

1 AN ACT
2 RELATING TO PUBLIC SCHOOLS; DEFINING "EDUCATION TECHNOLOGY
3 INFRASTRUCTURE"; PROVIDING FOR ALLOCATIONS FROM THE PUBLIC
4 SCHOOL CAPITAL OUTLAY FUND FOR EDUCATION TECHNOLOGY
5 INFRASTRUCTURE; ESTABLISHING AN EDUCATION TECHNOLOGY
6 INFRASTRUCTURE DEFICIENCY CORRECTIONS INITIATIVE; ALLOWING
7 FOR ADJUSTMENTS FOR THE LOCAL SCHOOL DISTRICT SHARE OF
8 PROGRAM COST; DECLARING AN EMERGENCY.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "22-24-3. DEFINITIONS.--As used in the Public School
14 Capital Outlay Act:

15 A. "constitutional special schools" means the
16 New Mexico school for the blind and visually impaired and the
17 New Mexico school for the deaf;

18 B. "constitutional special schools support spaces"
19 means all facilities necessary to support the constitutional
20 special schools' educational mission that are not included in
21 the constitutional special schools' educational adequacy
22 standards, including, but not limited to, performing arts
23 centers, facilities for athletic competition, school district
24 administration and facility and vehicle maintenance;

25 C. "council" means the public school capital
outlay council;

D. "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;

1 E. "fund" means the public school capital outlay
2 fund; and

3 F. "school district" includes state-chartered
4 charter schools and the constitutional special schools."

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

7 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND
8 CREATED--USE.--

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

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

16 C. The council may authorize the purchase by the
17 public school facilities authority of portable classrooms to
18 be loaned to school districts to meet a temporary
19 requirement. Payment for these purchases shall be made from
20 the fund. Title to and custody of the portable classrooms
21 shall rest in the public school facilities authority. The
22 council shall authorize the lending of the portable
23 classrooms to school districts upon request and upon finding
24 that sufficient need exists. Application for use or return
25 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

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

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

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

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

25 (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

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

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

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

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

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

25 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

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

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

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

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

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

23 (3) at the end of each fiscal year, any
24 unexpended or unencumbered balance of the appropriation shall
25 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

1 pursuant to the provisions of the Public School Lease
2 Purchase Act; and

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

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

15 (6) as used in this subsection:

16 (a) "MEM" means: 1) the average
17 full-time-equivalent enrollment using leased classroom
18 facilities on the eightieth and one hundred twentieth days of
19 the prior school year; or 2) in the case of an approved
20 charter school that has not commenced classroom instruction,
21 the estimated full-time-equivalent enrollment that will use
22 leased classroom facilities in the first year of instruction,
23 as shown in the approved charter school application; provided
24 that, after the eightieth day of the school year, the MEM
25 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.

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

23 K. Pursuant to guidelines established by the
24 council, allocations from the fund may be made to assist
25 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

1 able to pay the portion of the total cost of developing or
2 updating the plan that is not funded with the allocation from
3 the fund. Except as provided in Paragraph (2) of this
4 subsection, the portion of the total cost to be paid with the
5 allocation from the fund shall be determined pursuant to the
6 methodology in Paragraph (5) of Subsection B of Section
7 22-24-5 NMSA 1978; or

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

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

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

1 allocations from the fund may be made by the council for the
2 purpose of demolishing abandoned school district facilities,
3 provided that:

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

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

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

15 M. Up to ten million dollars (\$10,000,000) of the
16 fund may be expended each year in fiscal years 2014 through
17 2019 for an education technology infrastructure deficiency
18 corrections initiative pursuant to Section 4 of this 2014
19 act; provided that funding allocated pursuant to this section
20 shall be expended within three years of its allocation."

21 SECTION 3. Section 22-24-5 NMSA 1978 (being Laws 1975,
22 Chapter 235, Section 5, as amended) is amended to read:

23 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
24 APPLICATION--GRANT ASSISTANCE.--

25 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

1 govern grant assistance from the fund for a public school
2 capital outlay project not wholly funded pursuant to Section
3 22-24-4.1 NMSA 1978:

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

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

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

14 (b) the council shall adopt and apply
15 adequacy standards appropriate to the unique needs of the
16 constitutional special schools; and

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

22 (3) the council shall establish criteria to
23 be used in public school capital outlay projects that receive
24 grant assistance pursuant to the Public School Capital Outlay
25 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

1 construction materials that may reduce long-term operating
2 costs;

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

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

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

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

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

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

25 (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;

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
14 NMSA 1978, the Public School Capital Improvements Act, the
15 Public School Buildings Act, the Education Technology
16 Equipment Act and Paragraph (2) of Subsection B of Section
17 7-37-7 NMSA 1978 is calculated for each school district;

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

22 (i) the lowest value calculated
23 pursuant to Subparagraph (g) of this paragraph is subtracted
24 from the value calculated pursuant to that subparagraph for
25 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

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

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

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

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

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

25 (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

1 the subject school district in the current year plus the
2 value calculated for that school district in each of the two
3 preceding years and the denominator of which is three; and

4 (q) as used in this paragraph:

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

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

20 (a) the total of all legislative
21 appropriations made after January 1, 2003 for nonoperating
22 purposes either directly to the subject school district or to
23 another governmental entity for the purpose of passing the
24 money through directly to the subject school district, and
25 not rejected by the subject school district, is calculated;
provided that: 1) an appropriation made in a fiscal year
shall be deemed to be accepted by a school district unless,
prior to June 1 of that fiscal year, the school district
notifies the department of finance and administration and the
public education department that the district is rejecting

1 the appropriation; 2) the total shall exclude any education
2 technology appropriation made prior to January 1, 2005 unless
3 the appropriation was on or after January 1, 2003 and not
4 previously used to offset distributions pursuant to the
5 Technology for Education Act; 3) the total shall exclude any
6 appropriation previously made to the subject school district
7 that is reauthorized for expenditure by another recipient;
8 4) the total shall exclude one-half of the amount of any
9 appropriation made or reauthorized after January 1, 2007 if
10 the purpose of the appropriation or reauthorization is to
11 fund, in whole or in part, a capital outlay project that,
12 when prioritized by the council pursuant to this section
13 either in the immediately preceding funding cycle or in the
14 current funding cycle, ranked in the top one hundred fifty
15 projects statewide; 5) the total shall exclude the
16 proportionate share of any appropriation made or reauthorized
17 after January 1, 2008 for a capital project that will be
18 jointly used by a governmental entity other than the subject
19 school district. Pursuant to criteria adopted by rule of the
20 council and based upon the proposed use of the capital
21 project, the council shall determine the proportionate share
22 to be used by the governmental entity and excluded from the
23 total; and 6) unless the grant award is made to the
24 state-chartered charter school or unless the appropriation
25 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

1 state-chartered charter school;

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

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

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

16 (e) the amount calculated pursuant to
17 Subparagraph (p) of Paragraph (5) of this subsection shall be
18 reduced by the amount calculated pursuant to Subparagraph (d)
19 of this paragraph;

20 (7) as used in this subsection:

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

23 (b) "subject school district" means the
24 school district that has submitted the application for
25 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

1 finds that the subject school district has been exemplary in
2 implementing and maintaining a preventive maintenance
3 program. The council shall adopt such rules as are necessary
4 to implement the provisions of this paragraph;

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

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

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

1 interest and principal on outstanding school district general
2 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
7 next two years; and 3) for all educational purposes, has a
8 residential property tax rate of at least ten dollars
9 (\$10.00) on each one thousand dollars (\$1,000) of taxable
10 value, as measured by the sum of all rates imposed by
11 resolution of the local school board plus rates set to pay
12 interest and principal on outstanding school district general
13 obligation bonds;

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

23 (11) no application for grant assistance
24 from the fund shall be approved unless the council determines
25 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;

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

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

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

24 (f) the application includes the
25 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

1 writing, to comply with any reporting requirements or
2 conditions imposed by the council pursuant to
3 Section 22-24-5.1 NMSA 1978.

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

16 D. The acquisition of a facility by a school
17 district or charter school pursuant to a financing agreement
18 that provides for lease payments with an option to purchase
19 for a price that is reduced according to lease payments made
20 may be considered a public school capital outlay project and
21 eligible for grant assistance under this section pursuant to
22 the following criteria:

23 (1) no grant shall be awarded unless the
24 council determines that, at the time of exercising the option
25 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

1 requirements for grant assistance pursuant to the Public
2 School Capital Outlay Act;

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

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

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

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

19 E. In order to encourage private capital
20 investment in the construction of public school facilities,
21 the purchase of a privately owned school facility that is, at
22 the time of application, in use by a school district may be
23 considered a public school capital outlay project and
24 eligible for grant assistance pursuant to this section if the
25 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

1 at the facility to be purchased is at seventy-five percent or
2 greater of design capacity and the attendance at other
3 schools in the school district that the students at the
4 facility would otherwise attend is at eighty-five percent or
5 greater of design capacity; and

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

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

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

25 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

1 and segments of society most concerned with a particular
2 aspect of the council's work.

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

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

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

19 "EDUCATION TECHNOLOGY INFRASTRUCTURE DEFICIENCY
20 CORRECTIONS.--

21 A. No later than September 1, 2014, the council,
22 with the advice of the public education department and the
23 department of information technology, shall define and
24 develop:

25 (1) minimum adequacy standards for an
education technology infrastructure deficiency corrections
initiative to identify and determine reasonable costs for
correcting education technology infrastructure deficiencies
in or affecting school districts;

1 (2) a methodology for prioritizing projects
2 to correct education technology infrastructure deficiencies
3 in or affecting school districts; and

4 (3) a methodology for determining a school
5 district's share of the project costs.

6 B. The council may approve allocations from the
7 fund pursuant to Subsection M of Section 22-24-4 NMSA 1978
8 and this section for projects in or affecting a school
9 district committing to pay its share of the project costs.
10 The council may adjust the school district's share of the
11 project costs in accordance with Paragraph (9) of Subsection
12 B of Section 22-24-5 NMSA 1978 or the methodology for
13 determining the school district's share of the project
14 costs."

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15 SECTION 5. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect
17 immediately. _____
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