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AN ACT  
RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL  
CAPITAL OUTLAY ACT; AMENDING THE TECHNOLOGY FOR EDUCATION  
ACT PERTAINING TO DISTRIBUTIONS; AMENDING CERTAIN SECTIONS  
OF THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT; AMENDING A  
CERTAIN SECTION OF THE PUBLIC SCHOOL CODE CONCERNING  
APPROVAL OF CONSTRUCTION; MAKING AN APPROPRIATION; DECLARING  
AN EMERGENCY.

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

Section 1. A new section of the Public School Capital  
Outlay Act is enacted to read:

"PUBLIC SCHOOL FACILITIES AUTHORITY--CREATION--POWERS  
AND DUTIES.--

A. The "public school facilities authority" is  
created under the public school capital outlay council. The  
authority shall be headed by a director, selected by the  
council, who shall be versed in construction, architecture  
or project management. The director may hire no more than  
two deputies with the approval of the council, and, subject  
to budgetary constraints, shall employ or contract with such  
technical and administrative personnel as are necessary to  
carry out the provisions of this section. The director and  
deputies shall be exempt from the provisions of the  
Personnel Act; after July 1, 2004, all other employees of

1 the authority shall be subject to the provisions of the  
2 Personnel Act.

3 B. The authority shall:

4 (1) serve as staff to the council;

5 (2) as directed by the council, provide  
6 those assistance and oversight functions required of the  
7 council by Section 22-24-5.1 NMSA 1978;

8 (3) assist school districts with:

9 (a) the development and implementation  
10 of five-year facilities plans and preventive maintenance  
11 plans;

12 (b) procurement of architectural and  
13 engineering services;

14 (c) management and oversight of  
15 construction activities; and

16 (d) training programs;

17 (4) conduct ongoing reviews of five-year  
18 facilities plans, preventive maintenance plans and  
19 performance pursuant to those plans;

20 (5) ensure that public school capital  
21 outlay projects are in compliance with applicable building  
22 codes;

23 (6) conduct on-site inspections as  
24 necessary to ensure that the construction specifications are  
25 being met and periodically inspect all of the documents

1 related to projects;

2 (7) where appropriate, require the use of  
3 standardized construction documents and the use of a  
4 standardized process for change orders;

5 (8) have access to the premises of a  
6 project and any documentation relating to the project;

7 (9) after consulting with the department of  
8 education, develop building standards for public school  
9 facilities and ensure compliance with those standards;

10 (10) maintain a database of the condition  
11 of school facilities and maintenance schedules; and

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

15 (a) shall work with school districts  
16 to validate the assessment of the outstanding deficiencies  
17 and the projected costs to correct the deficiencies;

18 (b) shall work with school districts  
19 to provide direct oversight of the management and  
20 construction of the projects that will correct the  
21 outstanding deficiencies;

22 (c) shall oversee all aspects of the  
23 contracts entered into by the council to correct the  
24 outstanding deficiencies;

25 (d) may conduct on-site inspections

1 while the deficiencies correction work is being done to  
2 ensure that the construction specifications are being met  
3 and may periodically inspect all of the documents relating  
4 to the projects;

5 (e) may require the use of  
6 standardized construction documents and the use of a  
7 standardized process for change orders;

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

10 (g) shall maintain, track and account  
11 for deficiency correction projects separately from other  
12 capital outlay projects funded pursuant to the Public School  
13 Capital Outlay Act.

14 C. All actions taken by the authority shall be  
15 consistent with educational programs conducted pursuant to  
16 the Public School Code. In the event of any potential or  
17 perceived conflict between a proposed action of the  
18 authority and an educational program, the authority shall  
19 consult with the state superintendent. "

20 Section 2. Section 22-20-1 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 270, as amended) is amended to read:

22 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC  
23 SCHOOL FACILITIES AUTHORITY. --

24 A. Each local school board shall secure the  
25 approval of the director of the public school facilities

1 authority or his designee prior to the construction or  
2 letting of contracts for construction of any school building  
3 or related school structure or before reopening an existing  
4 structure that was formerly used as a school building but  
5 that has not been used for that purpose during the previous  
6 year. A written application shall be submitted to the  
7 director requesting approval of the construction, and, upon  
8 receipt, the director shall forward a copy of the  
9 application to the state superintendent. The director shall  
10 prescribe the form of the application, which shall include  
11 the following:

- 12 (1) a statement of need;
- 13 (2) the anticipated number of students  
14 affected by the construction;
- 15 (3) the estimated cost;
- 16 (4) a description of the proposed  
17 construction or structure to be built;
- 18 (5) a map of the area showing existing  
19 school attendance centers within a five-mile radius and any  
20 obstructions to attending the attendance centers, such as  
21 but not limited to railroad tracks, rivers and limited-  
22 access highways; and
- 23 (6) such other information as may be  
24 required by the director.

25 B. The director or his designee shall give his

1 approval to an application if he reasonably determines that:

2 (1) the construction will not cause an  
3 unnecessary proliferation of school construction;

4 (2) the construction is needed in the  
5 school district;

6 (3) the construction is feasible;

7 (4) the cost of the construction is  
8 reasonable;

9 (5) the school district is financially able  
10 to pay for the construction; and

11 (6) the state superintendent has certified  
12 that the construction will support the educational program  
13 of the school district.

14 C. Within thirty days after the receipt of an  
15 application filed pursuant to this section, the director or  
16 his designee shall in writing notify the local school board  
17 making the application and the department of education of  
18 his approval or disapproval of the application. "

19 Section 3. Section 22-24-4 NMSA 1978 (being Laws 1975,  
20 Chapter 235, Section 4, as amended) is amended to read:

21 "22-24-4. FUND CREATED--USE. --

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

25 B. Except as provided in Subsections G and H of

1 this section, money in the fund may be used only for capital  
2 expenditures deemed by the council necessary for an adequate  
3 educational program.

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

22 D. Applications for assistance from the fund  
23 shall be made by school districts to the council in  
24 accordance with requirements of the council. The council  
25 shall require as a condition of application that a school

1 district have a current five-year facilities plan, which  
2 shall include a current preventive maintenance plan to which  
3 the school adheres for each public school in the 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  
9 warrant of the department of finance and administration on  
10 vouchers signed by the secretary of finance and  
11 administration following certification by the council that  
12 an application has been approved. At the discretion of the  
13 council, money for a project shall be distributed as  
14 follows:

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

21 (2) the council may make payments directly  
22 to the contractor.

23 G. An amount up to five percent of the average  
24 annual grant assistance authorized from the fund during the  
25 three previous fiscal years may annually be expended for



1 project management expenses.

2 H. Up to one million two hundred fifty thousand  
3 dollars (\$1,250,000) of the balances of the fund may be  
4 expended in fiscal years 2003 and 2004 by the council for  
5 the purpose of updating and refining the statewide  
6 assessment study required by Section 22-24-5 NMSA 1978 and  
7 for the training of state and local officials on the use of  
8 the database and other data management related issues  
9 identified by the council.

10 I. Of the appropriation made to the fund by  
11 Subsection D of Section 15 of Chapter 338 of Laws 2001 for  
12 the purpose of correcting outstanding deficiencies, one  
13 million one hundred thousand dollars (\$1,100,000) is  
14 appropriated to the council for expenditure in fiscal year  
15 2004 for the core administrative functions of the  
16 deficiencies corrections program. Any unexpended or  
17 unencumbered balance remaining at the end of fiscal year  
18 2004 shall revert to the fund.

19 J. Up to seven hundred thousand dollars  
20 (\$700,000) of the balances of the fund may be expended by  
21 the council in fiscal year 2004 for the core administrative  
22 functions of the public school facilities authority."

23 Section 4. Section 22-24-4.1 NMSA 1978 (being Laws  
24 2001, Chapter 338, Section 6) is amended to read:

25 "22-24-4.1. OUTSTANDING DEFICIENCIES--ASSESSMENT--

1 CORRECTION. --

2 A. No later than September 1, 2001, the council  
3 shall define and develop guidelines, consistent with the  
4 codes adopted by the construction industries commission  
5 pursuant to the Construction Industries Licensing Act, for  
6 school districts to use to identify outstanding serious  
7 deficiencies in public school buildings and grounds,  
8 including buildings and grounds of charter schools, that may  
9 adversely affect the health or safety of students and school  
10 personnel.

11 B. A school district shall use these guidelines  
12 to complete a self-assessment of the outstanding health or  
13 safety deficiencies within the district and provide cost  
14 projections to correct the outstanding deficiencies.

15 C. The council shall develop a methodology for  
16 prioritizing projects that will correct the deficiencies.

17 D. After a public hearing and to the extent that  
18 money is available in the fund for such purposes, the  
19 council shall approve allocations from the fund on the  
20 established priority basis and, working with the school  
21 district and pursuant to the Procurement Code, enter into  
22 construction contracts with contractors to correct the  
23 deficiencies.

24 E. In entering into construction contracts to  
25 correct deficiencies pursuant to this section, the council

1 shall include such terms and conditions as necessary to  
2 ensure that the state money is expended in the most prudent  
3 manner possible and consistent with the original purpose.

4 F. Any deficiency that may adversely affect the  
5 health or safety of students or school personnel may be  
6 corrected pursuant to this section, regardless of the local  
7 effort or percentage of indebtedness of the school district.

8 G. It is the intent of the legislature that all  
9 outstanding deficiencies in public schools and grounds that  
10 may adversely affect the health or safety of students and  
11 school personnel be identified and awards made pursuant to  
12 this section no later than June 30, 2004, and that funds be  
13 expended no later than June 30, 2006. "

14 Section 5. A new section of the Public School Capital  
15 Outlay Act, Section 22-24-5.3 NMSA 1978, is enacted to read:

16 "22-24-5.3. PREVENTIVE MAINTENANCE PLANS--GUIDELINES--  
17 APPROVAL. --

18 A. The council shall adopt guidelines that will  
19 assist school districts in the development and  
20 implementation of preventive maintenance plans. In  
21 developing the guidelines, the council shall ensure that  
22 they are not overly complex, that they are user-friendly and  
23 that they take into account the geographic and size  
24 variations of the districts throughout the state. The  
25 guidelines shall include the major requirements for:

1 (1) establishing and implementing a  
2 preventive maintenance plan;

3 (2) necessary budgets, personnel and staff  
4 support;

5 (3) staff training; and

6 (4) evaluation and auditing.

7 B. To the extent resources are available, the  
8 council shall provide assistance to districts in developing  
9 and implementing a preventive maintenance plan.

10 C. For project allocation cycles beginning after  
11 September 1, 2003, a school district shall not be eligible  
12 for funding pursuant to Section 22-24-5 NMSA 1978 unless the  
13 district has a preventive maintenance plan that has been  
14 approved by the council.

15 D. As used in this section, "preventive  
16 maintenance" means the regularly scheduled repair and  
17 maintenance needed to keep a building component operating at  
18 peak efficiency and to extend its useful life. "Preventive  
19 maintenance" includes scheduled activities intended to  
20 prevent breakdowns and premature failures, including  
21 periodic inspections, lubrication, calibrations and  
22 replacement of expendable components of equipment. "

23 Section 6. Section 22-25-3 NMSA 1978 (being Laws 1975  
24 (S. S. ), Chapter 5, Section 3, as amended) is amended to  
25 read:

1 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO  
2 SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION. -- A  
3 local school board may adopt a resolution to submit to the  
4 qualified electors of the school district the question of  
5 whether a property tax should be imposed upon the net  
6 taxable value of property allocated to the school district  
7 under the Property Tax Code at a rate not to exceed that  
8 specified in the resolution for the purpose of capital  
9 improvements in the school district. The resolution shall:

10 A. identify the capital improvements for which  
11 the revenue proposed to be produced will be used;

12 B. specify the rate of the proposed tax, which  
13 shall not exceed two dollars (\$2.00) on each one thousand  
14 dollars (\$1,000) of net taxable value of property allocated  
15 to the school district under the Property Tax Code;

16 C. specify the date an election will be held to  
17 submit the question of imposition of the tax to the  
18 qualified electors of the district; and

19 D. limit the imposition of the proposed tax to  
20 no more than six property tax years. "

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

24 "22-25-5. CONDUCT OF ELECTION--NOTICE--BALLOT. --

25 A. An election on the question of imposing a tax

1 under the Public School Capital Improvements Act may be held  
2 in conjunction with a regular school district election or  
3 may be conducted as or held in conjunction with a special  
4 school district election, but the election shall be held  
5 prior to July 1 of the property tax year in which the tax is  
6 proposed to be imposed. Conduct of the election shall be as  
7 prescribed in the School Election Law for regular and  
8 special school district elections.

9 B. The proclamation required to be published as  
10 notice of the election under Section 1-22-4 or 1-22-5 NMSA  
11 1978 shall include as the question to be submitted to the  
12 voters whether a property tax at a rate not to exceed the  
13 rate specified in the authorizing resolution should be  
14 imposed for the specified number of property tax years not  
15 exceeding six years upon the net taxable value of all  
16 property allocated to the school district for the capital  
17 improvements specified in the authorizing resolution.

18 C. The ballot shall include the information  
19 specified in Subsection B of this section and shall present  
20 the voter the choice of voting "for the public school  
21 capital improvements tax" or "against the public school  
22 capital improvements tax". "

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

1           "22-25-8. TAX TO BE IMPOSED FOR A MAXIMUM OF SIX  
2 YEARS.--A tax imposed in a school district as a result of an  
3 election under the Public School Capital Improvements Act  
4 shall be imposed for a specified number of property tax  
5 years not exceeding six years commencing with the property  
6 tax year in which the election was held. The local school  
7 board may discontinue, by resolution, the Public School  
8 Capital Improvements Act tax levy at the end of any property  
9 tax year. The local school board shall direct that the  
10 Public School Capital Improvements Act tax levy be decreased  
11 by the amount required for any year in which the decrease is  
12 required by operation of the rate limitation provisions of  
13 Section 7-37-7.1 NMSA 1978. "

14           Section 9. Section 22-25-9 NMSA 1978 (being Laws 1975  
15 (S. S.), Chapter 5, Section 9, as amended) is amended to  
16 read:

17           "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT  
18 IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

19           A. Except as provided in Subsection C of this  
20 section, the state superintendent shall distribute to any  
21 school district that has imposed a tax under the Public  
22 School Capital Improvements Act an amount from the public  
23 school capital improvements fund that is equal to the amount  
24 by which the revenue estimated to be received from the  
25 imposed tax, at the rate certified by the department of

1 finance and administration in accordance with Section  
2 22-25-7 NMSA 1978, assuming a one hundred percent collection  
3 rate, is less than an amount calculated by multiplying the  
4 school district's first forty days' total program units by  
5 the dollar amount specified in Subsection B of this section  
6 and further multiplying the product obtained by the tax rate  
7 approved by the qualified electors in the most recent  
8 election on the question of imposing a tax under the Public  
9 School Capital Improvements Act. The distribution shall be  
10 made each year that the tax is imposed in accordance with  
11 Section 22-25-7 NMSA 1978; provided that no state  
12 distribution from the public school capital improvements  
13 fund may be used for capital improvements to any  
14 administration building of a school district. In the event  
15 that sufficient funds are not available in the public school  
16 capital improvements fund to make the state distribution  
17 provided for in this section, the dollar per program unit  
18 figure shall be reduced as necessary.

19 B. In calculating the state distribution  
20 pursuant to Subsection A of this section, the following  
21 amounts shall be used:

22 (1) fifty dollars (\$50.00) per program  
23 unit; and

24 (2) for fiscal year 2005 and thereafter, an  
25 additional amount certified to the state superintendent by



1 the public school capital outlay council. No later than  
2 June 1, 2004 and each June 1 thereafter, the council shall  
3 determine the amount needed in the next fiscal year for  
4 public school capital outlay projects pursuant to the Public  
5 School Capital Outlay Act and the amount of revenue, from  
6 all sources, available for the projects. If, in the sole  
7 discretion of the council, the amount available exceeds the  
8 amount needed, the council may certify an additional amount  
9 pursuant to this paragraph; provided that the sum of the  
10 amount calculated pursuant to this paragraph plus the amount  
11 in Paragraph (1) of this subsection shall not result in a  
12 total statewide distribution that, in the opinion of the  
13 council, exceeds one half of the total revenue estimated to  
14 be received from taxes imposed pursuant to the Public School  
15 Capital Improvements Act.

16 C. For fiscal year 2004 and thereafter,  
17 notwithstanding the amount calculated to be distributed  
18 pursuant to Subsections A and B of this section, a school  
19 district, the voters of which have approved a tax pursuant  
20 to Section 22-25-3 NMSA 1978, shall not receive a  
21 distribution less than an amount equal to five dollars  
22 (\$5.00) multiplied by the school district's first forty  
23 days' total program units and further multiplying the  
24 product obtained by the approved tax rate.

25 D. In making distributions pursuant to this

1 section, the state superintendent shall include such  
2 reporting requirements and conditions as are required by  
3 rule of the public school capital outlay council. The  
4 council shall adopt such requirements and conditions as are  
5 necessary to ensure that the distributions are expended in  
6 the most prudent manner possible and are consistent with the  
7 original purpose as specified in the authorizing resolution.  
8 Copies of reports or other information received by the state  
9 superintendent in response to the requirements and  
10 conditions shall be forwarded to the council."

11 Section 10. Section 22-24-5 NMSA 1978 (being Laws  
12 1975, Chapter 235, Section 5, as amended) is amended to  
13 read:

14 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
15 APPLICATION-- GRANT ASSISTANCE. --

16 A. For project allocation cycles occurring  
17 before September 1, 2003, the council shall approve an  
18 application for grant assistance from the fund for a public  
19 school capital outlay project not wholly funded pursuant to  
20 Section 22-24-4.1 NMSA 1978, when the council determines  
21 that:

- 22 (1) a need exists requiring action;  
23 (2) the residents of the school district  
24 have provided available resources to the school district to  
25 meet its capital outlay requirements;

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

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

6 (5) the school district:

7 (a) is indebted at not less than  
8 sixty-five percent of the total general obligation debt  
9 authorized by law; or

10 (b) within the last three years, was  
11 indebted at the level required in Subparagraph (a) of this  
12 paragraph and received a grant pursuant to this section for  
13 the initial stages of a project and currently has a critical  
14 need for an additional grant to complete the same project;

15 (6) the application includes:

16 (a) the capital needs of any charter  
17 schools located in the school district or the school  
18 district has shown that the capital needs of the charter  
19 schools are not as great as the capital needs requested in  
20 the application; and

21 (b) the facilities needed in the  
22 school district to implement a full-day kindergarten program  
23 or that the school district has shown that the need for  
24 facilities to implement the program is not as great as the  
25 capital needs requested in the application; provided that

1 the total amount of assistance grants made in a fiscal year  
2 for the purpose of implementing full-day kindergarten  
3 programs shall not exceed five million dollars (\$5,000,000);  
4 and

5 (7) the school district has submitted a  
6 five-year facilities plan that includes:

7 (a) enrollment projections;

8 (b) a current preventive maintenance  
9 plan to which the school adheres for each public school in  
10 the district; and

11 (c) projections for the facilities  
12 needed in order to maintain a full-day kindergarten program.

13 B. The council shall consider all applications  
14 for assistance from the fund and, after a public hearing,  
15 shall either approve or deny the application. Applications  
16 for grant assistance shall only be accepted by the council  
17 after a school district has complied with the provisions of  
18 this section. The council shall list all applications in  
19 order of priority, and all allocations shall be made on a  
20 priority basis, except:

21 (1) twenty million dollars (\$20,000,000) of  
22 the proceeds from supplemental severance tax bonds available  
23 for the funding cycle in each of fiscal years 2002 and 2003  
24 shall be set aside for allocation solely for projects in  
25 school districts that are eligible for funding from the fund

1 and that receive grants from the federal government as  
2 assistance to areas affected by federal activity authorized  
3 in accordance with Title 20 of the United States Code,  
4 commonly known as "PL 874 funds" or "impact aid";

5 (2) fifteen million dollars (\$15,000,000)  
6 of the money in the fund available for the funding cycle in  
7 fiscal year 2004 shall be set aside for allocation solely  
8 for projects in school districts that are eligible for  
9 funding and that:

10 (a) are eligible for additional  
11 program units pursuant to Section 22-8-23.1 NMSA 1978;

12 (b) are indebted at not less than  
13 ninety percent of the total general obligation debt  
14 authorized by law; and

15 (c) have a net taxable value per MEM  
16 equal to less than fifty percent of the average statewide  
17 net taxable value per MEM; and

18 (3) in the case of an emergency, the order  
19 of priority shall first reflect those projects that have  
20 been previously funded but are not as yet completed,  
21 excluding expansion of those projects and contingent upon  
22 maintenance of the required local support.

23 C. For allocation cycles beginning after  
24 September 1, 2003, the following provisions apply:

25 (1) all school districts are eligible to

1 apply for funding from the fund, regardless of percentage of  
2 indebtedness;

3 (2) priorities for funding shall be  
4 determined by using the statewide adequacy standards  
5 developed pursuant to Subsection D of this section; provided  
6 that the council shall apply the standards to charter  
7 schools to the same extent that they are applied to other  
8 public schools;

9 (3) after consulting with the staff  
10 architect of the property control division of the general  
11 services department, the council shall establish criteria to  
12 be used in public school capital outlay projects that  
13 receive grant assistance pursuant to the Public School  
14 Capital Outlay Act. In establishing the criteria, the  
15 council shall consider:

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

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

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

25 (4) no more than ten percent of the

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

4 (5) except as provided in Paragraph (6) or  
5 (8) of this subsection, the state share of a project  
6 approved and ranked by the council shall be funded within  
7 available resources in accordance with the following  
8 procedure:

9 (a) the final prior year net taxable  
10 value for a school district divided by the MEM for that  
11 district is calculated for each school district;

12 (b) the final prior year net taxable  
13 value for the whole state divided by the MEM for the state  
14 is calculated;

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

21 (d) the lowest value listed pursuant  
22 to Subparagraph (c) of this paragraph is subtracted from the  
23 highest value listed pursuant to that subparagraph;

24 (e) the value calculated pursuant to  
25 Subparagraph (a) of this paragraph for the subject school

1 district is subtracted from the highest value listed in  
2 Subparagraph (c) of this paragraph;

3 (f) the result calculated pursuant to  
4 Subparagraph (e) of this paragraph is divided by the result  
5 calculated pursuant to Subparagraph (d) of this paragraph;

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

14 (h) the lowest value calculated  
15 pursuant to Subparagraph (g) of this paragraph is subtracted  
16 from the highest value calculated pursuant to that  
17 subparagraph;

18 (i) the lowest value calculated  
19 pursuant to Subparagraph (g) of this paragraph is subtracted  
20 from the value calculated pursuant to that subparagraph for  
21 the subject school district;

22 (j) the value calculated pursuant to  
23 Subparagraph (i) of this paragraph is divided by the value  
24 calculated pursuant to Subparagraph (h) of this paragraph;

25 (k) if the value calculated for a



1 subject school district pursuant to Subparagraph (j) of this  
2 paragraph is less than five-tenths, then, except as provided  
3 in Subparagraph (n) or (o) of this paragraph, the value  
4 calculated for that district pursuant to Subparagraph (f) of  
5 this paragraph equals the portion of the approved project to  
6 be funded from the fund;

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

11 (m) if the value calculated for a  
12 subject school district pursuant to Subparagraph (j) of this  
13 paragraph is five-tenths or greater, then the value  
14 calculated pursuant to Subparagraph (l) of this paragraph is  
15 added to the value calculated pursuant to Subparagraph (f)  
16 of this paragraph. Except as provided in Subparagraph (n)  
17 or (o) of this paragraph, the sum equals the portion of the  
18 approved project to be funded from the fund;

19 (n) in those instances in which the  
20 calculation pursuant to Subparagraph (k) or (m) of this  
21 paragraph yields a value less than one-tenth, one-tenth  
22 shall be used as the portion of the approved project to be  
23 funded from the fund;

24 (o) in those instances in which the  
25 calculation pursuant to Subparagraph (k) or (m) of this

1 paragraph yields a value greater than one, one shall be used  
2 as the portion of the approved project to be funded from the  
3 fund;

4 (p) except as reduced pursuant to  
5 Paragraph (6) of this subsection, the amount to be  
6 distributed from the fund for an approved project shall  
7 equal the value for the subject school district derived from  
8 Subparagraph (k), (m), (n) or (o) of this paragraph  
9 multiplied by the total project cost; and

10 (q) as used in this paragraph, "MEM"  
11 means the total enrollment of students attending public  
12 school in a school district in the final funded prior school  
13 year, with kindergarten being counted as five-tenths;

14 (6) the amount calculated pursuant to  
15 Subparagraph (p) of Paragraph (5) of this subsection shall  
16 be reduced by the following procedure:

17 (a) the total of all legislative  
18 appropriations made after January 1, 2003 directly to, and  
19 not rejected by, the subject school district for non-  
20 operating purposes, excluding educational technology and  
21 reauthorizations of appropriations made to the subject  
22 school district, is calculated;

23 (b) the applicable amount for the  
24 subject school district calculated from Subparagraph (k),  
25 (m), (n) or (o) of Paragraph (5) of this subsection is

1 subtracted from one;

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

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

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

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

21 (8) in those instances in which a school  
22 district has used all of its local resources, the council  
23 may fund up to the total amount of a project; and

24 (9) no application for grant assistance  
25 from the fund shall be approved unless the council

1 determines that:

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

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

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

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

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

23 (f) the application includes the  
24 capital needs of any charter schools located in the school  
25 district or the school district has shown that the

1 facilities of the charter schools in the district meet the  
2 statewide adequacy standards; and

3 (g) the school district has agreed, in  
4 writing, to comply with any reporting requirements or  
5 conditions imposed by the council pursuant to Section  
6 22-24-5.1 NMSA 1978.

7 D. After consulting with the public school  
8 capital outlay task force and other experts, the council  
9 shall develop and regularly review and update statewide  
10 adequacy standards applicable to all school districts. The  
11 standards shall establish the minimum acceptable level for  
12 the physical condition and capacity of buildings, the  
13 educational suitability of facilities and the need for  
14 technological infrastructure. The amount of outstanding  
15 deviation from the standards shall be used by the council  
16 after September 1, 2003 in evaluating and prioritizing  
17 public school capital outlay projects.

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

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

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

12 H. The council shall promulgate such rules as  
13 are necessary to carry out the provisions of the Public  
14 School Capital Outlay Act.

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

25 Section 11. Section 22-15A-9 NMSA 1978 (being Laws

1 1994, Chapter 96, Section 9, as amended) is amended to read:

2 "22- 15A- 9. EDUCATIONAL TECHNOLOGY FUND- - DISTRIBUTION. -

3 -  
4 A. Upon annual review and approval of a school  
5 district's educational technology plan, the bureau shall  
6 determine a separate distribution from the educational  
7 technology fund for each school district.

8 B. On or before July 31 of each year, the bureau  
9 shall distribute money in the educational technology fund  
10 directly to each school district in an amount equal to  
11 ninety percent of the district's estimated adjusted  
12 entitlement calculated pursuant to Subsection C of this  
13 section. A school district's unadjusted entitlement is that  
14 portion of the total amount of the annual appropriation that  
15 the projected membership bears to the projected membership  
16 of the state. Kindergarten membership shall be calculated  
17 on a one-half full-time equivalent basis.

18 C. A school district's estimated adjusted  
19 entitlement shall be calculated by the bureau using the  
20 following procedure:

21 (1) a base allocation is calculated by  
22 multiplying the total annual appropriation by seventy-five  
23 thousandths of one percent;

24 (2) the estimated adjusted entitlement  
25 amount for a school district whose unadjusted entitlement is

1 at or below the base allocation shall be equal to the base  
2 allocation. For a school district whose unadjusted  
3 entitlement is higher than the base allocation, the  
4 estimated adjusted entitlement shall be calculated pursuant  
5 to Paragraphs (3) through (13) of this subsection;

6 (3) the total projected membership in those  
7 school districts that will receive the base allocation  
8 pursuant to Paragraph (2) of this subsection is subtracted  
9 from the total projected state membership;

10 (4) the total of the estimated adjusted  
11 entitlement amounts that will be distributed to those school  
12 districts receiving the base allocation pursuant to  
13 Paragraph (2) of this subsection is subtracted from the  
14 total appropriation;

15 (5) the projected membership for the  
16 district is divided by the result calculated pursuant to  
17 Paragraph (3) of this subsection;

18 (6) the number calculated pursuant to  
19 Paragraph (5) of this subsection is multiplied by the value  
20 calculated pursuant to Paragraph (4) of this subsection;

21 (7) the total of all legislative  
22 appropriations, excluding reauthorizations of education  
23 technology appropriations made to the subject school  
24 district, made after January 1, 2003 for educational  
25 technology directly to, and not rejected by, the school



1 district is calculated. No later than June 30 of each year,  
2 the legislative council service shall certify to the bureau  
3 the amount of direct appropriations made to each school  
4 district during the preceding twelve months;

5 (8) the applicable amount for the school  
6 district calculated from Subparagraph (k), (m), (n) or (o)  
7 of Paragraph (5) of Subsection C of Section 22-24-5 NMSA  
8 1978 is subtracted from one;

9 (9) the value calculated pursuant to  
10 Paragraph (7) of this subsection for the school district is  
11 multiplied by the amount calculated pursuant to Paragraph  
12 (8) of this subsection for that school district;

13 (10) the total amount of reductions for the  
14 school district made in prior fiscal years pursuant to  
15 Paragraph (11) of this subsection is subtracted from the  
16 amount calculated pursuant to Paragraph (9) of this  
17 subsection for that school district;

18 (11) the amount calculated for the school  
19 district pursuant to Paragraph (10) of this subsection is  
20 subtracted from the amount calculated pursuant to Paragraph  
21 (6) of this subsection for that school district;

22 (12) if the amount calculated for the  
23 school district pursuant to Paragraph (11) of this  
24 subsection is equal to or less than the base allocation  
25 amount, the estimated adjusted entitlement amount for that

1 school district is equal to the base allocation amount; and

2 (13) if the amount calculated for the  
3 school district pursuant to Paragraph (11) of this  
4 subsection is more than the base allocation amount, the  
5 estimated adjusted entitlement amount for that school  
6 district is equal to the amount calculated pursuant to that  
7 paragraph.

8 D. On or before January 30 of each year, the  
9 bureau shall recompute each adjusted entitlement using the  
10 final funded membership for that year and, without making  
11 any additional reductions, shall allocate the balance of the  
12 annual appropriation adjusting for any over- or under-  
13 projection of membership.

14 E. Any school district receiving funding  
15 pursuant to the Technology for Education Act is responsible  
16 for the purchase, distribution, use and maintenance of  
17 educational technology.

18 F. As used in this section, "membership" means  
19 the total enrollment of qualified students, as defined in  
20 the Public School Finance Act, on the current roll of class  
21 or school on a specified day. The current roll is  
22 established by the addition of original entries and re-  
23 entries minus withdrawals. Withdrawal of students, in  
24 addition to students formally withdrawn from the public  
25 school, includes students absent from the public school for

1 as many as ten consecutive school days."

2 Section 12. Section 22-15A-10 NMSA 1978 (being Laws  
3 1994, Chapter 96, Section 10) is amended to read:

4 "22-15A-10. ANNUAL REPORT.--Annually, at a time  
5 specified by the department of education, each school  
6 district receiving distributions from the educational  
7 technology fund shall file a report with the department of  
8 education regarding distributions received, direct  
9 legislative appropriations for educational technology made  
10 and not rejected, expenditures made and educational  
11 technology obtained by the district and such other related  
12 information as may be required by the department of  
13 education."

14 Section 13. TEMPORARY PROVISION--TRANSFER.--On July 1,  
15 2003:

16 A. all personnel of the deficiencies correction  
17 unit of the public school capital outlay council and up to  
18 four full-time employees of the capital outlay unit of the  
19 state department of public education are transferred to the  
20 public school facilities authority. The superintendent of  
21 public instruction and the public school capital outlay  
22 council shall jointly determine the employees of the capital  
23 outlay unit to be transferred pursuant to this subsection;  
24 provided that employees subject to the provisions of the  
25 Personnel Act prior to the transfer shall remain subject to

1 the provisions of that act subsequent to the transfer;

2 B. all appropriations, money, records, property,  
3 equipment and supplies of the public school capital outlay  
4 council and the state department of public education that  
5 are primarily associated with the personnel described in  
6 Subsection A of this section are transferred to the public  
7 school facilities authority;

8 C. all contracts and agreements of the public  
9 school capital outlay council and the state department of  
10 public education relating to the activities of the personnel  
11 described in Subsection A of this section are transferred to  
12 the public school facilities authority; and

13 D. the superintendent of public instruction and  
14 the public school capital outlay council shall jointly  
15 identify the property to be transferred pursuant to  
16 Subsections B and C of this section.

17 Section 14. REPEAL. -- Sections 22-20-3 and 22-24-4.2  
18 NMSA 1978 (being Laws 1967, Chapter 16, Section 272 and Laws  
19 2001, Chapter 338, Section 7, as amended) are repealed.

20 Section 15. EFFECTIVE DATE. -- The effective date of the  
21 provisions of Sections 1, 2, 13 and 14 of this act is July  
22 1, 2003.

23 Section 16. EMERGENCY. -- It is necessary for the public  
24 peace, health and safety that this act take effect  
25 immediately. \_\_\_\_\_

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