SENATE BILL 54

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

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT; CHANGING THE FORMULA FOR EXPENDITURES FOR CORE ADMINISTRATIVE FUNCTIONS OF THE PUBLIC SCHOOL FACILITIES AUTHORITY.

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.

.218517.1
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...
application that a school district have a current five-year
capital facilities plan, which shall include a current preventive
maintenance plan to which the school adheres for each public
school in the school district.

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

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

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

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

G. Balances in the fund may be [annually]
appropriated annually 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 five 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 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] is
used to reimburse the fund fully or partially for the
demolition costs allocated to the district.

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