

1 SENATE BILL 63
2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY
4 William P. Soules
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10 AN ACT

11 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING
12 PHOTOVOLTAIC SYSTEMS IN NEW PUBLIC SCHOOLS; CHANGING THE
13 DEFINITION OF "BUILDING SYSTEM" IN THE PUBLIC SCHOOL CAPITAL
14 OUTLAY ACT.
15

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

17 SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
18 Chapter 235, Section 3, as amended by Laws 2018, Chapter 66,
19 Section 1 and by Laws 2018, Chapter 71, Section 2) is amended
20 to read:

21 "22-24-3. DEFINITIONS.--As used in the Public School
22 Capital Outlay Act:

23 A. "authority" means the public school facilities
24 authority;

25 B. "building system" means a set of interacting

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1 parts that makes up a single, nonportable or fixed component of
2 a facility and that, together with other building systems,
3 makes up an entire integrated facility or property, including
4 roofing, electrical distribution, electronic communication,
5 plumbing, lighting, mechanical, fire prevention, facility
6 shell, interior finishes, heating, ventilation and air
7 conditioning systems, photovoltaic systems and school security
8 systems, as defined by the council;

9 C. "constitutional special schools" means the
10 New Mexico school for the blind and visually impaired and the
11 New Mexico school for the deaf;

12 D. "constitutional special schools support spaces"
13 means all facilities necessary to support the constitutional
14 special schools' educational mission that are not included in
15 the constitutional special schools' educational adequacy
16 standards, including performing arts centers, facilities for
17 athletic competition, school district administration and
18 facility and vehicle maintenance;

19 E. "council" means the public school capital outlay
20 council;

21 F. "education technology infrastructure" means the
22 physical hardware used to interconnect education technology
23 equipment for school districts and school buildings necessary
24 to support broadband connectivity as determined by the council;

25 G. "fund" means the public school capital outlay

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1 fund;

2 H. "maximum allowable gross square foot per
3 student" means a determination made by applying the established
4 maximum allowable square foot guidelines for educational
5 facilities based on type of school and number of students in
6 the current published New Mexico public school adequacy
7 planning guide to the department's current year certified first
8 reporting date membership;

9 I. "photovoltaic system" means a power system
10 designed to supply usable solar power, including enough power
11 for electric vehicle charging stations, which may be a grid-
12 tied, grid-hybrid or off-grid system;

13 ~~[F.]~~ J. "replacement cost per square foot" means
14 the statewide cost per square foot as established by the
15 council;

16 ~~[J.]~~ K. "school district" includes state-chartered
17 charter schools and the constitutional special schools;

18 ~~[K.]~~ L. "school district population density" means
19 the population density on a per square mile basis of a school
20 district as estimated by the authority based on the most
21 current tract level population estimates published by the
22 United States census bureau; and

23 ~~[L.]~~ M. "school district population density factor"
24 means zero when the school district population density is
25 greater than fifty people per square mile, six-hundredths when
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1 the school district population density is greater than fifteen
2 but less than fifty-one persons per square mile and twelve-
3 hundredths when the school district population density is less
4 than sixteen persons per square mile."

5 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
6 Chapter 235, Section 4, as amended by Laws 2019, Chapter 179,
7 Section 2 and by Laws 2019, Chapter 180, Section 1) is amended
8 to read:

9 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
10 USE.--

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

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

18 C. The council may authorize the purchase by the
19 authority of portable classrooms to be loaned to school
20 districts to meet a temporary requirement. Payment for these
21 purchases shall be made from the fund. Title to and custody of
22 the portable classrooms shall rest in the authority. The
23 council shall authorize the lending of the portable classrooms
24 to school districts upon request and upon finding that
25 sufficient need exists. Application for use or return of

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1 state-owned portable classroom buildings shall be submitted by
2 school districts to the council. Expenses of maintenance of
3 the portable classrooms while in the custody of the authority
4 shall be paid from the fund; expenses of maintenance and
5 insurance of the portable classrooms while in the custody of a
6 school district shall be the responsibility of the school
7 district. The council may authorize the permanent disposition
8 of the portable classrooms by the authority with prior approval
9 of the state board of finance.

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

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

22 F. Money in the fund shall be disbursed by warrant
23 of the department of finance and administration on vouchers
24 signed by the secretary of finance and administration following
25 certification by the council that an application has been

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1 approved or an expenditure has been ordered by a court pursuant
2 to Section 22-24-5.4 NMSA 1978. At the discretion of the
3 council, money for a project shall be distributed as follows:

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

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

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

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

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

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

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

17 (1) the amount of a grant to a school district
18 shall not exceed:

19 (a) the actual annual lease payments
20 owed for leasing classroom space for schools, including charter
21 schools, in the school district; or

22 (b) seven hundred dollars (\$700)
23 multiplied by the MEM using the leased classroom facilities;
24 provided that in fiscal year 2009 and in each subsequent fiscal
25 year, this amount shall be adjusted by the percentage change

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1 between the penultimate calendar year and the immediately
2 preceding calendar year of the consumer price index for the
3 United States, all items, as published by the United States
4 department of labor;

5 (2) a grant received for the lease payments of
6 a charter school may be used by that charter school as a state
7 match necessary to obtain federal grants pursuant to the
8 federal Every Student Succeeds Act;

9 (3) at the end of each fiscal year, any
10 unexpended or unencumbered balance of the appropriation shall
11 revert to the fund;

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

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

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

21 (5) if the lease payments are made pursuant to
22 a financing agreement under which the facilities may be
23 purchased for a price that is reduced according to the lease
24 payments made, neither a grant nor any provision of the Public
25 School Capital Outlay Act creates a legal obligation for the

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1 school district or charter school to continue the lease from
2 year to year or to purchase the facilities nor does it create a
3 legal obligation for the state to make subsequent grants
4 pursuant to the provisions of this subsection; and

5 (6) as used in this subsection:

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

17 (b) "classroom facilities" or "classroom
18 space" includes the space needed, as determined by the minimum
19 required under the statewide adequacy standards, for the direct
20 administration of school activities.

21 J. In addition to other authorized expenditures
22 from the fund, up to one percent of the average grant
23 assistance authorized from the fund during the three previous
24 fiscal years may be expended in each fiscal year by the
25 authority to pay the state fire marshal, the construction

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1 industries division of the regulation and licensing department
2 and local jurisdictions having authority from the state to
3 permit and inspect projects for expenditures made to permit and
4 inspect projects funded in whole or in part under the Public
5 School Capital Outlay Act. The authority may enter into
6 contracts with the state fire marshal, the construction
7 industries division or the appropriate local authorities to
8 carry out the provisions of this subsection. Such a contract
9 may provide for initial estimated payments from the fund prior
10 to the expenditures if the contract also provides for
11 additional payments from the fund if the actual expenditures
12 exceed the initial payments and for repayments back to the fund
13 if the initial payments exceed the actual expenditures. Money
14 distributed from the fund to the state fire marshal or the
15 construction industries division pursuant to this subsection
16 shall be used to supplement, rather than supplant,
17 appropriations to those entities.

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

23 (1) no allocation shall be made unless the
24 council determines that the school district is willing and able
25 to pay the portion of the total cost of developing or updating

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1 the plan that is not funded with the allocation from the fund.
2 Except as provided in Paragraph (2) of this subsection, the
3 portion of the total cost to be paid with the allocation from
4 the fund shall be determined pursuant to the methodology in
5 Subsection B of Section 22-24-5 NMSA 1978; or

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

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

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

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

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

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

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

16 M. Any new public school proposed to be constructed
17 after July 1, 2021 with grant assistance from the fund shall
18 include a photovoltaic system sufficient to meet the energy
19 needs of the public school.

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

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1 ~~[N.]~~ O. For each fiscal year from 2018 through
2 2022, twenty-five million dollars (\$25,000,000) of the fund is
3 reserved for appropriation by the legislature to the
4 instructional material fund or to the transportation
5 distribution of the public school fund. The secretary shall
6 certify the need for the issuance of supplemental severance tax
7 bonds to meet an appropriation from the public school capital
8 outlay fund to the instructional material fund or to the
9 transportation distribution of the public school fund. Any
10 portion of an amount of the public school capital outlay fund
11 that is reserved for appropriation by the legislature for a
12 fiscal year, but that is not appropriated before the first day
13 of that fiscal year, may be expended by the council as provided
14 in this section.

15 ~~[O.]~~ P. Up to ten million dollars (\$10,000,000) of
16 the fund may be expended in each of fiscal years 2019 through
17 2022 for school security system project grants made in
18 accordance with Section 22-24-4.7 NMSA 1978.

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

23 ~~[Q.]~~ R. The council may fund pre-kindergarten
24 classrooms with a qualifying, awarded standards-based project;
25 provided that pre-kindergarten classroom space shall not be

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1 included in the project prioritization calculation adopted by
2 the council pursuant to Section 22-24-5 NMSA 1978. The council
3 shall develop pre-kindergarten classroom standards to use when
4 funding pre-kindergarten space."

5 SECTION 3. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2021.