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SENATE BILL 297

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

William P. Soules

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL
OUTLAY ACT; CHANGING THE FORMULA OF MAXIMUM ANNUAL EXPENDITURES
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 2017, Chapter 142,
Section 1 and by Laws 2018, Chapter 71, Section 3) 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 [Ø] P 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
6 be 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~~
16 ~~facilities~~] authority shall be paid from the fund; expenses of
17 maintenance and insurance of the portable classrooms while in
18 the custody of a school district shall be the responsibility of
19 the school district. The council may authorize the permanent
20 disposition of the portable classrooms by the [~~public school~~
21 ~~facilities~~] authority with prior approval of the state board of
22 finance.

23 D. Applications for assistance from the fund shall
24 be made by school districts to the council in accordance with
25 requirements of the council. Except as provided in Subsection

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1 K of this section, the council shall require as a condition of
2 application that a school district have a current five-year
3 facilities plan, which shall include a current preventive
4 maintenance plan to which the school adheres for each public
5 school in the school district.

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

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

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

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

25 G. Balances in the fund may be [~~annually~~]

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

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

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

15 H. The fund may be expended by the council for
16 building system repair, renovation or replacement initiatives
17 with projects to be identified by the council pursuant to
18 Section 22-24-4.6 NMSA 1978; provided that money allocated
19 pursuant to this subsection shall be expended within three
20 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 school district; or

11 (b) seven hundred dollars (\$700)
12 multiplied by the MEM using the leased classroom facilities;
13 provided that in fiscal year 2009 and in each subsequent fiscal
14 year, this amount shall be adjusted by the percentage change
15 between the penultimate calendar year and the immediately
16 preceding calendar year of the consumer price index for the
17 United States, all items, as published by the United States
18 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 second and third reporting dates of the prior
23 school year; or 2) in the case of an approved charter school
24 that has not commenced classroom instruction, the estimated
25 full-time-equivalent enrollment that will use leased classroom

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

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

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

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

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

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

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

21 (a) the school district has fewer than
22 an average of six hundred full-time-equivalent students on the
23 second and third reporting dates of the prior school year; or

24 (b) the school district meets all of the
25 following requirements: 1) the school district has fewer than

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

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

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

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

24 (3) the council may enter into an agreement
25 with the school district under which an amount equal to the

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1 savings to the district in lower insurance premiums are used to
2 reimburse the fund fully or partially for the demolition costs
3 allocated to the district.

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

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

24 O. Up to ten million dollars (\$10,000,000) of the
25 fund may be expended in each of fiscal years 2019 through 2022

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1 for school security system project grants made in accordance
2 with Section 22-24-4.7 NMSA 1978."

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