

1 HOUSE BILL 264

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

5
6
7 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
8 AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC
12 SCHOOL CAPITAL OUTLAY ACT TO ALLOW THE PUBLIC SCHOOL CAPITAL
13 OUTLAY COUNCIL TO PROVIDE ANNUAL ALLOCATIONS TO SCHOOL
14 DISTRICTS TO ADDRESS BUILDING SYSTEMS NEEDS; AMENDING,
15 REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "22-24-3. DEFINITIONS.--As used in the Public School
21 Capital Outlay Act:

22 A. "building system" means a set of interacting
23 parts that make up a single, non-portable or fixed component of
24 a facility and that, together with other building systems, make
25 up an entire integrated facility or property, including

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1 roofing, electrical distribution, electronic communication,
2 plumbing, lighting, mechanical, fire prevention, facility
3 shell, interior finishes and heating, ventilation and air
4 conditioning systems, as defined by the council;

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

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

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

17 ~~[D-]~~ E. "fund" means the public school capital
18 outlay fund; and

19 ~~[E-]~~ F. "school district" includes state-chartered
20 charter schools and the constitutional special schools."

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

23 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
24 USE.--

25 A. The "public school capital outlay fund" is

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1 created. Balances remaining in the fund at the end of each
2 fiscal year shall not revert.

3 B. Except as provided in Subsections G and [~~F~~] J
4 through [~~H~~] M of this section, money in the fund may be used
5 only for capital expenditures deemed necessary by the council
6 for an adequate educational program.

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

25 D. Applications for assistance from the fund shall

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1 be made by school districts to the council in accordance with
2 requirements of the council. Except as provided in Subsection
3 [K] L of this section, the council shall require as a condition
4 of application that a school district have a current five-year
5 facilities plan, which shall include a current preventive
6 maintenance plan to which the school adheres for each public
7 school in the school district.

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

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

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

25 (2) the council may authorize payments

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1 directly to the contractor.

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

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

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

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

24 I. Up to fifteen million dollars (\$15,000,000) of
25 the fund may be expended annually by the council for

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1 expenditure in fiscal years 2014 through 2018 for a building
2 system repair, renovation or replacement initiative with
3 projects to be identified by the council pursuant to Section 3
4 of this 2013 act; provided that money allocated pursuant to
5 this subsection shall be expended within two years of the
6 allocation.

7 ~~[F.]~~ J. The fund may be expended annually by the
8 council for grants to school districts for the purpose of
9 making lease payments for classroom facilities, including
10 facilities leased by charter schools. The grants shall be made
11 upon application by the school districts and pursuant to rules
12 adopted by the council; provided that an application on behalf
13 of a charter school shall be made by the school district, but,
14 if the school district fails to make an application on behalf
15 of a charter school, the charter school may submit its own
16 application. The following criteria shall apply to the grants:

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

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

22 (b) seven hundred dollars (\$700)
23 multiplied by the number of MEM using the leased classroom
24 facilities; provided that in fiscal year 2009 and in each
25 subsequent fiscal year, this amount shall be adjusted by the

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1 percentage change between the penultimate calendar year and the
2 immediately preceding calendar year of the consumer price index
3 for the United States, all items, as published by the United
4 States department of labor;

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

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

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

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

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

21 (5) if the lease payments are made pursuant to
22 a financing agreement under which the facilities may be
23 purchased for a price that is reduced according to the lease
24 payments made, neither a grant nor any provision of the Public
25 School Capital Outlay Act creates a legal obligation for the

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1 school district or charter school to continue the lease from
2 year to year or to purchase the facilities nor does it create a
3 legal obligation for the state to make subsequent grants
4 pursuant to the provisions of this subsection; and

5 (6) as used in this subsection:

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

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

21 [~~J.~~] K. In addition to other authorized
22 expenditures from the fund, up to one percent of the average
23 grant assistance authorized from the fund during the three
24 previous fiscal years may be expended in each fiscal year by
25 the public school facilities authority to pay the state fire

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1 marshal, the construction industries division of the regulation
2 and licensing department and local jurisdictions having
3 authority from the state to permit and inspect projects for
4 expenditures made to permit and inspect projects funded in
5 whole or in part under the Public School Capital Outlay Act.
6 The authority may enter into contracts with the state fire
7 marshal, the construction industries division or the
8 appropriate local authorities to carry out the provisions of
9 this subsection. Such a contract may provide for initial
10 estimated payments from the fund prior to the expenditures if
11 the contract also provides for additional payments from the
12 fund if the actual expenditures exceed the initial payments and
13 for repayments back to the fund if the initial payments exceed
14 the actual expenditures. Money distributed from the fund to
15 the state fire marshal or the construction industries division
16 pursuant to this subsection shall be used to supplement, rather
17 than supplant, appropriations to those entities.

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

23 (1) no allocation shall be made unless the
24 council determines that the school district is willing and able
25 to pay the portion of the total cost of developing or updating

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1 the plan that is not funded with the allocation from the fund.
2 Except as provided in Paragraph (2) of this subsection, the
3 portion of the total cost to be paid with the allocation from
4 the fund shall be determined pursuant to the methodology in
5 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

8 (a) the school district has fewer than
9 an average of six hundred full-time-equivalent students on the
10 eightieth and one hundred twentieth days of the prior school
11 year; or

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

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1 outstanding school district general obligation bonds.

2 ~~[H.]~~ M. Upon application by a school district,
3 allocations from the fund may be made by the council for the
4 purpose of demolishing abandoned school district facilities,
5 provided that:

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

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

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

17 **SECTION 3.** A new section of the Public School Capital
18 Outlay Act is enacted to read:

19 "[NEW MATERIAL] BUILDING SYSTEM REPAIR, RENOVATION OR
20 REPLACEMENT.--

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

24 B. A school district desiring a grant award
25 pursuant to this section shall submit an application to the

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1 council. The application shall include an assessment of the
2 building system that, in the opinion of the school district,
3 the repair, renovation or replacement of which would extend the
4 useful life of the building itself.

5 C. The public school facilities authority shall
6 verify the assessment made by the school district and rank the
7 application with similar applications pursuant to a methodology
8 adopted by the council.

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

23 E. The state share of the cost of an approved
24 building system repair, renovation or replacement project shall
25 be calculated pursuant to the methodology in Paragraph (5) of

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1 Subsection B of Section 22-24-5 NMSA 1978.

2 F. A grant made pursuant to this section shall be
3 expended by the school district within two years of the grant
4 allocation."

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

7 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
8 APPLICATION--GRANT ASSISTANCE.--

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

12 B. Except as provided in Sections 22-24-4.3,
13 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
14 govern grant assistance from the fund [~~for a public school~~
15 ~~capital outlay project not wholly funded pursuant to Section~~
16 ~~22-24-4.1 NMSA 1978~~]:

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

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

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

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1 (b) the council may award grants
2 annually to school districts for the purpose of repairing,
3 renovating or replacing public school building systems as
4 identified in Section 3 of this 2013 act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (j) the value calculated pursuant to

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

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

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

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

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

25 (o) in those instances in which the

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1 calculation pursuant to Subparagraph (k) or (m) of this
2 paragraph yields a value greater than one, one shall be used as
3 the value for the subject school district;

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

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

25 (6) the amount calculated pursuant to

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1 Subparagraph (p) of Paragraph (5) of this subsection shall be
2 reduced by the following procedure:

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

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

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

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

23 (c) the value calculated pursuant to
24 Subparagraph (a) of this paragraph for the subject school
25 district is multiplied by the amount calculated pursuant to

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1 Subparagraph (b) of this paragraph for that school district;

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

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

11 (7) as used in this subsection:

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

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

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

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

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

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

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1 rates set to pay interest and principal on outstanding school
2 district general obligation bonds; or

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

13 (10) the local match for the constitutional
14 special schools shall be set at fifty percent for projects that
15 qualify under the educational adequacy category and one hundred
16 percent for projects that qualify in the support spaces
17 category; provided that the council may adjust or waive the
18 amount of any direct appropriation offset to or local share
19 required for the constitutional special schools if an applicant
20 constitutional special school has insufficient or no local
21 resources available; and

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

24 (a) the public school capital outlay
25 project is needed and included in the school district's

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1 five-year facilities plan among its top priorities;

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

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

7 (d) the school district has submitted a
8 five-year facilities plan that includes: 1) enrollment
9 projections; 2) a current preventive maintenance plan that has
10 been approved by the council pursuant to Section 22-24-5.3 NMSA
11 1978 and that is followed by each public school in the
12 district; 3) the capital needs of charter schools located in
13 the school district; and 4) projections for the facilities
14 needed in order to maintain a full-day kindergarten program;

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

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

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

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

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

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1 considered a public school capital outlay project and eligible
2 for grant assistance under this section pursuant to the
3 following criteria:

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

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

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

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

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

25 (6) neither a grant award nor any provision of

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1 the Public School Capital Outlay Act creates a legal obligation
2 for the school district or charter school to continue the lease
3 from year to year or to purchase the facility.

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

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

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

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

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1 be deemed to be attending other schools in the school district.

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

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

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

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

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

10 SECTION 5. Section 22-24-9 NMSA 1978 (being Laws 2003,
11 Chapter 147, Section 1, as amended) is amended to read:

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

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

25 B. The authority shall:

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- 1 (1) serve as staff to the council;
- 2 (2) as directed by the council, provide those
- 3 assistance and oversight functions required of the council by
- 4 Section 22-24-5.1 NMSA 1978;
- 5 (3) assist school districts with:
 - 6 (a) the development and implementation
 - 7 of five-year facilities plans and preventive maintenance plans;
 - 8 (b) procurement of architectural and
 - 9 engineering services;
 - 10 (c) management and oversight of
 - 11 construction activities; and
 - 12 (d) training programs;
- 13 (4) conduct ongoing reviews of five-year
- 14 facilities plans, preventive maintenance plans and performance
- 15 pursuant to those plans;
- 16 (5) as directed by the council, assist school
- 17 districts in analyzing and assessing their space utilization
- 18 options;
- 19 (6) ensure that public school capital outlay
- 20 projects are in compliance with applicable building codes;
- 21 (7) conduct on-site inspections as necessary
- 22 to ensure that the construction specifications are being met
- 23 and periodically inspect all of the documents related to
- 24 projects;
- 25 (8) require the use of standardized

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1 construction documents and the use of a standardized process
2 for change orders;

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

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

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

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

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

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

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

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

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

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

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

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

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

24 C. All actions taken by the authority shall be
25 consistent with educational programs conducted pursuant to the

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1 Public School Code. In the event of any potential or perceived
2 conflict between a proposed action of the authority and an
3 educational program, the authority shall consult with the
4 secretary.

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

9 Upon filing of the notice:

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

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

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

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

21 SECTION 6. REPEAL.--Section 22-24-4.1 NMSA 1978 (being
22 Laws 2001, Chapter 338, Section 6, as amended) is repealed.

23 SECTION 7. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2013.