

HOUSE BILL 143

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Natalie Figueroa

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL GOVERNANCE; CREATING REPORTING
REQUIREMENTS; ALLOWING THE PUBLIC EDUCATION DEPARTMENT TO
SUSPEND INDIVIDUAL LOCAL SCHOOL BOARD MEMBERS; REQUIRING THE
PUBLIC EDUCATION DEPARTMENT TO REPORT ASSESSMENT DATA ON A
REGULAR AND ROLLING BASIS; ALLOWING LOCAL SCHOOL BOARDS TO
ESTABLISH AN ANNUAL EVALUATION PROCESS FOR LOCAL
SUPERINTENDENTS; REQUIRING MORE MANDATORY TRAINING FOR LOCAL
SCHOOL BOARDS AND GOVERNING BODIES OF CHARTER SCHOOLS;
REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO REPORT FINANCIAL
DATA QUARTERLY TO LOCAL SCHOOL BOARDS; REQUIRING PUBLIC SCHOOL
CAPITAL OUTLAY COUNCIL APPROVAL OF LEASE PAYMENTS; REQUIRING
COUNCIL DEVELOPMENT AND IMPLEMENTATION OF A STANDARDIZED LEASE
FORMAT; REQUIRING CHARTERING AUTHORITY OVERSIGHT OF CHARTER
SCHOOL CONFLICT-OF-INTEREST DOCUMENTATION; PROVIDING MORE
PUBLIC ACCESS TO DECISION MAKING OF LOCAL SCHOOL BOARDS AND

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1 GOVERNING BODIES OF CHARTER SCHOOLS THROUGH WEBCASTING AND
2 ARCHIVING MEETINGS.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 SECTION 1. Section 1-22A-2 NMSA 1978 (being Laws 2013,
6 Chapter 180, Section 2, as amended) is amended to read:

7 "1-22A-2. DEFINITIONS.--As used in the School District
8 Campaign Reporting Act:

9 A. "campaign committee" means one or more persons
10 authorized by a candidate to raise, collect or expend
11 contributions on the candidate's behalf for the purpose of
12 electing the candidate to office;

13 B. "candidate" means a person who seeks or
14 considers an office in an election covered by the School
15 District Campaign Reporting Act and who either has filed a
16 declaration of candidacy or has received contributions or made
17 expenditures of five hundred dollars (\$500) or more or
18 authorized another person or campaign committee to receive
19 contributions or make expenditures of five hundred dollars
20 (\$500) or more for the purpose of seeking election to a covered
21 office;

22 C. "contribution" means a gift, subscription, loan,
23 advance or deposit of money or other thing of value, including
24 the estimated value of an in-kind contribution, that is made or
25 received for a political purpose, including payment of a debt

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1 incurred in an election campaign; but "contribution" does not
2 include the value of services provided without compensation or
3 unreimbursed travel or other personal expenses of individuals
4 who volunteer a portion or all of their time on behalf of a
5 candidate or campaign committee;

6 D. "covered office" means the position of board of
7 education member of a school district [~~that has an enrollment~~
8 ~~of twelve thousand students or more~~] or the position of board
9 member of a community college organized or operating pursuant
10 to the provisions of Chapter 21, Article 13 or Article 16 NMSA
11 1978;

12 E. "election cycle" means the period beginning
13 thirty days after an election for an office and ending thirty
14 days following the subsequent election day for that office;

15 F. "expenditure" means a payment, transfer or
16 distribution or obligation or promise to pay, transfer or
17 distribute any money or other thing of value for a political
18 purpose, including payment of a debt incurred in an election
19 campaign;

20 G. "political purpose" means advocating the
21 election or defeat of a candidate in an election;

22 H. "prescribed form" means a form or electronic
23 format prepared and prescribed by the secretary of state; and

24 I. "reporting individual" means a candidate or
25 treasurer of a campaign committee."

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1 SECTION 2. A new section of the Public School Code is
2 enacted to read:

3 "[NEW MATERIAL] DEPARTMENT REPORTING--REPORT CONTENTS.--

4 A. The department shall report quarterly to local
5 school boards on the following items:

6 (1) attendance data and whether students are
7 on track to graduate;

8 (2) educator workforce data, including
9 educator vacancies, educator retention and educator caseload
10 amounts; and

11 (3) any other data the department finds
12 necessary to report to the local school boards.

13 B. The department's quarterly reports, as required
14 in Subsection A of this section, shall be provided to local
15 school boards in tandem with the department's quarterly
16 financial data reports."

17 SECTION 3. Section 22-2-14 NMSA 1978 (being Laws 1978,
18 Chapter 129, Section 1, as amended) is amended to read:

19 "22-2-14. LOCAL SCHOOL BOARDS--PUBLIC SCHOOLS--
20 SUSPENSION--PROCEDURES.--

21 A. Money budgeted by a school district shall be
22 spent first to attain and maintain the requirements for a
23 school district as prescribed by law and by standards and rules
24 as prescribed by the department. The department shall give
25 written notification to a local school board, local

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1 superintendent and school principal, as applicable, of any
2 failure to meet requirements by any part of the school district
3 under the control of the local school board. The notice shall
4 specify the deficiency. Instructional units or administrative
5 functions may be disapproved for such deficiencies. The
6 department shall disapprove instructional units or
7 administrative functions that it determines to be detrimental
8 to the educational process.

9 B. Within thirty days after receipt of the notice
10 of failure to meet requirements, the local school board, local
11 superintendent and school principal, as applicable, shall:

12 (1) comply with the specific and attendant
13 requirements in order to remove the cause for disapproval; or

14 (2) submit plans satisfactory to the
15 department to meet requirements and remove the cause for
16 disapproval.

17 C. The secretary, after consultation with the
18 commission, shall suspend from authority and responsibility a
19 local school board, an individual local school board member, a
20 local superintendent or a school principal that has had notice
21 of disapproval and fails to comply with procedures of
22 Subsection B of this section. The department shall act in lieu
23 of the suspended local school board, individual local school
24 board member, local superintendent or school principal until
25 the department removes the suspension.

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1 D. To suspend a local school board, an individual
2 local school board member, a local superintendent or a school
3 principal, the secretary shall deliver to the local school
4 board an alternative order of suspension, stating the cause for
5 the suspension and the effective date and time the suspension
6 will begin. The alternative order shall also contain notice of
7 a time, date and place for a public hearing, prior to the
8 beginning of suspension, to be held by the department, at which
9 the local school board, individual local school board member,
10 local superintendent or school principal may appear and show
11 cause why the suspension should not be put into effect. Within
12 five days after the hearing, the secretary shall make
13 permanent, modify or withdraw the alternative order.

14 E. The secretary may suspend a local school board,
15 an individual local school board member, a local superintendent
16 or a school principal when the local school board, individual
17 local school board member, local superintendent or school
18 principal has been notified of disapproval and when the
19 department has sufficient reason to believe that the
20 educational process in the school district or public school has
21 been severely impaired or halted as a result of deficiencies so
22 severe as to warrant disapproved status before a public hearing
23 can be held.

24 F. The department, while acting in lieu of a
25 suspended local school board, an individual local school board

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1 member, a local superintendent or a school principal, shall
2 execute all the legal authority of the local school board,
3 individual local school board member, local superintendent or
4 school principal and assume all the responsibilities of the
5 local school board, individual local school board member, local
6 superintendent or school principal.

7 G. The provisions of this section shall be invoked
8 at any time the secretary, after consultation with the
9 commission, finds that the school district or public school has
10 failed to attain and maintain the requirements of law or
11 department standards and rules.

12 H. The commission shall consult with the secretary
13 and may recommend alternative actions for the secretary's
14 consideration.

15 I. A local school board, an individual local school
16 board member, a local superintendent or a school principal
17 aggrieved by a decision of the secretary may appeal to the
18 district court pursuant to the provisions of Section 39-3-1.1
19 NMSA 1978."

20 SECTION 4. Section 22-2C-4 NMSA 1978 (being Laws 2003,
21 Chapter 153, Section 13, as amended) is amended to read:

22 "22-2C-4. STATEWIDE ASSESSMENT AND ACCOUNTABILITY
23 SYSTEM--INDICATORS--REQUIRED ASSESSMENTS--ALTERNATIVE
24 ASSESSMENTS--LIMITS ON ALTERNATIVES TO ENGLISH LANGUAGE READING
25 ASSESSMENTS.--

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1 A. The department shall establish a statewide
2 assessment and accountability system that is aligned with the
3 state academic content and performance standards.

4 B. The academic assessment program shall test
5 student achievement as follows:

6 (1) for grades three through eight and for
7 grade eleven, standards-based assessments in mathematics,
8 reading and language arts;

9 (2) for grades three through eight, a
10 standards-based writing assessment with the writing assessment
11 scoring criteria applied to the extended response writing
12 portions of the language arts standards-based assessments; and

13 (3) for one of grades three through five and
14 six through eight and for grade eleven, standards-based
15 assessments in science by the 2007-2008 school year.

16 C. The department shall involve appropriate
17 licensed school employees in the development of the standards-
18 based assessments.

19 D. [~~Before August 5 of each year~~] The department
20 shall provide student scores on all standards-based assessments
21 taken during the prior school year and required in Subsection B
22 of this section on a regular rolling basis to students'
23 respective school districts in order to make test score data
24 available to assist school district staff with appropriate
25 grade-level and other placement for the current school year.

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1 E. All students shall participate in the academic
2 assessment program. The department shall adopt standards for
3 reasonable accommodations in standards-based assessments for
4 students with disabilities and limited English proficiency,
5 including when and how accommodations may be applied. The
6 legislative education study committee shall review the
7 standards prior to adoption by the department.

8 F. Students who have been determined to be limited
9 English proficient may be allowed to take the standards-based
10 assessment in their primary language. A student who has
11 attended school for three consecutive years in the United
12 States shall participate in the English language reading
13 assessment unless granted a waiver by the department based on
14 criteria established by the department. An English language
15 reading assessment waiver may be granted only for a maximum of
16 two additional years and only on a case-by-case basis."

17 SECTION 5. Section 22-2C-11 NMSA 1978 (being Laws 2003,
18 Chapter 153, Section 20, as amended) is amended to read:

19 "22-2C-11. ASSESSMENT AND ACCOUNTABILITY SYSTEM
20 REPORTING--PARENT SURVEY--DATA SYSTEM--FISCAL INFORMATION.--

21 A. The department shall:

22 (1) issue a state identification number for
23 each public school student for use in the accountability data
24 system;

25 (2) adopt the format for reporting individual

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1 student assessments to parents. The student assessments shall
2 report each student's progress and academic needs as measured
3 against state standards;

4 (3) adopt the format for reporting [~~annual~~]
5 progress on a regular rolling basis of public schools, school
6 districts, state-chartered charter schools and the department.
7 A school district's report shall include reports of all locally
8 chartered charter schools in the school district. If the
9 department has adopted a state improving schools program, the
10 [~~annual~~] accountability report shall include the results of
11 that program for each public school. The [~~annual~~]
12 accountability report format shall be clear, concise and
13 understandable to parents and the general public. All [~~annual~~]
14 accountability reports shall ensure that the privacy of
15 individual students is protected;

16 (4) require that when public schools, school
17 districts, state-chartered charter schools and the state
18 disaggregate and report school data for demographic subgroups,
19 they include data disaggregated by ethnicity, race, limited
20 English proficiency, students with disabilities, poverty and
21 gender; provided that ethnicity and race shall be reported
22 using the following categories:

- 23 (a) Caucasian, non-Hispanic;
- 24 (b) Hispanic;
- 25 (c) African American;

1 (d) American Indian or Alaska Native;

2 (e) Native Hawaiian or other Pacific

3 Islander;

4 (f) Asian;

5 (g) two or more races; and

6 (h) other; provided that if the sample

7 of students in any category enumerated in Subparagraphs (a)

8 through (g) of this paragraph is so small that a student in the

9 sample may be personally identifiable in violation of the

10 federal Family Educational Rights and Privacy Act of 1974, the

11 report may combine that sample into the "other" category;

12 (5) report cohort graduation data annually for

13 the state, for each school district and for each state-

14 chartered charter school and each public high school, based on

15 information provided by all school districts and state-

16 chartered charter schools according to procedures established

17 by the department; provided that the report shall include the

18 number and percentage of students in a cohort who:

19 (a) have graduated by August 1 of the

20 fourth year after entering the ninth grade;

21 (b) have graduated in more than four

22 years, but by August 1 of the fifth year after entering ninth

23 grade;

24 (c) have received a state certificate by

25 exiting the school system at the end of grade twelve without

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1 having satisfied the requirements for a high school diploma as
2 provided in Section 22-13-1.1 NMSA 1978 or completed all course
3 requirements but have not passed the graduation assessment or
4 portfolio of standards-based indicators pursuant to Section
5 22-13-1.1 NMSA 1978;

6 (d) have dropped out or whose status is
7 unknown;

8 (e) have exited public school and
9 indicated an intent to pursue a high school equivalency
10 credential; or

11 (f) are still enrolled in public school;

12 (6) report annually, based on data provided by
13 school districts and state-chartered charter schools, the
14 number and percentage of public school students in each cohort
15 in the state in grades nine through twelve who have advanced to
16 the next grade or graduated on schedule, who remain enrolled
17 but have not advanced to the next grade on schedule, who have
18 dropped out or whose other educational outcomes are known to
19 the department; and

20 (7) establish technical criteria and
21 procedures to define which students are included or excluded
22 from a cohort.

23 B. Local school boards and governing boards of
24 charter schools may establish additional indicators through
25 which to measure the school district's or charter school's

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1 performance.

2 C. The school district's or state-chartered charter
3 school's annual accountability report shall include a report of
4 four- and five-year graduation rates for each public high
5 school in the school district or state-chartered charter
6 school. All annual accountability reports shall ensure that
7 the privacy of individual students is protected. As part of
8 the graduation rate data, the school district or state-
9 chartered charter school shall include data showing the number
10 and percentage of students in the cohort:

11 (1) who have received a state certificate by
12 exiting the school system at the end of grade twelve without
13 having satisfied the requirements for a high school diploma as
14 provided in Section 22-13-1.1 NMSA 1978 or completed all course
15 requirements but have not passed the graduation assessment or
16 portfolio of standards-based indicators pursuant to Section
17 22-13-1.1 NMSA 1978;

18 (2) who have dropped out or whose status is
19 unknown;

20 (3) who have exited public school and
21 indicated an intent to pursue a high school equivalency
22 credential;

23 (4) who are still enrolled; and

24 (5) whose other educational outcomes are known
25 to the school district.

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1 D. The school district's or state-chartered charter
2 school's annual accountability report shall be adopted by the
3 local school board or governing body of the state-chartered
4 charter school, shall be published no later than November 15 of
5 each year and shall be published at least once each school year
6 in a newspaper of general circulation in the county where the
7 school district or state-chartered charter school is located as
8 well as online on the website of the school district or state-
9 chartered charter school. In publication, the report shall be
10 titled "The School District Report Card" or "The Charter School
11 Report Card" and disseminated in accordance with guidelines
12 established by the department to ensure effective communication
13 with parents, students, educators, local policymakers and
14 business and community organizations.

15 E. The annual accountability report shall include
16 the names of those members of the local school board or the
17 governing body of the charter school who failed to attend
18 annual mandatory training.

19 F. The annual accountability report shall include
20 data on expenditures for central office administration and
21 expenditures for the public schools of the school district or
22 charter school.

23 G. The department shall create an accountability
24 data system through which data from each public school and each
25 school district or state-chartered charter school may be

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1 compiled and reviewed. The department shall provide the
2 resources to train school district and charter school personnel
3 in the use of the accountability data system.

4 H. The department shall verify data submitted by
5 the school districts and state-chartered charter schools.

6 I. At the end of fiscal year 2005, after the budget
7 approval cycle, the department shall produce a report to the
8 legislature that shows for all school districts using
9 performance-based program budgeting the relationship between
10 that portion of a school district's program cost generated by
11 each public school in the school district and the budgeted
12 expenditures for each public school in the school district as
13 reported in the district's performance-based program budget.
14 At the end of fiscal year 2006 and subsequent fiscal years,
15 after the budget approval cycle, the department shall report on
16 this relationship in all public schools in all school districts
17 in the state.

18 J. When all public schools are participating in
19 performance-based budgeting, the department shall recommend
20 annually to the legislature for inclusion in the general
21 appropriation act the maximum percentage of appropriations that
22 may be expended in each school district for central office
23 administration.

24 K. The department shall disseminate its statewide
25 accountability report to school districts and charter schools;

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1 the governor, legislators and other policymakers; and business
2 and economic development organizations.

3 L. As used in this section, "cohort" means a group
4 of students who enter grade nine for the first time at the same
5 time, plus those students who transfer into the group in later
6 years and minus those students who leave the cohort for
7 documented excusable reasons."

8 SECTION 6. Section 22-5-4 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 28, as amended) is amended to read:

10 "22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local
11 school board shall have the following powers or duties:

12 A. subject to the rules of the department, develop
13 educational policies for the school district;

14 B. employ a local superintendent for the school
15 district and fix the superintendent's salary;

16 C. review and approve the annual school district
17 budget;

18 D. acquire, lease and dispose of property;

19 E. have the capacity to sue and be sued;

20 F. acquire property by eminent domain pursuant to
21 the procedures provided in the Eminent Domain Code;

22 G. issue general obligation bonds of the school
23 district;

24 H. provide for the repair of and maintain all
25 property belonging to the school district;

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1 I. for good cause and upon order of the district
2 court, subpoena witnesses and documents in connection with a
3 hearing concerning any powers or duties of the local school
4 board;

5 J. except for expenditures for salaries, contract
6 for the expenditure of money according to the provisions of the
7 Procurement Code;

8 K. adopt rules pertaining to the administration of
9 all powers or duties of the local school board;

10 L. accept or reject any charitable gift, grant,
11 devise or bequest. The particular gift, grant, devise or
12 bequest accepted shall be considered an asset of the school
13 district or the public school to which it is given;

14 M. offer and, upon compliance with the conditions
15 of such offer, pay rewards for information leading to the
16 arrest and conviction or other appropriate disciplinary
17 disposition by the courts or juvenile authorities of offenders
18 in case of theft, defacement or destruction of school district
19 property. All such rewards shall be paid from school district
20 funds in accordance with rules promulgated by the department;
21 [~~and~~]

22 N. give prior approval for any educational program
23 in a public school in the school district that is to be
24 conducted, sponsored, carried on or caused to be carried on by
25 a private organization or agency; and

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1 O. establish an annual evaluation process for local
2 superintendents using guidelines and evaluation metrics from
3 the department."

4 SECTION 7. Section 22-5-13 NMSA 1978 (being Laws 2003,
5 Chapter 153, Section 24) is amended to read:

6 "22-5-13. LOCAL SCHOOL BOARD MANDATORY TRAINING.--

7 A. The department shall develop a mandatory
8 training course for local school board members that explains
9 [~~state board rules~~] department rules, policies and procedures,
10 statutory powers and duties of local school boards, legal
11 concepts pertaining to public schools, finance and budget,
12 including performance-based budgeting, and other matters deemed
13 relevant by the department. The department shall notify local
14 school board members of the dates of the training course, the
15 last of which shall not be later than three months after a
16 local school board election.

17 B. The training shall cover:

18 (1) laws and department policies and
19 procedures affecting local school boards or public schools;

20 (2) public school finance, budgeting and
21 fiduciary responsibilities of local school boards;

22 (3) a local school board's role in evaluating
23 and improving student academic achievement and using data to
24 set individual school goals for student academic achievement in
25 each of the school district's public schools;

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1 (4) a local school board's role in providing a
2 safe learning environment conducive to improving student
3 outcomes;

4 (5) legal concepts pertaining to local school
5 boards and school districts, including the Open Meetings Act
6 and the Inspection of Public Records Act;

7 (6) effective governance practices and
8 effective methods of supporting and supervising the local
9 superintendent; and

10 (7) other matters deemed relevant by the
11 department."

12 SECTION 8. A new section of the Public School Code is
13 enacted to read:

14 "[NEW MATERIAL] LOCAL SCHOOL BOARD MEETINGS--WEBCASTING
15 AND ARCHIVING.--Except as otherwise provided in this section,
16 live audio and video webcasts of local school board meetings
17 shall be accessible through the school district's website and
18 shall include a user interface that allows members of the
19 public to submit comments. A webcast shall begin as soon as
20 practicable after the chair has called the meeting to order and
21 shall terminate as soon as practicable after the local school
22 board has adjourned. Recordings of the webcasts shall be
23 posted on the school district's website within one week of the
24 meeting's conclusion and shall be publicly available for at
25 least five years following the date of the meeting unless the

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1 state records retention schedule provides otherwise."

2 SECTION 9. Section 22-8-13.2 NMSA 1978 (being Laws 2011,
3 Chapter 12, Section 1) is amended to read:

4 "22-8-13.2. FINANCIAL REPORTING.--

5 A. ~~[Each local superintendent or person in charge~~
6 ~~of the fiscal management of a charter school]~~ The department
7 shall provide quarterly reports on the financial position of
8 the school district or charter school, as applicable, to the
9 local school board of the school district or the governing body
10 of the charter school for use in reviewing the financial status
11 of the school district or charter school. The department shall
12 develop ~~[the forms]~~ a standard report to be used for the
13 financial reporting required under this section. The ~~[forms]~~
14 standard report shall provide for at least the following:

15 (1) a report on the budget status of the local
16 school district or charter school, including the approved
17 operating budget for revenues and expenses compared with year-
18 to-date actual revenue and expenses;

19 (2) a statement of any budget adjustment
20 requests;

21 (3) cash reports, including revenue, expenses,
22 temporary loans and cash balances for operational, state and
23 federal grants, capital outlay and debt service funds;

24 (4) voucher reports, including a list of
25 issued warrants or checks;

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1 (5) reports listing procurement, travel or gas
2 card expenses; and

3 (6) investment reports.

4 B. School districts and charter schools, in
5 collaboration with the department, shall post the reports
6 required under Subsection A of this section on the school
7 district's or charter school's [~~web site~~] website.

8 C. As used in this section:

9 (1) "charter school" means a school organized
10 as a charter school pursuant to the provisions of the Charter
11 Schools Act; and

12 (2) "governing body" means the governing
13 structure of a charter school as set forth in the school's
14 charter."

15 SECTION 10. Section 22-8B-4 NMSA 1978 (being Laws 1999,
16 Chapter 281, Section 4, as amended) is amended to read:

17 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
18 OPERATION.--

19 A. A charter school shall be subject to all federal
20 and state laws and constitutional provisions prohibiting
21 discrimination on the basis of disability, physical or mental
22 handicap, serious medical condition, race, creed, color, sex,
23 gender identity, sexual orientation, spousal affiliation,
24 national origin, religion, ancestry or need for special
25 education services and shall not allow for the imposition of

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1 discipline, discrimination or disparate treatment against a
2 student based on the student's race, religion or culture or
3 because of the student's use of protective hairstyles or
4 cultural or religious headdresses.

5 B. A charter school shall be governed by a
6 governing body in the manner set forth in the charter contract;
7 provided that a governing body shall have at least five
8 members; and provided further that no member of a governing
9 body for a charter school that is initially approved on or
10 after July 1, 2005 or whose charter is renewed on or after July
11 1, 2005 shall serve on the governing body of another charter
12 school. No member of a local school board shall be a member of
13 a governing body for a charter school or employed in any
14 capacity by a locally chartered charter school located within
15 the local school board's school district during the term of
16 office for which the member was elected or appointed.

17 C. A charter school shall be responsible for:

18 (1) its own operation, including preparation
19 of a budget, subject to audits pursuant to the Audit Act; and

20 (2) contracting for services and personnel
21 matters.

22 D. A charter school may contract with a school
23 district, a university or college, the state, another political
24 subdivision of the state, the federal government or one of its
25 agencies, a tribal government or any other third party for the

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1 use of a facility, its operation and maintenance and the
2 provision of any service or activity that the charter school is
3 required to perform in order to carry out the educational
4 program described in its charter contract. Facilities used by
5 a charter school shall meet the standards required pursuant to
6 Section 22-8B-4.2 NMSA 1978.

7 E. A conversion school chartered before July 1,
8 2007 may choose to continue using the school district
9 facilities and equipment it had been using prior to conversion,
10 subject to the provisions of Subsection F of this section.

11 F. A school district that has available land or one
12 or more available facilities not currently used for other
13 educational purposes shall make facilities and may make land
14 available for lease, lease-purchase or purchase to the charter
15 schools located in the school district for the charter schools'
16 operations and shall notify the charter schools of that
17 availability no later than May 1 of each year. The public
18 school facilities authority shall annually ensure that each
19 school district with available land or one or more available
20 facilities has provided that notification. A school district
21 may develop a facility prioritization plan that identifies
22 which charter schools may lease, lease-purchase or purchase
23 available school district facilities. School-district-owned
24 land shall not be considered available to a charter school if
25 the school district has justified future use of that land

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1 through its five-year facilities master plan. An agreement for
2 the use of school district facilities by a charter school may
3 provide for reasonable lease payments approved by the public
4 school capital outlay council at the local market rate;
5 provided that the payments do not exceed the sum of the lease
6 reimbursement rate provided in Paragraph (1) of Subsection [±]
7 J of Section 22-24-4 NMSA 1978 plus any reimbursement for
8 actual direct costs incurred by the school district in
9 providing the facilities; and provided further that any lease
10 payments received by a school district may be retained by the
11 school district and shall not be considered to be cash balances
12 in any calculation pursuant to Section 22-8-41 NMSA 1978. The
13 available facilities provided by a school district to a charter
14 school shall meet all occupancy standards as specified by the
15 public school capital outlay council. As used in this
16 subsection, "other educational purposes" includes health
17 clinics, daycare centers, teacher training centers, school
18 district administration functions and other ancillary services
19 related to a school district's functions and operations.

20 G. A locally chartered charter school may pay the
21 costs of operation and maintenance of its facilities or may
22 contract with the school district to provide facility operation
23 and maintenance services.

24 H. Locally chartered charter school facilities are
25 eligible for state and local capital outlay funds and shall be

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1 included in the school district's five-year facilities plan.

2 I. A locally chartered charter school shall
3 negotiate with a school district to provide transportation to
4 students eligible for transportation under the provisions of
5 the Public School Code. The school district, in conjunction
6 with the charter school, may establish a limit for student
7 transportation to and from the charter school site not to
8 extend beyond the school district boundary.

9 J. A charter school shall be a nonsectarian,
10 nonreligious and non-home-based public school.

11 K. Except as otherwise provided in the Public
12 School Code, a charter school shall not charge tuition or have
13 admission requirements.

14 L. With the approval of the chartering authority, a
15 single charter school may maintain separate facilities at two
16 or more locations within the same school district; but, for
17 purposes of calculating program units pursuant to the Public
18 School Finance Act, the separate facilities shall be treated
19 together as one school.

20 M. A charter school shall be subject to the
21 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
22 Accountability Act.

23 N. Within constitutional and statutory limits, a
24 charter school may acquire and dispose of property; provided
25 that, upon termination of the charter, all assets of the

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1 locally chartered charter school shall revert to the local
2 school board and all assets of the state-chartered charter
3 school shall revert to the state, except that, if all or any
4 portion of a state-chartered charter school facility is
5 financed with the proceeds of general obligation bonds issued
6 by a local school board, the facility shall revert to the local
7 school board.

8 O. The governing body of a charter school may
9 accept or reject any charitable gift, grant, devise or bequest;
10 provided that no such gift, grant, devise or bequest shall be
11 accepted if subject to any condition contrary to law or to the
12 terms of the charter. The particular gift, grant, devise or
13 bequest shall be considered an asset of the charter school to
14 which it is given.

15 P. The governing body may contract and sue and be
16 sued. A local school board shall not be liable for any acts or
17 omissions of the charter school.

18 Q. A charter school shall comply with all state and
19 federal health and safety requirements applicable to public
20 schools, including those health and safety codes relating to
21 educational building occupancy.

22 R. A charter school is a public school that may
23 contract with a school district or other party for provision of
24 financial management, food services, transportation,
25 facilities, education-related services or other services. The

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1 governing body shall not contract with a for-profit entity for
2 the management of the charter school.

3 S. To enable state-chartered charter schools to
4 submit required data to the department, an accountability data
5 system shall be maintained by the department.

6 T. A charter school shall comply with all
7 applicable state and federal laws and rules related to
8 providing special education services. Charter school students
9 with disabilities and their parents retain all rights under the
10 federal Individuals with Disabilities Education Act and its
11 implementing state and federal rules. Each charter school is
12 responsible for identifying, evaluating and offering a free
13 appropriate public education to all eligible children who are
14 accepted for enrollment in that charter school. The state-
15 chartered charter school, as a local educational agency, shall
16 assume responsibility for determining students' needs for
17 special education and related services. The division may
18 promulgate rules to implement the requirements of this
19 subsection.

20 U. As used in this section:

21 (1) "cultural or religious headdresses"
22 includes hijabs, head wraps or other headdresses used as part
23 of an individual's personal cultural or religious beliefs;

24 (2) "protective hairstyles" includes such
25 hairstyles as braids, locs, twists, tight coils or curls,

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1 cornrows, bantu knots, afros, weaves, wigs or head wraps; and

2 (3) "race" includes traits historically
3 associated with race, including hair texture, length of hair,
4 protective hairstyles or cultural or religious headdresses."

5 SECTION 11. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
6 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
7 as amended) is amended to read:

8 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

9 A. The facilities of a charter school that is
10 approved on or after July 1, 2005 and before July 1, 2015 shall
11 meet educational occupancy standards required by applicable New
12 Mexico construction codes.

13 B. The facilities of a charter school whose charter
14 has been renewed at least once shall be evaluated, prioritized
15 and eligible for grants pursuant to the Public School Capital
16 Outlay Act in the same manner as all other public schools in
17 the state; provided that for charter school facilities in
18 leased facilities, grants may be used to provide additional
19 lease payments for leasehold improvements made by the lessor.

20 C. On or after July 1, 2011, a new charter school
21 shall not open and an existing charter school shall not
22 relocate unless the facilities of the new or relocated charter
23 school, as measured by the New Mexico condition index, receive
24 a condition rating equal to or better than the average
25 condition for all New Mexico public schools for that year or

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1 the charter school [~~demonstrates~~] attains, within eighteen
2 months of occupancy or relocation of the charter, [~~the way in~~
3 ~~which the facilities will achieve~~] a rating equal to or better
4 than the average New Mexico condition index.

5 D. On or after July 1, 2015, a new charter school
6 shall not open and an existing charter shall not be renewed
7 unless the charter school:

8 (1) is housed in a building that is:

9 (a) owned by the charter school, the
10 school district, the state, an institution of the state,
11 another political subdivision of the state, the federal
12 government or one of its agencies or a tribal government; or

13 (b) subject to a lease-purchase
14 arrangement that has been entered into and approved pursuant to
15 the Public School Lease Purchase Act; or

16 (2) if it is not housed in a building
17 described in Paragraph (1) of this subsection, demonstrates
18 that:

19 (a) the facility in which the charter
20 school is housed meets the statewide adequacy standards
21 developed pursuant to the Public School Capital Outlay Act and
22 the owner of the facility is contractually obligated to
23 maintain those standards at no additional cost to the charter
24 school or the state; and

25 (b) either: 1) public buildings are not

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1 available or adequate for the educational program of the
2 charter school; or 2) the owner of the facility is a nonprofit
3 entity specifically organized for the purpose of providing the
4 facility for the charter school.

5 E. Without the approval of the public school
6 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
7 charter school shall not enter into a lease-purchase agreement.

8 F. The public school capital outlay council:

9 (1) shall determine whether facilities of a
10 charter school meet the educational occupancy standards
11 pursuant to the requirements of Subsection A of this section or
12 the requirements of Subsections B, C and D of this section, as
13 applicable; and

14 (2) upon a determination that specific
15 requirements are not appropriate or reasonable for a charter
16 school, may grant a variance from those requirements for that
17 charter school."

18 SECTION 12. Section 22-8B-5.1 NMSA 1978 (being Laws 2009,
19 Chapter 18, Section 1) is amended to read:

20 "22-8B-5.1. GOVERNING BODY TRAINING.--

21 A. The department shall develop a mandatory
22 training course for all governing body members that explains
23 department rules, policies and procedures, statutory powers and
24 duties of governing boards, legal concepts pertaining to public
25 schools, finance and budget and other matters deemed relevant

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1 by the department. The department shall notify the governing
2 body members of the dates of the training courses.

3 B. The mandatory training shall cover:

4 (1) laws and department policies and
5 procedures affecting governing bodies or charter schools;

6 (2) public school finance, budgeting and
7 fiduciary responsibilities of governing bodies, in particular
8 federal and state requirements for state-chartered charter
9 schools to receive and maintain the schools' status as boards
10 of finance;

11 (3) a governing body's role in evaluating and
12 improving student academic achievement and using data to set
13 the school's goals for student academic achievement;

14 (4) a governing body's role in providing a
15 safe learning environment conducive to improving student
16 outcomes;

17 (5) legal concepts pertaining to governing
18 bodies and charter schools, including the Open Meetings Act and
19 the Inspection of Public Records Act;

20 (6) effective governance practices and
21 effective methods of supporting and supervising the head
22 administrator; and

23 (7) other matters deemed relevant by the
24 department."

25 SECTION 13. Section 22-8B-5.2 NMSA 1978 (being Laws 2011,

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1 Chapter 14, Section 7) is amended to read:

2 "22-8B-5.2. GOVERNING BODY CONFLICTS OF INTEREST.--

3 A. A person shall not serve as a member of a
4 governing body or as an employee of a charter school if the
5 person or an immediate family member of the person is an owner,
6 agent of, contractor with or otherwise has a financial interest
7 in a for-profit or nonprofit entity with which the charter
8 school contracts directly, for professional services, goods or
9 facilities. A violation of this subsection renders the
10 contract between the person or the person's immediate family
11 member and the charter school [~~voidable at the option of the~~
12 ~~chartering authority, the department or the governing body~~]
13 void. A person who knowingly violates this subsection may be
14 individually liable to the charter school for any financial
15 damage caused by the violation.

16 B. No member of a governing body or employee,
17 officer or agent of a charter school shall participate in
18 selecting, awarding or administering a contract with the
19 charter school if a conflict of interest exists. A conflict of
20 interest exists when the member, employee, officer or agent or
21 an immediate family member of the member, employee, officer or
22 agent has a financial interest in the entity with which the
23 charter school is contracting. A violation of this subsection
24 renders the contract [~~voidable~~] void.

25 C. Any employee, agent or board member of the

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1 chartering authority who participates in the initial review,
2 approval, ongoing oversight, evaluation or charter renewal
3 process of a charter school is ineligible to serve on the
4 governing body of the charter school chartered by the
5 chartering authority.

6 D. As used in this section, "immediate family
7 member" means spouse, father, father-in-law, mother, mother-in-
8 law, son, son-in-law, daughter, daughter-in-law, brother,
9 brother-in-law, sister, sister-in-law or any other relative who
10 is financially supported."

11 SECTION 14. Section 22-8B-5.3 NMSA 1978 (being Laws 2011,
12 Chapter 14, Section 8) is amended to read:

13 "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--
14 LIABILITY.--A chartering authority shall:

15 A. evaluate charter applications;

16 B. actively pursue the utilization of charter
17 schools to satisfy identified education needs and promote a
18 diversity of educational choices;

19 C. approve charter applications that meet the
20 requirements of the Charter Schools Act;

21 D. decline to approve charter applications that
22 fail to meet the requirements of the Charter Schools Act or are
23 otherwise inadequate;

24 E. negotiate and execute, in good faith, charter
25 contracts that meet the requirements of the Charter Schools Act

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1 with each approved charter school;

2 F. monitor, in accordance with the requirements of
3 the Charter Schools Act and the terms of the charter contract,
4 the performance and legal compliance of charter schools under
5 their authority;

6 G. determine whether a charter school merits
7 suspension, revocation or nonrenewal; [~~and~~]

8 H. develop and maintain chartering policies and
9 practices consistent with nationally recognized principles and
10 standards for quality charter authorizing in all major areas of
11 authorizing, including:

12 (1) organizational capacity and
13 infrastructure;

14 (2) evaluating charter applications;

15 (3) performance contracting;

16 (4) charter school oversight and evaluation;

17 and

18 (5) charter school suspension, revocation and
19 renewal processes; and

20 I. annually review and approve all charter school
21 conflict-of-interest disclosure statements."

22 SECTION 15. A new section of the Charter Schools Act is
23 enacted to read:

24 "[NEW MATERIAL] GOVERNING BODY MEETINGS--WEBCASTING AND
25 ARCHIVING.--Except as otherwise provided in this section, live

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1 audio and video webcasts of governing body meetings shall be
2 accessible through the charter school's website and shall
3 include a user interface that allows members of the public to
4 submit comments. A webcast shall begin as soon as practicable
5 after the chair has called the meeting to order and shall
6 terminate as soon as practicable after the body has adjourned.
7 Recordings of the webcasts shall be posted on the charter
8 school's website within one week of the meeting's conclusion
9 and shall be publicly available for at least five years
10 following the date of the meeting unless the state records
11 retention schedule provides otherwise."

12 SECTION 16. Section 22-24-4 NMSA 1978 (being Laws 1975,
13 Chapter 235, Section 4, as amended) is amended to read:

14 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
15 USE.--

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

19 B. Except as provided in Subsections G and [~~I~~] J
20 through [~~Q~~] R of this section, money in the fund may be used
21 only for capital expenditures deemed necessary by the council
22 for an adequate educational program.

23 C. The council may authorize the purchase by the
24 authority of portable classrooms to be loaned to school
25 districts to meet a temporary requirement. Payment for these

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1 purchases shall be made from the fund. Title to and custody of
2 the portable classrooms shall rest in the authority. The
3 council shall authorize the lending of the portable classrooms
4 to school districts upon request and upon finding that
5 sufficient need exists. Application for use or return of
6 state-owned portable classroom buildings shall be submitted by
7 school districts to the council. Expenses of maintenance of
8 the portable classrooms while in the custody of the authority
9 shall be paid from the fund; expenses of maintenance and
10 insurance of the portable classrooms while in the custody of a
11 school district shall be the responsibility of the school
12 district. The council may authorize the permanent disposition
13 of the portable classrooms by the authority with prior approval
14 of the state board of finance.

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

23 E. The council shall review all requests for
24 assistance from the fund and shall allocate funds only for
25 those capital outlay projects that meet the criteria of the

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1 Public School Capital Outlay Act.

2 F. Money in the fund shall be disbursed by warrant
3 of the department of finance and administration on vouchers
4 signed by the secretary of finance and administration following
5 certification by the council that an application has been
6 approved or an expenditure has been ordered by a court pursuant
7 to Section 22-24-5.4 NMSA 1978. At the discretion of the
8 council, money for a project shall be distributed as follows:

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

15 (2) the council may authorize payments
16 directly to the contractor.

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

23 (1) the total annual expenditures from the
24 fund for the core administrative functions pursuant to this
25 subsection shall not exceed five percent of the average annual

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1 grant assistance authorized from the fund during the three
2 previous fiscal years; and

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

6 H. The council shall develop a standardized
7 facility lease for use by all charter schools for all new
8 leases, amendments and renewals entered into after July 1,
9 2023.

10 [~~H.~~] I. The fund may be expended by the council for
11 building system repair, renovation or replacement initiatives
12 with projects to be identified by the council pursuant to
13 Section 22-24-4.6 NMSA 1978; provided that money allocated
14 pursuant to this subsection shall be expended within three
15 years of the allocation.

16 [~~H.~~] J. The fund may be expended annually by the
17 council for grants to school districts for the purpose of
18 making lease payments for facilities, including facilities
19 leased by charter schools. For leases, amendments and renewals
20 entered into after July 1, 2023, these payments may reimburse
21 only base rent for leases pre-approved by the council using the
22 standardized lease format approved by the council. The grants
23 shall be made upon application by the school districts and
24 pursuant to rules adopted by the council; provided that an
25 application on behalf of a charter school shall be made by the

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1 school district, but, if the school district fails to make an
2 application on behalf of a charter school, the charter school
3 may submit its own application. The following criteria shall
4 apply to the grants:

5 (1) the amount of a grant to a school district
6 or charter school shall not exceed:

7 (a) the actual annual lease payments
8 owed for leasing a facility; or

9 (b) seven hundred dollars (\$700)
10 multiplied by the MEM using the leased facilities; provided
11 that in fiscal year 2009 and in each subsequent fiscal year,
12 this amount shall be adjusted by the percentage change between
13 the penultimate calendar year and the immediately preceding
14 calendar year of the consumer price index for the United
15 States, all items, as published by the United States department
16 of labor;

17 (2) a grant received for the lease payments of
18 a charter school may be used by that charter school as a state
19 match necessary to obtain federal grants pursuant to the
20 federal Every Student Succeeds Act;

21 (3) at the end of each fiscal year, any
22 unexpended or unencumbered balance of the grant shall revert to
23 the fund;

24 (4) no grant shall be made for lease payments
25 due pursuant to a financing agreement under which the

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1 facilities may be purchased for a price that is reduced
2 according to the lease payments made unless:

3 (a) the agreement has been approved
4 pursuant to the provisions of the Public School Lease Purchase
5 Act; and

6 (b) the facilities are leased by a
7 charter school;

8 (5) if the lease payments are made pursuant to
9 a financing agreement under which the facilities may be
10 purchased for a price that is reduced according to the lease
11 payments made, neither a grant nor any provision of the Public
12 School Capital Outlay Act creates a legal obligation for the
13 school district or charter school to continue the lease from
14 year to year or to purchase the facilities nor does it create a
15 legal obligation for the state to make subsequent grants
16 pursuant to the provisions of this subsection; and

17 (6) as used in this subsection:

18 (a) "MEM" means: 1) the average full-
19 time-equivalent enrollment using leased facilities on the
20 second and third reporting dates of the prior school year; or
21 2) in the case of an approved charter school that has not
22 commenced classroom instruction, the estimated full-time-
23 equivalent enrollment that will use leased facilities in the
24 first year of instruction, as shown in the approved charter
25 school application; provided that, after the second reporting

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1 date of the current school year, the MEM shall be adjusted to
2 reflect the full-time-equivalent enrollment on that date; and

3 (b) "facilities" includes the space
4 needed for school activities.

5 [~~J~~] K. In addition to other authorized
6 expenditures from the fund, up to one percent of the average
7 grant assistance authorized from the fund during the three
8 previous fiscal years may be expended in each fiscal year by
9 the authority to pay the state fire marshal, the construction
10 industries division of the regulation and licensing department
11 and local jurisdictions having authority from the state to
12 permit and inspect projects for expenditures made to permit and
13 inspect projects funded in whole or in part under the Public
14 School Capital Outlay Act. The authority may enter into
15 contracts with the state fire marshal, the construction
16 industries division or the appropriate local authorities to
17 carry out the provisions of this subsection. Such a contract
18 may provide for initial estimated payments from the fund prior
19 to the expenditures if the contract also provides for
20 additional payments from the fund if the actual expenditures
21 exceed the initial payments and for repayments back to the fund
22 if the initial payments exceed the actual expenditures. Money
23 distributed from the fund to the state fire marshal or the
24 construction industries division pursuant to this subsection
25 shall be used to supplement, rather than supplant,

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1 appropriations to those entities.

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

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

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

17 (a) the school district has fewer than
18 an average of six hundred full-time-equivalent students on the
19 second and third reporting dates of the prior school year; or

20 (b) the school district meets all of the
21 following requirements: 1) the school district has fewer than
22 an average of one thousand full-time-equivalent students on the
23 second and third reporting dates of the prior school year; 2)
24 the school district has at least seventy percent of its
25 students eligible for free or reduced-fee lunch; 3) the state

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1 share of the total cost, if calculated pursuant to the
2 methodology in Subsection B of Section 22-24-5 NMSA 1978, would
3 be less than fifty percent; and 4) for all educational
4 purposes, the school district has a residential property tax
5 rate of at least seven dollars (\$7.00) on each one thousand
6 dollars (\$1,000) of taxable value, as measured by the sum of
7 all rates imposed by resolution of the local school board plus
8 rates set to pay interest and principal on outstanding school
9 district general obligation bonds.

10 ~~[L.]~~ M. Upon application by a school district,
11 allocations from the fund may be made by the council for the
12 purpose of demolishing abandoned school district facilities;
13 provided that:

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

17 (2) there is no practical use for the
18 abandoned facility without the expenditure of substantial
19 renovation costs; and

20 (3) the council may enter into an agreement
21 with the school district to fully fund the demolition of the
22 abandoned school district facility if Paragraphs (1) and (2) of
23 this subsection are satisfied.

24 ~~[M.]~~ N. Up to ten million dollars (\$10,000,000) of
25 the fund may be expended each year for an education technology

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1 infrastructure deficiency corrections initiative pursuant to
2 Section 22-24-4.5 NMSA 1978; provided that funding allocated
3 pursuant to this section shall be expended within three years
4 of its allocation.

5 ~~[N.]~~ O. For each fiscal year from 2018 through
6 2022, twenty-five million dollars (\$25,000,000) of the fund is
7 reserved for appropriation by the legislature to the
8 instructional material fund or to the transportation
9 distribution of the public school fund. The secretary shall
10 certify the need for the issuance of supplemental severance tax
11 bonds to meet an appropriation from the public school capital
12 outlay fund to the instructional material fund or to the
13 transportation distribution of the public school fund. Any
14 portion of an amount of the public school capital outlay fund
15 that is reserved for appropriation by the legislature for a
16 fiscal year, but that is not appropriated before the first day
17 of that fiscal year, may be expended by the council as provided
18 in this section.

19 ~~[O.]~~ P. Up to ten million dollars (\$10,000,000) of
20 the fund may be expended in each of fiscal years 2019 through
21 2022 for school security system project grants made in
22 accordance with Section 22-24-4.7 NMSA 1978.

23 ~~[P.]~~ Q. The fund may be expended in each of fiscal
24 years 2020 through 2024 for a pre-kindergarten classroom
25 facilities initiative in accordance with Section 22-24-12 NMSA

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1 1978.

2 [Q+] R. The council may fund pre-kindergarten
3 classrooms with a qualifying, awarded standards-based project;
4 provided that pre-kindergarten classroom space shall not be
5 included in the project prioritization calculation adopted by
6 the council pursuant to Section 22-24-5 NMSA 1978. The council
7 shall develop pre-kindergarten classroom standards to use when
8 funding pre-kindergarten space."

9 SECTION 17. APPLICABILITY.--The provisions of this act
10 apply to the 2023-2024 school year and subsequent school years.

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