

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 620

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR ALLOCATIONS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY
FUND FOR EDUCATION TECHNOLOGY EQUIPMENT.

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

.193758.1

underscored material = new
[bracketed material] = delete

1 the constitutional special schools' educational adequacy
2 standards, including, but not limited to, performing arts
3 centers, facilities for athletic competition, school district
4 administration and facility and vehicle maintenance;

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

7 D. "education technology equipment" means tools
8 used in the educational process that constitute learning and
9 administrative resources and may include:

10 (1) closed-circuit television systems;

11 (2) educational television and radio
12 broadcasting and cable television;

13 (3) satellite, copper wire and fiber-optic
14 transmission;

15 (4) network connection devices and digital
16 communications equipment, including voice, video and data
17 equipment;

18 (5) computer hardware and software, including
19 software licenses, data storage fees and other technologies and
20 services;

21 (6) local and remote servers;

22 (7) other computer infrastructure;

23 (8) portable media such as discs and drives to
24 contain data for electronic storage and playback;

25 (9) maintenance equipment; and

1 (10) any other techniques and tools used to
 2 implement technology in schools and related facilities;

3 ~~[D-]~~ E. "fund" means the public school capital
 4 outlay fund; and

5 ~~[E-]~~ F. "school district" includes state-chartered
 6 charter schools and the constitutional special schools."

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

9 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
 10 USE.--

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

14 B. Except as provided in Subsections G and I
 15 through ~~[E]~~ M of this section, money in the fund may be used
 16 only for capital expenditures deemed necessary by the council
 17 for an adequate educational program.

18 C. The council may authorize the purchase by the
 19 public school facilities authority of portable classrooms to be
 20 loaned to school districts to meet a temporary requirement.
 21 Payment for these purchases shall be made from the fund. Title
 22 to and custody of the portable classrooms shall rest in the
 23 public school facilities authority. The council shall
 24 authorize the lending of the portable classrooms to school
 25 districts upon request and upon finding that sufficient need

.193758.1

1 exists. Application for use or return of state-owned portable
2 classroom buildings shall be submitted by school districts to
3 the council. Expenses of maintenance of the portable
4 classrooms while in the custody of the public school facilities
5 authority shall be paid from the fund; expenses of maintenance
6 and insurance of the portable classrooms while in the custody
7 of a school district shall be the responsibility of the school
8 district. The council may authorize the permanent disposition
9 of the portable classrooms by the public school facilities
10 authority with prior approval of the state board of finance.

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

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

23 F. Money in the fund shall be disbursed by warrant
24 of the department of finance and administration on vouchers
25 signed by the secretary of finance and administration following

.193758.1

1 certification by the council that an application has been
2 approved or an expenditure has been ordered by a court pursuant
3 to Section 22-24-5.4 NMSA 1978. At the discretion of the
4 council, money for a project shall be distributed as follows:

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

10 or

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

13 G. Balances in the fund may be annually
14 appropriated for the core administrative functions of the
15 public school facilities authority pursuant to the Public
16 School Capital Outlay Act, and, in addition, balances in the
17 fund may be expended by the public school facilities authority,
18 upon approval of the council, for project management expenses;
19 provided that:

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

25 (2) any unexpended or unencumbered balance

.193758.1

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

1 remaining at the end of a fiscal year from the expenditures
2 authorized in this subsection shall revert to the fund.

3 H. Up to ten million dollars (\$10,000,000) of the
4 fund may be allocated annually by the council for expenditure
5 in fiscal years 2010 through 2015 for a roof repair and
6 replacement initiative with projects to be identified by the
7 council pursuant to Section 22-24-4.3 NMSA 1978; provided that
8 money allocated pursuant to this subsection shall be expended
9 within two years of the allocation.

10 I. The fund may be expended annually by the council
11 for grants to school districts for the purpose of making lease
12 payments for classroom facilities, including facilities leased
13 by charter schools. The grants shall be made upon application
14 by the school districts and pursuant to rules adopted by the
15 council; provided that an application on behalf of a charter
16 school shall be made by the school district, but, if the school
17 district fails to make an application on behalf of a charter
18 school, the charter school may submit its own application. The
19 following criteria shall apply to the grants:

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

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

25 (b) seven hundred dollars (\$700)

.193758.1

1 multiplied by the number of MEM using the leased classroom
2 facilities; provided that in fiscal year 2009 and in each
3 subsequent fiscal year, this amount shall be adjusted by the
4 percentage change between the penultimate calendar year and the
5 immediately preceding calendar year of the consumer price index
6 for the United States, all items, as published by the United
7 States department of labor;

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

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

15 (4) no grant shall be made for lease payments
16 due pursuant to a financing agreement under which the
17 facilities may be purchased for a price that is reduced
18 according to the lease payments made unless:

19 (a) the agreement has been approved
20 pursuant to the provisions of the Public School Lease Purchase
21 Act; and

22 (b) the facilities are leased by a
23 charter school;

24 (5) if the lease payments are made pursuant to
25 a financing agreement under which the facilities may be

.193758.1

1 purchased for a price that is reduced according to the lease
2 payments made, neither a grant nor any provision of the Public
3 School Capital Outlay Act creates a legal obligation for the
4 school district or charter school to continue the lease from
5 year to year or to purchase the facilities nor does it create a
6 legal obligation for the state to make subsequent grants
7 pursuant to the provisions of this subsection; and

8 (6) as used in this subsection:

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

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

24 J. In addition to other authorized expenditures
25 from the fund, up to one percent of the average grant

.193758.1

1 assistance authorized from the fund during the three previous
2 fiscal years may be expended in each fiscal year by the public
3 school facilities authority to pay the state fire marshal, the
4 construction industries division of the regulation and
5 licensing department and local jurisdictions having authority
6 from the state to permit and inspect projects for expenditures
7 made to permit and inspect projects funded in whole or in part
8 under the Public School Capital Outlay Act. The authority may
9 enter into contracts with the state fire marshal, the
10 construction industries division or the appropriate local
11 authorities to carry out the provisions of this subsection.
12 Such a contract may provide for initial estimated payments from
13 the fund prior to the expenditures if the contract also
14 provides for additional payments from the fund if the actual
15 expenditures exceed the initial payments and for repayments
16 back to the fund if the initial payments exceed the actual
17 expenditures. Money distributed from the fund to the state
18 fire marshal or the construction industries division pursuant
19 to this subsection shall be used to supplement, rather than
20 supplant, appropriations to those entities.

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

.193758.1

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

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

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

15 (b) the school district meets all of the
16 following requirements: 1) the school district has fewer than
17 an average of one thousand full-time-equivalent students on the
18 eightieth and one hundred twentieth days of the prior school
19 year; 2) the school district has at least seventy percent of
20 its students eligible for free or reduced-fee lunch; 3) the
21 state share of the total cost, if calculated pursuant to the
22 methodology in Paragraph (5) of Subsection B of Section 22-24-5
23 NMSA 1978, would be less than fifty percent; and 4) for all
24 educational purposes, the school district has a residential
25 property tax rate of at least seven dollars (\$7.00) on each one

.193758.1

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

1 thousand dollars (\$1,000) of taxable value, as measured by the
2 sum of all rates imposed by resolution of the local school
3 board plus rates set to pay interest and principal on
4 outstanding school district general obligation bonds.

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

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

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

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

20 M. Up to two hundred million dollars (\$200,000,000)
21 of the fund may be expended during fiscal years 2014 through
22 2018 by the council for grants to school districts for the
23 purposes of purchasing, installing, maintaining and upgrading
24 education technology equipment as deemed necessary by the
25 council for an adequate educational program. The grants shall

.193758.1

1 be made upon application by the school districts and pursuant
2 to rules adopted by the council. An application on behalf of a
3 charter school shall be made by the school district, but if the
4 school district fails to make an application on behalf of a
5 charter school, the charter school may submit its own
6 application. The following criteria shall apply to
7 applications and grants:

8 (1) the application shall include a detailed
9 assessment by the school district of the education technology
10 equipment needed to meet state or federal education
11 instructional requirements and the itemized estimated costs;

12 (2) the public school facilities authority
13 shall verify the assessment and estimated costs submitted by
14 the school district and rank the application with similar
15 applications pursuant to a methodology adopted by the council
16 that includes at least the following considerations:

17 (a) the availability of alternative
18 funding, including proceeds from the property tax imposed
19 pursuant to the Education Technology Equipment Act, the Public
20 School Capital Improvements Act or the Public School Buildings
21 Act; and

22 (b) the existing education technology
23 infrastructure within the school district and the size and
24 location of the school district;

25 (3) after a public hearing and to the extent

1 that money is available in the fund for such purposes, the
 2 council shall approve applications for grants on a priority
 3 basis established in rule; provided that the council may
 4 approve parts of the application and award partial grants; and

5 (4) a grant made pursuant to this section
 6 shall be expended by the school district within two years of
 7 the grant allocation."

8 SECTION 3. Section 22-24-5 NMSA 1978 (being Laws 1975,
 9 Chapter 235, Section 5, as amended) is amended to read:

10 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
 11 APPLICATION--GRANT ASSISTANCE.--

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

15 B. Except as provided in Sections 22-24-4.3,
 16 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
 17 govern grant assistance from the fund for a public school
 18 capital outlay project not wholly funded pursuant to Section
 19 22-24-4.1 NMSA 1978:

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

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

.193758.1

1 (a) the council shall apply the
2 standards to charter schools to the same extent that they are
3 applied to other public schools;

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

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

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

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

.193758.1

1 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 infrastructure;

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

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

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

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

24 (d) the lowest value listed pursuant to
25 Subparagraph (c) of this paragraph is subtracted from the

.193758.1

1 highest value listed pursuant to that subparagraph;

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

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

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

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

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

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

.193758.1

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

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

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

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

23 (o) in those instances in which the
24 calculation pursuant to Subparagraph (k) or (m) of this
25 paragraph yields a value greater than one, one shall be used as

.193758.1

1 the value for the subject school district;

2 (p) except as provided in Section
3 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
4 Paragraph (6), (8), (9) or (10) of this subsection, the amount
5 to be distributed from the fund for an approved project shall
6 equal the total project cost multiplied by a fraction the
7 numerator of which is the value calculated for the subject
8 school district in the current year plus the value calculated
9 for that school district in each of the two preceding years and
10 the denominator of which is three; and

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

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

.193758.1

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

.193758.1

1 statewide; 5) the total shall exclude the proportionate share
2 of any appropriation made or reauthorized after January 1, 2008
3 for a capital project that will be jointly used by a
4 governmental entity other than the subject school district.

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

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

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

25 (d) the total amount of reductions for

.193758.1

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

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

9 (7) as used in this subsection:

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

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

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

24 (9) the council may adjust the amount of local
25 share otherwise required if it determines that a school

.193758.1

1 district has ~~used~~ made a good-faith effort to use all of its
2 local resources. Before making any adjustment to the local
3 share, the council shall consider whether:

4 (a) the school district: 1) has fewer
5 than an average of eight hundred full-time-equivalent students
6 on the eightieth and two hundred twentieth days of the prior
7 school year; 2) has insufficient bonding capacity over the next
8 four years to provide the local match necessary to complete the
9 project; and 3) for all educational purposes, has a residential
10 property tax rate of at least ten dollars (\$10.00) on each one
11 thousand dollars (\$1,000) of taxable value, as measured by the
12 sum of all rates imposed by resolution of the local school
13 board plus rates set to pay interest and principal on
14 outstanding school district general obligation bonds;

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

.193758.1

1 rates set to pay interest and principal on outstanding school
2 district general obligation bonds; or

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

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

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

24 (a) the public school capital outlay
25 project is needed and included in the school district's five-

.193758.1

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

1 year facilities plan among its top priorities;

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

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

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

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

.193758.1

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

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

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

22 D. The acquisition of a facility by a school
23 district or charter school pursuant to a financing agreement
24 that provides for lease payments with an option to purchase for
25 a price that is reduced according to lease payments made may be

.193758.1

1 considered a public school capital outlay project and eligible
2 for grant assistance under this section pursuant to the
3 following criteria:

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

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

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

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

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

25 (6) neither a grant award nor any provision of

1 the Public School Capital Outlay Act creates a legal obligation
2 for the school district or charter school to continue the lease
3 from year to year or to purchase the facility.

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

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

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

20 (3) the school district and the capital outlay
21 project meet all of the requirements for grant assistance
22 pursuant to the Public School Capital Outlay Act; provided
23 that, when determining the deviation from the statewide
24 adequacy standards for the purposes of evaluating and
25 prioritizing the project, the students using the facility shall

.193758.1

1 be deemed to be attending other schools in the school district.

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

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

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

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

.193758.1

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

10 - 29 -
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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