1) has fewer
23 than an average of eight hundred full-time-equivalent students
24 on the fortieth, eightieth and one hundred twentieth days of
25 the prior school year; 2) has at least seventy percent of its

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1 students eligible for free or reduced-fee lunch; 3) has a share
2 of the total project cost, as calculated pursuant to provisions
3 of this section, that would be greater than fifty percent; and
4 4) for all educational purposes, has a residential property tax
5 rate of at least seven dollars (\$7.00) on each one thousand
6 dollars (\$1,000) of taxable value, as measured by the sum of
7 all rates imposed by resolution of the local school board plus
8 rates set to pay interest and principal on outstanding school
9 district general obligation bonds; or

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

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

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

25 (b) the school district has used its

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1 capital resources in a prudent manner;

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

5 (d) the school district has submitted a
6 five-year facilities plan that includes: 1) enrollment
7 projections; 2) a current preventive maintenance plan that has
8 been approved by the council pursuant to Section 22-24-5.3 NMSA
9 1978 and that is followed by each public school in the
10 district; 3) the capital needs of charter schools located in
11 the school district; and 4) projections for the facilities
12 needed in order to maintain a full-day kindergarten program;

13 (e) the school district is willing and
14 able to pay any portion of the total cost of the public school
15 capital outlay project that, according to Paragraph (5), (6) or
16 (8) of this subsection, is not funded with grant assistance
17 from the fund; provided that school district funds used for a
18 project that was initiated after September 1, 2002 when the
19 statewide adequacy standards were adopted, but before September
20 1, 2004 when the standards were first used as the basis for
21 determining the state and school district share of a project,
22 may be applied to the school district portion required for that
23 project;

24 (f) the application includes the capital
25 needs of any charter school located in the school district or

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1 the school district has shown that the facilities of the
2 charter school [~~has~~] have a smaller deviation from the
3 statewide adequacy standards than other district facilities
4 included in the application; and

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

9 C. After consulting with the public school capital
10 outlay oversight task force and other experts, the council
11 shall regularly review and update statewide adequacy standards
12 applicable to all school districts. The standards shall
13 establish the acceptable level for the physical condition and
14 capacity of buildings, the educational suitability of
15 facilities and the need for technological infrastructure.
16 Except as otherwise provided in the Public School Capital
17 Outlay Act, the amount of outstanding deviation from the
18 standards shall be used by the council in evaluating and
19 prioritizing public school capital outlay projects.

20 D. It is the intent of the legislature that grant
21 assistance made pursuant to this section allows every school
22 district to meet the standards developed pursuant to Subsection
23 C of this section; provided, however, that nothing in the
24 Public School Capital Outlay Act or the development of
25 standards pursuant to that act prohibits a school district from

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1 using local funds to exceed the statewide adequacy standards.

2 E. Upon request, the council shall work with, and
3 provide assistance and information to, the public school
4 capital outlay oversight task force.

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

13 G. Upon the recommendation of the public school
14 facilities authority, the council shall develop building
15 standards for public school facilities and shall promulgate
16 other such rules as are necessary to carry out the provisions
17 of the Public School Capital Outlay Act.

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

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1 study committee and the legislature."

2 Section 2. A new section of the Public School Capital
3 Outlay Act, Section 22-24-5.7 NMSA 1978, is enacted to read:

4 "22-24-5.7. [NEW MATERIAL] NEW OR EXPANDED SCHOOL
5 FACILITIES IN HIGH-GROWTH AREAS.--

6 A. Pursuant to guidelines adopted by the council,
7 the council shall identify high-growth areas of the state in
8 which critical overcrowding of existing school facilities is
9 adversely affecting the quality of education.

10 B. The public school facilities authority shall
11 assist school districts containing identified high-growth areas
12 in developing plans for new or expanded school facilities that
13 will alleviate the critical overcrowding.

14 C. After developing criteria for prioritizing
15 needed facilities and to the extent that money is available in
16 the fund for such purposes, the council shall approve
17 allocations from the fund for the new or expanded school
18 facilities and, working with the school district, enter into
19 construction contracts for the facilities.

20 D. Allocations from the fund for the construction
21 of new or expanded school facilities pursuant to this section
22 shall be made regardless of the local effort or percentage of
23 indebtedness of the school district; provided that no such
24 allocation from the fund shall be made unless the council
25 determines that:

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

4 (2) the school district has submitted a five-
5 year facilities plan that includes:

6 (a) enrollment projections;

7 (b) a current preventive maintenance
8 plan that has been approved by the council pursuant to Section
9 22-24-5.3 NMSA 1978 and that is followed by each public school
10 in the district;

11 (c) the capital needs of charter schools
12 located in the school district; and

13 (d) projections for the facilities
14 needed in order to maintain a full-day kindergarten program;
15 and

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

20 Section 3. APPROPRIATION.--Three hundred million dollars
21 (\$300,000,000) is appropriated from the general fund to the
22 public school capital outlay fund for expenditure in fiscal
23 years 2006 through 2009 for the purpose of funding new or
24 expanded school facilities in high-growth areas of the state
25 pursuant to Section 22-24-5.7 NMSA 1978. Any unexpended or

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1 unencumbered balance remaining at the end of fiscal year 2009
2 shall revert to the general fund.

3 Section 4. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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