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HOUSE BILL 322

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Rick Miera

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; CREATING THE PUBLIC SCHOOL FACILITY  
OPPORTUNITY FUND; AUTHORIZING GRANTS FROM THE FUND TO CERTAIN  
SCHOOL DISTRICTS FOR CERTAIN PURPOSES; PROVIDING THAT  
UNEXPENDED BALANCES OF CERTAIN CAPITAL PROJECT APPROPRIATIONS  
SHALL REVERT TO THE FUND; PROVIDING THAT A PORTION OF THE  
UNENCUMBERED BALANCE OF CERTAIN GENERAL FUND APPROPRIATIONS  
SHALL REVERT TO THE FUND; PROVIDING THAT A PORTION OF EACH  
SPECIAL APPROPRIATION FOR A PUBLIC SCHOOL SHALL BE SET ASIDE  
AND TRANSFERRED TO THE FUND; PROVIDING FOR A DISTRIBUTION TO  
THE FUND OF A PORTION OF GROSS RECEIPTS TAX REVENUE DERIVED  
FROM PUBLIC SCHOOL CONSTRUCTION PROJECTS; MAKING AN  
APPROPRIATION.

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

Section 1. A new section of the Public School Capital

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1 Outlay Act, Section 22-24-12 NMSA 1978, is enacted to read:

2 "22-24-12. [NEW MATERIAL] PUBLIC SCHOOL FACILITY  
3 OPPORTUNITY FUND--PURPOSE--GRANTS FROM THE FUND.--

4 A. The legislature finds that, even under the  
5 current program to bring all public school facilities up to a  
6 minimum statewide adequacy standard, because of a continuing  
7 shortage in available local resources, some school districts  
8 will not be able to exceed that minimum in the foreseeable  
9 future and, therefore, will not have the opportunity to provide  
10 their students with the same quality of educational facilities  
11 as students in school districts that have sufficient local  
12 resources to surpass the minimum standards. The purpose of  
13 this section is to provide a program of state support to  
14 certain school districts so that their school facilities may,  
15 in certain circumstances, exceed the minimum statewide adequacy  
16 standard.

17 B. The "public school facility opportunity fund" is  
18 created in the state treasury. The fund shall consist of  
19 transfers, distributions, appropriations, reversions, gifts,  
20 grants, donations and bequests made to the fund. Income from  
21 the fund shall be credited to the fund, and money in the fund  
22 shall not revert or be transferred to any other fund at the end  
23 of a fiscal year. Money in the fund is appropriated to the  
24 council for the purposes of making grants so that the  
25 facilities of qualifying school districts may, pursuant to the

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1 requirements of this section, exceed statewide adequacy  
2 standards. Expenditures from the fund shall be made on warrant  
3 of the secretary of finance and administration pursuant to  
4 vouchers signed by the director of the public school facilities  
5 authority.

6 C. A school district may apply for a grant from the  
7 public school facility opportunity fund if the council  
8 determines that:

9 (1) the school district meets all  
10 qualifications to apply for a grant pursuant to Section 22-24-5  
11 NMSA 1978;

12 (2) the value calculated for the school  
13 district pursuant to Subparagraph (k), (m), (n) or (o) of  
14 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 is  
15 equal to or greater than seven-tenths;

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

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

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1 (5) for the next four years, any local  
2 resources of the school district will be expended for the local  
3 match required for public school capital outlay projects and,  
4 therefore, the school district will have no available local  
5 resources to expend on school district facilities for the  
6 purpose of exceeding the statewide adequacy standards.

7 D. Applications for grant assistance from the  
8 public school facility opportunity fund shall be made by school  
9 districts to the council in accordance with the requirements of  
10 the council. Using criteria developed by the council, the  
11 council shall evaluate applications and prioritize those  
12 applications most in need of a grant from the fund. To the  
13 extent that money in the fund is available, the council may  
14 award grants for those prioritized applications.

15 E. All provisions of the Public School Capital  
16 Outlay Act relating to the expenditure of grants awarded from  
17 the public school capital outlay fund, including those relating  
18 to reporting, oversight, project access and accountability,  
19 apply to the use and expenditure of grants made pursuant to  
20 this section. In addition, in awarding grants pursuant to this  
21 section, the council may require conditions and procedures  
22 necessary to ensure that the money is expended in the most  
23 prudent manner."

24 Section 2. A new section of the Tax Administration Act is  
25 enacted to read:

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1           "[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FACILITY  
2 OPPORTUNITY FUND.--A distribution pursuant to Section 7-1-6.1  
3 NMSA 1978 shall be made to the public school facility  
4 opportunity fund in an amount equal to two percent of the  
5 taxable gross receipts attributable to the sale of construction  
6 services to school districts or to the public school facilities  
7 authority, as determined by the department."

8           Section 3. Section 6-5-10 NMSA 1978 (being Laws 1994,  
9 Chapter 11, Section 1, as amended) is amended to read:

10           "6-5-10. STATE AGENCY REVERSIONS--DIRECTOR POWERS--  
11 COMPLIANCE WITH FEDERAL RULES.--

12           A. Except as provided in Subsections B and C of  
13 this section, all unreserved undesignated fund balances in  
14 reverting funds and accounts as reflected in the central  
15 financial reporting and accounting system as of June 30 shall  
16 revert by September 30 to the general fund. The division may  
17 adjust the reversion within forty-five days of release of the  
18 audit report for that fiscal year.

19           B. The director of the division may modify a  
20 reversion required pursuant to Subsection A of this section if  
21 the reversion would violate federal law or rules pertaining to  
22 supplanting of state funds with federal funds or other  
23 applicable federal provisions.

24           C. One-half of all unreserved undesignated balances  
25 in reverting funds and accounts as of the end of each fiscal

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1 year from fiscal year 2007 through fiscal year 2011 shall not  
2 revert to the general fund but shall be transferred to the  
3 public school facility opportunity fund to be used for grants  
4 to school districts pursuant to Section 22-24-12 NMSA 1978."

5 Section 4. [NEW MATERIAL] PUBLIC SCHOOL APPROPRIATIONS  
6 FOR NONOPERATING PURPOSES--SET ASIDE FOR PUBLIC SCHOOL FACILITY  
7 OPPORTUNITY FUND.--Except for appropriations to or from the  
8 public school capital outlay fund, two percent of each  
9 appropriation made by the legislature on or after July 1, 2007  
10 for nonoperating purposes, either directly to a school district  
11 or a public school or to another governmental entity for the  
12 purpose of passing the money through directly to a school  
13 district or a public school, shall be set aside and transferred  
14 to the public school facility opportunity fund, provided that  
15 the amount set aside and transferred pursuant to this section  
16 shall not be included in a reduction in the amount of a state  
17 grant calculated pursuant to Paragraph (6) of Subsection B of  
18 Section 22-24-5 NMSA 1978. The amount shall be set aside and  
19 transferred by the secretary of finance and administration:

20 A. if the appropriation is from severance tax bond  
21 proceeds, at the time the severance tax bonds are issued by the  
22 state board of finance; or

23 B. if the appropriation is from the general fund,  
24 at such time during the first fiscal year that the  
25 appropriation may be expended as deemed appropriate by the

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1 secretary.

2 Section 5. Laws 2003, Chapter 385, Section 1 is amended  
3 to read:

4 "Section 1. GENERAL FUND APPROPRIATIONS FROM FISCAL YEAR  
5 2003--LIMITATIONS--REVERSIONS.--

6 A. The general fund appropriations in this act are  
7 from fiscal year 2003 and may be expended through fiscal year  
8 2008 except as otherwise provided in this section.

9 B. Unless otherwise provided, the unexpended  
10 balance of an appropriation made in this act from the general  
11 fund, including changes to prior appropriations, shall revert  
12 [~~to the originating fund, as follows~~] according to the  
13 following schedule. Unless otherwise provided, the reversion  
14 shall be made to the originating fund, except that, on or after  
15 July 1, 2007, a reversion of a general fund appropriation that  
16 would otherwise revert to the general fund shall not be made to  
17 the general fund but shall be made to the public school  
18 facility opportunity fund and shall be used for grants to  
19 school districts pursuant to Section 22-24-12 NMSA 1978:

20 (1) for projects for which appropriations were  
21 made to match federal grants, six months after completion of  
22 the project;

23 (2) for projects for which appropriations were  
24 made to purchase vehicles, heavy equipment, educational  
25 technology or equipment or furniture that is not related to a

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1 more inclusive construction or renovation project, at the end  
2 of the fiscal year following the fiscal year in which the  
3 appropriation was made for the purchase;

4 (3) for projects for which appropriations were  
5 made to purchase emergency vehicles or other vehicles that  
6 require special equipment, at the end of the fiscal year two  
7 years following the fiscal year in which the [~~severance tax~~  
8 ~~bonds were issued~~] appropriation was made for the purchase; and

9 (4) for all other projects for which  
10 appropriations were made, within six months of completion of  
11 the project, but no later than the end of fiscal year 2008.

12 C. Except for appropriations to the capital program  
13 fund, money from appropriations made in this act shall not be  
14 used to pay indirect project costs.

15 D. For the purpose of this section, "unexpended  
16 balance" means the remainder of an appropriation after  
17 reserving for unpaid costs and expenses covered by binding  
18 written obligations to third parties."

19 Section 6. Laws 2003, Chapter 429, Section 2 is amended  
20 to read:

21 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--  
22 LIMITATIONS--REVERSIONS.--

23 A. The general fund appropriations in this act are  
24 from fiscal year 2003 and may be expended through fiscal year  
25 2008 except as otherwise provided in this section.

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1           B. Unless otherwise provided, the unexpended  
2 balance of an appropriation made in this act from the general  
3 fund or other state fund, including changes to prior  
4 appropriations, shall revert [~~to the originating fund, as~~  
5 ~~follows~~] according to the following schedule. Unless otherwise  
6 provided, the reversion shall be made to the originating fund,  
7 except that, on or after July 1, 2007, a reversion of a general  
8 fund appropriation that would otherwise revert to the general  
9 fund shall not be made to the general fund but shall be made to  
10 the public school facility opportunity fund and shall be used  
11 for grants to school districts pursuant to Section 22-24-12  
12 NMSA 1978:

13                   (1) for projects for which appropriations were  
14 made to match federal grants, six months after completion of  
15 the project;

16                   (2) for projects for which appropriations were  
17 made to purchase vehicles, heavy equipment, educational  
18 technology or equipment or furniture that is not related to a  
19 more inclusive construction or renovation project, at the end  
20 of the fiscal year following the fiscal year in which the  
21 appropriation was made for the purchase;

22                   (3) for projects for which appropriations were  
23 made to purchase emergency vehicles or other vehicles that  
24 require special equipment, at the end of the fiscal year two  
25 years following the fiscal year in which the [~~severance tax~~

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1 ~~bonds were issued]~~ appropriation was made for the purchase; and

2 (4) for all other projects for which  
3 appropriations were made, within six months of completion of  
4 the project, but no later than the end of fiscal year 2008.

5 C. Except for appropriations to the capital program  
6 fund, money from appropriations made in this act shall not be  
7 used to pay indirect project costs.

8 D. For the purpose of this section, "unexpended  
9 balance" means the remainder of an appropriation after  
10 reserving for unpaid costs and expenses covered by binding  
11 written obligations to third parties."

12 Section 7. Laws 2004, Chapter 126, Section 2 is amended  
13 to read:

14 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--  
15 LIMITATIONS--REVERSIONS.--

16 A. Except as otherwise provided in this section,  
17 [~~or~~] another section of this act or another law, the unexpended  
18 balance of an appropriation made in this act from the general  
19 fund or other state fund, including changes to prior  
20 appropriations, shall revert [~~to the originating fund, as~~  
21 ~~follows]~~ according to the following schedule. Unless otherwise  
22 provided, the reversion shall be made to the originating fund,  
23 except that, on or after July 1, 2007, a reversion of a general  
24 fund appropriation that would otherwise revert to the general  
25 fund shall not be made to the general fund but shall be made to

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1 the public school facility opportunity fund and shall be used  
2 for grants to school districts pursuant to Section 22-24-12  
3 NMSA 1978:

4 (1) for projects for which appropriations were  
5 made to match federal grants, six months after completion of  
6 the project;

7 (2) for projects for which appropriations were  
8 made to purchase vehicles, heavy equipment, educational  
9 technology or equipment or furniture that is not related to a  
10 more inclusive construction or renovation project, at the end  
11 of the fiscal year following the fiscal year in which the  
12 appropriation was made for the purchase;

13 (3) for projects for which appropriations were  
14 made to purchase emergency vehicles or other vehicles that  
15 require special equipment, at the end of the fiscal year two  
16 years following the fiscal year in which the severance tax  
17 bonds were issued for the purchase; and

18 (4) for all other projects for which  
19 appropriations were made, within six months of completion of  
20 the project, but no later than the end of fiscal year 2009.

21 B. Except for appropriations to the capital program  
22 fund, money from appropriations made in this act shall not be  
23 used to pay indirect project costs.

24 C. For the purpose of this section, "unexpended  
25 balance" means the remainder of an appropriation after

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1 reserving for unpaid costs and expenses covered by binding  
2 written obligations to third parties."

3 Section 8. Laws 2005, Chapter 347, Section 2 is amended  
4 to read:

5 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--  
6 LIMITATIONS--REVERSIONS.--

7 A. Except as otherwise provided in this section,  
8 [~~or~~] another section of this act or another law, the unexpended  
9 balance of an appropriation made in this act from the general  
10 fund or other state fund, including changes to prior  
11 appropriations, shall revert [~~to the originating fund, as~~  
12 ~~follows~~] according to the following schedule. Unless otherwise  
13 provided, the reversion shall be made to the originating fund,  
14 except that, on or after July 1, 2007, a reversion of a general  
15 fund appropriation that would otherwise revert to the general  
16 fund shall not be made to the general fund but shall be made to  
17 the public school facility opportunity fund and shall be used  
18 for grants to school districts pursuant to Section 22-24-12

19 NMSA 1978:

20 (1) for projects for which appropriations were  
21 made to match federal grants, six months after completion of  
22 the project;

23 (2) for projects for which appropriations were  
24 made to purchase vehicles, heavy equipment, educational  
25 technology or equipment or furniture that is not related to a

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1 more inclusive construction or renovation project, at the end  
2 of the fiscal year following the fiscal year in which the  
3 appropriation was made for the purchase;

4 (3) for projects for which appropriations were  
5 made to purchase emergency vehicles or other vehicles that  
6 require special equipment, at the end of the fiscal year two  
7 years following the fiscal year in which the severance tax  
8 bonds were issued for the purchase; and

9 (4) for all other projects for which  
10 appropriations were made, within six months of completion of  
11 the project, but no later than the end of fiscal year 2010.

12 B. Except for appropriations to the capital program  
13 fund, money from appropriations made in this act shall not be  
14 used to pay indirect project costs.

15 C. For the purpose of this section, "unexpended  
16 balance" means the remainder of an appropriation after  
17 reserving for unpaid costs and expenses covered by binding  
18 written obligations to third parties."

19 Section 9. Laws 2006, Chapter 107, Section 2 is amended  
20 to read:

21 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--  
22 LIMITATIONS--REVERSIONS.--

23 A. Except as otherwise provided in another section  
24 of this act or another law, the unexpended balance of an  
25 appropriation from the general fund or other state fund that

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1 has been changed in this act shall revert [~~to the originating~~  
2 ~~fund, as follows~~] according to the following schedule. Unless  
3 otherwise provided, the reversion shall be made to the  
4 originating fund, except that, on or after July 1, 2007, a  
5 reversion of a general fund appropriation that would otherwise  
6 revert to the general fund shall not be made to the general  
7 fund but shall be made to the public school facility  
8 opportunity fund and shall be used for grants to school  
9 districts pursuant to Section 22-24-12 NMSA 1978:

10 (1) for projects for which appropriations were  
11 made to match federal grants, six months after completion of  
12 the project;

13 (2) for projects for which appropriations were  
14 made to purchase vehicles, including emergency vehicles and  
15 other vehicles that require special equipment; heavy equipment;  
16 educational technology; or equipment or furniture that is not  
17 related to a more inclusive construction or renovation project,  
18 at the end of the fiscal year two years following the fiscal  
19 year in which the appropriation was made for the purchase; and

20 (3) for all other projects for which  
21 appropriations were made, within six months of completion of  
22 the project, but no later than the end of fiscal year 2009.

23 B. For the purpose of this section, "unexpended  
24 balance" means the remainder of an appropriation after  
25 reserving for unpaid costs and expenses covered by binding

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1 written obligations to third parties."

2 Section 10. Laws 2006, Chapter 111, Section 2 is amended  
3 to read:

4 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--  
5 LIMITATIONS--REVERSIONS.--

6 A. Except as otherwise provided in this section,  
7 [~~or~~] another section of this act or another law, the unexpended  
8 balance of an appropriation made in this act from the general  
9 fund or other state fund, including changes to prior  
10 appropriations, shall revert [~~to the originating fund, as~~  
11 ~~follows~~] according to the following schedule. Unless otherwise  
12 provided, the reversion shall be made to the originating fund,  
13 except that, on or after July 1, 2007, a reversion of a general  
14 fund appropriation that would otherwise revert to the general  
15 fund shall not be made to the general fund but shall be made to  
16 the public school facility opportunity fund and shall be used  
17 for grants to school districts pursuant to Section 22-24-12  
18 NMSA 1978:

19 (1) for projects for which appropriations were  
20 made to match federal grants, six months after completion of  
21 the project;

22 (2) for projects for which appropriations were  
23 made to purchase vehicles, emergency vehicles or other vehicles  
24 that require special equipment, heavy equipment, educational  
25 technology or equipment or furniture that is not related to a

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1 more inclusive construction or renovation project, at the end  
2 of the fiscal year two years following the fiscal year in which  
3 the appropriation was made for the purchase; and

4 (3) for all other projects for which  
5 appropriations were made, within six months of completion of  
6 the project, but no later than the end of fiscal year 2010.

7 B. Upon certification by an agency that money from  
8 the general fund is needed for a purpose specified in this act,  
9 the secretary of finance and administration shall disburse  
10 [~~such~~] an amount of the appropriation for that project as is  
11 necessary to meet that need.

12 C. Except for appropriations to the capital program  
13 fund, money from appropriations made in this act shall not be  
14 used to pay indirect project costs.

15 D. For the purpose of this section, "unexpended  
16 balance" means the remainder of an appropriation after  
17 reserving for unpaid costs and expenses covered by binding  
18 written obligations to third parties."

19 Section 11. Laws 2006, Chapter 109, Section 3 is amended  
20 to read:

21 "Section 3. GENERAL PROVISIONS.--

22 A. Amounts set out under column headings are  
23 expressed in thousands of dollars.

24 B. Amounts set out under column headings are  
25 appropriated from the source indicated by the column heading.

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1 All amounts set out under the column heading "Internal Service  
2 Funds/Interagency Transfers" are intergovernmental transfers  
3 and do not represent a portion of total state government  
4 appropriations. All information designated as "Total" or  
5 "Subtotal" is provided for information and amounts are not  
6 appropriations.

7 C. Amounts set out in Section 4 of the General  
8 Appropriation Act of 2006, or so much as may be necessary, are  
9 appropriated from the indicated source for expenditure in  
10 fiscal year 2007 for the objects expressed.

11 D. Unencumbered balances in agency accounts  
12 remaining at the end of fiscal year 2006 shall revert to the  
13 general fund by October 1, 2006, unless otherwise indicated in  
14 the General Appropriation Act of 2006 or otherwise provided by  
15 law.

16 E. ~~[Unencumbered balances in agency accounts~~  
17 ~~remaining at the end of fiscal year 2007 shall revert to the~~  
18 ~~general fund by October 1, 2007]~~ Unless otherwise indicated in  
19 the General Appropriation Act of 2006 or otherwise provided by  
20 law, by October 1, 2007, fifty percent of the unencumbered  
21 balances in agency accounts remaining at the end of fiscal year  
22 2007 shall revert to the general fund and the remaining  
23 unencumbered balances shall be transferred to the public school  
24 facility opportunity fund.

25 F. The state budget division shall monitor revenue

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1 received by agencies from sources other than the general fund  
2 and shall reduce the operating budget of any agency whose  
3 revenue from such sources is not meeting projections. The  
4 state budget division shall notify the legislative finance  
5 committee of any operating budget reduced pursuant to this  
6 subsection.

7 G. Except as otherwise specifically stated in the  
8 General Appropriation Act of 2006, appropriations are made in  
9 that act for the expenditures of agencies and for other  
10 purposes as required by existing law for fiscal year 2007. If  
11 any other act of the second session of the forty-seventh  
12 legislature changes existing law with regard to the name or  
13 responsibilities of an agency or the name or purpose of a fund  
14 or distribution, the appropriation made in the General  
15 Appropriation Act of 2006 shall be transferred from the agency,  
16 fund or distribution to which an appropriation has been made as  
17 required by existing law to the appropriate agency, fund or  
18 distribution provided by the new law.

19 H. The department of finance and administration  
20 will regularly consult with the legislative finance committee  
21 staff to compare fiscal year 2007 revenue collections with the  
22 revenue estimate. If the analyses indicate that revenues and  
23 transfers to the general fund are not expected to meet  
24 appropriations, then the department shall present a plan to the  
25 legislative finance committee that outlines the methods by

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1 which the administration proposes to address the deficit.

2 I. Pursuant to Sections 6-3-23 through 6-3-25 NMSA  
3 1978, agencies whose revenue from state board of finance loans,  
4 from revenue appropriated by other acts of the legislature, or  
5 from gifts, grants, donations, bequests, insurance settlements,  
6 refunds or payments into revolving funds exceeds specifically  
7 appropriated amounts may request budget increases from the  
8 state budget division. If approved by the state budget  
9 division, such money is appropriated.

10 [~~H.~~] J. Except for gasoline credit cards used  
11 solely for operation of official vehicles, telephone credit  
12 cards used solely for official business and procurement cards  
13 used as authorized by Section 6-5-9.1 NMSA 1978, none of the  
14 appropriations contained in the General Appropriation Act of  
15 2006 may be expended for payment of agency-issued credit card  
16 invoices.

17 [~~M.~~] K. To prevent unnecessary spending,  
18 expenditures from the General Appropriation Act of 2006 for  
19 gasoline for state-owned vehicles at public gasoline service  
20 stations shall be made only for self-service gasoline provided  
21 that a state agency head may provide exceptions from the  
22 requirement to accommodate disabled persons or for other  
23 reasons the public interest may require.

24 [~~N.~~] L. For the purpose of administering the  
25 General Appropriation Act of 2006, the state of New Mexico

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1 shall follow the modified accrual basis of accounting for  
2 governmental funds in accordance with the manual of model  
3 accounting practices issued by the department of finance and  
4 administration.

5 ~~[Ø-]~~ M. When approving budgets based on  
6 appropriations in the General Appropriation Act of 2006, the  
7 state budget division is specifically authorized to approve  
8 budgets in accordance with generally accepted accounting  
9 principles and the authority to extend the availability period  
10 of an appropriation through the use of an encumbrance shall  
11 follow the modified accrual basis of accounting for  
12 governmental funds in accordance with the manual of model  
13 accounting practices issued by the department of finance and  
14 administration."

15 Section 12. EFFECTIVE DATE.--The effective date of the  
16 provisions of Section 2 of this act is July 1, 2007.