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HOUSE BILL 130

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Paul C. Bandy

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; RESERVING FOR EACH OF FIVE YEARS A PORTION OF THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR SCHOOL SECURITY SYSTEM REPAIRS, RENOVATIONS AND REPLACEMENTS; AUTHORIZING RECONCILIATION OF MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW.

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

SECTION 1. A new section of the Public School Capital Outlay Act, Section 22-24-4.7 NMSA 1978, is enacted to read:

"22-24-4.7. [NEW MATERIAL] SCHOOL SECURITY SYSTEM REPAIR, RENOVATION OR REPLACEMENT.--

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

B. A school district seeking a grant for a school

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1 security system repair, renovation or replacement project shall  
2 apply to the council on a form that includes an assessment of a  
3 school's security system and a statement of opinion by the  
4 school district that the repair, renovation or replacement  
5 sought would improve the security of the school's buildings,  
6 property and occupants.

7 C. The public school facilities authority shall  
8 verify the assessment made by the school district and rank all  
9 applications it receives for school security system repair,  
10 renovation or replacement grants according to the methodology  
11 adopted by the council for that purpose.

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

19 E. The state share of the cost of an approved  
20 school security system repair, renovation or replacement  
21 project shall be calculated according to the methodology  
22 outlined in Paragraph (5) of Subsection B of Section 22-24-5  
23 NMSA 1978.

24 F. A school district that receives a grant in  
25 accordance with this section shall expend the grant money

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1 within three years after the grant allocation. Money not spent  
2 in that time shall revert to the fund."

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] Q of this section, money in the fund may be used  
12 only for capital expenditures deemed necessary by the council  
13 for an adequate educational program.

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

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

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

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

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

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

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

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

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

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

24 H. The fund may be expended by the council for  
25 building system repair, renovation or replacement initiatives

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1 with projects to be identified by the council pursuant to  
2 Section 22-24-4.6 NMSA 1978; provided that money allocated  
3 pursuant to this subsection shall be expended within three  
4 years of the allocation.

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

15 (1) the amount of a grant to a school district  
16 shall not exceed:

17 (a) the actual annual lease payments  
18 owed for leasing classroom space for schools, including charter  
19 schools, in the school district; or

20 (b) seven hundred dollars (\$700)  
21 multiplied by the ~~[number of]~~ MEM using the leased classroom  
22 facilities; provided that in fiscal year 2009 and in each  
23 subsequent fiscal year, this amount shall be adjusted by the  
24 percentage change between the penultimate calendar year and the  
25 immediately preceding calendar year of the consumer price index

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1 for the United States, all items, as published by the United  
2 States department of labor;

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

7 (3) at the end of each fiscal year, any  
8 unexpended or unencumbered balance of the appropriation shall  
9 revert to the fund;

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

14 (a) the agreement has been approved  
15 pursuant to the provisions of the Public School Lease Purchase  
16 Act; and

17 (b) the facilities are leased by a  
18 charter school;

19 (5) if the lease payments are made pursuant to  
20 a financing agreement under which the facilities may be  
21 purchased for a price that is reduced according to the lease  
22 payments made, neither a grant nor any provision of the Public  
23 School Capital Outlay Act creates a legal obligation for the  
24 school district or charter school to continue the lease from  
25 year to year or to purchase the facilities nor does it create a

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1 legal obligation for the state to make subsequent grants  
2 pursuant to the provisions of this subsection; and

3 (6) as used in this subsection:

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

14 (b) "classroom facilities" or "classroom  
15 space" includes the space needed, as determined by the minimum  
16 required under the statewide adequacy standards, for the direct  
17 administration of school activities.

18 J. In addition to other authorized expenditures  
19 from the fund, up to one percent of the average grant  
20 assistance authorized from the fund during the three previous  
21 fiscal years may be expended in each fiscal year by the public  
22 school facilities authority to pay the state fire marshal, the  
23 construction industries division of the regulation and  
24 licensing department and local jurisdictions having authority  
25 from the state to permit and inspect projects for expenditures

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1 made to permit and inspect projects funded in whole or in part  
2 under the Public School Capital Outlay Act. The public school  
3 facilities authority may enter into contracts with the state  
4 fire marshal, the construction industries division or the  
5 appropriate local authorities to carry out the provisions of  
6 this subsection. Such a contract may provide for initial  
7 estimated payments from the fund prior to the expenditures if  
8 the contract also provides for additional payments from the  
9 fund if the actual expenditures exceed the initial payments and  
10 for repayments back to the fund if the initial payments exceed  
11 the actual expenditures. Money distributed from the fund to  
12 the state fire marshal or the construction industries division  
13 pursuant to this subsection shall be used to supplement, rather  
14 than supplant, appropriations to those entities.

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

20 (1) no allocation shall be made unless the  
21 council determines that the school district is willing and able  
22 to pay the portion of the total cost of developing or updating  
23 the plan that is not funded with the allocation from the fund.  
24 Except as provided in Paragraph (2) of this subsection, the  
25 portion of the total cost to be paid with the allocation from

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1 the fund shall be determined pursuant to the methodology in  
2 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

5 (a) the school district has fewer than  
6 an average of six hundred full-time-equivalent students on the  
7 eightieth and one hundred twentieth days of the prior school  
8 year; or

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

24 L. Upon application by a school district,  
25 allocations from the fund may be made by the council for the

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1 purpose of demolishing abandoned school district facilities;  
2 provided that:

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

6 (2) there is no practical use for the  
7 abandoned facility without the expenditure of substantial  
8 renovation costs; and

9 (3) the council may enter into an agreement  
10 with the school district under which an amount equal to the  
11 savings to the district in lower insurance premiums are used to  
12 reimburse the fund fully or partially for the demolition costs  
13 allocated to the district.

14 M. Up to ten million dollars (\$10,000,000) of the  
15 fund may be expended each year in fiscal years 2014 through  
16 2019 for an education technology infrastructure deficiency  
17 corrections initiative pursuant to Section 22-24-4.5 NMSA 1978;  
18 provided that funding allocated pursuant to this section shall  
19 be expended within three years of its allocation.

20 N. For each fiscal year from 2018 through 2022,  
21 twenty-five million dollars (\$25,000,000) of the public school  
22 capital outlay fund is reserved for appropriation by the  
23 legislature to the instructional material fund or to the  
24 transportation distribution of the public school fund. The  
25 secretary shall certify the need for the issuance of

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1 supplemental severance tax bonds to meet an appropriation from  
2 the public school capital outlay fund to the instructional  
3 material fund or to the transportation distribution of the  
4 public school fund. Any portion of an amount of the public  
5 school capital outlay fund that is reserved for appropriation  
6 by the legislature for a fiscal year, but that is not  
7 appropriated before the first day of that fiscal year, may be  
8 expended by the council as provided in this section.

9 0. For each of fiscal years 2019 through 2023, five  
10 million dollars (\$5,000,000) of the fund is reserved for awards  
11 for school security system repair, renovation or replacement  
12 made in accordance with Section 22-24-4.7 NMSA 1978."

13 SECTION 3. TEMPORARY PROVISION--COMPILATION  
14 INSTRUCTION--RECONCILIATION.--If acts making amendments to  
15 Section 22-24-4 NMSA 1978 are enacted by the first and second  
16 sessions of the fifty-third legislature, the provisions of  
17 those acts shall be reconciled and compiled in accordance with  
18 the provisions of Section 12-1-8 NMSA 1978, notwithstanding  
19 that the amendments were not made in the same session of the  
20 legislature.