

SENATE FLOOR SUBSTITUTE FOR  
SENATE BILL 146

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC  
SCHOOL CAPITAL OUTLAY ACT TO PROVIDE INCREMENTAL FUNDING FOR  
PROJECTS IN CERTAIN SCHOOL DISTRICTS, TO REDUCE THE OFFSET FROM  
A GRANT AWARD FOR CERTAIN APPROPRIATIONS MADE FOR JOINT USE  
WITH A GOVERNMENTAL ENTITY, TO CHANGE THE PROCEDURE FOR MAKING  
PAYMENTS FOR EXPENDITURES INCURRED TO INSPECT AND PERMIT  
PROJECTS, TO PROVIDE AN INCREASED GRANT AWARD TO THOSE SCHOOL  
DISTRICTS WITH AN EXEMPLARY RECORD OF PREVENTIVE MAINTENANCE  
AND TO CHANGE THE MEMBERSHIP OF THE PUBLIC SCHOOL CAPITAL  
OUTLAY OVERSIGHT TASK FORCE; EXTENDING THE EXPENDITURE PERIOD  
FOR A CERTAIN APPROPRIATION; MAKING AN APPROPRIATION.

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

Section 1. Section 22-24-4 NMSA 1978 (being Laws 1975,  
Chapter 235, Section 4, as amended) is amended to read:

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underscored material = new  
[bracketed material] = delete

1 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--  
2 USE.--

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

6 B. Except as provided in Section 22-24-5.8 NMSA  
7 1978 and in Subsections G through L of this section, money in  
8 the fund may be used only for capital expenditures deemed  
9 necessary by the council [~~necessary~~] for an adequate  
10 educational program.

11 C. The council may authorize the purchase by the  
12 public school facilities authority of portable classrooms to be  
13 loaned to school districts to meet a temporary requirement.  
14 Payment for these purchases shall be made from the fund. Title  
15 and custody to the portable classrooms shall rest in the public  
16 school facilities authority. The council shall authorize the  
17 lending of the portable classrooms to school districts upon  
18 request and upon finding that sufficient need exists.

19 Application for use or return of state-owned portable classroom  
20 buildings shall be submitted by school districts to the  
21 council. Expenses of maintenance of the portable classrooms  
22 while in the custody of the public school facilities authority  
23 shall be paid from the fund; expenses of maintenance and  
24 insurance of the portable classrooms while in the custody of a  
25 school district shall be the responsibility of the school

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1 district. The council may authorize the permanent disposition  
2 of the portable classrooms by the public school facilities  
3 authority with prior approval of the state board of finance.

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

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

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

23 (1) up to ten percent of the portion of the  
24 project cost funded with distributions from the fund or five  
25 percent of the total project cost, whichever is greater, may be

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1 paid to the school district before work commences with the  
2 balance of the grant award made on a cost-reimbursement basis;  
3 or

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

6 G. Balances in the fund may be annually  
7 appropriated for the core administrative functions of the  
8 public school facilities authority pursuant to the Public  
9 School Capital Outlay Act and, in addition, balances in the  
10 fund may be expended by the public school facilities authority,  
11 upon approval of the council, for project management expenses;  
12 provided that:

13 (1) the total annual expenditures from the  
14 fund pursuant to this subsection shall not exceed five percent  
15 of the average annual grant assistance authorized from the fund  
16 during the three previous fiscal years; and

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

20 H. Up to thirty million dollars (\$30,000,000) of  
21 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 I. The fund may be expended annually by the council  
3 in fiscal years 2006 through 2020 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) seven hundred dollars (\$700)  
19 multiplied by the number of MEM using the leased classroom  
20 facilities; provided that in fiscal year 2009 and in each  
21 subsequent fiscal year, this amount shall be adjusted by the  
22 percentage increase between the penultimate calendar year and  
23 the immediately preceding calendar year of the consumer price  
24 index for the United States, all items, as published by the  
25 United States department of labor; and provided further that if

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1 the total grants awarded pursuant to this paragraph would  
2 exceed the total annual amount available, the rate specified in  
3 this subparagraph shall be reduced proportionately;

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

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

11 (4) if the lease payments are made pursuant to  
12 a financing agreement under which the facilities may be  
13 purchased for a price that is reduced according to the lease  
14 payments made:

15 (a) a grant shall not be made unless the  
16 council determines that the leased facilities meet the  
17 statewide adequacy standards; and

18 (b) neither a grant nor any provision of  
19 the Public School Capital Outlay Act creates a legal obligation  
20 for the school district or charter school to continue the lease  
21 from year to year or to purchase the facilities nor does it  
22 create a legal obligation for the state to make subsequent  
23 grants pursuant to the provisions of this subsection;

24 (5) the total amount expended from the fund  
25 pursuant to this subsection shall not exceed:

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1 (a) seven million five hundred thousand  
2 dollars (\$7,500,000) in fiscal year 2007; and

3 (b) in fiscal year 2008 and each  
4 subsequent fiscal year, the maximum amount for the previous  
5 fiscal year adjusted by the percentage increase between the  
6 penultimate calendar year and the immediately preceding  
7 calendar year of the consumer price index for the United  
8 States, all items, as published by the United States department  
9 of labor; and

10 (6) as used in this subsection:

11 (a) "MEM" means: 1) the average  
12 full-time-equivalent enrollment using leased classroom  
13 facilities on the eightieth and one hundred twentieth days of  
14 the prior school year; or 2) 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 eightieth day of the school year, the MEM shall be  
20 adjusted to reflect the full-time-equivalent enrollment on that  
21 date; and

22 (b) "classroom facilities" or "classroom  
23 space" includes the space needed, as determined by the minimum  
24 required under the statewide adequacy standards, for the direct  
25 administration of school activities.

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

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

- 25                   (1) no allocation shall be made unless the



1 council determines that the school district is willing and able  
2 to pay the portion of the total cost of developing or updating  
3 the plan that is not funded with the allocation from the fund.  
4 Except as provided in Paragraph (2) of this subsection, the  
5 portion of the total cost to be paid with the allocation from  
6 the fund shall be determined pursuant to the methodology in  
7 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

10 (a) the school district has fewer than  
11 an average of six hundred full-time-equivalent students on the  
12 eightieth and one hundred twentieth days of the prior school  
13 year; or

14 (b) the school district meets all of the  
15 following requirements: 1) the school district has fewer than  
16 an average of one thousand full-time-equivalent students on the  
17 eightieth and one hundred twentieth days of the prior school  
18 year; 2) the school district has at least seventy percent of  
19 its students eligible for free or reduced-fee lunch; 3) the  
20 state share of the total cost, if calculated pursuant to the  
21 methodology in Paragraph (5) of Subsection B of Section 22-24-5  
22 NMSA 1978, would be less than fifty percent; and 4) for all  
23 educational purposes, the school district has a residential  
24 property tax rate of at least seven dollars (\$7.00) on each one  
25 thousand dollars (\$1,000) of taxable value, as measured by the

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

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

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

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

14 (3) the council may enter into an agreement  
15 with the school district under which an amount equal to the  
16 savings to the district in lower insurance premiums are used to  
17 [~~fully or partially~~] reimburse the fund fully or partially for  
18 the demolition costs allocated to the district."

19 Section 2. Section 22-24-5 NMSA 1978 (being Laws 1975,  
20 Chapter 235, Section 5, as amended) is amended to read:

21 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
22 APPLICATION--GRANT ASSISTANCE.--

23 A. Applications for grant assistance, [~~the~~]  
24 approval of applications, [~~the~~] prioritization of projects and  
25 grant awards shall be conducted pursuant to the provisions of

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1 this section.

2 B. Except as provided in Sections 22-24-4.3,  
3 22-24-5.4, [~~and~~] 22-24-5.6 and 22-24-5.8 NMSA 1978, the  
4 following provisions govern grant assistance from the fund for  
5 a public school capital outlay project not wholly funded  
6 pursuant to Section 22-24-4.1 NMSA 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;

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

8 (d) 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~~]  
15 (8) or (9) of this subsection, the state share of a project  
16 approved and ranked by the council shall be funded within  
17 available resources pursuant to the provisions of this  
18 paragraph. No later than May 1 of each calendar year, a value  
19 shall be calculated for each school district in accordance with  
20 the 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 or 22-24-5.8 NMSA 1978 and except as adjusted  
13 pursuant to Paragraph (6), ~~(8)~~ (9) of this subsection,  
14 the amount to be distributed from the fund for an approved  
15 project shall equal the total project cost multiplied by a  
16 fraction the numerator of which is the value calculated for the  
17 subject school district in the current year plus the value  
18 calculated for that school district in each of the two  
19 preceding years and the denominator of which is three; and

20 (q) as used in this paragraph: 1) "MEM"  
21 means the average full-time-equivalent enrollment of students  
22 attending public school in a school district on the eightieth  
23 and one hundred twentieth days of the prior school year; 2)  
24 "total project cost" means the total amount necessary to  
25 complete the public school capital outlay project less any

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1 insurance reimbursement received by the school district for the  
2 project; and 3) in the case of a state-chartered charter school  
3 that has submitted an application for grant assistance pursuant  
4 to this section, the "value calculated for the subject school  
5 district" means the value calculated for the school district in  
6 which the state-chartered charter school is physically located;

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, is calculated;  
16 provided that: 1) an appropriation made in a fiscal year shall  
17 be deemed to be accepted by a school district unless, prior to  
18 June 1 of that fiscal year, the school district notifies the  
19 department of finance and administration and the public  
20 education department that the district is rejecting the  
21 appropriation; 2) the total shall exclude any educational  
22 technology appropriation made prior to January 1, 2005 unless  
23 the appropriation was on or after January 1, 2003 and not  
24 previously used to offset distributions pursuant to the  
25 Technology for Education Act; 3) the total shall exclude any

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

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

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

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

14 (e) the amount calculated pursuant to  
15 Subparagraph (p) of Paragraph (5) of this subsection shall be  
16 reduced by the amount calculated pursuant to Subparagraph (d)  
17 of this paragraph;

18 (7) as used in [~~Paragraphs (5) and (6) of~~]  
19 this subsection:

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

22 (b) "subject school district" means the  
23 school district that has submitted the application for funding  
24 and in which the approved public school capital outlay project  
25 will be located;

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underscored material = new  
[bracketed material] = delete

1                   (8) the amount calculated pursuant to  
 2 Subparagraph (p) of Paragraph (5) of this subsection, after any  
 3 reduction pursuant to Paragraph (6) of this subsection, may be  
 4 increased by an additional five percent if the council finds  
 5 that the subject school district has been exemplary in  
 6 implementing and maintaining a preventive maintenance program.  
 7 The council shall adopt such rules as are necessary to  
 8 implement the provisions of this paragraph;

9                   ~~[(8)]~~ (9) the council may adjust the amount of  
 10 local share otherwise required if it determines that a school  
 11 district has used all of its local resources. Before making  
 12 any adjustment to the local share, the council shall consider  
 13 whether:

14                   (a) the school district has insufficient  
 15 bonding capacity over the next four years to provide the local  
 16 match necessary to complete the project and, for all  
 17 educational purposes, has a residential property tax rate of at  
 18 least ten dollars (\$10.00) on each one thousand dollars  
 19 (\$1,000) of taxable value, as measured by the sum of all rates  
 20 imposed by resolution of the local school board plus rates set  
 21 to pay interest and principal on outstanding school district  
 22 general obligation bonds;

23                   (b) the school district: 1) has fewer  
 24 than an average of eight hundred full-time-equivalent students  
 25 on the eightieth and one hundred twentieth days of the prior

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1 school year; 2) has at least seventy percent of its students  
2 eligible for free or reduced-fee lunch; 3) has a share of the  
3 total project cost, as calculated pursuant to provisions of  
4 this section, that would be greater than fifty percent; and 4)  
5 for all educational purposes, has a residential property tax  
6 rate of at least seven dollars (\$7.00) on each one thousand  
7 dollars (\$1,000) of taxable value, as measured by the sum of  
8 all rates imposed by resolution of the local school board plus  
9 rates set to pay interest and principal on outstanding school  
10 district general obligation bonds; or

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

21 [~~(9)~~] (10) no application for grant assistance  
22 from the fund shall be approved unless the council determines  
23 that:

24 (a) the public school capital outlay  
25 project is needed and included in the school district's

1 five-year facilities plan among its top priorities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (6) neither a grant award nor any provision of  
25 the Public School Capital Outlay Act creates a legal obligation

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1 for the school district or charter school to continue the lease  
2 from year to year or to purchase the facility.

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

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

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

19 (3) the school district and the capital outlay  
20 project meet all of the requirements for grant assistance  
21 pursuant to the Public School Capital Outlay Act; provided  
22 that, when determining the deviation from the statewide  
23 adequacy standards for the purposes of evaluating and  
24 prioritizing the project, the students using the facility shall  
25 be deemed to be attending other schools in the school district.

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

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

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

19 I. Upon the recommendation of the public school  
20 facilities authority, the council shall develop building  
21 standards for public school facilities and shall promulgate  
22 other such rules as are necessary to carry out the provisions  
23 of the Public School Capital Outlay Act.

24 J. No later than December 15 of each year, the  
25 council shall prepare a report summarizing its activities

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1 during the previous fiscal year. The report shall describe in  
2 detail all projects funded, the progress of projects previously  
3 funded but not completed, the criteria used to prioritize and  
4 fund projects and all other council actions. The report shall  
5 be submitted to the public education commission, the governor,  
6 the legislative finance committee, the legislative education  
7 study committee and the legislature."

8 Section 3. Section 22-24-5.4 NMSA 1978 (being Laws 2004,  
9 Chapter 125, Section 10) is amended to read:

10 "22-24-5.4. RECALCITRANT SCHOOL DISTRICTS--COURT ACTION  
11 TO ENFORCE CONSTITUTIONAL COMPLIANCE--IMPOSITION OF PROPERTY  
12 TAX.--

13 A. The council may bring an action against a school  
14 district pursuant to the provisions of this section if, based  
15 upon information submitted to the council by the public school  
16 facilities authority, the council determines that:

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

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

25 (3) either:

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

4 (b) the school district is unwilling to  
5 meet all of the requirements for the approval of an application  
6 for grant assistance pursuant to Paragraph [~~9~~] (10) of  
7 Subsection B of Section 22-24-5 NMSA 1978.

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

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

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

18 (2) order the school district to comply with  
19 Paragraph [~~9~~] (10) of Subsection B of Section 22-24-5 NMSA  
20 1978 and to take all other actions necessary to facilitate the  
21 completion of the project ordered pursuant to Paragraph (1) of  
22 this subsection; and

23 (3) enter a judgment against the school  
24 district for court costs and attorney fees and the necessary  
25 amount to satisfy the school district share, as determined by

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1 the formula prescribed by Subsection B of Section 22-24-5 NMSA  
2 1978, for the project ordered pursuant to Paragraph (1) of this  
3 subsection.

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

16 Section 4. A new section of the Public School Capital  
17 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

18 "22-24-5.8. [NEW MATERIAL] INCREMENTAL FUNDING FOR  
19 PROJECTS IN CERTAIN SCHOOL DISTRICTS.--

20 A. A school district receiving grant assistance  
21 from the fund pursuant to Section 22-24-5 NMSA 1978 for a  
22 public school capital outlay project, other than supplemental  
23 grant assistance for increased costs on a project previously  
24 approved, shall receive additional incremental funding from the  
25 fund if the school district and proposed use of the additional

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1 incremental funding qualify pursuant to the provisions of  
2 Subsection B of this section.

3 B. A school district shall receive the additional  
4 grant if the council determines that:

5 (1) the school district has a demonstrated  
6 history of providing support to its schools with all available  
7 resources;

8 (2) in calculating the grant assistance from  
9 the fund for the project pursuant to Section 22-24-5 NMSA 1978,  
10 the value calculated for the school district pursuant to  
11 Subparagraph (k), (m), (n) or (o) of Paragraph (5) of  
12 Subsection B of that section is equal to or greater than seven-  
13 tenths;

14 (3) averaged over the previous four property  
15 tax years, the school district had a residential property tax  
16 rate of at least nine dollars (\$9.00) on each one thousand  
17 dollars (\$1,000) of taxable value, as measured by the sum of  
18 all rates imposed by resolution of the local school board plus  
19 rates set to pay interest and principal on outstanding school  
20 district general obligation bonds;

21 (4) at least seventy percent of the students  
22 in the school district are eligible for free or reduced-fee  
23 lunch;

24 (5) the school district does not have  
25 sufficient resources to expend on the project so it is unlikely

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1 that the school district will be able to provide its students  
2 with more than the bare minimum;

3 (6) the political subdivision in which the  
4 school district is located does not have adequate  
5 infrastructure to compensate for the school district's lack of  
6 resources; and

7 (7) the planned use of the additional grant  
8 will enhance public school education in the school district,  
9 will further the school district's educational plan for student  
10 success and is a prudent use of state money.

11 C. The amount of additional incremental funding  
12 awarded pursuant to this section shall equal the total project  
13 cost multiplied by the lesser of:

14 (1) the value calculated for the school  
15 district pursuant to Subparagraph (k), (m), (n) or (o) of  
16 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978  
17 minus six-tenths; or

18 (2) twenty-five hundredths.

19 D. All provisions of the Public School Capital  
20 Outlay Act relating to the expenditure of other grants awarded  
21 from the fund, including those provisions relating to  
22 reporting, oversight, project access and accountability, apply  
23 to the use and expenditure of additional funding made pursuant  
24 to this section."

25 Section 5. Section 22-24-7 NMSA 1978 (being Laws 2001,

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1 Chapter 338, Section 12, as amended) is amended to read:

2 "22-24-7. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK  
3 FORCE--CREATION--STAFF.--

4 A. The "public school capital outlay oversight task  
5 force" is created. The task force consists of [~~twenty-six~~  
6 twenty-five members as follows:

7 (1) the secretary of finance and  
8 administration or the secretary's designee;

9 (2) the secretary of public education or the  
10 secretary's designee;

11 [~~(3) the state investment officer or the state  
12 investment officer's designee;~~

13 ~~(4)]~~ (3) the speaker of the house of  
14 representatives or the speaker's designee;

15 [~~(5)]~~ (4) the president pro tempore of the  
16 senate or the president pro tempore's designee;

17 [~~(6)]~~ (5) the chairs of the house  
18 appropriations and finance committee, the senate finance  
19 committee, the senate education committee and the house  
20 education committee or their designees;

21 [~~(7)]~~ (6) two minority party members of the  
22 house of representatives, appointed by the New Mexico  
23 legislative council;

24 [~~(8)]~~ (7) two minority party members of the  
25 senate, appointed by the New Mexico legislative council;

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1                   ~~[(9)]~~ (8) a member of the interim legislative  
2 committee charged with the oversight of Indian affairs,  
3 appointed by the New Mexico legislative council, provided that  
4 the member shall rotate annually between a senate member and a  
5 member of the house of representatives;

6                   ~~[(10)]~~ (9) a member of the house of  
7 representatives and a member of the senate who represent  
8 districts with school districts receiving federal funds  
9 commonly known as "PL 874" funds or "impact aid", appointed by  
10 the New Mexico legislative council;

11                   ~~[(11)]~~ (10) two public members who have  
12 expertise in education and finance appointed by the speaker of  
13 the house of representatives;

14                   ~~[(12)]~~ (11) two public members who have  
15 expertise in education and finance appointed by the president  
16 pro tempore of the senate;

17                   ~~[(13)]~~ (12) three public members, two of whom  
18 are residents of school districts that receive grants from the  
19 federal government as assistance to areas affected by federal  
20 activity authorized in accordance with Title 20 of the United  
21 States Code, appointed by the governor; and

22                   ~~[(14)]~~ (13) three superintendents of school  
23 districts or their designees, two of whom are from school  
24 districts that receive grants from the federal government as  
25 assistance to areas affected by federal activity authorized in



1 accordance with Title 20 of the United States Code, appointed  
 2 by the New Mexico legislative council in consultation with the  
 3 governor.

4 B. The chair of the public school capital outlay  
 5 oversight task force shall be elected by the task force. The  
 6 task force shall meet at the call of the chair, but no more  
 7 than four times per calendar year.

8 C. Non-ex-officio members of the task force shall  
 9 serve at the pleasure of their appointing authorities.

10 D. The public members of the public school capital  
 11 outlay oversight task force shall receive per diem and mileage  
 12 pursuant to the Per Diem and Mileage Act.

13 E. The legislative council service, with assistance  
 14 from the public school facilities authority, the department of  
 15 finance and administration, the public education department,  
 16 the legislative education study committee and the legislative  
 17 finance committee, shall provide staff for the public school  
 18 capital outlay oversight task force."

19 Section 6. Laws 2006, Chapter 95, Section 14 is amended  
 20 to read:

21 "Section 14. APPROPRIATIONS.--

22 A. Two million five hundred thousand dollars  
 23 (\$2,500,000) is appropriated from the public school capital  
 24 outlay fund to the public school facilities authority for  
 25 expenditure in fiscal years 2006 through [~~2008~~] 2009 for  
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1 continuing the development and implementation of a uniform  
2 web-based facility information management system for the public  
3 schools pursuant to the provisions of Section 22-24-5.3 NMSA  
4 1978. Any unexpended or unencumbered balance remaining at the  
5 end of fiscal year [~~2008~~] 2009 shall revert to the public  
6 school capital outlay fund.

7 B. Three hundred thousand dollars (\$300,000) is  
8 appropriated from the public school capital outlay fund to the  
9 public school facilities authority for expenditure in fiscal  
10 years 2007 and 2008 for the purpose of improving the indoor air  
11 quality of public schools by implementing the New Mexico indoor  
12 air quality tools for schools program pursuant to criteria  
13 developed by the public school facilities authority in  
14 consultation with the department of environment, the public  
15 education department, the department of health, the energy,  
16 minerals and natural resources department and the children,  
17 youth and families department. Any unexpended or unencumbered  
18 balance remaining at the end of fiscal year 2008 shall revert  
19 to the public school capital outlay fund."

20 Section 7. APPROPRIATION--NEW SCHOOL DEVELOPMENT FUND.--  
21 Three million dollars (\$3,000,000) is appropriated from the  
22 public school capital outlay fund to the new school development  
23 fund for expenditure in fiscal year 2009 and subsequent fiscal  
24 years for the purpose of making distributions to school  
25 districts to pay for equipment and other nonoperating costs

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1 unique to the first year of operation of new schools. Any  
2 unexpended or unencumbered balance remaining at the end of a  
3 fiscal year shall not revert.

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