

SENATE BILL 318

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Gerald Ortiz y Pino

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING NOTIFICATION TO CHARTER SCHOOLS OF PROPERTY AVAILABLE FOR THEIR EDUCATIONAL OPERATIONS; ALLOWING SCHOOL DISTRICTS TO DEVELOP FACILITY PRIORITIZATION PLANS; CREATING A CHARTER FACILITY FUND; REQUIRING POLICIES FOR LOANS FROM THE PUBLIC PROJECT REVOLVING FUND OR THE CHARTER FACILITY FUND; MODIFYING THE TERMS APPLICABLE TO GRANTS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR LEASED FACILITIES; SPECIFYING THE DATE BY WHICH CHARTER SCHOOLS MUST PROVIDE

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INFORMATION ON CAPITAL IMPROVEMENT PROJECTS PROPOSED FOR FUNDING THROUGH PROPERTY TAX IMPOSITION; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the New Mexico Finance Authority Act is enacted to read:

"NEW MATERIAL] PUBLIC PROJECT REVOLVING FUND--LOANS TO CHARTER SCHOOLS--POLICIES.--The authority shall adopt policies for the public project revolving fund to provide loans to charter schools for the purchase, construction, expansion or renovation of facilities or to pay off lease-purchase agreements that include:

A. evidence that any lease-purchase agreements are in accord with the Public School Lease Purchase Act;

B. evidence that a charter school's charter has been renewed at least once; and

C. review of the last two audits of the charter school."

SECTION 2. Section 22-8B-4 NMSA 1978 (being Laws 1999, Chapter 281, Section 4, as amended) is amended to read:

"22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--OPERATION.--

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting

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discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

C. A charter school shall be responsible for:

- (1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and
- (2) contracting for services and personnel matters.

D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its

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agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. ~~[The]~~ A school district [in which a charter school is geographically located shall provide a charter school with] that has available land or one or more available facilities [for] not currently used for other educational purposes shall make facilities and may make land available for lease, lease-purchase or purchase to the [school's] charter schools located in the school district for their operations [unless the facilities are currently used for other educational purposes] and shall notify them of that availability no later than May 1 of each year. The public school facilities authority shall annually ensure that each school district with available land or one or more available facilities has provided that notification. A school district may develop a facility prioritization plan that identifies which charter schools may

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lease, lease-purchase or purchase available school district facilities. School-district-owned land shall not be considered available to a charter school if the school district has justified future use of that land through its five-year facilities master plan. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in ~~[Subparagraph (b) of]~~ Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation

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and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act, the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act.

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N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

R. A charter school is a public school that may

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contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection."

**SECTION 3.** Section 22-24-4 NMSA 1978 (being Laws 1975, Chapter 235, Section 4, as amended by Laws 2019, Chapter 179, Section 2 and by Laws 2019, Chapter 180, Section 1) is amended

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

C. The council may authorize the purchase by the authority of portable classrooms to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title to and custody of the portable classrooms shall rest in the authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition

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of the portable classrooms by the authority with prior approval of the state board of finance.

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

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

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

(1) up to ten percent of the portion of the project cost funded with distributions from the fund or five percent of the total project cost, whichever is greater, may be paid to the school district before work commences with the

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balance of the grant award made on a cost-reimbursement basis;  
or

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

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

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

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

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

I. The fund may be expended annually by the council

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for grants to school districts for the purpose of making lease payments for [~~classroom~~] facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council; provided that an application on behalf of a charter school shall be made by the school district, but, if the school district fails to make an application on behalf of a charter school, the charter school may submit its own application. The following criteria shall apply to the grants:

(1) the amount of a grant to a school district or charter school shall not exceed:

(a) the actual annual lease payments owed for leasing [~~classroom space for schools, including charter schools, in the school district~~] a facility; or

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

(2) a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the

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federal Every Student Succeeds Act;

(3) at the end of each fiscal year, any unexpended or unencumbered balance of the [~~appropriation~~] grant shall revert to the fund;

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

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

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

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

(6) as used in this subsection:

(a) "MEM" means: 1) the average full-time-equivalent enrollment using leased [~~classroom~~] facilities

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on the second and third reporting dates of the prior school year; or 2) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased [classroom] facilities in the first year of instruction, as shown in the approved charter school application; provided that, after the second reporting date of the current school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date; and

(b) [classroom] "facilities" [or "classroom space"] includes the space needed SEC→, ~~as determined by the [minimum required under the] five-year facilities master plan aligned with statewide adequacy standards,~~ ←SEC for [the direct administration of] school activities.

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into

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contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

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

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

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

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

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

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

(1) the costs of continuing to insure an

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abandoned facility outweigh any potential benefit when and if a new facility is needed by the school district;

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

(3) the council may enter into an agreement with the school district under which an amount equal to the savings to the district in lower insurance premiums [~~are~~] is used to reimburse the fund fully or partially for the demolition costs allocated to the district.

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

N. For each fiscal year from 2018 through 2022, twenty-five million dollars (\$25,000,000) of the fund is reserved for appropriation by the legislature to the instructional material fund or to the transportation distribution of the public school fund. The secretary shall certify the need for the issuance of supplemental severance tax bonds to meet an appropriation from the public school capital outlay fund to the instructional material fund or to the transportation distribution of the public school fund. Any

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portion of an amount of the public school capital outlay fund that is reserved for appropriation by the legislature for a fiscal year, but that is not appropriated before the first day of that fiscal year, may be expended by the council as provided in this section.

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

P. The fund may be expended in each of fiscal years 2020 through 2024 for a pre-kindergarten classroom facilities initiative in accordance with Section [~~1 of this 2019 act~~] 22-24-12 NMSA 1978.

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

**SECTION 4.** A new section of the Public School Capital Outlay Act is enacted to read:

"[NEW MATERIAL] CHARTER FACILITY FUND.--

A. The "charter facility fund" is created as a nonreverting fund in the state treasury. The fund consists of

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appropriations, gifts, grants and donations. The fund shall be administered by the authority, and money in the fund shall be expended by the authority on authorization by the council.

Expenditures shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the authority or the director's designated representative.

B. The charter facility fund shall be used to pay off charter school lease-purchase agreements.

C. The council shall adopt rules to provide loans to charter schools for the SEC→~~purchase, construction, expansion or renovation of facilities~~←SEC SEC→renovation, construction, purchase or expansion of a charter school facility and the paying off of charter school lease-purchase agreements←SEC that include:

- (1) evidence that any lease-purchase agreements are in accordance with the Public School Lease Purchase Act;
- (2) evidence that a charter school's charter has been renewed at least once; and
- (3) review of the last two audits of the charter school."

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

"22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

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A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

- (1) identify the capital improvements for which the revenue proposed to be produced will be used;
- (2) specify the rate of the proposed tax, which shall not exceed two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;
- (3) limit the imposition of the proposed tax to no more than six property tax years; and
- (4) indicate the regular election on which the ballot question shall appear or specify the date a special election will be held to submit the question of imposition of the tax to the qualified electors of the district.

B. A school district that has one or more charter schools located within the school district boundaries shall collaborate with the charter schools to establish a process through which the charter schools submit necessary information to the school district for inclusion in the resolution. This process shall include:

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(1) identification of the capital improvements of the charter school for which the revenue proposed to be produced will be used;

(2) a requirement that necessary information be submitted to the school district no later than June 1 of the calendar year in which the local school board will consider the resolution; and

(3) the point of contact in the school district to which the charter school is to submit the information.

[B-] C. A resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if the charter school [~~timely provides the necessary information to the school district for inclusion in the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used~~] has complied with the process outlined in Subsection B of this section."

SECTION 6. Section 22-26-3 NMSA 1978 (being Laws 1983, Chapter 163, Section 3, as amended) is amended to read:

"22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

A. A local school board may adopt a resolution to

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submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code for the purpose of capital improvements to public schools in the school district. The resolution shall:

- (1) identify the capital improvements for which the revenue proposed to be produced will be used;
- (2) specify the rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;
- (3) limit the imposition of the proposed tax to no more than six property tax years; and
- (4) indicate the regular election on which the ballot question shall appear or specify the date a special election will be held to submit the question of imposition of the tax to the qualified electors of the district.

B. A school district that has one or more charter schools located within the school district boundaries shall collaborate with the charter schools to establish a process through which the charter schools submit necessary information to the school district for inclusion in the resolution. This process shall include:

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(1) identification of the capital improvements of the charter school for which the revenue proposed to be produced will be used;

(2) a requirement that necessary information be submitted to the school district no later than June 1 of the calendar year in which the local school board will consider the resolution; and

(3) the point of contact in the school district to which the charter school is to submit the information.

[B-] C. A resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if:

(1) the charter school [~~timely provides the necessary information to the school district for inclusion on the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used~~] has complied with the process outlined in Subsection B of this section; and

(2) the capital improvements are included in the five-year facilities plan:

(a) of the school district, if the charter school is a locally chartered charter school; or

(b) of the charter school, if the

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charter school is a state-chartered charter school."

SECTION 7. APPROPRIATION.--One million dollars (\$1,000,000) is appropriated from the general fund operating reserve to the public project revolving fund for expenditure in fiscal year 2022 and subsequent fiscal years to provide loans to charter schools for the renovation, construction, purchase or expansion of a charter school facility or to pay off charter school lease-purchase agreements as provided in Section 6 of this act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to any other fund.

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