

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 149

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

INTRODUCED BY

James E. Smith

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

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

underscored material = new  
[bracketed material] = delete

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

.195835.1

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

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

.195835.1

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

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

.195835.1

underscored material = new  
[bracketed material] = delete

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

.195835.1

underscored material = new  
[bracketed material] = delete

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

.195835.1

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

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

.195835.1

underscored material = new  
[bracketed material] = delete

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

.195835.1

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

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

.195835.1

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

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

.195835.1

underscored material = new  
[bracketed material] = delete

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

.195835.1

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

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:

.195835.1

underscored material = new  
[bracketed material] = delete

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

.195835.1



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

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

.195835.1

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

.195835.1

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

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

.195835.1

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

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

.195835.1

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

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.

.195835.1

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

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

.195835.1

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

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

underscoring material = new  
[bracketed material] = delete

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

.195835.1

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

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;

.195835.1

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

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

.195835.1

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

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

.195835.1

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

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

.195835.1

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

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

.195835.1

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

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

.195835.1

underscored material = new  
[bracketed material] = delete

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

.195835.1

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

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

.195835.1

underscored material = new  
[bracketed material] = delete

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;~~

.195835.1



underscored material = new  
[bracketed material] = delete

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.