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HOUSE BILL 68

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Rick Miera

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO ALLOW, RATHER THAN REQUIRE, CERTAIN SUPPLEMENTARY FUNDS TO BE TRANSFERRED BY THE PUBLIC SCHOOL FACILITIES AUTHORITY, TO EXTEND THE TIME PERIOD FOR NECESSARY ROOF REPAIRS AND REPLACEMENTS, TO ALLOW FOR GRANT ADJUSTMENT FOR CERTAIN SCHOOL FACILITIES IN REMOTE RURAL AREAS AND TO ALLOW THE PUBLIC SCHOOL FACILITIES AUTHORITY TO ADMINISTER THE PROCUREMENT FOR CERTAIN EMERGENCY PROJECTS; PROVIDING FOR A STUDY; REPEALING AN APPROPRIATION FOR INSURANCE PREMIUMS PAID BY SCHOOL DISTRICTS; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

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

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1 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
2 USE.--

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

6 B. Except as provided in Subsections G and I
7 through L of this section, money in the fund may be used only
8 for capital expenditures deemed necessary by the council for an
9 adequate educational program.

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

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1 of the portable classrooms by the public school facilities
2 authority with prior approval of the state board of finance.

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

11 E. The council shall review all requests for
12 assistance from the fund and shall allocate funds only for
13 those capital outlay projects that meet the criteria of the
14 Public School Capital Outlay Act.

15 F. Money in the fund shall be disbursed by warrant
16 of the department of finance and administration on vouchers
17 signed by the secretary of finance and administration following
18 certification by the council that an application has been
19 approved or an expenditure has been ordered by a court pursuant
20 to Section 22-24-5.4 NMSA 1978. At the discretion of the
21 council, money for a project shall be distributed as 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 authorize payments
4 directly to the contractor.

5 G. Balances in the fund may be annually
6 appropriated for the core administrative functions of the
7 public school facilities authority pursuant to the Public
8 School Capital Outlay Act, and, in addition, balances in the
9 fund may be expended by the public school facilities authority,
10 upon approval of the council, for project management expenses;
11 provided that:

12 (1) the total annual expenditures from the
13 fund for the core administrative functions pursuant to this
14 subsection shall not exceed five percent of the average annual
15 grant assistance authorized from the fund during the three
16 previous fiscal years; and

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

20 H. Up to ten million dollars (\$10,000,000) of the
21 fund may be allocated annually by the council for expenditure
22 in fiscal years 2010 through [~~2012~~] 2015 for a roof repair and
23 replacement initiative with projects to be identified by the
24 council pursuant to Section 22-24-4.3 NMSA 1978; provided that
25 money allocated pursuant to this subsection shall be expended

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1 within two years of the allocation.

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

12 (1) the amount of a grant to a school district
13 shall not exceed:

14 (a) the actual annual lease payments
15 owed for leasing classroom space for schools, including charter
16 schools, in the district; or

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

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

4 (3) at the end of each fiscal year, any
5 unexpended or unencumbered balance of the appropriation shall
6 revert to the fund;

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

11 (a) the agreement has been approved
12 pursuant to the provisions of the Public School Lease Purchase
13 Act; and

14 (b) the facilities are leased by a
15 charter school;

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

25 (6) as used in this subsection:

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1 (a) "MEM" means: 1) the average
2 full-time-equivalent enrollment using leased classroom
3 facilities on the eightieth and one hundred twentieth days of
4 the prior school year; or 2) in the case of an approved charter
5 school that has not commenced classroom instruction, the
6 estimated full-time-equivalent enrollment that will use leased
7 classroom facilities in the first year of instruction, as shown
8 in the approved charter school application; provided that,
9 after the eightieth day of the school year, the MEM shall be
10 adjusted to reflect the full-time-equivalent enrollment on that
11 date; and

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

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

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1 ~~shall~~ may enter into contracts with the state fire marshal,
2 the construction industries division or the appropriate local
3 authorities to carry out the provisions of this subsection.
4 Such a contract may provide for initial estimated payments from
5 the fund prior to the expenditures if the contract also
6 provides for additional payments from the fund if the actual
7 expenditures exceed the initial payments and for repayments
8 back to the fund if the initial payments exceed the actual
9 expenditures. Money distributed from the fund to the state
10 fire marshal or the construction industries division pursuant
11 to this subsection shall be used to supplement, rather than
12 supplant, appropriations to those entities.

13 K. Pursuant to guidelines established by the
14 council, allocations from the fund may be made to assist school
15 districts in developing and updating five-year facilities plans
16 required by the Public School Capital Outlay Act; provided
17 that:

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

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

3 (a) the school district has fewer than
4 an average of six hundred full-time-equivalent students on the
5 eightieth and one hundred twentieth days of the prior school
6 year; or

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

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

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

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

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

12 Section 2. Section 22-24-5 NMSA 1978 (being Laws 1975,
13 Chapter 235, Section 5, as amended) is amended to read:

14 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
15 APPLICATION--GRANT ASSISTANCE.--

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

19 B. Except as provided in Sections 22-24-4.3,
20 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
21 govern grant assistance from the fund for a public school
22 capital outlay project not wholly funded pursuant to Section
23 22-24-4.1 NMSA 1978:

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

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1 indebtedness;

2 (2) priorities for funding shall be determined
3 by using the statewide adequacy standards developed pursuant to
4 Subsection C of this section; provided 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 health
9 or safety of students or school personnel is at immediate risk
10 or in which there is a threat of significant property damage,
11 the council may award grant assistance for a project using
12 criteria other than the statewide adequacy standards;

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

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

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

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

25 (d) any other financing or construction

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1 concept that may maximize the dollar effect of the state grant
2 assistance;

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

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

13 (a) the final prior year net taxable
14 value for a school district divided by the MEM for that school
15 district is calculated for each school district;

16 (b) the final prior year net taxable
17 value for the whole state divided by the MEM for the state is
18 calculated;

19 (c) excluding any school district for
20 which the result calculated pursuant to Subparagraph (a) of
21 this paragraph is more than twice the result calculated
22 pursuant to Subparagraph (b) of this paragraph, the results
23 calculated pursuant to Subparagraph (a) of this paragraph are
24 listed from highest to lowest;

25 (d) the lowest value listed pursuant to

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1 Subparagraph (c) of this paragraph is subtracted from the
2 highest value listed pursuant to that subparagraph;

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

7 (f) the result calculated pursuant to
8 Subparagraph (e) of this paragraph is divided by the result
9 calculated pursuant to Subparagraph (d) of this paragraph;

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

17 (h) the lowest value calculated pursuant
18 to Subparagraph (g) of this paragraph is subtracted from the
19 highest value calculated pursuant to that subparagraph;

20 (i) the lowest value calculated pursuant
21 to Subparagraph (g) of this paragraph is subtracted from the
22 value calculated pursuant to that subparagraph for the subject
23 school district;

24 (j) the value calculated pursuant to
25 Subparagraph (i) of this paragraph is divided by the value

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1 calculated pursuant to Subparagraph (h) of this paragraph;

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

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

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

20 (n) in those instances in which the
21 calculation pursuant to Subparagraph (k) or (m) of this
22 paragraph yields a value less than one-tenth, one-tenth shall
23 be used as the value for the subject school district;

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

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

3 (p) except as provided in Section
4 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
5 Paragraph (6), (8), (9) or (11) of this subsection, the amount
6 to be distributed from the fund for an approved project shall
7 equal the total project cost multiplied by a fraction the
8 numerator of which is the value calculated for the subject
9 school district in the current year plus the value calculated
10 for that school district in each of the two preceding years and
11 the denominator of which is three; and

12 (q) as used in this paragraph: 1) "MEM"
13 means the average full-time-equivalent enrollment of students
14 attending public school in a school district on the eightieth
15 and one hundred twentieth days of the prior school year; 2)
16 "total project cost" means the total amount necessary to
17 complete the public school capital outlay project less any
18 insurance reimbursement received by the school district for the
19 project; and 3) in the case of a state-chartered charter school
20 that has submitted an application for grant assistance pursuant
21 to this section, the "value calculated for the subject school
22 district" means the value calculated for the school district in
23 which the state-chartered charter school is physically located;

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

2 (a) the total of all legislative
3 appropriations made after January 1, 2003 for nonoperating
4 purposes either directly to the subject school district or to
5 another governmental entity for the purpose of passing the
6 money through directly to the subject school district, and not
7 rejected by the subject school district, is calculated;
8 provided that: 1) an appropriation made in a fiscal year shall
9 be deemed to be accepted by a school district unless, prior to
10 June 1 of that fiscal year, the school district notifies the
11 department of finance and administration and the public
12 education department that the district is rejecting the
13 appropriation; 2) the total shall exclude any educational
14 technology appropriation made prior to January 1, 2005 unless
15 the appropriation was on or after January 1, 2003 and not
16 previously used to offset distributions pursuant to the
17 Technology for Education Act; 3) the total shall exclude any
18 appropriation previously made to the subject school district
19 that is reauthorized for expenditure by another recipient; 4)
20 the total shall exclude one-half of the amount of any
21 appropriation made or reauthorized after January 1, 2007 if the
22 purpose of the appropriation or reauthorization is to fund, in
23 whole or in part, a capital outlay project that, when
24 prioritized by the council pursuant to this section either in
25 the immediately preceding funding cycle or in the current

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1 funding cycle, ranked in the top one hundred fifty projects
2 statewide; 5) the total shall exclude the proportionate share
3 of any appropriation made or reauthorized after January 1, 2008
4 for a capital project that will be jointly used by a
5 governmental entity other than the subject school district.

6 Pursuant to criteria adopted by rule of the council and based
7 upon the proposed use of the capital project, the council shall
8 determine the proportionate share to be used by the
9 governmental entity and excluded from the total; and 6) unless
10 the grant award is made to the state-chartered charter school
11 or unless the appropriation was previously used to calculate a
12 reduction pursuant to this paragraph, the total shall exclude
13 appropriations made after January 1, 2007 for nonoperating
14 purposes of a specific state-chartered charter school,
15 regardless of whether the charter school is a state-chartered
16 charter school at the time of the appropriation or later opts
17 to become a state-chartered charter school;

18 (b) the total of all federal money
19 received by the subject school district for nonoperating
20 purposes pursuant to Title XIV of the American Recovery and
21 Reinvestment Act of 2009 is calculated; provided that: 1)
22 unless the grant award is made to the state-chartered charter
23 school or unless the federal money received was previously used
24 to calculate a reduction pursuant to this paragraph, before the
25 charter school became a state-chartered charter school, the

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1 total shall exclude federal money received for nonoperating
2 purposes of a specific state-chartered charter school,
3 regardless of whether the charter school is a state-chartered
4 charter school at the time of receiving the federal money or
5 later opts to become a state-chartered charter school; and 2)
6 the total shall exclude federal money distributed through the
7 fund as grant awards pursuant to the Public School Capital
8 Outlay Act;

9 (c) the value calculated pursuant to
10 Subparagraph (a) of this paragraph is added to the value
11 calculated pursuant to Subparagraph (b) of this paragraph;

12 (d) the applicable fraction used for the
13 subject school district and the current calendar year for the
14 calculation in Subparagraph (p) of Paragraph (5) of this
15 subsection is subtracted from one;

16 (e) the value calculated pursuant to
17 Subparagraph (c) of this paragraph for the subject school
18 district is multiplied by the amount calculated pursuant to
19 Subparagraph (d) of this paragraph for that school district;

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

25 (g) the amount calculated pursuant to

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1 Subparagraph (p) of Paragraph (5) of this subsection shall be
2 reduced by the amount calculated pursuant to Subparagraph (f)
3 of this paragraph;

4 (7) as used in this subsection:

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

7 (b) "subject school district" means the
8 school district that has submitted the application for funding
9 and in which the approved public school capital outlay project
10 will be located;

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

19 (9) the council may adjust the amount of local
20 share otherwise required if it determines that a school
21 district has used all of its local resources. Before making
22 any adjustment to the local share, the council shall consider
23 whether:

24 (a) the school district has insufficient
25 bonding capacity over the next four years to provide the local

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1 match necessary to complete the project and, for all
2 educational purposes, has a residential property tax rate of at
3 least ten dollars (\$10.00) on each one thousand dollars
4 (\$1,000) of taxable value, as measured by the sum of all rates
5 imposed by resolution of the local school board plus rates set
6 to pay interest and principal on outstanding school district
7 general obligation bonds;

8 (b) the school district: 1) has fewer
9 than an average of eight hundred full-time-equivalent students
10 on the eightieth and one hundred twentieth days of the prior
11 school year; 2) has at least seventy percent of its students
12 eligible for free or reduced-fee lunch; 3) has a share of the
13 total project cost, as calculated pursuant to provisions of
14 this section, that would be greater than fifty percent; and 4)
15 for all educational purposes, has a residential property tax
16 rate of at least seven dollars (\$7.00) on each one thousand
17 dollars (\$1,000) of taxable value, as measured by the sum of
18 all rates imposed by resolution of the local school board plus
19 rates set to pay interest and principal on outstanding school
20 district general obligation bonds; or

21 (c) the school district: 1) has an
22 enrollment growth rate over the previous school year of at
23 least two and one-half percent; 2) pursuant to its five-year
24 facilities plan, will be building a new school within the next
25 two years; and 3) for all educational purposes, has a

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1 residential property tax rate of at least ten dollars (\$10.00)
2 on each one thousand dollars (\$1,000) of taxable value, as
3 measured by the sum of all rates imposed by resolution of the
4 local school board plus rates set to pay interest and principal
5 on outstanding school district general obligation bonds;

6 (10) no application for grant assistance from
7 the fund shall be approved unless the council determines that:

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

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

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

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

24 (e) the school district is willing and
25 able to pay any portion of the total cost of the public school

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1 capital outlay project that, according to Paragraph (5), (6),
2 (8) or (9) of this subsection, is not funded with grant
3 assistance from the fund; provided that school district funds
4 used for a project that was initiated after September 1, 2002
5 when the statewide adequacy standards were adopted, but before
6 September 1, 2004 when the standards were first used as the
7 basis for determining the state and school district share of a
8 project, may be applied to the school district portion required
9 for that project;

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

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

20 (11) the amount distributed from the fund to
21 the subject school district for an approved high school project
22 may be increased by an amount of up to twenty percent of the
23 total project cost if:

24 (a) the public high school facility to
25 be constructed, improved or replaced by the project has

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1 previously qualified for a rural community adjustment pursuant
2 to the provisions of Section 22-24-5.8 NMSA 1978; and

3 (b) the council finds that the planned
4 use of the additional distribution will enhance public school
5 education at the facility, will further the subject school
6 district's educational plan for student success for students
7 attending the facility, is needed by and will benefit the
8 community in which the facility is located and is a prudent use
9 of state money.

10 C. After consulting with the public school capital
11 outlay oversight task force and other experts, the council
12 shall regularly review and update statewide adequacy standards
13 applicable to all school districts. The standards shall
14 establish the acceptable level for the physical condition and
15 capacity of buildings, the educational suitability of
16 facilities and the need for technological infrastructure.
17 Except as otherwise provided in the Public School Capital
18 Outlay Act, the amount of outstanding deviation from the
19 standards shall be used by the council in evaluating and
20 prioritizing public school capital outlay projects.

21 D. The acquisition of a facility by a school
22 district or charter school pursuant to a financing agreement
23 that provides for lease payments with an option to purchase for
24 a price that is reduced according to lease payments made may be
25 considered a public school capital outlay project and eligible

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1 for grant assistance under this section pursuant to the
2 following criteria:

3 (1) no grant shall be awarded unless the
4 council determines that, at the time of exercising the option
5 to purchase the facility by the school district or charter
6 school, the facility will equal or exceed the statewide
7 adequacy standards and the building standards for public school
8 facilities;

9 (2) no grant shall be awarded unless the
10 school district and the need for the facility meet all of the
11 requirements for grant assistance pursuant to the Public School
12 Capital Outlay Act;

13 (3) the total project cost shall equal the
14 total payments that would be due under the agreement if the
15 school district or charter school would eventually acquire
16 title to the facility;

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

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

24 (6) neither a grant award nor any provision of
25 the Public School Capital Outlay Act creates a legal obligation

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1 for the school district or charter school to continue the lease
2 from year to year or to purchase the facility.

3 E. In order to encourage private capital investment
4 in the construction of public school facilities, the purchase
5 of a privately owned school facility that is, at the time of
6 application, in use by a school district may be considered a
7 public school capital outlay project and eligible for grant
8 assistance pursuant to this section if the council finds that:

9 (1) at the time of the initial use by the
10 school district, the facility to be purchased equaled or
11 exceeded the statewide adequacy standards and the building
12 standards for public school facilities;

13 (2) at the time of application, attendance at
14 the facility to be purchased is at seventy-five percent or
15 greater of design capacity and the attendance at other schools
16 in the school district that the students at the facility would
17 otherwise attend is at eighty-five percent or greater of design
18 capacity; and

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

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

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

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

20 I. Upon the recommendation of the public school
21 facilities authority, the council shall develop building
22 standards for public school facilities and shall promulgate
23 other such rules as are necessary to carry out the provisions
24 of the Public School Capital Outlay Act.

25 J. No later than December 15 of each year, the

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

9 Section 3. Section 22-24-9 NMSA 1978 (being Laws 2003,
10 Chapter 147, Section 1, as amended) is amended to read:

11 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
12 CREATION--POWERS AND DUTIES.--

13 A. The "public school facilities authority" is
14 created under the council. The authority shall be headed by a
15 director, selected by the council, who shall be versed in
16 construction, architecture or project management. The director
17 may hire no more than two deputies with the approval of the
18 council, and, subject to budgetary constraints set out in
19 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
20 contract with such technical and administrative personnel as
21 are necessary to carry out the provisions of this section. The
22 director, deputies and all other employees of the authority
23 shall be exempt from the provisions of the Personnel Act.

24 B. The authority shall:

25 (1) serve as staff to the council;

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1 (2) as directed by the council, provide those
2 assistance and oversight functions required of the council by
3 Section 22-24-5.1 NMSA 1978;

4 (3) assist school districts with:

5 (a) the development and implementation
6 of five-year facilities plans and preventive maintenance plans;

7 (b) procurement of architectural and
8 engineering services;

9 (c) management and oversight of
10 construction activities; and

11 (d) training programs;

12 (4) conduct ongoing reviews of five-year
13 facilities plans, preventive maintenance plans and performance
14 pursuant to those plans;

15 (5) as directed by the council, assist school
16 districts in analyzing and assessing their space utilization
17 options;

18 (6) ensure that public school capital outlay
19 projects are in compliance with applicable building codes;

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

24 (8) require the use of standardized
25 construction documents and the use of a standardized process

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1 for change orders;

2 (9) have access to the premises of a project
3 and any documentation relating to the project;

4 (10) after consulting with the department,
5 recommend building standards for public school facilities to
6 the council and ensure compliance with building standards
7 adopted by the council;

8 (11) notwithstanding the provisions of
9 Subsection D of Section 22-24-6 NMSA 1978, account for all
10 distributions of grant assistance from the fund for which the
11 initial award was made after July 1, 2004, and make annual
12 reports to the department, the governor, the legislative
13 education study committee, the legislative finance committee
14 and the legislature;

15 (12) maintain a database of the condition of
16 school facilities and maintenance schedules; [~~and~~]

17 (13) as a central purchasing office pursuant
18 to the Procurement Code and as directed by the council, select
19 contractors and enter into and administer contracts for certain
20 emergency projects funded pursuant to Subparagraph (b) of
21 Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978; and

22 [~~(13)~~] (14) ensure that outstanding
23 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA
24 1978. In the performance of this duty, the authority:

25 (a) shall work with school districts to

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1 validate the assessment of the outstanding deficiencies and the
2 projected costs to correct the deficiencies;

3 (b) shall work with school districts to
4 provide direct oversight of the management and construction of
5 the projects that will correct the outstanding deficiencies;

6 (c) shall oversee all aspects of the
7 contracts entered into by the council to correct the
8 outstanding deficiencies;

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

14 (e) may require the use of standardized
15 construction documents and the use of a standardized process
16 for change orders;

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

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

23 C. All actions taken by the authority shall be
24 consistent with educational programs conducted pursuant to the
25 Public School Code. In the event of any potential or perceived

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1 conflict between a proposed action of the authority and an
2 educational program, the authority shall consult with the
3 secretary.

4 D. A school district, aggrieved by a decision or
5 recommendation of the authority, may appeal the matter to the
6 council by filing a notice of appeal with the council within
7 thirty days of the authority's decision or recommendation.

8 Upon filing of the notice:

9 (1) the decision or recommendation of the
10 authority shall be suspended until the matter is decided by the
11 council;

12 (2) the council shall hear the matter at its
13 next regularly scheduled hearing or at a special hearing called
14 by the chair for that purpose;

15 (3) at the hearing, the school district, the
16 authority and other interested parties may make informal
17 presentations to the council; and

18 (4) the council shall finally decide the
19 matter within ten days after the hearing."

20 Section 4. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL
21 OUTLAY OVERSIGHT TASK FORCE--ADDITIONAL STUDY.--In addition to
22 its other duties, during calendar year 2010, the public school
23 capital outlay oversight task force shall continue the working
24 group studying issues relating to performance-based procurement
25 for public school capital outlay projects. The task force

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1 shall report its findings and recommendations no later than
2 December 15, 2010 to the governor and the legislature.

3 Section 5. REPEAL.--Laws 2009 (1st S.S.), Chapter 5,
4 Section 7 and Laws 2009 (1st S.S.), Chapter 6, Section 1 are
5 repealed.

6 Section 6. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.

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