The Legislature
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State of New Mexico

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LAWS 2015

CHAPTER 93

SENATE BILL 128

Introduced by

SENATOR MIMI STEWART AND REPRESENTATIVE JAMES E. SMITH

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE
CHAPTER 93

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

B. "constitutional special schools" means the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf;
C. "constitutional special schools support spaces" means all facilities necessary to support the constitutional special schools' educational mission that are not included in the constitutional special schools' educational adequacy standards, including, but not limited to, performing arts centers, facilities for athletic competition, school district administration and facility and vehicle maintenance;

D. "council" means the public school capital outlay council;

E. "education technology infrastructure" means the physical hardware used to interconnect education technology equipment for school districts and school buildings necessary to support broadband connectivity as determined by the council;

F. "fund" means the public school capital outlay fund; and

G. "school district" includes state-chartered charter schools and the constitutional special schools."

SECTION 2. 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 M 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.

F. Up to fifteen million dollars ($15,000,000) of the fund may be expended annually by the council for expenditure in fiscal years 2016 through 2020 for a building system repair, renovation or replacement initiative with projects to be identified by the council pursuant to Section 3 of this 2015 act; provided that money allocated pursuant to this subsection shall be expended within three 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 eightyeth 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 eightyeth 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 public school facilities 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.

M. Up to ten million dollars ($10,000,000) of the fund may be expended each year in fiscal years 2014 through 2019 for an education technology infrastructure deficiency corrections initiative pursuant to Section 22-24-4.5 NMSA 1978; provided that funding allocated pursuant to this section shall be expended within three years of its allocation."

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

"BUILDING SYSTEM REPAIR, RENOVATION OR REPLACEMENT.--

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

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

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

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve building system repair, renovation or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund.

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

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

SECTION 4. 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;
(b) the council may award grants annually to school districts for the purpose of repairing, renovating or replacing public school building systems in existing buildings as identified in Section 3 of this 2015 act;

(c) the council shall adopt and apply adequacy standards appropriate to the unique needs of the constitutional special schools; and

(d) 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 (10) 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 (10) 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 school district is
rejecting the appropriation; 2) the total shall exclude any
education 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 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;

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

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

(e) the amount calculated pursuant to
Subparagraph (p) of Paragraph (5) of this subsection shall be
reduced by the amount calculated pursuant to Subparagraph (d)
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 made a good-faith effort to use 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) the local match for the constitutional special schools shall be set at fifty percent for projects that qualify under the educational adequacy category and one hundred percent for projects that qualify in the support
spaces category; provided that the council may adjust or
waive the amount of any direct appropriation offset to or
local share required for the constitutional special schools
if an applicant constitutional special school has
insufficient or no local resources available; and

   (11) 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.

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 education
technology 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.

E. 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 5. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2015.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this ___ day of April, 2015

Governor Susana Martinez
State of New Mexico