

# ARTICLE 24

## Public School Capital Outlay

### 22-24-1. Short title.

Chapter 22, Article 24 NMSA 1978 may be cited as the "Public School Capital Outlay Act".

**History:** 1953 Comp., § 77-24-9, enacted by Laws 1975, ch. 235, § 1; 1978, ch. 152, § 1; 2000 (2nd S.S.), ch. 19, § 1.

### ANNOTATIONS

**Cross references.** — For public school finances generally, see 22-8-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2000 amendment,** effective April 12, 2000, substituted "Chapter 22, Article 24 NMSA 1978" for "Sections 22-24-1 through 22-24-6 NMSA 1978".

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

### 22-24-2. Purpose of act.

The purpose of the Public School Capital Outlay Act is to ensure that, through a standards-based process for all school districts, the physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and maximize safe, functional and durable learning environments in order for the state to meet its educational responsibilities and for New Mexico's students to have the opportunity to achieve success.

**History:** 1953 Comp., § 77-24-10, enacted by Laws 1975, ch. 235, § 2; 1978, ch. 152, § 2; 1994, ch. 88, § 1; 2004, ch. 125, § 6.

### ANNOTATIONS

**The 2004 amendment,** effective May 19, 2004, replaced the previous purpose to "meet critical school district capital outlay which cannot be met by the school district after it has exhausted available resources" with the purpose that follows "is to" at the beginning of the section.

**The 1994 amendment,** effective May 18, 1994 deleted "all" preceding "available" near the end of the section.

### **22-24-3. Definitions.**

As used in the Public School Capital Outlay Act:

A. "authority" means the public school facilities authority;

B. "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 roofing, electrical distribution, electronic communication, plumbing, lighting, mechanical, fire prevention, facility shell, interior finishes, heating, ventilation and air conditioning systems and school security systems, as defined by the council;

C. "constitutional special schools" means the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf;

D. "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 performing arts centers, facilities for athletic competition, school district administration and facility and vehicle maintenance;

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

F. "education technology infrastructure" means the physical hardware and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the council;

G. "fund" means the public school capital outlay fund;

H. "maximum allowable gross square foot per student" means a determination made by applying the established maximum allowable square foot guidelines for educational facilities based on type of school and number of students in the current published New Mexico public school adequacy planning guide to the department's current year certified first reporting date membership;

I. "replacement cost per square foot" means the statewide cost per square foot as established by the council;

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

K. "school district population density" means the population density on a per square mile basis of a school district as estimated by the authority based on the most current tract level population estimates published by the United States census bureau; and

L. "school district population density factor" means zero when the school district population density is greater than fifty people per square mile, six-hundredths when the school district population density is greater than fifteen but less than fifty-one persons per square mile and twelve-hundredths when the school district population density is less than sixteen persons per square mile.

**History:** 1953 Comp., § 77-24-11, enacted by Laws 1975, ch. 235, § 3; 1978, ch. 152, § 3; 2006, ch. 94, § 58; 2012, ch. 53, § 1; 2014, ch. 28, § 1; 2015, ch. 93, § 1; 2018, ch. 66, § 1; 2018, ch. 71, § 2; 2021, ch. 49, § 1.

## ANNOTATIONS

**The 2021 amendment**, effective April 5, 2021, amended the definition of "education technology infrastructure" as used in the Public School Capital Outlay Act to include the interconnection between students and teachers to support remote learning; in Subsection F, after "physical hardware", deleted "used to interconnect education technology equipment for school districts and school buildings necessary to support broadband connectivity as determined by the council" and added "and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the council".

**2018 Amendments.** — Laws 2018, ch. 71, § 2, effective May 16, 2018, added "school security system" to the definition of "building system"; in Subsection A (now Subsection B), after "air conditioning systems", added "and school security systems", and made minor stylistic changes.

Laws 2018, ch. 66, § 1, effective May 16, 2018, defined "authority", "maximum allowable gross square foot per student", "replacement cost per square foot", "school district population density", and "school district population density factor" as used in the Public School Capital Outlay Act; added a new Subsection A and redesignated former Subsections A through F as Subsections B through G, respectively; and added Subsections H through L, and made minor stylistic changes.

**The 2015 amendment**, effective July 1, 2015, defined "building system" in the Public School Capital Outlay Act; and added Subsection A and redesignated the succeeding subsections accordingly.

**The 2014 amendment**, effective March 6, 2014, added a definition of "education technology infrastructure" to provide for allocations from the public school capital outlay fund for education technology infrastructure; and added Subsection D.

**The 2012 amendment**, effective May 16, 2012, made the school for the blind and visually impaired and the school for the deaf, including all facilities that are necessary for their educational missions, eligible for public school capital outlay funding; added Subsections A and B; and in Subsection E, after "charter schools", added "and the constitutional special schools".

**The 2006 amendment**, effective May 17, 2006, added Subsection C to define school district.

### **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 Q 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 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 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 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 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 that 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 authority pursuant to the Public School Capital Outlay Act, and, in addition, balances in the fund may be expended by the authority, upon approval of the council, for project management expenses; provided that:

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

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

H. The fund may be expended by the council for building system repair, renovation or replacement initiatives with projects to be identified by the council pursuant to Section 22-24-4.6

NMSA 1978; 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 school district; or

(b) seven hundred dollars (\$700) multiplied by the 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 Every Student Succeeds Act;

(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 [Chapter 22, Article 26A NMSA 1978]; 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 second and third reporting dates 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

second reporting date 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 authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

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

(1) no allocation shall be made unless the council determines that the school district is willing and able to pay the portion of the total cost of developing or updating the plan that is not funded with the allocation from the fund. Except as provided in Paragraph (2) of this subsection, the portion of the total cost to be paid with the allocation from the fund shall be determined pursuant to the methodology in 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 second and third reporting dates 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 second and third reporting dates 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 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 to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied.

M. Up to ten million dollars (\$10,000,000) of the fund may be expended each year 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.

N. For each fiscal year from 2018 through 2022, twenty-five million dollars (\$25,000,000) of the fund is reserved for appropriation by the legislature to the instructional material fund or to the transportation distribution of the public school fund. The secretary shall certify the need for the issuance of supplemental severance tax bonds to meet an appropriation from the public school capital outlay fund to the instructional material fund or to the transportation distribution of the public school fund. Any portion of an amount of the public school capital outlay fund that is reserved for appropriation by the legislature for a fiscal year, but that is not appropriated before the first day of that fiscal year, may be expended by the council as provided in this section.

O. Up to ten million dollars (\$10,000,000) of the fund may be expended in each of fiscal years 2019 through 2022 for school security system project grants made in accordance with Section 22-24-4.7 NMSA 1978.

P. The fund may be expended in each of fiscal years 2020 through 2024 for a pre-kindergarten classroom facilities initiative in accordance with Section 22-24-12 NMSA 1978.

Q. The council may fund pre-kindergarten classrooms with a qualifying, awarded standards-based project; provided that pre-kindergarten classroom space shall not be included in the project prioritization calculation adopted by the council pursuant to Section 22-24-5 NMSA 1978. The council shall develop pre-kindergarten classroom standards to use when funding pre-kindergarten space.

**History:** 1953 Comp., § 77-24-12, enacted by Laws 1975, ch. 235, § 4; 1978, ch. 152, § 4; 1983, ch. 301, § 70; 1993, ch. 226, § 50; 1994, ch. 88, § 2; 2001, ch. 338, § 5; 2001, ch. 339, § 1; 2002, ch. 65, § 1; 2003, ch. 147, § 3; 2004, ch. 125, § 7; 2005, ch. 274, § 5; 2006, ch. 95, § 4; 2007, ch. 366, § 3; 2008, ch. 90, § 1; 2009, ch. 258, § 2; 2010, ch. 104, § 1; 2014, ch. 28, § 2; 2015, ch. 93, § 2; 2016 (2nd S.S.), ch. 2, § 2; 2017, ch. 142, § 1; 2018, ch. 71, § 3; 2019, ch. 179, § 2; 2019, ch. 180, § 1; 2021, ch. 27, § 1.

## ANNOTATIONS

**Cross references.** — For the federal No Child Left Behind Act of 2001, see 20 U.S.C. § 6301.

For the public school facilities authority, see 22-24-9 NMSA 1978.

**The 2021 amendment,** effective June 18, 2021, authorized allocations from the public school capital outlay fund to fully fund the demolition of abandoned school district facilities; in

Subsection L, Paragraph L(3), after the first occurrence of "school district", deleted "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" and added "to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied"; and in Subsection P, after "Section", changed "1 of this 2019 act" to "22-24-12 NMSA 1978".

**2019 Amendments.** — Laws 2019, ch. 179, § 2, effective June 14, 2019, provided that the public school capital outlay fund may be expended for a pre-kindergarten classroom facilities initiative, provided that the council may fund pre-kindergarten classrooms, and made certain technical amendments; deleted "public school facilities" preceding "authority" throughout the section; in Subsection I, Paragraph I(2), after "federal grants", deleted "pursuant to the federal No Child Left Behind Act of 2001" and added "if required", and in Subparagraph I(6)(a), after "after the", deleted "eighteenth day" and added "second reporting date"; and in Subsection K, Paragraph K(1), after "methodology in", deleted "Paragraph (5) of", and in Subparagraph K(2)(b), after "methodology in", deleted "Paragraph (5) of"; and added Subsections P and Q.

Laws 2019, ch. 180, § 1, effective July 1, 2019, provided that 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 Every Student Succeeds Act, and made certain technical amendments; deleted "public school facilities" preceding "authority" throughout the section; in Subsection I, Paragraph I(2), after "pursuant to the federal", deleted "No Child Left Behind Act of 2001" and added "Every Student Succeeds Act", and in Subparagraph I(6)(a), after "after the", deleted "eighteenth day" and added "second reporting date"; and in Subsection K, Paragraph K(1), after "methodology in", deleted "Paragraph (5) of", and in Subparagraph K(2)(b), after "methodology in", deleted "Paragraph (5) of".

**The 2018 amendment,** effective May 16, 2018, authorized up to \$10,000,000 of the public school capital outlay fund to be expended in each of fiscal years 2019 through 2022 for school security system project grants and made technical changes; deleted three occurrences of "eightieth and one hundred twentieth days" and added "second and third reporting dates"; in Subsection B, after "through", deleted "N" and added "O"; in Subsection I, Subparagraph I(1)(b), after "multiplied by the", deleted "number of"; in Subsection M, after, "expended", added "in", and after "each", deleted "year in" and added "of"; and added Subsection O.

**Compiler's notes.** — Laws 2018, ch. 71, § 4 provided that if acts making amendments to Section 22-24-4 NMSA 1978 are enacted by the first and second sessions of the fifty-third legislature, the provisions of those acts shall be reconciled and compiled in accordance with the provisions of Section 12-1-8 NMSA 1978, notwithstanding that the amendments were not made in the same session of the legislature. This section includes language enacted by Laws 2017, ch. 142, § 1, which was given force of law by the New Mexico Supreme Court in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, S.Ct. Order No. S-1-SC-36731, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, and has been reconciled with Laws 2018, ch. 71, § 3.

**The 2017 amendment,** effective June 16, 2017, removed the time period which limited the use of the public school capital outlay fund for an education technology infrastructure deficiency corrections initiative; and in Subsection M, after "expended each year", deleted "in fiscal years 2014 through 2019".

**The 2016 (2nd S.S.) amendment,** effective October 7, 2016, removed the four-year fifteen million dollar (\$15,000,000) cap on expenditures from the public school capital outlay fund for



building system repairs, renovation or replacement initiatives, and reserved certain amounts from the public school capital outlay fund for appropriation by the legislature to the instructional material fund or the transportation distribution of the public school fund; in Subsection B, after "G and I through", deleted "M" and added "N"; in Subsection H, deleted "Up to fifteen million dollars (\$15,000,000) of", after "may be expended", deleted "annually", after "by the council for", deleted "expenditure in fiscal years 2016 through 2020 for a", after "renovation or replacement", changed "initiative" to "initiatives", and after "pursuant to Section", deleted "3 of this 2015 act" and added "22-24-4.6 NMSA 1978"; in Subparagraph I(1) (a), after "schools, in the", added "school"; and added new Subsection N.

**The 2015 amendment**, effective July 1, 2015, authorized the expenditure of fifteen million dollars (\$15,000,000) from the public school capital outlay fund to be used in fiscal years 2016 through 2020 for a building system repair; in Subsection H, after "Up to", deleted "ten million dollars (\$10,000,000) of the fund may be allocated annually by the council for expenditure in fiscal years 2010 through 2015 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within two years of the allocation" and added the remainder of the subsection; and in Subsection M, after "pursuant to this Section", deleted "4 of this 2014 act" and added "22-24-4.5 NMSA 1978".

**The 2014 amendment**, effective March 6, 2014, established an education technology infrastructure deficiency corrections initiative; in Subsection J, in the second sentence, added "public school facilities"; and added Subsection M.

**The 2010 amendment**, effective March 9, 2010, in Subsection C, in the third sentence, after "Title", added "to" and after "custody" deleted "to"; in Subsection H, after "fund may be allocated", added "annually" and after "fiscal years 2010 through", changed "2012" to "2015"; and in Subsection J, in the second sentence, after "The authority", changed "shall" to "may"; and added the last sentence.

**The 2009 amendment**, effective April 8, 2009, in Subsection B, added the reference to Subsection I; in Paragraph (1) of Subsection G, after "expenditures from the fund", added "for the core administrative functions"; in Subsection H, after "Up to", deleted "thirty million dollars (\$30,000,000)" and added "ten million dollars (\$10,000,000)"; after "allocated", deleted "annually"; after "by the council", changed "in fiscal years 2006 and 2007" to "for expenditure in fiscal years 2010 through 2012"; and after "subsection shall be expended", deleted "prior to September 1, 2008" and added "within two years of the allocation"; in Subsection I, after "annually by the council", deleted "in fiscal years 2006 through 2020"; in Subparagraph (b) of Paragraph (1) of Subsection I, after "percentage", deleted "increase" and added "change"; and after "department of labor", deleted the remainder of the sentence, which provided for a rate if the total grants awarded exceed the total annual amount available; added Paragraph (4) of Subsection I; deleted former Subparagraph (a) of Paragraph (5) of Subsection I, which provided that a grant shall not be made unless the facilities met the statewide adequacy standards; and deleted former Paragraph (5) of Subsection I, which provided limitations on the amounts expended from the fund.

**The 2008 amendment**, effective May 14, 2008, in Subsection J, provided that the contract may provide for initial estimated payments from the fund prior to the expenditures if the contract provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments to the fund if the initial payments exceed the actual expenditures.

**The 2007 amendment**, effective July 1, 2007, provided that, except as permitted in 22-24-5.8 NMSA 1978, money in the fund shall be used for capital expenditures for an adequate educational program; eliminated the \$7,500,000 limitation on expenditures for lease payments; increased the maximum amount of a grant to a school district to \$700,000,000; provided a formula for adjustment of the maximum amount of grants; added Paragraphs (4) and (5) of Subsection I; and added Subparagraph (b) of Paragraph (6) of Subsection I.

**The 2006 amendment**, effective March 6, 2006, added the qualification "except as provided in Subsection K" in Subsection D; deleted former Subsection H, which provided for expenditure of balances in the fund in fiscal years 2003 and 2004; in Subsection I (formerly Subsection J), changed four million dollars to seven million five hundred thousand dollars, changed "2005" to "2006" and changed "2009" to "2010"; in Subparagraph (b) of Paragraph (1) of Subsection I (formerly Subsection J), deleted three hundred dollars for fiscal year 2005 and deleted fiscal years 2006 through 2006 after six hundred dollars; in Subparagraph (b) of Paragraph (4) of Subsection I (formerly Subsection J), changed "fortieth" to "eightieth"; added a new Subsection K to provide for allocations for five-year facilities plans; added Paragraphs (1) and (2) of Subsection K to provide criteria for allocations for five-year facilities plans; added Subsection L to provide for allocations for demolishing abandoned school district facilities; and added Paragraphs (1) through (3) of Subsection L to provide criteria for allocations for demolishing abandoned school district facilities.

**The 2005 amendment**, effective April 6, 2005, changed the statutory reference in Subsection F from Section 22-24-5.5 NMSA 1978 to Section 22-24-5.4 NMSA 1978; deleted former Subsection I, which provided an appropriation to the council for core administrative functions of the deficiencies corrections program; deleted former Subsection J, which provided for the expenditures by the council for the core administrative functions of the public school facilities authority; provided in Subsection I for the allocation of funds for a roof repair and replacement initiative; provided in Subsection J 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, the charter school may submit its own application; provided in Subsection J(1)(b) that the amount of the grant shall not exceed \$300 for fiscal year 2005 and \$600 for fiscal years 2006 through 2009; changed "total" to "average" and "final funded prior school year" to "fortieth, eightieth and one hundred twentieth days of the prior school year" in Subsection J(4)(a); added Subsection J(4)(b) to define "MEM" in the case of a charter school that has not commenced classroom instruction; and added Subsection K to provide for the reimbursement of the state fire marshal, the construction industries division and local jurisdiction of costs incurred to permit and inspect projects.

**The 2004 amendment**, effective May 19, 2004, amended Subsection B to substitute "through K" for "and H", Subsection C to substitute in three places "public school facilities authority" for "property control division of the general services department" and to change in three places "property" to "portable classrooms", Subsection F to insert after "approved" "or an expenditure has been ordered by a court pursuant to Section 22-24-5.5 NMSA 1978" and Paragraph (2) to change "make" to "authorize", Subsection G to delete the present subsection and add new Subsection G, amended Subsection I to change "fiscal year 2004" to "fiscal years 2004 through 2007", and added new Subsection K.

**The 2003 amendment**, effective April 4, 2003, in Subsection F, inserted the second sentence and added Paragraphs F(1) and (2); rewrote Subsections G and H pertaining to distribution of money for projects; and added Subsections I and J.

**The 2002 amendment**, effective May 15, 2002, inserted the exception clause in Subsection B; and added Subsections G and H.

**The 2001 amendment**, effective July 1, 2001, added the last sentence of Subsection D; deleted "that cannot be financed by the school district from other sources and" following "capital outlay projects" in Subsection E; and added Subsection F.

**The 1994 amendment**, effective May 18, 1994, deleted "and the capital expenditures are limited to the purchase or construction of temporary or permanent classrooms" following "educational program" in Subsection B, and deleted "public" preceding "school" near the end of the fifth sentence of Subsection C.

**The 1993 amendment**, effective July 1, 1993, deleted "Annual" from the beginning of the fourth sentence of Subsection C.

**Disposal of portable classrooms not limited to sale.** — The discretion of the council to authorize the disposal of portable classrooms purchased by the fund is not limited to sale for consideration or exchange. 1980 Op. Att'y Gen. No. 80-05.

**When gratis transfer of classrooms proper.** — A gratis transfer by the public school capital outlay council of portable classrooms to local school boards does not violate N.M. Const., art. IX, § 14, since the prohibition there does not apply as between the state and one of its subordinate agencies. 1980 Op. Att'y Gen. No. 80-05.

**Veto power over gratis transfer.** — Section 13-6-2C NMSA 1978 (now Section 13-6-2D NMSA 1978) gives the secretary of finance and administration or the state board of finance (now the state budget division) veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-05.

## **22-24-4.1. Outstanding deficiencies; assessment; correction.**

A. No later than September 1, 2001, the council shall define and develop guidelines, consistent with the codes adopted by the construction industries commission pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978 NMSA 1978], for school districts to use to identify outstanding serious deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel.

B. A school district shall use these guidelines to complete a self-assessment of the outstanding health or safety deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The council shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], enter into construction contracts with contractors to correct the deficiencies.

E. In entering into construction contracts to correct deficiencies pursuant to this section, the council shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible and consistent with the original purpose.

F. Any deficiency that may adversely affect the health or safety of students or school personnel may be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district.

G. It is the intent of the legislature that all outstanding deficiencies in public schools and grounds that may adversely affect the health or safety of students and school personnel be identified and awards made pursuant to this section no later than June 30, 2005, and that funds be expended no later than June 30, 2007, provided that the council may extend the expenditure period upon a determination that a project requires the additional time because existing buildings need to be demolished or because of other extenuating circumstances.

**History:** 1978 Comp., § 22-24-4.1, enacted by Laws 2001, ch. 338, § 6; 2003, ch. 147, § 4; 2004, ch. 125, § 8; 2007, ch. 366, § 4.

### ANNOTATIONS

**The 2007 amendment,** effective July 1, 2007, amended Subsection G to authorize the council to extend the expenditure period for a project.

**The 2004 amendment,** effective May 19, 2004, amended Subsection B to add "school" before "district" and amended Subsection G to change "June 30, 2004" to "June 30, 2005" and "June 30, 2005" to "June 30, 2007".

**The 2003 amendment,** effective April 4, 2003, deleted "local" preceding "school district" in Subsection B; in Subsection G, substituted "awards made" for "funded" and added "and that funds be expended no later than June 30, 2006" at the end of the sentence.

### 22-24-4.2. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 2003, ch. 147, § 14 repealed 22-24-4.2 NMSA 1978, as enacted by Laws 2001, ch. 338, § 7, regarding the deficiencies correction unit, effective July 1, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*. For provisions of present law, see 22-24-9 NMSA 1978.

### 22-24-4.3. Roof repair and replacement initiative.

A. The council shall develop guidelines for a roof repair and 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 roofs on district school buildings that, in the opinion of the school district, create a threat of significant property damage.

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 roof repair 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. In order to pay its portion of the total project cost, a school district may use state distributions made to the school district pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or, if within the scope of the authorizing resolution, proceeds of the property tax imposed pursuant to that act.

E. The state share of the cost of an approved roof repair 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 two years of the grant allocation.

**History:** Laws 2005, ch. 274, § 6; 2009, ch. 258, § 3.

### ANNOTATIONS

**The 2009 amendment**, effective April 8, 2009, in Subsection E, after "cost of an approved", added "roof repair or replacement"; and in Subsection F, after "school district", deleted "prior to September 1, 2008" and added "within two years of the grant allocation".

#### **22-24-4.4. Serious roof deficiencies; correction.**

A. To complete the program to correct outstanding deficiencies, those serious deficiencies in the roofs of public school facilities identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:

(1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978], the cost of correcting the deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and

(2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public

school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.

B. It is the intent of the legislature that all awards for correcting outstanding deficiencies in public school roofs that may adversely affect the health and safety of students and school personnel be made pursuant to this section no later than September 30, 2005 and that funds be expended no later than September 30, 2008.

**History:** Laws 2005, ch. 274, § 7; 2007, ch. 366, § 5.

## ANNOTATIONS

**Repeals.** — Laws 2020 (1st S.S.), ch. 3, § 12, effective June 26, 2020, repealed Laws 2020, ch. 64, § 4, which was to become effective July 1, 2020. For provisions of Laws 2020, ch. 64, § 4, see the 2020 Session Laws on *NMOneSource.com*.

**The 2007 amendment,** effective July 1, 2007, changed the deadline for expenditure of funds to September 30, 2008.

### **22-24-4.5. Education technology infrastructure deficiency corrections.**

A. No later than September 1, 2014, the council, with the advice of the department and the department of information technology, shall define and develop:

(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;

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

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

B. The council shall develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment. The council may fund education technology infrastructure projects or items that the council determines are in accord with the guidelines and necessary to education for:

(1) students;

(2) school buses;

(3) internet connectivity within a school district;

(4) a multi-district regional education network; and

(5) a statewide education network.

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

**History:** Laws 2014, ch. 28, § 4; 2019, ch. 180, § 2; 2021, ch. 49, § 2.

## ANNOTATIONS

**The 2021 amendment**, effective April 5, 2021, required the public school capital outlay council to develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment, and authorized the council to fund education technology infrastructure projects or items that the council determines are in accord with guidelines and necessary for education; and added a new Subsection B and redesignated former Subsection B as Subsection C.

**The 2019 amendment**, effective July 1, 2019, in Subsection B, after "Paragraph", deleted "(9)" and added "(11)".

### **22-24-4.6. 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 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 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.

**History:** Laws 2015, ch. 93, § 3; 2019, ch. 180, § 3.

## ANNOTATIONS

**The 2019 amendment**, effective July 1, 2019, in Subsection C, deleted "public school facilities" preceding "authority"; and in Subsection E, after "methodology in", deleted "Paragraph (5) of".

### **22-24-4.7. School security system projects.**

A. The council shall develop guidelines for a school security system project grant initiative in accordance with this section.

B. A school district seeking a grant for a school security system project shall apply to the council on a form that includes an assessment of a school's security system and a statement of opinion by the school district that the project would improve the security of the school's buildings, property and occupants.

C. The authority shall verify the assessment made by the school district and rank all applications it receives for school security system project grants according to the methodology adopted by the council for that purpose.

D. After a public hearing, and to the extent that money is available in the fund for the purpose, the council shall make school security system project grants to school districts that the council determines are willing and able to pay for the portion of the total project cost not funded with grant assistance from the fund and according to those applicants' ranking.

E. The state share of the cost of an approved school security system project shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978.

F. A school district that receives a grant in accordance with this section shall expend the grant money within three years after the grant allocation. Money not spent in that time shall revert to the fund.

**History:** 1978 Comp., § 22-24-4.7, enacted by Laws 2018, ch. 71, § 1; 2019, ch. 180, § 4.

## ANNOTATIONS

**The 2019 amendment**, effective July 1, 2019, in Subsection C, deleted "public school facilities" preceding "authority"; and in Subsection E, after "methodology outlined in", deleted "Paragraph (5) of".

### **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 22-24-4.6 NMSA 1978;

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

(d) the council may award school security system project grants to school districts pursuant to the provisions of Section 22-24-4.7 NMSA 1978; and

(e) 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) no later than May 1 of each calendar year, the phase one formula 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 [Chapter 22, Article 25 NMSA 1978], the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978], the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978 ] 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) the phase one formula value shall equal a fraction the numerator of which is the value for the subject school district in the current year plus the value 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, "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the second and third reporting dates of the prior school year;

(6) no later than May 1 of each calendar year, the phase two formula value shall be calculated for each school district in accordance with the following procedure:

(a) the sum of the final prior five years net taxable value for a school district multiplied by nine ten-thousandths for that school district is calculated for each school district;

(b) the value calculated pursuant to Subparagraph (a) of this paragraph is added to the average unrestricted revenue used for capital expenditures pursuant to Subsection K of this section;

(c) the maximum allowable gross square foot per student multiplied by the replacement cost per square foot divided by forty-five is calculated for each school district;

(d) in fiscal years 2022 through 2024, the value calculated pursuant to Subparagraph (a) of this paragraph divided by the value calculated pursuant to Subparagraph (c) of this paragraph is calculated for each school district and in fiscal year 2025 and subsequent fiscal years, the value calculated pursuant to Subparagraph (b) of this paragraph divided by the value calculated pursuant to Subparagraph (c) of this paragraph is calculated for each school district;

(e) in those instances in which the calculation pursuant to Subparagraph (d) of this paragraph yields a value equal to or greater than one, the phase two formula value shall be zero for the subject school district;

(f) in those instances in which the calculation pursuant to Subparagraph (d) of this paragraph yields a value of ninety-hundredths or more but less than one, the phase two formula value shall be one minus the value calculated in Subparagraph (d) of this paragraph; and

(g) in those instances in which the calculation pursuant to Subparagraph (d) of this paragraph yields a value less than ninety-hundredths, the phase two formula value shall be one minus the value calculated in Subparagraph (d) of this paragraph plus the school district population density factor;

(7) the state share of a project approved by the council shall be funded within available resources pursuant to the provisions of this paragraph. Except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (9), (10), (11) or (12) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by the following percentage, except that in no case shall the state share be less than six percent:

(a) for fiscal years prior to fiscal year 2020, the percentage shall be the phase one formula value;

(b) for fiscal year 2020, the percentage shall be the sum of eight-tenths multiplied by the phase one formula value and two-tenths multiplied by the phase two formula value;

(c) for fiscal year 2021, the percentage shall be the sum of six-tenths multiplied by the phase one formula value and four-tenths multiplied by the phase two formula value;

(d) for fiscal year 2022, the percentage shall be the sum of four-tenths multiplied by the phase one formula value and six-tenths multiplied by the phase two formula value;

(e) for fiscal year 2023, the percentage shall be the sum of two-tenths multiplied by the phase one formula value and eight-tenths multiplied by the phase two formula value; and

(f) for fiscal year 2024 and thereafter, the percentage shall be the phase two formula value;

(8) as used in this subsection:

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

(b) "phase one formula value" for a state-chartered charter school means the phase one formula value calculated pursuant to Paragraph (5) of this subsection for the school district in which the state-chartered charter school is physically located;

(c) "phase two formula value" for a state-chartered charter school means the phase two formula value calculated pursuant to Paragraph (6) of this subsection for the school district in which the state-chartered charter school is physically located;

(d) "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; and

(e) "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;

(9) the amount to be distributed from the fund for an approved project pursuant to Paragraph (7) 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 percentage used for the subject school district for the applicable fiscal year pursuant to Paragraph (7) 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 to be distributed from the fund pursuant to Paragraph (7) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

(10) the amount calculated pursuant to Paragraph (7) of this subsection, after any reduction pursuant to Paragraph (9) 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;

(11) 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 second and third reporting dates 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;

(12) 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

(13) 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 (7), (9), (10) or (11) of this subsection, is not funded with grant assistance from the fund;

(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.

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

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

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

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

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

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

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

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

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

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

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

F. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of

standards pursuant to that act prohibits a school district from using other funds available to the district to exceed the statewide adequacy standards.

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

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

I. Upon the recommendation of the 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.

K. As used in this section, "unrestricted revenue used for capital expenditures" means the amount of revenue certified by the department that was not restricted for a particular purpose and used by a school district to make capital outlay expenditures, as defined by the council's rules. No later than July 1, 2024, the council shall adopt rules identifying the procedure for calculating unrestricted revenue used for capital expenditures after consulting with school districts, including school districts with limited bonding capacity for capital projects, the department, the public school capital outlay oversight task force, the legislative education study committee and the legislative finance committee; provided that the rules shall provide for the exclusion of revenue raised pursuant to the Public School Capital Improvements Act and the Public School Buildings Act and expenditures related to teacher housing. For the purposes of the phase two formula value pursuant to Paragraph (6) of Subsection B of this section, the average unrestricted revenue used for capital expenditures shall be calculated as follows:

(1) in fiscal year 2025, the amount shall be equal to unrestricted revenue used for capital expenditures in the most recent prior fiscal year for which data is available multiplied by 0.2;

(2) in fiscal year 2026, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the two most recent prior fiscal years for which data is available multiplied by 0.4;

(3) in fiscal year 2027, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the three most recent prior fiscal years for which data is available multiplied by 0.6;

(4) in fiscal year 2028, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the four most recent prior fiscal years for which data is available multiplied by 0.8; and



(5) in fiscal year 2029 and subsequent fiscal years, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the five most recent prior fiscal years for which data is available.

**History:** 1953 Comp., § 77-24-13, enacted by Laws 1975, ch. 235, § 5; 1977, ch. 247, § 205; 1978, ch. 152, § 5; 1987, ch. 326, § 1; 1994, ch. 88, § 3; 2000 (2nd S.S.), ch. 19, § 2; 2001, ch. 338, § 8; 2003, ch. 147, § 10; 2004, ch. 125, § 9; 2005, ch. 274, § 8; 2006, ch. 95, § 5; 2007, ch. 366, § 6; 2008, ch. 90, § 2; 2009, ch. 258, § 5; 2010, ch. 104, § 2; 2012, ch. 53, § 2; 2014, ch. 28, § 3; 2015, ch. 93, § 4.; 2018, ch. 66, § 2; 2019, ch. 180, § 5; 2021, ch. 52, § 8.

## ANNOTATIONS

**Cross references.** — For PL 874 funds, see 20 USCS § 7701 et seq.

**The 2021 amendment,** effective July 1, 2021, changed the phase two formula value calculation when determining the local and state match for capital outlay projects, and defined the term "unrestricted revenue used for capital expenditures" as used in this section; in Subsection B, added new Subparagraph B(6)(b) and redesignated former Subparagraphs B(6)(b) through B(6)(f) as Subparagraphs B(6)(c) through B(6)(g), respectively, in Subparagraph B(6)(d), added "in fiscal year 2022 through 2024", after the second occurrence of "Subparagraph", changed "(b)" to "(c)", and after "each school district", added the remainder of the subparagraph, in Subparagraph B(6)(e), B(6)(f), B(6)(g), after "Subparagraph", changed "(c)" to "(d)"; and added Subsection K.

**The 2019 amendment,** effective July 1, 2019, provided that the public school capital outlay council may award school security system project grants to school districts, and clarified the calculation of state and local shares of projects funded from the public school capital outlay fund; in Subsection B, Paragraph B(2), added new Subparagraph B(2)(d) and redesignated former Subparagraph B(2)(d) as Subparagraph B(2)(e), in Paragraph B(5), after "formula", added "value", in Subparagraph B(5)(p), deleted "except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (6), (10), (11) or (12) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by" and added "the phase one formula value shall equal", and after each occurrence of "value", deleted "calculated", in Subparagraph B(5)(q), deleted subparagraph designation "1)", after "district on the", deleted "eightieth and one hundred twentieth days" and added "second and third reporting dates", and deleted Subparagraphs B(5)(q)2) and B(5)(q)3), deleted former Paragraph B(6) and redesignated former Paragraph B(7) as Paragraph B(6), in Paragraph B(6), in the introductory clause, after "formula", added "value", deleted paragraph designation "(8)" and deleted "except as provided in Paragraph (6), (10), (11) or (12) of this subsection", added new paragraph designations "(7)" and "(8)", in Paragraph B(7), rewrote this paragraph to the extent that a detailed comparison is impracticable, in Paragraph B(8), added new Subparagraphs B(8)(b) and B(8)(c), new subparagraph designation "(d)" and new Subparagraph B(8)(e), added new Paragraph B(9), in Paragraph B(10), after "pursuant to", deleted "Subparagraph (p) of", after the next occurrence of "Paragraph", deleted "(5)" and added "(7)", and after the next occurrence of "Paragraph", deleted "(6)" and added "(9)", in Subparagraph B(11)(b), after "students on the", deleted "eightieth and one hundred twentieth days" and added "second and third reporting dates", in Subparagraph B(13)(e), after "Paragraph", deleted "(5), (6), (7), (9)", and after "from the fund;" deleted "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 property".

**The 2018 amendment**, effective May 16, 2018, changed the capital outlay funding formula for determination of state-local matches, and made stylistic and conforming changes; in Subsection B, Subparagraph B(2)(b), after "identified in Section", deleted "3 of this 2015 act" and added "22-24-4.6 NMSA 1978", in Paragraph B(5), in the introductory clause, deleted "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", and after "calendar year", deleted "a value" and added "the phase one formula"; in Subparagraph B(5)(p), after "Paragraph (6)", deleted "(8), (9) or" and after "(10)", added "(11) or (12)"; added new Paragraphs B(7) and B(8) and redesignated former Paragraphs B(7) through B(11) as Paragraphs B(9) through B(13), respectively; in Subparagraph B(13)(e), after "Paragraph (5), (6)", deleted "(8) or (9)" and added "(10) or (11)"; and in Subsection I, after "recommendation of the", deleted "public school facilities".

**The 2015 amendment**, effective July 1, 2015, authorized the public school capital outlay council to award grants to school districts for the purpose of repairing, renovating or replacing public school building systems; added Subsection B, Paragraph (2)(b) and redesignated the succeeding subparagraphs accordingly; and in Subsection B, Paragraph (6)(a), after "public education department that the", added "school".

**The 2014 amendment**, effective March 6, 2014, permitted the public school outlay council to adjust the amount of the local share if it determines that a school district has made a good-faith effort to use all of its local resources; in Subsection B, Paragraph (6), Subparagraph (a), after "2) the total shall exclude any", deleted "educational" and added "education"; in Subsection B, Paragraph (9), in the introductory sentence, after "school district has", deleted "used" and added "made a good-faith effort to use"; and in Subsection C, in the second sentence, after "and the need for", deleted "technological" and added "education technology".

**The 2012 amendment**, effective May 16, 2012, made the school for the blind and visually impaired and the school for the deaf, including facilities that are necessary for their educational missions, eligible for public school capital outlay funding; permitted the council to waive local matching if the schools have insufficient or no local resources available; and in Subsection B, in Paragraph (2), added Subparagraph (b); in Paragraph (5), in the first sentence, after the paragraph number "(9)", added "or (10)"; in Paragraph (5), in Subparagraph (p), after the paragraph number "(9)", added "or (10)"; in Paragraph (6), deleted former Subparagraph (b), which required that the amount to be distributed for a project be reduced by the amount of federal money received by the school district for nonoperating purposes; in Paragraph (6), deleted former Subparagraph (c), which required that the amount to be distributed for a project be reduced by the amount of state appropriations to the school district for nonoperating purposes; and added Paragraph (10).

**Laws 2010, ch. 104, § 2**, effective March 9, 2010, would have amended 22-24-5 NMSA 1978 as follows: in Subsection B(5), after "Paragraph (6), (8), (9)", added "or (11)"; in Subsection B(5)(p), after "Paragraph (6), (8), (9)", added "or (11)"; and added Subsection B(11), including Subparagraphs (a) and (b). These changes were line-item vetoed by the governor.

**The 2009 amendment**, effective April 8, 2009, in Paragraph (5) of Subsection B, added the reference to Paragraph (11); in Subparagraph (p) of Paragraph (5) of Subsection B, added the reference to Paragraph (11); added Subparagraphs (b) and (c) of Paragraph (6) of Subsection B; added Paragraph (11) of Subsection B; in Paragraph (1) of Subsection D, after "awarded

unless the council", deleted "finds that, prior to the purchase of" and added "determines that, at the time of exercising the option to purchase"; and in Subsection F, after "prohibits a school district from using" changed "local funds to exceed" to "other funds available to the district to exceed".

**The 2008 amendment**, effective May 14, 2008, added the reference to Paragraph (9) of Subsection B in Paragraph (5), Subparagraph (p) of Paragraph (5) and Subparagraph (e) of Paragraph (10) of Subsection B; added item 5) of Subparagraph (a) of Paragraph (6) of Subsection B; and added Subparagraph (a) of Paragraph (7) and Paragraph (8) of Subsection B.

**The 2007 amendment**, effective July 1, 2007, amended Subsection B to: add Subparagraph (c) of Paragraph (3); add item (3) of Subparagraph (q) of Paragraph (5) of Subsection B to define "value calculated for the subject school district"; and add items (2) through (5) of Subparagraph (a) of Paragraph (6); and, added new Subsections D and E.

**The 2006 amendment**, effective March 6, 2006, deleted the provision in Subsection A that provided an order of priority and funding of projects in the two years beginning July 1, 2004; in Subsection B, deleted the reference to Subsection A of this section; in Subparagraph (p) of Paragraph (5) of Subsection B, added the exception in Section 22-24-5.7 NMSA 1978 and deleted the provision that provided for a formula to determine the distribution for calendar year 2005; and in Subparagraph (b) of Paragraph (7) of Subsection B, deleted "fortieth" before "eightieth".

**The 2005 amendment**, effective April 6, 2005, changed "three years" to "two years" and changed "projects" to "specific projects" in Subsection A; provided in Subsection A that the order of projects that were partially funded shall exclude any expansion of the scope of the projects; changed the statutory reference in Subsection B and revised the funding priorities in Subsection B.

**The 2004 amendment**, effective May 19, 2004, replaced Subsections A and B with new Subsection A; designated former Subsection C as the last sentence of new Subsection A and added new language prior to Paragraph (1) of former Subsection C, now Subsection B; redesignated former Subsection D as Subsection C; redesignated former Subsections E through I as Subsections D through H; amended Subsection G to add the requirement of recommendation of the authority at the beginning of the subsection; and in Subsection H, changed "state board" to "public education commission" and deleted "each member of" preceding "the legislature".

**The 2003 amendment**, effective April 4, 2003, inserted Paragraph B(2) and redesignated former Paragraph B(2) as B(3); rewrote Paragraph C(5); inserted present Paragraphs C(6) and C(7), and redesignated the remaining paragraphs accordingly; substituted "that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by" for "to which the school adheres for" in Subparagraph C(9)(d); substituted "(6) or (8) of this subsection" for "established by law" in Subparagraph C(9)(e); and in Subsection D, deleted "no later than September 1, 2002"; inserted "and regularly review and update" preceding "statewide adequacy standards" in the first sentence and substituted "December 15" for "December 1" in Subsection I.

**The 2001 amendment**, effective April 5, 2001, rewrote the section.

**The 2000 amendment**, effective April 12, 2000, inserted "school" at the beginning of Subsection A(4) and in the second sentence of Subsection B; in Subsection A(6), added

"unless a determination and certification have been made pursuant to Subsection D of this section" to the preliminary language, designated the existing provisions of the subsection as Subparagraph (a) and added Subparagraph (b); in Subsection B, added Subsection B(1) and designated part of former Subsection B as Paragraph (2); and added Subsections D and E.

**The 1994 amendment**, effective May 18, 1994, deleted "all" preceding "available resources" in Paragraph A(2) and added Paragraphs A(6) and A(7), making related stylistic changes.

### **22-24-5.1. Council assistance and oversight.**

In providing grant assistance pursuant to Section 22-24-5 NMSA 1978, the council shall:

A. assist school districts in identifying critical capital outlay needs and in preparing grant applications;

B. take such actions as are necessary to assist school districts in implementing the projects for which grants are made, including assistance with the preparation of requests for bids or proposals, contract negotiations and contract implementation;

C. take such actions as are necessary to ensure cost savings and efficiencies for those school districts that are not large enough to maintain their own construction management staff; and

D. include such reporting requirements and conditions and take such actions as are necessary to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made. In order to ensure compliance with the intent of this subsection, the council may:

(1) access the premises of a project and review any documentation relating to a project;

(2) withhold all or part of the amount of grant assistance available for a project for grounds established by rule of the council; and

(3) if it determines that a project is repeatedly in substantial noncompliance with any reporting requirement or condition, take over the direct administration of the project until the project is completed.

**History:** 1978 Comp., § 22-24-5.1, enacted by Laws 2001, ch. 338, § 9.

### **22-24-5.2. Repealed.**

**History:** Laws 2001, ch. 328, § 3; repealed by Laws 2004, ch. 125, § 20.

## **ANNOTATIONS**

**Repeal.** — Laws 2004, ch. 125, § 20 repealed 22-24-5.2 NMSA 1978, as enacted by Laws 2001, ch. 328, § 3, relating to effect upon school district indebtedness requirement, effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### **22-24-5.3. Preventive maintenance plans; guidelines; approval.**

A. The council shall adopt guidelines that will assist school districts in the development and implementation of preventive maintenance plans. In developing the guidelines, the council shall ensure that they are not overly complex, that they are user-friendly and that they take into account the geographic and size variations of the districts throughout the state. The guidelines shall include the major requirements for:

- (1) establishing and implementing a preventive maintenance plan;
- (2) necessary budgets, personnel and staff support;
- (3) staff training; and
- (4) evaluation and auditing.

B. The council shall develop, implement and maintain a uniform web-based facility information management system. Within available appropriations, the council shall develop a schedule and procedure for phasing all school districts into the system, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act. The facility information management system shall:

- (1) provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;
- (2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and
- (3) facilitate training of facilities maintenance and management personnel.

C. To the extent resources are available, the council shall provide assistance to districts in developing and implementing a preventive maintenance plan.

D. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

- (1) the school district has a preventive maintenance plan that has been approved by the council; and
- (2) if applicable, the school district is participating in the implementation of the facility information management system.

E. As used in this section, "preventive maintenance" means the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life. "Preventive maintenance" includes scheduled activities intended to prevent

breakdowns and premature failures, including periodic inspections, lubrication, calibrations and replacement of expendable components of equipment.

**History:** 1978 Comp., § 22-24-5.3, enacted by Laws 2003, ch. 147, § 5; 2005, ch. 274, § 9.

## ANNOTATIONS

**The 2005 amendment**, effective April 6, 2005, added Subsections B(1) through (3) to provide that the council shall develop, implement and maintain a uniform web-based facility information management system; and added Subsection D(2) to provide that a school district shall not be eligible for funding unless, if applicable, the school district is participating in the implementation of the facility information management system.

### **22-24-5.4. Recalcitrant school districts; court action to enforce constitutional compliance; imposition of property tax.**

A. The council may bring an action against a school district pursuant to the provisions of this section if, based upon information submitted to the council by the authority, the council determines that:

(1) the physical condition of a public school facility in the school district is so inadequate that the facility or the education received by students attending the facility is below the minimum required by the constitution of New Mexico;

(2) the school district is not taking the necessary steps to bring the facility up to the constitutionally required minimum; and

(3) either:

(a) the school district has not applied for the grant assistance necessary to bring the facility up to minimum constitutional standards; or

(b) the school district is unwilling to meet all of the requirements for the approval of an application for grant assistance pursuant to Paragraph (13) of Subsection B of Section 22-24-5 NMSA 1978.

B. An action brought pursuant to this section shall be brought by the council in the name of the state against the school district in the district court for Santa Fe county.

C. After a hearing and consideration of the evidence, if the court finds that the council's determination pursuant to Subsection A of this section was correct, the court shall:

(1) order the council to expend sufficient resources necessary to bring the facility up to the minimum level required by the constitution of New Mexico;

(2) order the school district to comply with Paragraph (13) of Subsection B of Section 22-24-5 NMSA 1978 and to take all other actions necessary to facilitate the completion of the project ordered pursuant to Paragraph (1) of this subsection; and

(3) enter a judgment against the school district for court costs and attorney fees and the necessary amount to satisfy the school district share, as determined by the formula prescribed by Subsection B of Section 22-24-5 NMSA 1978, for the project ordered pursuant to Paragraph (1) of this subsection.

D. The amount of a judgment entered against a school district pursuant to Paragraph (3) of Subsection C of this section is a public debt of the school district. If the court finds that the debt cannot be satisfied with available school district funds, other than funds needed for the operation of the public schools and other existing obligations, the court shall order the imposition of a property tax on all taxable property allocated to the school district at a rate sufficient to pay the judgment, with accrued interest, within a reasonable time as determined by the court. After paying court costs and attorney fees, amounts received pursuant to this subsection shall be deposited by the council into the fund.

**History:** Laws 2004, ch. 125, § 10; 2008, ch. 90, § 3; 2019, ch. 180, § 6.

### ANNOTATIONS

**The 2019 amendment**, effective July 1, 2019, in Subsection A, deleted "public school facilities" preceding "authority"; and in Subsection C, Paragraph C(2), after "Paragraph", deleted "(10) and added "(13)".

**The 2008 amendment**, effective May 14, 2008, changed the reference from Paragraph (9) to Paragraph (10) of Subsection B of Section 22-24-5 NMSA 1978 in Subparagraph (b) of Paragraph (3) of Subsection A and in Paragraph (2) of Subsection C.

### **22-24-5.5. Preventive maintenance plans; participation in facility information management system.**

Each school district shall:

A. develop and implement a preventive maintenance plan following guidelines adopted by the public school capital outlay council pursuant to Section 22-24-5.3 NMSA 1978; and

B. participate in the facility information management system pursuant to the schedule adopted by the public school capital outlay council.

**History:** Laws 2005, ch. 274, § 16.

### ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 274, § 20 made the act effective April 6, 2005.

### **22-24-5.6. Outstanding deficiencies at certain state educational institutions.**

A. In consultation with the higher education department and the applicable board of regents, and after reviewing the existing five-year facilities plan and the facilities condition assessment, the public school facilities authority shall verify the assessed outstanding health, safety or infrastructure deficiencies at the constitutional special schools and shall develop a plan to correct the deficiencies.

B. The council may approve allocations from the fund and, working with the higher education department and the applicable board of regents, enter into construction contracts to correct the deficiencies.

C. The council shall establish oversight functions for the public school facilities authority and such other guidelines and conditions as it deems necessary to ensure that the allocations from the fund pursuant to this section are expended in the most prudent manner possible and consistent with the original purpose.

D. As used in the Public School Capital Outlay Act, "public school capital outlay project", "capital outlay project" or "project" includes a program for the correction of deficiencies at the constitutional special schools pursuant to this section.

**History:** Laws 2006, ch. 95, § 6; 2009, ch. 37, § 1; 2012, ch. 53, § 3.

## ANNOTATIONS

**The 2012 amendment**, effective May 16, 2012, included the school for the blind and visually impaired and the school for the deaf in the defined term "constitutional special schools"; in Subsection A, after "deficiencies at the", deleted "New Mexico school for the blind and visually impaired and the New Mexico school for the deaf" and added "constitutional special schools"; in Subsection D, after "deficiencies at the", deleted "New Mexico school for the blind and visually impaired and the New Mexico school for the deaf" and added "constitutional special schools"; and deleted former Subsection E, which defined "school district" for purposes of Sections 22-24-5.1, 22-24-5.3, 22-24-5.5, and Paragraph (10) of 22-24-5 NMSA 1978 to be the school for the blind and visually impaired and the school for the deaf.

**The 2009 amendment**, effective March 31, 2009, in Subsection B, deleted "To the extent that money has been appropriated for such purposes"; in Subsection D, changed "handicapped" to "impaired"; and added Subsection E.

### **22-24-5.7. Local match provisions for qualified high priority projects.**

A. For a qualified high priority project, if money has been specifically appropriated for the purposes of this section, and if the school district so requests, the money may be used to pay both the state share, as calculated by Subsection B of Section 22-24-5 NMSA 1978 and all or a portion of the district share, subject to the following criteria:

(1) the amount paid as the district's share plus any amount added pursuant to Paragraph (3) of this subsection shall be recouped by offsetting future allocations that otherwise would be made from the fund for the state share of projects qualifying for a grant award pursuant to Subsections B and C of Section 22-24-5 NMSA 1978;



(2) except as provided in Paragraph (6) of this subsection, once a project within a district has been funded pursuant to the provisions of this section, then, until the amount paid as the district's share plus any amount added pursuant to Paragraph (3) of this subsection is fully recouped, no standard-based grant awards from the fund shall be made to the district and the district shall be solely responsible for using its local resources to bring those facilities, that would otherwise be eligible for allocations from the fund pursuant to Section 22-24-5 NMSA 1978, up to the statewide adequacy standards;

(3) in determining the amount to be recouped pursuant to Paragraphs (1) and (2) of this subsection, any legislative appropriations for nonoperating purposes made either directly to the school district or to another governmental entity for the purpose of passing the money directly to the school district and not rejected by the school district shall be added to the amount advanced from the fund as the district's share for a project;

(4) the amount to be recouped pursuant to Paragraph (1) of this subsection may be reduced by payments from the school district with cash balances and other available district resources that may legally be used for such payments;

(5) allocations from the fund for the district share shall only be made if the council finds that the school district is likely to complete the project within thirty-six months after the allocation for the district share is made available to the district; and

(6) notwithstanding the requirements of Paragraph (2) of this section, two projects within a school district may be funded pursuant to this section before the recoupment process under that paragraph commences, if:

(a) both projects qualify pursuant to the provisions of Paragraph (2) of Subsection B of this section; or

(b) both projects qualify during the same awards cycle, beginning on or after July 1, 2006.

B. As used in this section, "qualified high priority project" means a project:

(1) that is approved for a grant award pursuant to Section 22-24-5 NMSA 1978 during an awards cycle occurring in 2006 and subsequent award cycles and is located in a high-growth area, as designated by the council; or

(2) that was approved for a grant award pursuant to Section 22-24-5 NMSA 1978 during the 2004-2005 or 2005-2006 awards cycle but for which the school district, as of July 1, 2006, has not obtained funding for the district share and is located in a high-growth area, as designated by the council.

C. The council may designate an area that equals a contiguous attendance area of one or more existing schools as a "high-growth area" if the council determines that:

(1) within five years of the grant allocation decision, the estimated occupancy rate of the proposed new school would be seventy percent or more of the design capacity;

(2) at the time of the application, the attendance at the existing schools in the high-growth area from which students at the new school will be drawn is above design capacity; and

(3) for the period of five years after the grant allocation decision the attendance at those existing schools will be maintained at ninety-five percent or greater of design capacity.

**History:** Laws 2006, ch. 95, § 7; 2019, ch. 180, § 7.

#### **ANNOTATIONS**

**The 2019 amendment**, effective July 1, 2019, in Subsection A, after "calculated by", deleted "Paragraphs (5) and (6) of".

### **22-24-5.8. Adequacy standards; constitutional special schools.**

Until July 1, 2018, the council may apply the adequacy standards to the constitutional special schools on a building-by-building basis rather than the entire campus. After that time, the adequacy standards rankings shall be based on the facilities condition of the entire campus.

**History:** Laws 2012, ch. 53, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

### **22-24-6. Council created; organization; duties.**

A. There is created the "public school capital outlay council", consisting of the:

- (1) secretary of finance and administration or his designee;
- (2) state superintendent [secretary] or his designee;
- (3) the governor or his designee;
- (4) president of the New Mexico school boards association or his designee;
- (5) the director of the construction industries division of the regulation and licensing department or his designee;
- (6) the president of the state board or his designee;
- (7) the director of the legislative education study committee or his designee;
- (8) the director of the legislative finance committee or his designee; and
- (9) the director of the legislative council service or his designee.

B. The council shall investigate all applications for assistance from the fund and shall certify the approved applications to the secretary of finance and administration for distribution of funds.

C. The council shall elect a chairman from among the members. The council shall meet at the call of the chairman.

D. The department of education [public education department] shall account for all distributions and shall make annual reports to the legislative education study committee and to the legislative finance committee.

**History:** 1953 Comp., § 77-24-14, enacted by Laws 1975, ch. 235, § 6; 1977, ch. 247, § 206; 1978, ch. 152, § 6; 1980, ch. 151, § 51; 1988, ch. 64, § 43; 1993, ch. 226, § 51; 1994, ch. 88, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1994 amendment,** effective May 18, 1994, substituted "state superintendent" for "superintendent of public instruction" in Paragraph A(2), deleted "of education" following "state board" in Paragraph A(6), and added Paragraphs A(8) and (9), making related stylistic changes.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, added "or his designee" at the end of Paragraphs (1), (2) and (5) and deleted "state" preceding "superintendent" at the beginning of Paragraph (2).

**The 1988 amendment,** effective May 18, 1988, substituted "the governor or his designee" for "director of the public school finance division" in Subsection A(3); made a minor stylistic change in Subsection A(4); substituted "regulation and licensing department" for "commerce and industry department" in Subsection A(5); added Subsections A(6) and (7); inserted "shall" in Subsection B; and substituted "department of education" for "council shall employ a staff director who" in Subsection D.

### 22-24-6.1. Procedures for a state-chartered charter school.

All of the provisions of the Public School Capital Outlay Act apply to an application by a state-chartered charter school for grant assistance for a capital project except:

A. the portion of the cost of the project to be paid from the fund shall be calculated pursuant to Subsection B of Section 22-24-5 NMSA 1978 using data from the school district in which the state-chartered charter school is located; and

B. in calculating a reduction pursuant to Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978, the amount to be used in Subparagraph (a) of that paragraph shall equal the total of all legislative appropriations made after January 1, 2007 for nonoperating expenses either directly to the charter school or to another governmental entity for the purpose of passing the money through directly to the charter school, regardless of whether the charter school was a state-chartered charter school at the time of the appropriation or later opted to become a state-chartered charter school, except that the total shall not include any such appropriation if, before the charter school became a state-chartered charter school, the appropriation was previously used to calculate a reduction pursuant to Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978.

**History:** Laws 2007, ch. 214, § 1; 2009, ch. 258, § 6; 2019, ch. 180, § 8.

### ANNOTATIONS

**The 2019 amendment**, effective July 1, 2019, in Subsection B, after the first occurrence of "Paragraph", deleted "(6) and added "(9)", and deleted paragraph designation "(1)" and Paragraph B(2); and deleted former Subsection C.

**The 2009 amendment**, effective April 8, 2009, added Paragraph (2) of Subsection B.

### 22-24-6.2. Repealed.

**History:** Laws 2007, ch. 214, § 2; repealed by Laws 2007, ch. 214, § 4.

### ANNOTATIONS

**Repeals.** — Laws 2007, ch. 214, § 4 repealed 22-24-6.2 NMSA 1978, as enacted by Laws 2007, ch. 214, § 2, relating to public facilities for charter schools, effective July 1, 2012. For provisions of former section, see the 2011 NMSA 1978 on *NMOneSource.com*.

### 22-24-7. Public school capital outlay oversight task force; creation; staff.

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their

designees;

(6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;

(7) two minority party members of the senate, appointed by the New Mexico legislative council;

(8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;

(9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;

(10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;

(11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;

(12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and

(13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

**History:** Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

## ANNOTATIONS

**Cross references.** — For PL 874 funds, see 20 USCS § 7701 et seq.

**Temporary provisions.** — Laws 2010, ch. 104, § 5 provided that during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects, and shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

**The 2008 amendment,** effective May 14, 2008, in Subsection A, changed the number of members from twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

**The 2007 amendment,** effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10) of Subsection A to provide new legislative members representing PL 874 school districts.

**The 2005 amendment,** effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

## **22-24-8. Public school capital outlay oversight task force; duties.**

The public school capital outlay oversight task force shall:

- A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;
- B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978];
- C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
- D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly

as they implement the statewide-based process for making grant awards;

E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and

F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

**History:** Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

## ANNOTATIONS

**Temporary provisions.** — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

**The 2005 amendment,** effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

### **22-24-9. Public school facilities authority; creation; powers and duties.**

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director, deputies and all other employees of the authority shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:

(a) the development and implementation of five-year facilities plans and preventive maintenance plans;

(b) procurement of architectural and engineering services;

(c) management and oversight of construction activities; and

(d) training programs;

(4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;

(5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;

(6) ensure that public school capital outlay projects are in compliance with applicable building codes;

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

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

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

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

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

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

(13) as a central purchasing office pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] and as directed by the council, select contractors and enter into and administer contracts for certain emergency projects funded pursuant to Subparagraph (b) of Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978; and

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

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

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



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

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

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

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

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

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code [Chapter 22 [except Article 5A] NMSA 1978]. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

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

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

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

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

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

**History:** Laws 2003, ch. 147, § 1; 2004, ch. 125, § 11; 2005, ch. 274, § 12; 2006, ch. 95, § 8; 2010, ch. 104, § 4.

## ANNOTATIONS

**The 2010 amendment**, effective March 9, 2010, added Paragraph (13) of Subsection B and renumbered succeeding paragraphs.

**The 2006 amendment**, effective March 6, 2006, in Subsection A, added all other employees of the authority and deleted the provision that subjected all other employees to the Personnel Act after July 1, 2006.

**The 2005 amendment**, effective April 6, 2005, provided in Subsection A that the hiring of deputies is subject to the budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978 and that after July 1, 2006, all other employees shall be subject to the Personnel Act; and added Subsection B(11) to provide that the authority shall account for all

distributions of grant assistance from the fund awarded after July 1, 2004 and make annual reports to the specified agencies or officers.

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to delete "public school capital outlay" preceding "council", amended Subsection B to add new Paragraph (5), redesignated former Paragraphs (6) through (11) of Subsection B as Paragraphs (7) through (12), amended Paragraph (8) to delete "where appropriate" before "require" and amended Paragraph (10) to delete "of education, develop" following "education" and insert in its place "recommend", to add "to the council" after "facilities", to replace "those" with "building" preceding "standards" and to insert "adopted by the council at the end of the paragraph", amended Subsection C to substitute "secretary of public education" for "state superintendent", and added Subsection D.

## **22-24-10. Public facilities to be used by charter schools; assessment.**

A. Prior to the occupancy of a public facility by a charter school, the charter school shall notify the council of the intended use, together with such other information as required by rule of the council.

B. Within sixty days of the notification to the council, the public school facilities authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

C. Once assessed pursuant to Subsection B of this section, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

D. As used in this section, "public facility" means a building owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or a tribal government.

**History:** Laws 2005, ch. 274, § 13.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.

## **22-24-11. Recompiled.**

**History:** Laws 2006, ch. 95, § 3; recompiled as § 22-8-48 by Laws 2007, ch. 366, § 25.

### **ANNOTATIONS**

**Recompilations.** — Laws 2007, ch. 366, § 25, effective July 1, 2007, recompiled former 22-24-11 NMSA 1978 as 22-8-48 NMSA 1978.

## **22-24-12. Pre-kindergarten classroom facilities initiative.**

A. The council shall develop guidelines for a pre-kindergarten classroom facilities initiative in accordance with this section, including establishing and adopting pre-kindergarten classroom standards.

B. The authority shall rank all applications it receives for the pre-kindergarten classroom facilities initiative according to the methodology adopted by the council for that purpose.

C. After a public hearing, and to the extent that money is available in the fund for that purpose, the council may make pre-kindergarten classroom facilities initiative grants to school districts that the council determines are willing and able to pay for the portion of the total cost not funded with grant assistance from the fund according to those applicants' rankings.

D. The state share of the cost of an approved pre-kindergarten classroom facilities initiative shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978.

E. A school district that receives a grant in accordance with this section shall expend the money within three years after the grant allocation, or the money shall revert to the fund.

**History:** Laws 2019, ch. 179, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.