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AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO CHANGE CERTAIN CRITERIA FOR GRANTS FOR LEASE PAYMENTS, TO PROVIDE AN OFFSET FOR CERTAIN FEDERAL RECEIPTS, ~~TO ALLOW FOR ADJUSTMENTS FOR CERTAIN SCHOOL FACILITIES IN REMOTE RURAL AREAS,~~ TO FUND IMPROVEMENTS TO ~~ATHLETIC FIELDS IN RURAL AREAS AND~~ NECESSARY ROOF REPAIRS AND REPLACEMENTS AND TO LIMIT ANNUAL EXPENDITURES FOR CERTAIN OPERATING COSTS; REVISING THE STANDARDS REQUIRED FOR CHARTER SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO REQUIRE CERTAIN DISTRIBUTIONS TO CHARTER SCHOOLS AND TO EXPAND THE DEFINITION OF "CAPITAL IMPROVEMENTS"; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005, Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2, as amended) is amended to read:

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

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

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated,

1 prioritized and eligible for grants pursuant to the Public
2 School Capital Outlay Act in the same manner as all other
3 public schools in the state; provided that for charter school
4 facilities in leased facilities, grants may be used to
5 provide additional lease payments for leasehold improvements
6 made by the lessor.

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

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

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

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

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

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

1 school or the state; and

2 (b) either: 1) public buildings are
3 not available or adequate for the educational program of the
4 charter school; or 2) the owner of the facility is a
5 nonprofit entity specifically organized for the purpose of
6 providing the facility for the charter school.

7 D. The public school capital outlay council:

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

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

17 Section 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
18 Chapter 235, Section 4, as amended) is amended to read:

19 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
20 USE.--

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

24 B. Except as provided in Subsections G and I
25 through L of this section, money in the fund may be used only

1 for capital expenditures deemed necessary by the council for
2 an adequate educational program.

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

22 D. Applications for assistance from the fund shall
23 be made by school districts to the council in accordance with
24 requirements of the council. Except as provided in
25 Subsection K of this section, the council shall require as a

1 condition of application that a school district have a
2 current five-year facilities plan, which shall include a
3 current preventive maintenance plan to which the school
4 adheres for each public school in the school district.

5 E. The council shall review all requests for
6 assistance from the fund and shall allocate funds only for
7 those capital outlay projects that meet the criteria of the
8 Public School Capital Outlay Act.

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

17 (1) up to ten percent of the portion of the
18 project cost funded with distributions from the fund or five
19 percent of the total project cost, whichever is greater, may
20 be paid to the school district before work commences with the
21 balance of the grant award made on a cost-reimbursement
22 basis; or

23 (2) the council may authorize payments
24 directly to the contractor.

25 G. Balances in the fund may be annually

1 appropriated for the core administrative functions of the
2 public school facilities authority pursuant to the Public
3 School Capital Outlay Act and, in addition, balances in the
4 fund may be expended by the public school facilities
5 authority, upon approval of the council, for project
6 management expenses; provided that:

7 (1) the total annual expenditures from the
8 fund for the core administrative functions pursuant to this
9 subsection shall not exceed five percent of the average
10 annual grant assistance authorized from the fund during the
11 three previous fiscal years; and

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

15 H. Up to ten million dollars (\$10,000,000) of the
16 fund may be allocated by the council for expenditure in
17 fiscal years 2010 through 2012 for a roof repair and
18 replacement initiative with projects to be identified by the
19 council pursuant to Section 22-24-4.3 NMSA 1978; provided
20 that money allocated pursuant to this subsection shall be
21 expended within two years of the allocation.

22 I. The fund may be expended annually by the
23 council for grants to school districts for the purpose of
24 making lease payments for classroom facilities, including
25 facilities leased by charter schools. The grants shall be

1 made upon application by the school districts and pursuant to
2 rules adopted by the council; provided that an application on
3 behalf of a charter school shall be made by the school
4 district but, if the school district fails to make an
5 application on behalf of a charter school, the charter school
6 may submit its own application. The following criteria shall
7 apply to the grants:

8 (1) the amount of a grant to a school
9 district shall not exceed:

10 (a) the actual annual lease payments
11 owed for leasing classroom space for schools, including
12 charter schools, in the district; or

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

21 (2) a grant received for the lease payments
22 of a charter school may be used by that charter school as a
23 state match necessary to obtain federal grants pursuant to
24 the federal No Child Left Behind Act of 2001;

25 (3) at the end of each fiscal year, any

1 unexpended or unencumbered balance of the appropriation shall
2 revert to the fund;

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

7 (a) the agreement has been approved
8 pursuant to the provisions of the Public School Lease
9 Purchase Act; and

10 (b) the facilities are leased by a
11 charter school;

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

22 (6) as used in this subsection:

23 (a) "MEM" means: 1) the average
24 full-time-equivalent enrollment using leased classroom
25 facilities on the eightieth and one hundred twentieth days of

1 the prior school year; or 2) in the case of an approved
2 charter school that has not commenced classroom instruction,
3 the estimated full-time-equivalent enrollment that will use
4 leased classroom facilities in the first year of instruction,
5 as shown in the approved charter school application; provided
6 that, after the eightieth day of the school year, the MEM
7 shall be adjusted to reflect the full-time-equivalent
8 enrollment on that date; and

9 (b) "classroom facilities" or
10 "classroom space" includes the space needed, as determined by
11 the minimum required under the statewide adequacy standards,
12 for the direct administration of school activities.

13 J. In addition to other authorized expenditures
14 from the fund, up to one percent of the average grant
15 assistance authorized from the fund during the three previous
16 fiscal years may be expended in each fiscal year by the
17 public school facilities authority to pay the state fire
18 marshal, the construction industries division of the
19 regulation and licensing department and local jurisdictions
20 having authority from the state to permit and inspect
21 projects for expenditures made to permit and inspect projects
22 funded in whole or in part under the Public School Capital
23 Outlay Act. The authority shall enter into contracts with
24 the state fire marshal, the construction industries division
25 or the appropriate local authorities to carry out the

1 provisions of this subsection. Such a contract may provide
2 for initial estimated payments from the fund prior to the
3 expenditures if the contract also provides for additional
4 payments from the fund if the actual expenditures exceed the
5 initial payments and for repayments back to the fund if the
6 initial payments exceed the actual expenditures.

7 K. Pursuant to guidelines established by the
8 council, allocations from the fund may be made to assist
9 school districts in developing and updating five-year
10 facilities plans required by the Public School Capital Outlay
11 Act; provided that:

12 (1) no allocation shall be made unless the
13 council determines that the school district is willing and
14 able to pay the portion of the total cost of developing or
15 updating the plan that is not funded with the allocation from
16 the fund. Except as provided in Paragraph (2) of this
17 subsection, the portion of the total cost to be paid with the
18 allocation from the fund shall be determined pursuant to the
19 methodology in Paragraph (5) of Subsection B of Section
20 22-24-5 NMSA 1978; or

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

24 (a) the school district has fewer than
25 an average of six hundred full-time-equivalent students on

1 the eightieth and one hundred twentieth days of the prior
2 school year; or

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

19 L. Upon application by a school district,
20 allocations from the fund may be made by the council for the
21 purpose of demolishing abandoned school district facilities,
22 provided that:

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

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

4 (3) the council may enter into an agreement
5 with the school district under which an amount equal to the
6 savings to the district in lower insurance premiums are used
7 to reimburse the fund fully or partially for the demolition
8 costs allocated to the district.

9 ~~M. Up to two million dollars (\$2,000,000) of the~~
10 ~~fund may be allocated by the council for expenditure in~~
11 ~~fiscal years 2009 through 2011 for lights and bleachers for~~
12 ~~certain rural high school athletic fields pursuant to Section~~
13 ~~22-24-4.5 NMSA 1978."~~

14 Section 3. Section 22-24-4.3 NMSA 1978 (being Laws
15 2005, Chapter 274, Section 6) is amended to read:

16 "22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--

17 A. The council shall develop guidelines for a
18 roof repair and replacement initiative pursuant to the
19 provisions of this section.

20 B. A school district, desiring a grant award
21 pursuant to this section, shall submit an application to the
22 council. The application shall include an assessment of the
23 roofs on district school buildings that, in the opinion of
24 the school district, create a threat of significant property
25 damage.

1 C. The public school facilities authority shall
2 verify the assessment made by the school district and rank
3 the application with similar applications pursuant to a
4 methodology adopted by the council.

5 D. After a public hearing and to the extent that
6 money is available in the fund for such purposes, the council
7 shall approve roof repair or replacement projects on the
8 established priority basis; provided that no project shall be
9 approved unless the council determines that the school
10 district is willing and able to pay the portion of the total
11 cost of the project that is not funded with grant assistance
12 from the fund. In order to pay its portion of the total
13 project cost, a school district may use state distributions
14 made to the school district pursuant to the Public School
15 Capital Improvements Act or, if within the scope of the
16 authorizing resolution, proceeds of the property tax imposed
17 pursuant to that act.

18 E. The state share of the cost of an approved
19 roof repair or replacement project shall be calculated
20 pursuant to the methodology in Paragraph (5) of Subsection B
21 of Section 22-24-5 NMSA 1978.

22 F. A grant made pursuant to this section shall be
23 expended by the school district within two years of the grant
24 allocation."

25 ~~Section 4. A new section of the Public School Capital~~

1 ~~Outlay Act, Section 22-24-4.5 NMSA 1978, is enacted to read:~~

2 ~~"22-24-4.5. GRANTS FOR RURAL ATHLETIC FIELD~~
3 ~~IMPROVEMENTS.--~~

4 ~~A. Pursuant to the provisions of this section,~~
5 ~~the council shall develop guidelines for awarding grants for~~
6 ~~lights and bleachers for high school athletic fields that~~
7 ~~were previously funded pursuant to the Public School Capital~~
8 ~~Outlay Act.~~

9 ~~B. A school district, desiring a grant award~~
10 ~~pursuant to this section, shall submit an application to the~~
11 ~~council, containing all information required by rule of the~~
12 ~~council.~~

13 ~~C. Pursuant to rules adopted by the council, the~~
14 ~~public school facilities authority shall evaluate each~~
15 ~~application and rank the application with similar~~
16 ~~applications.~~

17 ~~D. After a public hearing and to the extent that~~
18 ~~money is available in the fund for such purposes, the council~~
19 ~~shall approve grants on the established priority basis;~~
20 ~~provided that no project shall be approved unless the council~~
21 ~~determines that:~~

22 ~~(1) the athletic field was built or~~
23 ~~acquired as part of a project that was previously funded~~
24 ~~pursuant to the Public School Capital Outlay Act;~~

25 ~~(2) the athletic field is in a rural area;~~

1 ~~(3) there is no other athletic field with~~
2 ~~lights and bleachers that is practicably available for use by~~
3 ~~the high school; and~~

4 ~~(4) the school district is willing and able~~
5 ~~to pay the portion of the total cost of the project that is~~
6 ~~not funded with grant assistance from the fund.~~

7 ~~E. The state share of an approved project shall~~
8 ~~be calculated pursuant to the methodology in Paragraph (5) of~~
9 ~~Subsection B of Section 22-24-5 NMSA 1978."~~

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

12 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
13 APPLICATION--GRANT ASSISTANCE.--

14 A. Applications for grant assistance, approval of
15 applications, prioritization of projects and grant awards
16 shall be conducted pursuant to the provisions of this
17 section.

18 B. Except as provided in Sections 22-24-4.3,
19 ~~22-24-4.5~~, 22-24-5.4 and 22-24-5.6 NMSA 1978, the following
20 provisions govern grant assistance from the fund for a public
21 school capital outlay project not wholly funded pursuant to
22 Section 22-24-4.1 NMSA 1978:

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

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

5 (a) the council shall apply the
6 standards to charter schools to the same extent that they are
7 applied to other public schools; and

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

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

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

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

25 (c) concepts that promote efficient

1 but flexible utilization of space; and

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

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

9 (5) except as provided in Paragraph (6),
10 (8), (9) ~~or (11)~~ of this subsection, the state share of a
11 project approved and ranked by the council shall be funded
12 within available resources pursuant to the provisions of this
13 paragraph. No later than May 1 of each calendar year, a
14 value shall be calculated for each school district in
15 accordance with the following procedure:

16 (a) the final prior year net taxable
17 value for a school district divided by the MEM for that
18 school district is calculated for each school district;

19 (b) the final prior year net taxable
20 value for the whole state divided by the MEM for the state is
21 calculated;

22 (c) excluding any school district for
23 which the result calculated pursuant to Subparagraph (a) of
24 this paragraph is more than twice the result calculated
25 pursuant to Subparagraph (b) of this paragraph, the results

1 calculated pursuant to Subparagraph (a) of this paragraph are
2 listed from highest to lowest;

3 (d) the lowest value listed pursuant
4 to Subparagraph (c) of this paragraph is subtracted from the
5 highest value listed pursuant to that subparagraph;

6 (e) the value calculated pursuant to
7 Subparagraph (a) of this paragraph for the subject school
8 district is subtracted from the highest value listed in
9 Subparagraph (c) of this paragraph;

10 (f) the result calculated pursuant to
11 Subparagraph (e) of this paragraph is divided by the result
12 calculated pursuant to Subparagraph (d) of this paragraph;

13 (g) the sum of the property tax mill
14 levies for the prior tax year imposed by each school district
15 on residential property pursuant to Chapter 22, Article 18
16 NMSA 1978, the Public School Capital Improvements Act, the
17 Public School Buildings Act, the Education Technology
18 Equipment Act and Paragraph (2) of Subsection B of Section
19 7-37-7 NMSA 1978 is calculated for each school district;

20 (h) the lowest value calculated
21 pursuant to Subparagraph (g) of this paragraph is subtracted
22 from the highest value calculated pursuant to that
23 subparagraph;

24 (i) the lowest value calculated
25 pursuant to Subparagraph (g) of this paragraph is subtracted

1 from the value calculated pursuant to that subparagraph for
2 the subject school district;

3 (j) the value calculated pursuant to
4 Subparagraph (i) of this paragraph is divided by the value
5 calculated pursuant to Subparagraph (h) of this paragraph;

6 (k) if the value calculated for a
7 subject school district pursuant to Subparagraph (j) of this
8 paragraph is less than five-tenths, then, except as provided
9 in Subparagraph (n) or (o) of this paragraph, the value for
10 that school district equals the value calculated pursuant to
11 Subparagraph (f) of this paragraph;

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

16 (m) if the value calculated for a
17 subject school district pursuant to Subparagraph (j) of this
18 paragraph is five-tenths or greater, then the value
19 calculated pursuant to Subparagraph (l) of this paragraph is
20 added to the value calculated pursuant to Subparagraph (f) of
21 this paragraph. Except as provided in Subparagraph (n) or
22 (o) of this paragraph, the sum equals the value for that
23 school district;

24 (n) in those instances in which the
25 calculation pursuant to Subparagraph (k) or (m) of this

1 paragraph yields a value less than one-tenth, one-tenth shall
2 be used as the value for the subject school district;

3 (o) in those instances in which the
4 calculation pursuant to Subparagraph (k) or (m) of this
5 paragraph yields a value greater than one, one shall be used
6 as the value for the subject school district;

7 (p) except as provided in Section
8 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
9 Paragraph (6), (8), (9) ~~or (11)~~ of this subsection, the
10 amount to be distributed from the fund for an approved
11 project shall equal the total project cost multiplied by a
12 fraction the numerator of which is the value calculated for
13 the subject school district in the current year plus the
14 value calculated for that school district in each of the two
15 preceding years and the denominator of which is three; and

16 (q) as used in this paragraph:

17 1) "MEM" means the average full-time-equivalent enrollment of
18 students attending public school in a school district on the
19 eightieth and one hundred twentieth days of the prior school
20 year; 2) "total project cost" means the total amount
21 necessary to complete the public school capital outlay
22 project less any insurance reimbursement received by the
23 school district for the project; and 3) in the case of a
24 state-chartered charter school that has submitted an
25 application for grant assistance pursuant to this section,

1 the "value calculated for the subject school district" means
2 the value calculated for the school district in which the
3 state-chartered charter school is physically located;

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

7 (a) the total of all legislative
8 appropriations made after January 1, 2003 for nonoperating
9 purposes either directly to the subject school district or to
10 another governmental entity for the purpose of passing the
11 money through directly to the subject school district, and
12 not rejected by the subject school district, is calculated;
13 provided that: 1) an appropriation made in a fiscal year
14 shall be deemed to be accepted by a school district unless,
15 prior to June 1 of that fiscal year, the school district
16 notifies the department of finance and administration and the
17 public education department that the district is rejecting
18 the appropriation; 2) the total shall exclude any educational
19 technology appropriation made prior to January 1, 2005 unless
20 the appropriation was on or after January 1, 2003 and not
21 previously used to offset distributions pursuant to the
22 Technology for Education Act; 3) the total shall exclude any
23 appropriation previously made to the subject school district
24 that is reauthorized for expenditure by another recipient; 4)
25 the total shall exclude one-half of the amount of any

1 appropriation made or reauthorized after January 1, 2007 if
2 the purpose of the appropriation or reauthorization is to
3 fund, in whole or in part, a capital outlay project that,
4 when prioritized by the council pursuant to this section
5 either in the immediately preceding funding cycle or in the
6 current funding cycle, ranked in the top one hundred fifty
7 projects statewide; 5) the total shall exclude the
8 proportionate share of any appropriation made or reauthorized
9 after January 1, 2008 for a capital project that will be
10 jointly used by a governmental entity other than the subject
11 school district. Pursuant to criteria adopted by rule of the
12 council and based upon the proposed use of the capital
13 project, the council shall determine the proportionate share
14 to be used by the governmental entity and excluded from the
15 total; and 6) unless the grant award is made to the
16 state-chartered charter school or unless the appropriation
17 was previously used to calculate a reduction pursuant to this
18 paragraph, the total shall exclude appropriations made after
19 January 1, 2007 for nonoperating purposes of a specific
20 state-chartered charter school, regardless of whether the
21 charter school is a state-chartered charter school at the
22 time of the appropriation or later opts to become a
23 state-chartered charter school;

24 (b) the total of all federal money
25 received by the subject school district for nonoperating

1 purposes pursuant to Title XIV of the American Recovery and
2 Reinvestment Act of 2009 is calculated; provided that: 1)
3 unless the grant award is made to the state-chartered charter
4 school or unless the federal money received was previously
5 used to calculate a reduction pursuant to this paragraph,
6 before the charter school became a state-chartered charter
7 school, the total shall exclude federal money received for
8 nonoperating purposes of a specific state-chartered charter
9 school, regardless of whether the charter school is a
10 state-chartered charter school at the time of receiving the
11 federal money or later opts to become a state-chartered
12 charter school; and 2) the total shall exclude federal money
13 distributed through the fund as grant awards pursuant to the
14 Public School Capital Outlay Act;

15 (c) the value calculated pursuant to
16 Subparagraph (a) of this paragraph is added to the value
17 calculated pursuant to Subparagraph (b) of this paragraph;

18 (d) the applicable fraction used for
19 the subject school district and the current calendar year for
20 the calculation in Subparagraph (p) of Paragraph (5) of this
21 subsection is subtracted from one;

22 (e) the value calculated pursuant to
23 Subparagraph (c) of this paragraph for the subject school
24 district is multiplied by the amount calculated pursuant to
25 Subparagraph (d) of this paragraph for that school district;

1 (f) the total amount of reductions for
2 the subject school district previously made pursuant to
3 Subparagraph (g) of this paragraph for other approved public
4 school capital outlay projects is subtracted from the amount
5 calculated pursuant to Subparagraph (e) of this paragraph;
6 and

7 (g) the amount calculated pursuant to
8 Subparagraph (p) of Paragraph (5) of this subsection shall be
9 reduced by the amount calculated pursuant to Subparagraph (f)
10 of this paragraph;

11 (7) as used in this subsection:

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

14 (b) "subject school district" means
15 the school district that has submitted the application for
16 funding and in which the approved public school capital
17 outlay project will be located;

18 (8) the amount calculated pursuant to
19 Subparagraph (p) of Paragraph (5) of this subsection, after
20 any reduction pursuant to Paragraph (6) of this subsection,
21 may be increased by an additional five percent if the council
22 finds that the subject school district has been exemplary in
23 implementing and maintaining a preventive maintenance
24 program. The council shall adopt such rules as are necessary
25 to implement the provisions of this paragraph;

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

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

15 (b) the school district: 1) has fewer
16 than an average of eight hundred full-time-equivalent
17 students on the eightieth and one hundred twentieth days of
18 the prior school year; 2) has at least seventy percent of its
19 students eligible for free or reduced-fee lunch; 3) has a
20 share of the total project cost, as calculated pursuant to
21 provisions of this section, that would be greater than fifty
22 percent; and 4) for all educational purposes, has a
23 residential property tax rate of at least seven dollars
24 (\$7.00) on each one thousand dollars (\$1,000) of taxable
25 value, as measured by the sum of all rates imposed by

1 resolution of the local school board plus rates set to pay
2 interest and principal on outstanding school district general
3 obligation bonds; or

4 (c) the school district: 1) has an
5 enrollment growth rate over the previous school year of at
6 least two and one-half percent; 2) pursuant to its five-year
7 facilities plan, will be building a new school within the
8 next two years; and 3) for all educational purposes, has a
9 residential property tax rate of at least ten dollars
10 (\$10.00) on each one thousand dollars (\$1,000) of taxable
11 value, as measured by the sum of all rates imposed by
12 resolution of the local school board plus rates set to pay
13 interest and principal on outstanding school district general
14 obligation bonds;

15 (10) no application for grant assistance
16 from the fund shall be approved unless the council determines
17 that:

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

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

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

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

10 (e) the school district is willing and
11 able to pay any portion of the total cost of the public
12 school capital outlay project that, according to Paragraph
13 (5), (6), (8) or (9) of this subsection, is not funded with
14 grant assistance from the fund; provided that school district
15 funds used for a project that was initiated after September
16 1, 2002 when the statewide adequacy standards were adopted,
17 but before September 1, 2004 when the standards were first
18 used as the basis for determining the state and school
19 district share of a project, may be applied to the school
20 district portion required for that project;

21 (f) the application includes the
22 capital needs of any charter school located in the school
23 district or the school district has shown that the facilities
24 of the charter school have a smaller deviation from the
25 statewide adequacy standards than other district facilities

1 included in the application; and

2 (g) the school district has agreed, in
3 writing, to comply with any reporting requirements or
4 conditions imposed by the council pursuant to Section
5 22-24-5.1 NMSA 1978; and

6 ~~(11) the amount distributed from the fund
7 to the subject school district for an approved high school
8 project may be increased by an amount up to twenty percent of
9 the total project cost if:~~

10 ~~(a) the public high school facility to
11 be constructed, improved or replaced by the project has
12 previously qualified for a rural community adjustment
13 pursuant to the provisions of Section 22-24-5.8 NMSA 1978;
14 and~~

15 ~~(b) the council finds that the planned
16 use of the additional distribution will enhance public school
17 education at the facility, will further the subject school
18 district's educational plan for student success for students
19 attending the facility, is needed by and will benefit the
20 community in which the facility is located and is a prudent
21 use of state money.~~

22 C. After consulting with the public school
23 capital outlay oversight task force and other experts, the
24 council shall regularly review and update statewide adequacy
25 standards applicable to all school districts. The standards

1 shall establish the acceptable level for the physical
2 condition and capacity of buildings, the educational
3 suitability of facilities and the need for technological
4 infrastructure. Except as otherwise provided in the Public
5 School Capital Outlay Act, the amount of outstanding
6 deviation from the standards shall be used by the council in
7 evaluating and prioritizing public school capital outlay
8 projects.

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

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

22 (2) no grant shall be awarded unless the
23 school district and the need for the facility meet all of the
24 requirements for grant assistance pursuant to the Public
25 School Capital Outlay Act;

1 (3) the total project cost shall equal the
2 total payments that would be due under the agreement if the
3 school district or charter school would eventually acquire
4 title to the facility;

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

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

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

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

24 (1) at the time of the initial use by the
25 school district, the facility to be purchased equaled or

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

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

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

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

25 G. Upon request, the council shall work with, and

1 provide assistance and information to, the public school
2 capital outlay oversight task force.

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

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

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

1 Section 6. Section 22-24-6.1 NMSA 1978 (being Laws
2 2007, Chapter 214, Section 1) is amended to read:

3 "22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
4 SCHOOL.--All of the provisions of the Public School Capital
5 Outlay Act apply to an application by a state-chartered
6 charter school for grant assistance for a capital project
7 except:

8 A. the portion of the cost of the project to be
9 paid from the fund shall be calculated pursuant to Paragraph
10 (5) of Subsection B of Section 22-24-5 NMSA 1978 using data
11 from the school district in which the state-chartered charter
12 school is located;

13 B. in calculating a reduction pursuant to
14 Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978:

15 (1) the amount to be used in Subparagraph
16 (a) of that paragraph shall equal the total of all
17 legislative appropriations made after January 1, 2007 for
18 nonoperating expenses either directly to the charter school
19 or to another governmental entity for the purpose of passing
20 the money through directly to the charter school, regardless
21 of whether the charter school was a state-chartered charter
22 school at the time of the appropriation or later opted to
23 become a state-chartered charter school, except that the
24 total shall not include any such appropriation if, before the
25 charter school became a state-chartered charter school, the

1 appropriation was previously used to calculate a reduction
2 pursuant to Paragraph (6) of Subsection B of Section 22-24-5
3 NMSA 1978; and

4 (2) the amount to be used in Subparagraph
5 (b) of that paragraph shall equal the total of all federal
6 money received by the charter school for nonoperating
7 purposes pursuant to Title XIV of the American Recovery and
8 Reinvestment Act of 2009, regardless of whether the charter
9 school was a state-chartered charter school at the time of
10 receiving the federal money or later opted to become a
11 state-chartered charter school, except that the total shall
12 not include any such federal money if, before the charter
13 school became a state-chartered charter school, the money was
14 previously used to calculate a reduction pursuant to
15 Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978;
16 and

17 C. if the council determines that the
18 state-chartered charter school does not have the resources to
19 pay all or a portion of the total cost of the capital outlay
20 project that is not funded with grant assistance from the
21 fund, to the extent that money is available in the charter
22 school capital outlay fund, the council shall make an award
23 from that fund for the remaining amount necessary to pay for
24 the project. The council may establish, by rule, a procedure
25 for determining the amount of resources available to the

1 charter school and the amount needed from the charter school
2 capital outlay fund."

3 ~~Section 7. A new section of the Public School Capital~~
4 ~~Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:~~

5 ~~"22-24-5.8. RURAL COMMUNITY ADJUSTMENT FOR CERTAIN~~
6 ~~FACILITIES.--~~

7 ~~A. Upon application by a school district pursuant~~
8 ~~to rules adopted by the council, the council may decide if a~~
9 ~~public high school facility, located within that school~~
10 ~~district, qualifies for a rural community adjustment.~~

11 ~~B. The council shall qualify a public high school~~
12 ~~facility for the rural community adjustment if the council~~
13 ~~determines that:~~

14 ~~(1) the facility is located in an~~
15 ~~unincorporated, rural area;~~

16 ~~(2) the public high school facility is the~~
17 ~~only facility practicably available for community purposes~~
18 ~~and is sharing its use with the community, primarily at the~~
19 ~~school district's expense with little contribution from the~~
20 ~~community;~~

21 ~~(3) the community served by the facility~~
22 ~~does not have adequate infrastructure or resources to acquire~~
23 ~~its own facilities or to compensate the school district for~~
24 ~~use of the public high school facility;~~

25 ~~(4) in calculating the grant assistance~~

1 from the fund for a project pursuant to Section 22-24-5 NMSA
2 1978, the value calculated for the school district in which
3 the facility is located pursuant to Subparagraph (k), (m),
4 (n) or (o) of Paragraph (5) of Subsection B of that section
5 is equal to or greater than seven-tenths;

6 (5) averaged over the previous four
7 property tax years, the school district in which the facility
8 is located had a residential property tax rate of at least
9 nine dollars (\$9.00) on each one thousand dollars (\$1,000) of
10 taxable value, as measured by the sum of all rates imposed by
11 resolution of the local school board plus rates set to pay
12 interest and principal on outstanding school district general
13 obligation bonds;

14 (6) at least seventy percent of the
15 students in the school district in which the facility is
16 located are eligible for free or reduced-fee lunch; and

17 (7) the school district has complied with
18 all rules adopted by the council for the implementation of
19 the provisions of this section.

20 G. Upon the award of a capital outlay grant
21 pursuant to Section 22-24-5 NMSA 1978 for a public school
22 facility that has qualified for a rural community adjustment
23 pursuant to the provisions of this section, pursuant to
24 Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978,
25 the school district shall be eligible for an additional

1 ~~distribution to benefit that facility."~~

2 Section 8. Section 22-25-2 NMSA 1978 (being Laws 1975
3 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

4 "22-25-2. DEFINITIONS.--As used in the Public School
5 Capital Improvements Act:

6 A. "program unit" means the product of the
7 program element multiplied by the applicable cost
8 differential factor, as defined in Section 22-8-2 NMSA 1978;
9 and

10 B. "capital improvements" means expenditures,
11 including payments made with respect to lease-purchase
12 arrangements as defined in the Education Technology Equipment
13 Act or the Public School Lease Purchase Act but excluding any
14 other debt service expenses, for:

15 (1) erecting, remodeling, making additions
16 to, providing equipment for or furnishing public school
17 buildings;

18 (2) purchasing or improving public school
19 grounds;

20 (3) maintenance of public school buildings
21 or public school grounds, including the purchasing or
22 repairing of maintenance equipment, participating in the
23 facility information management system as required by the
24 Public School Capital Outlay Act and including payments under
25 contracts with regional education cooperatives for

1 maintenance support services and expenditures for technical
2 training and certification for maintenance and facilities
3 management personnel, but excluding salary expenses of school
4 district employees;

5 (4) purchasing activity vehicles for
6 transporting students to extracurricular school activities;
7 or

8 (5) purchasing computer software and
9 hardware for student use in public school classrooms."

10 Section 9. Section 22-25-3 NMSA 1978 (being Laws 1975
11 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

12 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO
13 SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

14 A. A local school board may adopt a resolution to
15 submit to the qualified electors of the school district the
16 question of whether a property tax should be imposed upon the
17 net taxable value of property allocated to the school
18 district under the Property Tax Code at a rate not to exceed
19 that specified in the resolution for the purpose of capital
20 improvements in the school district. The resolution shall:

21 (1) identify the capital improvements for
22 which the revenue proposed to be produced will be used;

23 (2) specify the rate of the proposed tax,
24 which shall not exceed two dollars (\$2.00) on each one
25 thousand dollars (\$1,000) of net taxable value of property

1 allocated to the school district under the Property Tax Code;

2 (3) specify the date an election will be
3 held to submit the question of imposition of the tax to the
4 qualified electors of the district; and

5 (4) limit the imposition of the proposed
6 tax to no more than six property tax years.

7 B. On or after July 1, 2009, a resolution
8 submitted to the qualified electors pursuant to Subsection A
9 of this section shall include capital improvements funding
10 for a locally chartered or state-chartered charter school
11 located within the school district if the charter school
12 timely provides the necessary information to the school
13 district for inclusion in the resolution that identifies the
14 capital improvements of the charter school for which the
15 revenue proposed to be produced will be used."

16 Section 10. Section 22-25-7 NMSA 1978 (being Laws 1975
17 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

18 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
19 EXPENDITURES.--

20 A. If as a result of an election held in
21 accordance with the Public School Capital Improvements Act a
22 majority of the qualified electors voting on the question
23 votes in favor of the imposition of the tax, the tax rate
24 shall be certified, unless the local school board requests by
25 resolution that a rate be discontinued, by the department of

1 finance and administration at the rate specified in the
2 resolution authorized under Section 22-25-3 NMSA 1978 or at
3 any lower rate required by operation of the rate limitation
4 provisions of Section 7-37-7.1 NMSA 1978 upon the rate
5 specified in the resolution and be imposed at the rate
6 certified in accordance with the provisions of the Property
7 Tax Code.

8 B. The revenue produced by the tax and, except as
9 provided in Subsection F, G or H of Section 22-25-9 NMSA
10 1978, any state distribution resulting to the district under
11 the Public School Capital Improvements Act shall be expended
12 only for the capital improvements specified in the
13 authorizing resolution.

14 C. For resolutions approved by the electors on or
15 after July 1, 2009, the amount of tax revenue to be
16 distributed to each charter school that was included in the
17 resolution shall be determined each year and shall be in the
18 same proportion as the average full-time-equivalent
19 enrollment of the charter school on the fortieth day of the
20 prior school year is to the total such enrollment in the
21 school district; provided that no distribution shall be made
22 to an approved charter school that had not commenced
23 classroom instruction in the prior school year and, provided
24 further, that, in determining a school district's total
25 enrollment, students attending a state-chartered charter

1 school within that school district shall be included. Each
2 year, the department shall certify to the county treasurer of
3 the county in which the eligible charter schools in the
4 school district are located the percentage of the revenue to
5 be distributed to each charter school. The county treasurer
6 shall distribute the charter school's share of the property
7 tax revenue directly to the charter school."

8 Section 11. Section 22-25-9 NMSA 1978 (being Laws 1975
9 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

10 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT
11 IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

12 A. Except as provided in Subsection C or G of
13 this section, the secretary shall distribute to any school
14 district that has imposed a tax under the Public School
15 Capital Improvements Act an amount from the public school
16 capital improvements fund that is equal to the amount by
17 which the revenue estimated to be received from the imposed
18 tax, at the rate certified by the department of finance and
19 administration in accordance with Section 22-25-7 NMSA 1978,
20 assuming a one hundred percent collection rate, is less than
21 an amount calculated by multiplying the school district's
22 first forty days' total program units by the amount specified
23 in Subsection B of this section and further multiplying the
24 product obtained by the tax rate approved by the qualified
25 electors in the most recent election on the question of

1 imposing a tax under the Public School Capital Improvements
2 Act. The distribution shall be made each year that the tax
3 is imposed in accordance with Section 22-25-7 NMSA 1978;
4 provided that no state distribution from the public school
5 capital improvements fund may be used for capital
6 improvements to any administration building of a school
7 district. In the event that sufficient funds are not
8 available in the public school capital improvements fund to
9 make the state distribution provided for in this section, the
10 dollar per program unit figure shall be reduced as necessary.

11 B. In calculating the state distribution pursuant
12 to Subsection A of this section, the following amounts shall
13 be used:

14 (1) the amount calculated pursuant to
15 Subsection D of this section per program unit; and

16 (2) an additional amount certified to the
17 secretary by the public school capital outlay council. No
18 later than June 1 of each year, the council shall determine
19 the amount needed in the next fiscal year for public school
20 capital outlay projects pursuant to the Public School Capital
21 Outlay Act and the amount of revenue, from all sources,
22 available for the projects. If, in the sole discretion of
23 the council, the amount available exceeds the amount needed,
24 the council may certify an additional amount pursuant to this
25 paragraph; provided that the sum of the amount calculated

1 pursuant to this paragraph plus the amount in Paragraph (1)
2 of this subsection shall not result in a total statewide
3 distribution that, in the opinion of the council, exceeds
4 one-half of the total revenue estimated to be received from
5 taxes imposed pursuant to the Public School Capital
6 Improvements Act.

7 C. For any fiscal year notwithstanding the amount
8 calculated to be distributed pursuant to Subsections A and B
9 of this section, except as provided in Subsection G of this
10 section, a school district, the voters of which have approved
11 a tax pursuant to Section 22-25-3 NMSA 1978, shall not
12 receive a distribution less than the amount calculated
13 pursuant to Subsection E of this section multiplied by the
14 school district's first forty days' total program units and
15 further multiplying the product obtained by the approved tax
16 rate.

17 D. For purposes of calculating the distribution
18 pursuant to Subsection B of this section, the amount used in
19 Paragraph (1) of that subsection shall equal seventy dollars
20 (\$70.00) in fiscal year 2008 and in each subsequent fiscal
21 year shall equal the amount for the previous fiscal year
22 adjusted by the percentage increase between the next
23 preceding calendar year and the preceding calendar year of
24 the consumer price index for the United States, all items, as
25 published by the United States department of labor.

1 E. For purposes of calculating the minimum
2 distribution pursuant to Subsection C of this section, the
3 amount used in that subsection shall equal five dollars
4 (\$5.00) through fiscal year 2005 and in each subsequent
5 fiscal year shall equal the amount for the previous fiscal
6 year adjusted by the percentage increase between the next
7 preceding calendar year and the preceding calendar year of
8 the consumer price index for the United States, all items, as
9 published by the United States department of labor.

10 F. In expending distributions made pursuant to
11 this section, school districts and charter schools shall give
12 priority to maintenance projects, including payments under
13 contracts with regional education cooperatives for
14 maintenance support services. In addition, distributions
15 made pursuant to this section may be expended by school
16 districts and charter schools as follows:

17 (1) for the school district portion of the
18 total project cost for roof repair or replacement required by
19 Section 22-24-4.3 NMSA 1978; or

20 (2) for the school district portion of
21 payments made under a financing agreement entered into by a
22 school district or a charter school for the leasing of a
23 building or other real property with an option to purchase
24 for a price that is reduced according to the payments made,
25 if the school district has received a grant for the state

1 share of the payments pursuant to Subsection D of Section
2 22-24-5 NMSA 1978.

3 G. If a serious deficiency in a roof of a public
4 school facility has been corrected pursuant to Section
5 22-24-4.4 NMSA 1978 and the school district has refused to
6 pay its share of the cost as determined by that section,
7 until the public school capital outlay fund is reimbursed in
8 full for the share attributed to the district, the
9 distribution calculated pursuant to this section shall not be
10 made to the school district but shall be made to the public
11 school capital outlay fund.

12 H. A portion of each distribution made by the
13 state pursuant to this section on or after July 1, 2009 shall
14 be further distributed by the school district to each locally
15 chartered or state-chartered charter school located within
16 the school district. The amount to be distributed to each
17 charter school shall be in the same proportion as the average
18 full-time-equivalent enrollment of the charter school on the
19 fortieth day of the prior school year is to the total such
20 enrollment in the school district; provided that no
21 distribution shall be made to an approved charter school that
22 had not commenced classroom instruction in the prior school
23 year. Each year, the department shall certify to the school
24 district the amount to be distributed to each charter school.
25 Distributions received by a charter school pursuant to this

1 subsection shall be expended pursuant to the provisions of
2 the Public School Capital Improvements Act; except that if
3 capital improvements for the charter school were not
4 identified in a resolution approved by the electors, the
5 charter school may expend the distribution for any capital
6 improvements, including those specified in Subsection F of
7 this section.

8 I. In determining a school district's total
9 program units pursuant to Subsections A and C of this section
10 and a school district's total enrollment pursuant to
11 Subsection H of this section, students attending a
12 state-chartered charter school within the school district
13 shall be included.

14 J. 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 Section 12. EMERGENCY.--It is necessary for the public

1 peace, health and safety that this act take effect

2 immediately. _____

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