

1 SENATE BILL 450

2 **47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

3 INTRODUCED BY

4 Cynthia Nava

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6
7
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9
10 AN ACT

11 RELATING TO SCHOOLS; REQUIRING A FACILITIES PLAN FOR ALL SCHOOL
12 DISTRICTS; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO
13 ALLOW EXPENDITURES FOR CERTAIN ABANDONED FACILITIES, FIVE-YEAR
14 FACILITIES PLANS AND CORRECTION OF DEFICIENCIES AT CERTAIN
15 STATE EDUCATIONAL INSTITUTIONS, TO CHANGE THE LIMITATIONS ON
16 EXPENDITURES FOR CERTAIN LEASE PAYMENTS AND TO PROVIDE A LOAN
17 PROGRAM FOR NEW SCHOOLS IN HIGH-GROWTH AREAS; AMENDING THE
18 PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO INCREASE THE STATE
19 DISTRIBUTION AND AUTHORIZE ADDITIONAL EXPENDITURES; EXEMPTING
20 CERTAIN EMPLOYEES FROM THE PERSONNEL ACT; REMOVING CERTAIN
21 RESTRICTIONS ON SCHOOL DISTRICT CASH BALANCES; PROVIDING START-
22 UP COSTS FOR NEW SCHOOLS; PROVIDING FUNDING TO IMPROVE THE
23 INDOOR AIR QUALITY OF PUBLIC SCHOOLS; PROVIDING FOR STUDIES OF
24 CERTAIN LOCAL GOVERNMENT ACTIONS ON SCHOOL REVENUE AND OF
25 ADDITIONAL CHARTERING AUTHORITIES FOR CHARTER SCHOOLS; ALLOWING

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1 THE PUBLIC SCHOOL FACILITIES AUTHORITY TO BE A CENTRAL
2 PURCHASING OFFICE; PROVIDING FOR AN ONGOING FACILITY
3 INFORMATION MANAGEMENT SYSTEM; MAKING APPROPRIATIONS; DECLARING
4 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

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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:

24 (1) school districts or charter schools may
25 also budget operational fund cash balances carried forward from

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1 the previous fiscal year for operational expenditures,
2 exclusive of salaries and payroll, upon specific prior approval
3 of the secretary. The secretary shall notify the legislative
4 finance committee in writing of ~~[his]~~ the secretary's approval
5 of such proposed expenditures ~~[For fiscal years 2004 and 2005,~~
6 ~~with the approval of the secretary];~~ and

7 (2) a school district or charter school may
8 budget so much of its operational cash balance as is needed for
9 nonrecurring expenditures, including capital outlay, the school
10 district's portion of the cost of capital outlay projects
11 funded pursuant to the Public School Capital Outlay Act,
12 development of five-year facilities plans and nonrecurring
13 school district costs associated with charter schools.

14 ~~[D. Notwithstanding the provisions of Subsection C~~
15 ~~of this section, beginning with fiscal year 2006, prior to~~
16 ~~approval of a school district's or charter school's budget, the~~
17 ~~secretary shall verify that the reductions from the state~~
18 ~~equalization guarantee distribution have been taken pursuant to~~
19 ~~this section.~~

20 E. ~~The allowable limit for a school district's or~~
21 ~~charter school's ending operational cash balance is:~~

22 (1) ~~if the current year program cost is less~~
23 ~~than five million dollars (\$5,000,000), nine percent of the~~
24 ~~budgeted expenditures;~~

25 (2) ~~if the current year program cost is five~~

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1 million dollars (~~\$5,000,000~~) but less than ten million dollars
2 (~~\$10,000,000~~), seven and one half percent of the budgeted
3 expenditures;

4 (3) ~~if the current year program cost is ten~~
5 million dollars (~~\$10,000,000~~) but less than twenty-five million
6 dollars (~~\$25,000,000~~), six percent of the budgeted
7 expenditures;

8 (4) ~~if the current year program cost is~~
9 twenty-five million dollars (~~\$25,000,000~~) but less than two
10 hundred million dollars (~~\$200,000,000~~), four and one-half
11 percent of the budgeted expenditures; and

12 (5) ~~if the current year program cost is two~~
13 hundred million dollars (~~\$200,000,000~~) or more, for fiscal year
14 2004, two and one-half percent of the budgeted expenditures
15 and, for subsequent fiscal years, three percent of the budgeted
16 expenditures.

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

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1 ~~calculated pursuant to Subsection E of this section. Provided,~~
2 ~~however, that:~~

3 ~~(1) for a school district or charter school~~
4 ~~with a current year program cost that exceeds two hundred~~
5 ~~million dollars (\$200,000,000), if the excess cash balance is~~
6 ~~greater than twenty percent of the allowable, unrestricted,~~
7 ~~unreserved operational cash balance and the emergency reserve,~~
8 ~~then the reduction pursuant to this subsection shall equal~~
9 ~~twenty percent of the allowable, unrestricted, unreserved~~
10 ~~operational cash balance and the emergency reserve; and~~

11 ~~(2) for other school districts and charter~~
12 ~~schools, if the excess cash balance is greater than eighteen~~
13 ~~percent of the allowable, unrestricted, unreserved operational~~
14 ~~cash balance and the emergency reserve, then the reduction~~
15 ~~pursuant to this subsection shall equal eighteen percent of the~~
16 ~~allowable, unrestricted, unreserved operational cash balance~~
17 ~~and the emergency reserve.~~

18 ~~G. In developing budgets, school districts and~~
19 ~~charter schools shall not budget current year cash balances~~
20 ~~without the approval of the secretary.~~

21 ~~H. A school district or charter school whose~~
22 ~~enrollment growth exceeds one percent from the prior year and~~
23 ~~whose facility master plan includes the addition of a new~~
24 ~~school within two years may request from the secretary a waiver~~
25 ~~of up to fifty percent of the reduction otherwise required by~~

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1 ~~Subsection F of this section.~~

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

7 ~~J. For the purposes of this section, "operational~~
8 ~~cash balance" means the allowable, unrestricted, unreserved~~
9 ~~operational cash balance and the emergency reserve.~~

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

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

19 "22-24-11. [NEW MATERIAL] NEW SCHOOL DEVELOPMENT FUND--
20 DISTRIBUTION.--

21 A. The "new school development fund" is created in
22 the state treasury. The fund shall consist of appropriations,
23 gifts, grants, donations and bequests made to the fund. Income
24 from the fund shall be credited to the fund, and money in the
25 fund shall not revert or be transferred to any other fund at

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1 the end of a fiscal year. Money in the fund is appropriated to
2 the department for the purposes of making distributions
3 pursuant to Subsection B of this section. Expenditures from
4 the fund shall be made on warrant of the secretary of finance
5 and administration pursuant to vouchers signed by the
6 secretary.

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

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

19 "22-24-4. FUND CREATED--USE.--

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

23 B. Except as provided in Subsections G through [K]
24 L of this section, money in the fund may be used only for
25 capital expenditures deemed by the council necessary for an

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1 adequate educational program.

2 C. The council may authorize the purchase by the
3 public school facilities authority of portable classrooms to be
4 loaned to school districts to meet a temporary requirement.

5 Payment for these purchases shall be made from the fund. Title
6 and custody to the portable classrooms shall rest in the public
7 school facilities authority. The council shall authorize the
8 lending of the portable classrooms to school districts upon
9 request and upon finding that sufficient need exists.

10 Application for use or return of state-owned portable classroom
11 buildings shall be submitted by school districts to the
12 council. Expenses of maintenance of the portable classrooms
13 while in the custody of the public school facilities authority
14 shall be paid from the fund; expenses of maintenance and
15 insurance of the portable classrooms while in the custody of a
16 school district shall be the responsibility of the school
17 district. The council may authorize the permanent disposition
18 of the portable classrooms by the public school facilities
19 authority with prior approval of the state board of finance.

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

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1 maintenance plan to which the school adheres for each public
2 school in the school district.

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

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

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

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

22 G. Balances in the fund may be annually
23 appropriated for the core administrative functions of the
24 public school facilities authority pursuant to the Public
25 School Capital Outlay Act and, in addition, balances in the

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1 fund may be expended by the public school facilities authority,
2 upon approval of the council, for project management expenses;
3 provided that:

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

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

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

18 ~~F.]~~ H. Up to thirty million dollars (\$30,000,000)
19 of the fund may be allocated annually by the council in fiscal
20 years 2006 and 2007 for a roof repair and replacement
21 initiative with projects to be identified by the council
22 pursuant to Section 22-24-4.3 NMSA 1978; provided that all
23 money allocated pursuant to this subsection shall be expended
24 prior to September 1, 2008.

25 ~~[J.]~~ I. Up to ~~[four million dollars (\$4,000,000)]~~

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

13 (1) the amount of a grant to a school district
14 shall not exceed:

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

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

25 (2) a grant received for the lease payments of

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1 a charter school may be used by that charter school as a state
2 match necessary to obtain federal grants pursuant to the
3 federal No Child Left Behind Act of 2001;

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

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

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

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

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

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

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

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

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

24 (a) the school district has fewer than
25 an average of four hundred full-time-equivalent students on the

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1 eightieth and one hundred twentieth days of the prior school
2 year; or

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

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

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

25 (2) there is no practical use for the

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1 abandoned facility without the expenditure of substantial
2 renovation costs; and

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

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

10 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
11 APPLICATION--GRANT ASSISTANCE.--

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

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

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

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

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

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

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

25 (a) the feasibility of using design,

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1 build and finance arrangements for public school capital outlay
2 projects;

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

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

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

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

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

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

25 (c) excluding any school district for

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1 which the result calculated pursuant to Subparagraph (a) of
2 this paragraph is more than twice the result calculated
3 pursuant to Subparagraph (b) of this paragraph, the results
4 calculated pursuant to Subparagraph (a) of this paragraph are
5 listed from highest to lowest;

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (q) as used in this paragraph: 1) "MEM"
25 means the average full-time-equivalent enrollment of students

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

7 (6) the amount calculated pursuant to
8 Subparagraph (p) of Paragraph (5) of this subsection shall be
9 reduced by the following procedure:

10 (a) the total of all legislative
11 appropriations made after January 1, 2003 for nonoperating
12 purposes either directly to the subject school district or to
13 another governmental entity for the purpose of passing the
14 money through directly to the subject school district, and not
15 rejected by the subject school district, but excluding
16 educational technology appropriations made prior to January 1,
17 2005 and reauthorizations of appropriations previously made to
18 the subject school district, is calculated; provided that an
19 appropriation made in a fiscal year shall be deemed to be
20 accepted by a school district unless, prior to June 1 of that
21 fiscal year, the school district notifies the department of
22 finance and administration and the public education department
23 that the district is rejecting the appropriation; provided
24 further that the total shall be increased by an amount,
25 certified to the council by the department, equal to the

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

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

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

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

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

22 (7) as used in Paragraphs (5) and (6) of this
23 subsection, "subject school district" means the school district
24 that has submitted the application for funding and in which the
25 approved public school capital outlay project will be located;

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

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

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

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1 rates set to pay interest and principal on outstanding school
2 district general obligation bonds; or

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

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

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

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

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

23 (d) the school district has submitted a
24 five-year facilities plan that includes: 1) enrollment
25 projections; 2) a current preventive maintenance plan that has

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

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

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

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

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1 NMSA 1978.

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

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

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

23 F. The council may establish committees or task
24 forces, not necessarily consisting of council members, and may
25 use the committees or task forces, as well as existing agencies

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

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

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

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

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

24 A. In consultation with the higher education
25 department and the applicable board of regents, and after

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

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

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

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

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

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1 "22-24-5.7. [NEW MATERIAL] LOAN PROGRAM FOR NEW SCHOOLS
2 IN HIGH-GROWTH AREAS.--During the 2006-2007 and 2007-2008 award
3 cycles, if a new school, approved for funding pursuant to
4 Section 22-24-5 NMSA 1978, will be located in a high-growth
5 area as determined by the council and if the council finds that
6 the school district is likely to develop and complete the
7 construction of the new school within thirty months of the
8 grant allocation decision, the following provisions apply:

9 A. balances in the fund may be used to make an
10 interest-free loan to the school district, for a period set by
11 the council but not to exceed ten years, in an amount not
12 exceeding the total project cost less the amount otherwise to
13 be paid from the fund as calculated by Paragraphs (5) and (6)
14 of Subsection B of Section 22-24-5 NMSA 1978;

15 B. if a loan is made pursuant to Subsection A of
16 this section:

17 (1) a loan agreement shall be entered into
18 between the council and the school district;

19 (2) the loan may be paid by the school
20 district with cash balances, other available district resources
21 or offsets of future allocations from the fund otherwise made
22 for projects in the school district; and

23 (3) loan payments shall be deposited into the
24 fund;

25 C. if the school district refuses to pay the loan

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1 pursuant to the loan agreement:

2 (1) future distributions from the public
3 school capital improvements fund pursuant to Section 22-25-9
4 NMSA 1978 shall not be made to the school district but shall be
5 made to the public school capital outlay fund until the loan is
6 fully repaid; and

7 (2) until the loan is fully repaid, the
8 council may offset future allocations from the fund otherwise
9 made for projects in the school district; and

10 D. the council may designate an area that equals a
11 contiguous attendance area of one or more existing schools as a
12 "high-growth area" if the council determines that:

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

16 (2) at the time of the application, the
17 attendance at the existing schools in the high-growth area from
18 which students at the new school will be drawn is above design
19 capacity; and

20 (3) for the period of five years after the
21 grant allocation decision, the attendance at those existing
22 schools will be maintained at ninety-five percent or greater of
23 design capacity."

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

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1 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
2 CREATION--POWERS AND DUTIES.--

3 A. The "public school facilities authority" is
4 created under the council. The authority shall be headed by a
5 director, selected by the council, who shall be versed in
6 construction, architecture or project management. The director
7 may hire no more than two deputies with the approval of the
8 council, and, subject to budgetary constraints set out in
9 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
10 contract with such technical and administrative personnel as
11 are necessary to carry out the provisions of this section. The
12 director, [~~and~~] deputies and all other employees of the
13 authority shall be exempt from the provisions of the Personnel
14 Act [~~after July 1, 2006, all other employees of the authority~~
15 ~~shall be subject to the provisions of the Personnel Act~~].

- 16 B. The authority shall:
- 17 (1) serve as staff to the council;
 - 18 (2) as directed by the council, provide those
19 assistance and oversight functions required of the council by
20 Section 22-24-5.1 NMSA 1978;
 - 21 (3) assist school districts with:
 - 22 (a) the development and implementation
23 of five-year facilities plans and preventive maintenance plans;
 - 24 (b) procurement of architectural and
25 engineering services;

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- 1 (c) management and oversight of
2 construction activities; and
3 (d) training programs;
4 (4) conduct ongoing reviews of five-year
5 facilities plans, preventive maintenance plans and performance
6 pursuant to those plans;
7 (5) as directed by the council, assist school
8 districts in analyzing and assessing their space utilization
9 options;
10 (6) ensure that public school capital outlay
11 projects are in compliance with applicable building codes;
12 (7) conduct on-site inspections as necessary
13 to ensure that the construction specifications are being met
14 and periodically inspect all of the documents related to
15 projects;
16 (8) require the use of standardized
17 construction documents and the use of a standardized process
18 for change orders;
19 (9) have access to the premises of a project
20 and any documentation relating to the project;
21 (10) after consulting with the department,
22 recommend building standards for public school facilities to
23 the council and ensure compliance with building standards
24 adopted by the council;
25 (11) notwithstanding the provisions of

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1 Subsection D of Section 22-24-6 NMSA 1978, account for all
2 distributions of grant assistance from the fund for which the
3 initial award was made after July 1, 2004, and make annual
4 reports to the department, the governor, the legislative
5 education study committee, the legislative finance committee
6 and the legislature;

7 (12) maintain a database of the condition of
8 school facilities and maintenance schedules; and

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

12 (a) shall work with school districts to
13 validate the assessment of the outstanding deficiencies and the
14 projected costs to correct the deficiencies;

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

18 (c) shall oversee all aspects of the
19 contracts entered into by the council to correct the
20 outstanding deficiencies;

21 (d) may conduct on-site inspections
22 while the deficiencies correction work is being done to ensure
23 that the construction specifications are being met and may
24 periodically inspect all of the documents relating to the
25 projects;

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

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

6 (g) shall maintain, track and account
7 for deficiency correction projects separately from other
8 capital outlay projects funded pursuant to the Public School
9 Capital Outlay Act.

10 C. All actions taken by the authority shall be
11 consistent with educational programs conducted pursuant to the
12 Public School Code. In the event of any potential or perceived
13 conflict between a proposed action of the authority and an
14 educational program, the authority shall consult with the
15 secretary.

16 D. A school district, aggrieved by a decision or
17 recommendation of the authority, may appeal the matter to the
18 council by filing a notice of appeal with the council within
19 thirty days of the authority's decision or recommendation.
20 Upon filing of the notice:

21 (1) the decision or recommendation of the
22 authority shall be suspended until the matter is decided by the
23 council;

24 (2) the council shall hear the matter at its
25 next regularly scheduled hearing or at a special hearing called

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1 by the chair for that purpose;

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

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

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

9 "22-25-2. DEFINITIONS.--As used in the Public School
10 Capital Improvements Act:

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

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

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

20 (2) purchasing or improving public school
21 grounds;

22 (3) maintenance of public school buildings or
23 public school grounds, including payments under contracts for
24 maintenance support services and expenditures for technical
25 training and certification for maintenance and facilities

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1 management personnel, but excluding salary expenses of school
2 district employees;

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

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

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

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

11 A. Except as provided in Subsection C, [~~or~~] G or H
12 of this section, the secretary shall distribute to any school
13 district that has imposed a tax under the Public School Capital
14 Improvements Act an amount from the public school capital
15 improvements fund that is equal to the amount by which the
16 revenue estimated to be received from the imposed tax, at the
17 rate certified by the department of finance and administration
18 in accordance with Section 22-25-7 NMSA 1978, assuming a one
19 hundred percent collection rate, is less than an amount
20 calculated by multiplying the school district's first forty
21 days' total program units by the amount specified in Subsection
22 B of this section and further multiplying the product obtained
23 by the tax rate approved by the qualified electors in the most
24 recent election on the question of imposing a tax under the
25 Public School Capital Improvements Act. The distribution shall

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1 be made each year that the tax is imposed in accordance with
2 Section 22-25-7 NMSA 1978; provided that no state distribution
3 from the public school capital improvements fund may be used
4 for capital improvements to any administration building of a
5 school district. In the event that sufficient funds are not
6 available in the public school capital improvements fund to
7 make the state distribution provided for in this section, the
8 dollar per program unit figure shall be reduced as necessary.

9 B. In calculating the state distribution pursuant
10 to Subsection A of this section, the following amounts shall be
11 used:

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

14 (2) ~~[for fiscal year 2006 and thereafter]~~ an
15 additional amount certified to the secretary by the public
16 school capital outlay council. No later than June 1 ~~[2005 and~~
17 ~~each June 1 thereafter]~~ of each year, the council shall
18 determine the amount needed in the next fiscal year for public
19 school capital outlay projects pursuant to the Public School
20 Capital Outlay Act and the amount of revenue, from all sources,
21 available for the projects. If, in the sole discretion of the
22 council, the amount available exceeds the amount needed, the
23 council may certify an additional amount pursuant to this
24 paragraph; provided that the sum of the amount calculated
25 pursuant to this paragraph plus the amount in Paragraph (1) of

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1 this subsection shall not result in a total statewide
2 distribution that, in the opinion of the council, exceeds one-
3 half of the total revenue estimated to be received from taxes
4 imposed pursuant to the Public School Capital Improvements Act.

5 C. For any fiscal year [~~2004 and thereafter~~]
6 notwithstanding the amount calculated to be distributed
7 pursuant to Subsections A and B of this section, except as
8 provided in Subsection G or H of this section, a school
9 district, the voters of which have approved a tax pursuant to
10 Section 22-25-3 NMSA 1978, shall not receive a distribution
11 less than the amount calculated pursuant to Subsection E of
12 this section, multiplied by the school district's first forty
13 days' total program units and further multiplying the product
14 obtained by the approved tax rate.

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

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1 E. For purposes of calculating the minimum
2 distribution pursuant to Subsection C of this section, the
3 amount used in that subsection shall equal five dollars (\$5.00)
4 through fiscal year 2005 and in each subsequent fiscal year
5 shall equal the amount for the previous fiscal year adjusted by
6 the percentage increase between the next preceding calendar
7 year and the preceding calendar year of the consumer price
8 index for the United States, all items, as published by the
9 United States department of labor.

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

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

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1 H. If the school district has entered into a loan
2 agreement pursuant to Section 22-24-5.7 NMSA 1978 and the
3 school district has refused to make payments under the
4 agreement, until the loan is paid in full, the distribution
5 calculated pursuant to this section shall not be made to the
6 school district but shall be made to the public school capital
7 outlay fund.

8 ~~[H.]~~ I. In making distributions pursuant to this
9 section, the secretary shall include such reporting
10 requirements and conditions as are required by rule of the
11 public school capital outlay council. The council shall adopt
12 such requirements and conditions as are necessary to ensure
13 that the distributions are expended in the most prudent manner
14 possible and are consistent with the original purpose as
15 specified in the authorizing resolution. Copies of reports or
16 other information received by the secretary in response to the
17 requirements and conditions shall be forwarded to the council."

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

20 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE
21 STATE PURCHASING AGENT.--Excluded from the requirement of
22 procurement through the state purchasing agent but not from the
23 requirements of the Procurement Code are the following:

- 24 A. procurement of professional services;
- 25 B. small purchases having a value not exceeding one

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1 thousand five hundred dollars (\$1,500);

2 C. emergency procurement;

3 D. procurement of highway construction or
4 reconstruction by the department of transportation;

5 E. procurement by the judicial branch of state
6 government;

7 F. procurement by the legislative branch of state
8 government;

9 G. procurement by the boards of regents of state
10 educational institutions named in Article 12, Section 11 of the
11 constitution of New Mexico;

12 H. procurement by the state fair commission of
13 tangible personal property, services and construction under ten
14 thousand dollars (\$10,000);

15 I. purchases from the instructional material fund;

16 J. procurement by all local public bodies;

17 K. procurement by regional education cooperatives;

18 L. procurement by charter schools; [~~and~~]

19 M. procurement by each state health care
20 institution that provides direct patient care and that is, or a
21 part of which is, medicaid certified and participating in the
22 New Mexico medicaid program; and

23 N. procurement by the public school facilities
24 authority."

25 Section 12. TEMPORARY PROVISION--SCHOOL DISTRICT REVENUE

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1 IMPACT STUDY GROUP--CREATION--STAFF.--

2 A. The "school district revenue impact study group"
3 is created. The study group consists of sixteen members as
4 follows:

5 (1) the secretary of finance and
6 administration or the secretary's designee;

7 (2) the secretary of public education or the
8 secretary's designee;

9 (3) the director of the public school
10 facilities authority or the director's designee;

11 (4) two majority party members and one
12 minority party member of the house of representatives,
13 appointed by the New Mexico legislative council;

14 (5) two majority party members and one
15 minority party member of the senate, appointed by the New
16 Mexico legislative council;

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

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

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

23 (9) a representative of the New Mexico
24 association of counties;

25 (10) a representative of the New Mexico school

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1 boards association; and

2 (11) a representative of the New Mexico
3 superintendents association.

4 B. The chair of the study group shall be elected by
5 the study group. The study group shall meet at the call of the
6 chair.

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

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

12 E. The study group shall:

13 (1) examine how actions by local governments
14 in the acquisition of property that will be exempt from
15 property taxes, such as acquiring projects with proceeds of
16 industrial revenue bonds, affect school district revenues;

17 (2) examine whether the purposes of the
18 Development Fees Act are served by the imposition of impact
19 fees against school districts;

20 (3) examine whether, in communities where
21 school facilities are often used by local governments, the
22 school districts and local governments should share the cost of
23 building and maintaining the facilities;

24 (4) examine alternatives that will ensure that
25 local governments consider the interests of school districts

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1 when making decisions that will impact school district revenues
2 and expenditures; and

3 (5) no later than December 31, 2006, report
4 its findings and recommendations for policy and statutory
5 changes to the public school capital outlay oversight task
6 force, the legislative education study committee and the
7 legislative finance committee.

8 F. The legislative council service, with assistance
9 from the public education department, the public school
10 facilities authority, the legislative education study committee
11 and the legislative finance committee, shall provide staff for
12 the study group.

13 Section 13. APPROPRIATIONS.--

14 A. Forty million dollars (\$40,000,000) is
15 appropriated from the general fund to the public school capital
16 outlay fund for expenditure in fiscal years 2006 through 2011
17 for the purpose of correcting outstanding health, safety or
18 infrastructure deficiencies in the buildings and grounds of the
19 New Mexico school for the blind and visually impaired and the
20 New Mexico school for the deaf pursuant to Section 22-24-5.6
21 NMSA 1978. Any unexpended or unencumbered balance remaining at
22 the end of fiscal year 2011 shall not revert to the general
23 fund but shall remain in the public school capital outlay fund
24 and be expended pursuant to the Public School Capital Outlay
25 Act.

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

10 C. Two million dollars (\$2,000,000) is appropriated
11 from the general fund to the public school capital outlay fund
12 for expenditure in fiscal years 2006 through 2010 for the
13 purpose of making allocations to school districts to demolish
14 abandoned school district facilities pursuant to Subsection L
15 of Section 22-24-4 NMSA 1978. Any unexpended or unencumbered
16 balance remaining at the end of fiscal year 2010 shall not
17 revert to the general fund but shall remain in the public
18 school capital outlay fund and be expended pursuant to the
19 Public School Capital Outlay Act.

20 D. Two hundred ninety million dollars
21 (\$290,000,000) is appropriated from the general fund to the
22 public school capital outlay fund for expenditure in fiscal
23 years 2006 through 2010 for the purpose of making grants and
24 loans for new facilities in high-growth areas pursuant to
25 Section 22-24-5.7 NMSA 1978. Any unexpended or unencumbered

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1 balance remaining at the end of fiscal year 2010 shall not
2 revert to the general fund but shall remain in the public
3 school capital outlay fund and be expended pursuant to the
4 Public School Capital Outlay Act.

5 E. One million dollars (\$1,000,000) is appropriated
6 from the general fund to the new school development fund for
7 expenditure in fiscal year 2006 and subsequent fiscal years for
8 the purpose of making distributions to school districts to pay
9 costs unique to the first year of operation of new schools.
10 Any unexpended or unencumbered balance of the appropriation
11 remaining at the end of a fiscal year shall not revert to the
12 general fund.

13 F. Seven million five hundred thousand dollars
14 (\$7,500,000) is appropriated from the general fund to the
15 public school capital outlay fund for expenditure in fiscal
16 years 2006 and 2007 for the purpose of making lease payments
17 pursuant to Subsection I of Section 22-24-4 NMSA 1978. Any
18 unexpended or unencumbered balance remaining at the end of
19 fiscal year 2007 shall not revert to the general fund but shall
20 remain in the public school capital outlay fund and be expended
21 pursuant to the Public School Capital Outlay Act.

22 G. Three hundred thousand dollars (\$300,000) is
23 appropriated from the general fund to the public school
24 facilities authority for expenditure in fiscal years 2006 and
25 2007 for the purpose of making grants to school districts to

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1 improve the indoor air quality of the public schools. Upon
2 application to the public school capital outlay council, the
3 council shall award the grants pursuant to criteria developed
4 by the public school facilities authority in consultation with
5 the department of environment, the public education department,
6 the department of health, the energy, minerals and natural
7 resources department and the children, youth and families
8 department. Any unexpended or unencumbered balance remaining
9 at the end of fiscal year 2007 shall revert to the general
10 fund.

11 H. Fifty thousand dollars (\$50,000) is appropriated
12 from the general fund to the public education department for
13 expenditure in fiscal years 2006 and 2007 for the purpose of
14 entering into a contract to study the feasibility of allowing
15 additional entities, including universities, tribal
16 governments, the public education department and a separate
17 chartering board, to approve the establishment of charter
18 schools. The contract and the feasibility study shall be
19 managed by the department in coordination with the legislative
20 council service, the legislative finance committee, the
21 legislative education study committee and the department of
22 finance and administration. No later than December 15, 2006,
23 the results of the study shall be presented to the public
24 school capital outlay oversight task force, the legislative
25 finance committee and the legislative education study

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1 committee. Any unexpended or unencumbered balance remaining at
2 the end of fiscal year 2007 shall revert to the general fund.

3 I. Fifty thousand dollars (\$50,000) is appropriated
4 from the general fund to the legislative council service for
5 expenditure in fiscal years 2006 and 2007 for the purpose of
6 paying per diem and mileage to the members of the school
7 district revenue impact study group and other expenses incurred
8 in carrying out the provisions of Section 11 of this act. Any
9 unexpended or unencumbered balance remaining at the end of
10 fiscal year 2007 shall revert to the general fund.

11 Section 14. DELAYED REPEAL.--On July 1, 2009, Section
12 22-24-5.7 NMSA 1978, as enacted by Section 7 of this act, is
13 repealed.

14 Section 15. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.