

1 HOUSE BILL 41

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 James E. Smith and Daniel A. Ivey-Soto

5
6
7 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE AND
8 THE LEGISLATIVE EDUCATION STUDY COMMITTEE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO
12 PROVIDE FOR OWNERSHIP OF CERTAIN CHARTER SCHOOL FACILITIES
13 UNDER CERTAIN CONDITIONS; AUTHORIZING RECONCILIATION OF
14 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
18 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
19 as amended) is amended to read:

20 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

21 A. The facilities of a charter school that is
22 approved on or after July 1, 2005 and before July 1, 2015 shall
23 meet educational occupancy standards required by applicable New
24 Mexico construction codes.

25 B. The facilities of a charter school whose charter

.208838.3

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 has been renewed at least once shall be evaluated, prioritized
2 and eligible for grants pursuant to the Public School Capital
3 Outlay Act in the same manner as all other public schools in
4 the state; provided that for charter school facilities in
5 leased facilities, grants may be used to provide additional
6 lease payments for leasehold improvements made by the lessor.

7 C. On or after July 1, 2011, a new charter school
8 shall not open and an existing charter school shall not
9 relocate unless the facilities of the new or relocated charter
10 school, as measured by the New Mexico condition index, receive
11 a condition rating equal to or better than the average
12 condition for all New Mexico public schools for that year or
13 the charter school demonstrates, within eighteen months of
14 occupancy or relocation of the charter, the way in which the
15 facilities will achieve a rating equal to or better than the
16 average New Mexico condition index.

17 D. On or after July 1, 2015, a new charter school
18 shall not open and an existing charter shall not be renewed
19 unless the charter school:

20 (1) is housed in a building that is:

21 (a) owned by the charter school, the
22 school district, the state, an institution of the state,
23 another political subdivision of the state, the federal
24 government or one of its agencies or a tribal government; or

25 (b) subject to a lease-purchase

.208838.3

underscored material = new
[bracketed material] = delete

1 arrangement that has been entered into and approved pursuant to
2 the Public School Lease Purchase Act; or

3 (2) if it is not housed in a building
4 described in Paragraph (1) of this subsection, demonstrates
5 that:

6 (a) the facility in which the charter
7 school is housed meets the statewide adequacy standards
8 developed pursuant to the Public School Capital Outlay Act,
9 ~~[and]~~ the owner of the facility is contractually obligated to
10 maintain those standards at no additional cost to the charter
11 school or the state and public buildings are not available or
12 adequate to meet the educational program needs of the charter
13 school; or

14 (b) ~~[either: 1) public buildings are~~
15 ~~not available or adequate for the educational program of the~~
16 ~~charter school; or 2)]~~ the facility in which the charter school
17 is housed meets the statewide adequacy standards developed
18 pursuant to the Public School Capital Outlay Act, the owner of
19 the facility is contractually obligated to maintain those
20 standards at no additional cost to the charter school or the
21 state and the owner of the facility is a nonprofit entity
22 specifically organized for the purpose of providing the
23 facility for the charter school; provided that if the charter
24 school makes lease payments to a nonprofit entity specifically
25 organized for the purpose of providing a facility for the

.208838.3

underscored material = new
[bracketed material] = delete

1 charter school, the charter school demonstrates that it has
2 entered into a legally binding agreement requiring the
3 nonprofit entity to transfer to the charter school the title to
4 the facility immediately after the nonprofit entity's
5 acquisition of title to the facility.

6 E. Without the approval of the public school
7 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
8 charter school shall not enter into a lease-purchase agreement.

9 F. The public school capital outlay council:

10 (1) shall determine whether facilities of a
11 charter school meet the educational occupancy standards
12 pursuant to the requirements of Subsection A of this section
13 or the requirements of Subsections B, C and D of this section,
14 as applicable; and

15 (2) upon a determination that specific
16 requirements are not appropriate or reasonable for a charter
17 school, may grant a variance from those requirements for that
18 charter school."

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

21 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
22 USE.--

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

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

1 B. Except as provided in Subsections G and I
2 through N of this section, money in the fund may be used only
3 for capital expenditures deemed necessary by the council for an
4 adequate educational program.

5 C. The council may authorize the purchase by the
6 public school facilities authority of portable classrooms to be
7 loaned to school districts to meet a temporary requirement.
8 Payment for these purchases shall be made from the fund. Title
9 to and custody of the portable classrooms shall rest in the
10 public school facilities authority. The council shall
11 authorize the lending of the portable classrooms to school
12 districts upon request and upon finding that sufficient need
13 exists. Application for use or return of state-owned portable
14 classroom buildings shall be submitted by school districts to
15 the council. Expenses of maintenance of the portable
16 classrooms while in the custody of the public school facilities
17 authority shall be paid from the fund; expenses of maintenance
18 and insurance of the portable classrooms while in the custody
19 of a school district shall be the responsibility of the school
20 district. The council may authorize the permanent disposition
21 of the portable classrooms by the public school facilities
22 authority with prior approval of the state board of finance.

23 D. Applications for assistance from the fund shall
24 be made by school districts to the council in accordance with
25 requirements of the council. Except as provided in Subsection

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

1 K of this section, the council shall require as a condition of
2 application that a school district have a current five-year
3 facilities plan, which shall include a current preventive
4 maintenance plan to which the school adheres for each public
5 school in the school district.

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

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

17 (1) up to ten percent of the portion of the
18 project cost funded with distributions from the fund or five
19 percent of the total project cost, whichever is greater, may be
20 paid to the school district before work commences with the
21 balance of the grant award made on a cost-reimbursement basis;
22 or

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

25 G. Balances in the fund may be annually

.208838.3

underscored material = new
[bracketed material] = delete

1 appropriated for the core administrative functions of the
2 public school facilities authority pursuant to the Public
3 School Capital Outlay Act, and, in addition, balances in the
4 fund may be expended by the public school facilities authority,
5 upon approval of the council, for project management expenses;
6 provided that:

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

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

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

21 I. The fund may be expended annually by the council
22 for grants to school districts for the purpose of making lease
23 payments for classroom facilities, including facilities leased
24 by charter schools; provided that a charter school is in
25 compliance with Subsection D of Section 22-8B-4.2 NMSA 1978, as

.208838.3

underscored material = new
[bracketed material] = delete

1 determined by the council; and provided further that if a
2 charter school obtains money from the fund to make lease
3 payments to a nonprofit entity specifically organized for the
4 purpose of providing a facility for the charter school, the
5 charter school demonstrates that it has entered into a legally
6 binding agreement with the nonprofit entity that requires the
7 nonprofit entity to transfer to the charter school the title to
8 the facility immediately after the nonprofit entity's
9 acquisition of title to the facility. The grants shall be made
10 upon application by the school districts and pursuant to rules
11 adopted by the council; provided that an application on behalf
12 of a charter school shall be made by the school district, but,
13 if the school district fails to make an application on behalf
14 of a charter school, the charter school may submit its own
15 application. The following criteria shall apply to the grants:

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

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

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

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

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

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

.208838.3

underscored material = new
~~[bracketed material] = delete~~

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

4 (6) as used in this subsection:

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

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

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

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

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,

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

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 22-24-4.5 NMSA 1978;
19 provided that funding allocated pursuant to this section shall
20 be expended within three years of its allocation.

21 N. For each fiscal year from 2018 through 2022,
22 twenty-five million dollars (\$25,000,000) of the public school
23 capital outlay fund is reserved for appropriation by the
24 legislature to the instructional material fund or to the
25 transportation distribution of the public school fund. The

.208838.3

underscoring material = new
~~[bracketed material] = delete~~

1 secretary shall certify the need for the issuance of
2 supplemental severance tax bonds to meet an appropriation from
3 the public school capital outlay fund to the instructional
4 material fund or to the transportation distribution of the
5 public school fund. Any portion of an amount of the public
6 school capital outlay fund that is reserved for appropriation
7 by the legislature for a fiscal year, but that is not
8 appropriated before the first day of that fiscal year, may be
9 expended by the council as provided in this section."

10 SECTION 3. TEMPORARY PROVISION--COMPILATION INSTRUCTION--
11 RECONCILIATION.--If acts making amendments to Section 22-24-4
12 NMSA 1978 are enacted by the first and second sessions of the
13 fifty-third legislature, the provisions of those acts shall be
14 reconciled and compiled in accordance with the provisions of
15 Section 12-1-8 NMSA 1978, notwithstanding that the amendments
16 were not made in the same session of the legislature.