

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 232

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

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE PUBLIC SCHOOL
VENTILATION IMPROVEMENT ACT; CREATING A CAPITAL IMPROVEMENT
PROGRAM FOR PUBLIC SCHOOL VENTILATION SYSTEMS; CREATING A FUND;
PROVIDING FOR APPLICATIONS FROM AND GRANTS TO SCHOOL DISTRICTS
AND CHARTER SCHOOLS TO IMPROVE MECHANICAL VENTILATION SYSTEMS
IN PUBLIC SCHOOLS FOR THE HEALTH AND SAFETY OF STUDENTS AND
SCHOOL PERSONNEL DURING THE CORONAVIRUS DISEASE 2019 PANDEMIC;
DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Public School Ventilation Improvement Act"."

SECTION 2. A new section of the Public School Code is

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1 enacted to read:

2 "[NEW MATERIAL] DEFINITIONS.--As used in the Public School
3 Ventilation Improvement Act:

4 A. "certified assessor" means:

5 (1) a certified technician; or

6 (2) a person who is certified to perform
7 ventilation assessments of heating, ventilation and air
8 conditioning systems through a certification body accredited by
9 the American national standards institute;

10 B. "certified technician" means a person who is
11 certified as a testing and balancing technician by an
12 accredited organization; provided that the accreditor of the
13 certification organization is approved by the construction
14 industries commission;

15 C. "fund" means the public school ventilation
16 improvement fund;

17 D. "mechanical engineer" means a professional
18 engineer licensed as a mechanical engineer by the state board
19 of licensure for professional engineers and professional
20 surveyors;

21 E. "mechanical ventilation system" means a building
22 ventilation system provided by mechanically powered, permanent
23 equipment such as motor-driven fans and blowers, and includes
24 carbon dioxide monitoring; provided, however, "mechanical
25 ventilation system" does not include devices such as wind-

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1 driven turbine ventilators, portable air cleaning and
 2 filtration devices and mechanically operated windows;

3 F. "school district" includes charter schools;

4 G. "skilled and trained construction workforce"
 5 means a workforce in which at least forty percent of the
 6 workers are graduates of a registered apprenticeship program in
 7 New Mexico for the applicable construction occupation; and

8 H. "ventilation program" means the public school
 9 ventilation improvement program."

10 SECTION 3. A new section of the Public School Code is
 11 enacted to read:

12 "[NEW MATERIAL] VENTILATION PROGRAM--CREATED--AWARDS.--

13 A. The "public school ventilation improvement
 14 program" is created in the department to award "ventilation
 15 program grants" to school districts for mechanical ventilation
 16 system improvement projects in public schools, including, if
 17 necessary, installation of carbon dioxide monitors on an
 18 otherwise adequate existing mechanical ventilation system. The
 19 department shall promulgate rules to carry out the provisions
 20 of the Public School Ventilation Improvement Act. Rules shall
 21 be promulgated no later than October 1, 2021.

22 B. A ventilation program grant may be used to test,
 23 adjust and balance a public school's mechanical ventilation
 24 system and, if necessary or cost-effective, to repair, upgrade
 25 or replace the existing heating, ventilation and air

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1 conditioning system or install a stand-alone mechanical
2 ventilation system. Allowable expenses include general
3 maintenance, reading and adjustment of ventilation rates,
4 filter replacement to meet a minimum efficiency reporting value
5 of at least thirteen, carbon dioxide monitor installation,
6 whole-system installation or replacement and final ventilation
7 verification reports. Portable filtration and air cleaners
8 shall be considered for funding only if the existing heating,
9 ventilation and air conditioning infrastructure cannot provide
10 minimum filtration and ventilation requirements or, as
11 recommended by a mechanical engineer, as a supplemental
12 enhancement to the permanent heating, ventilation and air
13 conditioning infrastructure when the desired indoor air quality
14 cannot be achieved with the mechanical ventilation system or
15 there are concerns with outdoor air contaminants such as those
16 created by wildfires and pollution. Subject to money in the
17 fund, the department may award a grant to make a heating,
18 ventilation and air conditioning system more energy efficient.

19 C. School districts may apply for a ventilation
20 program grant to help defray the cost of mechanical ventilation
21 system projects. Applications shall be on forms provided by
22 the department and shall include all information required by
23 the department. The department may request a school district
24 to resubmit an application that does not include the
25 information the department needs to evaluate the application.

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1 D. Grant awards shall be based on a ventilation
2 assessment conducted by a certified assessor or a mechanical
3 engineer and that includes an assessment of necessary repairs,
4 upgrades or replacement and an estimate of the cost of those
5 improvements to make the mechanical ventilation system meet a
6 minimum efficiency reporting value of at least thirteen.

7 E. When applying for a grant, a school district may
8 rely on ventilation assessments done by or for the public
9 school facilities authority when the school district applied
10 for building system improvements or public school capital
11 outlay funding. If the school district has not had such
12 ventilation assessments, the department shall pay the cost of
13 ventilation assessments from the five percent set-aside from
14 the fund.

15 F. Grants may be used to reimburse a school
16 district for mechanical ventilation system capital improvements
17 that were contracted and performed after August 1, 2020.

18 G. The department shall give priority to:

19 (1) school districts that do not have local
20 resources to improve public school mechanical ventilation
21 systems or to match a grant from the public school capital
22 outlay council for building system repair, renovation or
23 replacement;

24 (2) projects that are crucial to the reopening
25 of a public school; and

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1 (3) projects required for health and safety of
2 students and school personnel before grants for projects to
3 improve systems for cost savings.

4 H. In accepting a grant pursuant to this section,
5 the grantee warrants that:

6 (1) ventilation assessments of the mechanical
7 ventilation system were performed by a certified assessor or a
8 mechanical engineer; and

9 (2) construction work on the mechanical
10 ventilation system, whether paid in full or in part by the
11 grant, shall be performed by a contractor who employs a skilled
12 and trained construction workforce and who is in compliance
13 with the Construction Industries Licensing Act and rules
14 promulgated in accordance with that act.

15 I. Any unexpended or unencumbered balance of a
16 grant award to a school district remaining at the end of the
17 project shall revert to the fund."

18 SECTION 4. A new section of the Public School Code is
19 enacted to read:

20 "[NEW MATERIAL] PUBLIC SCHOOL VENTILATION IMPROVEMENT
21 FUND--CREATED--USES.--

22 A. The "public school ventilation improvement fund"
23 is created as a nonreverting fund in the state treasury. The
24 fund consists of federal grants, state appropriations, gifts,
25 grants and donations. The fund shall be administered by the

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1 department, and money in the fund is appropriated to the
 2 department to provide grants to school districts as provided in
 3 the Public School Ventilation Improvement Act and rules
 4 promulgated in accordance with that act. Expenditures from the
 5 fund shall be by warrant of the secretary of finance and
 6 administration pursuant to vouchers signed by the secretary of
 7 public education or the secretary's authorized representative.

8 B. The department may expend up to five percent of
 9 the fund each year to administer the ventilation program,
 10 including providing technical assistance and support to
 11 grantees and to pay the cost of ventilation assessments for
 12 grant applications, as necessary. The cost of ventilation
 13 verification assessments shall be paid from a school district's
 14 grant award.

15 C. If state funds are used to make a grant to a
 16 school district or a state-chartered charter school, the
 17 state's share of the total cost shall be calculated pursuant to
 18 the methodology in Subsection B of Section 22-24-5 NMSA 1978."

19 SECTION 5. A new section of the Public School Code is
 20 enacted to read:

21 "[NEW MATERIAL] ASSESSMENTS--VENTILATION VERIFICATION
 22 REPORTS.--

23 A. The ventilation assessment required to apply for
 24 a grant shall be performed by a certified assessor or a
 25 mechanical engineer. If an assessment is performed by a

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1 certified assessor, the assessment report shall be reviewed by
2 a mechanical engineer. The ventilation assessment shall verify
3 whether the existing mechanical ventilation system is operating
4 in accordance with design parameters, meets the requirements of
5 the New Mexico Mechanical Code and follows the recommendations
6 of the American society of heating, refrigerating and air
7 conditioning engineers for ventilation needs during the
8 coronavirus disease 2019 pandemic. The ventilation assessment
9 for a heating, ventilation and air conditioning system shall
10 include:

- 11 (1) testing for maximum filter efficiency;
- 12 (2) measurements of outside air rate;
- 13 (3) verification of operation of ventilation
14 components;
- 15 (4) measurement of all air distribution inlets
16 and outlets;
- 17 (5) verification of unit operation and that
18 required maintenance has been performed;
- 19 (6) verification of control sequences;
- 20 (7) verification of carbon dioxide sensors;
- 21 and
- 22 (8) collection of field data for the
23 installation of mechanical ventilation if none exists.

24 B. The assessment report from the mechanical
25 engineer shall include appropriate corrective actions needed

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1 for the mechanical ventilation system or the heating,
2 ventilation and air conditioning infrastructure, including
3 installation of appropriate filters, installation of carbon
4 dioxide sensors and additional maintenance, repairs, upgrades
5 or replacement.

6 C. Upon completion of work funded by a grant
7 pursuant to the Public School Ventilation Improvement Act, the
8 school district shall submit a ventilation verification report
9 to the department. The report shall include:

10 (1) the name and address of the public school
11 and the person preparing and certifying the report;

12 (2) the name and address of the certified
13 assessors, certified technicians, mechanical engineers,
14 contractors and the skilled and trained construction workforce
15 who performed assessments or construction and copies of
16 certifications and licenses;

17 (3) a copy of the procurement documents; and

18 (4) documentation of:

19 (a) initial operating ventilation rate
20 verifications;

21 (b) adjustments, repairs, upgrades or
22 replacements;

23 (c) final operating conditions,
24 including the minimum efficiency reporting value of the
25 filtration system and verified ventilation and exhaust rates

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1 for classrooms, auditoriums, gymnasiums, restrooms, offices and
2 other occupied spaces;

3 (d) verification of carbon dioxide
4 monitors, including make and model of the monitors; and

5 (e) verification that all work has been
6 tested and adjusted by certified technicians or mechanical
7 engineers and that all repairs, upgrades or replacements were
8 performed by a contractor who employs a skilled and trained
9 construction workforce and who is in compliance with the
10 Construction Industries Licensing Act and rules promulgated in
11 accordance with that act.

12 D. The ventilation assessment and the ventilation
13 verification reports are public documents and shall be
14 available to the public upon request."

15 SECTION 6. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.