

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 432

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

AN ACT

RELATING TO SCHOOLS; REQUIRING A FACILITIES PLAN FOR ALL SCHOOL DISTRICTS; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO ALLOW EXPENDITURES FOR CERTAIN ABANDONED FACILITIES, FIVE-YEAR FACILITIES PLANS AND CORRECTION OF DEFICIENCIES AT CERTAIN STATE EDUCATIONAL INSTITUTIONS, TO CHANGE THE LIMITATIONS ON EXPENDITURES FOR CERTAIN LEASE PAYMENTS AND TO PROVIDE, UNDER CERTAIN CIRCUMSTANCES, A LOCAL MATCH PROVISION FOR QUALIFIED HIGH PRIORITY PROJECTS; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO INCREASE THE STATE DISTRIBUTION AND AUTHORIZE ADDITIONAL EXPENDITURES; EXEMPTING CERTAIN EMPLOYEES FROM THE PERSONNEL ACT; EASING CERTAIN RESTRICTIONS ON SCHOOL DISTRICT CASH BALANCES; PROVIDING START-UP COSTS FOR NEW SCHOOLS; PROVIDING FUNDING TO IMPROVE THE INDOOR AIR QUALITY OF PUBLIC SCHOOLS; PROVIDING FOR STUDIES OF CERTAIN LOCAL GOVERNMENT ACTIONS ON SCHOOL REVENUE AND OF ADDITIONAL

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1 CHARTERING AUTHORITIES FOR CHARTER SCHOOLS; ALLOWING THE PUBLIC  
2 SCHOOL FACILITIES AUTHORITY TO BE A CENTRAL PURCHASING OFFICE;  
3 PROVIDING FOR AN ONGOING FACILITY INFORMATION MANAGEMENT  
4 SYSTEM; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. Section 22-20-1 NMSA 1978 (being Laws 1967,  
8 Chapter 16, Section 270, as amended) is amended to read:

9 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC  
10 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY  
11 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

12 A. Each local school board shall secure the  
13 approval of the director of the public school facilities  
14 authority or the director's designee prior to the construction  
15 or letting of contracts for construction of any school building  
16 or related school structure or before reopening an existing  
17 structure that was formerly used as a school building but that  
18 has not been used for that purpose during the previous year. A  
19 written application shall be submitted to the director  
20 requesting approval of the construction, and, upon receipt, the  
21 director shall forward a copy of the application to the  
22 secretary. The director shall prescribe the form of the  
23 application, which shall include the following:

- 24 (1) a statement of need;  
25 (2) the anticipated number of students

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1 affected by the construction;

2 (3) the estimated cost;

3 (4) a description of the proposed construction  
4 project;

5 (5) a map of the area showing existing school  
6 attendance centers within a five-mile radius and any  
7 obstructions to attending the attendance centers, such as  
8 railroad tracks, rivers and limited-access highways; and

9 (6) such other information as may be required  
10 by the director.

11 B. The director or the director's designee shall  
12 give approval to an application if the director or designee  
13 reasonably determines that:

14 (1) the construction will not cause an  
15 unnecessary proliferation of school construction;

16 (2) the construction is needed in the school  
17 district;

18 (3) the construction is feasible;

19 (4) the cost of the construction is  
20 reasonable;

21 (5) the school district has submitted a five-  
22 year facilities plan that includes:

23 (a) enrollment projections;

24 (b) a current preventive maintenance  
25 plan;

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1                                    (c) the capital needs of charter schools  
2 located in the school district; and

3                                    (d) projections for the facilities  
4 needed in order to maintain a full-day kindergarten program;

5                                    [~~5~~] (6) the construction project:

6                                    (a) is in compliance with the statewide  
7 adequacy standards adopted pursuant to the Public School  
8 Capital Outlay Act; and

9                                    (b) [~~if relevant~~] is appropriately  
10 integrated into the school district [~~master~~] five-year  
11 facilities plan;

12                                    [~~6~~] (7) the school district is financially  
13 able to pay for the construction; and

14                                    [~~7~~] (8) the secretary has certified that the  
15 construction will support the educational program of the school  
16 district.

17                                    C. Within thirty days after the receipt of an  
18 application filed pursuant to this section, the director or the  
19 director's designee shall in writing notify the local school  
20 board making the application and the department of approval or  
21 disapproval of the application.

22                                    D. A local school board shall not enter into a  
23 contract for the construction of a public school facility,  
24 including contracts funded with insurance proceeds, unless the  
25 contract contains provisions requiring the construction to be

1 in compliance with the statewide adequacy standards adopted  
2 pursuant to the Public School Capital Outlay Act, provided  
3 that, for a contract funded in whole or in part with insurance  
4 proceeds:

5 (1) the cost of settlement of any insurance  
6 claim shall not be increased by inclusion of the insurance  
7 proceeds in the construction contract; and

8 (2) insurance claims settlements shall  
9 continue to be governed by insurance policies, memoranda of  
10 coverage and rules related to them.

11 E. Public school facilities shall be constructed  
12 pursuant to state standards or codes promulgated pursuant to  
13 the Construction Industries Licensing Act and rules adopted  
14 pursuant to Section 59A-52-15 NMSA 1978 for the prevention and  
15 control of fires in public occupancies. Building standards or  
16 codes adopted by a municipality or county do not apply to the  
17 construction of public school facilities, except those  
18 structures constructed as a part of an educational program of a  
19 school district.

20 F. The provisions of Subsection E of this section  
21 relating to fire protection shall not be effective until the  
22 public regulation commission has adopted the International Fire  
23 Code and all standards related to that code.

24 G. As used in this section, "construction" means  
25 any project for which the construction industries division of

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1 the regulation and licensing department requires permitting."

2 Section 2. Section 22-8-41 NMSA 1978 (being Laws 1967,  
3 Chapter 16, Section 99, as amended) is amended to read:

4 "22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY  
5 ACCOUNTS--CASH BALANCES.--

6 A. A school district shall not expend money from  
7 its operational fund for the acquisition of a building site or  
8 for the construction of a new structure, unless the school  
9 district has bonded itself to practical capacity or the  
10 secretary determines and certifies to the legislative finance  
11 committee that the expending of money from the operational fund  
12 for this purpose is necessary for an adequate public  
13 educational program and will not unduly hamper the school  
14 district's current operations.

15 B. A school district or charter school may budget  
16 out of cash balances carried forward from the previous fiscal  
17 year an amount not to exceed five percent of its proposed  
18 operational fund expenditures for the ensuing fiscal year as an  
19 emergency account. Money in the emergency account shall be  
20 used only for unforeseen expenditures incurred after the annual  
21 budget was approved and shall not be expended without the prior  
22 written approval of the secretary.

23 C. In addition to the emergency account, school  
24 districts or charter schools may also budget operational fund  
25 cash balances carried forward from the previous fiscal year for

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1 operational expenditures, exclusive of salaries and payroll,  
 2 upon specific prior approval of the secretary. The secretary  
 3 shall notify the legislative finance committee in writing of  
 4 ~~[his]~~ the secretary's approval of such proposed expenditures.  
 5 For fiscal years 2004 and 2005, with the approval of the  
 6 secretary, a school district or charter school may budget so  
 7 much of its operational cash balance as is needed for  
 8 nonrecurring expenditures, including capital outlay.

9 D. ~~[Notwithstanding the provisions of Subsection C~~  
 10 ~~of this section]~~ Beginning with fiscal year ~~[2006]~~ 2007, prior  
 11 to approval of a school district's or charter school's budget,  
 12 the secretary shall verify that the reductions from the state  
 13 equalization guarantee distribution have been taken pursuant to  
 14 this section.

15 E. The allowable limit for a school district's or  
 16 charter school's ending operational cash balance is:

17 (1) if the current year program cost is less  
 18 than five million dollars (\$5,000,000), ~~[nine]~~ fifteen percent  
 19 of the budgeted expenditures;

20 (2) if the current year program cost is five  
 21 million dollars (\$5,000,000) or more but less than ten million  
 22 dollars (\$10,000,000), ~~[seven and one-half]~~ twelve percent of  
 23 the budgeted expenditures;

24 (3) if the current year program cost is ten  
 25 million dollars (\$10,000,000) or more but less than twenty-five

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1 million dollars (\$25,000,000), [~~six~~] nine percent of the  
2 budgeted expenditures;

3 (4) if the current year program cost is  
4 twenty-five million dollars (\$25,000,000) or more but less than  
5 two hundred million dollars (\$200,000,000), [~~four and one-half~~]  
6 seven percent of the budgeted expenditures; and

7 (5) if the current year program cost is two  
8 hundred million dollars (\$200,000,000) or more, [~~for fiscal~~  
9 ~~year 2004, two and one-half percent of the budgeted~~  
10 ~~expenditures and, for subsequent fiscal years, three~~] five  
11 percent of the budgeted expenditures.

12 F. Except as otherwise provided in this section,  
13 for the 2006 and subsequent fiscal years, the secretary shall  
14 reduce the state equalization guarantee distribution,  
15 calculated pursuant to Section 22-8-25 NMSA 1978, to each  
16 school district or charter school by an amount equal to the  
17 school district's or charter school's excess cash balance. As  
18 used in this section, "excess cash balance" means the  
19 difference between a school district's or a charter school's  
20 actual operational cash balance and the allowable limit  
21 calculated pursuant to Subsection E of this section. Provided,  
22 however, that:

23 (1) for a school district or charter school  
24 with a current year program cost that exceeds two hundred  
25 million dollars (\$200,000,000), if the excess cash balance is



1 greater than twenty percent of the allowable, unrestricted,  
2 unreserved operational cash balance and the emergency reserve,  
3 then the reduction pursuant to this subsection shall equal  
4 twenty percent of the allowable, unrestricted, unreserved  
5 operational cash balance and the emergency reserve; and

6 (2) for other school districts and charter  
7 schools, if the excess cash balance is greater than eighteen  
8 percent of the allowable, unrestricted, unreserved operational  
9 cash balance and the emergency reserve, then the reduction  
10 pursuant to this subsection shall equal eighteen percent of the  
11 allowable, unrestricted, unreserved operational cash balance  
12 and the emergency reserve.

13 G. In developing budgets, school districts and  
14 charter schools shall not budget current year cash balances  
15 without the approval of the secretary.

16 H. A school district or charter school whose  
17 enrollment growth exceeds one percent from the prior year and  
18 whose facility master plan includes the addition of a new  
19 school within two years may request from the secretary a waiver  
20 of up to fifty percent of the reduction otherwise required by  
21 Subsection F of this section.

22 I. Upon application by a school district, the  
23 secretary may waive all or a portion of the reduction otherwise  
24 required by Subsection F of this section if the secretary finds  
25 that the school district's excess balance is needed to provide

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1 the local match required under the Public School Capital Outlay  
2 Act or to recoup an amount paid as the district's share  
3 pursuant to Section 22-24-5.7 NMSA 1978.

4           ~~[F.]~~ J. Notwithstanding the provisions of  
5 Subsection F of this section, for fiscal year 2004, the  
6 reduction from the state equalization guarantee distribution  
7 shall be the greater of the amount calculated pursuant to that  
8 subsection or ten dollars (\$10.00) per MEM.

9           ~~[J.]~~ K. For the purposes of this section,  
10 "operational cash balance" means the allowable, unrestricted,  
11 unreserved operational cash balance and the emergency reserve.

12           ~~[K.]~~ L. For the purposes of this section,  
13 "allowable, unrestricted, unreserved operational cash balance  
14 and the emergency reserve" means the proportional share not  
15 attributable to revenue derived from the school district  
16 property tax, forest reserve funds and impact aid for which the  
17 state takes credit in determining a school district's or  
18 charter school's state equalization guarantee distribution."

19           Section 3. A new section of the Public School Code is  
20 enacted to read:

21           "22-24-11. [NEW MATERIAL] NEW SCHOOL DEVELOPMENT FUND--  
22 DISTRIBUTION.--

23           A. The "new school development fund" is created in  
24 the state treasury. The fund shall consist of appropriations,  
25 gifts, grants, donations and bequests made to the fund. Income

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1 from the fund shall be credited to the fund, and money in the  
 2 fund shall not revert or be transferred to any other fund at  
 3 the end of a fiscal year. Money in the fund is appropriated to  
 4 the department for the purposes of making distributions  
 5 pursuant to Subsection B of this section. Expenditures from  
 6 the fund shall be made on warrant of the secretary of finance  
 7 and administration pursuant to vouchers signed by the  
 8 secretary.

9 B. Upon application to the department by a school  
 10 district and subject to the availability of funds, the  
 11 department may approve a distribution to the school district  
 12 from the new school development fund to supplement district  
 13 funds needed to pay for supplies, equipment and operating costs  
 14 unique to the first year of operation of a new school, provided  
 15 that the department shall not approve a distribution unless it  
 16 determines that there are no other reasonably available  
 17 federal, private or other public sources for the needed  
 18 funding."

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

21 "22-24-4. FUND CREATED--USE.--

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

25 B. Except as provided in Subsections G through [K]

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1 L of this section, money in the fund may be used only for  
2 capital expenditures deemed by the council necessary for an  
3 adequate educational program.

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

22 D. Applications for assistance from the fund shall  
23 be made by school districts to the council in accordance with  
24 requirements of the council. Except as provided in Subsection  
25 K of this section, the council shall require as a condition of

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1 application that a school district have a current five-year  
2 facilities plan, which shall include a current preventive  
3 maintenance plan to which the school adheres for each public  
4 school in the school district.

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

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

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

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

24 G. Balances in the fund may be annually  
25 appropriated for the core administrative functions of the

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

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

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

13 ~~[H. Up to one million two hundred fifty thousand~~  
14 ~~dollars (\$1,250,000) of the balances of the fund may be~~  
15 ~~expended in fiscal years 2003 and 2004 by the council for the~~  
16 ~~purpose of updating and refining the statewide assessment study~~  
17 ~~required by Section 22-24-5 NMSA 1978 and for the training of~~  
18 ~~state and local officials on the use of the database and other~~  
19 ~~data-management-related issues identified by the council.~~

20 ~~F.]~~ H. Up to thirty million dollars (\$30,000,000)  
21 of the fund may be allocated annually by the council in fiscal  
22 years 2006 and 2007 for a roof repair and replacement  
23 initiative with projects to be identified by the council  
24 pursuant to Section 22-24-4.3 NMSA 1978; provided that all  
25 money allocated pursuant to this subsection shall be expended

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1 prior to September 1, 2008.

2           ~~[J.]~~ I. Up to ~~[four million dollars (\$4,000,000)]~~  
 3 seven million five hundred thousand dollars (\$7,500,000) from  
 4 the fund may be expended annually by the council in fiscal  
 5 years ~~[2005]~~ 2006 through ~~[2009]~~ 2010 for grants to school  
 6 districts for the purpose of making lease payments for  
 7 classroom facilities, including facilities leased by charter  
 8 schools. The grants shall be made upon application by the  
 9 school districts and pursuant to rules adopted by the council;  
 10 provided that, an application on behalf of a charter school  
 11 shall be made by the school district but, if the school  
 12 district fails to make an application on behalf of a charter  
 13 school, the charter school may submit its own application. The  
 14 following criteria shall apply to the grants:

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

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

20                               (b) ~~[three hundred dollars (\$300) for~~  
 21 ~~fiscal year 2005 and]~~ six hundred dollars (\$600) ~~[for fiscal~~  
 22 ~~years 2006 through 2009]~~ multiplied by the number of MEM using  
 23 the leased classroom facilities; provided that, if the total  
 24 grants awarded pursuant to this paragraph would exceed the  
 25 total annual amount available, the rate specified in this

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1 subparagraph shall be reduced proportionately;

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

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

9 (4) as used in this subsection, "MEM" means:

10 (a) the average full-time-equivalent  
11 enrollment using leased classroom facilities on the [~~fortieth~~]  
12 eightieth and one hundred twentieth days of the prior school  
13 year; or

14 (b) in the case of an approved charter  
15 school that has not commenced classroom instruction, the  
16 estimated full-time-equivalent enrollment that will use leased  
17 classroom facilities in the first year of instruction, as shown  
18 in the approved charter school application; provided that,  
19 after the [~~fortieth~~] eightieth day of the school year, the MEM  
20 shall be adjusted to reflect the full-time-equivalent  
21 enrollment on that date.

22 [~~K-~~] J. In addition to other authorized  
23 expenditures from the fund, up to one percent of the average  
24 grant assistance authorized from the fund during the three  
25 previous fiscal years may be expended in each fiscal year by

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1 the public school facilities authority to reimburse the state  
2 fire marshal, the construction industries division of the  
3 regulation and licensing department and local jurisdictions  
4 having authority from the state to permit and inspect projects  
5 for expenditures made to permit and inspect projects funded in  
6 whole or in part under the Public School Capital Outlay Act.  
7 The authority shall enter into contracts with the state fire  
8 marshal, the construction industries division or the  
9 appropriate local authorities to carry out the provisions of  
10 this subsection.

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

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

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

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1                   (a) the school district has fewer than  
2 an average of four hundred full-time-equivalent students on the  
3 eightieth and one hundred twentieth days of the prior school  
4 year; or

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

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

24                   (1) the costs of continuing to insure an  
25 abandoned facility outweigh any potential benefit when and if a

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1 new facility is needed by the school district;

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

5 (3) the council may enter into an agreement  
6 with the school district under which an amount equal to the  
7 savings to the district in lower insurance premiums are used to  
8 fully or partially reimburse the fund for the demolition costs  
9 allocated to the district."

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

12 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
13 APPLICATION--GRANT ASSISTANCE.--

14 A. Applications for grant assistance, the approval  
15 of applications, the prioritization of projects and grant  
16 awards shall be conducted pursuant to the provisions of this  
17 section [~~provided, however, that the order of priority in the~~  
18 ~~two years beginning July 1, 2004 shall first reflect those~~  
19 ~~specific projects that were partially funded by the council in~~  
20 ~~September 2003 but are not as yet completed, excluding any~~  
21 ~~expansion of the scope of those projects and contingent upon~~  
22 ~~maintenance of the required local support. In that transition~~  
23 ~~period, such projects shall be funded regardless of any~~  
24 ~~deviation from the statewide adequacy standards; provided that~~  
25 ~~the amount of the award received shall not exceed the amount~~

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1 ~~necessary to meet the statewide adequacy standards, including~~  
2 ~~projected enrollment growth].~~

3 B. Except as provided [~~in Subsection A of this~~  
4 ~~section and]~~ in Sections 22-24-4.3 [~~and~~], 22-24-5.4 and  
5 22-24-5.6 NMSA 1978, the following provisions govern grant  
6 assistance from the fund for a public school capital outlay  
7 project not wholly funded pursuant to Section 22-24-4.1 NMSA  
8 1978:

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

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

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

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

23 (3) the council shall establish criteria to be  
24 used in public school capital outlay projects that receive  
25 grant assistance pursuant to the Public School Capital Outlay

1 Act. In establishing the criteria, the council shall consider:

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

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

8 (c) any other financing or construction  
9 concept that may maximize the dollar effect of the state grant  
10 assistance;

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

14 (5) except as provided in Paragraph (6) or (8)  
15 of this subsection, the state share of a project approved and  
16 ranked by the council shall be funded within available  
17 resources pursuant to the provisions of this paragraph. No  
18 later than May 1 of each calendar year, a value shall be  
19 calculated for each school district in accordance with the  
20 following procedure:

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

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

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1 calculated;

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

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

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

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

18 (g) the sum of the property tax mill  
19 levies for the prior tax year imposed by each school district  
20 on residential property pursuant to Chapter 22, Article 18 NMSA  
21 1978, the Public School Capital Improvements Act, the Public  
22 School Buildings Act, the Education Technology Equipment Act  
23 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978  
24 is calculated for each school district;

25 (h) the lowest value calculated pursuant

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

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

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

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

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

20 (m) if the value calculated for a  
21 subject school district pursuant to Subparagraph (j) of this  
22 paragraph is five-tenths or greater, then the value calculated  
23 pursuant to Subparagraph (l) of this paragraph is added to the  
24 value calculated pursuant to Subparagraph (f) of this  
25 paragraph. Except as provided in Subparagraph (n) or (o) of

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1 this paragraph, the sum equals the value for that school  
2 district;

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

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

11 (p) except as provided in Section  
12 22-24-5.7 NMSA 1978 and except as reduced pursuant to Paragraph  
13 (6) of this subsection, the amount to be distributed from the  
14 fund for an approved project [~~1) in calendar year 2005, shall~~  
15 ~~equal the total project cost multiplied by a fraction the~~  
16 ~~numerator of which is the value calculated for the subject~~  
17 ~~school district in 2005 plus the value calculated for that~~  
18 ~~district in 2004 and the denominator of which is two; and 2) in~~  
19 ~~calendar year 2006 and each subsequent calendar year]~~ shall  
20 equal the total project cost multiplied by a fraction the  
21 numerator of which is the value calculated for the subject  
22 school district in the current year plus the value calculated  
23 for that school district in each of the two preceding years and  
24 the denominator of which is three; and

25 (q) as used in this paragraph: 1) "MEM"

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1 means the average full-time-equivalent enrollment of students  
2 attending public school in a school district on the [~~fortieth~~  
3 eightieth and one hundred twentieth days of the prior school  
4 year; and 2) "total project cost" means the total amount  
5 necessary to complete the public school capital outlay project  
6 less any insurance reimbursement received by the school  
7 district for the project;

8 (6) the amount calculated pursuant to  
9 Subparagraph (p) of Paragraph (5) of this subsection shall be  
10 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 not  
16 rejected by the subject school district, but excluding  
17 educational technology appropriations made prior to January 1,  
18 2005 and reauthorizations of appropriations previously made to  
19 the subject school district, is calculated; provided that an  
20 appropriation made in a fiscal year shall be deemed to be  
21 accepted by a school district unless, prior to June 1 of that  
22 fiscal year, the school district notifies the department of  
23 finance and administration and the public education department  
24 that the district is rejecting the appropriation; provided  
25 further that the total shall be increased by an amount,

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1 certified to the council by the department, equal to the  
2 educational technology appropriations made to the subject  
3 school district on or after January 1, 2003 and prior to  
4 January 1, 2005 and not previously used to offset distributions  
5 pursuant to the Technology for Education Act;

6 (b) the applicable fraction used for the  
7 subject school district and the current calendar year for the  
8 calculation in Subparagraph (p) of Paragraph (5) of this  
9 subsection is subtracted from one;

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

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

19 (e) the amount calculated pursuant to  
20 Subparagraph (p) of Paragraph (5) of this subsection shall be  
21 reduced by the amount calculated pursuant to Subparagraph (d)  
22 of this paragraph;

23 (7) as used in Paragraphs (5) and (6) of this  
24 subsection, "subject school district" means the school district  
25 that has submitted the application for funding and in which the

1 approved public school capital outlay project will be located;

2 (8) the council may adjust the amount of local  
3 share otherwise required if it determines that a school  
4 district has used all of its local resources. Before making  
5 any adjustment to the local share, the council shall consider  
6 whether:

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

16 (b) the school district: 1) has fewer  
17 than an average of eight hundred full-time-equivalent students  
18 on the [~~fortieth~~] eightieth and one hundred twentieth days of  
19 the prior school year; 2) has at least seventy percent of its  
20 students eligible for free or reduced-fee lunch; 3) has a share  
21 of the total project cost, as calculated pursuant to provisions  
22 of this section, that would be greater than fifty percent; and  
23 4) for all educational purposes, has a residential property tax  
24 rate of at least seven dollars (\$7.00) on each one thousand  
25 dollars (\$1,000) of taxable value, as measured by the sum of

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

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

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

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

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

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

24 (d) the school district has submitted a  
25 five-year facilities plan that includes: 1) enrollment

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

7 (e) the school district is willing and  
8 able to pay any portion of the total cost of the public school  
9 capital outlay project that, according to Paragraph (5), (6) or  
10 (8) of this subsection, is not funded with grant assistance  
11 from the fund; provided that school district funds used for a  
12 project that was initiated after September 1, 2002 when the  
13 statewide adequacy standards were adopted, but before September  
14 1, 2004 when the standards were first used as the basis for  
15 determining the state and school district share of a project,  
16 may be applied to the school district portion required for that  
17 project;

18 (f) the application includes the capital  
19 needs of any charter school located in the school district or  
20 the school district has shown that the facilities of the  
21 charter school [~~has~~] have a smaller deviation from the  
22 statewide adequacy standards than other district facilities  
23 included in the application; and

24 (g) the school district has agreed, in  
25 writing, to comply with any reporting requirements or

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1 conditions imposed by the council pursuant to Section 22-24-5.1  
2 NMSA 1978.

3 C. After consulting with the public school capital  
4 outlay oversight task force and other experts, the council  
5 shall regularly review and update statewide adequacy standards  
6 applicable to all school districts. The standards shall  
7 establish the acceptable level for the physical condition and  
8 capacity of buildings, the educational suitability of  
9 facilities and the need for technological infrastructure.  
10 Except as otherwise provided in the Public School Capital  
11 Outlay Act, the amount of outstanding deviation from the  
12 standards shall be used by the council in evaluating and  
13 prioritizing public school capital outlay projects.

14 D. It is the intent of the legislature that grant  
15 assistance made pursuant to this section allows every school  
16 district to meet the standards developed pursuant to Subsection  
17 C of this section; provided, however, that nothing in the  
18 Public School Capital Outlay Act or the development of  
19 standards pursuant to that act prohibits a school district from  
20 using local funds to exceed the statewide adequacy standards.

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

24 F. The council may establish committees or task  
25 forces, not necessarily consisting of council members, and may

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1 use the committees or task forces, as well as existing agencies  
 2 or organizations, to conduct studies, conduct surveys, submit  
 3 recommendations or otherwise contribute expertise from the  
 4 public schools, programs, interest groups and segments of  
 5 society most concerned with a particular aspect of the  
 6 council's work.

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

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

21 Section 6. A new section of the Public School Capital  
 22 Outlay Act, Section 22-24-5.6 NMSA 1978, is enacted to read:

23 "22-24-5.6. [NEW MATERIAL] OUTSTANDING DEFICIENCIES AT  
 24 CERTAIN STATE EDUCATIONAL INSTITUTIONS.--

25 A. In consultation with the higher education

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1 department and the applicable board of regents, and after  
2 reviewing the existing five-year facilities plan and the  
3 facilities condition assessment, the public school facilities  
4 authority shall verify the assessed outstanding health, safety  
5 or infrastructure deficiencies at the New Mexico school for the  
6 blind and visually impaired and the New Mexico school for the  
7 deaf and shall develop a plan to correct the deficiencies.

8 B. To the extent that money has been appropriated  
9 or is otherwise available in the fund for such purposes, the  
10 council may approve allocations from the fund and, working with  
11 the higher education department and the applicable board of  
12 regents, enter into construction contracts to correct the  
13 deficiencies.

14 C. The council shall establish oversight functions  
15 for the public school facilities authority and such other  
16 guidelines and conditions as it deems necessary to ensure that  
17 the allocations from the fund pursuant to this section are  
18 expended in the most prudent manner possible and consistent  
19 with the original purpose.

20 D. As used in the Public School Capital Outlay Act,  
21 "public school capital outlay project", "capital outlay  
22 project" or "project" includes a program for the correction of  
23 deficiencies at the New Mexico school for the blind and  
24 visually handicapped or at the New Mexico school for the deaf  
25 pursuant to this section."

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1 Section 7. A new section of the Public School Capital  
2 Outlay Act, Section 22-24-5.7 NMSA 1978, is enacted to read:

3 "22-24-5.7. [NEW MATERIAL] LOCAL MATCH PROVISIONS FOR  
4 QUALIFIED HIGH PRIORITY PROJECTS.--

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

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

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

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1 otherwise be eligible for allocations from the fund pursuant to  
2 Section 22-24-5 NMSA 1978, up to the statewide adequacy  
3 standards;

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

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

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

10 (a) is located in a high-growth area, as  
11 designated by the council; or

12 (b) is a project for which the council  
13 has determined, pursuant to its weighted average conditions  
14 index, that the cost necessary to bring the existing facilities  
15 up to the statewide adequacy standards would be equal to or  
16 more than the cost of replacing the existing facility; or

17 (2) that was approved for a grant award  
18 pursuant to Section 22-24-5 NMSA 1978 during the 2004-2005 or  
19 2005-2006 awards cycle but for which the school district, as of  
20 July 1, 2006, has not obtained funding for the district share  
21 and:

22 (a) is located in a high-growth area, as  
23 designated by the council; or

24 (b) is a project for which the council  
25 has determined, pursuant to its weighted average conditions

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underscored material = new  
[bracketed material] = delete

1 index, that the cost necessary to bring the existing facilities  
2 up to the statewide adequacy standards would be equal to or  
3 more than the cost of replacing the existing facility.

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

7 (1) within five years of the grant allocation  
8 decision, the estimated occupancy rate of the proposed new  
9 school would be seventy percent or more of the design capacity;

10 (2) at the time of the application, the  
11 attendance at the existing schools in the high-growth area from  
12 which students at the new school will be drawn is above design  
13 capacity; and

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

18 Section 8. Section 22-24-9 NMSA 1978 (being Laws 2003,  
19 Chapter 147, Section 1, as amended) is amended to read:

20 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--  
21 CREATION--POWERS AND DUTIES.--

22 A. The "public school facilities authority" is  
23 created under the council. The authority shall be headed by a  
24 director, selected by the council, who shall be versed in  
25 construction, architecture or project management. The director

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1 may hire no more than two deputies with the approval of the  
2 council, and, subject to budgetary constraints set out in  
3 Subsection G of Section 22-24-4 NMSA 1978, shall employ or  
4 contract with such technical and administrative personnel as  
5 are necessary to carry out the provisions of this section. The  
6 director, ~~[and]~~ deputies and all other employees of the  
7 authority shall be exempt from the provisions of the Personnel  
8 Act ~~[after July 1, 2006, all other employees of the authority~~  
9 ~~shall be subject to the provisions of the Personnel Act]~~.

10 B. The authority shall:

- 11 (1) serve as staff to the council;
- 12 (2) as directed by the council, provide those  
13 assistance and oversight functions required of the council by  
14 Section 22-24-5.1 NMSA 1978;
- 15 (3) assist school districts with:
- 16 (a) the development and implementation  
17 of five-year facilities plans and preventive maintenance plans;
- 18 (b) procurement of architectural and  
19 engineering services;
- 20 (c) management and oversight of  
21 construction activities; and
- 22 (d) training programs;
- 23 (4) conduct ongoing reviews of five-year  
24 facilities plans, preventive maintenance plans and performance  
25 pursuant to those plans;

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1                   (5) as directed by the council, assist school  
2 districts in analyzing and assessing their space utilization  
3 options;

4                   (6) ensure that public school capital outlay  
5 projects are in compliance with applicable building codes;

6                   (7) conduct on-site inspections as necessary  
7 to ensure that the construction specifications are being met  
8 and periodically inspect all of the documents related to  
9 projects;

10                  (8) require the use of standardized  
11 construction documents and the use of a standardized process  
12 for change orders;

13                  (9) have access to the premises of a project  
14 and any documentation relating to the project;

15                  (10) after consulting with the department,  
16 recommend building standards for public school facilities to  
17 the council and ensure compliance with building standards  
18 adopted by the council;

19                  (11) notwithstanding the provisions of  
20 Subsection D of Section 22-24-6 NMSA 1978, account for all  
21 distributions of grant assistance from the fund for which the  
22 initial award was made after July 1, 2004, and make annual  
23 reports to the department, the governor, the legislative  
24 education study committee, the legislative finance committee  
25 and the legislature;

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1 (12) maintain a database of the condition of  
2 school facilities and maintenance schedules; and

3 (13) ensure that outstanding deficiencies are  
4 corrected pursuant to Section 22-24-4.1 NMSA 1978. In the  
5 performance of this duty, the authority:

6 (a) shall work with school districts to  
7 validate the assessment of the outstanding deficiencies and the  
8 projected costs to correct the deficiencies;

9 (b) shall work with school districts to  
10 provide direct oversight of the management and construction of  
11 the projects that will correct the outstanding deficiencies;

12 (c) shall oversee all aspects of the  
13 contracts entered into by the council to correct the  
14 outstanding deficiencies;

15 (d) may conduct on-site inspections  
16 while the deficiencies correction work is being done to ensure  
17 that the construction specifications are being met and may  
18 periodically inspect all of the documents relating to the  
19 projects;

20 (e) may require the use of standardized  
21 construction documents and the use of a standardized process  
22 for change orders;

23 (f) may access the premises of a project  
24 and any documentation relating to the project; and

25 (g) shall maintain, track and account

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1 for deficiency correction projects separately from other  
2 capital outlay projects funded pursuant to the Public School  
3 Capital Outlay Act.

4 C. All actions taken by the authority shall be  
5 consistent with educational programs conducted pursuant to the  
6 Public School Code. In the event of any potential or perceived  
7 conflict between a proposed action of the authority and an  
8 educational program, the authority shall consult with the  
9 secretary.

10 D. A school district, aggrieved by a decision or  
11 recommendation of the authority, may appeal the matter to the  
12 council by filing a notice of appeal with the council within  
13 thirty days of the authority's decision or recommendation.

14 Upon filing of the notice:

15 (1) the decision or recommendation of the  
16 authority shall be suspended until the matter is decided by the  
17 council;

18 (2) the council shall hear the matter at its  
19 next regularly scheduled hearing or at a special hearing called  
20 by the chair for that purpose;

21 (3) at the hearing, the school district, the  
22 authority and other interested parties may make informal  
23 presentations to the council; and

24 (4) the council shall finally decide the  
25 matter within ten days after the hearing."

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1 Section 9. Section 22-25-2 NMSA 1978 (being Laws 1975  
2 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

3 "22-25-2. DEFINITIONS.--As used in the Public School  
4 Capital Improvements Act:

5 A. "program unit" means the product of the program  
6 element multiplied by the applicable cost differential factor,  
7 as defined in Section 22-8-2 NMSA 1978; and

8 B. "capital improvements" means expenditures,  
9 including payments made with respect to lease-purchase  
10 arrangements as defined in the Education Technology Equipment  
11 Act but excluding any other debt service expenses, for:

12 (1) erecting, remodeling, making additions to,  
13 providing equipment for or furnishing public school buildings;

14 (2) purchasing or improving public school  
15 grounds;

16 (3) maintenance of public school buildings or  
17 public school grounds, including payments under contracts for  
18 maintenance support services and expenditures for technical  
19 training and certification for maintenance and facilities  
20 management personnel, but excluding salary expenses of school  
21 district employees;

22 (4) purchasing activity vehicles for  
23 transporting students to extracurricular school activities; and

24 (5) purchasing computer software and hardware  
25 for student use in public school classrooms."

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1           Section 10. Section 22-25-9 NMSA 1978 (being Laws 1975  
2 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

3           "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING  
4 TAX UNDER CERTAIN CIRCUMSTANCES.--

5           A. Except as provided in Subsection C or G of this  
6 section, the secretary shall distribute to any school district  
7 that has imposed a tax under the Public School Capital  
8 Improvements Act an amount from the public school capital  
9 improvements fund that is equal to the amount by which the  
10 revenue estimated to be received from the imposed tax, at the  
11 rate certified by the department of finance and administration  
12 in accordance with Section 22-25-7 NMSA 1978, assuming a one  
13 hundred percent collection rate, is less than an amount  
14 calculated by multiplying the school district's first forty  
15 days' total program units by the amount specified in Subsection  
16 B of this section and further multiplying the product obtained  
17 by the tax rate approved by the qualified electors in the most  
18 recent election on the question of imposing a tax under the  
19 Public School Capital Improvements Act. The distribution shall  
20 be made each year that the tax is imposed in accordance with  
21 Section 22-25-7 NMSA 1978; provided that no state distribution  
22 from the public school capital improvements fund may be used  
23 for capital improvements to any administration building of a  
24 school district. In the event that sufficient funds are not  
25 available in the public school capital improvements fund to

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1 make the state distribution provided for in this section, the  
2 dollar per program unit figure shall be reduced as necessary.

3 B. In calculating the state distribution pursuant  
4 to Subsection A of this section, the following amounts shall be  
5 used:

6 (1) the amount calculated pursuant to  
7 Subsection D of this subsection per program unit; and

8 (2) [~~for fiscal year 2006 and thereafter~~] an  
9 additional amount certified to the secretary by the public  
10 school capital outlay council. No later than June 1 [~~2005 and~~  
11 ~~each June 1 thereafter~~] of each year, the council shall  
12 determine the amount needed in the next fiscal year for public  
13 school capital outlay projects pursuant to the Public School  
14 Capital Outlay Act and the amount of revenue, from all sources,  
15 available for the projects. If, in the sole discretion of the  
16 council, the amount available exceeds the amount needed, the  
17 council may certify an additional amount pursuant to this  
18 paragraph; provided that the sum of the amount calculated  
19 pursuant to this paragraph plus the amount in Paragraph (1) of  
20 this subsection shall not result in a total statewide  
21 distribution that, in the opinion of the council, exceeds one-  
22 half of the total revenue estimated to be received from taxes  
23 imposed pursuant to the Public School Capital Improvements Act.

24 C. For any fiscal year [~~2004 and thereafter~~]  
25 notwithstanding the amount calculated to be distributed

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1 pursuant to Subsections A and B of this section, except as  
2 provided in Subsection G of this section, a school district,  
3 the voters of which have approved a tax pursuant to Section  
4 22-25-3 NMSA 1978, shall not receive a distribution less than  
5 the amount calculated pursuant to Subsection E of this section,  
6 multiplied by the school district's first forty days' total  
7 program units and further multiplying the product obtained by  
8 the approved tax rate.

9 D. For purposes of calculating the distribution  
10 pursuant to Subsection B of this section, the amount used in  
11 Paragraph (1) of that subsection shall equal [~~fifty dollars~~  
12 ~~(\$50.00) through fiscal year 2005]~~ sixty dollars (\$60.00) in  
13 fiscal year 2006, ninety dollars (\$90.00) in fiscal year 2007  
14 and in each subsequent fiscal year shall equal the amount for  
15 the previous fiscal year adjusted by the percentage increase  
16 between the next preceding calendar year and the preceding  
17 calendar year of the consumer price index for the United  
18 States, all items, as published by the United States department  
19 of labor.

20 E. For purposes of calculating the minimum  
21 distribution pursuant to Subsection C of this section, the  
22 amount used in that subsection shall equal five dollars (\$5.00)  
23 through fiscal year 2005 and in each subsequent fiscal year  
24 shall equal the amount for the previous fiscal year adjusted by  
25 the percentage increase between the next preceding calendar

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1 year and the preceding calendar year of the consumer price  
2 index for the United States, all items, as published by the  
3 United States department of labor.

4 F. In expending distributions made pursuant to this  
5 section, school districts shall give priority to maintenance  
6 projects, including payments under contracts for maintenance  
7 support services. In addition, distributions made pursuant to  
8 this section may be expended by school districts for the school  
9 district portion of the total project cost for roof repair or  
10 replacement required by Section 22-24-4.3 NMSA 1978.

11 G. If a serious deficiency in a roof of a public  
12 school facility has been corrected pursuant to Section  
13 22-24-4.4 NMSA 1978 and the school district has refused to pay  
14 its share of the cost as determined by that section, until the  
15 public school capital outlay fund is reimbursed in full for the  
16 share attributed to the district, the distribution calculated  
17 pursuant to this section shall not be made to the school  
18 district but shall be made to the public school capital outlay  
19 fund.

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

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

5 Section 11. Section 13-1-99 NMSA 1978 (being Laws 1984,  
6 Chapter 65, Section 72, as amended) is amended to read:

7 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE  
8 STATE PURCHASING AGENT.--Excluded from the requirement of  
9 procurement through the state purchasing agent but not from the  
10 requirements of the Procurement Code are the following:

- 11 A. procurement of professional services;
- 12 B. small purchases having a value not exceeding one  
13 thousand five hundred dollars (\$1,500);
- 14 C. emergency procurement;
- 15 D. procurement of highway construction or  
16 reconstruction by the department of transportation;
- 17 E. procurement by the judicial branch of state  
18 government;
- 19 F. procurement by the legislative branch of state  
20 government;
- 21 G. procurement by the boards of regents of state  
22 educational institutions named in Article 12, Section 11 of the  
23 constitution of New Mexico;
- 24 H. procurement by the state fair commission of  
25 tangible personal property, services and construction under ten

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1 thousand dollars (\$10,000);

2 I. purchases from the instructional material fund;

3 J. procurement by all local public bodies;

4 K. procurement by regional education cooperatives;

5 L. procurement by charter schools; ~~and~~

6 M. procurement by each state health care

7 institution that provides direct patient care and that is, or a  
8 part of which is, medicaid certified and participating in the  
9 New Mexico medicaid program; and

10 N. procurement by the public school facilities  
11 authority."

12 Section 12. TEMPORARY PROVISION--SCHOOL DISTRICT REVENUE  
13 IMPACT STUDY GROUP--CREATION--STAFF.--

14 A. The "school district revenue impact study group"  
15 is created. The study group consists of sixteen members as  
16 follows:

17 (1) the secretary of finance and  
18 administration or the secretary's designee;

19 (2) the secretary of public education or the  
20 secretary's designee;

21 (3) the director of the public school  
22 facilities authority or the director's designee;

23 (4) two majority party members and one  
24 minority party member of the house of representatives,  
25 appointed by the New Mexico legislative council;

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1 (5) two majority party members and one  
2 minority party member of the senate, appointed by the New  
3 Mexico legislative council;

4 (6) two representatives of developers,  
5 appointed by the New Mexico legislative council;

6 (7) a member of the Indian education advisory  
7 council, appointed by the chair of the council;

8 (8) a representative of the New Mexico  
9 municipal league;

10 (9) a representative of the New Mexico  
11 association of counties;

12 (10) a representative of the New Mexico school  
13 boards association; and

14 (11) a representative of the New Mexico  
15 superintendents association.

16 B. The chair of the study group shall be elected by  
17 the study group. The study group shall meet at the call of the  
18 chair.

19 C. Members of the study group shall serve from the  
20 time of their appointment through December 31, 2006. On  
21 January 1, 2007, the study group is terminated.

22 D. Public members of the study group shall receive  
23 per diem and mileage pursuant to the Per Diem and Mileage Act.

24 E. The study group shall:

25 (1) examine how actions by local governments



1 in the acquisition of property that will be exempt from  
2 property taxes, such as acquiring projects with proceeds of  
3 industrial revenue bonds, affect school district revenues;

4 (2) examine whether the purposes of the  
5 Development Fees Act are served by the imposition of impact  
6 fees against school districts;

7 (3) examine whether, in communities where  
8 school facilities are often used by local governments, the  
9 school districts and local governments should share the cost of  
10 building and maintaining the facilities;

11 (4) examine alternatives that will ensure that  
12 local governments consider the interests of school districts  
13 when making decisions that will impact school district revenues  
14 and expenditures; and

15 (5) no later than December 31, 2006, report  
16 its findings and recommendations for policy and statutory  
17 changes to the public school capital outlay oversight task  
18 force, the legislative education study committee and the  
19 legislative finance committee.

20 F. The legislative council service, with assistance  
21 from the public education department, the public school  
22 facilities authority, the legislative education study committee  
23 and the legislative finance committee, shall provide staff for  
24 the study group.

25 Section 13. APPROPRIATIONS.--

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1           A. Forty million dollars (\$40,000,000) is  
2 appropriated from the general fund to the public school capital  
3 outlay fund for expenditure in fiscal years 2006 through 2011  
4 for the purpose of correcting outstanding health, safety or  
5 infrastructure deficiencies in the buildings and grounds of the  
6 New Mexico school for the blind and visually impaired and the  
7 New Mexico school for the deaf pursuant to Section 22-24-5.6  
8 NMSA 1978. Any unexpended or unencumbered balance remaining at  
9 the end of fiscal year 2011 shall not revert to the general  
10 fund but shall remain in the public school capital outlay fund  
11 and be expended pursuant to the Public School Capital Outlay  
12 Act.

13           B. Two million five hundred thousand dollars  
14 (\$2,500,000) is appropriated from the general fund to the  
15 public school facilities authority for expenditure in fiscal  
16 years 2006 through 2008 for continuing the development and  
17 implementation of a uniform, statewide web-based facility  
18 information management system for the public schools pursuant  
19 to the provisions of Section 22-24-5.3 NMSA 1978. Any  
20 unexpended or unencumbered balance remaining at the end of  
21 fiscal year 2008 shall revert to the general fund.

22           C. Two million dollars (\$2,000,000) is appropriated  
23 from the general fund to the public school capital outlay fund  
24 for expenditure in fiscal years 2006 through 2010 for the  
25 purpose of making allocations to school districts to demolish

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1 abandoned school district facilities pursuant to Subsection L  
2 of Section 22-24-4 NMSA 1978. Any unexpended or unencumbered  
3 balance remaining at the end of fiscal year 2010 shall not  
4 revert to the general fund but shall remain in the public  
5 school capital outlay fund and be expended pursuant to the  
6 Public School Capital Outlay Act.

7 D. Two hundred ninety million dollars  
8 (\$290,000,000) is appropriated from the general fund to the  
9 public school capital outlay fund for expenditure in fiscal  
10 years 2006 through 2010 for the purpose of making grants for  
11 both the state and local shares for qualified high priority  
12 projects pursuant to Section 22-24-5.7 NMSA 1978. Any  
13 unexpended or unencumbered balance remaining at the end of  
14 fiscal year 2010 shall not revert to the general fund but shall  
15 remain in the public school capital outlay fund and be expended  
16 pursuant to the Public School Capital Outlay Act.

17 E. One million dollars (\$1,000,000) is appropriated  
18 from the general fund to the new school development fund for  
19 expenditure in fiscal year 2006 and subsequent fiscal years for  
20 the purpose of making distributions to school districts to pay  
21 costs unique to the first year of operation of new schools.  
22 Any unexpended or unencumbered balance of the appropriation  
23 remaining at the end of a fiscal year shall not revert to the  
24 general fund.

25 F. Seven million five hundred thousand dollars

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1 (\$7,500,000) is appropriated from the general fund to the  
2 public school capital outlay fund for expenditure in fiscal  
3 years 2006 and 2007 for the purpose of making lease payments  
4 pursuant to Subsection I of Section 22-24-4 NMSA 1978. Any  
5 unexpended or unencumbered balance remaining at the end of  
6 fiscal year 2007 shall not revert to the general fund but shall  
7 remain in the public school capital outlay fund and be expended  
8 pursuant to the Public School Capital Outlay Act.

9 G. Three hundred thousand dollars (\$300,000) is  
10 appropriated from the general fund to the public school  
11 facilities authority for expenditure in fiscal years 2006 and  
12 2007 for the purpose of improving the indoor air quality of  
13 public schools by implementing the New Mexico indoor air  
14 quality tools for schools program pursuant to criteria  
15 developed by the public school facilities authority in  
16 consultation with the department of environment, the public  
17 education department, the department of health, the energy,  
18 minerals and natural resources department and the children,  
19 youth and families department. Any unexpended or unencumbered  
20 balance remaining at the end of fiscal year 2007 shall revert  
21 to the general fund.

22 H. Fifty thousand dollars (\$50,000) is appropriated  
23 from the general fund to the public education department for  
24 expenditure in fiscal years 2006 and 2007 for the purpose of  
25 entering into a contract to study the feasibility of allowing

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1 additional entities, including universities, tribal  
2 governments, the public education department and a separate  
3 chartering board, to approve the establishment of charter  
4 schools. The contract and the feasibility study shall be  
5 managed by the department in coordination with the legislative  
6 council service, the legislative finance committee, the  
7 legislative education study committee and the department of  
8 finance and administration. No later than December 15, 2006,  
9 the results of the study shall be presented to the public  
10 school capital outlay oversight task force, the legislative  
11 finance committee and the legislative education study  
12 committee. Any unexpended or unencumbered balance remaining at  
13 the end of fiscal year 2007 shall revert to the general fund.

14 I. Fifty thousand dollars (\$50,000) is appropriated  
15 from the general fund to the legislative council service for  
16 expenditure in fiscal years 2006 and 2007 for the purpose of  
17 paying per diem and mileage to the members of the school  
18 district revenue impact study group and other expenses incurred  
19 in carrying out the provisions of Section 12 of this act. Any  
20 unexpended or unencumbered balance remaining at the end of  
21 fiscal year 2007 shall revert to the general fund.

22 Section 14. EMERGENCY.--It is necessary for the public  
23 peace, health and safety that this act take effect immediately.