

SENATE BILL 41

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Mimi Stewart

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; ELIMINATING LOCAL AND FEDERAL CREDITS WHEN DETERMINING THE STATE EQUALIZATION GUARANTEE DISTRIBUTION; CHANGING THE PHASE TWO FORMULA VALUE CALCULATION WHEN DETERMINING THE LOCAL AND STATE MATCH FOR CAPITAL OUTLAY PROJECTS; INCLUDING PROPOSED USE OF FEDERAL AND LOCAL REVENUE IN EDUCATIONAL PLANS AND REPORTING STUDENT OUTCOMES FROM THOSE USES; PROVIDING A CONTINGENT EFFECTIVE DATE.

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

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SECTION 1. Section 6-23-7 NMSA 1978 (being Laws 1993, Chapter 231, Section 7, as amended) is amended to read:

"6-23-7. PUBLIC SCHOOL UTILITY CONSERVATION FUND  
CREATED--USE.--

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the distribution of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the [~~superintendent of public instruction~~] secretary of public education shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to [~~Paragraph (7) of Subsection D of~~] Section 22-8-25 NMSA 1978 and shall certify that amount to the secretary of finance and administration. Distributions from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the [~~state department of~~] public

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education department solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the [~~superintendent of public instruction~~] secretary of public education that the disbursement is for a payment authorized by the Public Facility Energy Efficiency and Water Conservation Act.

E. The [~~superintendent of public instruction~~] secretary of public education shall submit to the legislative finance committee and the legislative education study committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of

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any fiscal year shall be transferred to the public school fund."

SECTION 2. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended by Laws 2019, Chapter 206, Section 8 and by Laws 2019, Chapter 207, Section 8) is amended to read:

"22-8-6. OPERATING BUDGETS--EDUCATIONAL PLANS--  
SUBMISSION--CERTAIN REPORTS--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district and any locally chartered charter school in the school district for the ensuing fiscal year.

B. The date for the submission of the operating budget for each school district and each charter school as required by this section may be extended to a later date fixed by the secretary.

C. The operating budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

D. The operating budget required by this section

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shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

E. For fiscal year 2021 and subsequent fiscal years, each school district's and each locally chartered or state-chartered charter school's educational plan shall include:

(1) information on the instructional time offered by the school district or charter school, including the number of instructional days by school site and the number of hours in each instructional day and the frequency of early-release days;

(2) a narrative explaining the identified services to improve the academic success of at-risk students;

(3) a narrative explaining the services provided to students enrolled in the following programs:

(a) extended learning time programs, including a report of how the extended learning time is used to improve the academic success of students and professional learning of teachers; and

(b) K-5 plus programs;

(4) a narrative explaining the school district's or charter school's beginning teacher mentorship

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programs as well as class size and teaching load information;

(5) a narrative explaining supplemental programs or services offered by the school district or charter school to ensure that the Bilingual Multicultural Education Act, the Indian Education Act and the Hispanic Education Act are being implemented by the school district or charter school;

(6) a narrative describing the amount of program cost generated for services to students with disabilities and the spending of these revenues on services to students with disabilities, which shall include the following:

(a) program cost generated for students enrolled in approved special education programs;

(b) budgeted expenditures of program cost, for students enrolled in approved special education programs, on students with disabilities;

(c) the amount of program cost generated for personnel providing ancillary and related services to students with disabilities;

(d) budgeted expenditures of program cost for personnel providing ancillary and related services to students with disabilities, on special education ancillary and related services personnel; and

(e) a description of the steps taken to ensure that students with disabilities have access to a free and appropriate public education; and

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(7) a common set of performance targets and performance measures, as determined by the department in consultation with the department of finance and administration, the legislative finance committee and the legislative education study committee.

F. In addition to the requirements of Subsection E of this section, a school district or charter school that receives federal or local revenue shall include in its educational plan a narrative explaining how the school district or charter school will use the federal or local revenue to improve outcomes for students. No later than October 1 of each year, a school district or charter school that received federal or local revenue in the prior fiscal year shall report to the department on the actual uses of that revenue, including a comprehensive evaluation of how the programs and services provided with that revenue improved outcomes for students. A school district or charter school that is required under federal law to consult with tribal entities as a condition of receiving impact aid shall include in its educational plan a detailed narrative of its consultations with tribal entities and the results of those consultations. The school district or charter school shall transmit the October 1 spending and outcomes report to the appropriate tribal authorities. No later than November 15 of each year, the department shall compile the federal and local revenue outcomes reports into a

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statewide report to the legislative education study committee and the legislative finance committee that includes an analysis and identification of effective programs and strategies that improve outcomes for students.

[F.] G. If a local school board or governing board of a charter school fails to submit an operating budget pursuant to this section, the department shall prepare the operating budget for the school district or charter school for the ensuing fiscal year. A local school board or governing board of a charter school shall be considered as failing to submit an operating budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or charter school or if the budget submitted does not comply with the law or with rules and procedures of the department.

H. As used in this section:

(1) "federal revenue" means revenue derived from:

(a) federal forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; or

(b) federal assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid funds"; and

(2) "local revenue" means revenue from a



school district one-half mill school district property tax and revenue from the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act."

SECTION 3. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--  
DEFINITIONS--DETERMINATION OF AMOUNT.--

~~[A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue including its local and federal revenues as defined in this section is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.~~

~~B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under~~

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~~the Oil and Gas Production Equipment Ad Valorem Tax Act.~~

~~G. "Federal revenue", as used in this section, means receipts to the school district or state-chartered charter school, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:~~

~~(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and~~

~~(2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid".~~

~~D.]~~ A. To determine the amount of the state equalization guarantee distribution, the department shall:

(1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on the second and third reporting dates of the prior year; or

(2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an

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average of the MEM on appropriate dates established by the department; or

(3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates of the prior year or the fortieth day of the current year, whichever is greater; ~~[and]~~

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the staffing cost multiplier from the October report of the prior school year, establish a total program cost of the school district or charter school;

~~[(5) for school districts and state-chartered charter schools, calculate the local and federal revenues as defined in this section;~~

~~(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;~~

~~(7)]~~ (5) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

~~[(8)]~~ (6) deduct ninety percent of the amount

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certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

~~[E-]~~ B. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

~~[F-]~~ C. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs ~~[(6) through (8)]~~ (5) and (6) of Subsection ~~[D]~~ A of this section.

D. The amount of the state equalization guarantee distribution to which a state-chartered charter school is entitled is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

~~[G-]~~ E. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. ~~[The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed]~~ In the event that a school district or charter

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school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund."

SECTION 4. Section 22-8-31 NMSA 1978 (being Laws 1967, Chapter 16, Section 84, as amended) is amended to read:

"22-8-31. STATE-SUPPORT RESERVE FUND.--

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to [~~insure~~] ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit in qualified banks and in savings and [~~loans~~] loan associations whose deposits are insured with an agency of the United States. The state treasurer may deposit money from the state-support reserve fund or any other fund in one or more accounts with any such bank or federally insured savings and loan association, but the state treasurer, in any official capacity, shall not deposit money from [~~said~~] that fund or any other fund in any one [~~such~~] federally insured savings and loan association the aggregate of which would

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exceed the amount of federal savings and loan insurance corporation insurance for a single public account. Income from these investments shall be periodically credited to the general fund.

D. At least forty-five days before the money is needed, the chief shall notify the state treasurer in writing of the amount that will be needed for distribution.

~~[E. In the event that local or federal revenues as defined in Section 77-6-19 NMSA 1953 are received after May 31 of the fiscal year for which the state equalization guarantee distribution is being computed and it is therefore necessary to use money from the state support reserve fund to augment the appropriation for the state equalization guarantee distribution, the chief, upon receipt by the school district of the delayed local or federal revenues, shall deduct the appropriate amount from the current state equalization guarantee distribution to that school district and reimburse the state support reserve fund in the amount of the deduction.]~~

F.] E. It is the intent of the legislature that the state-support reserve fund be reimbursed in the amount of the yearly distribution by appropriation in the year following the distribution so that the fund at the beginning of each fiscal year shall have a credit balance of at least ten million dollars (\$10,000,000).

~~[G.]~~ F. Distribution from ~~[this]~~ the state-support

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reserve fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution."

SECTION 5. 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 22-24-4.1 NMSA 1978:

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

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

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

(b) the council may award grants annually to school districts for the purpose of repairing,

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renovating or replacing public school building systems in existing buildings as identified in Section 22-24-4.6 NMSA 1978;

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

(d) the council may award school security system project grants to school districts pursuant to the provisions of Section 22-24-4.7 NMSA 1978; and

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

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

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

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

(c) concepts that promote efficient but



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flexible utilization of space; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) if the value calculated for a

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subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;

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

(m) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the value for that school district;

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

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

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(p) the phase one formula value shall equal a fraction the numerator of which is the value for the subject school district in the current year plus the value for that school district in each of the two preceding years and the denominator of which is three; and

(q) as used in this paragraph, "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the second and third reporting dates of the prior school year;

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

(a) the sum of the final prior five years net taxable value for a school district multiplied by nine [~~ten-thousandths~~] ten-thousandths for that school district is calculated for each school district;

(b) the value calculated pursuant to Subparagraph (a) of this paragraph is added to a value equal to any unrestricted revenue used to make capital outlay expenditures and the amount of any interfund transfers from an unrestricted fund into a fund restricted to capital outlay expenditures as certified by the department, averaged over the prior ten years;

~~(b)~~ (c) the maximum allowable gross square foot per student multiplied by the replacement cost per

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square foot divided by forty-five is calculated for each school district;

~~(e)~~ (d) the value calculated pursuant to Subparagraph ~~(a)~~ (b) of this paragraph divided by the value calculated pursuant to Subparagraph ~~(b)~~ (c) of this paragraph is calculated for each school district;

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

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

~~(f)~~ (g) in those instances in which the calculation pursuant to Subparagraph ~~(e)~~ (d) of this paragraph yields a value less than ninety-hundredths, the phase two formula value shall be one minus the value calculated in Subparagraph ~~(e)~~ (d) of this paragraph plus the school district population density factor;

(7) the state share of a project approved by the council shall be funded within available resources pursuant

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to the provisions of this paragraph. Except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (9), (10), (11) or (12) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by the following percentage, except that in no case shall the state share be less than six percent:

(a) for fiscal years prior to fiscal year 2020, the percentage shall be the phase one formula value;

(b) for fiscal year 2020, the percentage shall be the sum of eight-tenths multiplied by the phase one formula value and two-tenths multiplied by the phase two formula value;

(c) for fiscal year 2021, the percentage shall be the sum of six-tenths multiplied by the phase one formula value and four-tenths multiplied by the phase two formula value;

(d) for fiscal year 2022, the percentage shall be the sum of four-tenths multiplied by the phase one formula value and six-tenths multiplied by the phase two formula value;

(e) for fiscal year 2023, the percentage shall be the sum of two-tenths multiplied by the phase one formula value and eight-tenths multiplied by the phase two formula value; and

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(f) for fiscal year 2024 and thereafter,  
the percentage shall be the phase two formula value;

(8) as used in this subsection:

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

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

(c) "phase two formula value" for a  
state-chartered charter school means the phase two formula  
value calculated pursuant to Paragraph (6) of this subsection  
for the school district in which the state-chartered charter  
school is physically located;

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

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

(9) the amount to be distributed from the fund  
for an approved project pursuant to Paragraph (7) of this

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subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, is calculated; provided that: 1) an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education department that the school district is rejecting the appropriation; 2) the total shall exclude any education technology appropriation made prior to January 1, 2005 unless the appropriation was on or after January 1, 2003 and not previously used to offset distributions pursuant to the Technology for Education Act; 3) the total shall exclude any appropriation previously made to the subject school district that is reauthorized for expenditure by another recipient; 4) the total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current

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funding cycle, ranked in the top one hundred fifty projects statewide; 5) the total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. Pursuant to criteria adopted by rule of the council and based upon the proposed use of the capital project, the council shall determine the proportionate share to be used by the governmental entity and excluded from the total; and 6) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;

(b) the percentage used for the subject school district for the applicable fiscal year pursuant to Paragraph (7) of this subsection is subtracted from one;

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

(d) the total amount of reductions for

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the subject school district previously made pursuant to Subparagraph (e) of this paragraph for other approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (c) of this paragraph; and

(e) the amount to be distributed from the fund pursuant to Paragraph (7) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

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

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

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at

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least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

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

(c) the school district: 1) has an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next two years; and 3) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as

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measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

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

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

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

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

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

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has

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been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (7), (9), (10) or (11) of this subsection, is not funded with grant assistance from the fund;

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

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

C. After consulting with the public school capital outlay oversight task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and

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capacity of buildings, the educational suitability of facilities and the need for education technology infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

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

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

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

(3) the total project cost shall equal the total payments that would be due under the agreement if the

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school district or charter school would eventually acquire title to the facility;

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

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

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

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

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

(2) at the time of application, attendance at the facility to be purchased is at seventy-five percent or

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greater of design capacity and the attendance at other schools in the school district that the students at the facility would otherwise attend is at eighty-five percent or greater of design capacity; and

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

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

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

H. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies



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or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs, interest groups and segments of society most concerned with a particular aspect of the council's work.

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

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

SECTION 6. SEC→~~CONTINGENT EFFECTIVE DATE--NOTIFICATION TO THE~~←SEC SEC→EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 2021.←SEC SEC→NEW MEXICO COMPILATION COMMISSION AND THE LEGISLATURE.--

~~A. The provisions of this act shall be effective the later of July 1, 2021 or the date when both the dismissal~~

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~~of Zuni Public School District, et al. v. State of New Mexico, No. D-1113-CV-98-00014-11 and the withdrawal from the consolidated case of Martinez, et al. v. State of New Mexico, No. D-101-CV-2014-00793 and Yazzie, et al. v. State of New Mexico, No. D-101-CV-2014-02224 of all the school districts receiving grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid funds", has been accomplished.~~

~~B. The public education department shall notify the New Mexico compilation commission and the legislature of the effective date of this act based on the conditions provided in Subsection A of this section being met. Notice to the legislature shall be given by notice to the legislative council service.~~ ←SEC