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SENATE BILL 196

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Cynthia Nava

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

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;

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

8 ~~[A.]~~ C. "council" means the public school capital
9 outlay council;

10 ~~[B.]~~ D. "fund" means the public school capital
11 outlay fund; and

12 ~~[G.]~~ E. "school district" includes state-chartered
13 charter schools and the constitutional special schools."

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

16 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
17 APPLICATION--GRANT ASSISTANCE.--

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

21 B. Except as provided in Sections 22-24-4.3,
22 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
23 govern grant assistance from the fund for a public school
24 capital outlay project not wholly funded pursuant to Section
25 22-24-4.1 NMSA 1978:

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

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

7 (a) the council shall apply the
8 standards to charter schools to the same extent that they are
9 applied to other public schools; ~~and~~

10 (b) the council shall adopt and apply
11 adequacy standards appropriate to the unique needs of the
12 constitutional special schools; and

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

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

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

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

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

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

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

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

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

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

25 (c) excluding any school district for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (q) as used in this paragraph: 1) "MEM"
19 means the average full-time-equivalent enrollment of students
20 attending public school in a school district on the eightieth
21 and one hundred twentieth days of the prior school year; 2)
22 "total project cost" means the total amount necessary to
23 complete the public school capital outlay project less any
24 insurance reimbursement received by the school district for the
25 project; and 3) in the case of a state-chartered charter school

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1 that has submitted an application for grant assistance pursuant
2 to this section, the "value calculated for the subject school
3 district" means the value calculated for the school district in
4 which the state-chartered charter school is physically located;

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

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

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1 the total shall exclude one-half of the amount of any
2 appropriation made or reauthorized after January 1, 2007 if the
3 purpose of the appropriation or reauthorization is to fund, in
4 whole or in part, a capital outlay project that, when
5 prioritized by the council pursuant to this section either in
6 the immediately preceding funding cycle or in the current
7 funding cycle, ranked in the top one hundred fifty projects
8 statewide; 5) the total shall exclude the proportionate share
9 of any appropriation made or reauthorized after January 1, 2008
10 for a capital project that will be jointly used by a
11 governmental entity other than the subject school district.

12 Pursuant to criteria adopted by rule of the council and based
13 upon the proposed use of the capital project, the council shall
14 determine the proportionate share to be used by the
15 governmental entity and excluded from the total; and 6) unless
16 the grant award is made to the state-chartered charter school
17 or unless the appropriation was previously used to calculate a
18 reduction pursuant to this paragraph, the total shall exclude
19 appropriations made after January 1, 2007 for nonoperating
20 purposes of a specific state-chartered charter school,
21 regardless of whether the charter school is a state-chartered
22 charter school at the time of the appropriation or later opts
23 to become a state-chartered charter school;

24 ~~[(b) the total of all federal money~~
25 ~~received by the subject school district for nonoperating~~

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1 purposes pursuant to Title XIV of the American Recovery and
2 Reinvestment Act of 2009 is calculated; provided that: 1)
3 unless the grant award is made to the state-chartered charter
4 school or unless the federal money received was previously used
5 to calculate a reduction pursuant to this paragraph, before the
6 charter school became a state-chartered charter school, the
7 total shall exclude federal money received for nonoperating
8 purposes of a specific state-chartered charter school,
9 regardless of whether the charter school is a state-chartered
10 charter school at the time of receiving the federal money or
11 later opts to become a state-chartered charter school; and 2)
12 the total shall exclude federal money distributed through the
13 fund as grant awards pursuant to the Public School Capital
14 Outlay Act;

15 ~~(c)~~ the value calculated pursuant to
16 Subparagraph (a) of this paragraph is added to the value
17 calculated pursuant to Subparagraph (b) of this paragraph;

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

22 ~~(e)~~ (c) the value calculated pursuant
23 to Subparagraph ~~(e)~~ (a) of this paragraph for the subject
24 school district is multiplied by the amount calculated pursuant
25 to Subparagraph ~~(d)~~ (b) of this paragraph for that school

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1 district;

2 ~~[(f)]~~ (d) the total amount of reductions
3 for the subject school district previously made pursuant to
4 Subparagraph ~~[(g)]~~ (e) of this paragraph for other approved
5 public school capital outlay projects is subtracted from the
6 amount calculated pursuant to Subparagraph ~~[(e)]~~ (c) of this
7 paragraph; and

8 ~~[(g)]~~ (e) the amount calculated pursuant
9 to Subparagraph (p) of Paragraph (5) of this subsection shall
10 be reduced by the amount calculated pursuant to Subparagraph
11 ~~[(f)]~~ (d) of this paragraph;

12 (7) as used in this subsection:

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

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

19 (8) the amount calculated pursuant to
20 Subparagraph (p) of Paragraph (5) of this subsection, after any
21 reduction pursuant to Paragraph (6) of this subsection, may be
22 increased by an additional five percent if the council finds
23 that the subject school district has been exemplary in
24 implementing and maintaining a preventive maintenance program.
25 The council shall adopt such rules as are necessary to

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1 implement the provisions of this paragraph;

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

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

16 (b) the school district: 1) has fewer
17 than an average of eight hundred full-time-equivalent students
18 on the eightieth and one hundred twentieth days of the prior
19 school year; 2) has at least seventy percent of its students
20 eligible for free or reduced-fee lunch; 3) has a share of the
21 total project cost, as calculated pursuant to provisions of
22 this section, that would be greater than fifty percent; and 4)
23 for all educational purposes, has a residential property tax
24 rate of at least seven dollars (\$7.00) on each one thousand
25 dollars (\$1,000) of taxable value, as measured by the sum of

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1 all rates imposed by resolution of the local school board plus
2 rates set to pay interest and principal on outstanding school
3 district general obligation bonds; or

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

14 (10) the local match for the constitutional
15 special schools shall be set at fifty percent for projects that
16 qualify under the educational adequacy category and one hundred
17 percent for projects that qualify in the support spaces
18 category; provided that the council may adjust or waive the
19 amount of any direct appropriation to or local share required
20 for the constitutional special schools if an applicant
21 constitutional special school has insufficient or no local
22 resources available; and

23 [~~(10)~~] (11) no application for grant
24 assistance from the fund shall be approved unless the council
25 determines that:

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

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

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

9 (d) the school district has submitted a
10 five-year facilities plan that includes: 1) enrollment
11 projections; 2) a current preventive maintenance plan that has
12 been approved by the council pursuant to Section 22-24-5.3 NMSA
13 1978 and that is followed by each public school in the
14 district; 3) the capital needs of charter schools located in
15 the school district; and 4) projections for the facilities
16 needed in order to maintain a full-day kindergarten program;

17 (e) the school district is willing and
18 able to pay any portion of the total cost of the public school
19 capital outlay project that, according to Paragraph (5), (6),
20 (8) or (9) of this subsection, is not funded with grant
21 assistance from the fund; provided that school district funds
22 used for a project that was initiated after September 1, 2002
23 when the statewide adequacy standards were adopted, but before
24 September 1, 2004 when the standards were first used as the
25 basis for determining the state and school district share of a

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1 project, may be applied to the school district portion required
2 for that project;

3 (f) the application includes the capital
4 needs of any charter school located in the school district or
5 the school district has shown that the facilities of the
6 charter school have a smaller deviation from the statewide
7 adequacy standards than other district facilities included in
8 the application; and

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

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

24 D. The acquisition of a facility by a school
25 district or charter school pursuant to a financing agreement

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1 that provides for lease payments with an option to purchase for
2 a price that is reduced according to lease payments made may be
3 considered a public school capital outlay project and eligible
4 for grant assistance under this section pursuant to the
5 following criteria:

6 (1) no grant shall be awarded unless the
7 council determines that, at the time of exercising the option
8 to purchase the facility by the school district or charter
9 school, the facility will equal or exceed the statewide
10 adequacy standards and the building standards for public school
11 facilities;

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

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

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

24 (5) the portion of the total project cost to
25 be paid by the school district or charter school may be paid

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1 from time to time as lease payments become due; and

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

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

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

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

22 (3) the school district and the capital outlay
23 project meet all of the requirements for grant assistance
24 pursuant to the Public School Capital Outlay Act; provided
25 that, when determining the deviation from the statewide

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1 adequacy standards for the purposes of evaluating and
2 prioritizing the project, the students using the facility shall
3 be deemed to be attending other schools in the school district.

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

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

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

23 I. Upon the recommendation of the public school
24 facilities authority, the council shall develop building
25 standards for public school facilities and shall promulgate

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1 other such rules as are necessary to carry out the provisions
2 of the Public School Capital Outlay Act.

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

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

14 "22-24-5.6. OUTSTANDING DEFICIENCIES AT CERTAIN STATE
15 EDUCATIONAL INSTITUTIONS.--

16 A. In consultation with the higher education
17 department and the applicable board of regents, and after
18 reviewing the existing five-year facilities plan and the
19 facilities condition assessment, the public school facilities
20 authority shall verify the assessed outstanding health, safety
21 or infrastructure deficiencies at the [~~New Mexico school for~~
22 ~~the blind and visually impaired and the New Mexico school for~~
23 ~~the deaf~~] constitutional special schools and shall develop a
24 plan to correct the deficiencies.

25 B. The council may approve allocations from the

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1 fund and, working with the higher education department and the
2 applicable board of regents, enter into construction contracts
3 to correct the deficiencies.

4 C. The council shall establish oversight functions
5 for the public school facilities authority and such other
6 guidelines and conditions as it deems necessary to ensure that
7 the allocations from the fund pursuant to this section are
8 expended in the most prudent manner possible and consistent
9 with the original purpose.

10 D. As used in the Public School Capital Outlay Act,
11 "public school capital outlay project", "capital outlay
12 project" or "project" includes a program for the correction of
13 deficiencies at the [~~New Mexico school for the blind and~~
14 ~~visually impaired or at the New Mexico school for the deaf]~~
15 constitutional special schools pursuant to this section.

16 [~~E. As used in Sections 22-24-5.1, 22-24-5.3 and~~
17 ~~22-24-5.5 NMSA 1978 and in Paragraph (10) of Subsection B of~~
18 ~~Section 22-24-5 NMSA 1978, "school district" includes the New~~
19 ~~Mexico school for the blind and visually impaired and the New~~
20 ~~Mexico school for the deaf.]"~~

21 SECTION 4. A new section of the Public School Capital
22 Outlay Act is enacted to read:

23 "[NEW MATERIAL] ADEQUACY STANDARDS--CONSTITUTIONAL SPECIAL
24 SCHOOLS.--Until July 1, 2018, the council may apply the
25 adequacy standards to the constitutional special schools on a

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1 building-by-building basis rather than the entire campus.
2 After that time, the adequacy standards rankings shall be based
3 on the facilities condition of the entire campus."

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