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HOUSE BILL 68

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Mimi Stewart

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO ALLOW THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL TO PROVIDE ANNUAL ALLOCATIONS TO SCHOOL DISTRICTS TO ADDRESS BUILDING SYSTEMS NEEDS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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. "building system" means a set of interacting parts that make up a single, non-portable or fixed component of a facility and that, together with other building systems, make up an entire integrated facility or property, including

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1 roofing, electrical distribution, electronic communication,
2 plumbing, lighting, mechanical, fire prevention, facility
3 shell, interior finishes and heating, ventilation and air
4 conditioning systems, as defined by the council;

5 ~~[A-]~~ B. "constitutional special schools" means the
6 New Mexico school for the blind and visually impaired and the
7 New Mexico school for the deaf;

8 ~~[B-]~~ C. "constitutional special schools support
9 spaces" means all facilities necessary to support the
10 constitutional special schools' educational mission that are
11 not included in the constitutional special schools' educational
12 adequacy standards, including, but not limited to, performing
13 arts centers, facilities for athletic competition, school
14 district administration and facility and vehicle maintenance;

15 ~~[G-]~~ D. "council" means the public school capital
16 outlay council;

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

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

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

23 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
24 USE.--

25 A. The "public school capital outlay fund" is

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1 created. Balances remaining in the fund at the end of each
2 fiscal year shall not revert.

3 B. Except as provided in Subsections G and [~~F~~] J
4 through [~~H~~] M of this section, money in the fund may be used
5 only for capital expenditures deemed necessary by the council
6 for an adequate educational program.

7 C. The council may authorize the purchase by the
8 public school facilities authority of portable classrooms to be
9 loaned to school districts to meet a temporary requirement.
10 Payment for these purchases shall be made from the fund. Title
11 to and custody of the portable classrooms shall rest in the
12 public school facilities authority. The council shall
13 authorize the lending of the portable classrooms to school
14 districts upon request and upon finding that sufficient need
15 exists. Application for use or return of state-owned portable
16 classroom buildings shall be submitted by school districts to
17 the council. Expenses of maintenance of the portable
18 classrooms while in the custody of the public school facilities
19 authority shall be paid from the fund; expenses of maintenance
20 and insurance of the portable classrooms while in the custody
21 of a school district shall be the responsibility of the school
22 district. The council may authorize the permanent disposition
23 of the portable classrooms by the public school facilities
24 authority with prior approval of the state board of finance.

25 D. Applications for assistance from the fund shall

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1 be made by school districts to the council in accordance with
2 requirements of the council. Except as provided in Subsection
3 [K] L of this section, the council shall require as a condition
4 of application that a school district have a current five-year
5 facilities plan, which shall include a current preventive
6 maintenance plan to which the school adheres for each public
7 school in the school district.

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

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

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

25 (2) the council may authorize payments

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1 directly to the contractor.

2 G. Balances in the fund may be annually
3 appropriated for the core administrative functions of the
4 public school facilities authority pursuant to the Public
5 School Capital Outlay Act, and, in addition, balances in the
6 fund may be expended by the public school facilities authority,
7 upon approval of the council, for project management expenses;
8 provided that:

9 (1) the total annual expenditures from the
10 fund for the core administrative functions pursuant to this
11 subsection shall not exceed five percent of the average annual
12 grant assistance authorized from the fund during the three
13 previous fiscal years; and

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

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

24 I. Up to fifteen million dollars (\$15,000,000) of
25 the fund may be expended annually by the council for

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1 expenditure in fiscal years 2015 through 2019 for a building
2 system repair, renovation or replacement initiative with
3 projects to be identified by the council pursuant to Section 3
4 of this 2014 act; provided that money allocated pursuant to
5 this subsection shall be expended within three years of the
6 allocation.

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

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

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

22 (b) seven hundred dollars (\$700)
23 multiplied by the number of MEM using the leased classroom
24 facilities; provided that in fiscal year 2009 and in each
25 subsequent fiscal year, this amount shall be adjusted by the

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1 percentage change between the penultimate calendar year and the
2 immediately preceding calendar year of the consumer price index
3 for the United States, all items, as published by the United
4 States department of labor;

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

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

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

16 (a) the agreement has been approved
17 pursuant to the provisions of the Public School Lease Purchase
18 Act; and

19 (b) the facilities are leased by a
20 charter school;

21 (5) if the lease payments are made pursuant to
22 a financing agreement under which the facilities may be
23 purchased for a price that is reduced according to the lease
24 payments made, neither a grant nor any provision of the Public
25 School Capital Outlay Act creates a legal obligation for the

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1 school district or charter school to continue the lease from
2 year to year or to purchase the facilities nor does it create a
3 legal obligation for the state to make subsequent grants
4 pursuant to the provisions of this subsection; and

5 (6) as used in this subsection:

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

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

21 [~~J.~~] K. In addition to other authorized
22 expenditures from the fund, up to one percent of the average
23 grant assistance authorized from the fund during the three
24 previous fiscal years may be expended in each fiscal year by
25 the public school facilities authority to pay the state fire

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

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

23 (1) no allocation shall be made unless the
24 council determines that the school district is willing and able
25 to pay the portion of the total cost of developing or updating

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1 the plan that is not funded with the allocation from the fund.
2 Except as provided in Paragraph (2) of this subsection, the
3 portion of the total cost to be paid with the allocation from
4 the fund shall be determined pursuant to the methodology in
5 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

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

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

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1 outstanding school district general obligation bonds.

2 ~~[H.]~~ M. Upon application by a school district,
3 allocations from the fund may be made by the council for the
4 purpose of demolishing abandoned school district facilities,
5 provided that:

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

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

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

17 **SECTION 3.** A new section of the Public School Capital
18 Outlay Act is enacted to read:

19 "[NEW MATERIAL] BUILDING SYSTEM REPAIR, RENOVATION OR
20 REPLACEMENT.--

21 A. The council shall develop guidelines for a
22 building system repair, renovation or replacement initiative
23 pursuant to the provisions of this section.

24 B. A school district desiring a grant award
25 pursuant to this section shall submit an application to the

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1 council. The application shall include an assessment of the
2 building system that, in the opinion of the school district,
3 the repair, renovation or replacement of which would extend the
4 useful life of the building itself.

5 C. The public school facilities authority shall
6 verify the assessment made by the school district and rank the
7 application with similar applications pursuant to a methodology
8 adopted by the council.

9 D. After a public hearing and to the extent that
10 money is available in the fund for such purposes, the council
11 shall approve building system repair, renovation or replacement
12 projects on the established priority basis; provided that no
13 project shall be approved unless the council determines that
14 the school district is willing and able to pay the portion of
15 the total cost of the project that is not funded with grant
16 assistance from the fund.

17 E. The state share of the cost of an approved
18 building system repair, renovation or replacement project shall
19 be calculated pursuant to the methodology in Paragraph (5) of
20 Subsection B of Section 22-24-5 NMSA 1978.

21 F. A grant made pursuant to this section shall be
22 expended by the school district within three years of the grant
23 allocation."

24 SECTION 4. Section 22-24-5 NMSA 1978 (being Laws 1975,
25 Chapter 235, Section 5, as amended) is amended to read:

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1 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
2 APPLICATION--GRANT ASSISTANCE.--

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

6 B. Except as provided in Sections 22-24-4.3,
7 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
8 govern grant assistance from the fund [~~for a public school~~
9 ~~capital outlay project not wholly funded pursuant to Section~~
10 ~~22-24-4.1 NMSA 1978~~]:

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

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

17 (a) the council shall apply the
18 standards to charter schools to the same extent that they are
19 applied to other public schools;

20 (b) the council may award grants
21 annually to school districts for the purpose of repairing,
22 renovating or replacing public school building systems as
23 identified in Section 3 of this 2014 act;

24 [~~(b)~~] (c) the council shall adopt and
25 apply adequacy standards appropriate to the unique needs of the

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1 constitutional special schools; and

2 [~~(e)~~] (d) in an emergency in which the
3 health or safety of students or school personnel is at
4 immediate risk or in which there is a threat of significant
5 property damage, the council may award grant assistance for a
6 project using criteria other than the statewide adequacy
7 standards;

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

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

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

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

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

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

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

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

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

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

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

23 (e) the value calculated pursuant to
24 Subparagraph (a) of this paragraph for the subject school
25 district is subtracted from the highest value listed in

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1 Subparagraph (c) of this paragraph;

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

5 (g) the sum of the property tax mill
6 levies for the prior tax year imposed by each school district
7 on residential property pursuant to Chapter 22, Article 18 NMSA
8 1978, the Public School Capital Improvements Act, the Public
9 School Buildings Act, the Education Technology Equipment Act
10 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
11 is calculated for each school district;

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

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

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

22 (k) if the value calculated for a
23 subject school district pursuant to Subparagraph (j) of this
24 paragraph is less than five-tenths, then, except as provided in
25 Subparagraph (n) or (o) of this paragraph, the value for that

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1 school district equals the value calculated pursuant to
2 Subparagraph (f) of this paragraph;

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

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

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

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

23 (p) except as provided in Section
24 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
25 Paragraph (6), (8), (9) or (10) of this subsection, the amount

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1 to be distributed from the fund for an approved project shall
2 equal the total project cost multiplied by a fraction the
3 numerator of which is the value calculated for the subject
4 school district in the current year plus the value calculated
5 for that school district in each of the two preceding years and
6 the denominator of which is three; and

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

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

22 (a) the total of all legislative
23 appropriations made after January 1, 2003 for nonoperating
24 purposes either directly to the subject school district or to
25 another governmental entity for the purpose of passing the

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1 money through directly to the subject school district, and not
2 rejected by the subject school district, is calculated;
3 provided that: 1) an appropriation made in a fiscal year shall
4 be deemed to be accepted by a school district unless, prior to
5 June 1 of that fiscal year, the school district notifies the
6 department of finance and administration and the public
7 education department that the school district is rejecting the
8 appropriation; 2) the total shall exclude any educational
9 technology appropriation made prior to January 1, 2005 unless
10 the appropriation was on or after January 1, 2003 and not
11 previously used to offset distributions pursuant to the
12 Technology for Education Act; 3) the total shall exclude any
13 appropriation previously made to the subject school district
14 that is reauthorized for expenditure by another recipient;
15 4) the total shall exclude one-half of the amount of any
16 appropriation made or reauthorized after January 1, 2007 if the
17 purpose of the appropriation or reauthorization is to fund, in
18 whole or in part, a capital outlay project that, when
19 prioritized by the council pursuant to this section either in
20 the immediately preceding funding cycle or in the current
21 funding cycle, ranked in the top one hundred fifty projects
22 statewide; 5) the total shall exclude the proportionate share
23 of any appropriation made or reauthorized after January 1, 2008
24 for a capital project that will be jointly used by a
25 governmental entity other than the subject school district.

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

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

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

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

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1 (e) the amount calculated pursuant to
2 Subparagraph (p) of Paragraph (5) of this subsection shall be
3 reduced by the amount calculated pursuant to Subparagraph (d)
4 of this paragraph;

5 (7) as used in this subsection:

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

8 (b) "subject school district" means the
9 school district that has submitted the application for funding
10 and in which the approved public school capital outlay project
11 will be located;

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

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

25 (a) the school district has insufficient

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1 bonding capacity over the next four years to provide the local
2 match necessary to complete the project and, for all
3 educational purposes, has a residential property tax rate of at
4 least ten dollars (\$10.00) on each one thousand dollars
5 (\$1,000) of taxable value, as measured by the sum of all rates
6 imposed by resolution of the local school board plus rates set
7 to pay interest and principal on outstanding school district
8 general obligation bonds;

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

22 (c) the school district: 1) has an
23 enrollment growth rate over the previous school year of at
24 least two and one-half percent; 2) pursuant to its five-year
25 facilities plan, will be building a new school within the next

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1 two years; and 3) for all educational purposes, has a
2 residential property tax rate of at least ten dollars (\$10.00)
3 on each one thousand dollars (\$1,000) of taxable value, as
4 measured by the sum of all rates imposed by resolution of the
5 local school board plus rates set to pay interest and principal
6 on outstanding school district general obligation bonds;

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

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

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

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

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

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1 (d) the school district has submitted a
2 five-year facilities plan that includes: 1) enrollment
3 projections; 2) a current preventive maintenance plan that has
4 been approved by the council pursuant to Section 22-24-5.3 NMSA
5 1978 and that is followed by each public school in the
6 district; 3) the capital needs of charter schools located in
7 the school district; and 4) projections for the facilities
8 needed in order to maintain a full-day kindergarten program;

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

20 (f) the application includes the capital
21 needs of any charter school located in the school district or
22 the school district has shown that the facilities of the
23 charter school have a smaller deviation from the statewide
24 adequacy standards than other district facilities included in
25 the application; and

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

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

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

23 (1) no grant shall be awarded unless the
24 council determines that, at the time of exercising the option
25 to purchase the facility by the school district or charter

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1 school, the facility will equal or exceed the statewide
2 adequacy standards and the building standards for public school
3 facilities;

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

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

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

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

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

23 E. In order to encourage private capital investment
24 in the construction of public school facilities, the purchase
25 of a privately owned school facility that is, at the time of

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1 application, in use by a school district may be considered a
2 public school capital outlay project and eligible for grant
3 assistance pursuant to this section if the council finds that:

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

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

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

21 F. It is the intent of the legislature that grant
22 assistance made pursuant to this section allows every school
23 district to meet the standards developed pursuant to Subsection
24 C of this section; provided, however, that nothing in the
25 Public School Capital Outlay Act or the development of

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1 standards pursuant to that act prohibits a school district from
2 using other funds available to the district to exceed the
3 statewide adequacy standards.

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

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

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

20 J. No later than December 15 of each year, the
21 council shall prepare a report summarizing its activities
22 during the previous fiscal year. The report shall describe in
23 detail all projects funded, the progress of projects previously
24 funded but not completed, the criteria used to prioritize and
25 fund projects and all other council actions. The report shall

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1 be submitted to the public education commission, the governor,
2 the legislative finance committee, the legislative education
3 study committee and the legislature."

4 SECTION 5. Section 22-24-9 NMSA 1978 (being Laws 2003,
5 Chapter 147, Section 1, as amended) is amended to read:

6 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
7 CREATION--POWERS AND DUTIES.--

8 A. The "public school facilities authority" is
9 created under the council. The authority shall be headed by a
10 director, selected by the council, who shall be versed in
11 construction, architecture or project management. The director
12 may hire no more than two deputies with the approval of the
13 council, and, subject to budgetary constraints set out in
14 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
15 contract with such technical and administrative personnel as
16 are necessary to carry out the provisions of this section. The
17 director, deputies and all other employees of the authority
18 shall be exempt from the provisions of the Personnel Act.

19 B. The authority shall:

20 (1) serve as staff to the council;

21 (2) as directed by the council, provide those
22 assistance and oversight functions required of the council by
23 Section 22-24-5.1 NMSA 1978;

24 (3) assist school districts with:

25 (a) the development and implementation

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1 of five-year facilities plans and preventive maintenance plans;

2 (b) procurement of architectural and
3 engineering services;

4 (c) management and oversight of
5 construction activities; and

6 (d) training programs;

7 (4) conduct ongoing reviews of five-year
8 facilities plans, preventive maintenance plans and performance
9 pursuant to those plans;

10 (5) as directed by the council, assist school
11 districts in analyzing and assessing their space utilization
12 options;

13 (6) ensure that public school capital outlay
14 projects are in compliance with applicable building codes;

15 (7) conduct on-site inspections as necessary
16 to ensure that the construction specifications are being met
17 and periodically inspect all of the documents related to
18 projects;

19 (8) require the use of standardized
20 construction documents and the use of a standardized process
21 for change orders;

22 (9) have access to the premises of a project
23 and any documentation relating to the project;

24 (10) after consulting with the department,
25 recommend building standards for public school facilities to

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1 the council and ensure compliance with building standards
2 adopted by the council;

3 (11) notwithstanding the provisions of
4 Subsection D of Section 22-24-6 NMSA 1978, account for all
5 distributions of grant assistance from the fund for which the
6 initial award was made after July 1, 2004, and make annual
7 reports to the department, the governor, the legislative
8 education study committee, the legislative finance committee
9 and the legislature;

10 (12) maintain a database of the condition of
11 school facilities and maintenance schedules; and

12 (13) as a central purchasing office pursuant
13 to the Procurement Code and as directed by the council, select
14 contractors and enter into and administer contracts for certain
15 emergency projects funded pursuant to Subparagraph (b) of
16 Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978 [and

17 ~~(14) ensure that outstanding deficiencies are~~
18 ~~corrected pursuant to Section 22-24-4.1 NMSA 1978. In the~~
19 ~~performance of this duty, the authority:~~

20 ~~(a) shall work with school districts to~~
21 ~~validate the assessment of the outstanding deficiencies and the~~
22 ~~projected costs to correct the deficiencies;~~

23 ~~(b) shall work with school districts to~~
24 ~~provide direct oversight of the management and construction of~~
25 ~~the projects that will correct the outstanding deficiencies;~~

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1 ~~(c) shall oversee all aspects of the~~
2 ~~contracts entered into by the council to correct the~~
3 ~~outstanding deficiencies;~~

4 ~~(d) may conduct on-site inspections~~
5 ~~while the deficiencies correction work is being done to ensure~~
6 ~~that the construction specifications are being met and may~~
7 ~~periodically inspect all of the documents relating to the~~
8 ~~projects;~~

9 ~~(e) may require the use of standardized~~
10 ~~construction documents and the use of a standardized process~~
11 ~~for change orders;~~

12 ~~(f) may access the premises of a project~~
13 ~~and any documentation relating to the project; and~~

14 ~~(g) shall maintain, track and account~~
15 ~~for deficiency correction projects separately from other~~
16 ~~capital outlay projects funded pursuant to the Public School~~
17 ~~Capital Outlay Act].~~

18 C. All actions taken by the authority shall be
19 consistent with educational programs conducted pursuant to the
20 Public School Code. In the event of any potential or perceived
21 conflict between a proposed action of the authority and an
22 educational program, the authority shall consult with the
23 secretary.

24 D. A school district, aggrieved by a decision or
25 recommendation of the authority, may appeal the matter to the

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1 council by filing a notice of appeal with the council within
2 thirty days of the authority's decision or recommendation.

3 Upon filing of the notice:

4 (1) the decision or recommendation of the
5 authority shall be suspended until the matter is decided by the
6 council;

7 (2) the council shall hear the matter at its
8 next regularly scheduled hearing or at a special hearing called
9 by the chair for that purpose;

10 (3) at the hearing, the school district, the
11 authority and other interested parties may make informal
12 presentations to the council; and

13 (4) the council shall finally decide the
14 matter within ten days after the hearing."

15 SECTION 6. REPEAL.--Section 22-24-4.1 NMSA 1978 (being
16 Laws 2001, Chapter 338, Section 6, as amended) is repealed.

17 SECTION 7. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2014.