

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 660

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
PROVIDING FOR ALLOCATIONS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY  
FUND FOR EDUCATION TECHNOLOGY EQUIPMENT.

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

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,  
Chapter 235, Section 3, as amended) is amended to read:

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

A. "constitutional special schools" means the New  
Mexico school for the blind and visually impaired and the New  
Mexico school for the deaf;

B. "constitutional special schools support spaces"  
means all facilities necessary to support the constitutional  
special schools' educational mission that are not included in

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1 the constitutional special schools' educational adequacy  
2 standards, including, but not limited to, performing arts  
3 centers, facilities for athletic competition, school district  
4 administration and facility and vehicle maintenance;

5 C. "council" means the public school capital outlay  
6 council;

7 D. "education technology equipment" means tools  
8 used in the educational process that constitute learning and  
9 administrative resources and may include:

10 (1) closed-circuit television systems;

11 (2) educational television and radio  
12 broadcasting and cable television;

13 (3) satellite, copper wire and fiber-optic  
14 transmission;

15 (4) network connection devices and digital  
16 communications equipment, including voice, video and data  
17 equipment;

18 (5) computer hardware and software, including  
19 software licenses, data storage fees and other technologies and  
20 services;

21 (6) local and remote servers;

22 (7) other computer infrastructure;

23 (8) portable media such as discs and drives to  
24 contain data for electronic storage and playback;

25 (9) maintenance equipment; and

1                    (10) any other techniques and tools used to  
 2 implement technology in schools and related facilities;

3                    [~~D~~] E. "fund" means the public school capital  
 4 outlay fund; and

5                    [~~E~~] F. "school district" includes state-chartered  
 6 charter schools and the constitutional special schools."

7                    **SECTION 2.** Section 22-24-4 NMSA 1978 (being Laws 1975,  
 8 Chapter 235, Section 4, as amended) is amended 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 [~~E~~] N 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 public school facilities authority of portable classrooms to be  
 20 loaned to school districts to meet a temporary requirement.  
 21 Payment for these purchases shall be made from the fund. Title  
 22 to and custody of the portable classrooms shall rest in the  
 23 public school facilities authority. The council shall  
 24 authorize the lending of the portable classrooms to school  
 25 districts upon request and upon finding that sufficient need

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

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

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

23 F. Money in the fund shall be disbursed by warrant  
24 of the department of finance and administration on vouchers  
25 signed by the secretary of finance and administration following

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

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

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

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

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

25 (2) any unexpended or unencumbered balance

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1 remaining at the end of a fiscal year from the expenditures  
2 authorized in this subsection shall revert to the fund.

3 H. Up to ten million dollars (\$10,000,000) of the  
4 fund may be allocated annually by the council for expenditure  
5 in fiscal years 2010 through 2015 for a roof repair and  
6 replacement initiative with projects to be identified by the  
7 council pursuant to Section 22-24-4.3 NMSA 1978; provided that  
8 money allocated pursuant to this subsection shall be expended  
9 within two years of the allocation.

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

20 (1) the amount of a grant to a school district  
21 shall not exceed:

22 (a) the actual annual lease payments  
23 owed for leasing classroom space for schools, including charter  
24 schools, in the district; or

25 (b) seven hundred dollars (\$700)

1 multiplied by the number of MEM using the leased classroom  
2 facilities; provided that in fiscal year 2009 and in each  
3 subsequent fiscal year, this amount shall be adjusted by the  
4 percentage change between the penultimate calendar year and the  
5 immediately preceding calendar year of the consumer price index  
6 for the United States, all items, as published by the United  
7 States department of labor;

8 (2) a grant received for the lease payments of  
9 a charter school may be used by that charter school as a state  
10 match necessary to obtain federal grants pursuant to ~~[the]~~  
11 federal ~~[No Child Left Behind Act of 2001]~~ law;

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

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

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

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

24 (5) if the lease payments are made pursuant to  
25 a financing agreement under which the facilities may be

.193926.1

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

8 (6) as used in this subsection:

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

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

24 J. In addition to other authorized expenditures  
25 from the fund, up to one percent of the average grant

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

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

.193926.1

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

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

11                               (a) the school district has fewer than  
12 an average of six hundred full-time-equivalent students on the  
13 eightieth and one hundred twentieth days of the prior school  
14 year; or

15                               (b) the school district meets all of the  
16 following requirements: 1) the school district has fewer than  
17 an average of one thousand full-time-equivalent students on the  
18 eightieth and one hundred twentieth days of the prior school  
19 year; 2) the school district has at least seventy percent of  
20 its students eligible for free or reduced-fee lunch; 3) the  
21 state share of the total cost, if calculated pursuant to the  
22 methodology in Paragraph (5) of Subsection B of Section 22-24-5  
23 NMSA 1978, would be less than fifty percent; and 4) for all  
24 educational purposes, the school district has a residential  
25 property tax rate of at least seven dollars (\$7.00) on each one

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1 thousand dollars (\$1,000) of taxable value, as measured by the  
 2 sum of all rates imposed by resolution of the local school  
 3 board plus rates set to pay interest and principal on  
 4 outstanding school district general obligation bonds.

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

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

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

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

20 M. Up to ten million dollars (\$10,000,000) of the  
 21 fund may be expended by the council in fiscal years 2014  
 22 through 2018 for an educational technology infrastructure  
 23 deficiency correction initiative pursuant to Section 3 of this  
 24 2013 act.

25 N. Up to two hundred million dollars (\$200,000,000)

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1 of the fund may be expended during fiscal years 2014 through  
2 2018 by the council for grants to school districts for the  
3 purposes of purchasing, installing, maintaining and upgrading  
4 education technology equipment as deemed necessary by the  
5 council for an adequate educational program. Prior to awarding  
6 grants, the council shall identify educational technology  
7 infrastructure deficiencies. The grants shall be made upon  
8 application by the school districts and pursuant to rules  
9 adopted by the council. An application on behalf of a charter  
10 school shall be made by the school district, but if the school  
11 district fails to make an application on behalf of a charter  
12 school, the charter school may submit its own application. The  
13 following criteria shall apply to applications and grants:

14 (1) the application shall be made in  
15 accordance with standards developed by the council in  
16 collaboration with the public education department, the  
17 department of information technology and telecommunication  
18 providers identifying educational technology infrastructure  
19 deficiencies in school districts;

20 (2) the application shall include a detailed  
21 assessment by the school district of the education technology  
22 equipment needed to meet state or federal education  
23 instructional requirements and the itemized estimated costs;

24 (3) the public school facilities authority  
25 shall verify the assessment and estimated costs submitted by

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1 the school district and rank the application with similar  
 2 applications pursuant to a methodology adopted by the council  
 3 that includes at least the following considerations:

4 (a) the availability of alternative  
 5 funding, including proceeds from the property tax imposed  
 6 pursuant to the Education Technology Equipment Act, the Public  
 7 School Capital Improvements Act, the Public School Buildings  
 8 Act, general obligation bonds or state or federal grants; and

9 (b) the existing educational technology  
 10 infrastructure within the school district and the size and  
 11 location of the school district;

12 (4) after a public hearing and to the extent  
 13 that money is available in the fund for such purposes, the  
 14 council shall approve applications for grants on a priority  
 15 basis established in rule; provided that the council may  
 16 approve parts of the application and award partial grants; and

17 (5) a grant made pursuant to this section  
 18 shall be expended by the school district within two years of  
 19 the grant allocation."

20 SECTION 3. A new section of the Public School Capital  
 21 Outlay Act is enacted to read:

22 "[NEW MATERIAL] EDUCATIONAL TECHNOLOGY INFRASTRUCTURE  
 23 DEFICIENCY CORRECTIONS.--

24 A. No later than September 1, 2013, the council,  
 25 with the advice of the public education department and the

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1 department of information technology, shall define and develop:

2 (1) minimum adequacy standards for an  
3 educational technology infrastructure deficiency correction  
4 initiative to identify and determine reasonable costs for  
5 correcting educational technology infrastructure deficiencies  
6 in school districts;

7 (2) a methodology for prioritizing projects to  
8 correct educational technology infrastructure deficiencies in  
9 school districts; and

10 (3) a methodology for determining the school  
11 district's share of the project costs.

12 B. The council may approve allocations from the  
13 fund pursuant to Subsection M of Section 22-24-4 NMSA 1978 and  
14 this section for projects in school districts committing to pay  
15 its share of the project costs using distributions received  
16 from the Education Technology Equipment Act, the Public School  
17 Capital Improvements Act, the Public School Buildings Act,  
18 general obligation bonds or state or federal grants. The  
19 council may reduce or waive the school district's share of the  
20 project costs in accordance with Paragraph (9) of Subsection B  
21 of Section 22-24-5 NMSA 1978.