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SENATE BILL 229

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING NOTIFICATION TO CHARTER SCHOOLS OF PROPERTY AVAILABLE FOR THEIR EDUCATIONAL OPERATIONS; MODIFYING THE TERMS APPLICABLE TO GRANTS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR LEASED CLASSROOM FACILITIES; ADJUSTING THE AMOUNT OF LOCAL MATCH REQUIRED OF STATE-CHARTERED CHARTER SCHOOLS FOR CAPITAL OUTLAY PROJECTS UNDER THE PUBLIC SCHOOL CAPITAL OUTLAY ACT; SPECIFYING THE DATE BY WHICH CHARTER SCHOOLS MUST PROVIDE INFORMATION ON CAPITAL IMPROVEMENT PROJECTS PROPOSED FOR FUNDING THROUGH PROPERTY TAX IMPOSITION; AUTHORIZING RECONCILIATION OF MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW.

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

SECTION 1. Section 22-8B-4 NMSA 1978 (being Laws 1999, Chapter 281, Section 4, as amended) is amended to read:

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1 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
2 OPERATION.--

3 A. A charter school shall be subject to all federal
4 and state laws and constitutional provisions prohibiting
5 discrimination on the basis of disability, physical or mental
6 handicap, serious medical condition, race, creed, color, sex,
7 gender identity, sexual orientation, spousal affiliation,
8 national origin, religion, ancestry or need for special
9 education services.

10 B. A charter school shall be governed by a
11 governing body in the manner set forth in the charter contract;
12 provided that a governing body shall have at least five
13 members; and provided further that no member of a governing
14 body for a charter school that is initially approved on or
15 after July 1, 2005 or whose charter is renewed on or after July
16 1, 2005 shall serve on the governing body of another charter
17 school. No member of a local school board shall be a member of
18 a governing body for a charter school or employed in any
19 capacity by a locally chartered charter school located within
20 the local school board's school district during the term of
21 office for which the member was elected or appointed.

22 C. A charter school shall be responsible for:
23 (1) its own operation, including preparation
24 of a budget, subject to audits pursuant to the Audit Act; and
25 (2) contracting for services and personnel

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1 matters.

2 D. A charter school may contract with a school
3 district, a university or college, the state, another political
4 subdivision of the state, the federal government or one of its
5 agencies, a tribal government or any other third party for the
6 use of a facility, its operation and maintenance and the
7 provision of any service or activity that the charter school is
8 required to perform in order to carry out the educational
9 program described in its charter contract. Facilities used by
10 a charter school shall meet the standards required pursuant to
11 Section 22-8B-4.2 NMSA 1978.

12 E. A conversion school chartered before July 1,
13 2007 may choose to continue using the school district
14 facilities and equipment it had been using prior to conversion,
15 subject to the provisions of Subsection F of this section.

16 F. ~~[The]~~ A school district ~~[in which a charter~~
17 ~~school is geographically located shall provide a charter school~~
18 ~~with]~~ that has available land or one or more available
19 facilities ~~[for]~~ not currently used for other educational
20 purposes shall make the land and facilities available to the
21 [school's] charter schools located in the district for their
22 operations ~~[unless the facilities are currently used for other~~
23 ~~educational purposes]~~ and shall timely notify them of that
24 availability. The public school facilities authority shall
25 annually ensure that each school district with available land

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1 or one or more available facilities has provided that
2 notification. An agreement for the use of school district
3 facilities by a charter school may provide for reasonable lease
4 payments; provided that the payments do not exceed the sum of
5 the lease reimbursement rate provided in Subparagraph [~~(b)~~] (c)
6 of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978
7 plus any reimbursement for actual direct costs incurred by the
8 school district in providing the facilities; and provided
9 further that any lease payments received by a school district
10 may be retained by the school district and shall not be
11 considered to be cash balances in any calculation pursuant to
12 Section 22-8-41 NMSA 1978. The available facilities provided
13 by a school district to a charter school shall meet all
14 occupancy standards as specified by the public school capital
15 outlay council. As used in this subsection, "other educational
16 purposes" includes health clinics, daycare centers, teacher
17 training centers, school district administration functions and
18 other ancillary services related to a school district's
19 functions and operations.

20 G. A locally chartered charter school may pay the
21 costs of operation and maintenance of its facilities or may
22 contract with the school district to provide facility operation
23 and maintenance services.

24 H. Locally chartered charter school facilities are
25 eligible for state and local capital outlay funds and shall be

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1 included in the school district's five-year facilities plan.

2 I. A locally chartered charter school shall
3 negotiate with a school district to provide transportation to
4 students eligible for transportation under the provisions of
5 the Public School Code. The school district, in conjunction
6 with the charter school, may establish a limit for student
7 transportation to and from the charter school site not to
8 extend beyond the school district boundary.

9 J. A charter school shall be a nonsectarian,
10 nonreligious and non-home-based public school.

11 K. Except as otherwise provided in the Public
12 School Code, a charter school shall not charge tuition or have
13 admission requirements.

14 L. With the approval of the chartering authority, a
15 single charter school may maintain separate facilities at two
16 or more locations within the same school district; but, for
17 purposes of calculating program units pursuant to the Public
18 School Finance Act, the separate facilities shall be treated
19 together as one school.

20 M. A charter school shall be subject to the
21 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
22 Accountability Act.

23 N. Within constitutional and statutory limits, a
24 charter school may acquire and dispose of property; provided
25 that, upon termination of the charter, all assets of the

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1 locally chartered charter school shall revert to the local
2 school board and all assets of the state-chartered charter
3 school shall revert to the state, except that, if all or any
4 portion of a state-chartered charter school facility is
5 financed with the proceeds of general obligation bonds issued
6 by a local school board, the facility shall revert to the local
7 school board.

8 O. The governing body of a charter school may
9 accept or reject any charitable gift, grant, devise or bequest;
10 provided that no such gift, grant, devise or bequest shall be
11 accepted if subject to any condition contrary to law or to the
12 terms of the charter. The particular gift, grant, devise or
13 bequest shall be considered an asset of the charter school to
14 which it is given.

15 P. The governing body may contract and sue and be
16 sued. A local school board shall not be liable for any acts or
17 omissions of the charter school.

18 Q. A charter school shall comply with all state and
19 federal health and safety requirements applicable to public
20 schools, including those health and safety codes relating to
21 educational building occupancy.

22 R. A charter school is a public school that may
23 contract with a school district or other party for provision of
24 financial management, food services, transportation, facilities,
25 education-related services or other services. The governing

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1 body shall not contract with a for-profit entity for the
2 management of the charter school.

3 S. To enable state-chartered charter schools to
4 submit required data to the department, an accountability data
5 system shall be maintained by the department.

6 T. A charter school shall comply with all
7 applicable state and federal laws and rules related to
8 providing special education services. Charter school students
9 with disabilities and their parents retain all rights under the
10 federal Individuals with Disabilities Education Act and its
11 implementing state and federal rules. Each charter school is
12 responsible for identifying, evaluating and offering a free
13 appropriate public education to all eligible children who are
14 accepted for enrollment in that charter school. The state-
15 chartered charter school, as a local educational agency, shall
16 assume responsibility for determining students' needs for
17 special education and related services. The division may
18 promulgate rules to implement the requirements of this
19 subsection."

20 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
21 Chapter 235, Section 4, as amended) is amended to read:

22 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
23 USE.--

24 A. The "public school capital outlay fund" is
25 created. Balances remaining in the fund at the end of each

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1 fiscal year shall not revert.

2 B. Except as provided in Subsections G and I
3 through N of this section, money in the fund may be used only
4 for capital expenditures deemed necessary by the council for an
5 adequate educational program.

6 C. The council may authorize the purchase by the
7 public school facilities authority of portable classrooms to be
8 loaned to school districts to meet a temporary requirement.
9 Payment for these purchases shall be made from the fund. Title
10 to and custody of the portable classrooms shall rest in the
11 public school facilities authority. The council shall
12 authorize the lending of the portable classrooms to school
13 districts upon request and upon finding that sufficient need
14 exists. Application for use or return of state-owned portable
15 classroom buildings shall be submitted by school districts to
16 the council. Expenses of maintenance of the portable
17 classrooms while in the custody of the public school facilities
18 authority shall be paid from the fund; expenses of maintenance
19 and insurance of the portable classrooms while in the custody
20 of a school district shall be the responsibility of the school
21 district. The council may authorize the permanent disposition
22 of the portable classrooms by the public school facilities
23 authority with prior approval of the state board of finance.

24 D. Applications for assistance from the fund shall
25 be made by school districts to the council in accordance with

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1 requirements of the council. Except as provided in Subsection
2 K of this section, the council shall require as a condition of
3 application that a school district have a current five-year
4 facilities plan, which shall include a current preventive
5 maintenance plan to which the school adheres for each public
6 school in the school district.

7 E. The council shall review all requests for
8 assistance from the fund and shall allocate funds only for
9 those capital outlay projects that meet the criteria of the
10 Public School Capital Outlay Act.

11 F. Money in the fund shall be disbursed by warrant
12 of the department of finance and administration on vouchers
13 signed by the secretary of finance and administration following
14 certification by the council that an application has been
15 approved or an expenditure has been ordered by a court pursuant
16 to Section 22-24-5.4 NMSA 1978. At the discretion of the
17 council, money for a project shall be distributed as follows:

18 (1) up to ten percent of the portion of the
19 project cost funded with distributions from the fund or five
20 percent of the total project cost, whichever is greater, may be
21 paid to the school district before work commences with the
22 balance of the grant award made on a cost-reimbursement basis;
23 or

24 (2) the council may authorize payments
25 directly to the contractor.

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1 G. Balances in the fund may be annually
2 appropriated for the core administrative functions of the
3 public school facilities authority pursuant to the Public
4 School Capital Outlay Act, and, in addition, balances in the
5 fund may be expended by the public school facilities authority,
6 upon approval of the council, for project management expenses;
7 provided that:

8 (1) the total annual expenditures from the
9 fund for the core administrative functions pursuant to this
10 subsection shall not exceed five percent of the average annual
11 grant assistance authorized from the fund during the three
12 previous fiscal years; and

13 (2) any unexpended or unencumbered balance
14 remaining at the end of a fiscal year from the expenditures
15 authorized in this subsection shall revert to the fund.

16 H. The fund may be expended by the council for
17 building system repair, renovation or replacement initiatives
18 with projects to be identified by the council pursuant to
19 Section 22-24-4.6 NMSA 1978; provided that money allocated
20 pursuant to this subsection shall be expended within three
21 years of the allocation.

22 I. The fund [~~may~~] shall be expended annually by the
23 council for grants to school districts for the purpose of
24 making lease payments for classroom facilities, including
25 facilities leased by charter schools. The grants shall be made

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1 upon application by the school districts and pursuant to rules
2 adopted by the council; provided that an application on behalf
3 of a charter school shall be made by the school district, but,
4 if the school district fails to make an application on behalf
5 of a charter school, the charter school may submit its own
6 application. The following criteria shall apply to the grants:

7 (1) the amount of a grant [~~to a school~~
8 ~~district~~] shall not exceed:

9 (a) for a school district, the actual
10 annual lease payments owed for leasing classroom space for
11 schools, including charter schools, in the school district;

12 (b) for a charter school submitting its
13 own application, the actual annual lease payments owed for
14 leasing of classroom space for the charter school; or

15 [~~(b)~~] (c) seven hundred dollars (\$700)
16 multiplied by the [~~number of~~] MEM using the leased classroom
17 facilities [~~provided that in fiscal year 2009 and in each~~
18 ~~subsequent fiscal year this amount shall be~~] and adjusted by
19 the percentage change between the penultimate calendar year and
20 the immediately preceding calendar year of the consumer price
21 index for the United States, all items, as published by the
22 United States department of labor, unless that product, as
23 adjusted, equals less than the amount represented by Paragraph
24 (2) of this subsection;

25 (2) the amount of a grant shall not equal less

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1 than the cost of leased classroom facilities adequate to meet
2 the need of the school district or charter school at the
3 prevailing market rate, as determined by the public school
4 facilities authority, for those facilities in the school
5 district;

6 [~~(2)~~] (3) a grant received for the lease
7 payments of a charter school may be used by that charter school
8 as a state match necessary to obtain federal grants pursuant to
9 the federal No Child Left Behind Act of 2001;

10 [~~(3)~~] (4) at the end of each fiscal year, any
11 unexpended or unencumbered balance of the appropriation shall
12 revert to the fund;

13 [~~(4)~~] (5) no grant shall be made for lease
14 payments due pursuant to a financing agreement under which the
15 facilities may be purchased for a price that is reduced
16 according to the lease payments made unless:

17 (a) the agreement has been approved
18 pursuant to the provisions of the Public School Lease Purchase
19 Act; and

20 (b) the facilities are leased by a
21 charter school;

22 [~~(5)~~] (6) if the lease payments are made
23 pursuant to a financing agreement under which the facilities
24 may be purchased for a price that is reduced according to the
25 lease payments made, neither a grant nor any provision of the

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1 Public School Capital Outlay Act creates a legal obligation for
2 the school district or charter school to continue the lease
3 from year to year or to purchase the facilities nor does it
4 create a legal obligation for the state to make subsequent
5 grants pursuant to the provisions of this subsection; and

6 [~~(6)~~] (7) as used in this subsection:

7 (a) "MEM" means: 1) the average full-
8 time-equivalent enrollment using leased classroom facilities on
9 the eightieth and one hundred twentieth days of the prior
10 school year; or 2) in the case of an approved charter school
11 that has not commenced classroom instruction, the estimated
12 full-time-equivalent enrollment that will use leased classroom
13 facilities in the first year of instruction, as shown in the
14 approved charter school application; provided that, after the
15 eightieth day of the school year, the MEM shall be adjusted to
16 reflect the full-time-equivalent enrollment on that date; and

17 (b) "classroom facilities" or "classroom
18 space" includes the space needed, as determined by the minimum
19 required under the statewide adequacy standards, for the direct
20 administration of school activities.

21 J. In addition to other authorized expenditures
22 from the fund, up to one percent of the average grant
23 assistance authorized from the fund during the three previous
24 fiscal years may be expended in each fiscal year by the public
25 school facilities authority to pay the state fire marshal, the

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1 construction industries division of the regulation and
2 licensing department and local jurisdictions having authority
3 from the state to permit and inspect projects for expenditures
4 made to permit and inspect projects funded in whole or in part
5 under the Public School Capital Outlay Act. The public school
6 facilities authority may enter into contracts with the state
7 fire marshal, the construction industries division or the
8 appropriate local authorities to carry out the provisions of
9 this subsection. Such a contract may provide for initial
10 estimated payments from the fund prior to the expenditures if
11 the contract also provides for additional payments from the
12 fund if the actual expenditures exceed the initial payments and
13 for repayments back to the fund if the initial payments exceed
14 the actual expenditures. Money distributed from the fund to
15 the state fire marshal or the construction industries division
16 pursuant to this subsection shall be used to supplement, rather
17 than supplant, appropriations to those entities.

18 K. Pursuant to guidelines established by the
19 council, allocations from the fund may be made to assist school
20 districts in developing and updating five-year facilities plans
21 required by the Public School Capital Outlay Act; provided
22 that:

23 (1) no allocation shall be made unless the
24 council determines that the school district is willing and able
25 to pay the portion of the total cost of developing or updating

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1 the plan that is not funded with the allocation from the fund.
2 Except as provided in Paragraph (2) of this subsection, the
3 portion of the total cost to be paid with the allocation from
4 the fund shall be determined pursuant to the methodology in
5 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

6 (2) the allocation from the fund may be used
7 to pay the total cost of developing or updating the plan if:

8 (a) the school district has fewer than
9 an average of six hundred full-time-equivalent students on the
10 eightieth and one hundred twentieth days of the prior school
11 year; or

12 (b) the school district meets all of the
13 following requirements: 1) the school district has fewer than
14 an average of one thousand full-time-equivalent students on the
15 eightieth and one hundred twentieth days of the prior school
16 year; 2) the school district has at least seventy percent of
17 its students eligible for free or reduced-fee lunch; 3) the
18 state share of the total cost, if calculated pursuant to the
19 methodology in Paragraph (5) of Subsection B of Section 22-24-5
20 NMSA 1978, would be less than fifty percent; and 4) for all
21 educational purposes, the school district has a residential
22 property tax rate of at least seven dollars (\$7.00) on each one
23 thousand dollars (\$1,000) of taxable value, as measured by the
24 sum of all rates imposed by resolution of the local school
25 board plus rates set to pay interest and principal on

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1 outstanding school district general obligation bonds.

2 L. Upon application by a school district,
3 allocations from the fund may be made by the council for the
4 purpose of demolishing abandoned school district facilities;
5 provided that:

6 (1) the costs of continuing to insure an
7 abandoned facility outweigh any potential benefit when and if a
8 new facility is needed by the school district;

9 (2) there is no practical use for the
10 abandoned facility without the expenditure of substantial
11 renovation costs; and

12 (3) the council may enter into an agreement
13 with the school district under which an amount equal to the
14 savings to the district in lower insurance premiums are used to
15 reimburse the fund fully or partially for the demolition costs
16 allocated to the district.

17 M. Up to ten million dollars (\$10,000,000) of the
18 fund may be expended each year in fiscal years 2014 through
19 2019 for an education technology infrastructure deficiency
20 corrections initiative pursuant to Section 22-24-4.5 NMSA 1978;
21 provided that funding allocated pursuant to this section shall
22 be expended within three years of its allocation.

23 N. For each fiscal year from 2018 through 2022,
24 twenty-five million dollars (\$25,000,000) of the public school
25 capital outlay fund is reserved for appropriation by the

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1 legislature to the instructional material fund or to the
2 transportation distribution of the public school fund. The
3 secretary shall certify the need for the issuance of
4 supplemental severance tax bonds to meet an appropriation from
5 the public school capital outlay fund to the instructional
6 material fund or to the transportation distribution of the
7 public school fund. Any portion of an amount of the public
8 school capital outlay fund that is reserved for appropriation
9 by the legislature for a fiscal year, but that is not
10 appropriated before the first day of that fiscal year, may be
11 expended by the council as provided in this section."

12 SECTION 3. Section 22-24-5 NMSA 1978 (being Laws 1975,
13 Chapter 235, Section 5, as amended) is amended to read:

14 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
15 APPLICATION--GRANT ASSISTANCE.--

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

19 B. Except as provided in Sections 22-24-4.3,
20 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
21 govern grant assistance from the fund for a public school
22 capital outlay project not wholly funded pursuant to Section
23 22-24-4.1 NMSA 1978:

24 (1) all school districts are eligible to apply
25 for funding from the fund, regardless of percentage of

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1 indebtedness;

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

5 (a) the council shall apply the
6 standards to charter schools to the same extent that they are
7 applied to other public schools;

8 (b) the council may award grants
9 annually to school districts for the purpose of repairing,
10 renovating or replacing public school building systems in
11 existing buildings as identified in Section [~~3 of this 2015~~
12 ~~act~~] 22-24-4.6 NMSA 1978;

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

16 (d) 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), ~~(10)~~ or (11) of this subsection, the state share of a
16 project approved and ranked by the council shall be funded
17 within 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

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) or (11) of this subsection,
14 the amount to be distributed from the fund for an approved
15 project shall equal the total project cost multiplied by a
16 fraction the numerator of which is the value calculated for the
17 subject school district in the current year plus the value
18 calculated for that school district in each of the two
19 preceding years and 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; and 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~~
7 ~~located];~~

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

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

.209441.2

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

.209441.2

1 to become a state-chartered charter school;

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

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

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

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

19 (7) as used in this subsection:

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

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

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

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

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

23 (b) the school district: 1) has fewer
24 than an average of eight hundred full-time-equivalent students
25 on the eightieth and one hundred twentieth days of the prior

.209441.2

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

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

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

.209441.2

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1 amount of any direct appropriation offset to or local share
2 required for the constitutional special schools if an applicant
3 constitutional special school has insufficient or no local
4 resources available; ~~and~~

5 (11) the local match for state-chartered
6 charter schools shall be set at ten percent; and

7 ~~(11)~~ (12) no application for grant
8 assistance from the fund shall be approved unless the council
9 determines that:

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

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

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

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

.209441.2

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

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

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

22 C. After consulting with the public school capital
23 outlay oversight task force and other experts, the council
24 shall regularly review and update statewide adequacy standards
25 applicable to all school districts. The standards shall

.209441.2

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1 establish the acceptable level for the physical condition and
2 capacity of buildings, the educational suitability of
3 facilities and the need for education technology
4 infrastructure. Except as otherwise provided in the Public
5 School Capital Outlay Act, the amount of outstanding deviation
6 from the standards shall be used by the council in evaluating
7 and prioritizing public school capital outlay projects.

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

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

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

25 (3) the total project cost shall equal the

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1 total payments that would be due under the agreement if the
2 school district or charter school would eventually acquire
3 title to the facility;

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

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

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

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

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

25 (2) at the time of application, attendance at

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1 the facility to be purchased is at seventy-five percent or
2 greater of design capacity and the attendance at other schools
3 in the school district that the students at the facility would
4 otherwise attend is at eighty-five percent or greater of design
5 capacity; and

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

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

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

24 H. The council may establish committees or task
25 forces, not necessarily consisting of council members, and may

.209441.2

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

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

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

21 **SECTION 4.** Section 22-25-3 NMSA 1978 (being Laws 1975
22 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

23 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
24 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

25 A. A local school board may adopt a resolution to

.209441.2

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1 submit to the qualified electors of the school district the
2 question of whether a property tax should be imposed upon the
3 net taxable value of property allocated to the school district
4 under the Property Tax Code at a rate not to exceed that
5 specified in the resolution for the purpose of capital
6 improvements in the school district. The resolution shall:

7 (1) identify the capital improvements for
8 which the revenue proposed to be produced will be used;

9 (2) specify the rate of the proposed tax,
10 which shall not exceed two dollars (\$2.00) on each one thousand
11 dollars (\$1,000) of net taxable value of property allocated to
12 the school district under the Property Tax Code;

13 (3) specify the date an election will be held
14 to submit the question of imposition of the tax to the
15 qualified electors of the district; and

16 (4) limit the imposition of the proposed tax
17 to no more than six property tax years.

18 B. On or after July 1, 2009, a resolution submitted
19 to the qualified electors pursuant to Subsection A of this
20 section shall include capital improvements funding for a
21 locally chartered or state-chartered charter school located
22 within the school district if the charter school, [~~timely~~] by
23 August 1, provides the necessary information to the school
24 district for inclusion in the resolution that identifies the
25 capital improvements of the charter school for which the

.209441.2

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1 revenue proposed to be produced will be used."

2 SECTION 5. Section 22-26-3 NMSA 1978 (being Laws 1983,
3 Chapter 163, Section 3, as amended) is amended to read:

4 "22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
5 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

6 A. A local school board may adopt a resolution to
7 submit to the qualified electors of the school district the
8 question of whether a property tax at a rate not to exceed the
9 rate specified in the resolution should be imposed upon the net
10 taxable value of property allocated to the school district
11 under the Property Tax Code for the purpose of capital
12 improvements to public schools in the school district. The
13 resolution shall:

14 (1) identify the capital improvements for
15 which the revenue proposed to be produced will be used;

16 (2) specify the rate of the proposed tax,
17 which shall not exceed ten dollars (\$10.00) on each one
18 thousand dollars (\$1,000) of net taxable value of property
19 allocated to the school district under the Property Tax Code;

20 (3) specify the date an election will be held
21 to submit the question of imposition of the tax to the
22 qualified electors of the district; and

23 (4) limit the imposition of the proposed tax
24 to no more than six property tax years.

25 B. After July 1, 2007, a resolution submitted to

.209441.2

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1 the qualified electors pursuant to Subsection A of this section
2 shall include capital improvements funding for a locally
3 chartered or state-chartered charter school located within the
4 school district if:

5 (1) the charter school, [~~timely~~] by August 1,
6 provides the necessary information to the school district for
7 inclusion on the resolution that identifies the capital
8 improvements of the charter school for which the revenue
9 proposed to be produced will be used; and

10 (2) the capital improvements are included in
11 the five-year facilities plan:

12 (a) of the school district, if the
13 charter school is a locally chartered charter school; or

14 (b) of the charter school, if the
15 charter school is a state-chartered charter school."

16 **SECTION 6. TEMPORARY PROVISION--COMPILATION**

17 **INSTRUCTION--RECONCILIATION.--**If acts making amendments to
18 Section 22-24-4 NMSA 1978 are enacted by the first and second
19 sessions of the fifty-third legislature, the provisions of
20 those acts shall be reconciled and compiled in accordance with
21 the provisions of Section 12-1-8 NMSA 1978, notwithstanding
22 that the amendments were not made in the same session of the
23 legislature.

24 **SECTION 7. EFFECTIVE DATE.--**The effective date of the
25 provisions of this act is July 1, 2018.

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