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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CREATING A  
PRE-KINDERGARTEN CLASSROOM FACILITIES INITIATIVE.

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

SECTION 1. A new section of the Public School Capital  
Outlay Act is enacted to read:

"PRE-KINDERGARTEN CLASSROOM FACILITIES INITIATIVE.--

A. The council shall develop guidelines for a  
pre-kindergarten classroom facilities initiative in  
accordance with this section, including establishing and  
adopting pre-kindergarten classroom standards.

B. The authority shall rank all applications it  
receives for the pre-kindergarten classroom facilities  
initiative according to the methodology adopted by the  
council for that purpose.

C. After a public hearing, and to the extent that  
money is available in the fund for that purpose, the council  
may make pre-kindergarten classroom facilities initiative  
grants to school districts that the council determines are  
willing and able to pay for the portion of the total cost not  
funded with grant assistance from the fund according to those  
applicants' rankings.

D. The state share of the cost of an approved  
pre-kindergarten classroom facilities initiative shall be

1 calculated according to the methodology outlined in  
2 Subsection B of Section 22-24-5 NMSA 1978.

3 E. A school district that receives a grant in  
4 accordance with this section shall expend the money within  
5 three years after the grant allocation, or the money shall  
6 revert to the fund."

7 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,  
8 Chapter 235, Section 4, as amended by Laws 2017, Chapter 142,  
9 Section 1 and by Laws 2018, Chapter 71, Section 3) is amended  
10 to read:

11 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--  
12 USE.--

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

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

20 C. The council may authorize the purchase by the  
21 authority of portable classrooms to be loaned to school  
22 districts to meet a temporary requirement. Payment for these  
23 purchases shall be made from the fund. Title to and custody  
24 of the portable classrooms shall rest in the authority. The  
25 council shall authorize the lending of the portable

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

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

21 E. The council shall review all requests for  
22 assistance from the fund and shall allocate funds only for  
23 those capital outlay projects that meet the criteria of the  
24 Public School Capital Outlay Act.

25 F. Money in the fund shall be disbursed by warrant

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

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

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

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

22 (1) the total annual expenditures from the  
23 fund for the core administrative functions pursuant to this  
24 subsection shall not exceed five percent of the average  
25 annual grant assistance authorized from the fund during the

1 three previous fiscal years; and

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

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

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

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

24 (a) the actual annual lease payments  
25 owed for leasing classroom space for schools, including

1 charter schools, in the school district; or

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

10 (2) a grant received for the lease payments  
11 of a charter school may be used by that charter school as a  
12 state match necessary to obtain federal grants if required;

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

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

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

23 (b) the facilities are leased by a  
24 charter school;

25 (5) if the lease payments are made pursuant

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

10 (6) as used in this subsection:

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

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

1           J. In addition to other authorized expenditures  
2 from the fund, up to one percent of the average grant  
3 assistance authorized from the fund during the three previous  
4 fiscal years may be expended in each fiscal year by the  
5 authority to pay the state fire marshal, the construction  
6 industries division of the regulation and licensing  
7 department and local jurisdictions having authority from the  
8 state to permit and inspect projects for expenditures made to  
9 permit and inspect projects funded in whole or in part under  
10 the Public School Capital Outlay Act. The authority may  
11 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 pursuant  
21 to this subsection shall be used to supplement, rather than  
22 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 Outlay  
2 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 from  
7 the fund. Except as provided in Paragraph (2) of this  
8 subsection, the portion of the total cost to be paid with the  
9 allocation from the fund shall be determined pursuant to the  
10 methodology in Subsection B of Section 22-24-5 NMSA 1978; or

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

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

17 (b) the school district meets all of  
18 the following requirements: 1) the school district has fewer  
19 than an average of one thousand full-time-equivalent students  
20 on the second and third reporting dates of the prior school  
21 year; 2) the school district has at least seventy percent of  
22 its students eligible for free or reduced-fee lunch; 3) the  
23 state share of the total cost, if calculated pursuant to the  
24 methodology in Subsection B of Section 22-24-5 NMSA 1978,  
25 would be less than fifty percent; and 4) for all educational

1 purposes, the school district has a residential property tax  
2 rate of at least seven dollars (\$7.00) on each one thousand  
3 dollars (\$1,000) of taxable value, as measured by the sum of  
4 all rates imposed by resolution of the local school board  
5 plus rates set to pay interest and principal on outstanding  
6 school district general obligation bonds.

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

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

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

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

22 M. Up to ten million dollars (\$10,000,000) of the  
23 fund may be expended each year for an education technology  
24 infrastructure deficiency corrections initiative pursuant to  
25 Section 22-24-4.5 NMSA 1978; provided that funding allocated

1 pursuant to this section shall be expended within three years  
2 of its allocation.

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

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

22 P. The fund may be expended in each of fiscal  
23 years 2020 through 2024 for a pre-kindergarten classroom  
24 facilities initiative in accordance with Section 1 of this  
25 2019 act.

1 Q. The council may fund pre-kindergarten  
2 classrooms with a qualifying, awarded standards-based  
3 project; provided that pre-kindergarten classroom space shall  
4 not be included in the project prioritization calculation  
5 adopted by the council pursuant to Section 22-24-5 NMSA 1978.  
6 The council shall develop pre-kindergarten classroom  
7 standards to use when funding pre-kindergarten space."

8 SECTION 3. Section 22-25-2 NMSA 1978 (being Laws 1975  
9 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

10 "22-25-2. DEFINITIONS.--As used in the Public School  
11 Capital Improvements Act:

12 A. "program unit" means the product of the program  
13 element multiplied by the applicable cost differential  
14 factor, as defined in Section 22-8-2 NMSA 1978; and

15 B. "capital improvements" means expenditures,  
16 including payments made with respect to lease-purchase  
17 arrangements as defined in the Education Technology Equipment  
18 Act or the Public School Lease Purchase Act but excluding any  
19 other debt service expenses, for:

20 (1) erecting, remodeling, making additions  
21 to, providing equipment for or furnishing public school  
22 buildings and pre-kindergarten classroom facilities;

23 (2) purchasing or improving public school or  
24 pre-kindergarten grounds;

25 (3) maintenance of public school buildings

1 or public school or pre-kindergarten grounds, including the  
2 purchasing or repairing of maintenance equipment and  
3 participating in the facility information management system  
4 as required by the Public School Capital Outlay Act and  
5 including payments under contracts with regional education  
6 cooperatives for maintenance support services and  
7 expenditures for technical training and certification for  
8 maintenance and facilities management personnel, but  
9 excluding salary expenses of school district employees;

10 (4) purchasing activity vehicles for  
11 transporting students to extracurricular school activities;

12 (5) purchasing computer software and  
13 hardware for student use in public school classrooms; and

14 (6) purchasing and installing education  
15 technology improvements, excluding salary expenses of school  
16 district employees, but including tools used in the  
17 educational process that constitute learning and  
18 administrative resources, and that may also include:

19 (a) satellite, copper and fiber-optic  
20 transmission; computer and network connection devices;  
21 digital communication equipment, including voice, video and  
22 data equipment; servers; switches; portable media devices,  
23 such as discs and drives to contain data for electronic  
24 storage and playback; and the purchase or lease of software  
25 licenses or other technologies and services, maintenance,

1 equipment and computer infrastructure information, techniques  
2 and tools used to implement technology in schools and related  
3 facilities; and

4 (b) improvements, alterations and  
5 modifications to, or expansions of, existing buildings or  
6 tangible personal property necessary or advisable to house or  
7 otherwise accommodate any of the tools listed in this  
8 paragraph."

9 SECTION 4. Section 22-26-2 NMSA 1978 (being Laws 1983,  
10 Chapter 163, Section 2, as amended) is amended to read:

11 "22-26-2. DEFINITION.--As used in the Public School  
12 Buildings Act, "capital improvements" means expenditures,  
13 including payments made with respect to lease-purchase  
14 arrangements as defined in the Education Technology Equipment  
15 Act but excluding any other debt service expenses, for:

16 A. erecting, remodeling, making additions to,  
17 providing equipment for or furnishing public school  
18 buildings, including pre-kindergarten classrooms belonging to  
19 the school district or charter school located in the school  
20 district;

21 B. payments made pursuant to a financing agreement  
22 entered into by a school district or a charter school for the  
23 leasing of a building or other real property with an option  
24 to purchase for a price that is reduced according to payments  
25 made;

1 C. purchasing or improving public school grounds;

2 D. purchasing activity vehicles for transporting  
3 students to and from extracurricular school activities;  
4 provided that this authorization for expenditure does not  
5 apply to school districts with a student MEM greater than  
6 sixty thousand;

7 E. administering the projects undertaken pursuant  
8 to Subsections A and C of this section, including  
9 expenditures for facility maintenance software, project  
10 management software, project oversight and district personnel  
11 specifically related to administration of projects funded by  
12 the Public School Buildings Act; provided that expenditures  
13 pursuant to this subsection shall not exceed five percent of  
14 the total project costs; and

15 F. purchasing and installing education technology  
16 improvements, excluding salary expenses of school district  
17 employees, but including tools used in the educational  
18 process that constitute learning and administrative  
19 resources, and that may also include:

20 (1) satellite, copper and fiber-optic  
21 transmission; computer and network connection devices;  
22 digital communication equipment, including voice, video and  
23 data equipment; servers; switches; portable media devices,  
24 such as discs and drives to contain data for electronic  
25 storage and playback; and purchase or lease of software

1 licenses or other technologies and services, maintenance,  
2 equipment and computer infrastructure information, techniques  
3 and tools used to implement technology in schools and related  
4 facilities; and

5 (2) improvements, alterations and  
6 modifications to, or expansions of, existing buildings or  
7 tangible personal property necessary or advisable to house or  
8 otherwise accommodate any of the tools listed in this  
9 subsection."

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