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SENATE BILL 513

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cynthia Nava

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL  
OUTLAY ACT TO PROVIDE FOR PREVENTIVE MAINTENANCE PLANS, A  
METHOD FOR CALCULATING AMOUNTS TO BE DISTRIBUTED AND A PUBLIC  
SCHOOL FACILITIES AUTHORITY; AMENDING THE TECHNOLOGY FOR  
EDUCATION ACT PERTAINING TO DISTRIBUTIONS; AMENDING CERTAIN  
SECTIONS OF THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT;  
AMENDING A CERTAIN SECTION OF THE PUBLIC SCHOOL CODE CONCERNING  
APPROVAL OF CONSTRUCTION; MAKING AN APPROPRIATION; DECLARING AN  
EMERGENCY.

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

Section 1. A new section of the Public School Capital  
Outlay Act is enacted to read:

" [NEW MATERIAL] PUBLIC SCHOOL FACILITIES AUTHORITY--  
CREATION-- POWERS AND DUTIES. --

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1           A. The "public school facilities authority" is  
2 created under the public school capital outlay council. The  
3 authority shall be headed by a director, selected by the  
4 council, who shall be versed in construction, architecture or  
5 project management. The director may hire no more than two  
6 deputies with the approval of the council, and, subject to  
7 budgetary constraints, shall employ or contract with such  
8 technical and administrative personnel as are necessary to  
9 carry out the provisions of this section. The director and  
10 deputies shall be exempt from the provisions of the Personnel  
11 Act; after July 1, 2004, all other employees of the authority  
12 shall be subject to the provisions of the Personnel Act.

13           B. The authority shall:

- 14                   (1) serve as staff to the council;
- 15                   (2) as directed by the council, provide those  
16 assistance and oversight functions required of the council by  
17 Section 22-24-5.1 NMSA 1978;
- 18                   (3) assist school districts with:
- 19                           (a) the development and implementation  
20 of five-year facilities plans and preventive maintenance plans;
- 21                           (b) architectural and engineering  
22 services;
- 23                           (c) construction management; and
- 24                           (d) training programs;
- 25                   (4) conduct ongoing reviews of five-year

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1 facilities plans, preventive maintenance plans and performance  
2 pursuant to those plans;

3 (5) ensure that public school capital outlay  
4 projects are in compliance with applicable building codes;

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

9 (7) where appropriate, require the use of  
10 standardized construction documents and the use of a  
11 standardized process for change orders;

12 (8) have access to the premises of a project  
13 and any documentation relating to the project;

14 (9) after consulting with the department of  
15 education, develop building standards for public school  
16 facilities and ensure compliance with those standards;

17 (10) maintain a database of the condition of  
18 school facilities and maintenance schedules; and

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

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

25 (b) shall work with school districts to

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1 provide direct oversight of the management and construction of  
2 the projects that will correct the outstanding deficiencies;

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

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

11 (e) may require the use of standardized  
12 construction documents and the use of a standardized process  
13 for change orders;

14 (f) may access the premises of a project  
15 and any documentation relating to the project; and

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

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

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1           Section 2. Section 22-20-1 NMSA 1978 (being Laws 1967,  
2 Chapter 16, Section 270, as amended) is amended to read:

3           "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE [STATE  
4 ~~SUPERINTENDENT~~] PUBLIC SCHOOL FACILITIES AUTHORITY. --

5           A. Each local school board shall secure the  
6 approval of the [~~state superintendent~~] director of the public  
7 school facilities authority or his designee prior to the  
8 construction or letting of contracts for construction of any  
9 school building or related school structure or before reopening  
10 an existing structure [~~which~~] that was formerly used as a  
11 school building but [~~which~~] that has not been used for that  
12 purpose during the previous year. [~~It shall not be required to~~  
13 ~~obtain approval from the state superintendent for enlarging an~~  
14 ~~existing attendance center which is now in use, unless the~~  
15 ~~enlargement is for the purpose of changing the character of the~~  
16 ~~attendance center from an elementary school to a secondary~~  
17 ~~school or adding an elementary school to a secondary school or~~  
18 ~~a secondary school to an elementary school.] A written  
19 application shall be submitted to the [~~state superintendent~~]  
20 director requesting approval of the construction, and, upon  
21 receipt, the director shall forward a copy of the application  
22 to the state superintendent. The [~~state superintendent~~]  
23 director shall prescribe the form of the application, which  
24 shall include the following:~~

- 25                           (1) a statement of need;

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- 1 (2) the anticipated number of students  
2 affected by the construction;
- 3 (3) the estimated cost;
- 4 (4) a description of the proposed construction  
5 or structure to be built; ~~and~~
- 6 (5) a map of the area showing existing school  
7 attendance centers within a five-mile radius and any  
8 obstructions to attending the attendance centers, such as but  
9 not limited to railroad tracks, rivers and limited-access  
10 highways; and
- 11 (6) such other information as may be required  
12 by the director.

13 B. The ~~[state superintendent]~~ director or his  
14 designee shall give his approval to an application if he  
15 reasonably determines that:

- 16 (1) the construction will not cause an  
17 unnecessary proliferation of school construction;
- 18 (2) the construction is needed in the school  
19 district;
- 20 (3) the construction is feasible;
- 21 (4) the cost of the construction is  
22 reasonable; ~~and~~
- 23 (5) the school district is financially able to  
24 pay for the construction; and
- 25 (6) the state superintendent has certified

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1 that the construction will support the educational program of  
2 the school district.

3 C. Within thirty days after the receipt of an  
4 application filed pursuant to this section, the [~~state~~  
5 ~~superintendent~~] director or his designee shall in writing  
6 notify the local school board making the application and the  
7 department of education of his approval or disapproval of the  
8 application. "

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

11 "22-24-4. FUND CREATED--USE. --

12 A. There is created the "public school capital  
13 outlay fund". Balances remaining in the fund at the end of  
14 each fiscal year shall not revert.

15 B. Except as provided in Subsections G and H of  
16 this section, money in the fund may be used only for capital  
17 expenditures deemed by the council necessary for an adequate  
18 educational program

19 C. The council may authorize the purchase by the  
20 property control division of the general services department of  
21 property to be loaned to school districts to meet a temporary  
22 requirement. Payment for these purchases shall be made from  
23 the fund. Title and custody to the property shall rest in the  
24 property control division. The council shall authorize the  
25 lending of the property to school districts upon request and

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

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

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

22 F. Money in the fund shall be disbursed by warrant  
23 of the department of finance and administration on vouchers  
24 signed by the secretary of finance and administration following  
25 certification by the council that an application has been

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1 approved.

2 ~~[G. Not more than three percent of the supplemental~~  
3 ~~severance tax bond proceeds appropriated to the fund pursuant~~  
4 ~~to Section 7-27-12.2 NMSA 1978, the severance tax bond proceeds~~  
5 ~~appropriated to the fund pursuant to Laws 2001, Chapter 338,~~  
6 ~~Section 14 and the general fund appropriation to the fund~~  
7 ~~pursuant to Subsection D of Section 15 of Chapter 338 of Laws~~  
8 ~~2001 for the purpose of correcting outstanding deficiencies~~  
9 ~~pursuant to Sections 22-24-4.1 and 22-24-4.2 NMSA 1978 may be~~  
10 ~~expended by the council for project management expenses.~~

11 ~~H. Of the appropriation made to the fund by~~  
12 ~~Subsection D of Section 15 of Chapter 338 of Laws 2001 for the~~  
13 ~~purpose of correcting outstanding deficiencies pursuant to~~  
14 ~~Sections 22-24-4.1 and 22-24-4.2 NMSA 1978, one million one~~  
15 ~~hundred thousand dollars (\$1,100,000) is appropriated to the~~  
16 ~~council for expenditure in fiscal year 2003 for the core~~  
17 ~~administrative functions of the deficiencies corrections unit.~~  
18 ~~Any unexpended or unencumbered balance remaining at the end of~~  
19 ~~fiscal year 2003 shall revert to the fund.] At the discretion~~  
20 ~~of the council, money for a project shall be distributed as~~  
21 ~~follows:~~

22 ~~(1) up to ten percent of the portion of the~~  
23 ~~project cost funded with distributions from the fund or five~~  
24 ~~percent of the total project cost, whichever is greater, may be~~  
25 ~~paid to the school district before work commences with the~~

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1 balance of the grant award made on a cost-reimbursement basis;  
2 or

3 (2) the council may make payments directly to  
4 the contractor.

5 G. An amount up to five percent of the average  
6 annual grant assistance authorized from the fund during the  
7 three previous fiscal years may annually be expended for on-  
8 site project management expenses.

9 H. Up to one million dollars (\$1,000,000) of the  
10 balances of the fund may be expended in fiscal years 2003 and  
11 2004 by the council for the purpose of updating and refining  
12 the statewide assessment study required by Section 22-24-5 NMSA  
13 1978 and for the training of state and local officials on the  
14 use of the database and other data management related issues  
15 identified by the council."

16 Section 4. A new section of the Public School Capital  
17 Outlay Act, Section 22-24-5.3 NMSA 1978, is enacted to read:

18 "22-24-5.3. [NEW MATERIAL] PREVENTIVE MAINTENANCE PLANS--  
19 GUIDELINES-- APPROVAL. --

20 A. The council shall adopt guidelines that will  
21 assist school districts in the development and implementation  
22 of preventive maintenance plans. In developing the guidelines,  
23 the council shall ensure that they are not overly complex, that  
24 they are user-friendly and that they take into account the  
25 geographic and size variations of the districts throughout the

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1 state. The guidelines shall include the major requirements  
2 for:

3 (1) establishing and implementing a preventive  
4 maintenance plan;

5 (2) necessary budgets, personnel and staff  
6 support;

7 (3) staff training; and

8 (4) evaluation and auditing.

9 B. To the extent resources are available, the  
10 council shall provide assistance to districts in developing and  
11 implementing a preventive maintenance plan.

12 C. For project allocation cycles beginning after  
13 September 1, 2003, a school district shall not be eligible for  
14 funding pursuant to Section 22-24-5 NMSA 1978 unless the  
15 district has a preventive maintenance plan that has been  
16 approved by the council.

17 D. As used in this section, "preventive  
18 maintenance" means the regularly scheduled repair and  
19 maintenance needed to keep a building component operating at  
20 peak efficiency and to extend its useful life. "Preventive  
21 maintenance" includes scheduled activities intended to prevent  
22 breakdowns and premature failures, including periodic  
23 inspections, lubrication, calibrations and replacement of  
24 expendable components of equipment. "

25 Section 5. Section 22-25-3 NMSA 1978 (being Laws 1975

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1 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

2 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT  
3 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION. -- [~~Any~~] A local  
4 school board may adopt a resolution to submit to the qualified  
5 electors of the school district the question of whether a  
6 property tax should be imposed upon the net taxable value of  
7 property allocated to the school district under the Property  
8 Tax Code at a rate not to exceed that specified in the  
9 resolution for the purpose of capital improvements in the  
10 school district. The resolution shall:

11 A. identify the capital improvements for which the  
12 revenue proposed to be produced will be used;

13 B. specify the rate of the proposed tax, which  
14 shall not exceed two dollars (\$2.00) on each one thousand  
15 dollars (\$1,000) of net taxable value of property allocated to  
16 the school district under the Property Tax Code;

17 C. specify the date an election will be held to  
18 submit the question of imposition of the tax to the qualified  
19 electors of the district; and

20 D. limit the imposition of the proposed tax to no  
21 more than [~~four~~] six property tax years. "

22 Section 6. Section 22-25-5 NMSA 1978 (being Laws 1975  
23 (S.S.), Chapter 5, Section 5, as amended) is amended to read:

24 "22-25-5. CONDUCT OF ELECTION--NOTICE--BALLOT. --

25 A. An election on the question of imposing a tax

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1 under the Public School Capital Improvements Act may be held in  
2 conjunction with a regular school district election or may be  
3 conducted as or held in conjunction with a special school  
4 district election, but the election shall be held prior to July  
5 1 of the property tax year in which the tax is proposed to be  
6 imposed. Conduct of the election shall be as prescribed in the  
7 School Election Law for regular and special school district  
8 elections.

9 B. The ~~[resolution]~~ proclamation required to be  
10 published as notice of the election under Section 1-22-4 or  
11 1-22-5 NMSA 1978 shall include as the question to be submitted  
12 to the voters whether a property tax at a rate not to exceed  
13 the rate specified in the authorizing resolution should be  
14 imposed for the specified number of property tax years not  
15 exceeding ~~[four]~~ six years upon the net taxable value of all  
16 property allocated to the school district for the capital  
17 improvements specified in the authorizing resolution.

18 C. The ballot shall include the information  
19 specified in Subsection B of this section and shall present the  
20 voter the choice of voting "for the public school capital  
21 improvements tax" or "against the public school capital  
22 improvements tax". "

23 Section 7. Section 22-25-8 NMSA 1978 (being Laws 1975  
24 (S.S.), Chapter 5, Section 8, as amended) is amended to read:

25 "22-25-8. TAX TO BE IMPOSED FOR A MAXIMUM OF ~~[FOUR]~~ SIX

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1 YEARS. -- A tax imposed in a school district as a result of an  
2 election under the Public School Capital Improvements Act shall  
3 be imposed for [~~one, two, three or four~~] a specified number of  
4 property tax years not exceeding six years commencing with the  
5 property tax year in which the election was held. The local  
6 school board may discontinue, by resolution, the Public School  
7 Capital Improvements Act tax levy at the end of [~~the first or~~  
8 ~~second year of the levy~~] any property tax year. The local  
9 school board shall direct that the Public School Capital  
10 Improvements Act tax levy be decreased by the amount required  
11 for any year in which the decrease is required by operation of  
12 the rate limitation provisions of Section 7-37-7.1 NMSA 1978. "

13 Section 8. Section 22-25-9 NMSA 1978 (being Laws 1975  
14 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

15 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING  
16 TAX UNDER CERTAIN CIRCUMSTANCES. --

17 A. Except as provided in Subsection C of this  
18 section, the state superintendent shall distribute to any  
19 school district that has imposed a tax under the Public School  
20 Capital Improvements Act an amount from the public school  
21 capital improvements fund that is equal to the amount by which  
22 the revenue estimated to be received from the imposed tax, at  
23 the rate certified by the department of finance and  
24 administration in accordance with Section 22-25-7 NMSA 1978,  
25 assuming a one hundred percent collection rate, is less than an

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1 amount calculated by multiplying the school district's first  
2 forty days' total program units by the dollar amount specified  
3 in Subsection B of this section and further multiplying the  
4 product obtained by the tax rate approved by the qualified  
5 electors in the most recent election on the question of  
6 imposing a tax under the Public School Capital Improvements  
7 Act. The distribution shall be made each year that the tax is  
8 imposed in accordance with Section 22-25-7 NMSA 1978; provided  
9 that no state distribution from the public school capital  
10 improvements fund may be used for capital improvements to any  
11 administration building of a school district. In the event  
12 that sufficient funds are not available in the public school  
13 capital improvements fund to make the state distribution  
14 provided for in this section, the dollar per program unit  
15 figure shall be reduced as necessary.

16 B. In calculating the state distribution pursuant  
17 to Subsection A of this section, the following amounts shall be  
18 used:

19 (1) fifty dollars (\$50.00) per program unit;

20 and

21 (2) for fiscal year 2005 and thereafter, an  
22 additional amount certified to the state superintendent by the  
23 public school capital outlay council. No later than June 1,  
24 2004 and each June 1 thereafter, the council shall determine  
25 the amount needed in the next fiscal year for public school

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1 capital outlay projects pursuant to the Public School Capital  
2 Outlay Act and the amount of revenue, from all sources,  
3 available for the projects. If, in the sole discretion of the  
4 council, the amount available exceeds the amount needed, the  
5 council may certify an additional amount pursuant to this  
6 paragraph; provided that the sum of the amount calculated  
7 pursuant to this paragraph plus the amount in Paragraph (1) of  
8 this subsection shall not result in a total statewide  
9 distribution that, in the opinion of the council, exceeds one  
10 half of the total revenue estimated to be received from taxes  
11 imposed pursuant to the Public School Capital Improvements Act.

12 C. For fiscal year 2004 and thereafter,  
13 notwithstanding the amount calculated to be distributed  
14 pursuant to Subsections A and B of this section, a school  
15 district, the voters of which have approved a tax pursuant to  
16 Section 22-25-3 NMSA 1978, shall not receive a distribution  
17 less than an amount equal to five dollars (\$5.00) multiplied by  
18 the school district's first forty days' total program units and  
19 further multiplying the product obtained by the approved tax  
20 rate.

21 D. In making distributions pursuant to this  
22 section, the state superintendent shall include such reporting  
23 requirements and conditions as are required by rule of the  
24 public school capital outlay council. The council shall adopt  
25 such requirements and conditions as are necessary to ensure

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1 that the distributions are expended in the most prudent manner  
2 possible and are consistent with the original purpose as  
3 specified in the authorizing resolution. Copies of reports or  
4 other information received by the state superintendent in  
5 response to the requirements and conditions shall be forwarded  
6 to the council."

7 Section 9. Section 22-24-5 NMSA 1978 (being Laws 1975,  
8 Chapter 235, Section 5, as amended) is amended to read:

9 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
10 APPLICATION-- GRANT ASSISTANCE. --

11 A. For project allocation cycles occurring before  
12 September 1, 2003, the council shall approve an application for  
13 grant assistance from the fund for a public school capital  
14 outlay project not wholly funded pursuant to Section 22-24-4.1  
15 NMSA 1978, when the council determines that:

- 16 (1) a need exists requiring action;
- 17 (2) the residents of the school district have  
18 provided available resources to the school district to meet its  
19 capital outlay requirements;
- 20 (3) the school district has used its capital  
21 resources in a prudent manner;
- 22 (4) the school district has provided insurance  
23 for buildings of the school district in accordance with the  
24 provisions of Section 13-5-3 NMSA 1978;
- 25 (5) the school district:

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1 (a) is indebted at not less than  
2 sixty-five percent of the total general obligation debt  
3 authorized by law; or

4 (b) within the last three years, was  
5 indebted at the level required in Subparagraph (a) of this  
6 paragraph and received a grant pursuant to this section for the  
7 initial stages of a project and currently has a critical need  
8 for an additional grant to complete the same project;

9 (6) the application includes:

10 (a) the capital needs of any charter  
11 schools located in the school district or the school district  
12 has shown that the capital needs of the charter schools are not  
13 as great as the capital needs requested in the application; and

14 (b) the facilities needed in the school  
15 district to implement a full-day kindergarten program or that  
16 the school district has shown that the need for facilities to  
17 implement the program is not as great as the capital needs  
18 requested in the application; provided that the total amount of  
19 assistance grants made in a fiscal year for the purpose of  
20 implementing full-day kindergarten programs shall not exceed  
21 five million dollars (\$5,000,000); and

22 (7) the school district has submitted a five-  
23 year facilities plan that includes:

24 (a) enrollment projections;

25 (b) a current preventive maintenance

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1 plan to which the school adheres for each public school in the  
2 district; and

3 (c) projections for the facilities  
4 needed in order to maintain a full-day kindergarten program.

5 B. The council shall consider all applications for  
6 assistance from the fund and, after a public hearing, shall  
7 either approve or deny the application. Applications for grant  
8 assistance shall only be accepted by the council after a school  
9 district has complied with the provisions of this section. The  
10 council shall list all applications in order of priority, and  
11 all allocations shall be made on a priority basis, except:

12 (1) twenty million dollars (\$20,000,000) of  
13 the proceeds from supplemental severance tax bonds available  
14 for the funding cycle in each of fiscal years 2002 and 2003  
15 shall be set aside for allocation solely for projects in school  
16 districts that are eligible for funding from the fund and that  
17 receive grants from the federal government as assistance to  
18 areas affected by federal activity authorized in accordance  
19 with Title 20 of the United States Code, commonly known as "PL  
20 874 funds" or "impact aid"; and

21 (2) in the case of an emergency, the order of  
22 priority shall first reflect those projects that have been  
23 previously funded but are not as yet completed, excluding  
24 expansion of those projects and contingent upon maintenance of  
25 the required local support.

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C. For allocation cycles beginning after  
September 1, 2003, the following provisions apply:

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

(2) priorities for funding shall be determined  
by using the statewide adequacy standards developed pursuant to  
Subsection D of this section; provided that the council shall  
apply the standards to charter schools to the same extent that  
they are applied to other public schools;

(3) after consulting with the staff architect  
of the property control division of the general services  
department, the council shall establish criteria to be used in  
public school capital outlay projects that receive grant  
assistance pursuant to the Public School Capital Outlay Act.  
In establishing the criteria, the council shall consider:

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

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

(c) any other financing or construction  
concept that may maximize the dollar effect of the state grant  
assistance;

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

4 (5) except as provided in Paragraph (6) or (8)  
5 of this subsection, the state share of a project approved and  
6 ranked by the council shall be funded within available  
7 resources in accordance with the following ~~[formula]~~ procedure:

8 ~~[(school district final prior year~~  
9 ~~assessed valuation per MEM ÷ the state~~  
10 ~~average final prior year assessed~~  
11 ~~valuation per MEM) x 0.5. The product is~~  
12 ~~subtracted from 1.0 and the difference is~~  
13 ~~then multiplied by seventy-five percent.~~  
14 ~~The product of that calculation added to~~  
15 ~~(the percent of bonding capacity used x~~  
16 ~~0.25) equals the percentage of the cost~~  
17 ~~of the approved project to be funded from~~  
18 ~~the fund. "MEM" means the total~~  
19 ~~enrollment of students attending public~~  
20 ~~school in a school district in the final~~  
21 ~~funded prior school year, with~~  
22 ~~kindergarten being counted as 0.5. In~~  
23 ~~those instances in which the formula~~  
24 ~~provides less than 0.1, 0.1 shall be used~~  
25 ~~as the state's share]~~

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1                   (a) the final prior year net taxable  
2 value for a school district divided by the MEM for that  
3 district is calculated for each school district;

4                   (b) the final prior year net taxable  
5 value for the whole state divided by the MEM for the state is  
6 calculated;

7                   (c) excluding any school district for  
8 which the result calculated pursuant to Subparagraph (a) of  
9 this paragraph is more than twice the result calculated  
10 pursuant to Subparagraph (b) of this paragraph, the results  
11 calculated pursuant to Subparagraph (a) of this paragraph are  
12 listed from highest to lowest;

13                   (d) the lowest value listed pursuant to  
14 Subparagraph (c) of this paragraph is subtracted from the  
15 highest value listed pursuant to that subparagraph;

16                   (e) the value calculated pursuant to  
17 Subparagraph (a) of this paragraph for the subject school  
18 district is subtracted from the highest value listed in  
19 Subparagraph (c) of this paragraph;

20                   (f) the result calculated pursuant to  
21 Subparagraph (e) of this paragraph is divided by the result  
22 calculated pursuant to Subparagraph (d) of this paragraph;

23                   (g) the sum of the property tax mill  
24 levies for the prior tax year imposed by each school district  
25 on residential property pursuant to Chapter 22, Article 18 NMSA

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1 1978, the Public School Capital Improvements Act, the Public  
2 School Buildings Act, the Education Technology Equipment Act  
3 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978  
4 is calculated for each school district;

5 (h) the lowest value calculated pursuant  
6 to Subparagraph (g) of this paragraph is subtracted from the  
7 highest value calculated pursuant to that subparagraph;

8 (i) the lowest value calculated pursuant  
9 to Subparagraph (g) of this paragraph is subtracted from the  
10 value calculated pursuant to that subparagraph for the subject  
11 school district;

12 (j) the value calculated pursuant to  
13 Subparagraph (i) of this paragraph is divided by the value  
14 calculated pursuant to Subparagraph (h) of this paragraph;

15 (k) if the value calculated for a  
16 subject school district pursuant to Subparagraph (j) of this  
17 paragraph is less than five-tenths, then, except as provided in  
18 Subparagraph (n) or (o) of this paragraph, the value calculated  
19 for that district pursuant to Subparagraph (f) of this  
20 paragraph equals the portion of the approved project to be  
21 funded from the fund;

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

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1                                   (m) if the value calculated for a  
2 subject school district pursuant to Subparagraph (j) of this  
3 paragraph is five-tenths or greater, then the value calculated  
4 pursuant to Subparagraph (l) of this paragraph is added to the  
5 value calculated pursuant to Subparagraph (f) of this  
6 paragraph. Except as provided in Subparagraph (n) or (o) of  
7 this paragraph, the sum equals the portion of the approved  
8 project to be funded from the fund;

9                                   (n) in those instances in which the  
10 calculation pursuant to Subparagraph (k) or (m) of this  
11 paragraph yields a value less than one-tenth, one-tenth shall  
12 be used as the portion of the approved project to be funded  
13 from the fund;

14                                   (o) in those instances in which the  
15 calculation pursuant to Subparagraph (k) or (m) of this  
16 paragraph yields a value greater than one, one shall be used as  
17 the portion of the approved project to be funded from the fund;

18                                   (p) except as reduced pursuant to  
19 Paragraph (6) of this subsection, the amount to be distributed  
20 from the fund for an approved project shall equal the value for  
21 the subject school district derived from Subparagraph (k), (m),  
22 (n) or (o) of this paragraph multiplied by the total project  
23 cost; and

24                                   (q) as used in this paragraph, "MEM"  
25 means the total enrollment of students attending public school



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1 in a school district in the final funded prior school year,  
2 with kindergarten being counted as five-tenths;

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

6 (a) the total of all legislative  
7 appropriations made after January 1, 2003 directly to, and not  
8 rejected by, the subject school district for non-operating  
9 purposes, excluding educational technology, is calculated;

10 (b) the applicable amount for the  
11 subject school district calculated from Subparagraph (k), (m),  
12 (n) or (o) of Paragraph (5) of this subsection is subtracted  
13 from one;

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

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

23 (e) the amount calculated pursuant to  
24 Subparagraph (p) of Paragraph (5) of this subsection shall be  
25 reduced by the amount calculated pursuant to Subparagraph (d)

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1 of this paragraph;

2 (7) as used in Paragraphs (5) and (6) of this  
3 subsection, "subject school district" means the school district  
4 that has submitted the application for funding and in which the  
5 approved public school capital outlay project will be located;

6 ~~[(6)]~~ (8) in those instances in which a school  
7 district has used all of its local resources, the council may  
8 fund up to the total amount of a project; and

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

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

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

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

20 (d) the school district has submitted a  
21 five-year facilities plan that includes: 1) enrollment  
22 projections; 2) a current preventive maintenance plan ~~[to which~~  
23 ~~the school adheres for]~~ that has been approved by the council  
24 pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by  
25 each public school in the district; and 3) projections for the

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1 facilities needed in order to maintain a full-day kindergarten  
2 program;

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

8 (f) the application includes the capital  
9 needs of any charter schools located in the school district or  
10 the school district has shown that the facilities of the  
11 charter schools in the district meet the statewide adequacy  
12 standards; 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 22-24-5.1  
16 NMSA 1978.

17 D. After consulting with the public school capital  
18 outlay task force and other experts, [~~no later than September~~  
19 ~~1, 2002~~] the council shall develop and regularly review and  
20 update statewide adequacy standards applicable to all school  
21 districts. The standards shall establish the minimum  
22 acceptable level for the physical condition and capacity of  
23 buildings, the educational suitability of facilities and the  
24 need for technological infrastructure. The amount of  
25 outstanding deviation from the standards shall be used by the

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1 council after September 1, 2003 in evaluating and prioritizing  
2 public school capital outlay projects.

3 E. It is the intent of the legislature that grant  
4 assistance made pursuant to this section allow every school  
5 district to meet the standards developed pursuant to Subsection  
6 D of this section; provided, however, that nothing in the  
7 Public School Capital Outlay Act or the development of  
8 standards pursuant to that act prohibits a school district from  
9 using local funds to exceed the statewide adequacy standards.

10 F. Upon request, the council shall work with, and  
11 provide assistance and information to, the public school  
12 capital outlay task force.

13 G. The council may establish committees or task  
14 forces, not necessarily consisting of council members, and may  
15 use the committees or task forces, as well as existing agencies  
16 or organizations, to conduct studies, conduct surveys, submit  
17 recommendations or otherwise contribute expertise from the  
18 public schools, programs, interest groups and segments of  
19 society most concerned with a particular aspect of the  
20 council's work.

21 H. The council shall promulgate such rules as are  
22 necessary to carry out the provisions of the Public School  
23 Capital Outlay Act.

24 I. No later than December 1 of each year, the  
25 council shall prepare a report summarizing its activities

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1 during the previous fiscal year. The report shall describe in  
2 detail all projects funded, the progress of projects previously  
3 funded but not completed, the criteria used to prioritize and  
4 fund projects and all other council actions. The report shall  
5 be submitted to the state board, the governor, the legislative  
6 finance committee, the legislative education study committee  
7 and each member of the legislature."

8 Section 10. Section 22-15A-9 NMSA 1978 (being Laws 1994,  
9 Chapter 96, Section 9, as amended) is amended to read:

10 "22-15A-9. EDUCATIONAL TECHNOLOGY FUND-- DISTRIBUTION. --

11 A. Upon annual review and approval of a school  
12 district's educational technology plan, the bureau shall  
13 determine a separate distribution from the educational  
14 technology fund for each school district.

15 B. On or before July 31 of each year, the bureau  
16 shall distribute money in the educational technology fund  
17 directly to each school district in an amount equal to ninety  
18 percent of the district's estimated adjusted entitlement  
19 calculated pursuant to Subsection C of this section. A school  
20 district's unadjusted entitlement is that portion of the total  
21 amount of the annual appropriation that the projected  
22 membership bears to the projected membership of the state.  
23 Kindergarten membership shall be calculated on a one-half full-  
24 time equivalent basis.

25 [~~C. After calculation of a school district's~~

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1 ~~unadjusted entitlement as provided in Subsection B of this~~  
2 ~~section, the bureau shall calculate a base allocation for each~~  
3 ~~school district by multiplying the total annual appropriation~~  
4 ~~by a base equity factor of seventy-five thousandths of one~~  
5 ~~percent. The adjusted entitlement amount for each school~~  
6 ~~district whose entitlement falls at or below the base~~  
7 ~~allocation amount shall be an amount equal to the base~~  
8 ~~allocation. The bureau shall then subtract from the total~~  
9 ~~annual appropriation amount the total of the adjusted~~  
10 ~~entitlement amounts calculated for distribution to those school~~  
11 ~~districts that will receive the base allocation amounts and~~  
12 ~~subtract from the total projected state membership the~~  
13 ~~membership of those school districts that will receive the base~~  
14 ~~allocation amount. The adjusted entitlement amount for each of~~  
15 ~~the remaining school districts shall be the amount of the~~  
16 ~~adjusted annual appropriation that the projected membership of~~  
17 ~~each remaining district bears to the projected membership of~~  
18 ~~all remaining districts.]~~

19 C. A school district's estimated adjusted  
20 entitlement shall be calculated by the bureau using the  
21 following procedure:

22 (1) a base allocation is calculated by  
23 multiplying the total annual appropriation by seventy-five  
24 thousandths of one percent;

25 (2) the estimated adjusted entitlement amount

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1 for a school district whose unadjusted entitlement is at or  
2 below the base allocation shall be equal to the base  
3 allocation. For a school district whose unadjusted entitlement  
4 is higher than the base allocation, the estimated adjusted  
5 entitlement shall be calculated pursuant to Paragraphs (3)  
6 through (13) of this subsection;

7 (3) the total projected membership in those  
8 school districts that will receive the base allocation pursuant  
9 to Paragraph (2) of this subsection is subtracted from the  
10 total projected state membership;

11 (4) the total of the estimated adjusted  
12 entitlement amounts that will be distributed to those school  
13 districts receiving the base allocation pursuant to Paragraph  
14 (2) of this subsection is subtracted from the total  
15 appropriation;

16 (5) the projected membership for the district  
17 is divided by the result calculated pursuant to Paragraph (3)  
18 of this subsection;

19 (6) the number calculated pursuant to  
20 Paragraph (5) of this subsection is multiplied by the value  
21 calculated pursuant to Paragraph (4) of this subsection;

22 (7) the total of all legislative  
23 appropriations made after January 1, 2003 for educational  
24 technology directly to, and not rejected by, the school  
25 district is calculated. No later than June 30 of each year,

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1 the legislative council service shall certify to the bureau the  
2 amount of direct appropriations made to each school district  
3 during the preceding twelve months;

4 (8) the applicable amount for the school  
5 district calculated from Subparagraph (k), (m), (n) or (o) of  
6 Paragraph (5) of Subsection C of Section 22-24-5 NMSA 1978 is  
7 subtracted from one;

8 (9) the value calculated pursuant to Paragraph  
9 (7) of this subsection for the school district is multiplied by  
10 the amount calculated pursuant to Paragraph (8) of this  
11 subsection for that school district;

12 (10) the total amount of reductions for the  
13 school district made in prior fiscal years pursuant to  
14 Paragraph (11) of this subsection is subtracted from the amount  
15 calculated pursuant to Paragraph (9) of this subsection for  
16 that school district;

17 (11) the amount calculated for the school  
18 district pursuant to Paragraph (10) of this subsection is  
19 subtracted from the amount calculated pursuant to Paragraph (6)  
20 of this subsection for that school district;

21 (12) if the amount calculated for the school  
22 district pursuant to Paragraph (11) of this subsection is equal  
23 to or less than the base allocation amount, the estimated  
24 adjusted entitlement amount for that school district is equal  
25 to the base allocation amount; and

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1                                   (13) if the amount calculated for the school  
2 district pursuant to Paragraph (11) of this subsection is more  
3 than the base allocation amount, the estimated adjusted  
4 entitlement amount for that school district is equal to the  
5 amount calculated pursuant to that paragraph.

6                                   D. On or before January 30 of each year, the bureau  
7 shall recompute each adjusted entitlement using the final  
8 funded membership for that year and, without making any  
9 additional reductions, shall allocate the balance of the annual  
10 appropriation adjusting for any over- or under- projection of  
11 membership.

12                                  E. Any school district receiving funding pursuant  
13 to the Technology for Education Act is responsible for the  
14 purchase, distribution, use and maintenance of educational  
15 technology.

16                                  F. As used in this section, "membership" means the  
17 total enrollment of qualified students, as defined in the  
18 Public School Finance Act, on the current roll of class or  
19 school on a specified day. The current roll is established by  
20 the addition of original entries and re-entries minus  
21 withdrawals. Withdrawal of students, in addition to students  
22 formally withdrawn from the public school, includes students  
23 absent from the public school for as many as ten consecutive  
24 school days. "

25                                  Section 11. Section 22-15A-10 NMSA 1978 (being Laws 1994,

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1 Chapter 96, Section 10) is amended to read:

2 "22-15A-10. ANNUAL REPORT. -- Annually, at a time specified  
3 by the department of education, each [~~local~~] school district  
4 receiving distributions from the educational technology fund  
5 shall file a report with the department of education regarding  
6 distributions received, direct legislative appropriations for  
7 educational technology made and not rejected, expenditures made  
8 and educational technology obtained by the district and such  
9 other related information as may be required by the department  
10 of education. "

11 Section 12. TEMPORARY PROVISION--TRANSFER. -- On July 1,  
12 2003:

13 A. all personnel of the deficiencies correction  
14 unit of the public school capital outlay council and up to four  
15 full-time employees of the capital outlay unit of the state  
16 department of public education are transferred to the public  
17 school facilities authority. The superintendent of public  
18 instruction and the public school capital outlay council shall  
19 jointly determine the employees of the capital outlay unit to  
20 be transferred pursuant to this subsection; provided that  
21 employees subject to the provisions of the Personnel Act prior  
22 to the transfer shall remain subject to the provisions of that  
23 act subsequent to the transfer;

24 B. all appropriations, money, records, property,  
25 equipment and supplies of the public school capital outlay

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1 council and the state department of public education that are  
2 primarily associated with the personnel described in Subsection  
3 A of this section are transferred to the public school  
4 facilities authority;

5 C. all contracts and agreements of the public  
6 school capital outlay council and the state department of  
7 public education relating to the activities of the personnel  
8 described in Subsection A of this section are transferred to  
9 the public school facilities authority; and

10 D. the superintendent of public instruction and the  
11 public school capital outlay council shall jointly identify the  
12 property to be transferred pursuant to Subsections B and C of  
13 this section.

14 Section 13. REPEAL. -- Sections 22-20-3 and 22-24-4.2 NMSA  
15 1978 (being Laws 1967, Chapter 16, Section 272 and Laws 2001,  
16 Chapter 338, Section 7, as amended) are repealed.

17 Section 14. EFFECTIVE DATE. -- The effective date of the  
18 provisions of Sections 1, 2, 12 and 13 of this act is July 1,  
19 2003.

20 Section 15. EMERGENCY. -- It is necessary for the public  
21 peace, health and safety that this act take effect immediately.