

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; PROVIDING THAT CERTAIN SCHOOL CONSTRUCTION PROJECTS MAY BE EXEMPTED FROM SOME STATE OVERSIGHT; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO CHANGE THE CRITERIA FOR OFFSETTING AMOUNTS FROM STATE GRANTS, TO REQUIRE SPACE UTILIZATION TO BE CONSIDERED, TO ALLOW ADDITIONAL GRANTS TO CERTAIN SCHOOL DISTRICTS, TO INCREASE GRANTS TO SCHOOLS FOR LEASE PAYMENTS, TO ALLOW CERTAIN FACILITIES TO BE PURCHASED WITH STATE GRANTS AND TO EXTEND THE TIME FOR WHICH CERTAIN EXPENDITURES MAY BE MADE; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO INCREASE THE STATE DISTRIBUTION; AMENDING THE PUBLIC SCHOOL BUILDINGS ACT TO ALLOW REVENUE TO BE USED FOR PROJECT MANAGEMENT, TO INCREASE THE PERIOD FOR WHICH A TAX MAY BE IMPOSED AND TO AUTHORIZE DIRECT PAYMENT OF REVENUE TO CHARTER SCHOOLS; ALLOWING CHARTER SCHOOLS AND SCHOOL DISTRICTS TO ENTER INTO LEASE AGREEMENTS; ALLOWING CERTAIN TYPES OF LEASE-PURCHASE ARRANGEMENTS TO BE FUNDED WITH CERTAIN STATE GRANTS AND CERTAIN TAX REVENUES; CREATING THE PUBLIC SCHOOL FACILITY OPPORTUNITY FUND; AUTHORIZING GRANTS FROM THE FUND TO CERTAIN SCHOOL DISTRICTS FOR CERTAIN PURPOSES; 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 THAT CERTAIN COMPONENTS

MAY BE SEPARATELY PRICED IN SCHOOL CONSTRUCTION CONTRACTS;  
RECOMPILING A CERTAIN SECTION OF THE PUBLIC SCHOOL CODE;  
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN  
LAWS 2006; MAKING APPROPRIATIONS.

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

Section 1. Section 22-20-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 270, as amended by Laws 2006, Chapter 94, Section 54 and by Laws 2006, Chapter 95, Section 1) is amended to read:

"22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

A. Except as provided in Subsection D of this section, each local school board or governing body of a charter school shall secure the approval of the director of the public school facilities authority or the director's designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. A written application shall be submitted to the director requesting approval of the construction, and, upon receipt, the director

shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected by the construction;
- (3) the estimated cost;
- (4) a description of the proposed construction project;
- (5) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and
- (6) other information as may be required by the director.

B. The director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district or by the charter school;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable;

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

(a) enrollment projections;

(b) a current preventive maintenance plan;

(c) the capital needs of charter schools chartered by the school district, if applicable, or the capital needs of the charter school if it is state-chartered; and

(d) projections for the facilities needed in order to maintain a full-day kindergarten program;

(6) the construction project:

(a) is in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act; and

(b) is appropriately integrated into the school district or charter school five-year facilities plan;

(7) the school district or charter school is financially able to pay for the construction; and

(8) the secretary has certified that the construction will support the educational program of the school district or charter school.

C. Within thirty days after the receipt of an application filed pursuant to this section, the director or

the director's designee shall in writing notify the local school board or governing body of a charter school making the application and the department of approval or disapproval of the application.

D. By rule, the public school capital outlay council may:

(1) exempt classes or types of construction from the application and approval requirements of this section; or

(2) exempt classes or types of construction from the requirement of approval but, if the council determines that information concerning the construction is necessary for the maintenance of the facilities assessment database, require a description of the proposed construction project and related information to be submitted to the public school facilities authority.

E. A local school board or governing body of a charter school shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act, provided that, for a contract funded in whole or in part with insurance proceeds:

(1) the cost of settlement of any insurance

claim shall not be increased by inclusion of the insurance proceeds in the construction contract; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

F. Public school facilities shall be constructed pursuant to state standards or codes promulgated pursuant to the Construction Industries Licensing Act and rules adopted pursuant to Section 59A-52-15 NMSA 1978 for the prevention and control of fires in public occupancies. Building standards or codes adopted by a municipality or county do not apply to the construction of public school facilities, except those structures constructed as a part of an educational program of a school district or charter school.

G. The provisions of Subsection F of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

H. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting and for which the estimated total cost exceeds two hundred thousand dollars (\$200,000)."

Section 2. A new section of the Procurement Code is enacted to read:

"SCHOOL CONSTRUCTION PROJECTS--SEPARATE PRICING REQUIRED IN CERTAIN CIRCUMSTANCES.--Prior to submitting a bid or proposal for a state or local public works project for the construction of a public school facility, if the central purchasing office or a responsible bidder or responsible offeror determines that there is only one source for a specific service, construction or item of tangible personal property that is required in the specifications, then the central purchasing office, responsible bidder or responsible offeror may require any bid or offer submitted by a subcontractor or supplier to separately price the specific service, construction or item of tangible personal property."

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

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

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

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

C. The council may authorize the purchase by the public school facilities authority of portable classrooms to

be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title and custody to the portable classrooms shall rest in the public school facilities authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the public school facilities authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the public school facilities authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. Except as provided in Subsection K of this section, the council shall require as a condition of application that a school district have a current five-year facilities plan, which shall include a current preventive maintenance plan to which the school adheres for each public school in the school district.



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

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

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

or

(2) the council may authorize payments directly to the contractor.

G. Balances in the fund may be annually appropriated for the core administrative functions of the public school facilities authority pursuant to the Public School Capital Outlay Act and, in addition, balances in the fund may be expended by the public school facilities

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

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

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

H. Up to thirty million dollars (\$30,000,000) of the fund may be allocated annually by the council in fiscal years 2006 and 2007 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that all money allocated pursuant to this subsection shall be expended prior to September 1, 2008.

I. The fund may be expended annually by the council in fiscal years 2006 through 2020 for grants to school districts for the purpose of making lease payments for classroom facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council; provided that an application on behalf of a charter school shall be made by the school district but, if the school district fails to make an application on behalf of a charter

school, the charter school may submit its own application.

The following criteria shall apply to the grants:

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

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

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

(2) a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal No Child Left Behind Act of 2001;

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

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

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

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

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

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

(b) in fiscal year 2008 and each subsequent fiscal year, the maximum amount for the previous fiscal year adjusted by the percentage increase between the penultimate calendar year and the immediately preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor; and

(6) as used in this subsection:

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

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

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the public school facilities authority to reimburse the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act.

The authority shall enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection.

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

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

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

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

(b) the school district meets all of

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

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

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

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

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

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

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

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

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

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

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council



shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code, enter into construction contracts with contractors to correct the deficiencies.

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

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

G. It is the intent of the legislature that all outstanding deficiencies in public schools and grounds that may adversely affect the health or safety of students and school personnel be identified and awards made pursuant to this section no later than June 30, 2005, and that funds be expended no later than June 30, 2007, provided that the council may extend the expenditure period upon a determination that a project requires the additional time because existing buildings need to be demolished or because of other extenuating circumstances."

Section 5. Section 22-24-4.4 NMSA 1978 (being Laws 2005, Chapter 274, Section 7) is amended to read:

"22-24-4.4. SERIOUS ROOF DEFICIENCIES--CORRECTION.--

A. To complete the program to correct outstanding deficiencies, those serious deficiencies in the roofs of public school facilities identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:

(1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act, the cost of correcting the deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and

(2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.

B. It is the intent of the legislature that all

awards for correcting outstanding deficiencies in public school roofs that may adversely affect the health and safety of students and school personnel be made pursuant to this section no later than September 30, 2005 and that funds be expended no later than September 30, 2008."

Section 6. Section 22-24-5 NMSA 1978 (being Laws 1975, Chapter 235, Section 5, as amended) is amended to read:

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

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

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

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

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

(a) the council shall apply the

standards to charter schools to the same extent that they are applied to other public schools; and

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

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

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

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

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

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

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for

retrofitting existing facilities for technology infrastructure;

(5) except as provided in Paragraph (6) or (8) of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources pursuant to the provisions of this paragraph. No later than May 1 of each calendar year, a value shall be calculated for each school district in accordance with the following procedure:

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

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

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

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

(e) the value calculated pursuant to

Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;

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

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

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

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

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

(k) if the value calculated for a

subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;

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

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

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

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

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

(q) as used in this paragraph:

1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the eightieth and one hundred twentieth days of the prior school year; 2) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project; and 3) in the case of a state-chartered charter school that has submitted an application for grant assistance pursuant to this section, the "value calculated for the subject school district" means the value calculated for the school district in which the state-chartered charter school is physically located;

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



(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, is calculated; provided that: 1) an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation; 2) the total shall exclude any educational technology appropriation made prior to January 1, 2005 unless the appropriation was on or after January 1, 2003 and not previously used to offset distributions pursuant to the Technology for Education Act; 3) the total shall exclude any appropriation previously made to the subject school district that is reauthorized for expenditure by another recipient; 4) the total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred fifty projects

statewide; and 5) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;

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

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

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

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

of this paragraph;

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

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

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

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a share of the

total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

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

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

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

(b) the school district has used its

capital resources in a prudent manner;

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

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

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

(f) the application includes the capital needs of any charter school located in the school

district or the school district has shown that the facilities of the charter school have a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

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

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

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

the following criteria:

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

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

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

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

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

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

facility.

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

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

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

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



district.

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

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

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

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

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

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

"22-24-5.8. SUPPLEMENTAL FUNDING FOR PROJECTS IN CERTAIN SCHOOL DISTRICTS.--

A. A school district receiving grant assistance from the fund pursuant to Section 22-24-5 NMSA 1978 for a public school capital outlay project shall receive an additional grant from the fund in order for the project to exceed the statewide adequacy standards if the school district and proposed use of the additional grant qualify pursuant to the provisions of Subsection B of this section.

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

(1) in calculating the grant assistance from the fund for the project pursuant to Section 22-24-5 NMSA

1978, the value calculated for the school district pursuant to Subparagraph (k), (m), (n) or (o) of Paragraph (5) of Subsection B of that section is equal to or greater than seven-tenths;

(2) averaged over the previous four property tax years, the school district had a residential property tax rate of at least nine dollars (\$9.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

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

(4) for the next four years, the school district will not have sufficient local resources to expend on the project so it is unlikely that the project will ever exceed the statewide adequacy standards; and

(5) the planned use of the additional grant to exceed the statewide adequacy standards will enhance public school education in the school district, will further the school district's educational plan for student success and is a prudent use of state money.

C. The amount of an additional grant awarded pursuant to this section shall equal the total project cost

multiplied by the lesser of:

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

(2) twenty-five hundredths.

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

Section 8. A new section of the Public School Capital Outlay Act, Section 22-24-12 NMSA 1978, is enacted to read:

"22-24-12. PUBLIC SCHOOL FACILITY OPPORTUNITY FUND--  
PURPOSE--GRANTS FROM THE FUND.--

A. The legislature finds that for many years, until relatively recently, educational facilities in a few school districts in New Mexico were so inadequate because of a lack of local resources and little support from the state that the quality of education offered to students in those school districts was extremely substandard. The legislature further finds that, even under the current program to bring all public school facilities up to a minimum statewide adequacy standard, because of a continuing shortage in available local resources,

some school districts will not be able to exceed that minimum in the foreseeable future and, therefore, will not have the opportunity to provide their students with the same quality of educational facilities as students in school districts that have sufficient local resources to surpass the minimum standards. The purpose of this section is to partially correct those past inequities by providing a program of state support for qualifying school districts so that minimum statewide adequacy standards may be exceeded on stand-alone projects on existing facilities.

B. The "public school facility opportunity fund" is created in the state treasury. The fund shall consist of transfers, appropriations, reversions, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the council for the purposes of making grants so that the facilities of qualifying school districts may, pursuant to the requirements of this section, exceed statewide adequacy standards. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the public school facilities authority.

C. A school district may apply for a grant from

the public school facility opportunity fund if the council determines that:

(1) the project is included in the school district's five-year facilities plan and the school district meets all qualifications to apply for a grant pursuant to Section 22-24-5 NMSA 1978 and meets the requirements of Subparagraphs (b), (c), (d) and (g) of Paragraph (9) of Subsection B of that section;

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

(3) averaged over the previous four property tax years, the school district had a residential property tax rate of at least nine dollars (\$9.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

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

(5) for the next four years, the school district will not have sufficient local resources to expend on school district facilities for the purpose of exceeding the

statewide adequacy standards.

D. Applications for grant assistance from the public school facility opportunity fund shall be made by school districts to the council in accordance with the requirements of the council. The council shall, pursuant to criteria adopted by rule, evaluate applications and prioritize those applications most in need of a grant from the fund and, to the extent that money in the fund is available, may award grants for those prioritized applications. The evaluation criteria for school district applications shall be primarily based upon the school district's detailed description of how the proposed facilities or improvements play an essential role in the district's programmatic priorities and how they contribute to meeting goals and objectives in the school district or the school educational plan for student success.

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

Chapter 11, Section 1, as amended) is amended to read:

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

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

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

C. Ten percent of all unreserved undesignated balances in reverting funds and accounts as of the end of each fiscal year from fiscal year 2009 through fiscal year 2013 shall not revert to the general fund but shall be transferred to the public school facility opportunity fund to be used for grants to school districts pursuant to Section 22-24-12 NMSA 1978."

Section 10. PUBLIC SCHOOL APPROPRIATIONS FOR  
NONOPERATING PURPOSES--SET ASIDE FOR PUBLIC SCHOOL FACILITY  
OPPORTUNITY FUND.--Except for appropriations to or from the



public school capital outlay fund, three percent of each appropriation made by the legislature on or after July 1, 2007 for nonoperating purposes, either directly to a school district or a public school or to another governmental entity for the purpose of passing the money through directly to a school district or a public school, shall be set aside and transferred to the public school facility opportunity fund, provided that the amount set aside and transferred pursuant to this section shall not be included in a reduction in the amount of a state grant calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978. The amount shall be set aside and transferred by the secretary of finance and administration:

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

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

Section 11. Section 22-24-7 NMSA 1978 (being Laws 2001, Chapter 338, Section 12, as amended) is amended to read:

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

A. The "public school capital outlay oversight

task force" is created. The task force consists of twenty-six members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the state investment officer or the state investment officer's designee;
- (4) the speaker of the house of representatives or the speaker's designee;
- (5) the president pro tempore of the senate or the president pro tempore's designee;
- (6) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (7) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (8) two minority party members of the senate, appointed by the New Mexico legislative council;
- (9) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a

member of the house of representatives;

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

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

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

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

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

B. The chair of the public school capital outlay

oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

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

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

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

Section 12. Section 22-25-1 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 1) is amended to read:

"22-25-1. SHORT TITLE.--Chapter 22, Article 25 NMSA 1978 may be cited as the "Public School Capital Improvements Act"."

Section 13. Section 22-25-2 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

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

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, HB 328  
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as defined in Section 22-8-2 NMSA 1978; and

B. "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act but excluding any other debt service expenses, for:

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

(2) payments made pursuant to a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to payments made;

(3) purchasing or improving public school grounds;

(4) maintenance of public school buildings or public school grounds, including payments under contracts for maintenance support services and expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;

(5) purchasing activity vehicles for transporting students to extracurricular school activities; or

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

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

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

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying the school district's first forty days' total program units by the amount specified in Subsection B of this section and further multiplying the product obtained by the tax rate approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school

capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.

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

(1) the amount calculated pursuant to Subsection D of this subsection per program unit; and

(2) an additional amount certified to the secretary by the public school capital outlay council. No later than June 1 of each year, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. For any fiscal year notwithstanding the amount

calculated to be distributed pursuant to Subsections A and B of this section, except as provided in Subsection G of this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than the amount calculated pursuant to Subsection E of this section, multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate.

D. For purposes of calculating the distribution pursuant to Subsection B of this section, the amount used in Paragraph (1) of that subsection shall equal seventy dollars (\$70.00) in fiscal year 2008 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

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



the United States department of labor.

F. In expending distributions made pursuant to this section, school districts shall give priority to maintenance projects, including payments under contracts for maintenance support services. In addition, distributions made pursuant to this section may be expended by school districts for the school district portion of:

(1) the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978; or

(2) payments made under a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, if the school district has received a grant for the state share of the payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

G. If a serious deficiency in a roof of a public school facility has been corrected pursuant to Section 22-24-4.4 NMSA 1978 and the school district has refused to pay its share of the cost as determined by that section, until the public school capital outlay fund is reimbursed in full for the share attributed to the district, the distribution calculated pursuant to this section shall not be made to the school district but shall be made to the public school capital outlay fund.

H. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council."

Section 15. Section 7-38-38.1 NMSA 1978 (being Laws 1986, Chapter 20, Section 116, as amended) is amended to read:

"7-38-38.1. RECIPIENTS OF REVENUE PRODUCED THROUGH AD VALOREM LEVIES REQUIRED TO PAY COUNTIES ADMINISTRATIVE CHARGE TO OFFSET COLLECTION COSTS.--

A. As used in this section:

(1) "revenue" means money for which a county treasurer has the legal responsibility for collection and which is owed to a revenue recipient as a result of an imposition authorized by law of a rate expressed in mills per dollar or dollars per thousands of dollars of net taxable value of property, assessed value of property or a similar term, including but not limited to money resulting from the authorization of rates and impositions under Subsection B and

Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA 1978, special levies for special purposes and benefit assessments, but the term does not include any money resulting from the imposition of taxes imposed under the provisions of the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas Production Equipment Ad Valorem Tax Act or the Copper Production Ad Valorem Tax Act or money resulting from impositions under Paragraph (3) of Subsection C of Section 7-37-7 NMSA 1978; and

(2) "revenue recipient" means the state and any of its political subdivisions, including charter schools but excluding institutions of higher education located in class A counties and class B counties having more than three hundred million dollars (\$300,000,000) valuation, that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge an amount equal to one percent of the revenue received.

C. The "county property valuation fund" is created. All administrative charges deducted by the county treasurer shall be distributed to the county property valuation fund.

D. Expenditures from the county property valuation fund shall be made pursuant to a property valuation program

presented by the county assessor and approved by the majority of the county commissioners."

Section 16. Section 22-8B-4 NMSA 1978 (being Laws 1999, Chapter 281, Section 4, as amended) is amended to read:

"22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--OPERATION.--

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

B. A charter school shall be governed by a governing body in the manner set forth in the charter; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.

C. A charter school shall be responsible for:

(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and

(2) contracting for services and personnel matters.

D. A charter school may contract with a school

district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and, provided further,

that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act, the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act.

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may

accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students



with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection."

Section 17. Section 22-8B-4.2 NMSA 1978 (being Laws 2005, Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2) is amended to read:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used as

additional lease payments for leasehold improvements.

C. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state;

(2) is housed in a building that meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and that is being leased by the charter school pursuant to a financing agreement that contains an option to purchase for a price that is reduced according to the lease payments made; or

(3) if it is not housed in a building described in Paragraph (1) or (2) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and

the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

D. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section;

(2) shall determine whether facilities of a charter school meet the requirements of Subsections B and C of this section; and

(3) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school."

Section 18. Section 22-26-1 NMSA 1978 (being Laws 1983, Chapter 163, Section 1) is amended to read:

"22-26-1. SHORT TITLE.--Chapter 22, Article 26 NMSA 1978 may be cited as the "Public School Buildings Act"."

Section 19. Section 22-26-2 NMSA 1978 (being Laws 1983, Chapter 163, Section 2, as amended) is amended to read:

"22-26-2. DEFINITION.--As used in the Public School Buildings Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

B. payments made pursuant to a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to payments made;

C. purchasing or improving public school grounds;  
or

D. administering the projects undertaken pursuant to Subsections A and C of this section, including expenditures for facility maintenance software, project management software, project oversight and district personnel specifically related to administration of projects funded by the Public School Buildings Act; provided that expenditures pursuant to this subsection shall not exceed five percent of the total project costs."

Section 20. Section 22-26-3 NMSA 1978 (being Laws 1983, Chapter 163, Section 3, as amended) is amended to read:

"22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO

SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code for the purpose of capital improvements to public schools in the school district. The resolution shall:

- (1) identify the capital improvements for which the revenue proposed to be produced will be used;
- (2) specify the rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;
- (3) specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and
- (4) limit the imposition of the proposed tax to no more than six property tax years.

B. After July 1, 2007, a resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for locally chartered and state-chartered charter schools located within the school district if:

(1) the charter school timely provides the necessary information to the school district for inclusion on the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used; and

(2) the capital improvements are included in the five-year facilities plan:

(a) of the school district, if the charter school is a locally chartered charter school; or

(b) of the charter school, if the charter school is a state-chartered charter school."

Section 21. Section 22-26-5 NMSA 1978 (being Laws 1983, Chapter 163, Section 5, as amended) is amended to read:

"22-26-5. CONDUCT OF ELECTION--NOTICE--BALLOT.--

A. An election on the question of imposing a tax under the Public School Buildings Act may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA

1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding six years upon the net taxable value of all property allocated to the school district for capital improvements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school buildings tax" or "against the public school buildings tax".

Section 22. Section 22-26-8 NMSA 1978 (being Laws 1983, Chapter 163, Section 8, as amended) is amended to read:

"22-26-8. TAX TO BE IMPOSED FOR A MAXIMUM OF SIX YEARS.--A tax imposed in a school district as a result of an election under the Public School Buildings Act shall be imposed for one, two, three, four, five or six years commencing with the property tax year in which the election was held. The local school board may direct that such levy be decreased or not made for any year if, in its judgment, the total levy is not necessary for such year and shall direct that the levy be decreased by the amount required if a decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

Section 23. A new section of the Public School Buildings Act is enacted to read:

"CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY TAX REVENUE.--If, in an election held after July 1, 2007, the qualified electors of a school district have voted in favor of the imposition of a property tax as provided in Section 22-26-3 NMSA 1978, the amount of tax revenue to be distributed to each charter school that was included in the resolution shall be determined each year and shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the fortieth day of the prior school year is to the total such enrollment in the district; provided that, in the case of an approved charter school that had not commenced classroom instruction in the prior school year, the estimated full-time-equivalent enrollment in the first year of instruction, as shown in the approved charter school application, shall be used, subject to adjustment after the fortieth day. Each year, the department shall certify to the county treasurer of the county in which the charter schools in the school district are located the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school."

Section 24. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE.--During the 2007 interim, the public school capital outlay oversight task force shall continue to work toward an equitable and fair system that



addresses the inequities between public school facilities among various school districts in this state. Toward that end, the task force shall assess the current statewide adequacy standards, the need for changing those standards and the effect upon school districts of any proposed change in the standards.

Section 25. TEMPORARY PROVISION--RECOMPILATION INSTRUCTIONS.--The compiler shall recompile Section 22-24-11 NMSA 1978 (being Laws 2006, Chapter 95, Section 3) as part of the Public School Finance Act.

Section 26. DELAYED REPEAL--REVERSION OF FUND BALANCE.--

A. On July 1, 2013, Sections 22-24-5.8 and 22-24-12 NMSA 1978, as enacted by Sections 7 and 8 of this act, and Section 10 of this act are repealed.

B. Upon the repeal of Section 22-24-12 NMSA 1978, the proportion of the unencumbered balance of the public school facility opportunity fund that is attributable to proceeds of severance tax bonds shall revert to the severance tax bonding fund and the remaining unencumbered balance shall revert to the general fund.

Section 27. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. \_\_\_\_\_