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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:

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

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

B. Except as provided in ~~Section 22-24-5.8 NMSA 1978~~ and in Subsections G through L of this section, money in the fund may be used only for capital expenditures deemed

1 necessary by the council for an adequate educational program.

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

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

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

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

8 F. Money in the fund shall be disbursed by warrant  
9 of the department of finance and administration on vouchers  
10 signed by the secretary of finance and administration  
11 following certification by the council that an application  
12 has been approved or an expenditure has been ordered by a  
13 court pursuant to Section 22-24-5.4 NMSA 1978. At the  
14 discretion of the council, money for a project shall be  
15 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  
19 be paid to the school district before work commences with the  
20 balance of the grant award made on a cost-reimbursement  
21 basis; 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

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  
4 authority, upon approval of the council, for project  
5 management expenses; provided that:

6 (1) the total annual expenditures from the  
7 fund pursuant to this subsection shall not exceed five  
8 percent of the average annual grant assistance authorized  
9 from the fund 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 thirty million dollars (\$30,000,000) of  
14 the fund may be allocated annually by the council in fiscal  
15 years 2006 and 2007 for a roof repair and replacement  
16 initiative with projects to be identified by the council  
17 pursuant to Section 22-24-4.3 NMSA 1978; provided that all  
18 money allocated pursuant to this subsection shall be expended  
19 prior to September 1, 2008.

20 I. The fund may be expended annually by the  
21 council in fiscal years 2006 through 2020 for grants to  
22 school districts for the purpose of making lease payments for  
23 classroom facilities, including facilities leased by charter  
24 schools. The grants shall be made upon application by the  
25 school districts and pursuant to rules adopted by the

1 council; provided that an application on behalf of a charter  
2 school shall be made by the school district but, if the  
3 school district fails to make an application on behalf of a  
4 charter school, the charter school may submit its own  
5 application. The following criteria shall apply to the  
6 grants:

7 (1) the amount of a grant to a school  
8 district shall not exceed:

9 (a) the actual annual lease payments  
10 owed for leasing classroom space for schools, including  
11 charter schools, in the district; or

12 (b) seven hundred dollars (\$700)  
13 multiplied by the number of MEM using the leased classroom  
14 facilities; provided that in fiscal year 2009 and in each  
15 subsequent fiscal year, this amount shall be adjusted by the  
16 percentage increase between the penultimate calendar year and  
17 the immediately preceding calendar year of the consumer price  
18 index for the United States, all items, as published by the  
19 United States department of labor; and provided further that  
20 if the total grants awarded pursuant to this paragraph would  
21 exceed the total annual amount available, the rate specified  
22 in this subparagraph shall be reduced proportionately;

23 (2) a grant received for the lease payments  
24 of a charter school may be used by that charter school as a  
25 state match necessary to obtain federal grants pursuant to

1 the federal No Child Left Behind Act of 2001;

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

5 (4) if the lease payments are made pursuant  
6 to a financing agreement under which the facilities may be  
7 purchased for a price that is reduced according to the lease  
8 payments made:

9 (a) a grant shall not be made unless  
10 the council determines that the leased facilities meet the  
11 statewide adequacy standards; and

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

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

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

23 (b) in fiscal year 2008 and each  
24 subsequent fiscal year, the maximum amount for the previous  
25 fiscal year adjusted by the percentage increase between the

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

5 (6) as used in this subsection:

6 (a) "MEM" means: 1) the average  
7 full-time-equivalent enrollment using leased classroom  
8 facilities on the eightieth and one hundred twentieth days of  
9 the prior school year; or 2) in the case of an approved  
10 charter school that has not commenced classroom instruction,  
11 the estimated full-time-equivalent enrollment that will use  
12 leased classroom facilities in the first year of instruction,  
13 as shown in the approved charter school application; provided  
14 that, after the eightieth day of the school year, the MEM  
15 shall be adjusted to reflect the full-time-equivalent  
16 enrollment on that date; and

17 (b) "classroom facilities" or  
18 "classroom space" includes the space needed, as determined by  
19 the minimum required under the statewide adequacy standards,  
20 for the direct administration of school activities.

21 J. In addition to other authorized expenditures  
22 from the fund, up to one percent of the average grant  
23 assistance authorized from the fund during the three previous  
24 fiscal years may be expended in each fiscal year by the  
25 public school facilities authority to pay the state fire

1 marshal, the construction industries division of the  
2 regulation and licensing department and local jurisdictions  
3 having authority from the state to permit and inspect  
4 projects for expenditures made to permit and inspect projects  
5 funded in whole or in part under the Public School Capital  
6 Outlay Act. The authority shall enter into contracts with  
7 the state fire marshal, the construction industries division  
8 or the appropriate local authorities to carry out the  
9 provisions of this subsection. Such a contract may provide  
10 for initial estimated payments from the fund prior to the  
11 expenditures if the contract also provides for additional  
12 payments from the fund if the actual expenditures exceed the  
13 initial payments and for repayments back to the fund if the  
14 initial payments exceed the actual expenditures.

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

20 (1) no allocation shall be made unless the  
21 council determines that the school district is willing and  
22 able to pay the portion of the total cost of developing or  
23 updating the plan that is not funded with the allocation from  
24 the fund. Except as provided in Paragraph (2) of this  
25 subsection, the portion of the total cost to be paid with the



1 allocation from the fund shall be determined pursuant to the  
2 methodology in Paragraph (5) of Subsection B of Section  
3 22-24-5 NMSA 1978; or

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

6 (a) the school district has fewer than  
7 an average of six hundred full-time-equivalent students on  
8 the eightieth and one hundred twentieth days of the prior  
9 school year; or

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

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

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

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

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

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

18 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
19 APPLICATION--GRANT ASSISTANCE.--

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

24 B. Except as provided in Sections 22-24-4.3,  
25 22-24-5.4, 22-24-5.6 and ~~22-24-5.8~~ NMSA 1978, the following

1 provisions govern grant assistance from the fund for a public  
2 school capital outlay project not wholly funded pursuant to  
3 Section 22-24-4.1 NMSA 1978:

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

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

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

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

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

24 (a) the feasibility of using design,  
25 build and finance arrangements for public school capital

1 outlay projects;

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

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

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

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

14 (5) except as provided in Paragraph (6), (8)  
15 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  
19 value shall be calculated for each school district in  
20 accordance with the following procedure:

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

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  
21 NMSA 1978, the Public School Capital Improvements Act, the  
22 Public School Buildings Act, the Education Technology  
23 Equipment Act and Paragraph (2) of Subsection B of Section  
24 7-37-7 NMSA 1978 is calculated for each school district;

25 (h) the lowest value calculated

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

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

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

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

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

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

1 this paragraph. Except as provided in Subparagraph (n) or  
2 (o) of this paragraph, the sum equals the value for that  
3 school district;

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

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

12 (p) except as provided in Section  
13 ~~22-24-5.7 or 22-24-5.8~~ NMSA 1978 and except as adjusted  
14 pursuant to Paragraph (6), (8) or (9) of this subsection, the  
15 amount to be distributed from the fund for an approved  
16 project shall equal the total project cost multiplied by a  
17 fraction the numerator of which is the value calculated for  
18 the subject school district in the current year plus the  
19 value calculated for that school district in each of the two  
20 preceding years and the denominator of which is three; and

21 (q) as used in this paragraph:

22 1) "MEM" means the average full-time-equivalent enrollment of  
23 students attending public school in a school district on the  
24 eightieth and one hundred twentieth days of the prior school  
25 year; 2) "total project cost" means the total amount

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

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

12 (a) the total of all legislative  
13 appropriations made after January 1, 2003 for nonoperating  
14 purposes either directly to the subject school district or to  
15 another governmental entity for the purpose of passing the  
16 money through directly to the subject school district, and  
17 not rejected by the subject school district, is calculated;  
18 provided that: 1) an appropriation made in a fiscal year  
19 shall be deemed to be accepted by a school district unless,  
20 prior to June 1 of that fiscal year, the school district  
21 notifies the department of finance and administration and the  
22 public education department that the district is rejecting  
23 the appropriation; 2) the total shall exclude any educational  
24 technology appropriation made prior to January 1, 2005 unless  
25 the appropriation was on or after January 1, 2003 and not



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

1 charter school is a state-chartered charter school at the  
2 time of the appropriation or later opts to become a  
3 state-chartered charter school;

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

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

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

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

22 (7) as used in this subsection:

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

25 (b) "subject school district" means the SFL/SB 146  
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1 school district that has submitted the application for  
2 funding and in which the approved public school capital  
3 outlay project will be located;

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

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

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

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

15 (c) the school district: 1) has an  
16 enrollment growth rate over the previous school year of at  
17 least two and one-half percent; 2) pursuant to its five-year  
18 facilities plan, will be building a new school within the  
19 next two years; and 3) for all educational purposes, has a  
20 residential property tax rate of at least ten dollars  
21 (\$10.00) on each one thousand dollars (\$1,000) of taxable  
22 value, as measured by the sum of all rates imposed by  
23 resolution of the local school board plus rates set to pay  
24 interest and principal on outstanding school district general  
25 obligation bonds; and

1 (10) no application for grant assistance  
2 from the fund shall be approved unless the council determines  
3 that:

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

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

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

12 (d) the school district has submitted a  
13 five-year facilities plan that includes: 1) enrollment  
14 projections; 2) a current preventive maintenance plan that  
15 has been approved by the council pursuant to Section  
16 22-24-5.3 NMSA 1978 and that is followed by each public  
17 school in the district; 3) the capital needs of charter  
18 schools located in the school district; and 4) projections  
19 for the facilities needed in order to maintain a full-day  
20 kindergarten program;

21 (e) the school district is willing and  
22 able to pay any portion of the total cost of the public  
23 school capital outlay project that, according to Paragraph  
24 (5), (6), (8) or (9) of this subsection, is not funded with  
25 grant assistance from the fund; provided that school district

1 funds used for a project that was initiated after September  
2 1, 2002 when the statewide adequacy standards were adopted,  
3 but before September 1, 2004 when the standards were first  
4 used as the basis for determining the state and school  
5 district share of a project, may be applied to the school  
6 district portion required for that project;

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

13 (g) the school district has agreed, in  
14 writing, to comply with any reporting requirements or  
15 conditions imposed by the council pursuant to Section  
16 22-24-5.1 NMSA 1978.

17 C. After consulting with the public school capital  
18 outlay oversight task force and other experts, the council  
19 shall regularly review and update statewide adequacy  
20 standards applicable to all school districts. The standards  
21 shall establish the acceptable level for the physical  
22 condition and capacity of buildings, the educational  
23 suitability of facilities and the need for technological  
24 infrastructure. Except as otherwise provided in the Public  
25 School Capital Outlay Act, the amount of outstanding

1 deviation from the standards shall be used by the council in  
2 evaluating and prioritizing public school capital outlay  
3 projects.

4 D. The acquisition of a facility by a school  
5 district or charter school pursuant to a financing agreement  
6 that provides for lease payments with an option to purchase  
7 for a price that is reduced according to lease payments made  
8 may be considered a public school capital outlay project and  
9 eligible for grant assistance under this section pursuant to  
10 the following criteria:

11 (1) no grant shall be awarded unless the  
12 council finds that, prior to the purchase of the facility by  
13 the school district or charter school, the facility will  
14 equal or exceed the statewide adequacy standards and the  
15 building standards for public school facilities;

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

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

24 (4) the portion of the total project cost to  
25 be paid from the fund may be awarded as one grant, but

1 disbursements from the fund shall be made from time to time  
2 as lease payments become due;

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

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

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

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

22 (2) at the time of application, attendance  
23 at the facility to be purchased is at seventy-five percent or  
24 greater of design capacity and the attendance at other  
25 schools in the school district that the students at the



1 facility would otherwise attend is at eighty-five percent or  
2 greater of design capacity; and

3 (3) the school district and the capital  
4 outlay project meet all of the requirements for grant  
5 assistance pursuant to the Public School Capital Outlay Act;  
6 provided that, when determining the deviation from the  
7 statewide adequacy standards for the purposes of evaluating  
8 and prioritizing the project, the students using the facility  
9 shall be deemed to be attending other schools in the school  
10 district.

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

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

22 H. The council may establish committees or task  
23 forces, not necessarily consisting of council members, and  
24 may use the committees or task forces, as well as existing  
25 agencies or organizations, to conduct studies, conduct

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

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

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

20 Section 3. Section 22-24-5.4 NMSA 1978 (being Laws  
21 2004, Chapter 125, Section 10) is amended to read:

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

25 A. The council may bring an action against a

1 school district pursuant to the provisions of this section  
2 if, based upon information submitted to the council by the  
3 public school facilities authority, the council determines  
4 that:

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

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

13 (3) either:

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

17 (b) the school district is unwilling to  
18 meet all of the requirements for the approval of an  
19 application for grant assistance pursuant to Paragraph (10)  
20 of Subsection B of Section 22-24-5 NMSA 1978.

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

25 C. After a hearing and consideration of the

1 evidence, if the court finds that the council's determination  
2 pursuant to Subsection A of this section was correct, the  
3 court shall:

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

7 (2) order the school district to comply with  
8 Paragraph (10) of Subsection B of Section 22-24-5 NMSA 1978  
9 and to take all other actions necessary to facilitate the  
10 completion of the project ordered pursuant to Paragraph (1)  
11 of this subsection; and

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

18 D. The amount of a judgment entered against a  
19 school district pursuant to Paragraph (3) of Subsection C of  
20 this section is a public debt of the school district. If the  
21 court finds that the debt cannot be satisfied with available  
22 school district funds, other than funds needed for the  
23 operation of the public schools and other existing  
24 obligations, the court shall order the imposition of a  
25 property tax on all taxable property allocated to the school

1 district at a rate sufficient to pay the judgment, with  
2 accrued interest, within a reasonable time as determined by  
3 the court. After paying court costs and attorney fees,  
4 amounts received pursuant to this subsection shall be  
5 deposited by the council into the fund."

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

8 ~~"22-24-5.8. INCREMENTAL FUNDING FOR PROJECTS IN CERTAIN~~  
9 ~~SCHOOL DISTRICTS.--~~

10 ~~A. A school district receiving grant assistance~~  
11 ~~from the fund pursuant to Section 22-24-5 NMSA 1978 for a~~  
12 ~~public school capital outlay project, other than supplemental~~  
13 ~~grant assistance for increased costs on a project previously~~  
14 ~~approved, shall receive additional incremental funding from~~  
15 ~~the fund if the school district and proposed use of the~~  
16 ~~additional incremental funding qualify pursuant to the~~  
17 ~~provisions of Subsection B of this section.~~

18 ~~B. A school district shall receive the additional~~  
19 ~~grant if the council determines that:~~

20 ~~(1) the school district has a demonstrated~~  
21 ~~history of providing support to its schools with all~~  
22 ~~available resources;~~

23 ~~(2) in calculating the grant assistance from~~  
24 ~~the fund for the project pursuant to Section 22-24-5 NMSA~~  
25 ~~1978, the value calculated for the school district pursuant~~

1 to Subparagraph (k), (m), (n) or (o) of Paragraph (5) of  
2 Subsection B of that section is equal to or greater than  
3 seven-tenths;

4 (3) averaged over the previous four property  
5 tax years, the school district had a residential property tax  
6 rate of at least nine dollars (\$9.00) 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  
9 plus rates set to pay interest and principal on outstanding  
10 school district general obligation bonds;

11 (4) at least seventy percent of the students  
12 in the school district are eligible for free or reduced-fee  
13 lunch;

14 (5) the school district does not have  
15 sufficient resources to expend on the project so it is  
16 unlikely that the school district will be able to provide its  
17 students with more than the bare minimum;

18 (6) the political subdivision in which the  
19 school district is located does not have adequate  
20 infrastructure to compensate for the school district's lack  
21 of resources; and

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

1           ~~C. The amount of additional incremental funding~~  
2 ~~awarded pursuant to this section shall equal the total~~  
3 ~~project cost multiplied by the lesser of:~~

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

8                     ~~(2) twenty-five hundredths.~~

9           ~~D. All provisions of the Public School Capital~~  
10 ~~Outlay Act relating to the expenditure of other grants~~  
11 ~~awarded from the fund, including those provisions relating to~~  
12 ~~reporting, oversight, project access and accountability,~~  
13 ~~apply to the use and expenditure of additional funding made~~  
14 ~~pursuant to this section."~~

15           Section 5. Section 22-24-7 NMSA 1978 (being Laws 2001,  
16 Chapter 338, Section 12, as amended) is amended to read:

17           "22-24-7. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK  
18 FORCE--CREATION--STAFF.--

19           A. The "public school capital outlay oversight  
20 task force" is created. The task force consists of  
21 twenty-five members as follows:

22                     (1) the secretary of finance and  
23 administration or the secretary's designee;

24                     (2) the secretary of public education or the  
25 secretary's designee;

1 (3) the speaker of the house of  
2 representatives or the speaker's designee;

3 (4) the president pro tempore of the senate  
4 or the president pro tempore's designee;

5 (5) the chairs of the house appropriations  
6 and finance committee, the senate finance committee, the  
7 senate education committee and the house education committee  
8 or their designees;

9 (6) two minority party members of the house  
10 of representatives, appointed by the New Mexico legislative  
11 council;

12 (7) two minority party members of the  
13 senate, appointed by the New Mexico legislative council;

14 (8) a member of the interim legislative  
15 committee charged with the oversight of Indian affairs,  
16 appointed by the New Mexico legislative council, provided  
17 that the member shall rotate annually between a senate member  
18 and a member of the house of representatives;

19 (9) a member of the house of representatives  
20 and a member of the senate who represent districts with  
21 school districts receiving federal funds commonly known as  
22 "PL 874" funds or "impact aid", appointed by the New Mexico  
23 legislative council;

24 (10) two public members who have expertise  
25 in education and finance appointed by the speaker of the



1 house of representatives;

2 (11) two public members who have expertise  
3 in education and finance appointed by the president pro  
4 tempore of the senate;

5 (12) three public members, two of whom are  
6 residents of school districts that receive grants from the  
7 federal government as assistance to areas affected by federal  
8 activity authorized in accordance with Title 20 of the  
9 United States Code, appointed by the governor; and

10 (13) three superintendents of school  
11 districts or their designees, two of whom are from school  
12 districts that receive grants from the federal government as  
13 assistance to areas affected by federal activity authorized  
14 in accordance with Title 20 of the United States Code,  
15 appointed by the New Mexico legislative council in  
16 consultation with the governor.

17 B. The chair of the public school capital outlay  
18 oversight task force shall be elected by the task force. The  
19 task force shall meet at the call of the chair, but no more  
20 than four times per calendar year.

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

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

1           E. The legislative council service, with  
2 assistance from the public school facilities authority, the  
3 department of finance and administration, the public  
4 education department, the legislative education study  
5 committee and the legislative finance committee, shall  
6 provide staff for the public school capital outlay oversight  
7 task force."

8           Section 6. Laws 2006, Chapter 95, Section 14 is amended  
9 to read:

10           "Section 14. APPROPRIATIONS.--

11           A. Two million five hundred thousand dollars  
12 (\$2,500,000) is appropriated from the public school capital  
13 outlay fund to the public school facilities authority for  
14 expenditure in fiscal years 2006 through 2009 for continuing  
15 the development and implementation of a uniform web-based  
16 facility information management system for the public schools  
17 pursuant to the provisions of Section 22-24-5.3 NMSA 1978.  
18 Any unexpended or unencumbered balance remaining at the end  
19 of fiscal year 2009 shall revert to the public school capital  
20 outlay fund.

21           B. Three hundred thousand dollars (\$300,000) is  
22 appropriated from the public school capital outlay fund to  
23 the public school facilities authority for expenditure in  
24 fiscal years 2007 and 2008 for the purpose of improving the  
25 indoor air quality of public schools by implementing the

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

10 Section 7. APPROPRIATION--NEW SCHOOL DEVELOPMENT

11 FUND.--

12 Three million dollars (\$3,000,000) is appropriated from  
13 the public school capital outlay fund to the new school  
14 development fund for expenditure in fiscal year 2009 and  
15 subsequent fiscal years for the purpose of making  
16 distributions to school districts to pay for equipment and  
17 other nonoperating costs unique to the first year of operation  
18 of new schools. Any unexpended or unencumbered balance  
19 remaining at the end of a fiscal year shall not revert. \_\_\_\_\_