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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CHANGING THE
FORMULA BY WHICH THE STATE-LOCAL MATCHES ARE DETERMINED;
ADDING DEFINITIONS.

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

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School
Capital Outlay Act:

A. "authority" means the public school facilities
authority;

B. "building system" means a set of interacting
parts that makes up a single, nonportable or fixed component
of a facility and that, together with other building systems,
makes up an entire integrated facility or property,
including, but not limited to, roofing, electrical
distribution, electronic communication, plumbing, lighting,
mechanical, fire prevention, facility shell, interior
finishes and heating, ventilation and air conditioning
systems, as defined by the council;

C. "constitutional special schools" means the
New Mexico school for the blind and visually impaired and the
New Mexico school for the deaf;

D. "constitutional special schools support spaces" SB 147
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1 means all facilities necessary to support the constitutional
2 special schools' educational mission that are not included in
3 the constitutional special schools' educational adequacy
4 standards, including, but not limited to, performing arts
5 centers, facilities for athletic competition, school district
6 administration and facility and vehicle maintenance;

7 E. "council" means the public school capital
8 outlay council;

9 F. "education technology infrastructure" means the
10 physical hardware used to interconnect education technology
11 equipment for school districts and school buildings necessary
12 to support broadband connectivity as determined by the
13 council;

14 G. "fund" means the public school capital outlay
15 fund;

16 H. "maximum allowable gross square foot per
17 student" means a determination made by applying the
18 established maximum allowable square foot guidelines for
19 educational facilities based on type of school and number of
20 students in the current published New Mexico public school
21 adequacy planning guide to the public education department's
22 current year certified first reporting date membership;

23 I. "replacement cost per square foot" means the
24 statewide cost per square foot as established by the council;

25 J. "school district" includes state-chartered

1 charter schools and the constitutional special schools;

2 K. "school district population density" means the
3 population density on a per square mile basis of a school
4 district as estimated by the authority based on the most
5 current tract level population estimates published by the
6 United States census bureau; and

7 L. "school district population density factor"
8 means zero when the school district population density is
9 greater than fifty people per square mile; six-hundredths
10 when the school district population density is greater than
11 fifteen but less than fifty-one persons per square mile and
12 twelve-hundredths when the school district population density
13 is less than sixteen persons per square mile."

14 SECTION 2. Section 22-24-5 NMSA 1978 (being Laws 1975,
15 Chapter 235, Section 5, as amended) is amended to read:

16 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
17 APPLICATION--GRANT ASSISTANCE.--

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

22 B. Except as provided in Sections 22-24-4.3,
23 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
24 govern grant assistance from the fund for a public school
25 capital outlay project not wholly funded pursuant to

1 Section 22-24-4.1 NMSA 1978:

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

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

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

12 (b) the council may award grants
13 annually to school districts for the purpose of repairing,
14 renovating or replacing public school building systems in
15 existing buildings as identified in Section 22-24-4.6 NMSA
16 1978;

17 (c) the council shall adopt and apply
18 adequacy standards appropriate to the unique needs of the
19 constitutional special schools; and

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

25 (3) the council shall establish criteria to

1 be used in public school capital outlay projects that receive
2 grant assistance pursuant to the Public School Capital Outlay
3 Act. In establishing the criteria, the council shall
4 consider:

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

8 (b) the potential use of more durable
9 construction materials that may reduce long-term operating
10 costs;

11 (c) concepts that promote efficient but
12 flexible utilization of space; and

13 (d) any other financing or construction
14 concept that may maximize the dollar effect of the state
15 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) no later than May 1 of each calendar
21 year, the phase one formula shall be calculated for each
22 school district in accordance with the following procedure:

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

1 (b) the final prior year net taxable
2 value for the whole state divided by the MEM for the state is
3 calculated;

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

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

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

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

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

1 Section 7-37-7 NMSA 1978 is calculated for each school
2 district;

3 (h) the lowest value calculated
4 pursuant to Subparagraph (g) of this paragraph is subtracted
5 from the highest value calculated pursuant to that
6 subparagraph;

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

11 (j) the value calculated pursuant to
12 Subparagraph (i) of this paragraph is divided by the value
13 calculated pursuant to Subparagraph (h) of this paragraph;

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

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

24 (m) if the value calculated for a
25 subject school district pursuant to Subparagraph (j) of this

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

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

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

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

24 (q) as used in this paragraph:

25 1) "MEM" means the average full-time-equivalent enrollment of

1 students attending public school in a school district on the
2 eightieth and one hundred twentieth days of the prior school
3 year; 2) "total project cost" means the total amount
4 necessary to complete the public school capital outlay
5 project less any insurance reimbursement received by the
6 school district for the project; and 3) in the case of a
7 state-chartered charter school that has submitted an
8 application for grant assistance pursuant to this section,
9 the "value calculated for the subject school district" means
10 the value calculated for the school district in which the
11 state-chartered charter school is physically located;

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

15 (a) the total of all legislative
16 appropriations made after January 1, 2003 for nonoperating
17 purposes either directly to the subject school district or to
18 another governmental entity for the purpose of passing the
19 money through directly to the subject school district, and
20 not rejected by the subject school district, is calculated;
21 provided that: 1) an appropriation made in a fiscal year
22 shall be deemed to be accepted by a school district unless,
23 prior to June 1 of that fiscal year, the school district
24 notifies the department of finance and administration and the
25 public education department that the school district is

1 rejecting the appropriation; 2) the total shall exclude any
2 education technology appropriation made prior to January 1,
3 2005 unless the appropriation was on or after January 1, 2003
4 and not previously used to offset distributions pursuant to
5 the Technology for Education Act; 3) the total shall exclude
6 any appropriation previously made to the subject school
7 district that is reauthorized for expenditure by another
8 recipient; 4) the total shall exclude one-half of the amount
9 of any appropriation made or reauthorized after
10 January 1, 2007 if the purpose of the appropriation or
11 reauthorization is to fund, in whole or in part, a capital
12 outlay project that, when prioritized by the council pursuant
13 to this section either in the immediately preceding funding
14 cycle or in the current funding cycle, ranked in the top one
15 hundred fifty projects statewide; 5) the total shall exclude
16 the proportionate share of any appropriation made or
17 reauthorized after January 1, 2008 for a capital project that
18 will be jointly used by a governmental entity other than the
19 subject school district. Pursuant to criteria adopted by
20 rule of the council and based upon the proposed use of the
21 capital project, the council shall determine the
22 proportionate share to be used by the governmental entity and
23 excluded from the total; and 6) unless the grant award is
24 made to the state-chartered charter school or unless the
25 appropriation was previously used to calculate a reduction

1 pursuant to this paragraph, the total shall exclude
2 appropriations made after January 1, 2007 for nonoperating
3 purposes of a specific state-chartered charter school,
4 regardless of whether the charter school is a state-chartered
5 charter school at the time of the appropriation or later opts
6 to become a state-chartered charter school;

7 (b) the applicable fraction used for
8 the subject school district and the current calendar year for
9 the calculation in Subparagraph (p) of Paragraph (5) of this
10 subsection is subtracted from one;

11 (c) the value calculated pursuant to
12 Subparagraph (a) of this paragraph for the subject school
13 district is multiplied by the amount calculated pursuant to
14 Subparagraph (b) of this paragraph for that school district;

15 (d) the total amount of reductions for
16 the subject school district previously made pursuant to
17 Subparagraph (e) of this paragraph for other approved public
18 school capital outlay projects is subtracted from the amount
19 calculated pursuant to Subparagraph (c) of this paragraph;
20 and

21 (e) the amount calculated pursuant to
22 Subparagraph (p) of Paragraph (5) of this subsection shall be
23 reduced by the amount calculated pursuant to Subparagraph (d)
24 of this paragraph;

25 (7) no later than May 1 of each calendar

1 year, the phase two formula shall be calculated for each
2 school district in accordance with the following procedure:

3 (a) the sum of the final prior five
4 years net taxable value for a school district multiplied by
5 nine ten thousandths for that school district is calculated
6 for each school district;

7 (b) the maximum allowable gross square
8 foot per student multiplied by the replacement cost per
9 square foot, divided by forty-five is calculated for each
10 school district;

11 (c) the value calculated pursuant to
12 Subparagraph (a) of this paragraph divided by the value
13 calculated pursuant to Subparagraph (b) of this paragraph is
14 calculated for each school district;

15 (d) in those instances in which the
16 calculation pursuant to Subparagraph (c) of this paragraph
17 yields a value greater than one, the phase two formula value
18 shall be zero for the subject school district;

19 (e) in those instances in which the
20 calculation pursuant to Subparagraph (c) of this paragraph
21 yields a value greater than eighty-nine hundredths but less
22 than one, the phase two formula value shall be one minus the
23 value calculated in Subparagraph (c) of this paragraph; and

24 (f) in those instances in which the
25 calculation pursuant to Subparagraph (c) of this paragraph

1 yields a value less than ninety-hundredths, the phase two
2 formula value shall be one minus the value calculated in
3 Subparagraph (c) of this paragraph plus the school district
4 population density factor;

5 (8) except as provided in Paragraph (6),
6 (10), (11) or (12) of this subsection, the state share of a
7 project approved by the council shall be funded within
8 available resources pursuant to the provisions of this
9 paragraph. The school district calculation for grant awards
10 made in accordance with this section shall be pursuant to the
11 following procedure:

12 (a) for fiscal year 2019, the school
13 district calculation shall be the sum of eight-tenths
14 multiplied by the calculation in Paragraph (5) of this
15 subsection and two-tenths multiplied by the calculation in
16 Paragraph (7) of this subsection;

17 (b) for fiscal year 2020, the school
18 district calculation shall be the sum of six-tenths
19 multiplied by the calculation in Paragraph (5) of this
20 subsection and four-tenths multiplied by the calculation in
21 Paragraph (7) of this subsection;

22 (c) for fiscal year 2021, the school
23 district calculation shall be the sum of four-tenths
24 multiplied by the calculation in Paragraph (5) of this
25 subsection and six-tenths multiplied by the calculation in

1 Paragraph (7) of this subsection;

2 (d) for fiscal year 2022, the school
3 district calculation shall be the sum of two-tenths
4 multiplied by the calculation in Paragraph (5) of this
5 subsection and eight-tenths multiplied by the calculation in
6 Paragraph (7) of this subsection; and

7 (e) for fiscal year 2023 and
8 thereafter, the school district calculation shall be the
9 calculation specified in Paragraph (7) of this paragraph;

10 (9) as used in this subsection:

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

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

17 (10) the amount calculated pursuant to
18 Subparagraph (p) of Paragraph (5) of this subsection, after
19 any reduction pursuant to Paragraph (6) of this subsection,
20 may be increased by an additional five percent if the council
21 finds that the subject school district has been exemplary in
22 implementing and maintaining a preventive maintenance
23 program. The council shall adopt such rules as are necessary
24 to implement the provisions of this paragraph;

25 (11) the council may adjust the amount of

1 local share otherwise required if it determines that a school
2 district has made a good-faith effort to use all of its local
3 resources. Before making any adjustment to the local share,
4 the council shall consider whether:

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

14 (b) the school district: 1) has fewer
15 than an average of eight hundred full-time-equivalent
16 students on the eightieth and one hundred twentieth days of
17 the prior school year; 2) has at least seventy percent of its
18 students eligible for free or reduced-fee lunch; 3) has a
19 share of the total project cost, as calculated pursuant to
20 provisions of this section, that would be greater than fifty
21 percent; and 4) for all educational purposes, has a
22 residential property tax rate of at least seven dollars
23 (\$7.00) on each one thousand dollars (\$1,000) of taxable
24 value, as measured by the sum of all rates imposed by
25 resolution of the local school board plus rates set to pay

1 interest and principal on outstanding school district general
2 obligation bonds; or

3 (c) the school district: 1) has an
4 enrollment growth rate over the previous school year of at
5 least two and one-half percent; 2) pursuant to its five-year
6 facilities plan, will be building a new school within the
7 next two years; and 3) for all educational purposes, has a
8 residential property tax rate of at least ten dollars
9 (\$10.00) on each one thousand dollars (\$1,000) of taxable
10 value, as measured by the sum of all rates imposed by
11 resolution of the local school board plus rates set to pay
12 interest and principal on outstanding school district general
13 obligation bonds;

14 (12) the local match for the constitutional
15 special schools shall be set at fifty percent for projects
16 that qualify under the educational adequacy category and one
17 hundred percent for projects that qualify in the support
18 spaces category; provided that the council may adjust or
19 waive the amount of any direct appropriation offset to or
20 local share required for the constitutional special schools
21 if an applicant constitutional special school has
22 insufficient or no local resources available; and

23 (13) no application for grant assistance
24 from the fund shall be approved unless the council determines
25 that:

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

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

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

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

18 (e) the school district is willing and
19 able to pay any portion of the total cost of the public
20 school capital outlay project that, according to Paragraph
21 (5), (6), (8) or (9) of this subsection, is not funded with
22 grant assistance from the fund; provided that school district
23 funds used for a project that was initiated after September
24 1, 2002 when the statewide adequacy standards were adopted,
25 but before September 1, 2004 when the standards were first

1 used as the basis for determining the state and school
2 district share of a project, may be applied to the school
3 district portion required for that project;

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

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

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

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

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

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

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

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

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

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

9 E. In order to encourage private capital
10 investment in the construction of public school facilities,
11 the purchase of a privately owned school facility that is, at
12 the time of application, in use by a school district may be
13 considered a public school capital outlay project and
14 eligible for grant assistance pursuant to this section if the
15 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
21 at the facility to be purchased is at seventy-five percent or
22 greater of design capacity and the attendance at other
23 schools in the school district that the students at the
24 facility would otherwise attend is at eighty-five percent or
25 greater of design capacity; and

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

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

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

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

1 and segments of society most concerned with a particular
2 aspect of the council's work.

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

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