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HOUSE BILL 352

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Nora Espinoza

AN ACT

RELATING TO EDUCATION; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW CERTAIN CHARTER SCHOOLS TO RECEIVE FUNDING FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR A DOWN PAYMENT TO BUILD OR ENTER INTO A LEASE-PURCHASE AGREEMENT TO ACQUIRE CLASSROOM FACILITIES; MAKING AN APPROPRIATION.

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) 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

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1 through [M] N of this section, money in the fund may be used
2 only for capital expenditures deemed necessary by the council
3 for an adequate educational program.

4 C. The council may authorize the purchase by the
5 public school facilities authority of portable classrooms to be
6 loaned to school districts to meet a temporary requirement.
7 Payment for these purchases shall be made from the fund. Title
8 to and custody of the portable classrooms shall rest in the
9 public school facilities authority. The council shall
10 authorize the lending of the portable classrooms to school
11 districts upon request and upon finding that sufficient need
12 exists. Application for use or return of state-owned portable
13 classroom buildings shall be submitted by school districts to
14 the council. Expenses of maintenance of the portable
15 classrooms while in the custody of the public school facilities
16 authority shall be paid from the fund; expenses of maintenance
17 and insurance of the portable classrooms while in the custody
18 of a school district shall be the responsibility of the school
19 district. The council may authorize the permanent disposition
20 of the portable classrooms by the public school facilities
21 authority with prior approval of the state board of finance.

22 D. Applications for assistance from the fund shall
23 be made by school districts to the council in accordance with
24 requirements of the council. Except as provided in Subsection
25 K of this section, the council shall require as a condition of

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

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

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

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

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

24 G. Balances in the fund may be annually
25 appropriated for the core administrative functions of the

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1 public school facilities authority pursuant to the Public
2 School Capital Outlay Act, and, in addition, balances in the
3 fund may be expended by the public school facilities authority,
4 upon approval of the council, for project management expenses;
5 provided that:

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

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

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

21 I. The fund may be expended annually by the council
22 for grants to school districts for the purpose of making lease
23 payments for classroom facilities, including facilities leased
24 by charter schools. The grants shall be made upon application
25 by the school districts and pursuant to rules adopted by the

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

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

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

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

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

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

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1 (4) no grant shall be made for lease payments
2 due pursuant to a financing agreement under which the
3 facilities may be purchased for a price that is reduced
4 according to the lease payments made unless:

5 (a) the agreement has been approved
6 pursuant to the provisions of the Public School Lease Purchase
7 Act; and

8 (b) the facilities are leased by a
9 charter school;

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

19 (6) as used in this subsection:

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

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1 classroom facilities in the first year of instruction, as shown
2 in the approved charter school application; provided that,
3 after the eightieth day of the school year, the MEM shall be
4 adjusted to reflect the full-time-equivalent enrollment on that
5 date; and

6 (b) "classroom facilities" or "classroom
7 space" includes the space needed, as determined by the minimum
8 required under the statewide adequacy standards, for the direct
9 administration of school activities.

10 J. In addition to other authorized expenditures
11 from the fund, up to one percent of the average grant
12 assistance authorized from the fund during the three previous
13 fiscal years may be expended in each fiscal year by the public
14 school facilities authority to pay the state fire marshal, the
15 construction industries division of the regulation and
16 licensing department and local jurisdictions having authority
17 from the state to permit and inspect projects for expenditures
18 made to permit and inspect projects funded in whole or in part
19 under the Public School Capital Outlay Act. The public school
20 facilities authority may enter into contracts with the state
21 fire marshal, the construction industries division or the
22 appropriate local authorities to carry out the provisions of
23 this subsection. Such a contract may provide for initial
24 estimated payments from the fund prior to the expenditures if
25 the contract also provides for additional payments from the

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1 fund if the actual expenditures exceed the initial payments and
2 for repayments back to the fund if the initial payments exceed
3 the actual expenditures. Money distributed from the fund to
4 the state fire marshal or the construction industries division
5 pursuant to this subsection shall be used to supplement, rather
6 than supplant, appropriations to those entities.

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

12 (1) no allocation shall be made unless the
13 council determines that the school district is willing and able
14 to pay the portion of the total cost of developing or updating
15 the plan that is not funded with the allocation from the fund.
16 Except as provided in Paragraph (2) of this subsection, the
17 portion of the total cost to be paid with the allocation from
18 the fund shall be determined pursuant to the methodology in
19 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

22 (a) the school district has fewer than
23 an average of six hundred full-time-equivalent students on the
24 eightieth and one hundred twentieth days of the prior school
25 year; or

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1 (b) the school district meets all of the
2 following requirements: 1) the school district has fewer than
3 an average of one thousand full-time-equivalent students on the
4 eightieth and one hundred twentieth days of the prior school
5 year; 2) the school district has at least seventy percent of
6 its students eligible for free or reduced-fee lunch; 3) the
7 state share of the total cost, if calculated pursuant to the
8 methodology in Paragraph (5) of Subsection B of Section 22-24-5
9 NMSA 1978, would be less than fifty percent; and 4) for all
10 educational purposes, the school district has a residential
11 property tax rate of at least seven dollars (\$7.00) on each one
12 thousand dollars (\$1,000) of taxable value, as measured by the
13 sum of all rates imposed by resolution of the local school
14 board plus rates set to pay interest and principal on
15 outstanding school district general obligation bonds.

16 L. Upon application by a school district,
17 allocations from the fund may be made by the council for the
18 purpose of demolishing abandoned school district facilities,
19 provided that:

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

23 (2) there is no practical use for the
24 abandoned facility without the expenditure of substantial
25 renovation costs; and

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1 (3) the council may enter into an agreement
2 with the school district under which an amount equal to the
3 savings to the district in lower insurance premiums are used to
4 reimburse the fund fully or partially for the demolition costs
5 allocated to the district.

6 M. Up to ten million dollars (\$10,000,000) of the
7 fund may be expended each year in fiscal years 2014 through
8 2019 for an education technology infrastructure deficiency
9 corrections initiative pursuant to Section [~~4 of this 2014 act~~]
10 22-24-4.5 NMSA 1978; provided that funding allocated pursuant
11 to this section shall be expended within three years of its
12 allocation.

13 N. Pursuant to guidelines established by the
14 council, allocations from the fund may be made for the purpose
15 of assisting certain charter schools to provide funding for a
16 lump-sum down payment of not more than twenty-five percent of
17 the total cost of the classroom facilities to purchase or to
18 enter into a lease-purchase agreement pursuant to the
19 provisions of the Public School Lease Purchase Act to acquire
20 classroom facilities; provided that:

21 (1) the charter school's charter has been
22 renewed at least once;

23 (2) the charter school has, for three
24 consecutive years, earned a grade of "C" or higher pursuant to
25 provisions of the A-B-C-D-F Schools Rating Act; and

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1 (3) the school district in which the charter
2 school is geographically located certifies to the council that
3 the school district has no classroom facilities available to
4 provide to the charter school."

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