SENATE BILL 43

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

William P. Soules

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING ALLOCATIONS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND TO FULLY FUND THE DEMOLITION OF ABANDONED SCHOOL DISTRICT FACILITIES.

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

SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975, Chapter 235, Section 4, as amended by Laws 2019, Chapter 179, Section 2 and by Laws 2019, Chapter 180, Section 1) is amended to read:

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

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

B. Except as provided in Subsections G and I
through 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 \[which\] 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, .218518.1
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; 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 .218518.1
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 [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

.218518.1

- 9 -
allocated to the 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 [1 of this 2019 act] 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."