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SENATE BILL 231

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CLARIFYING THE
CALCULATION OF STATE AND LOCAL SHARES OF PROJECTS FUNDED FROM
THE PUBLIC SCHOOL CAPITAL OUTLAY FUND; AMENDING SECTIONS OF THE
PUBLIC SCHOOL CAPITAL OUTLAY ACT TO MAKE RELATED CONFORMING
TECHNICAL CHANGES.

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 by Laws 2017, Chapter 142,
Section 1 and by Laws 2018, Chapter 71, Section 3) 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

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1 fiscal year shall not revert.

2 B. Except as provided in Subsections G and I
3 through O of this section, money in the fund may be used only
4 for capital expenditures deemed necessary by the council for an
5 adequate educational program.

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

25 D. Applications for assistance from the fund shall

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

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

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

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

25 (2) the council may authorize payments

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1 directly to the contractor.

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

9 (1) the total annual expenditures from the
10 fund for the core administrative functions pursuant to this
11 subsection shall not exceed five percent of the average annual
12 grant assistance authorized from the fund during the three
13 previous fiscal years; and

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

17 H. The fund may be expended by the council for
18 building system repair, renovation or replacement initiatives
19 with projects to be identified by the council pursuant to
20 Section 22-24-4.6 NMSA 1978; provided that money allocated
21 pursuant to this subsection shall be expended within three
22 years of the allocation.

23 I. The fund may be expended annually by the council
24 for grants to school districts for the purpose of making lease
25 payments for classroom facilities, including facilities leased

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

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

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

13 (b) seven hundred dollars (\$700)
14 multiplied by the MEM using the leased classroom facilities;
15 provided that in fiscal year 2009 and in each subsequent fiscal
16 year, this amount shall be adjusted by the percentage change
17 between the penultimate calendar year and the immediately
18 preceding calendar year of the consumer price index for the
19 United States, all items, as published by the United States
20 department of labor;

21 (2) a grant received for the lease payments of
22 a charter school may be used by that charter school as a state
23 match necessary to obtain federal grants pursuant to the
24 federal ~~[No Child Left Behind Act of 2001]~~ Every Student
25 Succeeds Act;

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

4 (4) no grant shall be made for lease payments
5 due pursuant to a financing agreement under which the
6 facilities may be purchased for a price that is reduced
7 according to the lease payments made unless:

8 (a) the agreement has been approved
9 pursuant to the provisions of the Public School Lease Purchase
10 Act; and

11 (b) the facilities are leased by a
12 charter school;

13 (5) if the lease payments are made pursuant to
14 a financing agreement under which the facilities may be
15 purchased for a price that is reduced according to the lease
16 payments made, neither a grant nor any provision of the Public
17 School Capital Outlay Act creates a legal obligation for the
18 school district or charter school to continue the lease from
19 year to year or to purchase the facilities nor does it create a
20 legal obligation for the state to make subsequent grants
21 pursuant to the provisions of this subsection; and

22 (6) as used in this subsection:

23 (a) "MEM" means: 1) the average
24 full-time-equivalent enrollment using leased classroom
25 facilities on the second and third reporting dates of the prior

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1 school year; or 2) in the case of an approved charter school
2 that has not commenced classroom instruction, the estimated
3 full-time-equivalent enrollment that will use leased classroom
4 facilities in the first year of instruction, as shown in the
5 approved charter school application; provided that, after the
6 [~~eightieth day~~] second reporting date of the school year, the
7 MEM shall be adjusted to reflect the full-time-equivalent
8 enrollment on that date; and

9 (b) "classroom facilities" or "classroom
10 space" includes the space needed, as determined by the minimum
11 required under the statewide adequacy standards, for the direct
12 administration of school activities.

13 J. In addition to other authorized expenditures
14 from the fund, up to one percent of the average grant
15 assistance authorized from the fund during the three previous
16 fiscal years may be expended in each fiscal year by the [~~public
17 school facilities~~] authority to pay the state fire marshal, the
18 construction industries division of the regulation and
19 licensing department and local jurisdictions having authority
20 from the state to permit and inspect projects for expenditures
21 made to permit and inspect projects funded in whole or in part
22 under the Public School Capital Outlay Act. The [~~public school
23 facilities~~] authority may enter into contracts with the state
24 fire marshal, the construction industries division or the
25 appropriate local authorities to carry out the provisions of

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1 this subsection. Such a contract may provide for initial
2 estimated payments from the fund prior to the expenditures if
3 the contract also provides for additional payments from the
4 fund if the actual expenditures exceed the initial payments and
5 for repayments back to the fund if the initial payments exceed
6 the actual expenditures. Money distributed from the fund to
7 the state fire marshal or the construction industries division
8 pursuant to this subsection shall be used to supplement, rather
9 than supplant, appropriations to those entities.

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

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

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

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1 (a) the school district has fewer than
2 an average of six hundred full-time-equivalent students on the
3 second and third reporting dates of the prior school year; or

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

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

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

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

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

9 M. Up to ten million dollars (\$10,000,000) of the
10 fund may be expended each year for an education technology
11 infrastructure deficiency corrections initiative pursuant to
12 Section 22-24-4.5 NMSA 1978; provided that funding allocated
13 pursuant to this section shall be expended within three years
14 of its allocation.

15 N. For each fiscal year from 2018 through 2022,
16 twenty-five million dollars (\$25,000,000) of the [~~public school~~
17 ~~capital outlay~~] fund is reserved for appropriation by the
18 legislature to the instructional material fund or to the
19 transportation distribution of the public school fund. The
20 secretary shall certify the need for the issuance of
21 supplemental severance tax bonds to meet an appropriation from
22 the public school capital outlay fund to the instructional
23 material fund or to the transportation distribution of the
24 public school fund. Any portion of an amount of the public
25 school capital outlay fund that is reserved for appropriation

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1 by the legislature for a fiscal year, but that is not
2 appropriated before the first day of that fiscal year, may be
3 expended by the council as provided in this section.

4 O. Up to ten million dollars (\$10,000,000) of the
5 fund may be expended in each of fiscal years 2019 through 2022
6 for school security system project grants made in accordance
7 with Section 22-24-4.7 NMSA 1978."

8 SECTION 2. Section 22-24-4.5 NMSA 1978 (being Laws 2014,
9 Chapter 28, Section 4) is amended to read:

10 "22-24-4.5. EDUCATION TECHNOLOGY INFRASTRUCTURE
11 DEFICIENCY CORRECTIONS.--

12 A. No later than September 1, 2014, the council,
13 with the advice of the [~~public education~~] department and the
14 department of information technology, shall define and develop:

15 (1) minimum adequacy standards for an
16 education technology infrastructure deficiency corrections
17 initiative to identify and determine reasonable costs for
18 correcting education technology infrastructure deficiencies in
19 or affecting school districts;

20 (2) a methodology for prioritizing projects to
21 correct education technology infrastructure deficiencies in or
22 affecting school districts; and

23 (3) a methodology for determining a school
24 district's share of the project costs.

25 B. The council may approve allocations from the

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1 fund pursuant to Subsection M of Section 22-24-4 NMSA 1978 and
2 this section for projects in or affecting a school district
3 committing to pay its share of the project costs. The council
4 may adjust the school district's share of the project costs in
5 accordance with Paragraph [~~(9)~~] (11) of Subsection B of Section
6 22-24-5 NMSA 1978 or the methodology for determining the school
7 district's share of the project costs."

8 SECTION 3. Section 22-24-4.6 NMSA 1978 (being Laws 2015,
9 Chapter 93, Section 3) is amended to read:

10 "22-24-4.6. BUILDING SYSTEM REPAIR, RENOVATION OR
11 REPLACEMENT.--

12 A. The council shall develop guidelines for a
13 building system repair, renovation or replacement initiative
14 pursuant to the provisions of this section.

15 B. A school district desiring a grant award
16 pursuant to this section shall submit an application to the
17 council. The application shall include an assessment of the
18 building system that, in the opinion of the school district,
19 the repair, renovation or replacement of which would extend the
20 useful life of the building itself.

21 C. The [~~public school facilities~~] authority shall
22 verify the assessment made by the school district and rank the
23 application with similar applications pursuant to a methodology
24 adopted by the council.

25 D. After a public hearing and to the extent that

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1 money is available in the fund for such purposes, the council
2 shall approve building system repair, renovation or replacement
3 projects on the established priority basis; provided that no
4 project shall be approved unless the council determines that
5 the school district is willing and able to pay the portion of
6 the total cost of the project that is not funded with grant
7 assistance from the fund.

8 E. The state share of the cost of an approved
9 building system repair, renovation or replacement project shall
10 be calculated pursuant to the methodology in [~~Paragraph (5) of~~]
11 Subsection B of Section 22-24-5 NMSA 1978.

12 F. A grant made pursuant to this section shall be
13 expended by the school district within three years of the grant
14 allocation."

15 SECTION 4. Section 22-24-4.7 NMSA 1978 (being Laws 2018,
16 Chapter 71, Section 1) is amended to read:

17 "22-24-4.7. SCHOOL SECURITY SYSTEM PROJECTS.--

18 A. The council shall develop guidelines for a
19 school security system project grant initiative in accordance
20 with this section.

21 B. A school district seeking a grant for a school
22 security system project shall apply to the council on a form
23 that includes an assessment of a school's security system and a
24 statement of opinion by the school district that the project
25 would improve the security of the school's buildings, property

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1 and occupants.

2 C. The [~~public school facilities~~] authority shall
3 verify the assessment made by the school district and rank all
4 applications it receives for school security system project
5 grants according to the methodology adopted by the council for
6 that purpose.

7 D. After a public hearing, and to the extent that
8 money is available in the fund for the purpose, the council
9 shall make school security system project grants to school
10 districts that the council determines are willing and able to
11 pay for the portion of the total project cost not funded with
12 grant assistance from the fund and according to those
13 applicants' ranking.

14 E. The state share of the cost of an approved
15 school security system project shall be calculated according to
16 the methodology outlined in [~~Paragraph (5) of~~] Subsection B of
17 Section 22-24-5 NMSA 1978.

18 F. A school district that receives a grant in
19 accordance with this section shall expend the grant money
20 within three years after the grant allocation. Money not spent
21 in that time shall revert to the fund."

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

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

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1 A. Applications for grant assistance, approval of
2 applications, prioritization of projects and grant awards shall
3 be conducted pursuant to the provisions of this section.

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

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

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

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

18 (b) the council may award grants
19 annually to school districts for the purpose of repairing,
20 renovating or replacing public school building systems in
21 existing buildings as identified in Section 22-24-4.6 NMSA
22 1978;

23 (c) the council shall adopt and apply
24 adequacy standards appropriate to the unique needs of the
25 constitutional special schools; ~~and~~

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1 (d) the council may award school
2 security system project grants to school districts pursuant to
3 the provisions of Section 22-24-4.7 NMSA 1978; and

4 [~~(d)~~] (e) in an emergency in which the
5 health or safety of students or school personnel is at
6 immediate risk or in which there is a threat of significant
7 property damage, the council may award grant assistance for a
8 project using criteria other than the statewide adequacy
9 standards;

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

14 (a) the feasibility of using design,
15 build and finance arrangements for public school capital outlay
16 projects;

17 (b) the potential use of more durable
18 construction materials that may reduce long-term operating
19 costs;

20 (c) concepts that promote efficient but
21 flexible utilization of space; and

22 (d) any other financing or construction
23 concept that may maximize the dollar effect of the state grant
24 assistance;

25 (4) no more than ten percent of the combined

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1 total of grants in a funding cycle shall be used for
2 retrofitting existing facilities for technology infrastructure;

3 (5) no later than May 1 of each calendar year,
4 the phase one formula value shall be calculated for each school
5 district in accordance with the following procedure:

6 (a) the final prior year net taxable
7 value for a school district divided by the MEM for that school
8 district is calculated for each school district;

9 (b) the final prior year net taxable
10 value for the whole state divided by the MEM for the state is
11 calculated;

12 (c) excluding any school district for
13 which the result calculated pursuant to Subparagraph (a) of
14 this paragraph is more than twice the result calculated
15 pursuant to Subparagraph (b) of this paragraph, the results
16 calculated pursuant to Subparagraph (a) of this paragraph are
17 listed from highest to lowest;

18 (d) the lowest value listed pursuant to
19 Subparagraph (c) of this paragraph is subtracted from the
20 highest value listed pursuant to that subparagraph;

21 (e) the value calculated pursuant to
22 Subparagraph (a) of this paragraph for the subject school
23 district is subtracted from the highest value listed in
24 Subparagraph (c) of this paragraph;

25 (f) the result calculated pursuant to

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1 Subparagraph (e) of this paragraph is divided by the result
2 calculated pursuant to Subparagraph (d) of this paragraph;

3 (g) the sum of the property tax mill
4 levies for the prior tax year imposed by each school district
5 on residential property pursuant to Chapter 22, Article 18 NMSA
6 1978, the Public School Capital Improvements Act, the Public
7 School Buildings Act, the Education Technology Equipment Act
8 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
9 is calculated for each school district;

10 (h) the lowest value calculated pursuant
11 to Subparagraph (g) of this paragraph is subtracted from the
12 highest value calculated pursuant to that subparagraph;

13 (i) the lowest value calculated pursuant
14 to Subparagraph (g) of this paragraph is subtracted from the
15 value calculated pursuant to that subparagraph for the subject
16 school district;

17 (j) the value calculated pursuant to
18 Subparagraph (i) of this paragraph is divided by the value
19 calculated pursuant to Subparagraph (h) of this paragraph;

20 (k) if the value calculated for a
21 subject school district pursuant to Subparagraph (j) of this
22 paragraph is less than five-tenths, then, except as provided in
23 Subparagraph (n) or (o) of this paragraph, the value for that
24 school district equals the value calculated pursuant to
25 Subparagraph (f) of this paragraph;

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

5 (m) if the value calculated for a
6 subject school district pursuant to Subparagraph (j) of this
7 paragraph is five-tenths or greater, then the value calculated
8 pursuant to Subparagraph (l) of this paragraph is added to the
9 value calculated pursuant to Subparagraph (f) of this
10 paragraph. Except as provided in Subparagraph (n) or (o) of
11 this paragraph, the sum equals the value for that school
12 district;

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

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

21 (p) [~~except as provided in Section~~
22 ~~22-24-5.7 NMSA 1978 and except as adjusted pursuant to~~
23 ~~Paragraph (6), (10), (11) or (12) of this subsection, the~~
24 ~~amount to be distributed from the fund for an approved project~~
25 ~~shall equal the total project cost multiplied by] the phase one~~

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1 formula value shall equal a fraction the numerator of which is
2 the value [~~calculated~~] for the subject school district in the
3 current year plus the value [~~calculated~~] for that school
4 district in each of the two preceding years and the denominator
5 of which is three; and

6 (q) as used in this paragraph, [~~1~~]
7 "MEM" means the average full-time-equivalent enrollment of
8 students attending public school in a school district on the
9 [~~eightieth and one hundred twentieth days~~] second and third
10 reporting dates of the prior school year; [~~2~~] "~~total project~~
11 ~~cost~~" means the total amount necessary to complete the public
12 school capital outlay project less any insurance reimbursement
13 received by the school district for the project; and [~~3~~] in the
14 case of a state-chartered charter school that has submitted an
15 application for grant assistance pursuant to this section, the
16 "~~value calculated for the subject school district~~" means the
17 value calculated for the school district in which the state-
18 chartered charter school is physically located;

19 (~~6~~) the amount calculated pursuant to
20 Subparagraph (p) of Paragraph (5) of this subsection shall be
21 reduced by the following procedure:

22 (~~a~~) the total of all legislative
23 appropriations made after January 1, 2003 for nonoperating
24 purposes either directly to the subject school district or to
25 another governmental entity for the purpose of passing the

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1 ~~money through directly to the subject school district, and not~~
2 ~~rejected by the subject school district, is calculated;~~
3 ~~provided that: 1) an appropriation made in a fiscal year shall~~
4 ~~be deemed to be accepted by a school district unless, prior to~~
5 ~~June 1 of that fiscal year, the school district notifies the~~
6 ~~department of finance and administration and the public~~
7 ~~education department that the school district is rejecting the~~
8 ~~appropriation; 2) the total shall exclude any education~~
9 ~~technology appropriation made prior to January 1, 2005 unless~~
10 ~~the appropriation was on or after January 1, 2003 and not~~
11 ~~previously used to offset distributions pursuant to the~~
12 ~~Technology for Education Act; 3) the total shall exclude any~~
13 ~~appropriation previously made to the subject school district~~
14 ~~that is reauthorized for expenditure by another recipient; 4)~~
15 ~~the total shall exclude one-half of the amount of any~~
16 ~~appropriation made or reauthorized after January 1, 2007 if the~~
17 ~~purpose of the appropriation or reauthorization is to fund, in~~
18 ~~whole or in part, a capital outlay project that, when~~
19 ~~prioritized by the council pursuant to this section either in~~
20 ~~the immediately preceding funding cycle or in the current~~
21 ~~funding cycle, ranked in the top one hundred fifty projects~~
22 ~~statewide; 5) the total shall exclude the proportionate share~~
23 ~~of any appropriation made or reauthorized after January 1, 2008~~
24 ~~for a capital project that will be jointly used by a~~
25 ~~governmental entity other than the subject school district.~~

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1 Pursuant to criteria adopted by rule of the council and based
2 upon the proposed use of the capital project, the council shall
3 determine the proportionate share to be used by the
4 governmental entity and excluded from the total; and 6) unless
5 the grant award is made to the state-chartered charter school
6 or unless the appropriation was previously used to calculate a
7 reduction pursuant to this paragraph, the total shall exclude
8 appropriations made after January 1, 2007 for nonoperating
9 purposes of a specific state-chartered charter school,
10 regardless of whether the charter school is a state-chartered
11 charter school at the time of the appropriation or later opts
12 to become a state-chartered charter school;

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

17 (c) the value calculated pursuant to
18 Subparagraph (a) of this paragraph for the subject school
19 district is multiplied by the amount calculated pursuant to
20 Subparagraph (b) of this paragraph for that school district;

21 (d) the total amount of reductions for
22 the subject school district previously made pursuant to
23 Subparagraph (e) of this paragraph for other approved public
24 school capital outlay projects is subtracted from the amount
25 calculated pursuant to Subparagraph (c) of this paragraph; and

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1 ~~(e) the amount calculated pursuant to~~
2 ~~Subparagraph (p) of Paragraph (5) of this subsection shall be~~
3 ~~reduced by the amount calculated pursuant to Subparagraph (d)~~
4 ~~of this paragraph;~~

5 ~~(7)]~~ (6) no later than May 1 of each calendar
6 year, the phase two formula value shall be calculated for each
7 school district in accordance with the following procedure:

8 (a) the sum of the final prior five
9 years net taxable value for a school district multiplied by
10 nine ten thousandths for that school district is calculated for
11 each school district;

12 (b) the maximum allowable gross square
13 foot per student multiplied by the replacement cost per square
14 foot divided by forty-five is calculated for each school
15 district;

16 (c) the value calculated pursuant to
17 Subparagraph (a) of this paragraph divided by the value
18 calculated pursuant to Subparagraph (b) of this paragraph is
19 calculated for each school district;

20 (d) in those instances in which the
21 calculation pursuant to Subparagraph (c) of this paragraph
22 yields a value equal to or greater than one, the phase two
23 formula value shall be zero for the subject school district;

24 (e) in those instances in which the
25 calculation pursuant to Subparagraph (c) of this paragraph

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1 yields a value of ninety-hundredths or more but less than one,
2 the phase two formula value shall be one minus the value
3 calculated in Subparagraph (c) of this paragraph; and

4 (f) in those instances in which the
5 calculation pursuant to Subparagraph (c) of this paragraph
6 yields a value less than ninety-hundredths, the phase two
7 formula value shall be one minus the value calculated in
8 Subparagraph (c) of this paragraph plus the school district
9 population density factor;

10 [~~(8) except as provided in Paragraph (6),~~
11 ~~(10), (11) or (12) of this subsection]~~

12 (7) the state share of a project approved by
13 the council shall be funded within available resources pursuant
14 to the provisions of this paragraph. [~~The school district~~
15 ~~calculation for grant awards made in accordance with this~~
16 ~~section shall be pursuant to the following procedure]~~ Except as
17 provided in Section 22-24-5.7 NMSA 1978 and except as adjusted
18 pursuant to Paragraph (9), (10), (11) or (12) of this
19 subsection, the amount to be distributed from the fund for an
20 approved project shall equal the total project cost multiplied
21 by the following percentage, except that in no case shall the
22 state share be less than six percent:

23 (a) for fiscal years prior to fiscal
24 year 2020, the percentage shall be the phase one formula value;

25 [~~(a)] (b) for fiscal year 2020, the~~

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1 ~~[school district calculation]~~ percentage shall be the sum of
2 eight-tenths multiplied by the ~~[calculation in Paragraph (5) of~~
3 ~~this subsection]~~ phase one formula value and two-tenths
4 multiplied by the ~~[calculation in Paragraph (7) of this~~
5 ~~subsection]~~ phase two formula value;

6 ~~[(b)]~~ (c) for fiscal year 2021, the
7 ~~[school district calculation]~~ percentage shall be the sum of
8 six-tenths multiplied by the ~~[calculation in Paragraph (5) of~~
9 ~~this subsection]~~ phase one formula value and four-tenths
10 multiplied by the ~~[calculation in Paragraph (7) of this~~
11 ~~subsection]~~ phase two formula value;

12 ~~[(e)]~~ (d) for fiscal year 2022, the
13 ~~[school district calculation]~~ percentage shall be the sum of
14 four-tenths multiplied by the ~~[calculation in Paragraph (5) of~~
15 ~~this subsection]~~ phase one formula value and six-tenths
16 multiplied by the ~~[calculation in Paragraph (7) of this~~
17 ~~subsection]~~ phase two formula value;

18 ~~[(d)]~~ (e) for fiscal year 2023, the
19 ~~[school district calculation]~~ percentage shall be the sum of
20 two-tenths multiplied by the ~~[calculation in Paragraph (5) of~~
21 ~~this subsection]~~ phase one formula value and eight-tenths
22 multiplied by the ~~[calculation in Paragraph (7) of this~~
23 ~~subsection]~~ phase two formula value; and

24 ~~[(e)]~~ (f) for fiscal year 2024 and
25 thereafter, the ~~[school district calculation shall be the~~

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1 ~~calculation specified in Paragraph (7) of this subsection]~~
2 percentage shall be the phase two formula value;

3 [~~9~~] (8) as used in this subsection:

4 (a) "governmental entity" includes an
5 Indian nation, tribe or pueblo; ~~and]~~

6 (b) "phase one formula value" for a
7 state-chartered charter school means the phase one formula
8 value calculated pursuant to Paragraph (5) of this subsection
9 for the school district in which the state-chartered charter
10 school is physically located;

11 (c) "phase two formula value" for a
12 state-chartered charter school means the phase two formula
13 value calculated pursuant to Paragraph (6) of this subsection
14 for the school district in which the state-chartered charter
15 school is physically located;

16 [~~b~~] (d) "subject school district"
17 means the school district that has submitted the application
18 for funding and in which the approved public school capital
19 outlay project will be located; and

20 (e) "total project cost" means the total
21 amount necessary to complete the public school capital outlay
22 project less any insurance reimbursement received by the school
23 district for the project;

24 (9) the amount to be distributed from the fund
25 for an approved project pursuant to Paragraph (7) of this

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1 subsection shall be reduced by the following procedure:

2 (a) the total of all legislative
3 appropriations made after January 1, 2003 for nonoperating
4 purposes either directly to the subject school district or to
5 another governmental entity for the purpose of passing the
6 money through directly to the subject school district, and not
7 rejected by the subject school district, is calculated;
8 provided that: 1) an appropriation made in a fiscal year shall
9 be deemed to be accepted by a school district unless, prior to
10 June 1 of that fiscal year, the school district notifies the
11 department of finance and administration and the public
12 education department that the school district is rejecting the
13 appropriation; 2) the total shall exclude any education
14 technology appropriation made prior to January 1, 2005 unless
15 the appropriation was on or after January 1, 2003 and not
16 previously used to offset distributions pursuant to the
17 Technology for Education Act; 3) the total shall exclude any
18 appropriation previously made to the subject school district
19 that is reauthorized for expenditure by another recipient; 4)
20 the total shall exclude one-half of the amount of any
21 appropriation made or reauthorized after January 1, 2007 if the
22 purpose of the appropriation or reauthorization is to fund, in
23 whole or in part, a capital outlay project that, when
24 prioritized by the council pursuant to this section either in
25 the immediately preceding funding cycle or in the current

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1 funding cycle, ranked in the top one hundred fifty projects
2 statewide; 5) the total shall exclude the proportionate share
3 of any appropriation made or reauthorized after January 1, 2008
4 for a capital project that will be jointly used by a
5 governmental entity other than the subject school district.
6 Pursuant to criteria adopted by rule of the council and based
7 upon the proposed use of the capital project, the council shall
8 determine the proportionate share to be used by the
9 governmental entity and excluded from the total; and 6) unless
10 the grant award is made to the state-chartered charter school
11 or unless the appropriation was previously used to calculate a
12 reduction pursuant to this paragraph, the total shall exclude
13 appropriations made after January 1, 2007 for nonoperating
14 purposes of a specific state-chartered charter school,
15 regardless of whether the charter school is a state-chartered
16 charter school at the time of the appropriation or later opts
17 to become a state-chartered charter school;

18 (b) the percentage used for the subject
19 school district for the applicable fiscal year pursuant to
20 Paragraph (7) of this subsection is subtracted from one;

21 (c) the value calculated pursuant to
22 Subparagraph (a) of this paragraph for the subject school
23 district is multiplied by the amount calculated pursuant to
24 Subparagraph (b) of this paragraph for that school district;

25 (d) the total amount of reductions for

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1 the subject school district previously made pursuant to
2 Subparagraph (e) of this paragraph for other approved public
3 school capital outlay projects is subtracted from the amount
4 calculated pursuant to Subparagraph (c) of this paragraph; and

5 (e) the amount to be distributed from
6 the fund pursuant to Paragraph (7) of this subsection shall be
7 reduced by the amount calculated pursuant to Subparagraph (d)
8 of this paragraph;

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

17 (11) the council may adjust the amount of
18 local share otherwise required if it determines that a school
19 district has made a good-faith effort to use all of its local
20 resources. Before making any adjustment to the local share,
21 the council shall consider whether:

22 (a) the school district has insufficient
23 bonding capacity over the next four years to provide the local
24 match necessary to complete the project and, for all
25 educational purposes, has a residential property tax rate of at

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1 least ten dollars (\$10.00) on each one thousand dollars
2 (\$1,000) of taxable value, as measured by the sum of all rates
3 imposed by resolution of the local school board plus rates set
4 to pay interest and principal on outstanding school district
5 general obligation bonds;

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

20 (c) the school district: 1) has an
21 enrollment growth rate over the previous school year of at
22 least two and one-half percent; 2) pursuant to its five-year
23 facilities plan, will be building a new school within the next
24 two years; and 3) for all educational purposes, has a
25 residential property tax rate of at least ten dollars (\$10.00)

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1 on each one thousand dollars (\$1,000) of taxable value, as
2 measured by the sum of all rates imposed by resolution of the
3 local school board plus rates set to pay interest and principal
4 on outstanding school district general obligation bonds;

5 (12) the local match for the constitutional
6 special schools shall be set at fifty percent for projects that
7 qualify under the educational adequacy category and one hundred
8 percent for projects that qualify in the support spaces
9 category; provided that the council may adjust or waive the
10 amount of any direct appropriation offset to or local share
11 required for the constitutional special schools if an applicant
12 constitutional special school has insufficient or no local
13 resources available; and

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

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

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

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

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

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

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

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

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

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

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

14 D. The acquisition of a facility by a school
15 district or charter school pursuant to a financing agreement
16 that provides for lease payments with an option to purchase for
17 a price that is reduced according to lease payments made may be
18 considered a public school capital outlay project and eligible
19 for grant assistance under this section pursuant to the
20 following criteria:

21 (1) no grant shall be awarded unless the
22 council determines that, at the time of exercising the option
23 to purchase the facility by the school district or charter
24 school, the facility will equal or exceed the statewide
25 adequacy standards and the building standards for public school

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1 facilities;

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

6 (3) the total project cost shall equal the
7 total payments that would be due under the agreement if the
8 school district or charter school would eventually acquire
9 title to the facility;

10 (4) the portion of the total project cost to
11 be paid from the fund may be awarded as one grant, but
12 disbursements from the fund shall be made from time to time as
13 lease payments become due;

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

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

21 E. In order to encourage private capital investment
22 in the construction of public school facilities, the purchase
23 of a privately owned school facility that is, at the time of
24 application, in use by a school district may be considered a
25 public school capital outlay project and eligible for grant

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1 assistance pursuant to this section if the council finds that:

2 (1) at the time of the initial use by the
3 school district, the facility to be purchased equaled or
4 exceeded the statewide adequacy standards and the building
5 standards for public school facilities;

6 (2) at the time of application, attendance at
7 the facility to be purchased is at seventy-five percent or
8 greater of design capacity and the attendance at other schools
9 in the school district that the students at the facility would
10 otherwise attend is at eighty-five percent or greater of design
11 capacity; and

12 (3) the school district and the capital outlay
13 project meet all of the requirements for grant assistance
14 pursuant to the Public School Capital Outlay Act; provided
15 that, when determining the deviation from the statewide
16 adequacy standards for the purposes of evaluating and
17 prioritizing the project, the students using the facility shall
18 be deemed to be attending other schools in the school district.

19 F. It is the intent of the legislature that grant
20 assistance made pursuant to this section allows every school
21 district to meet the standards developed pursuant to Subsection
22 C of this section; provided, however, that nothing in the
23 Public School Capital Outlay Act or the development of
24 standards pursuant to that act prohibits a school district from
25 using other funds available to the district to exceed the

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1 statewide adequacy standards.

2 G. Upon request, the council shall work with, and
3 provide assistance and information to, the public school
4 capital outlay oversight task force.

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

13 I. Upon the recommendation of the authority, the
14 council shall develop building standards for public school
15 facilities and shall promulgate other such rules as are
16 necessary to carry out the provisions of the Public School
17 Capital Outlay Act.

18 J. No later than December 15 of each year, the
19 council shall prepare a report summarizing its activities
20 during the previous fiscal year. The report shall describe in
21 detail all projects funded, the progress of projects previously
22 funded but not completed, the criteria used to prioritize and
23 fund projects and all other council actions. The report shall
24 be submitted to the public education commission, the governor,
25 the legislative finance committee, the legislative education

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1 study committee and the legislature."

2 SECTION 6. Section 22-24-5.4 NMSA 1978 (being Laws 2004,
3 Chapter 125, Section 10, as amended) is amended to read:

4 "22-24-5.4. RECALCITRANT SCHOOL DISTRICTS--COURT ACTION
5 TO ENFORCE CONSTITUTIONAL COMPLIANCE--IMPOSITION OF PROPERTY
6 TAX.--

7 A. The council may bring an action against a school
8 district pursuant to the provisions of this section if, based
9 upon information submitted to the council by the [~~public school~~
10 ~~facilities~~] authority, the council determines that:

11 (1) the physical condition of a public school
12 facility in the school district is so inadequate that the
13 facility or the education received by students attending the
14 facility is below the minimum required by the constitution of
15 New Mexico;

16 (2) the school district is not taking the
17 necessary steps to bring the facility up to the
18 constitutionally required minimum; and

19 (3) either:

20 (a) the school district has not applied
21 for the grant assistance necessary to bring the facility up to
22 minimum constitutional standards; or

23 (b) the school district is unwilling to
24 meet all of the requirements for the approval of an application
25 for grant assistance pursuant to Paragraph [~~(10)~~] (13) of

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1 Subsection B of Section 22-24-5 NMSA 1978.

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

5 C. After a hearing and consideration of the
6 evidence, if the court finds that the council's determination
7 pursuant to Subsection A of this section was correct, the court
8 shall:

9 (1) order the council to expend sufficient
10 resources necessary to bring the facility up to the minimum
11 level required by the constitution of New Mexico;

12 (2) order the school district to comply with
13 Paragraph [~~(10)~~] (13) of Subsection B of Section 22-24-5 NMSA
14 1978 and to take all other actions necessary to facilitate the
15 completion of the project ordered pursuant to Paragraph (1) of
16 this subsection; and

17 (3) enter a judgment against the school
18 district for court costs and attorney fees and the necessary
19 amount to satisfy the school district share, as determined by
20 the formula prescribed by Subsection B of Section 22-24-5 NMSA
21 1978, for the project ordered pursuant to Paragraph (1) of this
22 subsection.

23 D. The amount of a judgment entered against a
24 school district pursuant to Paragraph (3) of Subsection C of
25 this section is a public debt of the school district. If the

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1 court finds that the debt cannot be satisfied with available
2 school district funds, other than funds needed for the
3 operation of the public schools and other existing obligations,
4 the court shall order the imposition of a property tax on all
5 taxable property allocated to the school district at a rate
6 sufficient to pay the judgment, with accrued interest, within a
7 reasonable time as determined by the court. After paying court
8 costs and attorney fees, amounts received pursuant to this
9 subsection shall be deposited by the council into the fund."

10 SECTION 7. Section 22-24-5.7 NMSA 1978 (being Laws 2006,
11 Chapter 95, Section 7) is amended to read:

12 "22-24-5.7. LOCAL MATCH PROVISIONS FOR QUALIFIED HIGH
13 PRIORITY PROJECTS.--

14 A. For a qualified high priority project, if money
15 has been specifically appropriated for the purposes of this
16 section, and if the school district so requests, the money may
17 be used to pay both the state share, as calculated by
18 [~~Paragraphs (5) and (6) of~~] Subsection B of Section 22-24-5
19 NMSA 1978 and all or a portion of the district share, subject
20 to the following criteria:

21 (1) the amount paid as the district's share
22 plus any amount added pursuant to Paragraph (3) of this
23 subsection shall be recouped by offsetting future allocations
24 that otherwise would be made from the fund for the state share
25 of projects qualifying for a grant award pursuant to

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1 Subsections B and C of Section 22-24-5 NMSA 1978;

2 (2) except as provided in Paragraph (6) of
3 this subsection, once a project within a district has been
4 funded pursuant to the provisions of this section, then, until
5 the amount paid as the district's share plus any amount added
6 pursuant to Paragraph (3) of this subsection is fully recouped,
7 no standard-based grant awards from the fund shall be made to
8 the district and the district shall be solely responsible for
9 using its local resources to bring those facilities, that would
10 otherwise be eligible for allocations from the fund pursuant to
11 Section 22-24-5 NMSA 1978, up to the statewide adequacy
12 standards;

13 (3) in determining the amount to be recouped
14 pursuant to Paragraphs (1) and (2) of this subsection, any
15 legislative appropriations for nonoperating purposes made
16 either directly to the school district or to another
17 governmental entity for the purpose of passing the money
18 directly to the school district and not rejected by the school
19 district shall be added to the amount advanced from the fund as
20 the district's share for a project;

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

25 (5) allocations from the fund for the district

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1 share shall only be made if the council finds that the school
2 district is likely to complete the project within thirty-six
3 months after the allocation for the district share is made
4 available to the district; and

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

9 (a) both projects qualify pursuant to
10 the provisions of Paragraph (2) of Subsection B of this
11 section; or

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

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

16 (1) that is approved for a grant award
17 pursuant to Section 22-24-5 NMSA 1978 during an awards cycle
18 occurring in 2006 and subsequent award cycles and [~~a~~] is
19 located in a high-growth area, as designated by the council; or

20 (2) that was approved for a grant award
21 pursuant to Section 22-24-5 NMSA 1978 during the 2004-2005 or
22 2005-2006 awards cycle but for which the school district, as of
23 July 1, 2006, has not obtained funding for the district share
24 and [~~a~~] is located in a high-growth area, as designated by
25 the council.

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

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

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

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

15 SECTION 8. Section 22-24-6.1 NMSA 1978 (being Laws 2007,
16 Chapter 214, Section 1, as amended) is amended to read:

17 "22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
18 SCHOOL.--All of the provisions of the Public School Capital
19 Outlay Act apply to an application by a state-chartered charter
20 school for grant assistance for a capital project except:

21 A. the portion of the cost of the project to be
22 paid from the fund shall be calculated pursuant to [~~Paragraph~~
23 ~~(5) of~~] Subsection B of Section 22-24-5 NMSA 1978 using data
24 from the school district in which the state-chartered charter
25 school is located; and

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1 B. in calculating a reduction pursuant to Paragraph
2 [~~(6)~~] (9) of Subsection B of Section 22-24-5 NMSA 1978,

3 [~~(1)~~] the amount to be used in Subparagraph (a)
4 of that paragraph shall equal the total of all legislative
5 appropriations made after January 1, 2007 for nonoperating
6 expenses either directly to the charter school or to another
7 governmental entity for the purpose of passing the money
8 through directly to the charter school, regardless of whether
9 the charter school was a state-chartered charter school at the
10 time of the appropriation or later opted to become a state-
11 chartered charter school, except that the total shall not
12 include any such appropriation if, before the charter school
13 became a state-chartered charter school, the appropriation was
14 previously used to calculate a reduction pursuant to Paragraph
15 [~~(6)~~] (9) of Subsection B of Section 22-24-5 NMSA 1978. [~~and~~

16 ~~(2) the amount to be used in Subparagraph (b)~~
17 ~~of that paragraph shall equal the total of all federal money~~
18 ~~received by the charter school for nonoperating purposes~~
19 ~~pursuant to Title XIV of the American Recovery and Reinvestment~~
20 ~~Act of 2009, regardless of whether the charter school was a~~
21 ~~state-chartered charter school at the time of receiving the~~
22 ~~federal money or later opted to become a state-chartered~~
23 ~~charter school, except that the total shall not include any~~
24 ~~such federal money if, before the charter school became a~~
25 ~~state-chartered charter school, the money was previously used~~

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1 to calculate a reduction pursuant to Paragraph (6) of
2 Subsection B of Section 22-24-5 NMSA 1978; and

3 G. if the council determines that the state-
4 chartered charter school does not have the resources to pay all
5 or a portion of the total cost of the capital outlay project
6 that is not funded with grant assistance from the fund, to the
7 extent that money is available in the charter school capital
8 outlay fund, the council shall make an award from that fund for
9 the remaining amount necessary to pay for the project. The
10 council may establish, by rule, a procedure for determining the
11 amount of resources available to the charter school and the
12 amount needed from the charter school capital outlay fund.]"

13 SECTION 9. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2019.