

1 AN ACT

2 RELATING TO STATE EXPENDITURES; REMOVING CERTAIN
3 RESTRICTIONS ON EXPENDITURES FROM THE PUBLIC SCHOOL CAPITAL
4 OUTLAY FUND FOR BUILDING SYSTEM REPAIR, RENOVATION OR
5 REPLACEMENT INITIATIVES; RESERVING AMOUNTS FROM THE PUBLIC
6 SCHOOL CAPITAL OUTLAY FUND FOR APPROPRIATION TO THE
7 INSTRUCTIONAL MATERIAL FUND OR THE TRANSPORTATION
8 DISTRIBUTION OF THE PUBLIC SCHOOL FUND; MAKING AN
9 APPROPRIATION; DECLARING AN EMERGENCY.

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

12 SECTION 1. Section 7-27-12.2 NMSA 1978 (being Laws
13 2001, Chapter 338, Section 2, as amended) is amended to
14 read:

15 "7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC
16 SCHOOL CAPITAL OUTLAY AND OTHER PROJECTS.--

17 A. The public school capital outlay council is
18 authorized to certify by resolution that proceeds of
19 supplemental severance tax bonds are needed for expenditures
20 relating to public school capital outlay projects pursuant
21 to the Public School Capital Outlay Act or for the state
22 distribution for public school capital improvements pursuant
23 to the Public School Capital Improvements Act. The
24 resolution shall specify the total amount needed.

25 B. The state board of finance may issue and sell

1 supplemental severance tax bonds in compliance with the
2 Severance Tax Bonding Act when the public school capital
3 outlay council certifies by resolution the need for the
4 issuance of the bonds or when the secretary of public
5 education certifies the need for the issuance of the bonds
6 pursuant to Section 22-24-4 NMSA 1978 or Section 3 of this
7 2016 act. The amount of the bonds sold at each sale shall
8 not exceed the lesser of:

9 (1) the total of the amounts certified by
10 the council and the secretary of public education; or

11 (2) the amount that may be issued pursuant
12 to the restrictions of Section 7-27-14 NMSA 1978.

13 C. The state board of finance shall schedule the
14 issuance and sale of the bonds in the most expeditious and
15 economical manner possible.

16 D. The proceeds from the sale of the bonds are
17 appropriated as follows:

18 (1) the amount certified by the secretary
19 of public education as necessary to make the distribution
20 pursuant to Section 22-25-9 NMSA 1978 is appropriated to the
21 public school capital improvements fund for the purpose of
22 carrying out the provisions of the Public School Capital
23 Improvements Act; and

24 (2) the remainder of the proceeds is
25 appropriated to the public school capital outlay fund for

1 the purpose of carrying out the provisions of the Public
2 School Capital Outlay Act."

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

5 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
6 USE.--

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

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

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

1 of the public school facilities authority shall be paid from
2 the fund; expenses of maintenance and insurance of the
3 portable classrooms while in the custody of a school
4 district shall be the responsibility of the school district.
5 The council may authorize the permanent disposition of the
6 portable classrooms by the public school facilities
7 authority with prior approval of the state board of finance.

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

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

21 F. Money in the fund shall be disbursed by
22 warrant of the department of finance and administration on
23 vouchers signed by the secretary of finance and
24 administration following certification by the council that
25 an application has been approved or an expenditure has been

1 ordered by a court pursuant to Section 22-24-5.4 NMSA 1978.

2 At the discretion of the council, money for a project shall
3 be distributed as follows:

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

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

12 G. Balances in the fund may be annually
13 appropriated for the core administrative functions of the
14 public school facilities authority pursuant to the Public
15 School Capital Outlay Act, and, in addition, balances in the
16 fund may be expended by the public school facilities
17 authority, upon approval of the council, for project
18 management expenses; provided that:

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

24 (2) any unexpended or unencumbered balance
25 remaining at the end of a fiscal year from the expenditures

1 authorized in this subsection shall revert to the fund.

2 H. The fund may be expended by the council for
3 building system repair, renovation or replacement
4 initiatives with projects to be identified by the council
5 pursuant to Section 22-24-4.6 NMSA 1978; provided that money
6 allocated pursuant to this subsection shall be expended
7 within three years of the allocation.

8 I. The fund may be expended annually by the
9 council for grants to school districts for the purpose of
10 making lease payments for classroom facilities, including
11 facilities leased by charter schools. The grants shall be
12 made upon application by the school districts and pursuant
13 to rules adopted by the council; provided that an
14 application on behalf of a charter school shall be made by
15 the school district, but, if the school district fails to
16 make an application on behalf of a charter school, the
17 charter school may submit its own application. The
18 following criteria shall apply to the grants:

19 (1) the amount of a grant to a school
20 district shall not exceed:

21 (a) the actual annual lease payments
22 owed for leasing classroom space for schools, including
23 charter schools, in the school district; or

24 (b) seven hundred dollars (\$700)
25 multiplied by the number of MEM using the leased classroom

1 facilities; provided that in fiscal year 2009 and in each
2 subsequent fiscal year, this amount shall be adjusted by the
3 percentage change between the penultimate calendar year and
4 the immediately preceding calendar year of the consumer
5 price index for the United States, all items, as published
6 by the United States department of labor;

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

11 (3) at the end of each fiscal year, any
12 unexpended or unencumbered balance of the appropriation
13 shall revert to the fund;

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

18 (a) the agreement has been approved
19 pursuant to the provisions of the Public School Lease
20 Purchase Act; and

21 (b) the facilities are leased by a
22 charter school;

23 (5) if the lease payments are made pursuant
24 to a financing agreement under which the facilities may be
25 purchased for a price that is reduced according to the lease

1 payments made, neither a grant nor any provision of the
2 Public School Capital Outlay Act creates a legal obligation
3 for the school district or charter school to continue the
4 lease from year to year or to purchase the facilities nor
5 does it create a legal obligation for the state to make
6 subsequent grants pursuant to the provisions of this
7 subsection; and

8 (6) as used in this subsection:

9 (a) "MEM" means: 1) the average full-
10 time-equivalent enrollment using leased classroom facilities
11 on the eightieth and one hundred twentieth days of the prior
12 school year; or 2) in the case of an approved charter school
13 that has not commenced classroom instruction, the estimated
14 full-time-equivalent enrollment that will use leased
15 classroom facilities in the first year of instruction, as
16 shown in the approved charter school application; provided
17 that, after the eightieth day of the school year, the MEM
18 shall be adjusted to reflect the full-time-equivalent
19 enrollment on that date; and

20 (b) "classroom facilities" or
21 "classroom space" includes the space needed, as determined
22 by the minimum required under the statewide adequacy
23 standards, for the direct administration of school
24 activities.

25 J. In addition to other authorized expenditures

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

23 K. Pursuant to guidelines established by the
24 council, allocations from the fund may be made to assist
25 school districts in developing and updating five-year

1 facilities plans required by the Public School Capital
2 Outlay Act; provided that:

3 (1) no allocation shall be made unless the
4 council determines that the school district is willing and
5 able to pay the portion of the total cost of developing or
6 updating the plan that is not funded with the allocation
7 from the fund. Except as provided in Paragraph (2) of this
8 subsection, the portion of the total cost to be paid with
9 the allocation from the fund shall be determined pursuant to
10 the methodology in Paragraph (5) of Subsection B of Section
11 22-24-5 NMSA 1978; or

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

15 (a) the school district has fewer than
16 an average of six hundred full-time-equivalent students on
17 the eightieth and one hundred twentieth days of the prior
18 school year; or

19 (b) the school district meets all of
20 the following requirements: 1) the school district has
21 fewer than an average of one thousand full-time-equivalent
22 students on the eightieth and one hundred twentieth days of
23 the prior school year; 2) the school district has at least
24 seventy percent of its students eligible for free or
25 reduced-fee lunch; 3) the state share of the total cost, if

1 calculated pursuant to the methodology in Paragraph (5) of
2 Subsection B of Section 22-24-5 NMSA 1978, would be less
3 than fifty percent; and 4) for all educational purposes, the
4 school district has a residential property tax rate of at
5 least seven dollars (\$7.00) on each one thousand dollars
6 (\$1,000) of taxable value, as measured by the sum of all
7 rates imposed by resolution of the local school board plus
8 rates set to pay interest and principal on outstanding
9 school district general obligation bonds.

10 L. Upon application by a school district,
11 allocations from the fund may be made by the council for the
12 purpose of demolishing abandoned school district facilities;
13 provided that:

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

17 (2) there is no practical use for the
18 abandoned facility without the expenditure of substantial
19 renovation costs; and

20 (3) the council may enter into an
21 agreement with the school district under which an amount
22 equal to the savings to the district in lower insurance
23 premiums are used to reimburse the fund fully or partially
24 for the demolition costs allocated to the district.

25 M. Up to ten million dollars (\$10,000,000) of

1 the fund may be expended each year in fiscal years 2014
2 through 2019 for an education technology infrastructure
3 deficiency corrections initiative pursuant to Section
4 22-24-4.5 NMSA 1978; provided that funding allocated
5 pursuant to this section shall be expended within three
6 years of its allocation.

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

22 SECTION 3. APPROPRIATION.--Twelve million five
23 hundred thousand dollars (\$12,500,000) is appropriated from
24 the public school capital outlay fund to the instructional
25 material fund for expenditure in fiscal year 2017 and

1 subsequent fiscal years for the purchase of instructional
2 material pursuant to the Instructional Material Law;
3 provided that the secretary of public education certifies
4 the need for the issuance of supplemental severance tax
5 bonds to meet that appropriation. Any unexpended or
6 unencumbered balance remaining at the end of a fiscal year
7 shall not revert to the public school capital outlay fund.

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8 SECTION 4. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect
10 immediately. _____
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