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HOUSE BILL 149

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO CHARTER SCHOOLS; AMENDING THE DEFINITION FOR
"QUALIFIED ENTITY" IN THE NEW MEXICO FINANCE AUTHORITY ACT TO
INCLUDE A NONPROFIT FOUNDATION OR SUPPORT ORGANIZATION
AFFILIATED WITH A CHARTER SCHOOL; AUTHORIZING THE NEW MEXICO
FINANCE AUTHORITY TO MAKE LOANS FROM THE CHARTER SCHOOL
FACILITY REVOLVING FUND TO NONPROFIT FOUNDATIONS OR SUPPORT
ORGANIZATIONS AFFILIATED WITH CHARTER SCHOOLS; REQUIRING THAT
THE AMOUNT OF A GRANT FROM THE PUBLIC SCHOOL CAPITAL OUTLAY
FUND FOR LEASE ASSISTANCE TO A CHARTER SCHOOL BE THE GREATEST
OF THE POSSIBLE AUTHORIZED AMOUNTS; LIMITING A CHARTER SCHOOL'S
LOCAL SHARE OF A PUBLIC SCHOOL CAPITAL OUTLAY PROJECT QUALIFIED
UNDER THE EDUCATIONAL ADEQUACY CATEGORY TO TEN PERCENT; MAKING
CONFORMING AMENDMENTS; MAKING A TRANSFER FROM THE PUBLIC SCHOOL
CAPITAL OUTLAY FUND TO THE CHARTER SCHOOL FACILITY REVOLVING
FUND.

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

SECTION 1. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3, as amended) is amended to read:

"6-21-3. DEFINITIONS.--As used in the New Mexico Finance Authority Act:

A. "authority" means the New Mexico finance authority;

B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "emergency public project" means a public project:

(1) made necessary by an unforeseen occurrence or circumstance threatening the public health, safety or welfare; and

(2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;

E. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including land; buildings; water rights; water, sewerage and waste disposal systems; streets; housing; airports; municipal

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1 utilities; public recreational facilities; public
2 transportation systems; parking facilities; and machinery,
3 furniture and equipment. "Public project" includes all
4 proposed expenditures related to the entire undertaking.
5 "Public project" also includes the acquisition, construction or
6 improvement of real property, buildings, facilities and other
7 assets by the authority for the purpose of leasing the
8 property;

9 F. "qualified entity" means the state or an
10 agency or institution of the state or a county; a municipality;
11 a school district; a two-year public post-secondary educational
12 institution; a charter school; a land grant corporation; an
13 acequia association; a public improvement district; a federally
14 chartered college located in New Mexico; an intercommunity
15 water or natural gas supply association or corporation; a
16 special water, a drainage, an irrigation or a conservancy
17 district or other special district created pursuant to law; a
18 rural electric cooperative pursuant to the Rural Electric
19 Cooperative Act; a nonprofit foundation or other support
20 organization affiliated with a public university, college or
21 other higher educational institution located in New Mexico,
22 including a university research park corporation; a nonprofit
23 foundation or other support organization affiliated with a
24 charter school and organized for the purpose of acquiring,
25 developing, financing or improving the charter school's

1 facility; a nonprofit housing developer; an Indian nation,
2 tribe or pueblo located wholly or partially in New Mexico,
3 including a political subdivision or a wholly owned enterprise
4 of an Indian nation, tribe or pueblo or a consortium of those
5 Indian entities; or a consortium of any two or more qualified
6 entities created pursuant to law; and

7 G. "security" or "securities", unless the context
8 indicates otherwise, means bonds, notes or other evidence of
9 indebtedness that are issued by a qualified entity or leases or
10 certificates or other evidence of participation in the lessor's
11 interest in and rights under a lease with a qualified entity
12 and that are payable from taxes, revenues, rates, charges,
13 assessments or user fees or from the proceeds of funding or
14 refunding bonds, notes or other evidence of indebtedness of a
15 qualified entity or from certificates or evidence of
16 participation in a lease with a qualified entity."

17 SECTION 2. Section 6-21-6.16 NMSA 1978 (being Laws 2022,
18 Chapter 19, Section 1) is amended to read:

19 "6-21-6.16. CHARTER SCHOOL FACILITY LOANS--CHARTER SCHOOL
20 FACILITY REVOLVING FUND--CREATED--REPORTS.--

21 A. The [~~New Mexico finance~~] authority may receive
22 and review applications for charter school facility loans
23 pursuant to this section. The authority shall adopt rules to
24 govern the application procedures and requirements for
25 disbursing charter school facility loans and for determining

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1 the eligibility of charter schools for loans. The authority
2 may make loans to a qualified entity that is a charter school
3 or a nonprofit foundation or support organization affiliated
4 with a charter school for the purchase, construction, expansion
5 or renovation of facilities or to pay off lease-purchase
6 agreements; provided that an application shall include:

7 (1) evidence that any lease-purchase
8 agreements are in accordance with the Public School Lease
9 Purchase Act;

10 (2) evidence that a charter school's charter
11 has been renewed at least once; and

12 (3) a review of the last two audits of the
13 charter school or nonprofit foundation or support organization.

14 B. If applicable, the authority may consult with
15 the applicant's authorizer in evaluating applications; provided
16 that a final determination shall be made solely by the
17 authority.

18 C. Receipts from the repayment of principal or
19 interest accrued on the charter school facility loans made and
20 other fees or charges paid to the ~~[New Mexico finance]~~
21 authority in connection with charter school facility loans
22 shall be deposited in the charter school facility revolving
23 fund.

24 D. The "charter school facility revolving fund" is
25 created within the ~~[New Mexico finance]~~ authority. The fund

1 consists of appropriations, gifts, grants, donations and money
2 otherwise accruing to the fund. The fund shall be administered
3 by the authority as a separate account and may consist of such
4 subaccounts as the authority deems necessary to carry out the
5 purposes of the fund. The authority may establish procedures
6 for administering the fund in accordance with the provisions of
7 this section. Balances in the fund at the end of a fiscal year
8 shall not revert to any other fund.

9 E. Money in the charter school facility revolving
10 fund is appropriated to the [~~New Mexico finance~~] authority to
11 make charter school facility loans and to pay the reasonably
12 necessary administrative and other costs incurred by the
13 authority in evaluating, processing, originating and servicing
14 loans.

15 F. Money in the charter school facility revolving
16 fund that is not needed for immediate disbursement, including
17 money held in reserve, may be deposited or invested in the same
18 manner as other funds administered by the [~~New Mexico finance~~]
19 authority.

20 G. Prior to December 1, 2023 and each December 1
21 thereafter, the [~~New Mexico finance~~] authority shall submit a
22 report to the New Mexico finance authority oversight committee.
23 The report shall provide details regarding any loans made
24 pursuant to this section.

25 H. The [~~New Mexico finance~~] authority may exercise

1 any power provided to the authority in the New Mexico Finance
2 Authority Act to assist in the administration of this section;
3 provided that the power is consistent with the provisions of
4 that act."

5 SECTION 3. Section 22-24-4 NMSA 1978 (being Laws 1975,
6 Chapter 235, Section 4, as amended) is amended to read:

7 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
8 USE.--

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

12 B. Except as provided in Subsections G and I
13 through N of this section, money in the fund may be used only
14 for capital expenditures deemed necessary by the council for an
15 adequate educational program.

16 C. The council may authorize the purchase by the
17 authority of portable classrooms to be loaned to school
18 districts to meet a temporary requirement. Payment for these
19 purchases shall be made from the fund. Title to and custody of
20 the portable classrooms shall rest in the authority. The
21 council shall authorize the lending of the portable classrooms
22 to school districts upon request and upon finding that
23 sufficient need exists. Application for use or return of
24 state-owned portable classroom buildings shall be submitted by
25 school districts to the council. Expenses of maintenance of

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1 the portable classrooms while in the custody of the authority
2 shall be paid from the fund; expenses of maintenance and
3 insurance of the portable classrooms while in the custody of a
4 school district shall be the responsibility of the school
5 district. The council may authorize the permanent disposition
6 of the portable classrooms by the authority with prior approval
7 of the state board of finance.

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

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

20 F. Money in the fund shall be disbursed by warrant
21 of the department of finance and administration on vouchers
22 signed by the secretary of finance and administration following
23 certification by the council that an application has been
24 approved or an expenditure has been ordered by a court pursuant
25 to Section 22-24-5.4 NMSA 1978. At the discretion of the

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1 council, money for a project shall be distributed as follows:

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

8 (2) the council may authorize payments
9 directly to the contractor.

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

16 (1) the total annual expenditures from the
17 fund for the core administrative functions pursuant to this
18 subsection shall not exceed five percent of the average annual
19 grant assistance authorized from the fund during the five
20 previous fiscal years; and

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

24 H. The fund may be expended by the council for
25 building system repair, renovation or replacement initiatives

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1 with projects to be identified by the council pursuant to
2 Section 22-24-4.6 NMSA 1978; provided that money allocated
3 pursuant to this subsection shall be expended within three
4 years of the allocation.

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

16 (1) the amount of a grant to a school district
17 or charter school:

18 (a) shall not exceed ~~[(a)]~~ the actual
19 annual lease payments owed for leasing a facility; ~~[or]~~ and

20 (b) ~~[seven hundred dollars (\$700)]~~ shall
21 not be less than one thousand fifty-two dollars (\$1,052)
22 multiplied by the MEM using the leased facilities; provided
23 that in fiscal year ~~[2009]~~ 2027 and in each subsequent fiscal
24 year, this amount shall be adjusted by the percentage change
25 between the penultimate calendar year and the immediately

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1 preceding calendar year of the consumer price index for the
2 United States, all items, as published by the United States
3 department of labor;

4 (2) a grant received for the lease payments of
5 a charter school may be used by that charter school as a state
6 match necessary to obtain federal grants pursuant to the
7 federal Every Student Succeeds Act or for the repayment of
8 principal or interest accrued on a charter school facility loan
9 made and other fees or charges imposed by the New Mexico
10 finance authority in connection with the charter school
11 facility loan;

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

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

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

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

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

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

8 (6) as used in this subsection:

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

19 (b) "facilities" includes the space
20 needed for school activities.

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

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

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

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

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

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

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

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

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1 L. Upon application by a school district,
2 allocations from the fund may be made by the council for the
3 purpose of demolishing abandoned school district facilities;
4 provided that:

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

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

11 (3) the council may enter into an agreement
12 with the school district to fully fund the demolition of the
13 abandoned school district facility if Paragraphs (1) and (2) of
14 this subsection are satisfied.

15 M. The fund may be expended in each of fiscal years
16 2020 through 2024 for a pre-kindergarten classroom facilities
17 initiative project in accordance with Section 22-24-12 NMSA
18 1978.

19 N. The council may fund pre-kindergarten classrooms
20 with a qualifying, awarded standards-based project; provided
21 that pre-kindergarten classroom space shall not be included in
22 the project prioritization calculation adopted by the council
23 pursuant to Section 22-24-5 NMSA 1978. The council shall
24 develop pre-kindergarten classroom standards to use when
25 funding pre-kindergarten space."

1 SECTION 4. Section 22-24-5 NMSA 1978 (being Laws 1975,
2 Chapter 235, Section 5, as amended by Laws 2025, Chapter 16,
3 Section 1 and by Laws 2025, Chapter 82, Section 4) is amended
4 to read:

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

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

10 B. Except as provided in Sections 22-24-4.3,
11 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
12 govern grant assistance from the fund for a public school
13 capital outlay project not wholly funded pursuant to Section
14 22-24-4.1 NMSA 1978:

15 (1) all school districts are eligible to apply
16 for funding from the fund, regardless of percentage of
17 indebtedness;

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

21 (a) the council shall apply the
22 standards to charter schools to the same extent that they are
23 applied to other public schools;

24 (b) the council may award grants
25 annually to school districts for the purpose of repairing,

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1 renovating or replacing public school building systems in
2 existing buildings as identified in Section 22-24-4.6 NMSA
3 1978;

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

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

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

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

19 (b) the potential use of more durable
20 construction materials that may reduce long-term operating
21 costs;

22 (c) concepts that promote efficient but
23 flexible utilization of space; and

24 (d) any other financing or construction
25 concept that may maximize the dollar effect of the state grant

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1 assistance;

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

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

8 (a) the sum of the final prior five
9 years net taxable value for a school district multiplied by
10 nine ten-thousandths for that school district is calculated for
11 each school district;

12 (b) the maximum allowable gross square
13 foot per student multiplied by the replacement cost per square
14 foot divided by forty-five is calculated for each school
15 district;

16 (c) the value calculated pursuant to
17 Subparagraph (a) of this paragraph divided by the value
18 calculated pursuant to Subparagraph (b) of this paragraph is
19 calculated for each school district;

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

24 (e) in those instances in which the
25 calculation pursuant to Subparagraph (c) of this paragraph

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1 yields a value of ninety-hundredths or more but less than one,
2 the phase two formula value shall be one minus the value
3 calculated in Subparagraph (c) of this paragraph; and

4 (f) in those instances in which the
5 calculation pursuant to Subparagraph (c) of this paragraph
6 yields a value less than ninety-hundredths, the phase two
7 formula value shall be one minus the value calculated in
8 Subparagraph (c) of this paragraph plus the school district
9 population density factor;

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

19 (a) for fiscal year 2024 through fiscal
20 year 2027, the percentage shall be the phase two formula value
21 plus a percentage equal to one-third of the difference between
22 one and the phase two formula value; provided that, for school
23 districts with fewer than 200 MEM, the percentage shall be the
24 phase two formula value plus a percentage equal to one-half of
25 the difference between one and the phase two formula; and

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1 (b) for fiscal year 2028 and thereafter,
2 the percentage shall be the phase two formula value;

3 (7) as used in this subsection:

4 (a) "governmental entity" includes an
5 Indian nation, tribe or pueblo;

6 (b) "phase two formula value" for a
7 state-chartered charter school means the phase two formula
8 value calculated pursuant to Paragraph (5) of this subsection
9 for the school district in which the state-chartered charter
10 school is physically located;

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

15 (d) "total project cost" means the total
16 amount necessary to complete the public school capital outlay
17 project less any insurance reimbursement received by the school
18 district for the project;

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

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1 (9) the council may adjust the amount of a
2 school district's local share otherwise required if it
3 determines that the school district has made a good-faith
4 effort to use all of its local resources. Before making any
5 adjustment to the local share, the council shall consider
6 whether:

7 (a) the school district has insufficient
8 bonding capacity over the next four years to provide the local
9 match necessary to complete the project and, for all
10 educational purposes, has a residential property tax rate of at
11 least ten dollars (\$10.00) on each one thousand dollars
12 (\$1,000) of taxable value, as measured by the sum of all rates
13 imposed by resolution of the local school board plus rates set
14 to pay interest and principal on outstanding school district
15 general obligation bonds; or

16 (b) the school district has fewer than
17 an average of one thousand five hundred full-time-equivalent
18 students on the second and third reporting dates of the prior
19 school year and has, for all educational purposes, [~~has~~] a
20 residential property tax rate of at least seven dollars (\$7.00)
21 on each one thousand dollars (\$1,000) of taxable value as
22 measured by the sum of all rates imposed by resolution of the
23 local school board plus rates set to pay interest and principal
24 on outstanding school district general obligation bonds;

25 (10) the local [~~match~~] share for the

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

9 (11) a charter school's local share for a
10 project that qualifies under the educational adequacy category
11 shall not exceed ten percent, and the local share for all other
12 projects shall be calculated in accordance with Paragraph (5)
13 of this subsection; and

14 [~~(11)~~] (12) no application for grant
15 assistance from the fund shall be approved unless the council
16 determines that:

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

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

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

25 (d) the school district has submitted

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

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

14 (f) the application includes the capital
15 needs of any charter school located in the school district or
16 the school district has shown that the facilities of the
17 charter school have a smaller deviation from the statewide
18 adequacy standards than other district facilities included in
19 the application; and

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

24 C. After consulting with the public school capital
25 outlay oversight task force and other experts, the council

1 shall regularly review and update statewide adequacy standards
2 applicable to all school districts. The standards shall
3 establish the acceptable level for the physical condition and
4 capacity of buildings, the educational suitability of
5 facilities and the need for career-technical education
6 facilities or classrooms. The council shall collaborate with
7 the office of broadband access and expansion in the development
8 of education technology infrastructure standards in accordance
9 with the provisions of the Broadband Access and Expansion Act
10 and apply those standards to the statewide adequacy standards.
11 Except as otherwise provided in the Public School Capital
12 Outlay Act, the amount of outstanding deviation from the
13 standards shall be used by the council in evaluating and
14 prioritizing public school capital outlay projects.

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

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

1 adequacy standards and the building standards for public school
2 facilities;

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

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

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

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

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

22 E. In order to encourage private capital investment
23 in the construction of public school facilities, the purchase
24 of a privately owned school facility that is, at the time of
25 application, in use by a school district may be considered a

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1 public school capital outlay project and eligible for grant
2 assistance pursuant to this section if the council finds that:

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

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

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

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

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

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

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

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

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

1 commission, the governor, the legislative finance committee,
2 the legislative education study committee and the legislature.

3 K. For any school district that received a
4 standards- or systems-based award from the council in fiscal
5 year 2023, the state share for any future phase of the project
6 for which funding has not yet been awarded shall be the amount
7 calculated pursuant to Subsection B of this section for fiscal
8 year 2024, regardless of the state share at the time of the
9 initial award.

10 L. As used in this section:

11 (1) "MEM" means membership; and

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

22 SECTION 5. TRANSFER.--On the effective date of this act,
23 twenty million dollars (\$20,000,000) is transferred from the
24 public school capital outlay fund to the charter school
25 facility revolving fund.

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