

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:

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

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

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

C. The council may authorize the purchase by the public school facilities authority of portable classrooms to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title to and custody of the portable classrooms shall rest in the public school facilities authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the public school facilities authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the public school facilities authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. Except as provided in Subsection K of this section, the council shall require as a condition of application that a school district have a current five-year facilities plan, which shall include a current preventive

maintenance plan to which the school adheres for each public school in the school district.

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

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

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

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

G. Balances in the fund may be annually appropriated for the core administrative functions of the public school facilities authority pursuant to the Public

School Capital Outlay Act, and, in addition, balances in the fund may be expended by the public school facilities authority, upon approval of the council, for project management expenses; provided that:

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

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

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

I. The fund may be expended annually by the council for grants to school districts for the purpose of making lease payments for classroom facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council; provided that an application on

behalf of a charter school shall be made by the school district, but, if the school district fails to make an application on behalf of a charter school, the charter school may submit its own application. The following criteria shall apply to the grants:

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

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

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

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

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

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

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

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

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

(6) as used in this subsection:

(a) "MEM" means: 1) the average full-time-equivalent enrollment using leased classroom facilities on the eightieth and one hundred twentieth days of the prior school year; or 2) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use

leased classroom facilities in the first year of instruction, as shown in the approved charter school application; provided that, after the eightieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date; and

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

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the public school facilities authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual

expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

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

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

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

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school

year; or

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

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

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

(2) there is no practical use for the

abandoned facility without the expenditure of substantial renovation costs; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) no more than ten percent of the combined

total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used

as the value for the subject school district;

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

(q) as used in this paragraph:

1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the eightieth and one hundred twentieth days of the prior school year; 2) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project; and 3) in the case of a state-chartered charter school that has submitted an application for grant assistance pursuant to this section, the "value calculated for the subject school district" means the value calculated for the school district in which the state-chartered charter school is physically located;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be

reduced by the following procedure:

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

funding cycle, ranked in the top one hundred fifty projects statewide; 5) the total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. Pursuant to criteria adopted by rule of the council and based upon the proposed use of the capital project, the council shall determine the proportionate share to be used by the governmental entity and excluded from the total; and 6) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;

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

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

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

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

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

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

(g) the amount calculated pursuant to

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

(7) as used in this subsection:

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

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

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

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

(a) the school district has insufficient bonding capacity over the next four years to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The acquisition of a facility by a school district or charter school pursuant to a financing agreement that provides for lease payments with an option to purchase

for a price that is reduced according to lease payments made may be considered a public school capital outlay project and eligible for grant assistance under this section pursuant to the following criteria:

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

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

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

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

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

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

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

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

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

(3) the school district and the capital outlay project meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act;

provided that, when determining the deviation from the statewide adequacy standards for the purposes of evaluating and prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

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

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

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

I. Upon the recommendation of the public school

facilities authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Section 22-24-9 NMSA 1978 (being Laws 2003, Chapter 147, Section 1, as amended) is amended to read:

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

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as

are necessary to carry out the provisions of this section. The director, deputies and all other employees of the authority shall be exempt from the provisions of the Personnel Act.

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:
 - (a) the development and implementation of five-year facilities plans and preventive maintenance plans;
 - (b) procurement of architectural and engineering services;
 - (c) management and oversight of construction activities; and
 - (d) training programs;
- (4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;
- (5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;
- (6) ensure that public school capital outlay

projects are in compliance with applicable building codes;

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

(8) require the use of standardized construction documents and the use of a standardized process for change orders;

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

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

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

(12) maintain a database of the condition of school facilities and maintenance schedules;

(13) as a central purchasing office pursuant to the Procurement Code and as directed by the council, select

contractors and enter into and administer contracts for certain emergency projects funded pursuant to Subparagraph (b) of Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978; and

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

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

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

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

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

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

(f) may access the premises of a

project and any documentation relating to the project; and

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

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

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

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

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

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

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

Section 5. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE--ADDITIONAL STUDY.--In addition to its other duties, during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects. The task force shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

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

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