

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL
PART 1 GENERAL PROVISIONS

6.27.1.1 ISSUING AGENCY: Public School Capital Outlay Council
[6.27.1.1 NMAC - N, 11/14/2000]

6.27.1.2 SCOPE: Public school capital outlay council and public school districts
[6.27.1.2 NMAC - N, 11/14/2000]

6.27.1.3 STATUTORY AUTHORITY: The Public School Capital Outlay Act, Sections 22-24-1 to 22-24-11 NMSA 1978.
[6.27.1.3 NMAC - N, 11/14/2000; A, 07/15/2010]

6.27.1.4 DURATION: Permanent
[6.27.1.4 NMAC - N, 11/14/2000]

6.27.1.5 EFFECTIVE DATE: November 14, 2000, unless a later date is cited at the end of a section.
[6.27.1.5 NMAC - N, 11/14/2000]

6.27.1.6 OBJECTIVE: The objective of the rule is to establish the definitions for rules filed in this chapter and rules for the general operation of the public school capital outlay council.
[6.27.1.6 NMAC - N, 11/14/2000; A, 07/15/2010]

6.27.1.7 DEFINITIONS: As used in this chapter:

- A. "public school facilities authority ("authority")" means that entity created under the public school capital outlay council pursuant to Subsection A of Section 22-24-9 NMSA 1978;
 - B. "council" means the public school capital outlay council;
 - C. "department" means the public education department;
 - D. "director" means the director of the public school facilities authority;
 - E. "secretary" means the secretary of public education; and
 - F. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes; for purposes of the rules within this chapter, references to "school district" or "district" shall also be applicable to state chartered charter schools, the New Mexico school for the blind and visually impaired ("NMSBVI") and the New Mexico school for the deaf ("NMSD").
- [6.27.1.7 NMAC - N, 11/14/2000; A, 06/15/2004; A, 07/15/2010]

6.27.1.8 NOTICE OF OPEN MEETINGS

- A. All meetings will be conducted pursuant to the provisions of the Open Meetings Act, Sections 10-15-1 to 10-15-4 NMSA 1978. At its first meeting of each fiscal year, the council will determine what notice to the public of its meetings is reasonable and will establish the schedule of its regular meetings.
- B. Notice of open meetings will be consistent with the open meetings resolution adopted by the council as follows.
 - (1) All meetings will be held in Santa Fe, New Mexico or as otherwise indicated on the meeting notice.
 - (2) At least ten (10) days notice will be given in advance of the meeting date. Notice requirements are met if notice of the date, time and place of the meeting and an agenda for the meeting, or information on how the public may obtain a copy of such an agenda, is placed in one newspaper of general circulation in the state. The council will also disseminate copies of the written notice to those broadcast stations licensed by the federal communications commission, newspapers of general circulation, local school district superintendents, and all others who have made a written request for notice of public meetings.
 - (3) Special meetings may be called by the chair or a majority of the members upon three (3) days notice. The council will disseminate copies of the written notice to those broadcast stations licensed by the federal communications commission and newspapers of general circulation that have made a written request for notice of public meetings by expedited mail, e-mail, FAX, or other expedited manner. The council will further disseminate

by e-mail or fax copies of the written notice to local school district superintendents and to others who have made a request for notice of public meetings.

(4) Emergency meetings will be called only under unforeseen circumstances that, if not addressed, will likely result in injury or damage to persons or property or substantial financial loss. Emergency meetings may be called by the chair or a majority of the members upon twenty-four (24) hours notice, unless threat of personal injury or property damage require less notice. The notice for all emergency meetings will include an agenda for the meeting or information on how the public may obtain a copy of the agenda. The council will disseminate copies of the written notice to those broadcast stations licensed by the federal communications commission and newspapers of general circulation that have made a written request for notice of public meetings by expedited mail, e-mail, FAX, or other expedited manner. The council will further disseminate by e-mail or fax copies of the written notice to local school district superintendents and to others who have made a request for notice of public meetings.

C. All notices will include the following language: If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact _____ at _____ at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact _____ at _____ if a summary or other type of accessible format is needed.

D. The council may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Subsection H of Section 10-15-1 NMSA 1978 of the Open Meetings Act. If any meeting is closed pursuant to the exclusions contained in Subsection H of Section 10-15-1 NMSA 1978 of the Open Meetings Act, the following requirements will be adhered to:

(1) if made in an open meeting, closure shall be approved by a majority vote of a quorum of the council; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting, the vote shall be taken in an open meeting, and the vote of each individual member shall be recorded in the minutes; only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the council is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public; and

(3) following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting; this statement shall be approved by the council as part of the minutes.

[6.27.1.8 NMAC - N, 11/14/2000; A, 08/31/05]

6.27.1.9 COUNCIL ORGANIZATION

A. A majority of the membership of the council constitutes a quorum.

B. The council will elect a chair and vice-chair. The chair and vice-chair will serve two-year terms.

If an interim vacancy results in the office of chair or vice-chair, the council will select an officer or officers to serve in the interim.

C. The chair will preside at council meetings and will have powers and duties including, but not limited to, the following:

(1) to rule on matters of parliamentary procedure;

(2) to execute documents approved by the council on behalf of the council;

(3) to coordinate with council staff; and

(4) to appoint subcommittees of the council as the chair deems necessary and advisable to enable the council to conduct its business in an efficient manner. Subcommittees will be composed of fewer than a quorum of the council membership and will make recommendations to the council on issues and matters as directed by the chair. Subcommittees will act in an advisory capacity to the council. Subcommittees may not take any final or binding action.

D. The vice-chair will serve in the absence of the chair.

E. If a council member is unable to attend a council meeting, the member may provide a written designation to the chair authorizing a specified individual to act on behalf of the council member for the meeting.

[6.27.1.9 NMAC - N, 11/14/2000; A, 06/15/04]

6.27.1.10 APPEALS

A. A school district aggrieved by a decision or recommendation of the authority that is not otherwise subject to review and final decision by the council may appeal the matter to the council.

B. The following procedures will govern appeals.

(1) An aggrieved district must file an appeal to the council within thirty (30) days of the authority's decision or recommendation.

(2) The notice of appeal, including a statement of the grounds upon which the school district is aggrieved, must be filed with the authority. The authority will forward the notice of appeal to the chair within two (2) working days of receipt of the notice of appeal.

(3) The chairperson will inform the school district and the authority of the date, time and location of the hearing. No later than five (5) days prior to the hearing, the school district and the authority will exchange documents that will be relied upon in making presentations to the council. The authority will duplicate all documents and make copies available to council members.

(4) At the hearing, the school district, the authority and other interested parties may make informal presentations to the council in accordance with rules of order established by the chair.

C. Notwithstanding Subsections A and B of this section, if a charter school requests that the school district appeal a decision or recommendation of the authority that is not otherwise subject to review and final decision by the council and which relates to a charter school facility and the school district does not file the appeal, the charter school may submit its appeal directly to the council. The charter school must submit its appeal no later than thirty (30) days after the expiration of the time period established in Paragraph (1) of Subsection B of this section.

D. The council will decide the matter within ten (10) days after the hearing and notify the school district and the authority of its decision.

E. The filing of an appeal will suspend any decision or recommendation of the authority pending a decision by the council.

[6.27.1.10 NMAC - N, 06/15/04]

HISTORY OF 6.27.1 NMAC: [RESERVED]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL
PART 2 PUBLIC SCHOOL FACILITIES AUTHORITY

6.27.2.1 ISSUING AGENCY: Public School Capital Outlay Council
[6.27.2.1 NMAC - N, 06/15/04]

6.27.2.2 SCOPE: Public school capital outlay council and public schools facilities authority
[6.27.2.2 NMAC - N, 06/15/04]

6.27.2.3 STATUTORY AUTHORITY: The Public School Capital Outlay Act, Sections 22-24-1 to 22-24-11 and 22-20-1 NMSA 1978.
[6.27.2.3 NMAC - N, 06/15/04; A, 07/15/10]

6.27.2.4 DURATION: Permanent
[6.27.2.4 NMAC - N, 06/15/04]

6.27.2.5 EFFECTIVE DATE: June 15, 2004, unless a later date is cited at the end of a section.
[6.27.2.5 NMAC - N, 06/15/04]

6.27.2.6 OBJECTIVE: The objective of the rule is to establish the general provisions for rules filed in this chapter.
[6.27.2.6 NMAC - N, 06/15/04]

6.27.2.7 DEFINITIONS: [Reserved]

6.27.2.8 GENERAL PROVISIONS: DIRECTOR

A. The council shall select the director of the authority, who shall serve at the pleasure of the council.
 (1) The director may hire no more than two deputy directors with the approval of the council. The deputy directors shall serve at the pleasure of the director.

 (2) The director shall hire, fire and otherwise take personnel actions for personnel as may be employed by the authority.

B. The director shall present an organizational chart and budget for the operation of the authority and the execution of the duties of the authority to the council for its review and approval at such times as directed by the council.

C. The director shall present an annual calendar and work schedule to the council at such time as directed by the council.

D. The director shall provide reports and other information as requested by the council.

[6.27.2.8 NMAC - N, 06/15/04]

6.27.2.9 AUTHORITY: DUTIES

A. The authority shall perform duties as provided by law and as directed by the council.

B. As required by law and rule, or in addition to such duties as set forth in law and rule, the authority shall:

 (1) consult with the secretary of public education or the secretary's designee prior to recommending building standards for public school facilities to the council;

 (2) maintain the statewide database that reflects the condition of each public school facility;

 (3) develop, implement and maintain a uniform web-based facility information management systems (FIMS);

 (4) assist public school districts with implementation and maintenance of FIMS;

 (5) account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee, the public school capital outlay oversight task force and the legislature; and

(6) administer all appropriations, monies, projects, contracts, agreements, records, property, equipment and supplies previously administered by the deficiencies correction unit of the public school capital outlay council.

C. Advise the council of the need to make allocations for emergencies that require immediate action by the authority to safeguard the health or safety of students or school personnel, or where there is a threat of significant property damage if immediate action is not taken. All applications for emergency capital outlay grant assistance must be submitted to the authority on the current, approved, and designated form, and which form shall be signed by the school board president, the school district superintendent and the regional manager of the authority for the region in which the school is located. As part of the application, a quorum of the school board submitting the application must meet either in a regular meeting or a special meeting called for the purpose of declaring an emergency. The school board, in addition to declaring an emergency, must certify that no other funds are available to address the emergency. Depending upon the amount of the emergency grant request, the following procedures shall apply.

(1) If the grant request is for \$150,000 or less, the director, with the approval of the council chair, may grant or advance up to \$150,000 for school district emergencies if it is determined by the director that sufficient district funds are not available. In instances where district cash flow or cash balances prevent available funds from being used for the emergency, emergency assistance may be offered in the form of an advance to be repaid as opposed to a grant.

(2) If the grant request is for more than \$150,000, consideration of the request must be by a quorum of the council in a public meeting. The district will be notified of when and where the meeting will be held and will be provided the opportunity to appear before the council to address the emergency funding request. In instances where district cash flow or cash balances prevent available funds from being used for the emergency, emergency assistance may be offered in the form of an advance to be repaid by the district.

[6.27.2.9 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

6.27.2.10 PRE-IMPLEMENTATION PHASE FOR PROJECTS FUNDED WHOLLY OR IN PART BY THE COUNCIL. The authority shall:

A. assist districts in developing scope of project, budget, timeline for completion and best procurement method based on final budget;

B. work with the school district to determine:

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

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

(3) any other financing or construction concept that may maximize the dollar effect of the state grant assistance, including competitive proposal contracts entered into pursuant to rules adopted through a public rulemaking process in accordance with the Procurement Code.

[6.27.2.10 NMAC - N, 06/15/04]

6.27.2.11 OVERSIGHT AND IMPLEMENTATION OF PROJECTS FUNDED WHOLLY OR IN PART BY THE COUNCIL

A. The authority shall:

(1) oversee the procurement process;

(2) require the use of standardized construction documents and the use of a standardized process for change orders;

(3) review plans and specifications for compliance with the statewide adequacy standards and all applicable codes and regulations;

(4) coordinate all required reviews and approvals;

(5) require standardized reporting and use of the construction information management system (CIMS) to monitor progress of projects;

(6) conduct periodic on-site inspections and inspection of documents to ensure compliance with project specifications;

(7) ensure timely payments for completed work;

(8) on or before the 12th month following substantial completion of the project or phase, the authority will schedule a review of all project expenditures that apply to both the scope of work and to the statewide adequacy standards to insure that the overall expenditures align with the match percentages after necessary offsets and waivers

as identified in the memorandum of understanding for the project; following mutual agreement on the overall and final financial project status, project balances will be reallocated by the council; all council awards must be fully reconciled and reallocated no later than eighteen (18) months after substantial completion; and

(9) maintain records for completed projects, including warranties.

B. Management and oversight involvement by the authority shall be either direct or indirect, depending on the degree of qualified personnel in the district and ability to provide proper oversight of the project. Even with respect to responsibilities granted to the district, the authority must be consulted and must approve the actions taken in order for the authority to authorize payment for the work.

C. The authority shall develop an agreement for each project defining the respective roles and responsibilities of the authority and the district. The process shall be defined in the district agreement and may include responsibilities for the following, which shall be accomplished through the use of standardized documents, procedures, and reports, the construction information management system (CIMS), and also include review, approval and payment for completed work at each phase.

(1) Pre-design phase:

- (a) assist districts in developing initial scope of project and budget;
- (b) assist districts in development of educational specifications where required; and
- (c) assist districts in developing the request for proposals for design professionals where

necessary.

(2) Design phase:

- (a) prepare or assist in developing contracts for design professionals, consultants and other required services;
- (b) final review and approval of the various submittal phases including but not limited to; program statement, schematic design, design development and construction documents for completeness;
- (c) periodic review and validation of scope of work, budget, schedule, value engineering, and plans and specifications;
- (d) issue or review invitation to bid;
- (e) assist or conduct pre-bid conference;
- (f) coordinate bid opening; and
- (g) review and evaluate bids.

(3) Construction phase:

- (a) prepare or assist in development of contracts for construction;
- (b) assist or conduct pre-construction conference;
- (c) coordinate weekly project meeting with architect, engineer, consultants, district personnel, contractors and sub-contractors;
- (d) provide interface for understanding of issues, disputes, and mediation;
- (e) review, approve and oversee changes to the work; and
- (f) periodic review and validation of work to insure conformance with contract and industry standards of quality.

(4) Project close-out:

- (a) verify all work complete;
- (b) coordinate operations and maintenance training;
- (c) review as-built drawings;
- (d) approve final close-out documents;
- (e) review warranties;
- (f) ensure final acceptance by district;
- (g) update facility information management system (FIMS) for new facilities and equipment;
- (h) ensure all required documents related to the projects are properly held and archived;
- (i) ensure that one-year warranty inspections are conducted and oversee any required repairs or remedies; and
- (j) schedule and conduct project budget closeout review with the district.

D. The authority shall report to the council concerning the progress of projects.

(1) The authority shall identify and make recommendations to the council concerning any substantial noncompliance with any reporting requirement or condition.

(2) The authority shall identify and make recommendations to the council regarding any misfeasance or malfeasance in the implementation of the project warranting the withholding of all or part of the grant assistance for the project.

[6.27.2.11 NMAC - N, 06/15/04; A, 07/15/10]

6.27.2.12 OTHER SCHOOL CONSTRUCTION PROJECTS; REQUIRED APPROVALS UNDER SECTION 22-20-1 NMSA 1978

A. Each local school board must secure the approval of the director or the director's designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. As used in this subsection, "construction" means any project for which the construction industries division of the regulation and licensing department (CID) requires permitting. A "related school structure" means a project involving any structure or part of a structure under the control of the local school district for which the construction industries division requires permitting.

B. Excepted from the requirements of Subsection A of this section, but not from permitting requirements of CID or other jurisdictions having authority are school construction projects with a value of \$200,000 or less, exclusive of gross receipts tax. For such projects, however, the local school board shall complete a notice of school construction, on the current, approved and designated form, which form shall be submitted to the authority at least ten (10) days prior to the construction or the letting of contracts for construction of the project. It shall be the responsibility of the local school board or its designee to obtain all required permits and approvals from local, state and federal agencies having jurisdiction over any portion of the proposed construction. Additionally, if the construction project involves the construction of new buildings or structures, additions to existing structures or the demolition of existing structures, the local school board or its designee shall submit to the authority a dimensioned or scaled floor plan and site plan showing the proposed construction and any building or structure to be demolished. The site plan shall illustrate the distance of the new construction or demolition from existing structures and shall be sufficiently detailed to provide an accurate representation of the proposed construction or demolition.

C. A written request for approval meeting the requirements of Subsection A of Section 22-20-1 NMSA 1978 must be submitted to the director on a form prescribed by the director. The form shall include an assurance that any contract for the construction of a public school facility, including contracts funded in whole or in part with insurance proceeds, shall contain provisions requiring the construction to be in compliance with the statewide adequacy standards.

D. The director or the director's designee shall approve the request if the director reasonably determines that the conditions set forth in Subsection B of Section 22-20-1 NMSA 1978 have been met, including:

- (1) certification by the secretary that the construction shall support the educational program of the school district; and
- (2) determination that the construction project is in compliance with the statewide adequacy standards.

E. Within thirty (30) days of receipt of the request for approval, the director or the director's designee shall notify the local school board and the department of the approval or disapproval of the request.

F. No local school board may construct, or cause the construction of, any public school building within four hundred (400) feet of any main artery of travel without the prior written approval of the department or its designee.

G. The authority will coordinate all required reviews and approvals.

[6.27.2.12 NMAC - N, 06/15/04; A, 08/31/05; A, 07/15/10]

HISTORY OF 6.27.2 NMAC: [RESERVED]