

SENATE BILL 131

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Mimi Stewart and Craig W. Brandt

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING THE PUBLIC SCHOOL FACILITIES AUTHORITY BUDGET TO BE BASED ON A FIVE-YEAR AVERAGE; ELIMINATING OFFSETS FOR SCHOOL DISTRICTS; REDUCING THE LOCAL MATCH BY ONE-THIRD FOR SOME SCHOOL DISTRICTS; REDUCING THE LOCAL MATCH BY ONE-HALF FOR CERTAIN SMALL SCHOOL DISTRICTS; ELIMINATING THE IMPACT AID CREDIT; ELIMINATING OFFSETS FOR CHARTER SCHOOLS; REDUCING THE LOCAL MATCH FOR PRE-KINDERGARTEN PROJECTS BY FIFTY PERCENT; PROVIDING TECHNICAL CLEANUP SFC

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~~MAKING APPROPRIATIONS~~ ← SFC .

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) 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 [Q] Q 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 of the portable classrooms shall rest in the authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the authority shall be paid from the fund; expenses of maintenance and

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insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the authority with prior approval of the state board of finance.

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

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

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

- (1) up to ten percent of the portion of the

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project cost funded with distributions from the fund or five percent of the total project cost, whichever is greater, may be paid to the school district before work commences with the balance of the grant award made on a cost-reimbursement basis; or

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

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

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

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

H. The fund may be expended by the council for building system repair, renovation or replacement initiatives with projects to be identified by the council pursuant to Section 22-24-4.6 NMSA 1978; provided that money allocated

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pursuant to this subsection shall be expended within three years of the allocation.

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

(1) the amount of a grant to a school district or charter school shall not exceed:

(a) the actual annual lease payments owed for leasing a facility; or

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

(2) a grant received for the lease payments of .223539.2AIC

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a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal Every Student Succeeds Act;

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

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

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

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

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

(6) as used in this subsection:

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

(b) "facilities" includes the space needed for school activities.

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract

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may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

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

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

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

(a) the school district has fewer than



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an average of six hundred full-time-equivalent students on the second and third reporting dates of the prior school year; or

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

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

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

(2) there is no practical use for the

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abandoned facility without the expenditure of substantial renovation costs; and

(3) the council may enter into an agreement with the school district to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied.

M. Up to ten million dollars (\$10,000,000) of the fund may be expended each year for an education technology infrastructure deficiency corrections initiative pursuant to Section 22-24-4.5 NMSA 1978; provided that funding allocated pursuant to this section shall be expended within three years of its allocation.

~~[N. For each fiscal year from 2018 through 2022, twenty-five million dollars (\$25,000,000) of the fund is reserved for appropriation by the legislature to the instructional material fund or to the transportation distribution of the public school fund. The secretary shall certify the need for the issuance of supplemental severance tax bonds to meet an appropriation from the public school capital outlay fund to the instructional material fund or to the transportation distribution of the public school fund. Any portion of an amount of the public school capital outlay fund that is reserved for appropriation by the legislature for a fiscal year, but that is not appropriated before the first day of that fiscal year, may be expended by the council as provided~~

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~~in this section.~~

~~0. Up to ten million dollars (\$10,000,000) of the fund may be expended in each of fiscal years 2019 through 2022 for school security system project grants made in accordance with Section 22-24-4.7 NMSA 1978.~~

P.] N. The fund may be expended in each of fiscal years 2020 through 2024 for a pre-kindergarten classroom facilities initiative project in accordance with Section 22-24-12 NMSA 1978.

[Q.] O. The council may fund pre-kindergarten classrooms with a qualifying, awarded standards-based project; provided that pre-kindergarten classroom space shall not be included in the project prioritization calculation adopted by the council pursuant to Section 22-24-5 NMSA 1978. The council shall develop pre-kindergarten classroom standards to use when funding pre-kindergarten space."

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

"22-24-4.5. EDUCATION TECHNOLOGY INFRASTRUCTURE DEFICIENCY CORRECTIONS.--

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

(1) minimum adequacy standards for an education technology infrastructure deficiency corrections

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initiative to identify and determine reasonable costs for correcting education technology infrastructure deficiencies in or affecting school districts;

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

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

B. The council shall develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment. The council may fund education technology infrastructure projects or items that the council determines are in accord with the guidelines and necessary to education for:

- (1) students;
- (2) school buses;
- (3) internet connectivity within a school district;
- (4) a multi-district regional education network; and
- (5) a statewide education network.

C. The council may approve allocations from the fund pursuant to Subsection M of Section 22-24-4 NMSA 1978 and this section for projects in or affecting a school district

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committing to pay its share of the project costs. The council may adjust the school district's share of the project costs in accordance with Paragraph [~~(11)~~] (9) of Subsection B of Section 22-24-5 NMSA 1978 or the methodology for determining the school district's share of the project costs."

**SECTION 3.** Section 22-24-5 NMSA 1978 (being Laws 1975, Chapter 235, Section 5, as amended) is amended to read:

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

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

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

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

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

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

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applied to other public schools;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~listed from highest to lowest;~~

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

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

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

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

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

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



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

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

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

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

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

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

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

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

~~(6)] (5) no later than May 1 of each calendar year, the phase two formula value shall be calculated for each school district in accordance with the following procedure:~~

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

~~[(b) the value calculated pursuant to Subparagraph (a) of this paragraph is added to the average unrestricted revenue used for capital expenditures pursuant to Subsection K of this section;~~

~~(e)] (b) the maximum allowable gross~~

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square foot per student multiplied by the replacement cost per square foot divided by forty-five is calculated for each school district;

~~[(d) in fiscal years 2022 through 2024]~~

(c) the value calculated pursuant to Subparagraph (a) of this paragraph divided by the value calculated pursuant to Subparagraph ~~[(e)]~~ (b) of this paragraph is calculated for each school district; ~~[and in fiscal year 2025 and subsequent fiscal years, the value calculated pursuant to Subparagraph (b) of this paragraph divided by the value calculated pursuant to Subparagraph (c) of this paragraph is calculated for each school district;~~

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

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

~~[(g)]~~ (f) in those instances in which the calculation pursuant to Subparagraph ~~[(d)]~~ (c) of this

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paragraph yields a value less than ninety-hundredths, the phase two formula value shall be one minus the value calculated in Subparagraph ~~[(d)]~~ (c) of this paragraph plus the school district population density factor;

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

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

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

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

~~(d) for fiscal year 2022, the percentage shall be the sum of four-tenths multiplied by the phase one~~

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~~formula value and six-tenths multiplied by the phase two formula value;~~

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

~~(f)] (a) for fiscal year 2024 [and thereafter] through fiscal year 2026, the percentage shall be the phase two formula value plus a percentage equal to one-third of the difference between one and the phase two formula value; provided that, for school districts with fewer than 200 MEM, the percentage shall be the phase two formula value plus a percentage equal to one-half of the difference between one and the phase two formula; and~~

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

~~(8)] (7) as used in this subsection:~~

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

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

~~(e)] (b) "phase two formula value" for a~~

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state-chartered charter school means the phase two formula value calculated pursuant to Paragraph ~~[(6)]~~ (5) of this subsection for the school district in which the state-chartered charter school is physically located;

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

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

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

~~(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, is calculated; provided that: 1) an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public~~

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~~education department that the school district is rejecting the appropriation; 2) the total shall exclude any education technology appropriation made prior to January 1, 2005 unless the appropriation was on or after January 1, 2003 and not previously used to offset distributions pursuant to the Technology for Education Act; 3) the total shall exclude any appropriation previously made to the subject school district that is reauthorized for expenditure by another recipient; 4) the total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred fifty projects statewide; 5) the total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. Pursuant to criteria adopted by rule of the council and based upon the proposed use of the capital project, the council shall determine the proportionate share to be used by the governmental entity and excluded from the total; and 6) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a~~

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~~reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;~~

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

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

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

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

~~(10)]~~ (8) the amount calculated pursuant to Paragraph [~~(7)]~~ (6) of this subsection [~~after any reduction pursuant to Paragraph (9) of this subsection]~~ may be increased



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by an additional five percent if the council finds that the subject school district has been exemplary in implementing and maintaining a preventive maintenance program. The council shall adopt such rules as are necessary to implement the provisions of this paragraph;

[~~(11)~~] (9) the council may adjust the amount of local share otherwise required if it determines that a school district has made a good-faith effort to use all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

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

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the second and third reporting dates of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a share of the total project cost, as calculated pursuant to provisions of this

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section, that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

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

[~~(12)~~] (10) the local match for the constitutional special schools shall be set at fifty percent for projects that qualify under the educational adequacy category and one hundred percent for projects that qualify in the support spaces category; provided that the council may adjust or waive the amount of any direct appropriation offset to or local share required for the constitutional special schools if an applicant constitutional special school has

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insufficient or no local resources available; and

~~[(13)]~~ (11) no application for grant assistance from the fund shall be approved unless the council determines that:

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

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

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

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

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph ~~[(7), (9), (10) or (11)]~~ (6), (8) or (9) of this subsection, is not funded with grant assistance from the fund;

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

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

C. After consulting with the public school capital outlay oversight task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities, the need for career-technical education facilities or classrooms and the need for education technology infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. The acquisition of a facility by a school district or charter school pursuant to a financing agreement that provides for lease payments with an option to purchase for

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a price that is reduced according to lease payments made may be considered a public school capital outlay project and eligible for grant assistance under this section pursuant to the following criteria:

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

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

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

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

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

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

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

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

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

(3) the school district and the capital outlay project meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act; provided that, when determining the deviation from the statewide adequacy standards for the purposes of evaluating and

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prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

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

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

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

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

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Capital Outlay Act.

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

~~[K. As used in this section, "unrestricted revenue used for capital expenditures" means the amount of revenue certified by the department that was not restricted for a particular purpose and used by a school district to make capital outlay expenditures, as defined by the council's rules. No later than July 1, 2024, the council shall adopt rules identifying the procedure for calculating unrestricted revenue used for capital expenditures after consulting with school districts, including school districts with limited bonding capacity for capital projects, the department, the public school capital outlay oversight task force, the legislative education study committee and the legislative finance committee; provided that the rules shall provide for the exclusion of revenue raised pursuant to the Public School Capital Improvements Act and the Public School Buildings Act~~



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~~and expenditures related to teacher housing. For the purposes of the phase two formula value pursuant to Paragraph (6) of Subsection B of this section, the average unrestricted revenue used for capital expenditures shall be calculated as follows:~~

~~(1) in fiscal year 2025, the amount shall be equal to unrestricted revenue used for capital expenditures in the most recent prior fiscal year for which data is available multiplied by 0.2;~~

~~(2) in fiscal year 2026, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the two most recent prior fiscal years for which data is available multiplied by 0.4;~~

~~(3) in fiscal year 2027, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the three most recent prior fiscal years for which data is available multiplied by 0.6;~~

~~(4) in fiscal year 2028, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the four most recent prior fiscal years for which data is available multiplied by 0.8; and~~

~~(5) in fiscal year 2029 and subsequent fiscal years, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the five most recent prior fiscal years for which data is available.]~~

K. For any school district that received a

standards- or systems-based award from the council in fiscal year 2023, the state share for any future phase of the project for which funding has not yet been awarded shall be the amount calculated pursuant to Subsection B of this section for fiscal year 2024, regardless of the state share at the time of the initial award.

L. As used in this section:

(1) "MEM" means membership; and

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

SECTION 4. Section 22-24-5.4 NMSA 1978 (being Laws 2004, Chapter 125, Section 10, as amended) is amended to read:

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

A. The council may bring an action against a school district pursuant to the provisions of this section if, based

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upon information submitted to the council by the authority, the council determines that:

(1) the physical condition of a public school facility in the school district is so inadequate that the facility or the education received by students attending the facility is below the minimum required by the constitution of New Mexico;

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

(3) either:

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

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

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

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

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

(2) order the school district to comply with Paragraph [~~(13)~~] (11) of Subsection B of Section 22-24-5 NMSA 1978 and to take all other actions necessary to facilitate the completion of the project ordered pursuant to Paragraph (1) of this subsection; and

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

D. The amount of a judgment entered against a school district pursuant to Paragraph (3) of Subsection C of this section is a public debt of the school district. If the court finds that the debt cannot be satisfied with available school district funds, other than funds needed for the operation of the public schools and other existing obligations, the court shall order the imposition of a property tax on all taxable property allocated to the school district at a rate sufficient to pay the judgment, with accrued interest, within a reasonable time as determined by the court. After paying court costs and attorney fees, amounts received pursuant to this

subsection shall be deposited by the council into the fund."

SECTION 5. Section 22-24-6.1 NMSA 1978 (being Laws 2007, Chapter 214, Section 1, as amended) is amended to read:

"22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER SCHOOL.--All of the provisions of the Public School Capital Outlay Act apply to an application by a state-chartered charter school for grant assistance for a capital project except [A.] the portion of the cost of the project to be paid from the fund shall be calculated pursuant to Subsection B of Section 22-24-5 NMSA 1978 using data from the school district in which the state-chartered charter school is located [and

~~B. in calculating a reduction pursuant to Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978, the amount to be used in Subparagraph (a) of that paragraph shall equal the total of all legislative appropriations made after January 1, 2007 for nonoperating expenses either directly to the charter school or to another governmental entity for the purpose of passing the money through directly to the charter school, regardless of whether the charter school was a state-chartered charter school at the time of the appropriation or later opted to become a state-chartered charter school, except that the total shall not include any such appropriation if, before the charter school became a state-chartered charter school, the appropriation was previously used to calculate a reduction pursuant to Paragraph (9) of Subsection B of Section 22-24-5~~

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~~NMSA 1978~~]."

SECTION 6. Section 22-24-12 NMSA 1978 (being Laws 2019, Chapter 179, Section 1) is amended to read:

"22-24-12. PRE-KINDERGARTEN CLASSROOM FACILITIES INITIATIVE.--

A. The council shall develop guidelines for a pre-kindergarten classroom facilities initiative in accordance with this section, including establishing and adopting pre-kindergarten classroom standards.

B. The authority shall rank all applications it receives for the pre-kindergarten classroom facilities initiative according to the methodology adopted by the council for that purpose.

C. After a public hearing, and to the extent that money is available in the fund for that purpose, the council may make pre-kindergarten classroom facilities initiative grants to school districts that the council determines are willing and able to pay for the portion of the total cost not funded with grant assistance from the fund according to those applicants' rankings.

D. The state share of the cost of an approved pre-kindergarten classroom facilities initiative project shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978; provided that, for fiscal years 2024 through 2026, the state share of an approved pre-

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kindergarten classroom facilities initiative project shall be the phase two formula value plus a percentage equal to one-half of the difference between one and the phase two formula value.

E. A school district that receives a grant in accordance with this section shall expend the money within three years after the grant allocation, or the money shall revert to the fund."

SECTION 7. Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

"22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

A. Except as provided in Subsection E of this section, for each year that a capital improvements tax is imposed by a school district, the secretary shall distribute from the public school capital improvements fund to the school district an amount equal to the greater of:

(1) the difference between:

(a) the product of: 1) the school district's program units; 2) multiplied by the tax rate imposed by the school district; and 3) multiplied further by the sum calculated pursuant to Subsection B of this section; and

(b) the school district's estimated tax revenue; or

(2) the product of:

(a) five dollars (\$5.00) for fiscal year

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2023; and in each subsequent fiscal year, the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor;

(b) multiplied by the school district's program units; and

(c) multiplied further by the tax rate imposed by the school district.

B. The amount in Item 3) of Subparagraph (a) of Paragraph (1) of Subsection A of this section shall be equal to the sum of:

(1) for fiscal year 2023, eighty-nine dollars twenty-five cents (\$89.25); and in each subsequent fiscal year, the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor; plus

(2) an additional amount certified to the secretary by the public school capital outlay council. No later than June 1 of each year, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay



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Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. If a distribution is made to a school district pursuant to Subsection A of this section, the secretary shall make an additional distribution from the public school capital improvements fund to the school district in an amount equal to the product of:

- (1) fifty-three dollars (\$53.00);
- (2) multiplied by the sum of the school district's program units;
- (3) multiplied further by the greater of six percent or the percentage calculated pursuant to Paragraph [~~4~~] (5) of Subsection B of Section 22-24-5 NMSA 1978; and
- (4) multiplied further by the tax rate imposed by the school district.

D. In expending distributions made pursuant to this section, school districts and charter schools shall give

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priority to maintenance projects, including payments under contracts with regional education cooperatives for maintenance support services. In addition, distributions made pursuant to this section may be expended by school districts and charter schools as follows, but no distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district:

(1) for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978; or

(2) for the school district portion of payments made under a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, if the school district has received a grant for the state share of the payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

E. In the event that sufficient funds are not available in the public school capital improvements fund to make the distributions pursuant to this section, the dollar per program unit figure shall be reduced as necessary.

F. A portion of each distribution made by the state pursuant to this section shall be further distributed by the school district to each locally chartered or state-chartered charter school located within the school district. The amount

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to be distributed to each charter school shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the second and third reporting dates of the prior school year is to the total such enrollment in the school district; provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and provided further that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year. Each year, the department shall certify to the school district the amount to be distributed to each charter school. Distributions received by a charter school pursuant to this subsection shall be expended pursuant to the provisions of the Public School Capital Improvements Act; except that if capital improvements for the charter school were not identified in a resolution approved by the electors, the charter school may expend the distribution for any capital improvements, including those specified in Subsection D of this section.

G. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner

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possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council.

H. As used in this section:

(1) "capital improvements tax" means the tax authorized pursuant to the Public School Capital Improvements Act;

(2) "estimated tax revenue" means the revenue estimated to be received by a school district from the capital improvements tax, using prior year valuations and assuming a one hundred percent collection rate;

(3) "program units" means a school district's final program units determined pursuant to Sections 22-8-19, 22-8-20 through 22-8-23.1 and 22-8-23.3 NMSA 1978 generated in the previous fiscal year, including such program units generated by a charter school located within the school district; and

(4) "tax rate" means the rate approved by the qualified electors in the most recent election on the question of imposing a tax pursuant to the Public School Capital Improvements Act."

**SECTION 8. TEMPORARY PROVISION--ELIMINATION OF CURRENT OFFSETS.--**All current outstanding offsets held against school districts or charter schools for a direct legislative

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appropriation shall be eliminated on the effective date of this act.

SFC→~~SECTION 9. APPROPRIATION.~~---

~~A. Twenty-five million dollars (\$25,000,000) is appropriated from the public school capital outlay fund to the public school facilities authority in accordance with any procedures established by the public school capital outlay council for expenditure in fiscal years 2024 through 2027 for distributions to school districts SFC→SEC→and charter schools←SEC←SFC to improve school security infrastructure. The public school facilities authority shall disburse the funds to school districts SFC→SEC→and charter schools←SEC←SFC in fiscal year 2024. The school districts SFC→SEC→and charter schools←SEC←SFC shall have until fiscal year 2027 to use the funds. Any unexpended or unencumbered balance remaining at the end of fiscal year 2027 shall revert to the public school capital outlay fund.~~

~~B. School security infrastructure may include:~~

- ~~(1) school surveillance systems;~~
- ~~(2) fencing;~~
- ~~(3) secure vestibules; or~~
- ~~(4) other capital infrastructure directly related to student safety.~~

~~C. The public school facilities authority shall~~

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~~make a distribution to each school district in fiscal year 2024 in a manner in which each school district receives the greater of fifty thousand dollars (\$50,000) or the percentage of the total appropriation equal to the percentage attributable to that school district from the total distributions made to school districts for fiscal year 2024 pursuant to the Public School Capital Improvements Act. SFC→SEC→The public school facilities authority shall make a distribution to each state-chartered charter school and locally chartered charter school of twenty-five thousand dollars (\$25,000).←SEC←SFC~~

~~D. A distribution provided to a school district SFC→SEC→or a charter school←SEC←SFC pursuant to the appropriation provided in this section shall not be subject to any local match or offset.~~

~~SECTION 10. APPROPRIATION.--~~

~~A. Seventy-five million dollars (\$75,000,000) is appropriated from the public school capital outlay fund to the public school facilities authority in accordance with any procedures established by the public school capital outlay council for expenditure in fiscal years 2024 through 2027 to make a distribution to each school district SFC→SEC→and charter school←SEC←SFC in fiscal year 2024 to construct, renovate and equip career-technical educational facilities and pre-kindergarten facilities or to maintain and repair public~~

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~~school buildings. Any unexpended or unencumbered balance remaining at the end of fiscal year 2027 shall revert to the public school capital outlay fund.~~

~~B. The public school facilities authority shall make the distribution to each school district in a manner such that each school district receives the greater of one hundred thousand dollars (\$100,000) or the percentage of the total appropriation equal to the percentage attributable to that school district from the total distributions made to school districts for fiscal year 2024 pursuant to the Public School Capital Improvements Act. SFC→SEC→The public school facilities authority shall make a distribution to each state-chartered charter school and locally chartered charter school of fifty thousand dollars (\$50,000).←SEC←SFC~~

~~C. A distribution provided to a school district SFC→SEC→or a charter school←SEC←SFC pursuant to the appropriation provided in this section shall not be subject to any local match or offset.←SFC~~

SECTION SFC→11.←SFC SFC→9.←SFC EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.