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HOUSE BILL 490

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Eliseo Lee Alcon

AN ACT

RELATING TO EDUCATION; DEFINING "SCHOOL BUILDING" AND "PUBLIC SCHOOL BUILDING" WITHIN CERTAIN ARTICLES OF CHAPTER 22 NMSA 1978; REQUIRING EXPENDITURES FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR DEBT SERVICE OR LOAN PAYMENTS FOR CERTAIN SCHOOL DISTRICTS; PERMITTING ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS FOR THOSE EXPENDITURES; MAKING APPROPRIATIONS.

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

**SECTION 1.** Section 7-27-12 NMSA 1978 (being Laws 1961, Chapter 5, Section 10, as amended by Laws 2001, Chapter 37, Section 1 and by Laws 2001, Chapter 338, Section 1) is amended to read:

"7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law

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1 that sets out the amount of the issue and the recipient of the  
2 money.

3 B. The state board of finance shall also issue and  
4 sell severance tax bonds authorized by Sections 72-14-36  
5 through 72-14-42 NMSA 1978, and such authority as has been  
6 given to the interstate stream commission to issue and sell  
7 such bonds is transferred to the state board of finance. The  
8 state board of finance shall issue and sell all severance tax  
9 bonds only when so instructed by resolution of the governing  
10 body or by written direction from an authorized officer of the  
11 recipient of the bond money.

12 C. Except as provided in Subsection D of this  
13 section, proceeds from supplemental severance tax bonds shall  
14 be used only for public school capital outlay projects or other  
15 purposes provided pursuant to the Public School Capital Outlay  
16 Act or the Public School Capital Improvements Act.

17 D. Proceeds from supplemental severance tax bonds  
18 issued pursuant to Paragraph (2) of Subsection A of Section 19  
19 of Chapter 6 of Laws 1999 (1st S.S.) shall be used for the  
20 purposes specified in that paragraph.

21 E. Except as provided in Subsection F of this  
22 section, the state board of finance shall issue and sell all  
23 supplemental severance tax bonds when so instructed by  
24 resolution of the public school capital outlay council pursuant  
25 to Section 7-27-12.2 NMSA 1978.

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1 F. The state board of finance shall issue and sell  
2 supplemental severance tax bonds authorized by Paragraph (2) of  
3 Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.)  
4 when so instructed by resolution of the [~~commission on~~] higher  
5 education department."

6 SECTION 2. Section 7-27-12.2 NMSA 1978 (being Laws 2001,  
7 Chapter 338, Section 2, as amended) is amended to read:

8 "7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC  
9 SCHOOL CAPITAL OUTLAY PROJECTS.--

10 A. The public school capital outlay council is  
11 authorized to certify by resolution that proceeds of  
12 supplemental severance tax bonds are needed for expenditures  
13 relating to public school capital outlay projects or other  
14 purposes provided pursuant to the Public School Capital Outlay  
15 Act or for the state distribution for public school capital  
16 improvements pursuant to the Public School Capital Improvements  
17 Act. The resolution shall specify the total amount needed.

18 B. The state board of finance may issue and sell  
19 supplemental severance tax bonds in compliance with the  
20 Severance Tax Bonding Act when the public school capital outlay  
21 council certifies by resolution the need for the issuance of  
22 the bonds. The amount of the bonds sold at each sale shall not  
23 exceed the lesser of the amount certified by the council or the  
24 amount that may be issued pursuant to the restrictions of  
25 Section 7-27-14 NMSA 1978.

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1 C. The state board of finance shall schedule the  
2 issuance and sale of the bonds in the most expeditious and  
3 economical manner possible.

4 D. The proceeds from the sale of the bonds are  
5 appropriated as follows:

6 (1) the amount certified by the secretary of  
7 public education as necessary to make the distribution pursuant  
8 to Section 22-25-9 NMSA 1978 is appropriated to the public  
9 school capital improvements fund for the purpose of carrying  
10 out the provisions of the Public School Capital Improvements  
11 Act; and

12 (2) the remainder of the proceeds is  
13 appropriated to the public school capital outlay fund for the  
14 purpose of carrying out the provisions of the Public School  
15 Capital Outlay Act."

16 SECTION 3. Section 22-18-1 NMSA 1978 (being Laws 1967,  
17 Chapter 16, Section 228, as amended) is amended to read:

18 "22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO  
19 ISSUE.--

20 A. For purposes of this section, "school building"  
21 means a public school building, public school administration  
22 building or any related public school structure or facility,  
23 including teacher housing in school districts with schools  
24 located in sparsely populated, isolated, rural areas, that is  
25 owned, acquired or constructed by a school district as

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1 necessary to carry out the functions of the school district.

2           ~~[A-]~~ B. After consideration of the priorities for  
3 the school district's capital needs as shown by the facility  
4 assessment database maintained by the public school facilities  
5 authority and subject to the provisions of Article 9, Section  
6 11 of the constitution of New Mexico and Sections 6-15-1 and  
7 6-15-2 NMSA 1978, a school district may issue general  
8 obligation bonds for the purpose of:

9                   (1) erecting, remodeling, making additions to  
10 and furnishing school buildings;

11                   (2) purchasing or improving school grounds;

12                   (3) purchasing computer software and hardware  
13 for student use in public schools;

14                   (4) providing matching funds for capital  
15 outlay projects funded pursuant to the Public School Capital  
16 Outlay Act; or

17                   (5) any combination of these purposes.

18           ~~[B-]~~ C. The bonds shall be fully negotiable and  
19 constitute negotiable instruments within the meaning and for  
20 all purposes of the Uniform Commercial Code."

21           **SECTION 4.** Section 22-24-3 NMSA 1978 (being Laws 1975,  
22 Chapter 235, Section 3, as amended) is amended to read:

23                   "22-24-3. DEFINITIONS.--As used in the Public School  
24 Capital Outlay Act:

25                   A. "constitutional special schools" means the

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1 New Mexico school for the blind and visually impaired and the  
2 New Mexico school for the deaf;

3 B. "constitutional special schools support spaces"  
4 means all facilities necessary to support the constitutional  
5 special schools' educational mission that are not included in  
6 the constitutional special schools' educational adequacy  
7 standards, including, but not limited to, performing arts  
8 centers, facilities for athletic competition, school district  
9 administration and facility and vehicle maintenance;

10 C. "council" means the public school capital outlay  
11 council;

12 D. "education technology infrastructure" means the  
13 physical hardware used to interconnect education technology  
14 equipment for school districts and school buildings necessary to  
15 support broadband connectivity as determined by the council;

16 E. "fund" means the public school capital outlay  
17 fund; ~~and~~

18 F. "school building" means a public school  
19 building, public school administration building or any related  
20 public school structure or facility, including teacher housing  
21 in school districts with schools located in sparsely populated,  
22 isolated, rural areas, that is owned, acquired or constructed  
23 by a school district as necessary to carry out the functions of  
24 the school district; and

25 ~~[F.]~~ G. "school district" includes state-chartered

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1 charter schools and the constitutional special schools."

2 SECTION 5. Section 22-24-4 NMSA 1978 (being Laws 1975,  
3 Chapter 235, Section 4, as amended) is amended to read:

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

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

9 B. Except as provided in Subsections G and I  
10 through M of this section, money in the fund may be used only  
11 for capital expenditures deemed necessary by the council for an  
12 adequate educational program.

13 C. The council may authorize the purchase by the  
14 public school facilities authority of portable classrooms to be  
15 loaned to school districts to meet a temporary requirement.  
16 Payment for these purchases shall be made from the fund. Title  
17 to and custody of the portable classrooms shall rest in the  
18 public school facilities authority. The council shall  
19 authorize the lending of the portable classrooms to school  
20 districts upon request and upon finding that sufficient need  
21 exists. Application for use or return of state-owned portable  
22 classroom buildings shall be submitted by school districts to  
23 the council. Expenses of maintenance of the portable  
24 classrooms while in the custody of the public school facilities  
25 authority shall be paid from the fund; expenses of maintenance

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1 and insurance of the portable classrooms while in the custody  
2 of a school district shall be the responsibility of the school  
3 district. The council may authorize the permanent disposition  
4 of the portable classrooms by the public school facilities  
5 authority with prior approval of the state board of finance.

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

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

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

25 (1) up to ten percent of the portion of the

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1 project cost funded with distributions from the fund or five  
2 percent of the total project cost, whichever is greater, may be  
3 paid to the school district before work commences with the  
4 balance of the grant award made on a cost-reimbursement basis;  
5 or

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

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

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

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

23 H. Up to ten million dollars (\$10,000,000) of the  
24 fund may be allocated annually by the council for expenditure  
25 in fiscal years 2010 through 2015 for a roof repair and

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1 replacement initiative with projects to be identified by the  
2 council pursuant to Section 22-24-4.3 NMSA 1978; provided that  
3 money allocated pursuant to this subsection shall be expended  
4 within two years of the allocation.

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

15 (1) the amount of a grant to a school district  
16 shall not exceed:

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

20 (b) seven hundred dollars (\$700)  
21 multiplied by the number of MEM using the leased classroom  
22 facilities; provided that in fiscal year 2009 and in each  
23 subsequent fiscal year, this amount shall be adjusted by the  
24 percentage change between the penultimate calendar year and the  
25 immediately preceding calendar year of the consumer price index

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1 for the United States, all items, as published by the United  
2 States department of labor;

3 (2) a grant received for the lease payments of  
4 a charter school may be used by that charter school as a state  
5 match necessary to obtain federal grants pursuant to the  
6 federal No Child Left Behind Act of 2001;

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

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

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

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

19 (5) if the lease payments are made pursuant to  
20 a financing agreement under which the facilities may be  
21 purchased for a price that is reduced according to the lease  
22 payments made, neither a grant nor any provision of the Public  
23 School Capital Outlay Act creates a legal obligation for the  
24 school district or charter school to continue the lease from  
25 year to year or to purchase the facilities nor does it create a

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1 legal obligation for the state to make subsequent grants  
2 pursuant to the provisions of this subsection; and

3 (6) as used in this subsection:

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

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

19 J. In addition to other authorized expenditures  
20 from the fund, up to one percent of the average grant  
21 assistance authorized from the fund during the three previous  
22 fiscal years may be expended in each fiscal year by the public  
23 school facilities authority to pay the state fire marshal, the  
24 construction industries division of the regulation and  
25 licensing department and local jurisdictions having authority

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

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

21 (1) no allocation shall be made unless the  
22 council determines that the school district is willing and able  
23 to pay the portion of the total cost of developing or updating  
24 the plan that is not funded with the allocation from the fund.

25 Except as provided in Paragraph (2) of this subsection, the

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1 portion of the total cost to be paid with the allocation from  
2 the fund shall be determined pursuant to the methodology in  
3 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

6 (a) the school district has fewer than  
7 an average of six hundred full-time-equivalent students on the  
8 eightieth and one hundred twentieth days of the prior school  
9 year; or

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

25 L. Upon application by a school district,

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1 allocations from the fund may be made by the council for the  
2 purpose of demolishing abandoned school district facilities,  
3 provided that:

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

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

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

15 M. Up to ten million dollars (\$10,000,000) of the  
16 fund may be expended each year in fiscal years 2014 through  
17 2019 for an education technology infrastructure deficiency  
18 corrections initiative pursuant to Section [~~4 of this 2014 act~~]  
19 22-24-4.5 NMSA 1978; provided that funding allocated pursuant  
20 to this section shall be expended within three years of its  
21 allocation.

22 N. In each fiscal year from fiscal year 2016  
23 through fiscal year 2020, an expenditure from the fund shall be  
24 made for debt service payments on revenue bonds issued by the  
25 Gallup-McKinley county school district, in an amount equal to

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1 the lesser of three million dollars (\$3,000,000) or the amount  
2 in debt service payments due for that fiscal year multiplied by  
3 the percentage representing the state share of a project for  
4 the school district, as established pursuant to Section 22-24-5  
5 NMSA 1978.

6 0. In each fiscal year from fiscal year 2016  
7 through fiscal year 2020, an expenditure from the fund shall be  
8 made for loan payments for the Zuni public school district, in  
9 an amount equal to the lesser of one million dollars  
10 (\$1,000,000) or the amount in loan payments due for that fiscal  
11 year multiplied by the percentage representing the state share  
12 of a project for the school district, as established pursuant  
13 to Section 22-24-5 NMSA 1978."

14 SECTION 6. Section 22-25-2 NMSA 1978 (being Laws 1975  
15 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

16 "22-25-2. DEFINITIONS.--As used in the Public School  
17 Capital Improvements Act:

18 A. "program unit" means the product of the program  
19 element multiplied by the applicable cost differential factor,  
20 as defined in Section 22-8-2 NMSA 1978; [~~and~~]

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

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1 (1) erecting, remodeling, making additions to,  
2 providing equipment for or furnishing public school buildings;

3 (2) purchasing or improving public school  
4 grounds;

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

15 (4) purchasing activity vehicles for  
16 transporting students to extracurricular school activities; or

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

19 C. "public school building" means a building for a  
20 public school, administration building for a public school and  
21 any related structure or facility of a public school, including  
22 teacher housing in school districts with schools located in  
23 sparsely populated, isolated, rural areas, that is owned,  
24 acquired or constructed by a school district as necessary to  
25 carry out the functions of the school district."

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1           SECTION 7. Section 22-26-2 NMSA 1978 (being Laws 1983,  
2 Chapter 163, Section 2, as amended) is amended to read:

3           "22-26-2. [~~DEFINITION~~] DEFINITIONS.--As used in the  
4 Public School Buildings Act:

5           A. "capital improvements" means expenditures,  
6 including payments made with respect to lease-purchase  
7 arrangements as defined in the Education Technology Equipment  
8 Act but excluding any other debt service expenses, for:

9                   [~~A-~~] (1) erecting, remodeling, making  
10 additions to, providing equipment for or furnishing public  
11 school buildings;

12                   [~~B-~~] (2) payments made pursuant to a financing  
13 agreement entered into by a school district or a charter school  
14 for the leasing of a building or other real property with an  
15 option to purchase for a price that is reduced according to  
16 payments made;

17                   [~~C-~~] (3) purchasing or improving public school  
18 grounds;

19                   [~~D-~~] (4) purchasing activity vehicles for  
20 transporting students to and from extracurricular school  
21 activities; provided that this authorization for expenditure  
22 does not apply to school districts with a student MEM greater  
23 than sixty thousand; or

24                   [~~E-~~] (5) administering the projects undertaken  
25 pursuant to [~~Subsections A and C of this section~~] Paragraphs

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1 (1) and (3) of this subsection, including expenditures for  
2 facility maintenance software, project management software,  
3 project oversight and district personnel specifically related  
4 to administration of projects funded by the Public School  
5 Buildings Act; provided that expenditures pursuant to this  
6 subsection shall not exceed five percent of the total project  
7 costs; and

8 B. "public school building" means a building for a  
9 public school, an administration building for a public school  
10 or any structure or facility of a public school, including  
11 teacher housing in school districts with schools located in  
12 sparsely populated, isolated, rural areas, that is owned,  
13 acquired or constructed by a school district as necessary to  
14 carry out the functions of the school district."