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SENATE BILL 76

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

Mimi Stewart

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AMENDING THE LOCAL  
SHARE ADJUSTMENT WAIVER REQUIREMENTS FOR SCHOOL DISTRICTS.

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

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

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

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

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

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1 22-24-4.1 NMSA 1978:

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

5 (2) priorities for funding shall be determined  
6 by using the statewide adequacy standards developed pursuant to  
7 Subsection C of this section; provided 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 risk  
21 or in which there is a threat of significant property damage,  
22 the council may award grant assistance for a project using  
23 criteria other than the statewide adequacy standards;

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

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1 grant assistance pursuant to the Public School Capital  
2 Outlay 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 outlay  
6 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 grant  
14 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 infrastructure;

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

21 (a) the sum of the final prior five  
22 years net taxable value for a school district multiplied by  
23 nine ten-thousandths for that school district is calculated for  
24 each school district;

25 (b) the maximum allowable gross square  
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1 foot per student multiplied by the replacement cost per square  
2 foot divided by forty-five is calculated for each school  
3 district;

4 (c) the value calculated pursuant to  
5 Subparagraph (a) of this paragraph divided by the value  
6 calculated pursuant to Subparagraph (b) of this paragraph is  
7 calculated for each school district;

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

12 (e) in those instances in which the  
13 calculation pursuant to Subparagraph (c) of this paragraph  
14 yields a value of ninety-hundredths or more but less than one,  
15 the phase two formula value shall be one minus the value  
16 calculated in Subparagraph (c) of this paragraph; and

17 (f) in those instances in which the  
18 calculation pursuant to Subparagraph (c) of this paragraph  
19 yields a value less than ninety-hundredths, the phase two  
20 formula value shall be one minus the value calculated in  
21 Subparagraph (c) of this paragraph plus the school district  
22 population density factor;

23 (6) the state share of a project approved by  
24 the council shall be funded within available resources pursuant  
25 to the provisions of this paragraph. Except as provided in

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1 Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to  
2 Paragraph (8), (9) or (10) of this subsection, the amount to be  
3 distributed from the fund for an approved project shall equal  
4 the total project cost multiplied by the following percentage,  
5 except that in no case shall the state share be less than six  
6 percent:

7 (a) for fiscal year 2024 through fiscal  
8 year 2026, the percentage shall be the phase two formula value  
9 plus a percentage equal to one-third of the difference between  
10 one and the phase two formula value; provided that, for school  
11 districts with fewer than 200 MEM, the percentage shall be the  
12 phase two formula value plus a percentage equal to one-half of  
13 the difference between one and the phase two formula; and

14 (b) for fiscal year 2027 and thereafter,  
15 the percentage shall be the phase two formula value;

16 (7) as used in this subsection:

17 (a) "governmental entity" includes an  
18 Indian nation, tribe or pueblo;

19 (b) "phase two formula value" for a  
20 state-chartered charter school means the phase two formula  
21 value calculated pursuant to Paragraph (5) of this subsection  
22 for the school district in which the state-chartered charter  
23 school is physically located;

24 (c) "subject school district" means the  
25 school district that has submitted the application for funding

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1 and in which the approved public school capital outlay project  
2 will be located; and

3 (d) "total project cost" means the total  
4 amount necessary to complete the public school capital outlay  
5 project less any insurance reimbursement received by the school  
6 district for the project;

7 (8) the amount calculated pursuant to  
8 Paragraph (6) of this subsection may be increased by an  
9 additional five percent if the council finds that the subject  
10 school district has been exemplary in implementing and  
11 maintaining a preventive maintenance program. The council  
12 shall adopt such rules as are necessary to implement the  
13 provisions of this paragraph;

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

19 (a) the school district has insufficient  
20 bonding capacity over the next four years to provide the local  
21 match necessary to complete the project and, for all  
22 educational purposes, has a residential property tax rate of at  
23 least ten dollars (\$10.00) on each one thousand dollars  
24 (\$1,000) of taxable value, as measured by the sum of all rates  
25 imposed by resolution of the local school board plus rates set

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

3 (b) the school district: 1) has fewer  
4 than an average of eight hundred full-time-equivalent students  
5 on the second and third reporting dates of the prior school  
6 year; 2) has at least seventy percent of its students eligible  
7 for free or reduced-fee lunch; 3) has a ~~[share of the total~~  
8 ~~project cost, as calculated pursuant to provisions of this~~  
9 ~~section]~~ phase two formula value calculated pursuant to  
10 Paragraph (5) of this subsection that would be greater than  
11 fifty percent; and 4) for all educational purposes, has a  
12 residential property tax rate of at least seven dollars (\$7.00)  
13 on each one thousand dollars (\$1,000) of taxable value, as  
14 measured by the sum of all rates imposed by resolution of the  
15 local school board plus rates set to pay interest and principal  
16 on outstanding school district general obligation bonds; or

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

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1 on outstanding school district general obligation bonds;

2 (10) the local match for the constitutional  
3 special schools shall be set at fifty percent for projects that  
4 qualify under the educational adequacy category and one hundred  
5 percent for projects that qualify in the support spaces  
6 category; provided that the council may adjust or waive the  
7 amount of any direct appropriation offset to or local share  
8 required for the constitutional special schools if an applicant  
9 constitutional special school has insufficient or no local  
10 resources available; and

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

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

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

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

21 (d) the school district has submitted a  
22 five-year facilities plan that includes: 1) enrollment  
23 projections; 2) a current preventive maintenance plan that has  
24 been approved by the council pursuant to Section 22-24-5.3 NMSA  
25 1978 and that is followed by each public school in the

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1 district; 3) the capital needs of charter schools located in  
2 the school district; and 4) projections for the facilities  
3 needed in order to maintain a full-day kindergarten program;

4 (e) the school district is willing and  
5 able to pay any portion of the total cost of the public school  
6 capital outlay project that, according to Paragraph (6), (8) or  
7 (9) of this subsection, is not funded with grant assistance  
8 from the fund;

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

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

19 C. After consulting with the public school capital  
20 outlay oversight task force and other experts, the council  
21 shall regularly review and update statewide adequacy standards  
22 applicable to all school districts. The standards shall  
23 establish the acceptable level for the physical condition and  
24 capacity of buildings, the educational suitability of  
25 facilities, the need for career-technical education facilities

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

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

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

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

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

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1 title to the facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 K. For any school district that received a  
20 standards- or systems-based award from the council in fiscal  
21 year 2023, the state share for any future phase of the project  
22 for which funding has not yet been awarded shall be the amount  
23 calculated pursuant to Subsection B of this section for fiscal  
24 year 2024, regardless of the state share at the time of the  
25 initial award.

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L. As used in this section:

(1) "MEM" means membership; and

(2) "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting."

SECTION 2. APPLICABILITY.--The provisions of this act apply to public school capital outlay awards made during the 2023-2024 awards cycle and subsequent award cycles.