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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING
ALLOCATIONS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND TO
FULLY FUND THE DEMOLITION OF ABANDONED SCHOOL DISTRICT
FACILITIES.

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

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

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

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

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

C. The council may authorize the purchase by the
authority of portable classrooms to be loaned to school
districts to meet a temporary requirement. Payment for these
purchases shall be made from the fund. Title to and custody
of the portable classrooms shall rest in the authority. The

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

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

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

25 F. Money in the fund shall be disbursed by warrant SB 43
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1 of the department of finance and administration on vouchers
2 signed by the secretary of finance and administration
3 following certification by the council that an application
4 has been approved or an expenditure has been ordered by a
5 court pursuant to Section 22-24-5.4 NMSA 1978. At the
6 discretion of the council, money for a project shall be
7 distributed as follows:

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

14 (2) the council may authorize payments
15 directly to the contractor.

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

22 (1) the total annual expenditures from the
23 fund for the core administrative functions pursuant to this
24 subsection shall not exceed five percent of the average
25 annual grant assistance authorized from the fund during the

1 three previous fiscal years; and

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

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

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

22 (1) the amount of a grant to a school
23 district shall not exceed:

24 (a) the actual annual lease payments
25 owed for leasing classroom space for schools, including

1 charter schools, in the school district; or

2 (b) seven hundred dollars (\$700)
3 multiplied by the MEM using the leased classroom facilities;
4 provided that in fiscal year 2009 and in each subsequent
5 fiscal year, this amount shall be adjusted by the percentage
6 change between the penultimate calendar year and the
7 immediately preceding calendar year of the consumer price
8 index for the United States, all items, as published by the
9 United States department of labor;

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

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

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

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

24 (b) the facilities are leased by a
25 charter school;

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

11 (6) as used in this subsection:

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

23 (b) "classroom facilities" or
24 "classroom space" includes the space needed, as determined by
25 the minimum required under the statewide adequacy standards,

1 for the direct administration of school activities.

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

24 K. Pursuant to guidelines established by the
25 council, allocations from the fund may be made to assist

1 school districts in developing and updating five-year
2 facilities plans required by the Public School Capital Outlay
3 Act; provided that:

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

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

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

18 (b) the school district meets all of
19 the following requirements: 1) the school district has fewer
20 than an average of one thousand full-time-equivalent students
21 on the second and third reporting dates of the prior school
22 year; 2) the school district has at least seventy percent of
23 its students eligible for free or reduced-fee lunch; 3) the
24 state share of the total cost, if calculated pursuant to the
25 methodology in Subsection B of Section 22-24-5 NMSA 1978,

1 would be less than fifty percent; and 4) for all educational
2 purposes, the school district has a residential property tax
3 rate of at least seven dollars (\$7.00) on each one thousand
4 dollars (\$1,000) of taxable value, as measured by the sum of
5 all rates imposed by resolution of the local school board
6 plus rates set to pay interest and principal on outstanding
7 school district general obligation bonds.

8 L. Upon application by a school district,
9 allocations from the fund may be made by the council for the
10 purpose of demolishing abandoned school district facilities;
11 provided that:

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

15 (2) there is no practical use for the
16 abandoned facility without the expenditure of substantial
17 renovation costs; and

18 (3) the council may enter into an agreement
19 with the school district to fully fund the demolition of the
20 abandoned school district facility if Paragraphs (1) and (2)
21 of this subsection are satisfied.

22 M. Up to ten million dollars (\$10,000,000) of the
23 fund may be expended each year for an education technology
24 infrastructure deficiency corrections initiative pursuant to
25 Section 22-24-4.5 NMSA 1978; provided that funding allocated

1 pursuant to this section shall be expended within three years
2 of its allocation.

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

17 O. Up to ten million dollars (\$10,000,000) of the
18 fund may be expended in each of fiscal years 2019 through
19 2022 for school security system project grants made in
20 accordance with Section 22-24-4.7 NMSA 1978.

21 P. The fund may be expended in each of fiscal
22 years 2020 through 2024 for a pre-kindergarten classroom
23 facilities initiative in accordance with Section 22-24-12
24 NMSA 1978.

25 Q. The council may fund pre-kindergarten

1 classrooms with a qualifying, awarded standards-based
2 project; provided that pre-kindergarten classroom space
3 shall not be included in the project prioritization
4 calculation adopted by the council pursuant to Section 22-24-5
5 NMSA 1978. The council shall develop pre-kindergarten
6 classroom standards to use when funding pre-kindergarten
7 space."

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