

1 SENATE BILL 399

2 **46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

3 INTRODUCED BY

4 Cynthia Nava

5  
6  
7  
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

9  
10 AN ACT

11 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AUTHORIZING SEVERANCE  
12 TAX BONDS AND SUPPLEMENTAL SEVERANCE TAX BONDS FOR PUBLIC  
13 SCHOOL CAPITAL OUTLAY PROJECTS; AMENDING THE PUBLIC SCHOOL  
14 CAPITAL IMPROVEMENTS ACT TO ESTABLISH FUNDING PRIORITIES,  
15 EXPAND THE PURPOSE FOR WHICH FUNDS MAY BE USED, INCREASE THE  
16 STATE DISTRIBUTION AND ADJUST STATE DISTRIBUTIONS BY AN  
17 INFLATION FACTOR; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT  
18 TO CHANGE THE MEMBERSHIP OF THE PUBLIC SCHOOL CAPITAL OUTLAY  
19 COUNCIL, CHANGE CRITERIA FOR FUNDING CERTAIN PROJECTS, PROVIDE  
20 A PROCEDURE FOR APPEALING CERTAIN DECISIONS, PROVIDE A CAUSE OF  
21 ACTION AGAINST CERTAIN SCHOOL DISTRICTS FOR CERTAIN  
22 CONSTITUTIONAL VIOLATIONS AND PROVIDE FOR A TAX IMPOSITION AS A  
23 REMEDY; CREATING THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE;  
24 PROVIDING DUTIES FOR THE TASK FORCE; AMENDING THE TECHNOLOGY  
25 FOR EDUCATION ACT TO LIMIT CARRYFORWARD PROVISIONS; MAKING

.150359.1

underscoring material = new  
~~[bracketed material]~~ = delete

underscored material = new  
[bracketed material] = delete

1 APPROPRIATIONS.

2

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

4 Section 1. Section 7-27-10.1 NMSA 1978 (being Laws 2003,  
5 Chapter 134, Section 1) is amended to read:

6 "7-27-10.1. BONDING CAPACITY--AUTHORIZATION FOR SEVERANCE  
7 TAX BONDS--~~[WATER PROJECTS]~~ PRIORITY FOR WATER PROJECTS AND  
8 PUBLIC SCHOOL CAPITAL OUTLAY.--

9 A. By January 15 of each year, the board of finance  
10 division of the department of finance and administration shall  
11 estimate the amount of bonding capacity available for severance  
12 tax bonds ~~[to be authorized by the legislature]~~ and  
13 supplemental severance tax bonds.

14 B. The board of finance division shall ~~[authorize]~~  
15 set aside ten percent of the estimated severance tax bonding  
16 capacity each year ~~[and]~~. The legislature authorizes the state  
17 board of finance to issue severance tax bonds in the annually  
18 ~~[deducted]~~ set aside amount for use by the water trust board to  
19 fund water projects statewide. ~~[B.]~~ The water trust board  
20 shall certify to the state board of finance the need for  
21 issuance of severance tax bonds for water projects. The state  
22 board of finance may issue and sell the severance tax bonds in  
23 the same manner as other severance tax bonds in an amount not  
24 to exceed the authorized amount provided for in ~~[Subsection A~~  
25 ~~of this section]~~ this subsection. If necessary, the state

.150359.1

underscored material = new  
[bracketed material] = delete

1 board of finance shall take the appropriate steps to comply  
2 with the federal Internal Revenue Code of 1986, as amended.  
3 Proceeds from the sale of the severance tax bonds are  
4 appropriated to the water project fund in the New Mexico  
5 finance authority for the purposes certified by the water trust  
6 board to the state board of finance.

7 C. Money from the severance tax bonds provided for  
8 in Subsection B of this section shall not be used to pay  
9 indirect project costs. Any unexpended balance from proceeds  
10 of severance tax bonds issued for a water project shall revert  
11 to the severance tax bonding fund within six months of  
12 completion of the water project. The New Mexico finance  
13 authority shall monitor and ensure proper reversions.

14 D. As used in this section, "water project" means a  
15 capital outlay project for:

16 (1) the storage, conveyance or delivery of  
17 water to end users;

18 (2) the implementation of federal Endangered  
19 Species Act of 1973 collaborative programs;

20 (3) the restoration and management of  
21 watersheds;

22 (4) flood prevention; or

23 (5) conservation, recycling, treatment or  
24 reuse of water.

25 E. In addition to the amount of severance tax

.150359.1

underscored material = new  
[bracketed material] = delete

1 bonding capacity set aside pursuant to Subsection B of this  
2 section, if the specific conditions and limitations prescribed  
3 by this subsection are satisfied, the board of finance division  
4 shall set aside an amount for public school capital outlay  
5 projects. The amount of the set-aside shall be calculated as  
6 follows:

7 (1) the division shall:

8 (a) add: 1) the total amount of  
9 severance tax bonds and supplemental severance tax bonds issued  
10 during the previous fiscal year for public school capital  
11 outlay pursuant to the Public School Capital Outlay Act and the  
12 Public School Capital Improvements Act but excluding severance  
13 tax bonds or supplemental severance tax bonds issued to correct  
14 deficiencies pursuant to Section 22-24-4.1 NMSA 1978; 2) the  
15 estimated total amount of severance tax bonds and supplemental  
16 severance tax bonds to be issued during the current fiscal year  
17 for public school capital outlay pursuant to the Public School  
18 Capital Outlay Act and the Public School Capital Improvements  
19 Act but excluding severance tax bonds or supplemental severance  
20 tax bonds issued to correct deficiencies pursuant to Section  
21 22-24-4.1 NMSA 1978; and 3) the estimated supplemental  
22 severance tax bonding capacity calculated pursuant to  
23 Subsection A of this section; and

24 (b) divide the sum by three;

25 (2) except as provided in Paragraph (3) of

.150359.1

underscored material = new  
[bracketed material] = delete

1 this subsection, the amount of severance tax bonding capacity  
2 set aside for public school capital outlay projects shall equal  
3 the value reached by subtracting the amount calculated pursuant  
4 to Paragraph (1) of this subsection from the lesser of:

5 (a) one hundred twenty-five million  
6 dollars (\$125,000,000); or

7 (b) the amount certified by the public  
8 school capital outlay council pursuant to Section 22-24-5.4  
9 NMSA 1978; and

10 (3) if the value calculated pursuant to  
11 Paragraph (2) of this subsection is less than zero, no amount  
12 shall be set aside pursuant to this subsection.

13 F. In compliance with the Severance Tax Bonding  
14 Act, the state board of finance may issue and sell severance  
15 tax bonds in the amount set aside pursuant to Subsection E of  
16 this section when the public school capital outlay council  
17 certifies by resolution the need for the issuance of the bonds.  
18 The state board of finance shall schedule the issuance and sale  
19 of the bonds in the most expeditious and economical manner  
20 possible. If necessary, the state board of finance shall take  
21 the appropriate steps to comply with the federal Internal  
22 Revenue Code of 1986, as amended. The proceeds from the sale  
23 of the bonds are appropriated to the public school capital  
24 outlay fund for the purposes certified by the public school  
25 capital outlay council to the state board of finance.

.150359.1

1                   G. The board of finance division shall deduct the  
2 amounts set aside in Subsections B and E of this section from  
3 the capacity estimated pursuant to Subsection A of this section  
4 and certify the result to the legislature as the amount  
5 available for additional severance tax bond authorizations."

6                   Section 2. Section 7-27-12.2 NMSA 1978 (being Laws 2001,  
7 Chapter 338, Section 2) is amended to read:

8                   "7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC  
9 SCHOOL CAPITAL OUTLAY PROJECTS.--

10                   A. The public school capital outlay council is  
11 authorized to certify by resolution that proceeds of  
12 supplemental severance tax bonds are needed for expenditures  
13 relating to public school capital outlay projects pursuant to  
14 [~~Section 22-24-5 NMSA 1978~~] the Public School Capital Outlay  
15 Act or for the state distribution for public school capital  
16 improvements pursuant to the Public School Capital Improvements  
17 Act. The resolution shall specify the total amount needed.

18                   B. The state board of finance may issue and sell  
19 supplemental severance tax bonds in compliance with the  
20 Severance Tax Bonding Act when the public school capital outlay  
21 council certifies by resolution the need for the issuance of  
22 the bonds. The amount of the bonds sold at each sale shall not  
23 exceed the lesser of the amount certified by the council or the  
24 amount that may be issued pursuant to the restrictions of  
25 Section 7-27-14 NMSA 1978.

.150359.1

underscored material = new  
[bracketed material] = delete

1 C. The state board of finance shall schedule the  
2 issuance and sale of the bonds in the most expeditious and  
3 economical manner possible.

4 D. The proceeds from the sale of the bonds are  
5 appropriated as follows:

6 (1) the amount certified by the  
7 ~~[superintendent of public instruction]~~ secretary of public  
8 education as necessary to make the distribution pursuant to  
9 Section 22-25-9 NMSA 1978 is appropriated to the public school  
10 capital improvements fund for the purpose of carrying out the  
11 provisions of the Public School Capital Improvements Act; and

12 (2) the remainder of the proceeds is  
13 appropriated to the public school capital outlay fund for the  
14 purpose of ~~[making awards of grant assistance pursuant to~~  
15 ~~Section 22-24-5 NMSA 1978, except that, of the proceeds~~  
16 ~~received from the sale of the bonds in fiscal year 2001, fifty~~  
17 ~~million dollars (\$50,000,000) shall be used for projects to~~  
18 ~~correct outstanding deficiencies pursuant to Sections 22-24-4.1~~  
19 ~~and 22-24-4.2 NMSA 1978]~~ carrying out the provisions of the  
20 Public School Capital Outlay Act."

21 Section 3. Section 7-27-14 NMSA 1978 (being Laws 1961,  
22 Chapter 5, Section 11, as amended) is amended to read:

23 "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

24 A. The legislature shall provide for the continued  
25 assessment, levy, collection and deposit into the severance tax

.150359.1

underscored material = new  
[bracketed material] = delete

1 bonding fund of the tax or taxes upon natural resource products  
2 severed and saved from the soil of the state that, together  
3 with such other income as may be deposited to the fund, will be  
4 sufficient to produce an amount that is at least the amount  
5 necessary to meet annual debt service charges on all  
6 outstanding severance tax bonds and supplemental severance tax  
7 bonds.

8 B. Except as otherwise specifically provided by  
9 law, the state board of finance shall issue no severance tax  
10 bonds unless the aggregate amount of severance tax bonds  
11 outstanding, and including the issue proposed, can be serviced  
12 with not more than fifty percent of the annual deposits into  
13 the severance tax bonding fund, as determined by the deposits  
14 during the preceding fiscal year.

15 C. The state board of finance shall issue no  
16 supplemental severance tax bonds with a term that extends  
17 beyond the fiscal year in which the bonds are issued unless the  
18 aggregate amount of severance tax bonds and supplemental  
19 severance tax bonds outstanding, and including the issue  
20 proposed, can be serviced with not more than sixty-two and  
21 one-half percent of the annual deposits into the severance tax  
22 bonding fund, as determined by the deposits during the  
23 preceding fiscal year.

24 D. Except as otherwise specifically provided by  
25 law, the state board of finance may issue supplemental

.150359.1

underscored material = new  
[bracketed material] = delete

1 severance tax bonds with a term that does not extend beyond the  
2 fiscal year in which they are issued if the debt service on  
3 such supplemental severance tax bonds when added to the debt  
4 service previously paid or scheduled to be paid during that  
5 fiscal year on severance tax bonds and supplemental severance  
6 tax bonds does not exceed [~~eighty-seven and one-half~~] ninety-  
7 five percent of the deposits into the severance tax bonding  
8 fund during the preceding fiscal year.

9 E. The provisions of this section shall not be  
10 modified by the terms of any severance tax bonds or  
11 supplemental severance tax bonds hereafter issued."

12 Section 4. Section 7-37-7 NMSA 1978 (being Laws 1973,  
13 Chapter 258, Section 40, as amended) is amended to read:

14 "7-37-7. TAX RATES AUTHORIZED--LIMITATIONS.--

15 A. The tax rates specified in Subsection B of this  
16 section are the maximum rates that may be set by the department  
17 of finance and administration for the use of the stated  
18 governmental units for the purposes stated in that subsection.  
19 The tax rates set for residential property for county, school  
20 district or municipal general purposes or for the purposes  
21 authorized in Paragraph (2) of Subsection C of this section  
22 shall be the same as the tax rates set for nonresidential  
23 property for those governmental units for those purposes unless  
24 different rates are required because of limitations imposed by  
25 Section 7-37-7.1 NMSA 1978. The department of finance and

.150359.1

underscored material = new  
[bracketed material] = delete

1 administration may set a rate at less than the maximum in any  
2 tax year. In addition to the rates authorized in Subsection B  
3 of this section, the department of finance and administration  
4 shall also determine and set the necessary rates authorized in  
5 Subsection C of this section. The tax rates authorized in  
6 Paragraphs (1), [~~and~~] (3) and (4) of Subsection C of this  
7 section shall be set at the same rate for both residential and  
8 nonresidential property. Rates shall be set after the  
9 governmental units' budget-making and approval process is  
10 completed and shall be set in accordance with Section 7-38-33  
11 NMSA 1978. Orders imposing the rates set for all units of  
12 government shall be made by the boards of county commissioners  
13 after rates are set and certified to the boards by the  
14 department of finance and administration. The department of  
15 finance and administration shall also certify the rates set for  
16 nonresidential property in governmental units to the department  
17 for use in collecting taxes imposed under the Oil and Gas Ad  
18 Valorem Production Tax Act, the Oil and Gas Production  
19 Equipment Ad Valorem Tax Act and the Copper Production Ad  
20 Valorem Tax Act.

21 B. The following tax rates for the indicated  
22 purposes are authorized:

23 (1) for the use of each county for general  
24 purposes for the 1987 and subsequent property tax years, a rate  
25 of eleven dollars eighty-five cents (\$11.85) for each one

.150359.1

underscored material = new  
[bracketed material] = delete

1 thousand dollars (\$1,000) of net taxable value of both  
2 residential and nonresidential property allocated to the  
3 county;

4 (2) for the use of each school district for  
5 general operating purposes, a rate of fifty cents (\$.50) for  
6 each one thousand dollars (\$1,000) of net taxable value of both  
7 residential and nonresidential property allocated to the school  
8 district; and

9 (3) for the use of each municipality for  
10 general purposes for the 1987 and subsequent property tax  
11 years, a rate of seven dollars sixty-five cents (\$7.65) for  
12 each one thousand dollars (\$1,000) of net taxable value of both  
13 residential and nonresidential property allocated to the  
14 municipality.

15 C. In addition to the rates authorized in  
16 Subsection B of this section, there are also authorized:

17 (1) those rates or impositions authorized  
18 under provisions of law outside of the Property Tax Code that  
19 are for the use of the governmental units indicated in those  
20 provisions and are for the stated purpose of paying principal  
21 and interest on a public general obligation debt incurred under  
22 those provisions of law;

23 (2) those rates or impositions authorized  
24 under provisions of law outside of the Property Tax Code that  
25 are for the use of the governmental units indicated in those

.150359.1

underscored material = new  
[bracketed material] = delete

1 provisions, are for the stated purposes authorized by those  
2 provisions and have been approved by the voters of the  
3 governmental unit in the manner required by law; ~~and]~~

4 (3) those rates or impositions necessary for  
5 the use of a governmental unit to pay a tort or workers'  
6 compensation judgment for which a county, municipality or  
7 school district is liable, subject to the limitations in  
8 Subsection B of Section 41-4-25 NMSA 1978, but, except as  
9 provided in Paragraph (4) of this subsection, no rate or  
10 imposition shall be authorized to pay any judgment other than  
11 one arising from a tort or workers' compensation claim; and

12 (4) those rates or impositions ordered by a  
13 court pursuant to Section 22-24-5.5 NMSA 1978 and for the use  
14 of a school district to pay a judgment pursuant to that  
15 section.

16 D. The rates and impositions authorized under  
17 Subsection C of this section shall be on the net taxable value  
18 of both residential and nonresidential property allocated to  
19 the unit of government specified in the provisions of the other  
20 laws or the judgments."

21 Section 5. Section 15-3B-2 NMSA 1978 (being Laws 1972,  
22 Chapter 74, Section 2, as amended) is amended to read:

23 "15-3B-2. DEFINITIONS.--As used in the Property Control  
24 Act:

25 A. "capital outlay project" means the acquisition,

.150359.1

underscored material = new  
[bracketed material] = delete

1 improvement, alteration or reconstruction of assets of a long-  
2 term character that are intended to continue to be held or  
3 used, including land, buildings, machinery, furniture and  
4 equipment. A "capital outlay project" includes all proposed  
5 expenditures related to the entire undertaking;

6 B. "department" means the general services  
7 department;

8 C. "director" means the director of the division;

9 D. "division" means the property control division  
10 of the department;

11 E. "jurisdiction" means all state buildings and  
12 land except those under the control and management of the state  
13 armory board, the office of cultural affairs, the state fair  
14 commission, the department of game and fish, the [~~state highway~~  
15 ~~and transportation~~] department of transportation, the  
16 commissioner of public lands, the state parks division of the  
17 energy, minerals and natural resources department, the state  
18 institutions of higher learning, the New Mexico school for the  
19 deaf, the New Mexico school for the visually handicapped, the  
20 judicial branch, the legislative branch, [~~and~~] property  
21 acquired by the economic development department pursuant to the  
22 Statewide Economic Development Finance Act and property  
23 acquired by the public school facilities authority pursuant to  
24 the Public School Capital Outlay Act; and

25 F. "secretary" means the secretary of general

.150359.1

underscored material = new  
[bracketed material] = delete

1 services."

2 Section 6. Section 22-15A-9 NMSA 1978 (being Laws 1994,  
3 Chapter 96, Section 9, as amended) is amended to read:

4 "22-15A-9. EDUCATIONAL TECHNOLOGY FUND--DISTRIBUTION.--

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

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

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

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

25 (2) the estimated adjusted entitlement amount

.150359.1

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

22 (7) ~~[the total of all legislative~~  
23 ~~appropriations excluding reauthorizations of education~~  
24 ~~technology appropriations made to the subject school district~~  
25 ~~made after January 1, 2003 for educational technology]~~

.150359.1

underscored material = new  
[bracketed material] = delete

1 excluding appropriations made prior to January 1, 2003 and  
2 reauthorizations of previous educational technology  
3 appropriations, the total of educational technology  
4 appropriations made in the immediately preceding three fiscal  
5 years directly to, and not rejected by, the school district, is  
6 calculated. No later than June 30 of each year, the  
7 [~~legislative council service~~] department of finance and  
8 administration shall certify to the bureau the amount of direct  
9 appropriations made to each school district during the  
10 preceding twelve months. An appropriation made in a fiscal  
11 year shall be deemed to be accepted by a school district  
12 unless, prior to July 15 of the fiscal year following the  
13 appropriation, the district notifies the department of finance  
14 and administration and the public education department that the  
15 district is rejecting the appropriation;

16 (8) the applicable amount for the school  
17 district calculated from Subparagraph (k), (m), (n) or (o) of  
18 Paragraph (5) of Subsection [€] B of Section 22-24-5 NMSA 1978  
19 is subtracted from one;

20 (9) the value calculated pursuant to Paragraph  
21 (7) of this subsection for the school district is multiplied by  
22 the amount calculated pursuant to Paragraph (8) of this  
23 subsection for that school district;

24 (10) the total amount of reductions for the  
25 school district made in [~~prior~~] the immediately two preceding

.150359.1

underscored material = new  
[bracketed material] = delete

1 fiscal years pursuant to Paragraph (11) of this subsection is  
2 subtracted from the amount calculated pursuant to Paragraph (9)  
3 of this subsection for that school district;

4 (11) the amount calculated for the school  
5 district pursuant to Paragraph (10) of this subsection is  
6 subtracted from the amount calculated pursuant to Paragraph (6)  
7 of this subsection for that school district;

8 (12) if the amount calculated for the school  
9 district pursuant to Paragraph (11) of this subsection is equal  
10 to or less than the base allocation amount, the estimated  
11 adjusted entitlement amount for that school district is equal  
12 to the base allocation amount; and

13 (13) if the amount calculated for the school  
14 district pursuant to Paragraph (11) of this subsection is more  
15 than the base allocation amount, the estimated adjusted  
16 entitlement amount for that school district is equal to the  
17 amount calculated pursuant to that paragraph.

18 D. On or before January 30 of each year, the bureau  
19 shall recompute each adjusted entitlement using the final  
20 funded membership for that year and, without making any  
21 additional reductions, shall allocate the balance of the annual  
22 appropriation adjusting for any over- or under-projection of  
23 membership.

24 E. ~~Any~~ A school district receiving funding  
25 pursuant to the Technology for Education Act is responsible for

.150359.1

underscored material = new  
[bracketed material] = delete

1 the purchase, distribution, use and maintenance of educational  
2 technology.

3 F. As used in this section, "membership" means the  
4 total enrollment of qualified students, as defined in the  
5 Public School Finance Act, on the current roll of class or  
6 school on a specified day. The current roll is established by  
7 the addition of original entries and reentries minus  
8 withdrawals. Withdrawal of students, in addition to students  
9 formally withdrawn from the public school, includes students  
10 absent from the public school for as many as ten consecutive  
11 school days."

12 Section 7. Section 22-24-2 NMSA 1978 (being Laws 1975,  
13 Chapter 235, Section 2, as amended) is amended to read:

14 "22-24-2. PURPOSE OF ACT.--The purpose of the Public  
15 School Capital Outlay Act is to ~~[meet critical school district~~  
16 ~~capital outlay needs which cannot be met by the school district~~  
17 ~~after it has exhausted available sources]~~ ensure that, through  
18 a standards-based process for all school districts, the  
19 physical condition and capacity, educational suitability and  
20 technology infrastructure of all public school facilities in  
21 New Mexico meet an adequate level statewide and the design,  
22 construction and maintenance of school sites and facilities  
23 encourage, promote and maximize safe, functional and durable  
24 learning environments in order for the state to meet its  
25 educational responsibilities and for New Mexico's students to

.150359.1

underscored material = new  
[bracketed material] = delete

1 have the opportunity to achieve success."

2 Section 8. Section 22-24-4 NMSA 1978 (being Laws 1975,  
3 Chapter 235, Section 4, as amended) is amended to read:

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

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

8 B. Except as provided in Subsections G [~~and H~~  
9 through K of this section, money in the fund may be used only  
10 for capital expenditures deemed by the council necessary for an  
11 adequate educational program.

12 C. The council may authorize the purchase by the  
13 [~~property control division of the general services department~~  
14 public school facilities authority of [~~property~~] portable  
15 classrooms to be loaned to school districts to meet a temporary  
16 requirement. Payment for these purchases shall be made from  
17 the fund. Title and custody to the [~~property~~] portable  
18 classrooms shall rest in the [~~property control division~~] public  
19 school facilities authority. The council shall authorize the  
20 lending of the [~~property~~] portable classrooms to school  
21 districts upon request and upon finding that sufficient need  
22 exists. Application for use or return of state-owned portable  
23 classroom buildings shall be submitted by school districts to  
24 the council. Expenses of maintenance of the [~~property~~]  
25 portable classrooms while in the custody of the [~~property~~

.150359.1

underscored material = new  
[bracketed material] = delete

1 ~~control division~~ public school facilities authority shall be  
2 paid from the fund; expenses of maintenance and insurance of  
3 the ~~[property]~~ portable classrooms while in the custody of a  
4 school district shall be the responsibility of the school  
5 district. The council may authorize the permanent disposition  
6 of the ~~[property]~~ portable classrooms by the ~~[property control~~  
7 ~~division]~~ public school facilities authority with prior  
8 approval of the state board of finance.

9 D. Applications for assistance from the fund shall  
10 be made by school districts to the council in accordance with  
11 requirements of the council. The council shall require as a  
12 condition of application that a school district have a current  
13 five-year facilities plan, which shall include a current  
14 preventive maintenance plan to which the school adheres for  
15 each public school in the school district.

16 E. The council shall review all requests for  
17 assistance from the fund and shall allocate funds only for  
18 those capital outlay projects that meet the criteria of the  
19 Public School Capital Outlay Act.

20 F. Money in the fund shall be disbursed by warrant  
21 of the department of finance and administration on vouchers  
22 signed by the secretary of finance and administration following  
23 certification by the council that an application has been  
24 approved or an expenditure has been ordered by a court pursuant  
25 to Section 22-24-5.5 NMSA 1978. At the discretion of the

.150359.1

underscored material = new  
[bracketed material] = delete

1 council, money for a project shall be distributed as follows:

2 (1) up to ten percent of the portion of the  
3 project cost funded with distributions from the fund or five  
4 percent of the total project cost, whichever is greater, may be  
5 paid to the school district before work commences with the  
6 balance of the grant award made on a cost-reimbursement basis;  
7 or

8 (2) the council may ~~make~~ authorize payments  
9 directly to the contractor.

10 G. ~~[An amount up to five percent of the average~~  
11 ~~annual grant assistance authorized from the fund during the~~  
12 ~~three previous fiscal years may annually be expended for~~  
13 ~~project management expenses.]~~ Balances in the fund may be  
14 annually appropriated for the core administrative functions of  
15 the public school facilities authority pursuant to the Public  
16 School Capital Outlay Act and, in addition, balances in the  
17 fund may be expended by the public school facilities authority,  
18 upon approval of the council, for project management expenses;  
19 provided that:

20 (1) the total annual expenditures from the  
21 fund pursuant to this subsection shall not exceed five percent  
22 of the average annual grant assistance authorized from the fund  
23 during the three previous fiscal years; and

24 (2) any unexpended or unencumbered balance  
25 remaining at the end of a fiscal year from the expenditures

.150359.1

underscored material = new  
[bracketed material] = delete

1 authorized in this subsection shall revert to the fund.

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 the  
5 purpose of updating and refining the statewide assessment study  
6 required by Section 22-24-5 NMSA 1978 and for the training of  
7 state and local officials on the use of the database and other  
8 data-management-related issues identified by the council.

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

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

21 K. Up to three million dollars (\$3,000,000) may be  
22 appropriated annually from the fund to the council in fiscal  
23 years 2005 through 2009 for grants to charter schools for the  
24 purpose of making lease payments for charter school facilities.  
25 The grants shall be made upon application by the charter

.150359.1

underscored material = new  
[bracketed material] = delete

1 schools and pursuant to rules adopted by the council and the  
2 following criteria:

3 (1) the amount of an annual grant to a charter  
4 school shall be the lesser of:

5 (a) the actual annual lease payment owed  
6 by the charter school to lease school facilities; or

7 (b) three hundred dollars (\$300)  
8 multiplied by the number of MEM attending the charter school;  
9 provided that, if the total grants awarded pursuant to this  
10 paragraph would exceed the total annual appropriation, the rate  
11 specified in this subparagraph shall be reduced  
12 proportionately;

13 (2) a grant may be used by a charter school as  
14 a state match necessary to obtain federal grants pursuant to  
15 the federal No Child Left Behind Act of 2001;

16 (3) at the end of each fiscal year, any  
17 unexpended or unencumbered balance of the appropriation shall  
18 revert to the fund; and

19 (4) as used in this subsection, "MEM" means  
20 the total full-time-equivalent enrollment attending a charter  
21 school in the final funded prior school year."

22 Section 9. Section 22-24-4.1 NMSA 1978 (being Laws 2001,  
23 Chapter 338, Section 6, as amended) is amended to read:

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

.150359.1

underscored material = new  
[bracketed material] = delete

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

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

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

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

21           E. In entering into construction contracts to  
22 correct deficiencies pursuant to this section, the council  
23 shall include such terms and conditions as necessary to ensure  
24 that the state money is expended in the most prudent manner  
25 possible and consistent with the original purpose.

.150359.1

underscored material = new  
[bracketed material] = delete

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

5 G. It is the intent of the legislature that all  
6 outstanding deficiencies in public schools and grounds that may  
7 adversely affect the health or safety of students and school  
8 personnel be identified and awards made pursuant to this  
9 section no later than June 30, [~~2004~~] 2005, and that funds be  
10 expended no later than June 30, [~~2006~~] 2007."

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

13 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
14 APPLICATION--GRANT ASSISTANCE.--

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

20 ~~(1) a need exists requiring action;~~

21 ~~(2) the residents of the school district have~~  
22 ~~provided available resources to the school district to meet its~~  
23 ~~capital outlay requirements;~~

24 ~~(3) the school district has used its capital~~  
25 ~~resources in a prudent manner;~~

.150359.1

underscored material = new  
[bracketed material] = delete

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

4                   ~~(5) the school district:~~

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

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

13                   ~~(6) the application includes:~~

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

18                   ~~(b) the facilities needed in the school~~  
19 ~~district to implement a full-day kindergarten program or that~~  
20 ~~the school district has shown that the need for facilities to~~  
21 ~~implement the program is not as great as the capital needs~~  
22 ~~requested in the application; provided that the total amount of~~  
23 ~~assistance grants made in a fiscal year for the purpose of~~  
24 ~~implementing full-day kindergarten programs shall not exceed~~  
25 ~~five million dollars (\$5,000,000); and~~

.150359.1

underscored material = new  
[bracketed material] = delete

1                   ~~(7) the school district has submitted a five-~~  
2 ~~year facilities plan that includes:~~

3                           ~~(a) enrollment projections;~~

4                           ~~(b) a current preventive maintenance~~  
5 ~~plan to which the school adheres for each public school in the~~  
6 ~~district; and~~

7                           ~~(c) projections for the facilities~~  
8 ~~needed in order to maintain a full-day kindergarten program.~~

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

16                           ~~(1) twenty million dollars (\$20,000,000) of~~  
17 ~~the proceeds from supplemental severance tax bonds available~~  
18 ~~for the funding cycle in each of fiscal years 2002 and 2003~~  
19 ~~shall be set aside for allocation solely for projects in school~~  
20 ~~districts that are eligible for funding from the fund and that~~  
21 ~~receive grants from the federal government as assistance to~~  
22 ~~areas affected by federal activity authorized in accordance~~  
23 ~~with Title 20 of the United States Code, commonly known as "PL~~  
24 ~~874 funds" or "impact aid";~~

25                           ~~(2) fifteen million dollars (\$15,000,000) of~~

.150359.1

underscored material = new  
[bracketed material] = delete

1 ~~the money in the fund available for the funding cycle in fiscal~~  
2 ~~year 2004 shall be set aside for allocation solely for projects~~  
3 ~~in school districts that are eligible for funding and that:~~

4 ~~(a) are eligible for additional program~~  
5 ~~units pursuant to Section 22-8-23.1 NMSA 1978;~~

6 ~~(b) are indebted at not less than ninety~~  
7 ~~percent of the total general obligation debt authorized by law;~~  
8 ~~and~~

9 ~~(c) have a net taxable value per MEM~~  
10 ~~equal to less than fifty percent of the average statewide net~~  
11 ~~taxable value per MEM; and~~

12 ~~(3) in the case of an emergency]~~

13 A. Applications for grant assistance, the approval  
14 of applications, the prioritization of projects and grant  
15 awards shall be conducted pursuant to the provisions of this  
16 section; provided, however, that the order of priority in the  
17 three years beginning July 1, 2004 shall first reflect those  
18 projects that [have been previously funded] were partially  
19 funded by the council in September 2003 but are not as yet  
20 completed, excluding expansion of those projects and contingent  
21 upon maintenance of the required local support. [G. For  
22 allocation cycles beginning after September 1, 2003, the  
23 following provisions apply] In that transition period, such  
24 projects shall be funded regardless of any deviation from the  
25 statewide adequacy standards; provided, that the amount of the

.150359.1

underscored material = new  
[bracketed material] = delete

1 award received shall not exceed the amount necessary to meet  
2 the statewide adequacy standards, including projected  
3 enrollment growth.

4 B. Except as provided in Subsection A of this  
5 section and in Section 22-24-5.5 NMSA 1978, the following  
6 provisions govern grant assistance from the fund for a public  
7 school capital outlay project not wholly funded pursuant to  
8 Section 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 ~~[D]~~ C of this section; provided that:

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

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

23 ~~(3) [after consulting with the staff architect~~  
24 ~~of the property control division of the general services~~  
25 ~~department]~~ the council shall establish criteria to be used in

.150359.1

underscored material = new  
[bracketed material] = delete

1 public school capital outlay projects that receive grant  
2 assistance pursuant to the Public School Capital Outlay Act.

3 In establishing the criteria, the council shall consider:

4 (a) the feasibility of using design,  
5 build and finance arrangements for public school capital outlay  
6 projects;

7 (b) the potential use of more durable  
8 construction materials that may reduce long-term operating  
9 costs; and

10 (c) any other financing or construction  
11 concept that may maximize the dollar effect of the state grant  
12 assistance;

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

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

20 (a) the final prior year net taxable  
21 value for a school district divided by the MEM for that school  
22 district is calculated for each school district;

23 (b) the final prior year net taxable  
24 value for the whole state divided by the MEM for the state is  
25 calculated;

.150359.1

underscored material = new  
[bracketed material] = delete

1 (c) excluding any school district for  
2 which the result calculated pursuant to Subparagraph (a) of  
3 this paragraph is more than twice the result calculated  
4 pursuant to Subparagraph (b) of this paragraph, the results  
5 calculated pursuant to Subparagraph (a) of this paragraph are  
6 listed from highest to lowest;

7 (d) the lowest value listed pursuant to  
8 Subparagraph (c) of this paragraph is subtracted from the  
9 highest value listed pursuant to that subparagraph;

10 (e) the value calculated pursuant to  
11 Subparagraph (a) of this paragraph for the subject school  
12 district is subtracted from the highest value listed in  
13 Subparagraph (c) of this paragraph;

14 (f) the result calculated pursuant to  
15 Subparagraph (e) of this paragraph is divided by the result  
16 calculated pursuant to Subparagraph (d) of this paragraph;

17 (g) the sum of the property tax mill  
18 levies for the prior tax year imposed by each school district  
19 on residential property pursuant to Chapter 22, Article 18 NMSA  
20 1978, the Public School Capital Improvements Act, the Public  
21 School Buildings Act, the Education Technology Equipment Act  
22 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978  
23 is calculated for each school district;

24 (h) the lowest value calculated pursuant  
25 to Subparagraph (g) of this paragraph is subtracted from the

.150359.1

1 highest value calculated pursuant to that subparagraph;

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

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

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

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

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

.150359.1

underscored material = new  
[bracketed material] = delete

1 this paragraph, the sum equals the portion of the approved  
2 project to be funded from the fund;

3 (n) in those instances in which the  
4 calculation pursuant to Subparagraph (k) or (m) of this  
5 paragraph yields a value less than one-tenth, one-tenth shall  
6 be used as the portion of the approved project to be funded  
7 from the fund;

8 (o) in those instances in which the  
9 calculation pursuant to Subparagraph (k) or (m) of this  
10 paragraph yields a value greater than one, one shall be used as  
11 the portion of the approved project to be funded from the fund;

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

18 (q) as used in this paragraph: 1) "MEM"  
19 means the total full-time equivalent enrollment of students  
20 attending public school in a school district in the final  
21 funded prior school year [~~with kindergarten being counted as~~  
22 ~~five-tenths~~]; and 2) "total project cost" means the total  
23 amount necessary to complete the public school capital outlay  
24 project less any insurance reimbursement received by the school  
25 district for the project;

.150359.1

underscored material = new  
[bracketed material] = delete

1 (6) the amount calculated pursuant to  
2 Subparagraph (p) of Paragraph (5) of this subsection shall be  
3 reduced by the following procedure:

4 (a) the total of all legislative  
5 appropriations made after January 1, 2003 directly to, and not  
6 rejected by, the subject school district for non-operating  
7 purposes, excluding educational technology and reauthorizations  
8 of appropriations previously made to the subject school  
9 district, is calculated; provided that an appropriation made in  
10 a fiscal year shall be deemed to be accepted by a school  
11 district unless, prior to July 15 of the fiscal year following  
12 the appropriation, the district notifies the department of  
13 finance and administration and the public education department  
14 that the district is rejecting the appropriation;

15 (b) the applicable amount for the  
16 subject school district calculated from Subparagraph (k), (m),  
17 (n) or (o) of Paragraph (5) of this subsection is subtracted  
18 from one;

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

23 (d) the total amount of reductions for  
24 the subject school district previously made pursuant to  
25 Subparagraph (e) of this paragraph for other approved public

.150359.1

underscored material = new  
[bracketed material] = delete

1 school capital outlay projects is subtracted from the amount  
2 calculated pursuant to Subparagraph (c) of this paragraph; and

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

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

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

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

16 (a) the public school capital outlay  
17 project is needed and included in the school district's five-  
18 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

.150359.1

underscored material = new  
[bracketed material] = delete

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; and 3) projections for the facilities needed in order  
5 to maintain a full-day kindergarten program;

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

11 (f) the application includes the capital  
12 needs of any charter schools located in the school district or  
13 the school district has shown that the facilities of the  
14 charter schools in the district meet the statewide adequacy  
15 standards; and

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

20 ~~[D-]~~ C. After consulting with the public school  
21 capital outlay task force and other experts, the council shall  
22 ~~[develop and]~~ regularly review and update statewide adequacy  
23 standards applicable to all school districts. The standards  
24 shall establish the ~~[minimum]~~ acceptable level for the physical  
25 condition and capacity of buildings, the educational

.150359.1

underscored material = new  
[bracketed material] = delete

1 suitability of facilities and the need for technological  
2 infrastructure. Except as otherwise provided in the Public  
3 School Capital Outlay Act, the amount of outstanding deviation  
4 from the standards shall be used by the council [~~after~~  
5 ~~September 1, 2003~~] in evaluating and prioritizing public school  
6 capital outlay projects.

7 [~~E.~~] D. It is the intent of the legislature that  
8 grant assistance made pursuant to this section allow every  
9 school district to meet the standards developed pursuant to  
10 Subsection [~~D.~~] C of this section; provided, however, that  
11 nothing in the Public School Capital Outlay Act or the  
12 development of standards pursuant to that act prohibits a  
13 school district from using local funds to exceed the statewide  
14 adequacy standards.

15 [~~F.~~] E. Upon request, the council shall work with,  
16 and provide assistance and information to, the public school  
17 capital outlay task force.

18 [~~G.~~] F. The council may establish committees or  
19 task forces, not necessarily consisting of council members, and  
20 may use the committees or task forces, as well as existing  
21 agencies or organizations, to conduct studies, conduct surveys,  
22 submit recommendations or otherwise contribute expertise from  
23 the public schools, programs, interest groups and segments of  
24 society most concerned with a particular aspect of the  
25 council's work.

.150359.1

underscored material = new  
[bracketed material] = delete

1                   ~~[H. The council]~~ G. Upon the recommendation of the  
2 public school facilities authority, the council shall develop  
3 building standards for public school facilities and shall  
4 promulgate other such rules as are necessary to carry out the  
5 provisions of the Public School Capital Outlay Act.

6                   ~~[F.]~~ H. No later than December 15 of each year, the  
7 council shall prepare a report summarizing its activities  
8 during the previous fiscal year. The report shall describe in  
9 detail all projects funded, the progress of projects previously  
10 funded but not completed, the criteria used to prioritize and  
11 fund projects and all other council actions. The report shall  
12 be submitted to the ~~[state board]~~ public education commission,  
13 the governor, the legislative finance committee, the  
14 legislative education study committee and ~~[each member of]~~ the  
15 legislature."

16                   Section 11. A new section of the Public School Capital  
17 Outlay Act, Section 22-24-5.4 NMSA 1978, is enacted to read:

18                   "22-24-5.4. [NEW MATERIAL] PUBLIC SCHOOL CAPITAL OUTLAY  
19 COUNCIL--CERTIFICATION OF NEED.--

20                   A. Prior to January 1 of each year, the council  
21 shall calculate the amount needed in the fund to carry out the  
22 provisions of the Public School Capital Outlay Act during the  
23 next grant allocation cycle. The calculation shall consider  
24 the amounts necessary:

25                   (1) to ensure that all public school

underscored material = new  
[bracketed material] = delete

1 facilities will meet the statewide adequacy standards within a  
2 reasonable time;

3 (2) for new or expanded public school  
4 facilities to meet growth in enrollment;

5 (3) to improve the condition of existing  
6 facilities, as shown by a condition index derived from a  
7 statewide database, maintained by the public school facilities  
8 authority, showing the condition of adequacy of each public  
9 school facility; and

10 (4) to provide adequate administrative  
11 resources for the public school facilities authority.

12 B. The need calculated pursuant to Subsection A of  
13 this section shall be added to the amount certified by the  
14 secretary of public education as necessary to make the  
15 distribution pursuant to Section 22-25-9 NMSA 1978, and the sum  
16 shall be certified by the council to the legislature, the  
17 governor and the board of finance division of the department of  
18 finance and administration."

19 Section 12. A new section of the Public School Capital  
20 Outlay Act, Section 22-24-5.5 NMSA 1978, is enacted to read:

21 "22-24-5.5. [NEW MATERIAL] RECALCITRANT SCHOOL  
22 DISTRICTS--COURT ACTION TO ENFORCE CONSTITUTIONAL COMPLIANCE--  
23 IMPOSITION OF PROPERTY TAX.--

24 A. The council may bring an action against a school  
25 district pursuant to the provisions of this section if, based

.150359.1

underscored material = new  
[bracketed material] = delete

1 upon information submitted to the council by the public school  
2 facilities authority, the council determines that:

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

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

11 (3) either:

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

15 (b) the school district is unwilling to  
16 meet all of the requirements for the approval of an application  
17 for grant assistance pursuant to Paragraph (9) of Subsection B  
18 of Section 22-24-5 NMSA 1978.

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

22 C. After a hearing and consideration of the  
23 evidence, if the court finds that the council's determination  
24 pursuant to Subsection A of this section was correct, the court  
25 shall:

.150359.1

underscored material = new  
[bracketed material] = delete

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

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

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

15 D. The amount of a judgment entered against a  
16 school district pursuant to Paragraph (3) of Subsection C of  
17 this section is a public debt of the school district. If the  
18 court finds that the debt cannot be satisfied with available  
19 school district funds, other than funds needed for the  
20 operation of the public schools and other existing obligations,  
21 the court shall order the imposition of a property tax on all  
22 taxable property allocated to the school district at a rate  
23 sufficient to pay the judgment, with accrued interest, within a  
24 reasonable time as determined by the court. After paying court  
25 costs and attorney fees, amounts received pursuant to this

.150359.1

underscored material = new  
[bracketed material] = delete

1 subsection shall be deposited by the council into the fund."

2 Section 13. Section 22-24-6 NMSA 1978 (being Laws 1975,  
3 Chapter 235, Section 6, as amended) is amended to read:

4 "22-24-6. COUNCIL CREATED--ORGANIZATION--DUTIES.--

5 A. There is created the "public school capital  
6 outlay council", consisting of the:

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

9 (2) [~~state superintendent or his~~] secretary of  
10 public education or the secretary's designee;

11 (3) [~~the~~] governor or [~~his~~] the governor's  
12 designee;

13 (4) president of the New Mexico school boards  
14 association or [~~his~~] the president's designee;

15 (5) [~~the~~] director of the construction  
16 industries division of the regulation and licensing department  
17 or [~~his~~] the director's designee;

18 (6) [~~the~~] president of the [~~state board or~~  
19 ~~his~~] public education commission or the president's designee;

20 (7) [~~the~~] director of the legislative  
21 education study committee or [~~his~~] the director's designee;

22 (8) [~~the~~] director of the legislative finance  
23 committee or [~~his~~] the director's designee; [~~and~~]

24 (9) [~~the~~] director of the legislative council  
25 service or [~~his~~] the director's designee; and

.150359.1

underscored material = new  
[bracketed material] = delete

1                                    (10) president of the New Mexico  
2 superintendents' association or the president's designee.

3                                    B. The council shall investigate all applications  
4 for assistance from the fund and shall certify the approved  
5 applications to the secretary of finance and administration for  
6 distribution of funds.

7                                    C. The council shall elect a chairman from among  
8 the members. The council shall meet at the call of the  
9 chairman.

10                                   D. The [~~department of education~~] council shall  
11 account for all distributions and shall make annual reports to  
12 the public education commission, the governor, the legislative  
13 education study committee, [and to] the legislative finance  
14 committee and the legislature."

15                                   Section 14. Section 22-24-9 NMSA 1978 (being Laws 2003,  
16 Chapter 147, Section 1) is amended to read:

17                                   "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--CREATION--  
18 POWERS AND DUTIES.--

19                                   A. The "public school facilities authority" is  
20 created under the [~~public school capital outlay~~] council. The  
21 authority shall be headed by a director, selected by the  
22 council, who shall be versed in construction, architecture or  
23 project management. The director may hire no more than two  
24 deputies with the approval of the council, and, subject to  
25 budgetary constraints, shall employ or contract with such

.150359.1

underscored material = new  
[bracketed material] = delete

1 technical and administrative personnel as are necessary to  
2 carry out the provisions of this section. The director and  
3 deputies shall be exempt from the provisions of the Personnel  
4 Act; after July 1, 2004, all other employees of the authority  
5 shall be subject to the provisions of the Personnel Act.

6 B. The authority shall:

7 (1) serve as staff to the council;

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

11 (3) assist school districts with:

12 (a) the development and implementation  
13 of five-year facilities plans and preventive maintenance plans;

14 (b) procurement of architectural and  
15 engineering services;

16 (c) management and oversight of  
17 construction activities; and

18 (d) training programs;

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

22 (5) as directed by the council, assist school  
23 districts in analyzing and assessing their space utilization  
24 options;

25 [~~5~~] (6) ensure that public school capital

.150359.1

underscored material = new  
[bracketed material] = delete

1 outlay projects are in compliance with applicable building  
2 codes;

3 ~~[(6)]~~ (7) conduct on-site inspections as  
4 necessary to ensure that the construction specifications are  
5 being met and periodically inspect all of the documents related  
6 to projects;

7 ~~[(7) where appropriate]~~ (8) require the use  
8 of standardized construction documents and the use of a  
9 standardized process for change orders;

10 ~~[(8)]~~ (9) have access to the premises of a  
11 project and any documentation relating to the project;

12 ~~[(9)]~~ (10) after consulting with the  
13 department ~~[of education, develop]~~, recommend building  
14 standards for public school facilities to the council and  
15 ensure compliance with ~~[those]~~ building standards adopted by  
16 the council;

17 ~~[(10)]~~ (11) maintain a database of the  
18 condition of school facilities and maintenance schedules; and

19 ~~[(11)]~~ (12) ensure that outstanding  
20 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA  
21 1978. In the performance of this duty, the authority:

22 (a) shall work with school districts to  
23 validate the assessment of the outstanding deficiencies and the  
24 projected costs to correct the deficiencies;

25 (b) shall work with school districts to

.150359.1

underscored material = new  
[bracketed material] = delete

1 provide direct oversight of the management and construction of  
2 the projects that will correct the outstanding deficiencies;

3 (c) shall oversee all aspects of the  
4 contracts entered into by the council to correct the  
5 outstanding deficiencies;

6 (d) may conduct on-site inspections  
7 while the deficiencies correction work is being done to ensure  
8 that the construction specifications are being met and may  
9 periodically inspect all of the documents relating to the  
10 projects;

11 (e) may require the use of standardized  
12 construction documents and the use of a standardized process  
13 for change orders;

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

16 (g) shall maintain, track and account  
17 for deficiency correction projects separately from other  
18 capital outlay projects funded pursuant to the Public School  
19 Capital Outlay Act.

20 C. All actions taken by the authority shall be  
21 consistent with educational programs conducted pursuant to the  
22 Public School Code. In the event of any potential or perceived  
23 conflict between a proposed action of the authority and an  
24 educational program, the authority shall consult with the  
25 [~~state superintendent~~] secretary of public education.

.150359.1

underscored material = new  
[bracketed material] = delete

1           D. A school district, aggrieved by a decision or  
2 recommendation of the authority, may appeal the matter to the  
3 council by filing a notice of appeal with the council within  
4 thirty days of the authority's decision or recommendation.

5 Upon filing of the notice:

6                   (1) the decision or recommendation of the  
7 authority shall be suspended until the matter is decided by the  
8 council;

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

12                   (3) at the hearing, the school district, the  
13 authority and other interested parties may make informal  
14 presentations to the council; and

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

17           Section 15. Section 22-25-2 NMSA 1978 (being Laws 1975  
18 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

19           "22-25-2. DEFINITIONS.--As used in the Public School  
20 Capital Improvements Act:

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

24                   B. "capital improvements" means expenditures,  
25 including payments made with respect to lease-purchase

.150359.1

underscored material = new  
[bracketed material] = delete

1 arrangements as defined in the Education Technology Equipment  
2 Act but excluding any other debt service expenses, for:

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

5 (2) purchasing or improving public school  
6 grounds;

7 (3) maintenance of public school buildings or  
8 public school grounds, [~~exclusive of~~] including expenditures  
9 for technical training and certification for maintenance and  
10 facilities management personnel, but excluding salary expenses  
11 of school district employees;

12 (4) purchasing activity vehicles for  
13 transporting students to extracurricular school activities; and

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

16 Section 16. Section 22-25-7 NMSA 1978 (being Laws 1975  
17 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

18 "22-25-7. IMPOSITION OF TAX--LIMITATION ON  
19 EXPENDITURES.--If as a result of an election held in accordance  
20 with the Public School Capital Improvements Act a majority of  
21 the qualified electors voting on the question vote in favor of  
22 the imposition of the tax, the tax rate shall be certified,  
23 unless the local school board requests by resolution that a  
24 rate be discontinued, by the department of finance and  
25 administration at the rate specified in the resolution

.150359.1

underscored material = new  
[bracketed material] = delete

1 authorized under Section 22-25-3 NMSA 1978 or at any lower rate  
2 required by operation of the rate limitation provisions of  
3 Section 7-37-7.1 NMSA 1978 upon the rate specified in the  
4 resolution and be imposed at the rate certified in accordance  
5 with the provisions of the Property Tax Code. The revenue  
6 produced by the tax and, except as provided in Subsection F of  
7 Section 22-25-9 NMSA 1978, any state distribution resulting to  
8 the district under the Public School Capital Improvements Act  
9 shall be expended only for the capital improvements specified  
10 in the authorizing resolution."

11 Section 17. Section 22-25-9 NMSA 1978 (being Laws 1975  
12 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

13 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING  
14 TAX UNDER CERTAIN CIRCUMSTANCES.--

15 A. Except as provided in Subsection C of this  
16 section, the [~~state superintendent~~] secretary of public  
17 education shall distribute to any school district that has  
18 imposed a tax under the Public School Capital Improvements Act  
19 an amount from the public school capital improvements fund that  
20 is equal to the amount by which the revenue estimated to be  
21 received from the imposed tax, at the rate certified by the  
22 department of finance and administration in accordance with  
23 Section 22-25-7 NMSA 1978, assuming a one hundred percent  
24 collection rate, is less than an amount calculated by  
25 multiplying the school district's first forty days' total

.150359.1

underscored material = new  
[bracketed material] = delete

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

14 B. In calculating the state distribution pursuant  
15 to Subsection A of this section, the following amounts shall be  
16 used:

17 (1) [~~fifty dollars (\$50.00)~~] the amount  
18 calculated pursuant to Subsection D of this subsection per  
19 program unit; and

20 (2) for fiscal year 2006 and thereafter, an  
21 additional amount certified to the [~~state superintendent~~]  
22 secretary of public education by the public school capital  
23 outlay council. No later than June 1, 2005 and each June 1  
24 thereafter, the council shall determine the amount needed in  
25 the next fiscal year for public school capital outlay projects

.150359.1

underscored material = new  
[bracketed material] = delete

1 pursuant to the Public School Capital Outlay Act and the amount  
2 of revenue, from all sources, available for the projects. If,  
3 in the sole discretion of the council, the amount available  
4 exceeds the amount needed, the council may certify an  
5 additional amount pursuant to this paragraph; provided that the  
6 sum of the amount calculated pursuant to this paragraph plus  
7 the amount in Paragraph (1) of this subsection shall not result  
8 in a total statewide distribution that, in the opinion of the  
9 council, exceeds one-half of the total revenue estimated to be  
10 received from taxes imposed pursuant to the Public School  
11 Capital Improvements Act.

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

22 D. For purposes of calculating the distribution  
23 pursuant to Subsection B of this section, the amount used in  
24 Paragraph (1) of that subsection shall equal fifty dollars  
25 (\$50.00) for fiscal year 2004, sixty dollars (\$60.00) for

.150359.1

underscored material = new  
[bracketed material] = delete

1 fiscal year 2005 and in each subsequent fiscal year shall equal  
2 the amount for the previous fiscal year adjusted by the  
3 percentage increase between the next preceding calendar year  
4 and the preceding calendar year of the consumer price index for  
5 the United States, all items, as published by the United States  
6 department of labor.

7 E. For purposes of calculating the minimum  
8 distribution pursuant to Subsection C of this section, the  
9 amount used in that subsection shall equal five dollars (\$5.00)  
10 through fiscal year 2005 and in each subsequent fiscal year  
11 shall equal the amount for the previous fiscal year adjusted by  
12 the percentage increase between the next preceding calendar  
13 year and the preceding calendar year of the consumer price  
14 index for the United States, all items, as published by the  
15 United States department of labor.

16 F. In expending distributions made pursuant to this  
17 section, school districts shall give priority to maintenance  
18 projects.

19 ~~[D-]~~ G. In making distributions pursuant to this  
20 section, the ~~[state superintendent]~~ secretary of public  
21 education shall include such reporting requirements and  
22 conditions as are required by rule of the public school capital  
23 outlay council. The council shall adopt such requirements and  
24 conditions as are necessary to ensure that the distributions  
25 are expended in the most prudent manner possible and are

.150359.1

underscored material = new  
[bracketed material] = delete

1 consistent with the original purpose as specified in the  
2 authorizing resolution. Copies of reports or other information  
3 received by the [~~state superintendent~~] secretary in response to  
4 the requirements and conditions shall be forwarded to the  
5 council."

6 Section 18. TEMPORARY PROVISION--SHORT-TERM SUPPLEMENTAL  
7 SEVERANCE TAX BONDS AUTHORIZED FOR FISCAL YEAR 2004.--In  
8 addition to the bonds issued pursuant to Section 7-27-14 NMSA  
9 1978 and notwithstanding the limitations of that section, in  
10 compliance with the Severance Tax Bonding Act, in fiscal year  
11 2004 the state board of finance may issue and sell supplemental  
12 severance tax bonds with a term that does not extend beyond the  
13 fiscal year in which they are issued in an amount not exceeding  
14 forty-nine million six hundred thousand dollars (\$49,600,000)  
15 when the public school capital outlay council certifies by  
16 resolution the need for the issuance of the bonds. The  
17 proceeds from the sale of the bonds are appropriated to the  
18 public school capital outlay fund for the purpose of making  
19 awards of grant assistance for correcting deficiencies pursuant  
20 to the Public School Capital Outlay Act; provided, however,  
21 that no supplemental severance tax bonds shall be issued  
22 pursuant to this section:

23 A. until all other severance tax bonds and  
24 supplemental severance tax bonds to be issued in fiscal year  
25 2004 have been issued; and

.150359.1

underscored material = new  
[bracketed material] = delete

1           B. unless the balance in the severance tax bonding  
2 fund as of the date that the bonds are issued is greater than  
3 the sum of:

4                   (1) the debt service on the supplemental  
5 severance tax bonds to be issued pursuant to this section;

6                   (2) the debt service scheduled to be paid  
7 during the remainder of the fiscal year on all outstanding  
8 severance tax bonds and supplemental severance tax bonds; and

9                   (3) the amount necessary to meet all principal  
10 and interest payments on outstanding bonds payable from the  
11 severance tax bonding fund on the next two ensuing semiannual  
12 payment dates.

13           Section 19. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL  
14 OUTLAY TASK FORCE--CREATION--STAFF.--

15           A. The "public school capital outlay task force" is  
16 created. The task force consists of twenty members as follows:

17                   (1) the dean of the university of New Mexico  
18 school of law or the dean's designee;

19                   (2) the secretary of finance and  
20 administration or the secretary's designee;

21                   (3) the secretary of public education or the  
22 secretary's designee;

23                   (4) the state investment officer or the state  
24 investment officer's designee;

25                   (5) the chairmen of the house appropriations

.150359.1

underscored material = new  
[bracketed material] = delete

1 and finance committee, the senate finance committee, the senate  
2 education committee and the house education committee or their  
3 designees;

4 (6) a minority party member of the house of  
5 representatives, appointed by the New Mexico legislative  
6 council;

7 (7) a minority party member of the senate,  
8 appointed by the New Mexico legislative council;

9 (8) two public members who have expertise in  
10 education and finance appointed by the speaker of the house of  
11 representatives;

12 (9) two public members who have expertise in  
13 education and finance appointed by the president pro tempore of  
14 the senate;

15 (10) three public members who have expertise  
16 in education and finance appointed by the governor; and

17 (11) three superintendents of school districts  
18 or their designees that receive grants from the federal  
19 government as assistance to areas affected by federal activity  
20 authorized in accordance with Title 20 of the United States  
21 Code, appointed by the New Mexico legislative council in  
22 consultation with the governor.

23 B. The chair of the public school capital outlay  
24 task force shall be elected by the task force. The task force  
25 shall meet at the call of the chair.

.150359.1

underscored material = new  
[bracketed material] = delete

1 C. Members of the task force shall serve from the  
2 time of their appointment through June 30, 2005. On July 1,  
3 2005, the task force is terminated.

4 D. The public members of the public school capital  
5 outlay task force shall receive per diem and mileage pursuant  
6 to the Per Diem and Mileage Act.

7 E. The legislative council service, with assistance  
8 from the public school facilities authority, the department of  
9 finance and administration, the public education department,  
10 the legislative education study committee and the legislative  
11 finance committee, shall provide staff for the public school  
12 capital outlay task force.

13 Section 20. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL  
14 OUTLAY TASK FORCE--DUTIES.--The public school capital outlay  
15 task force shall:

16 A. study and evaluate the progress and  
17 effectiveness of programs administered pursuant to the Public  
18 School Capital Outlay Act and the Public School Capital  
19 Improvements Act;

20 B. review the condition index and the methodology  
21 used for ranking projects;

22 C. evaluate the existing permanent revenue streams  
23 as an adequate long-term funding source for public school  
24 capital outlay projects;

25 D. monitor and assist the public school capital

.150359.1

underscored material = new  
[bracketed material] = delete

1 outlay council and the public school facilities authority as  
2 they perform functions pursuant to the Public School Capital  
3 Outlay Act, particularly as they implement the statewide-based  
4 process for making grant awards; and

5 E. before the beginning of the first session of the  
6 forty-seventh legislature, report the results of its analyses,  
7 findings and recommendations to the governor and the  
8 legislature.

9 Section 21. APPROPRIATION.--Fifty-six million dollars  
10 (\$56,000,000) is appropriated from the general fund operating  
11 reserve to the public school capital outlay fund for  
12 expenditure in fiscal years 2005 through 2007 for the purpose  
13 of making awards of grant assistance for correcting  
14 deficiencies pursuant to the Public School Capital Outlay Act.  
15 Any unexpended or unencumbered balance remaining at the end of  
16 fiscal year 2007 shall revert to the general fund operating  
17 reserve.

18 Section 22. REPEAL.--Section 22-24-5.2 NMSA 1978 (being  
19 Laws 2001, Chapter 328, Section 3) is repealed.

20 Section 23. EFFECTIVE DATE.--The effective date of the  
21 provisions of Section 3 of this act is July 1, 2004.