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SENATE BILL 128

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Mimi Stewart

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE  
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC  
SCHOOL CAPITAL OUTLAY ACT TO ALLOW THE PUBLIC SCHOOL CAPITAL  
OUTLAY COUNCIL TO PROVIDE TEMPORARY ANNUAL ALLOCATIONS TO  
SCHOOL DISTRICTS TO ADDRESS BUILDING SYSTEMS NEEDS IN EXISTING  
BUILDINGS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.

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

**SECTION 1.** Section 22-24-3 NMSA 1978 (being Laws 1975,  
Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School  
Capital Outlay Act:

A. "building system" means a set of interacting  
parts that makes up a single, nonportable or fixed component of  
a facility and that, together with other building systems,

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1 makes up an entire integrated facility or property, including,  
2 but not limited to, roofing, electrical distribution,  
3 electronic communication, plumbing, lighting, mechanical, fire  
4 prevention, facility shell, interior finishes and heating,  
5 ventilation and air conditioning systems, as defined by the  
6 council;

7 ~~[A-]~~ B. "constitutional special schools" means the  
8 New Mexico school for the blind and visually impaired and the  
9 New Mexico school for the deaf;

10 ~~[B-]~~ C. "constitutional special schools support  
11 spaces" means all facilities necessary to support the  
12 constitutional special schools' educational mission that are  
13 not included in the constitutional special schools' educational  
14 adequacy standards, including, but not limited to, performing  
15 arts centers, facilities for athletic competition, school  
16 district administration and facility and vehicle maintenance;

17 ~~[G-]~~ D. "council" means the public school capital  
18 outlay council;

19 ~~[D-]~~ E. "education technology infrastructure" means  
20 the physical hardware used to interconnect education technology  
21 equipment for school districts and school buildings necessary  
22 to support broadband connectivity as determined by the council;

23 ~~[E-]~~ F. "fund" means the public school capital  
24 outlay fund; and

25 ~~[F-]~~ G. "school district" includes state-chartered

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1 charter schools and the constitutional special schools."

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

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

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

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

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

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1 and insurance of the portable classrooms while in the custody  
2 of a school district shall be the responsibility of the school  
3 district. The council may authorize the permanent disposition  
4 of the portable classrooms by the public school facilities  
5 authority with prior approval of the state board of finance.

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

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

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

25 (1) up to ten percent of the portion of the

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

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

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

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

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

23 H. Up to ~~[ten million dollars (\$10,000,000)]~~ of the  
24 ~~fund may be allocated annually by the council for expenditure~~  
25 ~~in fiscal years 2010 through 2015 for a roof repair and~~

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1 ~~replacement initiative with projects to be identified by the~~  
2 ~~council pursuant to Section 22-24-4.3 NMSA 1978; provided that~~  
3 ~~money allocated pursuant to this subsection shall be expended~~  
4 ~~within two years of the allocation]~~ fifteen million dollars  
5 (\$15,000,000) of the fund may be expended annually by the  
6 council for expenditure in fiscal years 2016 through 2020 for a  
7 building system repair, renovation or replacement initiative  
8 with projects to be identified by the council pursuant to  
9 Section 3 of this 2015 act; provided that money allocated  
10 pursuant to this subsection shall be expended within three  
11 years of the allocation.

12 I. The fund may be expended annually by the council  
13 for grants to school districts for the purpose of making lease  
14 payments for classroom facilities, including facilities leased  
15 by charter schools. The grants shall be made upon application  
16 by the school districts and pursuant to rules adopted by the  
17 council; provided that an application on behalf of a charter  
18 school shall be made by the school district, but, if the school  
19 district fails to make an application on behalf of a charter  
20 school, the charter school may submit its own application. The  
21 following criteria shall apply to the grants:

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

24 (a) the actual annual lease payments  
25 owed for leasing classroom space for schools, including charter

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1 schools, in the district; or

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

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

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

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

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

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

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

10                   (6) as used in this subsection:

11                   (a) "MEM" means: 1) the average  
12 full-time-equivalent enrollment using leased classroom  
13 facilities on the eightieth and one hundred twentieth days of  
14 the prior school year; or 2) in the case of an approved charter  
15 school that has not commenced classroom instruction, the  
16 estimated full-time-equivalent enrollment that will use leased  
17 classroom facilities in the first year of instruction, as shown  
18 in the approved charter school application; provided that,  
19 after the eightieth day of the school year, the MEM shall be  
20 adjusted to reflect the full-time-equivalent enrollment on that  
21 date; and

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

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1           J. In addition to other authorized expenditures  
2 from the fund, up to one percent of the average grant  
3 assistance authorized from the fund during the three previous  
4 fiscal years may be expended in each fiscal year by the public  
5 school facilities authority to pay the state fire marshal, the  
6 construction industries division of the regulation and  
7 licensing department and local jurisdictions having authority  
8 from the state to permit and inspect projects for expenditures  
9 made to permit and inspect projects funded in whole or in part  
10 under the Public School Capital Outlay Act. The public school  
11 facilities authority may enter into contracts with the state  
12 fire marshal, the construction industries division or the  
13 appropriate local authorities to carry out the provisions of  
14 this subsection. Such a contract may provide for initial  
15 estimated payments from the fund prior to the expenditures if  
16 the contract also provides for additional payments from the  
17 fund if the actual expenditures exceed the initial payments and  
18 for repayments back to the fund if the initial payments exceed  
19 the actual expenditures. Money distributed from the fund to  
20 the state fire marshal or the construction industries division  
21 pursuant to this subsection shall be used to supplement, rather  
22 than supplant, appropriations to those entities.

23           K. Pursuant to guidelines established by the  
24 council, allocations from the fund may be made to assist school  
25 districts in developing and updating five-year facilities plans

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1 required by the Public School Capital Outlay Act; provided  
2 that:

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

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

13 (a) the school district has fewer than  
14 an average of six hundred full-time-equivalent students on the  
15 eightieth and one hundred twentieth days of the prior school  
16 year; or

17 (b) the school district meets all of the  
18 following requirements: 1) the school district has fewer than  
19 an average of one thousand full-time-equivalent students on the  
20 eightieth and one hundred twentieth days of the prior school  
21 year; 2) the school district has at least seventy percent of  
22 its students eligible for free or reduced-fee lunch; 3) the  
23 state share of the total cost, if calculated pursuant to the  
24 methodology in Paragraph (5) of Subsection B of Section 22-24-5  
25 NMSA 1978, would be less than fifty percent; and 4) for all

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1 educational purposes, the school district has a residential  
2 property tax rate of at least seven dollars (\$7.00) on each one  
3 thousand dollars (\$1,000) of taxable value, as measured by the  
4 sum of all rates imposed by resolution of the local school  
5 board plus rates set to pay interest and principal on  
6 outstanding school district general obligation bonds.

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

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

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

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

22 M. Up to ten million dollars (\$10,000,000) of the  
23 fund may be expended each year in fiscal years 2014 through  
24 2019 for an education technology infrastructure deficiency  
25 corrections initiative pursuant to Section [~~4 of this 2014 act~~]

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1 22-24-4.5 NMSA 1978; provided that funding allocated pursuant  
2 to this section shall be expended within three years of its  
3 allocation."

4 SECTION 3. A new section of the Public School Capital  
5 Outlay Act is enacted to read:

6 "[NEW MATERIAL] BUILDING SYSTEM REPAIR, RENOVATION OR  
7 REPLACEMENT.--

8 A. The council shall develop guidelines for a  
9 building system repair, renovation or replacement initiative  
10 pursuant to the provisions of this section.

11 B. A school district desiring a grant award  
12 pursuant to this section shall submit an application to the  
13 council. The application shall include an assessment of the  
14 building system that, in the opinion of the school district,  
15 the repair, renovation or replacement of which would extend the  
16 useful life of the building itself.

17 C. The public school facilities authority shall  
18 verify the assessment made by the school district and rank the  
19 application with similar applications pursuant to a methodology  
20 adopted by the council.

21 D. After a public hearing and to the extent that  
22 money is available in the fund for such purposes, the council  
23 shall approve building system repair, renovation or replacement  
24 projects on the established priority basis; provided that no  
25 project shall be approved unless the council determines that

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1 the school district is willing and able to pay the portion of  
2 the total cost of the project that is not funded with grant  
3 assistance from the fund.

4 E. The state share of the cost of an approved  
5 building system repair, renovation or replacement project shall  
6 be calculated pursuant to the methodology in Paragraph (5) of  
7 Subsection B of Section 22-24-5 NMSA 1978.

8 F. A grant made pursuant to this section shall be  
9 expended by the school district within three years of the grant  
10 allocation."

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

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

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

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

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

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

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

7 (b) the council may award grants  
8 annually to school districts for the purpose of repairing,  
9 renovating or replacing public school building systems in  
10 existing buildings as identified in Section 3 of this 2015 act;

11 [~~(b)~~] (c) the council shall adopt and  
12 apply adequacy standards appropriate to the unique needs of the  
13 constitutional special schools; and

14 [~~(e)~~] (d) in an emergency in which the  
15 health or safety of students or school personnel is at  
16 immediate risk or in which there is a threat of significant  
17 property damage, the council may award grant assistance for a  
18 project using criteria other than the statewide adequacy  
19 standards;

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

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

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1 projects;

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

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

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

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

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

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

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

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

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

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

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

17 (g) the sum of the property tax mill  
18 levies for the prior tax year imposed by each school district  
19 on residential property pursuant to Chapter 22, Article 18 NMSA  
20 1978, the Public School Capital Improvements Act, the Public  
21 School Buildings Act, the Education Technology Equipment Act  
22 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978  
23 is calculated for each school district;

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

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1 highest value calculated pursuant to that subparagraph;

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

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

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

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

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

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1 district;

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

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

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

19 (q) as used in this paragraph: 1) "MEM"  
20 means the average full-time-equivalent enrollment of students  
21 attending public school in a school district on the eightieth  
22 and one hundred twentieth days of the prior school year; 2)  
23 "total project cost" means the total amount necessary to  
24 complete the public school capital outlay project less any  
25 insurance reimbursement received by the school district for the

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1 project; and 3) in the case of a state-chartered charter school  
2 that has submitted an application for grant assistance pursuant  
3 to this section, the "value calculated for the subject school  
4 district" means the value calculated for the school district in  
5 which the state-chartered charter school is physically located;

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

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

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

25 (b) the applicable fraction used for the

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1 subject school district and the current calendar year for the  
2 calculation in Subparagraph (p) of Paragraph (5) of this  
3 subsection is subtracted from one;

4 (c) the value calculated pursuant to  
5 Subparagraph (a) of this paragraph for the subject school  
6 district is multiplied by the amount calculated pursuant to  
7 Subparagraph (b) of this paragraph for that school district;

8 (d) the total amount of reductions for  
9 the subject school district previously made pursuant to  
10 Subparagraph (e) of this paragraph for other approved public  
11 school capital outlay projects is subtracted from the amount  
12 calculated pursuant to Subparagraph (c) of this paragraph; and

13 (e) the amount calculated pursuant to  
14 Subparagraph (p) of Paragraph (5) of this subsection shall be  
15 reduced by the amount calculated pursuant to Subparagraph (d)  
16 of this paragraph;

17 (7) as used in this subsection:

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

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

24 (8) the amount calculated pursuant to  
25 Subparagraph (p) of Paragraph (5) of this subsection, after any

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

7 (9) the council may adjust the amount of local  
8 share otherwise required if it determines that a school  
9 district has made a good-faith effort to use all of its local  
10 resources. Before making any adjustment to the local share,  
11 the council shall consider whether:

12 (a) the school district has insufficient  
13 bonding capacity over the next four years to provide the local  
14 match necessary to complete the project and, for all  
15 educational purposes, has a residential property tax rate of at  
16 least ten dollars (\$10.00) on each one thousand dollars  
17 (\$1,000) of taxable value, as measured by the sum of all rates  
18 imposed by resolution of the local school board plus rates set  
19 to pay interest and principal on outstanding school district  
20 general obligation bonds;

21 (b) the school district: 1) has fewer  
22 than an average of eight hundred full-time-equivalent students  
23 on the eightieth and one hundred twentieth days of the prior  
24 school year; 2) has at least seventy percent of its students  
25 eligible for free or reduced-fee lunch; 3) has a share of the

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1 total project cost, as calculated pursuant to provisions of  
2 this section, that would be greater than fifty percent; and 4)  
3 for all educational purposes, has a residential property tax  
4 rate of at least seven dollars (\$7.00) on each one thousand  
5 dollars (\$1,000) of taxable value, as measured by the sum of  
6 all rates imposed by resolution of the local school board plus  
7 rates set to pay interest and principal on outstanding school  
8 district general obligation bonds; or

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

19 (10) the local match for the constitutional  
20 special schools shall be set at fifty percent for projects that  
21 qualify under the educational adequacy category and one hundred  
22 percent for projects that qualify in the support spaces  
23 category; provided that the council may adjust or waive the  
24 amount of any direct appropriation offset to or local share  
25 required for the constitutional special schools if an applicant

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1 constitutional special school has insufficient or no local  
2 resources available; and

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

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

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

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

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

21 (e) the school district is willing and  
22 able to pay any portion of the total cost of the public school  
23 capital outlay project that, according to Paragraph (5), (6),  
24 (8) or (9) of this subsection, is not funded with grant  
25 assistance from the fund; provided that school district funds

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1 used for a project that was initiated after September 1, 2002  
2 when the statewide adequacy standards were adopted, but before  
3 September 1, 2004 when the standards were first used as the  
4 basis for determining the state and school district share of a  
5 project, may be applied to the school district portion required  
6 for that project;

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

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

17 C. After consulting with the public school capital  
18 outlay oversight task force and other experts, the council  
19 shall regularly review and update statewide adequacy standards  
20 applicable to all school districts. The standards shall  
21 establish the acceptable level for the physical condition and  
22 capacity of buildings, the educational suitability of  
23 facilities and the need for education technology  
24 infrastructure. Except as otherwise provided in the Public  
25 School Capital Outlay Act, the amount of outstanding deviation

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1 from the standards shall be used by the council in evaluating  
2 and prioritizing public school capital outlay projects.

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

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

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

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

24 (4) the portion of the total project cost to  
25 be paid from the fund may be awarded as one grant, but

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1 disbursements from the fund shall be made from time to time as  
2 lease payments become due;

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

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

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

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

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

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1                   (3) the school district and the capital outlay  
2 project meet all of the requirements for grant assistance  
3 pursuant to the Public School Capital Outlay Act; provided  
4 that, when determining the deviation from the statewide  
5 adequacy standards for the purposes of evaluating and  
6 prioritizing the project, the students using the facility shall  
7 be deemed to be attending other schools in the school district.

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

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

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

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1 council's work.

2 I. Upon the recommendation of the public school  
3 facilities authority, the council shall develop building  
4 standards for public school facilities and shall promulgate  
5 other such rules as are necessary to carry out the provisions  
6 of the Public School Capital Outlay Act.

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

16 SECTION 5. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2015.