

HOUSE BILL 268

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC
SCHOOL CAPITAL OUTLAY ACT TO ALLOW THE PUBLIC SCHOOL CAPITAL
OUTLAY COUNCIL TO DETERMINE WHETHER A SCHOOL DISTRICT SHOULD BE
ELIGIBLE FOR A WAIVER OF ITS REQUIRED FUNDING MATCH.

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

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

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

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

B. Except as provided in Sections 22-24-4.3,
22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions

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1 govern grant assistance from the fund for a public school
2 capital outlay project not wholly funded pursuant to
3 Section 22-24-4.1 NMSA 1978:

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

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

10 (a) the council shall apply the
11 standards to charter schools to the same extent that they are
12 applied to other public schools;

13 (b) the council shall adopt and apply
14 adequacy standards appropriate to the unique needs of the
15 constitutional special schools; and

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

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

25 (a) the feasibility of using design,

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1 build and finance arrangements for public school capital outlay
2 projects;

3 (b) the potential use of more durable
4 construction materials that may reduce long-term operating
5 costs;

6 (c) concepts that promote efficient but
7 flexible utilization of space; and

8 (d) any other financing or construction
9 concept that may maximize the dollar effect of the state grant
10 assistance;

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

14 (5) except as provided in Paragraph (6), (8),
15 (9) or (10) of this subsection, the state share of a project
16 approved and ranked by the council shall be funded within
17 available resources pursuant to the provisions of this
18 paragraph. No later than May 1 of each calendar year, a value
19 shall be calculated for each school district in accordance with
20 the following procedure:

21 (a) the final prior year net taxable
22 value for a school district divided by the MEM for that school
23 district is calculated for each school district;

24 (b) the final prior year net taxable
25 value for the whole state divided by the MEM for the state is

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1 calculated;

2 (c) excluding any school district for
3 which the result calculated pursuant to Subparagraph (a) of
4 this paragraph is more than twice the result calculated
5 pursuant to Subparagraph (b) of this paragraph, the results
6 calculated pursuant to Subparagraph (a) of this paragraph are
7 listed from highest to lowest;

8 (d) the lowest value listed pursuant to
9 Subparagraph (c) of this paragraph is subtracted from the
10 highest value listed pursuant to that subparagraph;

11 (e) the value calculated pursuant to
12 Subparagraph (a) of this paragraph for the subject school
13 district is subtracted from the highest value listed in
14 Subparagraph (c) of this paragraph;

15 (f) the result calculated pursuant to
16 Subparagraph (e) of this paragraph is divided by the result
17 calculated pursuant to Subparagraph (d) of this paragraph;

18 (g) the sum of the property tax mill
19 levies for the prior tax year imposed by each school district
20 on residential property pursuant to Chapter 22, Article 18 NMSA
21 1978, the Public School Capital Improvements Act, the Public
22 School Buildings Act, the Education Technology Equipment Act
23 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
24 is calculated for each school district;

25 (h) the lowest value calculated pursuant

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1 to Subparagraph (g) of this paragraph is subtracted from the
2 highest value calculated pursuant to that subparagraph;

3 (i) the lowest value calculated pursuant
4 to Subparagraph (g) of this paragraph is subtracted from the
5 value calculated pursuant to that subparagraph for the subject
6 school district;

7 (j) the value calculated pursuant to
8 Subparagraph (i) of this paragraph is divided by the value
9 calculated pursuant to Subparagraph (h) of this paragraph;

10 (k) if the value calculated for a
11 subject school district pursuant to Subparagraph (j) of this
12 paragraph is less than five-tenths, then, except as provided in
13 Subparagraph (n) or (o) of this paragraph, the value for that
14 school district equals the value calculated pursuant to
15 Subparagraph (f) of this paragraph;

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

20 (m) if the value calculated for a
21 subject school district pursuant to Subparagraph (j) of this
22 paragraph is five-tenths or greater, then the value calculated
23 pursuant to Subparagraph (l) of this paragraph is added to the
24 value calculated pursuant to Subparagraph (f) of this
25 paragraph. Except as provided in Subparagraph (n) or (o) of

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1 this paragraph, the sum equals the value for that school
2 district;

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

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

11 (p) except as provided in Section
12 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
13 Paragraph (6), (8), (9) or (10) of this subsection, the amount
14 to be distributed from the fund for an approved project shall
15 equal the total project cost multiplied by a fraction the
16 numerator of which is the value calculated for the subject
17 school district in the current year plus the value calculated
18 for that school district in each of the two preceding years and
19 the denominator of which is three; and

20 (q) as used in this paragraph: 1) "MEM"
21 means the average full-time-equivalent enrollment of students
22 attending public school in a school district on the eightieth
23 and one hundred twentieth days of the prior school year; 2)
24 "total project cost" means the total amount necessary to
25 complete the public school capital outlay project less any

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1 insurance reimbursement received by the school district for the
2 project; and 3) in the case of a state-chartered charter school
3 that has submitted an application for grant assistance pursuant
4 to this section, the "value calculated for the subject school
5 district" means the value calculated for the school district in
6 which the state-chartered charter school is physically located;

7 (6) the amount calculated pursuant to
8 Subparagraph (p) of Paragraph (5) of this subsection shall be
9 reduced by the following procedure:

10 (a) the total of all legislative
11 appropriations made after January 1, 2003 for nonoperating
12 purposes either directly to the subject school district or to
13 another governmental entity for the purpose of passing the
14 money through directly to the subject school district, and not
15 rejected by the subject school district, is calculated;
16 provided that: 1) an appropriation made in a fiscal year shall
17 be deemed to be accepted by a school district unless, prior to
18 June 1 of that fiscal year, the school district notifies the
19 department of finance and administration and the public
20 education department that the district is rejecting the
21 appropriation; 2) the total shall exclude any educational
22 technology appropriation made prior to January 1, 2005 unless
23 the appropriation was on or after January 1, 2003 and not
24 previously used to offset distributions pursuant to the
25 Technology for Education Act; 3) the total shall exclude any

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1 appropriation previously made to the subject school district
2 that is reauthorized for expenditure by another recipient;
3 4) the total shall exclude one-half of the amount of any
4 appropriation made or reauthorized after January 1, 2007 if the
5 purpose of the appropriation or reauthorization is to fund, in
6 whole or in part, a capital outlay project that, when
7 prioritized by the council pursuant to this section either in
8 the immediately preceding funding cycle or in the current
9 funding cycle, ranked in the top one hundred fifty projects
10 statewide; 5) the total shall exclude the proportionate share
11 of any appropriation made or reauthorized after January 1, 2008
12 for a capital project that will be jointly used by a
13 governmental entity other than the subject school district.
14 Pursuant to criteria adopted by rule of the council and based
15 upon the proposed use of the capital project, the council shall
16 determine the proportionate share to be used by the
17 governmental entity and excluded from the total; and 6) unless
18 the grant award is made to the state-chartered charter school
19 or unless the appropriation was previously used to calculate a
20 reduction pursuant to this paragraph, the total shall exclude
21 appropriations made after January 1, 2007 for nonoperating
22 purposes of a specific state-chartered charter school,
23 regardless of whether the charter school is a state-chartered
24 charter school at the time of the appropriation or later opts
25 to become a state-chartered charter school;

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1 (b) the applicable fraction used for the
2 subject school district and the current calendar year for the
3 calculation in Subparagraph (p) of Paragraph (5) of this
4 subsection is subtracted from one;

5 (c) the value calculated pursuant to
6 Subparagraph (a) of this paragraph for the subject school
7 district is multiplied by the amount calculated pursuant to
8 Subparagraph (b) of this paragraph for that school district;

9 (d) the total amount of reductions for
10 the subject school district previously made pursuant to
11 Subparagraph (e) of this paragraph for other approved public
12 school capital outlay projects is subtracted from the amount
13 calculated pursuant to Subparagraph (c) of this paragraph; and

14 (e) the amount calculated pursuant to
15 Subparagraph (p) of Paragraph (5) of this subsection shall be
16 reduced by the amount calculated pursuant to Subparagraph (d)
17 of this paragraph;

18 (7) as used in this subsection:

19 (a) "governmental entity" includes an
20 Indian nation, tribe or pueblo; and

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

25 (8) the amount calculated pursuant to

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

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

13 (a) the school district: 1) has fewer
14 than an average of eight hundred full-time-equivalent students
15 on the eightieth and two hundred twentieth days of the prior
16 school year; 2) has insufficient bonding capacity over the next
17 four years to provide the local match necessary to complete the
18 project; and 3) for all educational purposes, has a residential
19 property tax rate of at least ten dollars (\$10.00) on each one
20 thousand dollars (\$1,000) of taxable value, as measured by the
21 sum of all rates imposed by resolution of the local school
22 board plus rates set to pay interest and principal on
23 outstanding school district general obligation bonds;

24 (b) the school district: 1) has fewer
25 than an average of eight hundred full-time-equivalent students

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

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

22 (10) the local match for the constitutional
23 special schools shall be set at fifty percent for projects that
24 qualify under the educational adequacy category and one hundred
25 percent for projects that qualify in the support spaces

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1 category; provided that the council may adjust or waive the
2 amount of any direct appropriation offset to or local share
3 required for the constitutional special schools if an applicant
4 constitutional special school has insufficient or no local
5 resources available; and

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

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

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

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

16 (d) the school district has submitted a
17 five-year facilities plan that includes: 1) enrollment
18 projections; 2) a current preventive maintenance plan that has
19 been approved by the council pursuant to Section 22-24-5.3 NMSA
20 1978 and that is followed by each public school in the
21 district; 3) the capital needs of charter schools located in
22 the school district; and 4) projections for the facilities
23 needed in order to maintain a full-day kindergarten program;

24 (e) the school district is willing and
25 able to pay any portion of the total cost of the public school

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1 capital outlay project that, according to Paragraph (5), (6),
2 (8) or (9) of this subsection, is not funded with grant
3 assistance from the fund; provided that school district funds
4 used for a project that was initiated after September 1, 2002
5 when the statewide adequacy standards were adopted, but before
6 September 1, 2004 when the standards were first used as the
7 basis for determining the state and school district share of a
8 project, may be applied to the school district portion required
9 for that project;

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

16 (g) 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 C. After consulting with the public school capital
21 outlay oversight task force and other experts, the council
22 shall regularly review and update statewide adequacy standards
23 applicable to all school districts. The standards shall
24 establish the acceptable level for the physical condition and
25 capacity of buildings, the educational suitability of

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

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

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

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

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

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1 title to the facility;

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

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

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

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

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

23 (2) at the time of application, attendance at
24 the facility to be purchased is at seventy-five percent or
25 greater of design capacity and the attendance at other schools

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1 in the school district that the students at the facility would
2 otherwise attend is at eighty-five percent or greater of design
3 capacity; and

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

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

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

22 H. The council may establish committees or task
23 forces, not necessarily consisting of council members, and may
24 use the committees or task forces, as well as existing agencies
25 or organizations, to conduct studies, conduct surveys, submit

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

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

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