

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 450

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; CREATING A FUND TO PROVIDE 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

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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, 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

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

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

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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

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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 for such purposes, the council may approve allocations from the
10 fund and, working with the higher education department and the
11 applicable board of regents, enter into construction contracts
12 to correct the deficiencies.

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

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

25 Section 7. A new section of the Public School Capital

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1 Outlay Act, Section 22-24-5.7 NMSA 1978, is enacted to read:

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

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

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

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

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

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

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

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

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

24 (a) both projects qualify pursuant to
25 the provisions of Paragraph (2) of Subsection B of this

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1 section; or

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

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

6 (1) that is approved for a grant award
7 pursuant to Section 22-24-5 NMSA 1978 during an awards cycle
8 occurring in 2006 and subsequent award cycles and:

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

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

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

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

23 (b) is a project for which the council
24 has determined, pursuant to its weighted average conditions
25 index, that the cost necessary to bring the existing facilities

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1 up to the statewide adequacy standards would be equal to or
2 more than the cost of replacing the existing facility.

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

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

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

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

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

19 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
20 CREATION--POWERS AND DUTIES.--

21 A. The "public school facilities authority" is
22 created under the council. The authority shall be headed by a
23 director, selected by the council, who shall be versed in
24 construction, architecture or project management. The director
25 may hire no more than two deputies with the approval of the

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1 council, and, subject to budgetary constraints set out in
2 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
3 contract with such technical and administrative personnel as
4 are necessary to carry out the provisions of this section. The
5 director, ~~[and]~~ deputies and all other employees of the
6 authority shall be exempt from the provisions of the Personnel
7 Act ~~[after July 1, 2006, all other employees of the authority~~
8 ~~shall be subject to the provisions of the Personnel Act]~~.

9 B. The authority shall:

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

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1 districts in analyzing and assessing their space utilization
2 options;

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

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

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

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

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

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

25 (12) maintain a database of the condition of

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1 school facilities and maintenance schedules; and

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

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

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

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

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

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

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

24 (g) shall maintain, track and account
25 for deficiency correction projects separately from other

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1 capital outlay projects funded pursuant to the Public School
2 Capital Outlay Act.

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

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

13 Upon filing of the notice:

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

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

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

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

25 Section 9. Section 22-25-2 NMSA 1978 (being Laws 1975

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1 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

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

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

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

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

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

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

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

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

25 Section 10. Section 22-25-9 NMSA 1978 (being Laws 1975

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1 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

2 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
3 TAX UNDER CERTAIN CIRCUMSTANCES.--

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

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1 dollar per program unit figure shall be reduced as necessary.

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

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

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

23 C. For any fiscal year [~~2004 and thereafter~~]
24 notwithstanding the amount calculated to be distributed
25 pursuant to Subsections A and B of this section, except as

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

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

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

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

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

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

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

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1 specified in the authorizing resolution. Copies of reports or
2 other information received by the secretary in response to the
3 requirements and conditions shall be forwarded to the council."

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

6 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE
7 STATE PURCHASING AGENT.--Excluded from the requirement of
8 procurement through the state purchasing agent but not from the
9 requirements of the Procurement Code are the following:

- 10 A. procurement of professional services;
- 11 B. small purchases having a value not exceeding one
12 thousand five hundred dollars (\$1,500);
- 13 C. emergency procurement;
- 14 D. procurement of highway construction or
15 reconstruction by the department of transportation;
- 16 E. procurement by the judicial branch of state
17 government;
- 18 F. procurement by the legislative branch of state
19 government;
- 20 G. procurement by the boards of regents of state
21 educational institutions named in Article 12, Section 11 of the
22 constitution of New Mexico;
- 23 H. procurement by the state fair commission of
24 tangible personal property, services and construction under ten
25 thousand dollars (\$10,000);

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- 1 I. purchases from the instructional material fund;
- 2 J. procurement by all local public bodies;
- 3 K. procurement by regional education cooperatives;
- 4 L. procurement by charter schools; [~~and~~]
- 5 M. procurement by each state health care
- 6 institution that provides direct patient care and that is, or a
- 7 part of which is, medicaid certified and participating in the
- 8 New Mexico medicaid program; and
- 9 N. procurement by the public school facilities
- 10 authority."

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

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

- 16 (1) the secretary of finance and
- 17 administration or the secretary's designee;
- 18 (2) the secretary of public education or the
- 19 secretary's designee;
- 20 (3) the director of the public school
- 21 facilities authority or the director's designee;
- 22 (4) two majority party members and one
- 23 minority party member of the house of representatives,
- 24 appointed by the New Mexico legislative council;
- 25 (5) two majority party members and one

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1 minority party member of the senate, appointed by the New
2 Mexico legislative council;

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

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

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

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

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

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

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

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

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

23 E. The study group shall:

24 (1) examine how actions by local governments
25 in the acquisition of property that will be exempt from

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1 property taxes, such as acquiring projects with proceeds of
2 industrial revenue bonds, affect school district revenues;

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

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

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

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

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

24 Section 13. TEMPORARY PROVISION--CHARTERING AUTHORITY
25 STUDY.--The legislative council service, in conjunction with

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1 the public education department, the department of finance and
2 administration and the staffs of the legislative finance
3 committee and the legislative education study committee, shall
4 study the feasibility of allowing additional entities,
5 including universities, tribal governments, the public
6 education department and a separate chartering board, to
7 approve the establishment of charter schools. No later than
8 December 15, 2006, the results of the study shall be presented
9 to the public school capital outlay oversight task force, the
10 legislative finance committee and the legislative education
11 study committee.

12 Section 14. APPROPRIATIONS.--

13 A. Two million five hundred thousand dollars
14 (\$2,500,000) is appropriated from the public school capital
15 outlay fund to the public school facilities authority for
16 expenditure in fiscal years 2006 through 2008 for continuing
17 the development and implementation of a uniform web-based
18 facility information management system for the public schools
19 pursuant 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 public school capital
22 outlay fund.

23 B. Three hundred thousand dollars (\$300,000) is
24 appropriated from the public school capital outlay fund to the
25 public school facilities authority for expenditure in fiscal

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1 years 2007 and 2008 for the purpose of improving the indoor air
2 quality of public schools by implementing the New Mexico indoor
3 air quality tools for schools program pursuant to criteria
4 developed by the public school facilities authority in
5 consultation with the department of environment, the public
6 education department, the department of health, the energy,
7 minerals and natural resources department and the children,
8 youth and families department. Any unexpended or unencumbered
9 balance remaining at the end of fiscal year 2008 shall revert
10 to the public school capital outlay fund.

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

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