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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CLARIFYING THE
CALCULATION OF STATE AND LOCAL SHARES OF PROJECTS FUNDED FROM
THE PUBLIC SCHOOL CAPITAL OUTLAY FUND; AMENDING SECTIONS OF
THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO MAKE RELATED
CONFORMING TECHNICAL CHANGES.

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

SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,
Chapter 235, Section 4, as amended by Laws 2017, Chapter 142,
Section 1 and by Laws 2018, Chapter 71, Section 3) is amended
to read:

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

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

B. Except as provided in Subsections G and I
through O of this section, money in the fund may be used only
for capital expenditures deemed necessary by the council for
an adequate educational program.

C. The council may authorize the purchase by the
authority of portable classrooms to be loaned to school
districts to meet a temporary requirement. Payment for these
purchases shall be made from the fund. Title to and custody

1 of the portable classrooms shall rest in the authority. The
2 council shall authorize the lending of the portable
3 classrooms to school districts upon request and upon finding
4 that sufficient need exists. Application for use or return
5 of state-owned portable classroom buildings shall be
6 submitted by school districts to the council. Expenses of
7 maintenance of the portable classrooms while in the custody
8 of the authority shall be paid from the fund; expenses of
9 maintenance and insurance of the portable classrooms while in
10 the custody of a school district shall be the responsibility
11 of the school district. The council may authorize the
12 permanent disposition of the portable classrooms by the
13 authority with prior approval of the state board of finance.

14 D. Applications for assistance from the fund shall
15 be made by school districts to the council in accordance with
16 requirements of the council. Except as provided in
17 Subsection K of this section, the council shall require as a
18 condition of application that a school district have a
19 current five-year facilities plan, which shall include a
20 current preventive maintenance plan to which the school
21 adheres for each public school in the school district.

22 E. The council shall review all requests for
23 assistance from the fund and shall allocate funds only for
24 those capital outlay projects that meet the criteria of the
25 Public School Capital Outlay Act.

1 F. Money in the fund shall be disbursed by warrant
2 of the department of finance and administration on vouchers
3 signed by the secretary of finance and administration
4 following certification by the council that an application
5 has been approved or an expenditure has been ordered by a
6 court pursuant to Section 22-24-5.4 NMSA 1978. At the
7 discretion of the council, money for a project shall be
8 distributed as follows:

9 (1) up to ten percent of the portion of the
10 project cost funded with distributions from the fund or five
11 percent of the total project cost, whichever is greater, may
12 be paid to the school district before work commences with the
13 balance of the grant award made on a cost-reimbursement
14 basis; or

15 (2) the council may authorize payments
16 directly to the contractor.

17 G. Balances in the fund may be annually
18 appropriated for the core administrative functions of the
19 authority pursuant to the Public School Capital Outlay Act,
20 and, in addition, balances in the fund may be expended by the
21 authority, upon approval of the council, for project
22 management expenses; provided that:

23 (1) the total annual expenditures from the
24 fund for the core administrative functions pursuant to this
25 subsection shall not exceed five percent of the average

1 annual grant assistance authorized from the fund during the
2 three previous fiscal years; and

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

6 H. The fund may be expended by the council for
7 building system repair, renovation or replacement initiatives
8 with projects to be identified by the council pursuant to
9 Section 22-24-4.6 NMSA 1978; provided that money allocated
10 pursuant to this subsection shall be expended within three
11 years of the allocation.

12 I. The fund may be expended annually by the
13 council for grants to school districts for the purpose of
14 making lease payments for classroom facilities, including
15 facilities leased by charter schools. The grants shall be
16 made upon application by the school districts and pursuant to
17 rules adopted by the council; provided that an application on
18 behalf of a charter school shall be made by the school
19 district, but, if the school district fails to make an
20 application on behalf of a charter school, the charter school
21 may submit its own application. The following criteria shall
22 apply to the grants:

23 (1) the amount of a grant to a school
24 district shall not exceed:

25 (a) the actual annual lease payments

1 owed for leasing classroom space for schools, including
2 charter schools, in the school district; or

3 (b) seven hundred dollars (\$700)
4 multiplied by the MEM using the leased classroom facilities;
5 provided that in fiscal year 2009 and in each subsequent
6 fiscal year, this amount shall be adjusted by the percentage
7 change between the penultimate calendar year and the
8 immediately preceding calendar year of the consumer price
9 index for the United States, all items, as published by the
10 United States department of labor;

11 (2) a grant received for the lease payments
12 of a charter school may be used by that charter school as a
13 state match necessary to obtain federal grants pursuant to
14 the federal Every Student Succeeds Act;

15 (3) at the end of each fiscal year, any
16 unexpended or unencumbered balance of the appropriation shall
17 revert to the fund;

18 (4) no grant shall be made for lease
19 payments due pursuant to a financing agreement under which
20 the facilities may be purchased for a price that is reduced
21 according to the lease payments made unless:

22 (a) the agreement has been approved
23 pursuant to the provisions of the Public School Lease
24 Purchase Act; and

25 (b) the facilities are leased by a

1 charter school;

2 (5) if the lease payments are made pursuant
3 to a financing agreement under which the facilities may be
4 purchased for a price that is reduced according to the lease
5 payments made, neither a grant nor any provision of the
6 Public School Capital Outlay Act creates a legal obligation
7 for the school district or charter school to continue the
8 lease from year to year or to purchase the facilities nor
9 does it create a legal obligation for the state to make
10 subsequent grants pursuant to the provisions of this
11 subsection; and

12 (6) as used in this subsection:

13 (a) "MEM" means: 1) the average
14 full-time-equivalent enrollment using leased classroom
15 facilities on the second and third reporting dates of the
16 prior school year; or 2) in the case of an approved charter
17 school that has not commenced classroom instruction, the
18 estimated full-time-equivalent enrollment that will use
19 leased classroom facilities in the first year of instruction,
20 as shown in the approved charter school application; provided
21 that, after the second reporting date of the school year, the
22 MEM shall be adjusted to reflect the full-time-equivalent
23 enrollment on that date; and

24 (b) "classroom facilities" or
25 "classroom space" includes the space needed, as determined by

1 the minimum required under the statewide adequacy standards,
2 for the direct administration of school activities.

3 J. In addition to other authorized expenditures
4 from the fund, up to one percent of the average grant
5 assistance authorized from the fund during the three previous
6 fiscal years may be expended in each fiscal year by the
7 authority to pay the state fire marshal, the construction
8 industries division of the regulation and licensing
9 department and local jurisdictions having authority from the
10 state to permit and inspect projects for expenditures made to
11 permit and inspect projects funded in whole or in part under
12 the Public School Capital Outlay Act. The authority may
13 enter into contracts with the state fire marshal, the
14 construction industries division or the appropriate local
15 authorities to carry out the provisions of this subsection.
16 Such a contract may provide for initial estimated payments
17 from the fund prior to the expenditures if the contract also
18 provides for additional payments from the fund if the actual
19 expenditures exceed the initial payments and for repayments
20 back to the fund if the initial payments exceed the actual
21 expenditures. Money distributed from the fund to the state
22 fire marshal or the construction industries division pursuant
23 to this subsection shall be used to supplement, rather than
24 supplant, appropriations to those entities.

25 K. Pursuant to guidelines established by the

1 council, allocations from the fund may be made to assist
2 school districts in developing and updating five-year
3 facilities plans required by the Public School Capital Outlay
4 Act; provided that:

5 (1) no allocation shall be made unless the
6 council determines that the school district is willing and
7 able to pay the portion of the total cost of developing or
8 updating the plan that is not funded with the allocation from
9 the fund. Except as provided in Paragraph (2) of this
10 subsection, the portion of the total cost to be paid with the
11 allocation from the fund shall be determined pursuant to the
12 methodology in Subsection B of Section 22-24-5 NMSA 1978; or

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

15 (a) the school district has fewer than
16 an average of six hundred full-time-equivalent students on
17 the second and third reporting dates of the prior school
18 year; or

19 (b) the school district meets all of
20 the following requirements: 1) the school district has fewer
21 than an average of one thousand full-time-equivalent students
22 on the second and third reporting dates of the prior school
23 year; 2) the school district has at least seventy percent of
24 its students eligible for free or reduced-fee lunch; 3) the
25 state share of the total cost, if calculated pursuant to the

1 methodology in Subsection B of Section 22-24-5 NMSA 1978,
2 would be less than fifty percent; and 4) for all educational
3 purposes, the school district has a residential property tax
4 rate of at least seven dollars (\$7.00) on each one thousand
5 dollars (\$1,000) of taxable value, as measured by the sum of
6 all rates imposed by resolution of the local school board
7 plus rates set to pay interest and principal on outstanding
8 school district general obligation bonds.

9 L. Upon application by a school district,
10 allocations from the fund may be made by the council for the
11 purpose of demolishing abandoned school district facilities;
12 provided that:

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

16 (2) there is no practical use for the
17 abandoned facility without the expenditure of substantial
18 renovation costs; and

19 (3) the council may enter into an agreement
20 with the school district under which an amount equal to the
21 savings to the district in lower insurance premiums are used
22 to reimburse the fund fully or partially for the demolition
23 costs allocated to the district.

24 M. Up to ten million dollars (\$10,000,000) of the
25 fund may be expended each year for an education technology

1 infrastructure deficiency corrections initiative pursuant to
2 Section 22-24-4.5 NMSA 1978; provided that funding allocated
3 pursuant to this section shall be expended within three years
4 of its allocation.

5 N. For each fiscal year from 2018 through 2022,
6 twenty-five million dollars (\$25,000,000) of the fund is
7 reserved for appropriation by the legislature to the
8 instructional material fund or to the transportation
9 distribution of the public school fund. The secretary shall
10 certify the need for the issuance of supplemental severance
11 tax bonds to meet an appropriation from the public school
12 capital outlay fund to the instructional material fund or to
13 the transportation distribution of the public school fund.
14 Any portion of an amount of the public school capital outlay
15 fund that is reserved for appropriation by the legislature
16 for a fiscal year, but that is not appropriated before the
17 first day of that fiscal year, may be expended by the council
18 as provided in this section.

19 O. Up to ten million dollars (\$10,000,000) of the
20 fund may be expended in each of fiscal years 2019 through
21 2022 for school security system project grants made in
22 accordance with Section 22-24-4.7 NMSA 1978."

23 SECTION 2. Section 22-24-4.5 NMSA 1978 (being Laws
24 2014, Chapter 28, Section 4) is amended to read:

25 "22-24-4.5. EDUCATION TECHNOLOGY INFRASTRUCTURE

1 DEFICIENCY CORRECTIONS.--

2 A. No later than September 1, 2014, the council,
3 with the advice of the department and the department of
4 information technology, shall define and develop:

5 (1) minimum adequacy standards for an
6 education technology infrastructure deficiency corrections
7 initiative to identify and determine reasonable costs for
8 correcting education technology infrastructure deficiencies
9 in or affecting school districts;

10 (2) a methodology for prioritizing projects
11 to correct education technology infrastructure deficiencies
12 in or affecting school districts; and

13 (3) a methodology for determining a school
14 district's share of the project costs.

15 B. The council may approve allocations from the
16 fund pursuant to Subsection M of Section 22-24-4 NMSA 1978
17 and this section for projects in or affecting a school
18 district committing to pay its share of the project costs.
19 The council may adjust the school district's share of the
20 project costs in accordance with Paragraph (11) of Subsection
21 B of Section 22-24-5 NMSA 1978 or the methodology for
22 determining the school district's share of the project
23 costs."

24 SECTION 3. Section 22-24-4.6 NMSA 1978 (being Laws
25 2015, Chapter 93, Section 3) is amended to read:

1 "22-24-4.6. BUILDING SYSTEM REPAIR, RENOVATION OR
2 REPLACEMENT.--

3 A. The council shall develop guidelines for a
4 building system repair, renovation or replacement initiative
5 pursuant to the provisions of this section.

6 B. A school district desiring a grant award
7 pursuant to this section shall submit an application to the
8 council. The application shall include an assessment of the
9 building system that, in the opinion of the school district,
10 the repair, renovation or replacement of which would extend
11 the useful life of the building itself.

12 C. The authority shall verify the assessment made
13 by the school district and rank the application with similar
14 applications pursuant to a methodology adopted by the
15 council.

16 D. After a public hearing and to the extent that
17 money is available in the fund for such purposes, the council
18 shall approve building system repair, renovation or
19 replacement projects on the established priority basis;
20 provided that no project shall be approved unless the council
21 determines that the school district is willing and able to
22 pay the portion of the total cost of the project that is not
23 funded with grant assistance from the fund.

24 E. The state share of the cost of an approved
25 building system repair, renovation or replacement project

1 shall be calculated pursuant to the methodology in Subsection
2 B of Section 22-24-5 NMSA 1978.

3 F. A grant made pursuant to this section shall be
4 expended by the school district within three years of the
5 grant allocation."

6 SECTION 4. Section 22-24-4.7 NMSA 1978 (being Laws
7 2018, Chapter 71, Section 1) is amended to read:

8 "22-24-4.7. SCHOOL SECURITY SYSTEM PROJECTS.--

9 A. The council shall develop guidelines for a
10 school security system project grant initiative in accordance
11 with this section.

12 B. A school district seeking a grant for a school
13 security system project shall apply to the council on a form
14 that includes an assessment of a school's security system and
15 a statement of opinion by the school district that the
16 project would improve the security of the school's buildings,
17 property and occupants.

18 C. The authority shall verify the assessment made
19 by the school district and rank all applications it receives
20 for school security system project grants according to the
21 methodology adopted by the council for that purpose.

22 D. After a public hearing, and to the extent that
23 money is available in the fund for the purpose, the council
24 shall make school security system project grants to school
25 districts that the council determines are willing and able to

1 pay for the portion of the total project cost not funded with
2 grant assistance from the fund and according to those
3 applicants' ranking.

4 E. The state share of the cost of an approved
5 school security system project shall be calculated according
6 to the methodology outlined in Subsection B of Section
7 22-24-5 NMSA 1978.

8 F. A school district that receives a grant in
9 accordance with this section shall expend the grant money
10 within three years after the grant allocation. Money not
11 spent in that time shall revert to the fund."

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

14 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
15 APPLICATION--GRANT ASSISTANCE.--

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

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

25 (1) all school districts are eligible to

1 apply for funding from the fund, regardless of percentage of
2 indebtedness;

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

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

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

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

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

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

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

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

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

12 (c) concepts that promote efficient but
13 flexible utilization of space; and

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

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

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

25 (a) the final prior year net taxable

1 value for a school district divided by the MEM for that
2 school district is calculated for each school district;

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

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

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

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

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

22 (g) the sum of the property tax mill
23 levies for the prior tax year imposed by each school district
24 on residential property pursuant to Chapter 22, Article 18
25 NMSA 1978, the Public School Capital Improvements Act, the

1 Public School Buildings Act, the Education Technology
2 Equipment Act and Paragraph (2) of Subsection B of Section
3 7-37-7 NMSA 1978 is calculated for each school district;

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

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

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

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

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

25 (m) if the value calculated for a

1 subject school district pursuant to Subparagraph (j) of this
2 paragraph is five-tenths or greater, then the value
3 calculated pursuant to Subparagraph (l) of this paragraph is
4 added to the value calculated pursuant to Subparagraph (f) of
5 this paragraph. Except as provided in Subparagraph (n) or
6 (o) of this paragraph, the sum equals the value for that
7 school district;

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

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

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

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

25 (6) no later than May 1 of each calendar

1 year, the phase two formula value shall be calculated for
2 each school district in accordance with the following
3 procedure:

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

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

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

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

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

25 (f) in those instances in which the

1 calculation pursuant to Subparagraph (c) of this paragraph
2 yields a value less than ninety-hundredths, the phase two
3 formula value shall be one minus the value calculated in
4 Subparagraph (c) of this paragraph plus the school district
5 population density factor;

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

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

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

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

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

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

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

12 (8) as used in this subsection:

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

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

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

25 (d) "subject school district" means the

1 school district that has submitted the application for
2 funding and in which the approved public school capital
3 outlay project will be located; and

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

8 (9) the amount to be distributed from the
9 fund for an approved project pursuant to Paragraph (7) of
10 this subsection shall be reduced by the following procedure:

11 (a) the total of all legislative
12 appropriations made after January 1, 2003 for nonoperating
13 purposes either directly to the subject school district or to
14 another governmental entity for the purpose of passing the
15 money through directly to the subject school district, and
16 not rejected by the subject school district, is calculated;
17 provided that: 1) an appropriation made in a fiscal year
18 shall be deemed to be accepted by a school district unless,
19 prior to June 1 of that fiscal year, the school district
20 notifies the department of finance and administration and the
21 public education department that the school district is
22 rejecting the appropriation; 2) the total shall exclude any
23 education technology appropriation made prior to January 1,
24 2005 unless the appropriation was on or after January 1, 2003
25 and not previously used to offset distributions pursuant to

1 the Technology for Education Act; 3) the total shall exclude
2 any appropriation previously made to the subject school
3 district that is reauthorized for expenditure by another
4 recipient; 4) the total shall exclude one-half of the amount
5 of any appropriation made or reauthorized after January 1,
6 2007 if the purpose of the appropriation or reauthorization
7 is to fund, in whole or in part, a capital outlay project
8 that, when prioritized by the council pursuant to this
9 section either in the immediately preceding funding cycle or
10 in the current funding cycle, ranked in the top one hundred
11 fifty projects statewide; 5) the total shall exclude the
12 proportionate share of any appropriation made or reauthorized
13 after January 1, 2008 for a capital project that will be
14 jointly used by a governmental entity other than the subject
15 school district. Pursuant to criteria adopted by rule of the
16 council and based upon the proposed use of the capital
17 project, the council shall determine the proportionate share
18 to be used by the governmental entity and excluded from the
19 total; and 6) unless the grant award is made to the state-
20 chartered charter school or unless the appropriation was
21 previously used to calculate a reduction pursuant to this
22 paragraph, the total shall exclude appropriations made after
23 January 1, 2007 for nonoperating purposes of a specific
24 state-chartered charter school, regardless of whether the
25 charter school is a state-chartered charter school at the

1 time of the appropriation or later opts to become a state-
2 chartered charter school;

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

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

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

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

20 (10) the amount calculated pursuant to
21 Paragraph (7) of this subsection, after any reduction
22 pursuant to Paragraph (9) of this subsection, may be
23 increased by an additional five percent if the council finds
24 that the subject school district has been exemplary in
25 implementing and maintaining a preventive maintenance

1 program. The council shall adopt such rules as are necessary
2 to implement the provisions of this paragraph;

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

8 (a) the school district has
9 insufficient bonding capacity over the next four years to
10 provide the local match necessary to complete the project
11 and, for all educational purposes, has a residential property
12 tax rate of at least ten dollars (\$10.00) on each one
13 thousand dollars (\$1,000) of taxable value, as measured by
14 the sum of all rates imposed by resolution of the local
15 school board plus rates set to pay interest and principal on
16 outstanding school district general obligation bonds;

17 (b) the school district: 1) has fewer
18 than an average of eight hundred full-time-equivalent
19 students on the second and third reporting dates of the prior
20 school year; 2) has at least seventy percent of its students
21 eligible for free or reduced-fee lunch; 3) has a share of the
22 total project cost, as calculated pursuant to provisions of
23 this section, that would be greater than fifty percent; and
24 4) for all educational purposes, has a residential property
25 tax rate of at least seven dollars (\$7.00) on each one

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

5 (c) the school district: 1) has an
6 enrollment growth rate over the previous school year of at
7 least two and one-half percent; 2) pursuant to its five-year
8 facilities plan, will be building a new school within the
9 next two years; and 3) for all educational purposes, has a
10 residential property tax rate of at least ten dollars
11 (\$10.00) on each one thousand dollars (\$1,000) of taxable
12 value, as measured by the sum of all rates imposed by
13 resolution of the local school board plus rates set to pay
14 interest and principal on outstanding school district general
15 obligation bonds;

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

25 (13) no application for grant assistance

1 from the fund shall be approved unless the council determines
2 that:

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

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

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

11 (d) the school district has submitted a
12 five-year facilities plan that includes: 1) enrollment
13 projections; 2) a current preventive maintenance plan that
14 has been approved by the council pursuant to Section
15 22-24-5.3 NMSA 1978 and that is followed by each public
16 school in the district; 3) the capital needs of charter
17 schools located in the school district; and 4) projections
18 for the facilities needed in order to maintain a full-day
19 kindergarten program;

20 (e) the school district is willing and
21 able to pay any portion of the total cost of the public
22 school capital outlay project that, according to Paragraph
23 (7), (9), (10) or (11) of this subsection, is not funded with
24 grant assistance from the fund;

25 (f) the application includes the

1 capital needs of any charter school located in the school
2 district or the school district has shown that the facilities
3 of the charter school have a smaller deviation from the
4 statewide adequacy standards than other district facilities
5 included in the application; and

6 (g) the school district has agreed, in
7 writing, to comply with any reporting requirements or
8 conditions imposed by the council pursuant to Section
9 22-24-5.1 NMSA 1978.

10 C. After consulting with the public school capital
11 outlay oversight task force and other experts, the council
12 shall regularly review and update statewide adequacy
13 standards applicable to all school districts. The standards
14 shall establish the acceptable level for the physical
15 condition and capacity of buildings, the educational
16 suitability of facilities and the need for education
17 technology infrastructure. Except as otherwise provided in
18 the Public School Capital Outlay Act, the amount of
19 outstanding deviation from the standards shall be used by the
20 council in evaluating and prioritizing public school capital
21 outlay projects.

22 D. The acquisition of a facility by a school
23 district or charter school pursuant to a financing agreement
24 that provides for lease payments with an option to purchase
25 for a price that is reduced according to lease payments made

1 may be considered a public school capital outlay project and
2 eligible for grant assistance under this section pursuant to
3 the following criteria:

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

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

14 (3) the total project cost shall equal the
15 total payments that would be due under the agreement if the
16 school district or charter school would eventually acquire
17 title to the facility;

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

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

25 (6) neither a grant award nor any provision

1 of the Public School Capital Outlay Act creates a legal
2 obligation for the school district or charter school to
3 continue the lease from year to year or to purchase the
4 facility.

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

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

16 (2) at the time of application, attendance
17 at the facility to be purchased is at seventy-five percent or
18 greater of design capacity and the attendance at other
19 schools in the school district that the students at the
20 facility would otherwise attend is at eighty-five percent or
21 greater of design capacity; and

22 (3) the school district and the capital
23 outlay project meet all of the requirements for grant
24 assistance pursuant to the Public School Capital Outlay Act;
25 provided that, when determining the deviation from the

1 statewide adequacy standards for the purposes of evaluating
2 and prioritizing the project, the students using the facility
3 shall be deemed to be attending other schools in the school
4 district.

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

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

16 H. The council may establish committees or task
17 forces, not necessarily consisting of council members, and
18 may use the committees or task forces, as well as existing
19 agencies or organizations, to conduct studies, conduct
20 surveys, submit recommendations or otherwise contribute
21 expertise from the public schools, programs, interest groups
22 and segments of society most concerned with a particular
23 aspect of the council's work.

24 I. Upon the recommendation of the authority, the
25 council shall develop building standards for public school

1 facilities and shall promulgate other such rules as are
2 necessary to carry out the provisions of the Public School
3 Capital Outlay Act.

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

14 SECTION 6. Section 22-24-5.4 NMSA 1978 (being Laws
15 2004, Chapter 125, Section 10, as amended) is amended to
16 read:

17 "22-24-5.4. RECALCITRANT SCHOOL DISTRICTS--COURT ACTION
18 TO ENFORCE CONSTITUTIONAL COMPLIANCE--IMPOSITION OF PROPERTY
19 TAX.--

20 A. The council may bring an action against a
21 school district pursuant to the provisions of this section
22 if, based upon information submitted to the council by the
23 authority, the council determines that:

24 (1) the physical condition of a public
25 school facility in the school district is so inadequate that

1 the facility or the education received by students attending
2 the facility is below the minimum required by the
3 constitution of New Mexico;

4 (2) the school district is not taking the
5 necessary steps to bring the facility up to the
6 constitutionally required minimum; and

7 (3) either:

8 (a) the school district has not applied
9 for the grant assistance necessary to bring the facility up
10 to minimum constitutional standards; or

11 (b) the school district is unwilling to
12 meet all of the requirements for the approval of an
13 application for grant assistance pursuant to Paragraph (13)
14 of Subsection B of Section 22-24-5 NMSA 1978.

15 B. An action brought pursuant to this section
16 shall be brought by the council in the name of the state
17 against the school district in the district court for Santa
18 Fe county.

19 C. After a hearing and consideration of the
20 evidence, if the court finds that the council's determination
21 pursuant to Subsection A of this section was correct, the
22 court shall:

23 (1) order the council to expend sufficient
24 resources necessary to bring the facility up to the minimum
25 level required by the constitution of New Mexico;

1 (2) order the school district to comply with
2 Paragraph (13) of Subsection B of Section 22-24-5 NMSA 1978
3 and to take all other actions necessary to facilitate the
4 completion of the project ordered pursuant to Paragraph (1)
5 of this subsection; and

6 (3) enter a judgment against the school
7 district for court costs and attorney fees and the necessary
8 amount to satisfy the school district share, as determined by
9 the formula prescribed by Subsection B of Section 22-24-5
10 NMSA 1978, for the project ordered pursuant to Paragraph (1)
11 of this subsection.

12 D. The amount of a judgment entered against a
13 school district pursuant to Paragraph (3) of Subsection C of
14 this section is a public debt of the school district. If the
15 court finds that the debt cannot be satisfied with available
16 school district funds, other than funds needed for the
17 operation of the public schools and other existing
18 obligations, the court shall order the imposition of a
19 property tax on all taxable property allocated to the school
20 district at a rate sufficient to pay the judgment, with
21 accrued interest, within a reasonable time as determined by
22 the court. After paying court costs and attorney fees,
23 amounts received pursuant to this subsection shall be
24 deposited by the council into the fund."

25 SECTION 7. Section 22-24-5.7 NMSA 1978 (being Laws

1 2006, Chapter 95, Section 7) is amended to read:

2 "22-24-5.7. LOCAL MATCH PROVISIONS FOR QUALIFIED HIGH
3 PRIORITY PROJECTS.--

4 A. For a qualified high priority project, if money
5 has been specifically appropriated for the purposes of this
6 section, and if the school district so requests, the money
7 may be used to pay both the state share, as calculated by
8 Subsection B of Section 22-24-5 NMSA 1978 and all or a
9 portion of the district share, subject to the following
10 criteria:

11 (1) the amount paid as the district's share
12 plus any amount added pursuant to Paragraph (3) of this
13 subsection shall be recouped by offsetting future allocations
14 that otherwise would be made from the fund for the state
15 share of projects qualifying for a grant award pursuant to
16 Subsections B and C of Section 22-24-5 NMSA 1978;

17 (2) except as provided in Paragraph (6) of
18 this subsection, once a project within a district has been
19 funded pursuant to the provisions of this section, then,
20 until the amount paid as the district's share plus any amount
21 added pursuant to Paragraph (3) of this subsection is fully
22 recouped, no standard-based grant awards from the fund shall
23 be made to the district and the district shall be solely
24 responsible for using its local resources to bring those
25 facilities, that would otherwise be eligible for allocations

1 from the fund pursuant to Section 22-24-5 NMSA 1978, up to
2 the statewide adequacy standards;

3 (3) in determining the amount to be recouped
4 pursuant to Paragraphs (1) and (2) of this subsection, any
5 legislative appropriations for nonoperating purposes made
6 either directly to the school district or to another
7 governmental entity for the purpose of passing the money
8 directly to the school district and not rejected by the
9 school district shall be added to the amount advanced from
10 the fund as the district's share for a project;

11 (4) the amount to be recouped pursuant to
12 Paragraph (1) of this subsection may be reduced by payments
13 from the school district with cash balances and other
14 available district resources that may legally be used for
15 such payments;

16 (5) allocations from the fund for the
17 district share shall only be made if the council finds that
18 the school district is likely to complete the project within
19 thirty-six months after the allocation for the district share
20 is made available to the district; and

21 (6) notwithstanding the requirements of
22 Paragraph (2) of this section, two projects within a school
23 district may be funded pursuant to this section before the
24 recoupment process under that paragraph commences, if:

25 (a) both projects qualify pursuant to

1 the provisions of Paragraph (2) of Subsection B of this
2 section; or

3 (b) both projects qualify during the
4 same awards cycle, beginning on or after July 1, 2006.

5 B. As used in this section, "qualified high
6 priority project" means a project:

7 (1) that is approved for a grant award
8 pursuant to Section 22-24-5 NMSA 1978 during an awards cycle
9 occurring in 2006 and subsequent award cycles and is located
10 in a high-growth area, as designated by the council; or

11 (2) that was approved for a grant award
12 pursuant to Section 22-24-5 NMSA 1978 during the 2004-2005 or
13 2005-2006 awards cycle but for which the school district, as
14 of July 1, 2006, has not obtained funding for the district
15 share and is located in a high-growth area, as designated by
16 the council.

17 C. The council may designate an area that equals a
18 contiguous attendance area of one or more existing schools as
19 a "high-growth area" if the council determines that:

20 (1) within five years of the grant
21 allocation decision, the estimated occupancy rate of the
22 proposed new school would be seventy percent or more of the
23 design capacity;

24 (2) at the time of the application, the
25 attendance at the existing schools in the high-growth area

1 from which students at the new school will be drawn is above
2 design capacity; and

3 (3) for the period of five years after the
4 grant allocation decision the attendance at those existing
5 schools will be maintained at ninety-five percent or greater
6 of design capacity."

7 SECTION 8. Section 22-24-6.1 NMSA 1978 (being Laws
8 2007, Chapter 214, Section 1, as amended) is amended to read:

9 "22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
10 SCHOOL.--All of the provisions of the Public School Capital
11 Outlay Act apply to an application by a state-chartered
12 charter school for grant assistance for a capital project
13 except:

14 A. the portion of the cost of the project to be
15 paid from the fund shall be calculated pursuant to Subsection
16 B of Section 22-24-5 NMSA 1978 using data from the school
17 district in which the state-chartered charter school is
18 located; and

19 B. in calculating a reduction pursuant to
20 Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978,
21 the amount to be used in Subparagraph (a) of that paragraph
22 shall equal the total of all legislative appropriations made
23 after January 1, 2007 for nonoperating expenses either
24 directly to the charter school or to another governmental
25 entity for the purpose of passing the money through directly

1 to the charter school, regardless of whether the charter
2 school was a state-chartered charter school at the time of
3 the appropriation or later opted to become a state-chartered
4 charter school, except that the total shall not include any
5 such appropriation if, before the charter school became a
6 state-chartered charter school, the appropriation was
7 previously used to calculate a reduction pursuant to
8 Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978."

9 SECTION 9. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2019. _____

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