

1 AN ACT

2 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING THE
3 PUBLIC SCHOOL FACILITIES AUTHORITY BUDGET TO BE BASED ON A
4 FIVE-YEAR AVERAGE; ELIMINATING OFFSETS FOR SCHOOL DISTRICTS;
5 REDUCING THE LOCAL MATCH BY ONE-THIRD FOR SOME SCHOOL
6 DISTRICTS; REDUCING THE LOCAL MATCH BY ONE-HALF FOR CERTAIN
7 SMALL SCHOOL DISTRICTS; ELIMINATING THE IMPACT AID CREDIT;
8 ELIMINATING OFFSETS FOR CHARTER SCHOOLS; REDUCING THE LOCAL
9 MATCH FOR PRE-KINDERGARTEN PROJECTS BY FIFTY PERCENT;
10 PROVIDING TECHNICAL CLEANUP.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,
14 Chapter 235, Section 4, as amended) is amended to read:

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

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

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

24 C. The council may authorize the purchase by the
25 authority of portable classrooms to be loaned to school

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

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

24 E. The council shall review all requests for
25 assistance from the fund and shall allocate funds only for

1 those capital outlay projects that meet the criteria of the
2 Public School Capital Outlay Act.

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

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

17 (2) the council may authorize payments
18 directly to the contractor.

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

25 (1) the total annual expenditures from the

1 fund for the core administrative functions pursuant to this
2 subsection shall not exceed five percent of the average
3 annual grant assistance authorized from the fund during the
4 five previous fiscal years; and

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

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

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

25 (1) the amount of a grant to a school

1 district or charter school shall not exceed:

2 (a) the actual annual lease payments
3 owed for leasing a facility; or

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

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

16 (3) at the end of each fiscal year, any
17 unexpended or unencumbered balance of the grant shall revert
18 to the fund;

19 (4) no grant shall be made for lease
20 payments due pursuant to a financing agreement under which
21 the facilities may be purchased for a price that is reduced
22 according to the lease payments made unless:

23 (a) the agreement has been approved
24 pursuant to the provisions of the Public School Lease
25 Purchase Act; and

1 (b) the facilities are leased by a
2 charter school;

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

13 (6) as used in this subsection:

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

25 (b) "facilities" includes the space

1 needed for school activities.

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

24 K. Pursuant to guidelines established by the
25 council, allocations from the fund may be made to assist

1 school districts in developing and updating five-year
2 facilities plans required by the Public School Capital
3 Outlay Act; provided that:

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

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

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

18 (b) the school district meets all of
19 the following requirements: 1) the school district has fewer
20 than an average of one thousand full-time-equivalent students
21 on the second and third reporting dates of the prior school
22 year; 2) the school district has at least seventy percent of
23 its students eligible for free or reduced-fee lunch; 3) the
24 state share of the total cost, if calculated pursuant to the
25 methodology in Subsection B of Section 22-24-5 NMSA 1978,

1 would be less than fifty percent; and 4) for all educational
2 purposes, the school district has a residential property tax
3 rate of at least seven dollars (\$7.00) on each one thousand
4 dollars (\$1,000) of taxable value, as measured by the sum of
5 all rates imposed by resolution of the local school board
6 plus rates set to pay interest and principal on outstanding
7 school district general obligation bonds.

8 L. Upon application by a school district,
9 allocations from the fund may be made by the council for the
10 purpose of demolishing abandoned school district facilities;
11 provided that:

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

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

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

22 M. Up to ten million dollars (\$10,000,000) of the
23 fund may be expended each year for an education technology
24 infrastructure deficiency corrections initiative pursuant to
25 Section 22-24-4.5 NMSA 1978; provided that funding allocated

1 pursuant to this section shall be expended within three years
2 of its allocation.

3 N. The fund may be expended in each of fiscal
4 years 2020 through 2024 for a pre-kindergarten classroom
5 facilities initiative project in accordance with
6 Section 22-24-12 NMSA 1978.

7 O. The council may fund pre-kindergarten
8 classrooms with a qualifying, awarded standards-based
9 project; provided that pre-kindergarten classroom space shall
10 not be included in the project prioritization calculation
11 adopted by the council pursuant to Section 22-24-5 NMSA 1978.
12 The council shall develop pre-kindergarten classroom
13 standards to use when funding pre-kindergarten space."

14 SECTION 2. Section 22-24-4.5 NMSA 1978 (being
15 Laws 2014, Chapter 28, Section 4, as amended) is amended to
16 read:

17 "22-24-4.5. EDUCATION TECHNOLOGY INFRASTRUCTURE
18 DEFICIENCY CORRECTIONS.--

19 A. No later than September 1, 2014, the council,
20 with the advice of the department and the department of
21 information technology, shall define and develop:

22 (1) minimum adequacy standards for an
23 education technology infrastructure deficiency corrections
24 initiative to identify and determine reasonable costs for
25 correcting education technology infrastructure deficiencies

1 in or affecting school districts;

2 (2) a methodology for prioritizing projects
3 to correct education technology infrastructure deficiencies
4 in or affecting school districts; and

5 (3) a methodology for determining a school
6 district's share of the project costs.

7 B. The council shall develop guidelines for a
8 statewide education technology infrastructure network that
9 integrates regional hub locations for network services and
10 the installation and maintenance of equipment. The council
11 may fund education technology infrastructure projects or
12 items that the council determines are in accord with the
13 guidelines and necessary to education for:

14 (1) students;

15 (2) school buses;

16 (3) internet connectivity within a school
17 district;

18 (4) a multi-district regional education
19 network; and

20 (5) a statewide education network.

21 C. The council may approve allocations from the
22 fund pursuant to Subsection M of Section 22-24-4 NMSA 1978
23 and this section for projects in or affecting a school
24 district committing to pay its share of the project costs.

25 The council may adjust the school district's share of

1 the project costs in accordance with Paragraph (9) of
2 Subsection B of Section 22-24-5 NMSA 1978 or the methodology
3 for determining the school district's share of the project
4 costs."

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

7 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY
8 PROJECTS--APPLICATION--GRANT ASSISTANCE.--

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

13 B. Except as provided in Sections 22-24-4.3,
14 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
15 govern grant assistance from the fund for a public school
16 capital outlay project not wholly funded pursuant to
17 Section 22-24-4.1 NMSA 1978:

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

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

25 (a) the council shall apply the

1 standards to charter schools to the same extent that they are
2 applied to other public schools;

3 (b) the council may award grants
4 annually to school districts for the purpose of repairing,
5 renovating or replacing public school building systems in
6 existing buildings as identified in Section 22-24-4.6
7 NMSA 1978;

8 (c) the council shall adopt and apply
9 adequacy standards appropriate to the unique needs of the
10 constitutional special schools; and

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

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

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

24 (b) the potential use of more durable
25 construction materials that may reduce long-term operating

1 costs;

2 (c) concepts that promote efficient but
3 flexible utilization of space; and

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

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

11 (5) no later than May 1 of each calendar
12 year, the phase two formula value shall be calculated for
13 each school district in accordance with the following
14 procedure:

15 (a) the sum of the final prior five
16 years net taxable value for a school district multiplied by
17 nine ten-thousandths for that school district is calculated
18 for each school district;

19 (b) the maximum allowable gross square
20 foot per student multiplied by the replacement cost per
21 square foot divided by forty-five is calculated for each
22 school district;

23 (c) the value calculated pursuant to
24 Subparagraph (a) of this paragraph divided by the value
25 calculated pursuant to Subparagraph (b) of this paragraph is

1 calculated for each school district;

2 (d) in those instances in which the
3 calculation pursuant to Subparagraph (c) of this paragraph
4 yields a value equal to or greater than one, the phase two
5 formula value shall be zero for the subject school district;

6 (e) in those instances in which the
7 calculation pursuant to Subparagraph (c) of this paragraph
8 yields a value of ninety-hundredths or more but less than
9 one, the phase two formula value shall be one minus the value
10 calculated in Subparagraph (c) of this paragraph; and

11 (f) in those instances in which the
12 calculation pursuant to Subparagraph (c) of this paragraph
13 yields a value less than ninety-hundredths, the phase two
14 formula value shall be one minus the value calculated in
15 Subparagraph (c) of this paragraph plus the school district
16 population density factor;

17 (6) the state share of a project approved by
18 the council shall be funded within available resources
19 pursuant to the provisions of this paragraph. Except as
20 provided in Section 22-24-5.7 NMSA 1978 and except as
21 adjusted pursuant to Paragraph (8), (9) or (10) of this
22 subsection, the amount to be distributed from the fund for an
23 approved project shall equal the total project cost
24 multiplied by the following percentage, except that in no
25 case shall the state share be less than six percent:

1 (a) for fiscal year 2024 through fiscal
2 year 2026, the percentage shall be the phase two formula
3 value plus a percentage equal to one-third of the difference
4 between one and the phase two formula value; provided that,
5 for school districts with fewer than 200 MEM, the percentage
6 shall be the phase two formula value plus a percentage equal
7 to one-half of the difference between one and the phase two
8 formula; and

9 (b) for fiscal year 2027 and
10 thereafter, the percentage shall be the phase two formula
11 value;

12 (7) as used in this subsection:

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

15 (b) "phase two formula value" for a
16 state-chartered charter school means the phase two formula
17 value calculated pursuant to Paragraph (5) of this subsection
18 for the school district in which the state-chartered charter
19 school is physically located;

20 (c) "subject school district" means the
21 school district that has submitted the application for
22 funding and in which the approved public school capital
23 outlay project will be located; and

24 (d) "total project cost" means the
25 total amount necessary to complete the public school capital

1 outlay project less any insurance reimbursement received by
2 the school district for the project;

3 (8) the amount calculated pursuant to
4 Paragraph (6) of this subsection may be increased by an
5 additional five percent if the council finds that the subject
6 school district has been exemplary in implementing and
7 maintaining a preventive maintenance program. The council
8 shall adopt such rules as are necessary to implement the
9 provisions of this paragraph;

10 (9) the council may adjust the amount of
11 local share otherwise required if it determines that a school
12 district has made a good-faith effort to use all of its local
13 resources. Before making any adjustment to the local share,
14 the council shall consider whether:

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

24 (b) the school district: 1) has fewer
25 than an average of eight hundred full-time-equivalent

1 students on the second and third reporting dates of the prior
2 school year; 2) has at least seventy percent of its students
3 eligible for free or reduced-fee lunch; 3) has a share of the
4 total project cost, as calculated pursuant to provisions of
5 this section, that would be greater than fifty percent; and
6 4) for all educational purposes, has a residential property
7 tax rate of at least seven dollars (\$7.00) on each one
8 thousand dollars (\$1,000) of taxable value, as measured by
9 the sum of all rates imposed by resolution of the local
10 school board plus rates set to pay interest and principal on
11 outstanding school district general obligation bonds; or

12 (c) the school district: 1) has an
13 enrollment growth rate over the previous school year of at
14 least two and one-half percent; 2) pursuant to its five-year
15 facilities plan, will be building a new school within the
16 next two years; and 3) for all educational purposes, has a
17 residential property tax rate of at least ten dollars
18 (\$10.00) on each one thousand dollars (\$1,000) of taxable
19 value, as measured by the sum of all rates imposed by
20 resolution of the local school board plus rates set to pay
21 interest and principal on outstanding school district general
22 obligation bonds;

23 (10) the local match for the constitutional
24 special schools shall be set at fifty percent for projects
25 that qualify under the educational adequacy category and one

1 hundred percent for projects that qualify in the support
2 spaces category; provided that the council may adjust or
3 waive the amount of any direct appropriation offset to or
4 local share required for the constitutional special schools
5 if an applicant constitutional special school has
6 insufficient or no local resources available; and

7 (11) no application for grant assistance
8 from the fund shall be approved unless the council determines
9 that:

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

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

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

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

1 kindergarten program;

2 (e) the school district is willing and
3 able to pay any portion of the total cost of the public
4 school capital outlay project that, according to Paragraph
5 (6), (8) or (9) of this subsection, is not funded with grant
6 assistance from the fund;

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

13 (g) the school district has agreed, in
14 writing, to comply with any reporting requirements or
15 conditions imposed by the council pursuant to Section
16 22-24-5.1 NMSA 1978.

17 C. After consulting with the public school capital
18 outlay oversight task force and other experts, the council
19 shall regularly review and update statewide adequacy
20 standards applicable to all school districts. The standards
21 shall establish the acceptable level for the physical
22 condition and capacity of buildings, the educational
23 suitability of facilities, the need for career-technical
24 education facilities or classrooms and the need for education
25 technology infrastructure. Except as otherwise provided in

1 the Public School Capital Outlay Act, the amount of
2 outstanding deviation from the standards shall be used by the
3 council in evaluating and prioritizing public school capital
4 outlay projects.

5 D. The acquisition of a facility by a school
6 district or charter school pursuant to a financing agreement
7 that provides for lease payments with an option to purchase
8 for a price that is reduced according to lease payments made
9 may be considered a public school capital outlay project and
10 eligible for grant assistance under this section pursuant to
11 the following criteria:

12 (1) no grant shall be awarded unless the
13 council determines that, at the time of exercising the option
14 to purchase the facility by the school district or charter
15 school, the facility will equal or exceed the statewide
16 adequacy standards and the building standards for public
17 school facilities;

18 (2) no grant shall be awarded unless the
19 school district and the need for the facility meet all of
20 the requirements for grant assistance pursuant to the
21 Public School Capital Outlay Act;

22 (3) the total project cost shall equal the
23 total payments that would be due under the agreement if the
24 school district or charter school would eventually acquire
25 title to the facility;

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

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

8 (6) neither a grant award nor any provision
9 of the Public School Capital Outlay Act creates a legal
10 obligation for the school district or charter school to
11 continue the lease from year to year or to purchase the
12 facility.

13 E. In order to encourage private capital
14 investment in the construction of public school facilities,
15 the purchase of a privately owned school facility that is, at
16 the time of application, in use by a school district may be
17 considered a public school capital outlay project and
18 eligible for grant assistance pursuant to this section if the
19 council finds that:

20 (1) at the time of the initial use by the
21 school district, the facility to be purchased equaled or
22 exceeded the statewide adequacy standards and the building
23 standards for public school facilities;

24 (2) at the time of application, attendance
25 at the facility to be purchased is at seventy-five percent or

1 greater of design capacity and the attendance at other
2 schools in the school district that the students at the
3 facility would otherwise attend is at eighty-five percent or
4 greater of design capacity; and

5 (3) the school district and the capital
6 outlay project meet all of the requirements for grant
7 assistance pursuant to the Public School Capital Outlay Act;
8 provided that, when determining the deviation from the
9 statewide adequacy standards for the purposes of evaluating
10 and prioritizing the project, the students using the facility
11 shall be deemed to be attending other schools in the school
12 district.

13 F. It is the intent of the legislature that grant
14 assistance made pursuant to this section allows every school
15 district to meet the standards developed pursuant to
16 Subsection C of this section; provided, however, that nothing
17 in the Public School Capital Outlay Act or the development of
18 standards pursuant to that act prohibits a school district
19 from using other funds available to the district to exceed
20 the statewide adequacy standards.

21 G. Upon request, the council shall work with, and
22 provide assistance and information to, the public school
23 capital outlay oversight task force.

24 H. The council may establish committees or task
25 forces, not necessarily consisting of council members, and

1 may use the committees or task forces, as well as existing
2 agencies or organizations, to conduct studies, conduct
3 surveys, submit recommendations or otherwise contribute
4 expertise from the public schools, programs, interest groups
5 and segments of society most concerned with a particular
6 aspect of the council's work.

7 I. Upon the recommendation of the authority, the
8 council shall develop building standards for public school
9 facilities and shall promulgate other such rules as are
10 necessary to carry out the provisions of the Public School
11 Capital Outlay Act.

12 J. No later than December 15 of each year, the
13 council shall prepare a report summarizing its activities
14 during the previous fiscal year. The report shall describe
15 in detail all projects funded, the progress of projects
16 previously funded but not completed, the criteria used to
17 prioritize and fund projects and all other council actions.
18 The report shall be submitted to the public education
19 commission, the governor, the legislative finance committee,
20 the legislative education study committee and the
21 legislature.

22 K. For any school district that received a
23 standards- or systems-based award from the council in fiscal
24 year 2023, the state share for any future phase of the
25 project for which funding has not yet been awarded shall be

1 the amount calculated pursuant to Subsection B of this
2 section for fiscal year 2024, regardless of the state share
3 at the time of the initial award.

4 L. As used in this section:

5 (1) "MEM" means membership; and

6 (2) "membership" means the total enrollment
7 of qualified students on the current roll of a class or
8 school on a specified day. The current roll is established
9 by the addition of original entries and reentries minus
10 withdrawals. Withdrawals of students, in addition to
11 students formally withdrawn from the public school, include
12 students absent from the public school for as many as ten
13 consecutive school days; provided that withdrawals do not
14 include students in need of early intervention and habitual
15 truants the school district is required to intervene with and
16 keep in an educational setting."

17 SECTION 4. Section 22-24-5.4 NMSA 1978 (being
18 Laws 2004, Chapter 125, Section 10, as amended) is amended
19 to read:

20 "22-24-5.4. RECALCITRANT SCHOOL DISTRICTS--COURT
21 ACTION TO ENFORCE CONSTITUTIONAL COMPLIANCE--IMPOSITION OF
22 PROPERTY TAX.--

23 A. The council may bring an action against a
24 school district pursuant to the provisions of this section
25 if, based upon information submitted to the council by the

1 authority, the council determines that:

2 (1) the physical condition of a public
3 school facility in the school district is so inadequate that
4 the facility or the education received by students attending
5 the facility is below the minimum required by the
6 constitution of New Mexico;

7 (2) the school district is not taking the
8 necessary steps to bring the facility up to the
9 constitutionally required minimum; and

10 (3) either:

11 (a) the school district has not applied
12 for the grant assistance necessary to bring the facility up
13 to minimum constitutional standards; or

14 (b) the school district is unwilling to
15 meet all of the requirements for the approval of an
16 application for grant assistance pursuant to Paragraph (11)
17 of Subsection B of Section 22-24-5 NMSA 1978.

18 B. An action brought pursuant to this section
19 shall be brought by the council in the name of the state
20 against the school district in the district court for
21 Santa Fe county.

22 C. After a hearing and consideration of the
23 evidence, if the court finds that the council's determination
24 pursuant to Subsection A of this section was correct, the
25 court shall:

1 (1) order the council to expend sufficient
2 resources necessary to bring the facility up to the minimum
3 level required by the constitution of New Mexico;

4 (2) order the school district to comply with
5 Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978
6 and to take all other actions necessary to facilitate the
7 completion of the project ordered pursuant to Paragraph (1)
8 of this subsection; and

9 (3) enter a judgment against the school
10 district for court costs and attorney fees and the necessary
11 amount to satisfy the school district share, as determined by
12 the formula prescribed by Subsection B of Section 22-24-5
13 NMSA 1978, for the project ordered pursuant to Paragraph (1)
14 of this subsection.

15 D. The amount of a judgment entered against a
16 school district pursuant to Paragraph (3) of Subsection C of
17 this section is a public debt of the school district. If the
18 court finds that the debt cannot be satisfied with available
19 school district funds, other than funds needed for the
20 operation of the public schools and other existing
21 obligations, the court shall order the imposition of a
22 property tax on all taxable property allocated to the school
23 district at a rate sufficient to pay the judgment, with
24 accrued interest, within a reasonable time as determined by
25 the court. After paying court costs and attorney fees,

1 amounts received pursuant to this subsection shall be
2 deposited by the council into the fund."

3 SECTION 5. Section 22-24-6.1 NMSA 1978 (being
4 Laws 2007, Chapter 214, Section 1, as amended) is amended to
5 read:

6 "22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
7 SCHOOL.--All of the provisions of the Public School Capital
8 Outlay Act apply to an application by a state-chartered
9 charter school for grant assistance for a capital project
10 except the portion of the cost of the project to be paid
11 from the fund shall be calculated pursuant to Subsection B of
12 Section 22-24-5 NMSA 1978 using data from the school district
13 in which the state-chartered charter school is located."

14 SECTION 6. Section 22-24-12 NMSA 1978 (being Laws 2019,
15 Chapter 179, Section 1) is amended to read:

16 "22-24-12. PRE-KINDERGARTEN CLASSROOM FACILITIES
17 INITIATIVE.--

18 A. The council shall develop guidelines for a
19 pre-kindergarten classroom facilities initiative in
20 accordance with this section, including establishing and
21 adopting pre-kindergarten classroom standards.

22 B. The authority shall rank all applications it
23 receives for the pre-kindergarten classroom facilities
24 initiative according to the methodology adopted by the
25 council for that purpose.

1 C. After a public hearing, and to the extent that
2 money is available in the fund for that purpose, the council
3 may make pre-kindergarten classroom facilities initiative
4 grants to school districts that the council determines are
5 willing and able to pay for the portion of the total cost not
6 funded with grant assistance from the fund according to those
7 applicants' rankings.

8 D. The state share of the cost of an approved
9 pre-kindergarten classroom facilities initiative project
10 shall be calculated according to the methodology outlined in
11 Subsection B of Section 22-24-5 NMSA 1978; provided that, for
12 fiscal years 2024 through 2026, the state share of an
13 approved pre-kindergarten classroom facilities initiative
14 project shall be the phase two formula value plus a
15 percentage equal to one-half of the difference between one
16 and the phase two formula value.

17 E. A school district that receives a grant in
18 accordance with this section shall expend the money within
19 three years after the grant allocation, or the money shall
20 revert to the fund."

21 SECTION 7. Section 22-25-9 NMSA 1978 (being Laws 1975
22 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

23 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT
24 IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

25 A. Except as provided in Subsection E of this

1 section, for each year that a capital improvements tax is
2 imposed by a school district, the secretary shall distribute
3 from the public school capital improvements fund to the
4 school district an amount equal to the greater of:

5 (1) the difference between:

6 (a) the product of: 1) the school
7 district's program units; 2) multiplied by the tax rate
8 imposed by the school district; and 3) multiplied further by
9 the sum calculated pursuant to Subsection B of this section;
10 and

11 (b) the school district's estimated tax
12 revenue; or

13 (2) the product of:

14 (a) five dollars (\$5.00) for fiscal
15 year 2023; and in each subsequent fiscal year, the amount for
16 the previous fiscal year adjusted by the percentage increase
17 between the next preceding calendar year and the preceding
18 calendar year of the consumer price index for the United
19 States, all items, as published by the United States
20 department of labor;

21 (b) multiplied by the school district's
22 program units; and

23 (c) multiplied further by the tax rate
24 imposed by the school district.

25 B. The amount in Item 3) of Subparagraph (a) of

1 Paragraph (1) of Subsection A of this section shall be equal
2 to the sum of:

3 (1) for fiscal year 2023, eighty-nine
4 dollars twenty-five cents (\$89.25); and in each subsequent
5 fiscal year, the amount for the previous fiscal year adjusted
6 by the percentage increase between the next preceding
7 calendar year and the preceding calendar year of the consumer
8 price index for the United States, all items, as published by
9 the United States department of labor; plus

10 (2) an additional amount certified to the
11 secretary by the public school capital outlay council. No
12 later than June 1 of each year, the council shall determine
13 the amount needed in the next fiscal year for public school
14 capital outlay projects pursuant to the Public School Capital
15 Outlay Act and the amount of revenue, from all sources,
16 available for the projects. If, in the sole discretion of
17 the council, the amount available exceeds the amount needed,
18 the council may certify an additional amount pursuant to this
19 paragraph; provided that the sum of the amount calculated
20 pursuant to this paragraph plus the amount in Paragraph (1)
21 of this subsection shall not result in a total statewide
22 distribution that, in the opinion of the council, exceeds
23 one-half of the total revenue estimated to be received from
24 taxes imposed pursuant to the Public School Capital
25 Improvements Act.

1 C. If a distribution is made to a school district
2 pursuant to Subsection A of this section, the secretary shall
3 make an additional distribution from the public school
4 capital improvements fund to the school district in an amount
5 equal to the product of:

6 (1) fifty-three dollars (\$53.00);

7 (2) multiplied by the sum of the school
8 district's program units;

9 (3) multiplied further by the greater of
10 six percent or the percentage calculated pursuant to
11 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978;
12 and

13 (4) multiplied further by the tax rate
14 imposed by the school district.

15 D. In expending distributions made pursuant to
16 this section, school districts and charter schools shall give
17 priority to maintenance projects, including payments under
18 contracts with regional education cooperatives for
19 maintenance support services. In addition, distributions
20 made pursuant to this section may be expended by school
21 districts and charter schools as follows, but no distribution
22 from the public school capital improvements fund may be used
23 for capital improvements to any administration building of a
24 school district:

25 (1) for the school district portion of the

1 total project cost for roof repair or replacement required by
2 Section 22-24-4.3 NMSA 1978; or

3 (2) for the school district portion of
4 payments made under a financing agreement entered into by a
5 school district or a charter school for the leasing of a
6 building or other real property with an option to purchase
7 for a price that is reduced according to the payments made,
8 if the school district has received a grant for the
9 state share of the payments pursuant to Subsection D of
10 Section 22-24-5 NMSA 1978.

11 E. In the event that sufficient funds are not
12 available in the public school capital improvements fund to
13 make the distributions pursuant to this section, the dollar
14 per program unit figure shall be reduced as necessary.

15 F. A portion of each distribution made by the
16 state pursuant to this section shall be further distributed
17 by the school district to each locally chartered or state-
18 chartered charter school located within the school district.
19 The amount to be distributed to each charter school shall be
20 in the same proportion as the average full-time-equivalent
21 enrollment of the charter school on the second and third
22 reporting dates of the prior school year is to the total such
23 enrollment in the school district; provided that, in
24 determining the school district's total enrollment, charter
25 school students located within the school district shall be

1 included; and provided further that no distribution shall be
2 made to an approved charter school that had not commenced
3 classroom instruction in the prior school year. Each year,
4 the department shall certify to the school district the
5 amount to be distributed to each charter school.

6 Distributions received by a charter school pursuant to this
7 subsection shall be expended pursuant to the provisions of
8 the Public School Capital Improvements Act; except that if
9 capital improvements for the charter school were not
10 identified in a resolution approved by the electors, the
11 charter school may expend the distribution for any capital
12 improvements, including those specified in Subsection D of
13 this section.

14 G. In making distributions pursuant to this
15 section, the secretary shall include such reporting
16 requirements and conditions as are required by rule of the
17 public school capital outlay council. The council shall
18 adopt such requirements and conditions as are necessary to
19 ensure that the distributions are expended in the most
20 prudent manner possible and are consistent with the original
21 purpose as specified in the authorizing resolution. Copies
22 of reports or other information received by the secretary in
23 response to the requirements and conditions shall be
24 forwarded to the council.

25 H. As used in this section:

1 (1) "capital improvements tax" means the
2 tax authorized pursuant to the Public School Capital
3 Improvements Act;

4 (2) "estimated tax revenue" means the
5 revenue estimated to be received by a school district from
6 the capital improvements tax, using prior year valuations and
7 assuming a one hundred percent collection rate;

8 (3) "program units" means a school
9 district's final program units determined pursuant to
10 Sections 22-8-19, 22-8-20 through 22-8-23.1 and 22-8-23.3
11 NMSA 1978 generated in the previous fiscal year, including
12 such program units generated by a charter school located
13 within the school district; and

14 (4) "tax rate" means the rate approved by
15 the qualified electors in the most recent election on the
16 question of imposing a tax pursuant to the Public School
17 Capital Improvements Act."

18 SECTION 8. TEMPORARY PROVISION--ELIMINATION OF CURRENT
19 OFFSETS.--All current outstanding offsets held against school
20 districts or charter schools for a direct legislative
21 appropriation shall be eliminated on the effective date of
22 this act.

23 SECTION 9. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2023. _____