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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CHANGING THE
CAPITAL OUTLAY FUNDING FORMULA FOR DETERMINATION OF
STATE-LOCAL MATCHES; 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
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"
means all facilities necessary to support the constitutional

1 special schools' educational mission that are not included in
2 the constitutional special schools' educational adequacy
3 standards, including performing arts centers, facilities for
4 athletic competition, school district administration and
5 facility and vehicle maintenance;

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

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

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

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

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

24 J. "school district" includes state-chartered
25 charter schools and the constitutional special schools;

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

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

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

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

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

21 B. Except as provided in Sections 22-24-4.3,
22 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
23 govern grant assistance from the fund for a public school
24 capital outlay project not wholly funded pursuant to Section
25 22-24-4.1 NMSA 1978:

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

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

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

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

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

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

24 (3) the council shall establish criteria to
25 be used in public school capital outlay projects that receive

1 grant assistance pursuant to the Public School Capital Outlay
2 Act. In establishing the criteria, the council shall
3 consider:

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

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

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

12 (d) any other financing or construction
13 concept that may maximize the dollar effect of the state
14 grant assistance;

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

19 (5) no later than May 1 of each calendar
20 year, the phase one formula shall be calculated for each
21 school district in accordance with the following procedure:

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

25 (b) the final prior year net taxable

1 value for the whole state divided by the MEM for the state is
2 calculated;

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

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

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

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

19 (g) the sum of the property tax mill
20 levies for the prior tax year imposed by each school district
21 on residential property pursuant to Chapter 22, Article 18
22 NMSA 1978, the Public School Capital Improvements Act, the
23 Public School Buildings Act, the Education Technology
24 Equipment Act and Paragraph (2) of Subsection B of Section
25 7-37-7 NMSA 1978 is calculated for each school district;

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

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

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

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

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

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

1 added to the value calculated pursuant to Subparagraph (f) of
2 this paragraph. Except as provided in Subparagraph (n) or
3 (o) of this paragraph, the sum equals the value for that
4 school district;

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

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

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

22 (q) as used in this paragraph:

23 1) "MEM" means the average full-time-equivalent enrollment of
24 students attending public school in a school district on the
25 eightieth and one hundred twentieth days of the prior school

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

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

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

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

1 for nonoperating purposes of a specific state-chartered
2 charter school, regardless of whether the charter school is a
3 state-chartered charter school at the time of the
4 appropriation or later opts to become a state-chartered
5 charter school;

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

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

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

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

24 (7) no later than May 1 of each calendar
25 year, the phase two formula shall be calculated for each

1 school district in accordance with the following procedure:

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

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

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

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

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

23 (f) in those instances in which the
24 calculation pursuant to Subparagraph (c) of this paragraph
25 yields a value less than ninety-hundredths, the phase two

1 formula value shall be one minus the value calculated in
2 Subparagraph (c) of this paragraph plus the school district
3 population density factor;

4 (8) except as provided in Paragraph (6),
5 (10), (11) or (12) of this subsection, the state share of a
6 project approved by the council shall be funded within
7 available resources pursuant to the provisions of this
8 paragraph. The school district calculation for grant awards
9 made in accordance with this section shall be pursuant to the
10 following procedure, except that in no case shall the state
11 share be less than six percent:

12 (a) for fiscal year 2020, 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 2021, 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 2022, 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 2023, 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 2024 and
8 thereafter, the school district calculation shall be the
9 calculation specified in Paragraph (7) of this subsection;

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 Section
13 22-24-5.3 NMSA 1978 and that is followed by each public
14 school in the district; 3) the capital needs of charter
15 schools located in the school district; and 4) projections
16 for the facilities needed in order to maintain a full-day
17 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), (10) or (11) 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 authority, the
4 council shall develop building standards for public school
5 facilities and shall promulgate other such rules as are
6 necessary to carry out the provisions of the Public School
7 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." _____