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AN ACT

RELATING TO CERTAIN EDUCATIONAL FACILITIES; MAKING THE FACILITIES AT THE NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED AND THE NEW MEXICO SCHOOL FOR THE DEAF ELIGIBLE FOR PUBLIC SCHOOL CAPITAL OUTLAY ACT FUNDING; EXEMPTING THESE INSTITUTIONS FROM THE REQUIRED LOCAL SHARE OF PROJECT FUNDING UNDER CERTAIN CONDITIONS.

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

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975, Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School Capital Outlay Act:

A. "constitutional special schools" means the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf;

B. "constitutional special schools support spaces" means all facilities necessary to support the constitutional special schools' educational mission that are not included in the constitutional special schools' educational adequacy standards, including, but not limited to, performing arts centers, facilities for athletic competition, school district administration and facility and vehicle maintenance;

C. "council" means the public school capital outlay council;

1           D. "fund" means the public school capital outlay  
2 fund; and

3           E. "school district" includes state-chartered  
4 charter schools and the constitutional special schools."

5           SECTION 2. Section 22-24-5 NMSA 1978 (being Laws 1975,  
6 Chapter 235, Section 5, as amended) is amended to read:

7           "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
8 APPLICATION--GRANT ASSISTANCE.--

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

13           B. Except as provided in Sections 22-24-4.3,  
14 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions  
15 govern grant assistance from the fund for a public school  
16 capital outlay project not wholly funded pursuant to  
17 Section 22-24-4.1 NMSA 1978:

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

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

25                                   (a) the council shall apply the

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

3 (b) the council shall adopt and apply  
4 adequacy standards appropriate to the unique needs of the  
5 constitutional special schools; and

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

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

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

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

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

24 (d) any other financing or construction  
25 concept that may maximize the dollar effect of the state

1 grant assistance;

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

6 (5) except as provided in Paragraph (6),  
7 (8), (9) or (10) of this subsection, the state share of a  
8 project approved and ranked by the council shall be funded  
9 within available resources pursuant to the provisions of this  
10 paragraph. No later than May 1 of each calendar year, a  
11 value shall be calculated for each school district in  
12 accordance with the following procedure:

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

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

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

25 (d) the lowest value listed pursuant to SB 196  
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1 Subparagraph (c) of this paragraph is subtracted from the  
2 highest value listed pursuant to that subparagraph;

3 (e) the value calculated pursuant to  
4 Subparagraph (a) of this paragraph for the subject school  
5 district is subtracted from the highest value listed in  
6 Subparagraph (c) of this paragraph;

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

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

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

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

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

4                   (k) if the value calculated for a  
5 subject school district pursuant to Subparagraph (j) of this  
6 paragraph is less than five-tenths, then, except as provided  
7 in Subparagraph (n) or (o) of this paragraph, the value for  
8 that school district equals the value calculated pursuant to  
9 Subparagraph (f) of this paragraph;

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

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

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

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

5 (p) except as provided in Section  
6 22-24-5.7 NMSA 1978 and except as adjusted pursuant to  
7 Paragraph (6), (8), (9) or (10) of this subsection, the  
8 amount to be distributed from the fund for an approved  
9 project shall equal the total project cost multiplied by a  
10 fraction the numerator of which is the value calculated for  
11 the subject school district in the current year plus the  
12 value calculated for that school district in each of the two  
13 preceding years and the denominator of which is three; and

14 (q) as used in this paragraph:

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

1 state-chartered charter school is physically located;

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

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



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

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

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

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

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

15 (7) as used in this subsection:

16 (a) "governmental entity" includes an  
17 Indian nation, tribe or pueblo; and

18 (b) "subject school district" means the  
19 school district that has submitted the application for  
20 funding and in which the approved public school capital  
21 outlay project will be located;

22 (8) the amount calculated pursuant to  
23 Subparagraph (p) of Paragraph (5) of this subsection, after  
24 any reduction pursuant to Paragraph (6) of this subsection,  
25 may be increased by an additional five percent if the council

1 finds that the subject school district has been exemplary in  
2 implementing and maintaining a preventive maintenance  
3 program. The council shall adopt such rules as are necessary  
4 to implement the provisions of this paragraph;

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

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

19 (b) the school district: 1) has fewer  
20 than an average of eight hundred full-time-equivalent  
21 students on the eightieth and one hundred twentieth days of  
22 the prior school year; 2) has at least seventy percent of its  
23 students eligible for free or reduced-fee lunch; 3) has a  
24 share of the total project cost, as calculated pursuant to  
25 provisions of this section, that would be greater than fifty

1 percent; and 4) for all educational purposes, has a  
2 residential property tax rate of at least seven dollars  
3 (\$7.00) on each one thousand dollars (\$1,000) of taxable  
4 value, as measured by the sum of all rates imposed by  
5 resolution of the local school board plus rates set to pay  
6 interest and principal on outstanding school district general  
7 obligation bonds; or

8 (c) the school district: 1) has an  
9 enrollment growth rate over the previous school year of at  
10 least two and one-half percent; 2) pursuant to its five-year  
11 facilities plan, will be building a new school within the  
12 next two years; and 3) for all educational purposes, has a  
13 residential property tax rate of at least ten dollars  
14 (\$10.00) on each one thousand dollars (\$1,000) of taxable  
15 value, as measured by the sum of all rates imposed by  
16 resolution of the local school board plus rates set to pay  
17 interest and principal on outstanding school district general  
18 obligation bonds;

19 (10) the local match for the constitutional  
20 special schools shall be set at fifty percent for projects  
21 that qualify under the educational adequacy category and one  
22 hundred percent for projects that qualify in the support  
23 spaces category; provided that the council may adjust or  
24 waive the amount of any direct appropriation offset to or  
25 local share required for the constitutional special schools

1 if an applicant constitutional special school has  
2 insufficient or no local resources available; and

3 (11) no application for grant assistance  
4 from the fund shall be approved unless the council determines  
5 that:

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

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

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

14 (d) the school district has submitted a  
15 five-year facilities plan that includes: 1) enrollment  
16 projections; 2) a current preventive maintenance plan that  
17 has been approved by the council pursuant to Section  
18 22-24-5.3 NMSA 1978 and that is followed by each public  
19 school in the district; 3) the capital needs of charter  
20 schools located in the school district; and 4) projections  
21 for the facilities needed in order to maintain a full-day  
22 kindergarten program;

23 (e) the school district is willing and  
24 able to pay any portion of the total cost of the public  
25 school capital outlay project that, according to Paragraph

1 (5), (6), (8) or (9) of this subsection, is not funded with  
2 grant assistance from the fund; provided that school district  
3 funds used for a project that was initiated after September  
4 1, 2002 when the statewide adequacy standards were adopted,  
5 but before September 1, 2004 when the standards were first  
6 used as the basis for determining the state and school  
7 district share of a project, may be applied to the school  
8 district portion required for that project;

9 (f) the application includes the  
10 capital needs of any charter school located in the school  
11 district or the school district has shown that the facilities  
12 of the charter school have a smaller deviation from the  
13 statewide adequacy standards than other district facilities  
14 included in the application; and

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

19 C. After consulting with the public school capital  
20 outlay oversight task force and other experts, the council  
21 shall regularly review and update statewide adequacy  
22 standards applicable to all school districts. The standards  
23 shall establish the acceptable level for the physical  
24 condition and capacity of buildings, the educational  
25 suitability of facilities and the need for technological

1 infrastructure. Except as otherwise provided in the Public  
2 School Capital Outlay Act, the amount of outstanding  
3 deviation from the standards shall be used by the council in  
4 evaluating and prioritizing public school capital outlay  
5 projects.

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

13 (1) no grant shall be awarded unless the  
14 council determines that, at the time of exercising the option  
15 to purchase the facility by the school district or charter  
16 school, the facility will equal or exceed the statewide  
17 adequacy standards and the building standards for public  
18 school facilities;

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

23 (3) the total project cost shall equal the  
24 total payments that would be due under the agreement if the  
25 school district or charter school would eventually acquire

1 title to the facility;

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

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

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

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

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

25 (2) at the time of application, attendance



1 at the facility to be purchased is at seventy-five percent or  
2 greater of design capacity and the attendance at other  
3 schools in the school district that the students at the  
4 facility would otherwise attend is at eighty-five percent or  
5 greater of design capacity; and

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

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

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

25 H. The council may establish committees or task

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

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

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

23 SECTION 3. Section 22-24-5.6 NMSA 1978 (being Laws  
24 2006, Chapter 95, Section 6, as amended) is amended to read:

25 "22-24-5.6. OUTSTANDING DEFICIENCIES AT CERTAIN STATE

1 EDUCATIONAL INSTITUTIONS.--

2 A. In consultation with the higher education  
3 department and the applicable board of regents, and after  
4 reviewing the existing five-year facilities plan and the  
5 facilities condition assessment, the public school facilities  
6 authority shall verify the assessed outstanding health,  
7 safety or infrastructure deficiencies at the constitutional  
8 special schools and shall develop a plan to correct the  
9 deficiencies.

10 B. The council may approve allocations from the  
11 fund and, working with the higher education department and  
12 the applicable board of regents, enter into construction  
13 contracts to correct the deficiencies.

14 C. The council shall establish oversight functions  
15 for the public school facilities authority and such other  
16 guidelines and conditions as it deems necessary to ensure  
17 that the allocations from the fund pursuant to this section  
18 are expended in the most prudent manner possible and  
19 consistent with the original purpose.

20 D. As used in the Public School Capital Outlay  
21 Act, "public school capital outlay project", "capital outlay  
22 project" or "project" includes a program for the correction  
23 of deficiencies at the constitutional special schools  
24 pursuant to this section."

25 SECTION 4. A new section of the Public School Capital

1 Outlay Act is enacted to read:

2 "ADEQUACY STANDARDS--CONSTITUTIONAL SPECIAL  
3 SCHOOLS.--Until July 1, 2018, the council may apply the  
4 adequacy standards to the constitutional special schools on a  
5 building-by-building basis rather than the entire campus.  
6 After that time, the adequacy standards rankings shall be  
7 based on the facilities condition of the entire campus."           

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