

1 SENATE BILL 239

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 George K. Munoz

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING FOR THE  
12 EXPENDITURE OF MONEY IN THE PUBLIC SCHOOL CAPITAL OUTLAY FUND  
13 FOR SCHOOL SECURITY SYSTEM REPAIRS, RENOVATIONS AND  
14 REPLACEMENTS; AUTHORIZING RECONCILIATION OF MULTIPLE AMENDMENTS  
15 TO THE SAME SECTION OF LAW.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "22-24-4.7. [NEW MATERIAL] SCHOOL SECURITY SYSTEM REPAIR,  
21 RENOVATION OR REPLACEMENT.--

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

25 B. A school district seeking a grant for a school

.210051.2

underscored material = new  
[bracketed material] = delete

underscoring material = new  
~~[bracketed material] = delete~~

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

.210051.2

underscored material = new  
[bracketed material] = delete

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

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

5 "22-24-3. DEFINITIONS.--As used in the Public School  
6 Capital Outlay Act:

7 A. "building system" means a set of interacting  
8 parts that makes up a single, nonportable or fixed component of  
9 a facility and that, together with other building systems,  
10 makes up an entire integrated facility or property, including  
11 [~~but not limited to~~] roofing, electrical distribution,  
12 electronic communication, plumbing, lighting, mechanical, fire  
13 prevention, facility shell, interior finishes, [~~and~~] heating,  
14 ventilation and air conditioning systems and school security  
15 systems, as defined by the council;

16 B. "constitutional special schools" means the New  
17 Mexico school for the blind and visually impaired and the New  
18 Mexico school for the deaf;

19 C. "constitutional special schools support spaces"  
20 means all facilities necessary to support the constitutional  
21 special schools' educational mission that are not included in  
22 the constitutional special schools' educational adequacy  
23 standards, including [~~but not limited to~~] performing arts  
24 centers, facilities for athletic competition, school district  
25 administration and facility and vehicle maintenance;

.210051.2

underscoring material = new  
~~[bracketed material] = delete~~

1           D. "council" means the public school capital outlay  
2 council;

3           E. "education technology infrastructure" means the  
4 physical hardware used to interconnect education technology  
5 equipment for school districts and school buildings necessary  
6 to support broadband connectivity as determined by the council;

7           F. "fund" means the public school capital outlay  
8 fund; and

9           G. "school district" includes state-chartered  
10 charter schools and the constitutional special schools."

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

13           "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--  
14 USE.--

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

18           B. Except as provided in Subsections G and I  
19 through [N] Q of this section, money in the fund may be used  
20 only for capital expenditures deemed necessary by the council  
21 for an adequate educational program.

22           C. The council may authorize the purchase by the  
23 public school facilities authority of portable classrooms to be  
24 loaned to school districts to meet a temporary requirement.

25 Payment for these purchases shall be made from the fund. Title  
.210051.2

underscoring material = new  
~~[bracketed material] = delete~~

1 to and custody of the portable classrooms shall rest in the  
2 public school facilities authority. The council shall  
3 authorize the lending of the portable classrooms to school  
4 districts upon request and upon finding that sufficient need  
5 exists. Application for use or return of state-owned portable  
6 classroom buildings shall be submitted by school districts to  
7 the council. Expenses of maintenance of the portable  
8 classrooms while in the custody of the public school facilities  
9 authority shall be paid from the fund; expenses of maintenance  
10 and insurance of the portable classrooms while in the custody  
11 of a school district shall be the responsibility of the school  
12 district. The council may authorize the permanent disposition  
13 of the portable classrooms by the public school facilities  
14 authority with prior approval of the state board of finance.

15 D. Applications for assistance from the fund shall  
16 be made by school districts to the council in accordance with  
17 requirements of the council. Except as provided in Subsection  
18 K of this section, the council shall require as a condition of  
19 application that a school district have a current five-year  
20 facilities plan, which shall include a current preventive  
21 maintenance plan to which the school adheres for each public  
22 school in the school district.

23 E. The council shall review all requests for  
24 assistance from the fund and shall allocate funds only for  
25 those capital outlay projects that meet the criteria of the

.210051.2

underscoring material = new  
~~[bracketed material] = delete~~

1 Public School Capital Outlay Act.

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

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

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

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

24 (1) the total annual expenditures from the  
25 fund for the core administrative functions pursuant to this

.210051.2

underscoring material = new  
~~[bracketed material] = delete~~

1 subsection shall not exceed five percent of the average annual  
2 grant assistance authorized from the fund during the three  
3 previous fiscal years; and

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

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

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

23 (1) the amount of a grant to a school district  
24 shall not exceed:

25 (a) the actual annual lease payments

.210051.2

underscored material = new  
[bracketed material] = delete

1 owed for leasing classroom space for schools, including charter  
2 schools, in the school district; or

3 (b) seven hundred dollars (\$700)  
4 multiplied by the ~~[number of]~~ MEM using the leased classroom  
5 facilities; provided that in fiscal year 2009 and in each  
6 subsequent fiscal year, this amount shall be adjusted by the  
7 percentage change between the penultimate calendar year and the  
8 immediately preceding calendar year of the consumer price index  
9 for the United States, all items, as published by the United  
10 States department of labor;

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

15 (3) at the end of each fiscal year, any  
16 unexpended or unencumbered balance of the appropriation shall  
17 revert to the fund;

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

22 (a) the agreement has been approved  
23 pursuant to the provisions of the Public School Lease Purchase  
24 Act; and

25 (b) the facilities are leased by a

.210051.2



underscored material = new  
[bracketed material] = delete

1 charter school;

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

11 (6) as used in this subsection:

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

23 (b) "classroom facilities" or "classroom  
24 space" includes the space needed, as determined by the minimum  
25 required under the statewide adequacy standards, for the direct

.210051.2

underscored material = new  
~~[bracketed material] = delete~~

1 administration of school activities.

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

24 K. Pursuant to guidelines established by the  
25 council, allocations from the fund may be made to assist school

.210051.2

underscored material = new  
[bracketed material] = delete

1 districts in developing and updating five-year facilities plans  
2 required by the Public School Capital Outlay Act; provided  
3 that:

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

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

14 (a) the school district has fewer than  
15 an average of six hundred full-time-equivalent students on the  
16 [~~eightieth and one hundred twentieth days~~] second and third  
17 reporting dates of the prior school year; or

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

.210051.2

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

24 M. Up to ten million dollars (\$10,000,000) of the  
25 fund may be expended in each [~~year in~~] of fiscal years 2014

.210051.2

underscored material = new  
[bracketed material] = delete

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

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

19 O. Up to ten million dollars (\$10,000,000) of the  
20 fund may be expended in each of fiscal years 2019 through 2022  
21 for school security system repair, renovation or replacement  
22 made in accordance with Section 22-24-4.7 NMSA 1978."

23 SECTION 4. TEMPORARY PROVISION--COMPILATION  
24 INSTRUCTION--RECONCILIATION.--If acts making amendments to  
25 Section 22-24-4 NMSA 1978 are enacted by the first and second

.210051.2

underscoring = new  
~~[bracketed material]~~ = delete

1 sessions of the fifty-third legislature, the provisions of  
2 those acts shall be reconciled and compiled in accordance with  
3 the provisions of Section 12-1-8 NMSA 1978, notwithstanding  
4 that the amendments were not made in the same session of the  
5 legislature.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25