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SENATE BILL 333

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO PUBLIC SCHOOL DISTRICT AND CHARTER SCHOOL FACILITIES; REQUIRING PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL APPROVAL OF LEASE PAYMENTS; REQUIRING COUNCIL DEVELOPMENT AND IMPLEMENTATION OF A STANDARDIZED LEASE FORMAT; REQUIRING CHARTERING AUTHORITY OVERSIGHT OF CHARTER SCHOOL CONFLICT-OF-INTEREST DOCUMENTATION.

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

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

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

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental

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1 handicap, serious medical condition, race, creed, color, sex,  
2 gender identity, sexual orientation, spousal affiliation,  
3 national origin, religion, ancestry or need for special  
4 education services.

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

17 C. A charter school shall be responsible for:  
18 (1) its own operation, including preparation  
19 of a budget, subject to audits pursuant to the Audit Act; and  
20 (2) contracting for services and personnel  
21 matters.

22 D. A charter school may contract with a school  
23 district, a university or college, the state, another political  
24 subdivision of the state, the federal government or one of its  
25 agencies, a tribal government or any other third party for the

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1 use of a facility, its operation and maintenance and the  
2 provision of any service or activity that the charter school is  
3 required to perform in order to carry out the educational  
4 program described in its charter contract. Facilities used by  
5 a charter school shall meet the standards required pursuant to  
6 Section 22-8B-4.2 NMSA 1978.

7 E. A conversion school chartered before July 1,  
8 2007 may choose to continue using the school district  
9 facilities and equipment it had been using prior to conversion,  
10 subject to the provisions of Subsection F of this section.

11 F. The school district in which a charter school is  
12 geographically located shall provide a charter school with  
13 available facilities for the school's operations unless the  
14 facilities are currently used for other educational purposes.  
15 An agreement for the use of school district facilities by a  
16 charter school may provide for reasonable lease payments  
17 approved by the public school capital outlay council at the  
18 local market rate; provided that the payments do not exceed the  
19 sum of the lease reimbursement rate provided in Subparagraph  
20 (b) of Paragraph (1) of Subsection [±] J of Section 22-24-4  
21 NMSA 1978 plus any reimbursement for actual direct costs  
22 incurred by the school district in providing the facilities;  
23 and provided further that any lease payments received by a  
24 school district may be retained by the school district and  
25 shall not be considered to be cash balances in any calculation

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1 pursuant to Section 22-8-41 NMSA 1978. The available  
2 facilities provided by a school district to a charter school  
3 shall meet all occupancy standards as specified by the public  
4 school capital outlay council. As used in this subsection,  
5 "other educational purposes" includes health clinics, daycare  
6 centers, teacher training centers, school district  
7 administration functions and other ancillary services related  
8 to a school district's functions and operations.

9 G. A locally chartered charter school may pay the  
10 costs of operation and maintenance of its facilities or may  
11 contract with the school district to provide facility operation  
12 and maintenance services.

13 H. Locally chartered charter school facilities are  
14 eligible for state and local capital outlay funds and shall be  
15 included in the school district's five-year facilities plan.

16 I. A locally chartered charter school shall  
17 negotiate with a school district to provide transportation to  
18 students eligible for transportation under the provisions of  
19 the Public School Code. The school district, in conjunction  
20 with the charter school, may establish a limit for student  
21 transportation to and from the charter school site not to  
22 extend beyond the school district boundary.

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

25 K. Except as otherwise provided in the Public

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1 School Code, a charter school shall not charge tuition or have  
2 admission requirements.

3 L. With the approval of the chartering authority, a  
4 single charter school may maintain separate facilities at two  
5 or more locations within the same school district; but, for  
6 purposes of calculating program units pursuant to the Public  
7 School Finance Act, the separate facilities shall be treated  
8 together as one school.

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

12 N. Within constitutional and statutory limits, a  
13 charter school may acquire and dispose of property; provided  
14 that, upon termination of the charter, all assets of the  
15 locally chartered charter school shall revert to the local  
16 school board and all assets of the state-chartered charter  
17 school shall revert to the state, except that, if all or any  
18 portion of a state-chartered charter school facility is  
19 financed with the proceeds of general obligation bonds issued  
20 by a local school board, the facility shall revert to the local  
21 school board.

22 O. The governing body of a charter school may  
23 accept or reject any charitable gift, grant, devise or bequest;  
24 provided that no such gift, grant, devise or bequest shall be  
25 accepted if subject to any condition contrary to law or to the

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1 terms of the charter. The particular gift, grant, devise or  
2 bequest shall be considered an asset of the charter school to  
3 which it is given.

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

7 Q. A charter school shall comply with all state and  
8 federal health and safety requirements applicable to public  
9 schools, including those health and safety codes relating to  
10 educational building occupancy.

11 R. A charter school is a public school that may  
12 contract with a school district or other party for provision of  
13 financial management, food services, transportation, facilities,  
14 education-related services or other services. The governing  
15 body shall not contract with a for-profit entity for the  
16 management of the charter school.

17 S. To enable state-chartered charter schools to  
18 submit required data to the department, an accountability data  
19 system shall be maintained by the department.

20 T. A charter school shall comply with all  
21 applicable state and federal laws and rules related to  
22 providing special education services. Charter school students  
23 with disabilities and their parents retain all rights under the  
24 federal Individuals with Disabilities Education Act and its  
25 implementing state and federal rules. Each charter school is

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1 responsible for identifying, evaluating and offering a free  
2 appropriate public education to all eligible children who are  
3 accepted for enrollment in that charter school. The state-  
4 chartered charter school, as a local educational agency, shall  
5 assume responsibility for determining students' needs for  
6 special education and related services. The division may  
7 promulgate rules to implement the requirements of this  
8 subsection."

9 SECTION 2. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,  
10 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,  
11 as amended) is amended to read:

12 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

13 A. The facilities of a charter school that is  
14 approved on or after July 1, 2005 and before July 1, 2015 shall  
15 meet educational occupancy standards required by applicable New  
16 Mexico construction codes.

17 B. The facilities of a charter school whose charter  
18 has been renewed at least once shall be evaluated, prioritized  
19 and eligible for grants pursuant to the Public School Capital  
20 Outlay Act in the same manner as all other public schools in  
21 the state; provided that for charter school facilities in  
22 leased facilities, grants may be used to provide additional  
23 lease payments for leasehold improvements made by the lessor.

24 C. On or after July 1, 2011, a new charter school  
25 shall not open and an existing charter school shall not

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1 relocate unless the facilities of the new or relocated charter  
2 school, as measured by the New Mexico condition index, receive  
3 a condition rating equal to or better than the average  
4 condition for all New Mexico public schools for that year or  
5 the charter school [~~demonstrates~~] attains, within eighteen  
6 months of occupancy or relocation of the charter, [~~the way in~~  
7 ~~which the facilities will achieve~~] a rating equal to or better  
8 than the average New Mexico condition index.

9 D. On or after July 1, 2015, a new charter school  
10 shall not open and an existing charter shall not be renewed  
11 unless the charter school:

12 (1) is housed in a building that is:

13 (a) owned by the charter school, the  
14 school district, the state, an institution of the state,  
15 another political subdivision of the state, the federal  
16 government or one of its agencies or a tribal government; or

17 (b) subject to a lease-purchase  
18 arrangement that has been entered into and approved pursuant to  
19 the Public School Lease Purchase Act; or

20 (2) if it is not housed in a building  
21 described in Paragraph (1) of this subsection, demonstrates  
22 that:

23 (a) the facility in which the charter  
24 school is housed meets the statewide adequacy standards  
25 developed pursuant to the Public School Capital Outlay Act and

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1 the owner of the facility is contractually obligated to  
2 maintain those standards at no additional cost to the charter  
3 school or the state; and

4 (b) either: 1) public buildings are not  
5 available or adequate for the educational program of the  
6 charter school; or 2) the owner of the facility is a nonprofit  
7 entity specifically organized for the purpose of providing the  
8 facility for the charter school.

9 E. Without the approval of the public school  
10 facilities authority pursuant to Section 22-20-1 NMSA 1978, a  
11 charter school shall not enter into a lease-purchase agreement.

12 F. The public school capital outlay council:

13 (1) shall determine whether facilities of a  
14 charter school meet the educational occupancy standards  
15 pursuant to the requirements of Subsection A of this section  
16 or the requirements of Subsections B, C and D of this section,  
17 as applicable; and

18 (2) upon a determination that specific  
19 requirements are not appropriate or reasonable for a charter  
20 school, may grant a variance from those requirements for that  
21 charter school."

22 **SECTION 3.** Section 22-8B-5.2 NMSA 1978 (being Laws 2011,  
23 Chapter 14, Section 7) is amended to read:

24 "22-8B-5.2. GOVERNING BODY CONFLICTS OF INTEREST.--

25 A. A person shall not serve as a member of a

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1 governing body or as an employee of a charter school if the  
2 person or an immediate family member of the person is an owner,  
3 agent of, contractor with or otherwise has a financial interest  
4 in a for-profit or nonprofit entity with which the charter  
5 school contracts directly, for professional services, goods or  
6 facilities. A violation of this subsection renders the  
7 contract between the person or the person's immediate family  
8 member and the charter school [~~voidable at the option of the~~  
9 ~~chartering authority, the department or the governing body~~]  
10 void. A person who knowingly violates this subsection may be  
11 individually liable to the charter school for any financial  
12 damage caused by the violation.

13 B. No member of a governing body or employee,  
14 officer or agent of a charter school shall participate in  
15 selecting, awarding or administering a contract with the  
16 charter school if a conflict of interest exists. A conflict of  
17 interest exists when the member, employee, officer or agent or  
18 an immediate family member of the member, employee, officer or  
19 agent has a financial interest in the entity with which the  
20 charter school is contracting. A violation of this subsection  
21 renders the contract [~~voidable~~] void.

22 C. Any employee, agent or board member of the  
23 chartering authority who participates in the initial review,  
24 approval, ongoing oversight, evaluation or charter renewal  
25 process of a charter school is ineligible to serve on the

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1 governing body of the charter school chartered by the  
2 chartering authority.

3 D. As used in this section, "immediate family  
4 member" means spouse, father, father-in-law, mother, mother-in-  
5 law, son, son-in-law, daughter, daughter-in-law, brother,  
6 brother-in-law, sister, sister-in-law or any other relative who  
7 is financially supported."

8 SECTION 4. Section 22-8B-5.3 NMSA 1978 (being Laws 2011,  
9 Chapter 14, Section 8) is amended to read:

10 "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--  
11 LIABILITY.--A chartering authority shall:

12 A. evaluate charter applications;

13 B. actively pursue the utilization of charter  
14 schools to satisfy identified education needs and promote a  
15 diversity of educational choices;

16 C. approve charter applications that meet the  
17 requirements of the Charter Schools Act;

18 D. decline to approve charter applications that  
19 fail to meet the requirements of the Charter Schools Act or are  
20 otherwise inadequate;

21 E. negotiate and execute, in good faith, charter  
22 contracts that meet the requirements of the Charter Schools Act  
23 with each approved charter school;

24 F. monitor, in accordance with the requirements of  
25 the Charter Schools Act and the terms of the charter contract,

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1 the performance and legal compliance of charter schools under  
2 their authority;

3 G. determine whether a charter school merits  
4 suspension, revocation or nonrenewal; ~~and~~

5 H. develop and maintain chartering policies and  
6 practices consistent with nationally recognized principles and  
7 standards for quality charter authorizing in all major areas of  
8 authorizing, including:

9 (1) organizational capacity and  
10 infrastructure;

11 (2) evaluating charter applications;

12 (3) performance contracting;

13 (4) charter school oversight and evaluation;

14 and

15 (5) charter school suspension, revocation and  
16 renewal processes; and

17 I. annually review and approve all charter school  
18 conflict-of-interest disclosure statements."

19 SECTION 5. Section 22-24-4 NMSA 1978 (being Laws 1975,  
20 Chapter 235, Section 4, as amended) is amended to read:

21 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--  
22 USE.--

23 A. The "public school capital outlay fund" is  
24 created. Balances remaining in the fund at the end of each  
25 fiscal year shall not revert.

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1           B. Except as provided in Subsections G and [~~F~~] J  
2 through [~~H~~] M of this section, money in the fund may be used  
3 only for capital expenditures deemed necessary by the council  
4 for an adequate educational program.

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

23           D. Applications for assistance from the fund shall  
24 be made by school districts to the council in accordance with  
25 requirements of the council. Except as provided in Subsection

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

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

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

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

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

25 G. Balances in the fund may be annually

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

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

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

15 H. Up to ten million dollars (\$10,000,000) of the  
16 fund may be allocated annually by the council for expenditure  
17 in fiscal years 2010 through 2015 for a roof repair and  
18 replacement initiative with projects to be identified by the  
19 council pursuant to Section 22-24-4.3 NMSA 1978; provided that  
20 money allocated pursuant to this subsection shall be expended  
21 within two years of the allocation.

22 I. The council shall develop a standardized  
23 facility lease for use by all charter schools for all new  
24 leases, amendments and renewals entered into after July 1,  
25 2013.

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1           ~~[F.]~~ J. The fund may be expended annually by the  
2 council for grants to school districts for the purpose of  
3 making lease payments for classroom facilities, including  
4 facilities leased by charter schools. For leases, amendments  
5 and renewals entered into after July 1, 2013, these payments  
6 may reimburse only base rent for leases pre-approved by the  
7 council using the standardized lease format approved by the  
8 council. The grants shall be made upon application by the  
9 school districts and pursuant to rules adopted by the council;  
10 provided that an application on behalf of a charter school  
11 shall be made by the school district, but, if the school  
12 district fails to make an application on behalf of a charter  
13 school, the charter school may submit its own application. The  
14 following criteria shall apply to the grants:

15                   (1) the amount of a grant to a school district  
16 shall not exceed:

17                               (a) the actual annual lease payments  
18 owed for leasing classroom space for schools, including charter  
19 schools, in the district; or

20                               (b) seven hundred dollars (\$700)  
21 multiplied by the number of MEM using the leased classroom  
22 facilities; provided that in fiscal year 2009 and in each  
23 subsequent fiscal year, this amount shall be adjusted by the  
24 percentage change between the penultimate calendar year and the  
25 immediately preceding calendar year of the consumer price index

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1 for the United States, all items, as published by the United  
2 States department of labor;

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

7 (3) at the end of each fiscal year, any  
8 unexpended or unencumbered balance of the appropriation shall  
9 revert to the fund;

10 (4) no grant shall be made for lease payments  
11 due pursuant to a financing agreement under which the  
12 facilities may be purchased for a price that is reduced  
13 according to the lease payments made unless:

14 (a) the agreement has been approved  
15 pursuant to the provisions of the Public School Lease Purchase  
16 Act; and

17 (b) the facilities are leased by a  
18 charter school;

19 (5) if the lease payments are made pursuant to  
20 a financing agreement under which the facilities may be  
21 purchased for a price that is reduced according to the lease  
22 payments made, neither a grant nor any provision of the Public  
23 School Capital Outlay Act creates a legal obligation for the  
24 school district or charter school to continue the lease from  
25 year to year or to purchase the facilities nor does it create a

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1 legal obligation for the state to make subsequent grants  
2 pursuant to the provisions of this subsection; and

3 (6) as used in this subsection:

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

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

19 [~~J.~~] K. In addition to other authorized  
20 expenditures from the fund, up to one percent of the average  
21 grant assistance authorized from the fund during the three  
22 previous fiscal years may be expended in each fiscal year by  
23 the public school facilities authority to pay the state fire  
24 marshal, the construction industries division of the regulation  
25 and licensing department and local jurisdictions having

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

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

21 (1) no allocation shall be made unless the  
22 council determines that the school district is willing and able  
23 to pay the portion of the total cost of developing or updating  
24 the plan that is not funded with the allocation from the fund.  
25 Except as provided in Paragraph (2) of this subsection, the

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1 portion of the total cost to be paid with the allocation from  
2 the fund shall be determined pursuant to the methodology in  
3 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

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

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

25 [~~H-~~] M. Upon application by a school district,

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1 allocations from the fund may be made by the council for the  
2 purpose of demolishing abandoned school district facilities,  
3 provided that:

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

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

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