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AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ELIMINATING THE
TIME PERIOD WHEN THE PUBLIC SCHOOL CAPITAL OUTLAY FUND CAN BE
USED FOR EDUCATION TECHNOLOGY INFRASTRUCTURE DEFICIENCY
CORRECTIONS INITIATIVES.

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) 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 N 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
public school facilities 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 public school facilities authority. The
council shall authorize the lending of the portable

1 classrooms to school districts upon request and upon finding
2 that sufficient need exists. Application for use or return
3 of state-owned portable classroom buildings shall be
4 submitted by school districts to the council. Expenses of
5 maintenance of the portable classrooms while in the custody
6 of the public school facilities authority shall be paid from
7 the fund; expenses of maintenance and insurance of the
8 portable classrooms while in the custody of a school district
9 shall be the responsibility of the school district. The
10 council may authorize the permanent disposition of the
11 portable classrooms by the public school facilities authority
12 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, which 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 64
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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 public school facilities authority pursuant to the Public
19 School Capital Outlay Act, and, in addition, balances in the
20 fund may be expended by the public school facilities
21 authority, upon approval of the council, for project
22 management expenses; provided that:

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

1 annual grant assistance authorized from the fund during the
2 three previous fiscal years; and

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

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

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

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

25 (a) the actual annual lease payments

1 owed for leasing classroom space for schools, including
2 charter schools, in the school district; or

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

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

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

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

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

25 (b) the facilities are leased by a

1 charter school;

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

12 (6) as used in this subsection:

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

24 (b) "classroom facilities" or
25 "classroom space" includes the space needed, as determined by

1 the minimum required under the statewide adequacy standards,
2 for the direct administration of school activities.

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

1 K. Pursuant to guidelines established by the
2 council, allocations from the fund may be made to assist
3 school districts in developing and updating five-year
4 facilities plans required by the Public School Capital Outlay
5 Act; provided that:

6 (1) no allocation shall be made unless the
7 council determines that the school district is willing and
8 able to pay the portion of the total cost of developing or
9 updating the plan that is not funded with the allocation from
10 the fund. Except as provided in Paragraph (2) of this
11 subsection, the portion of the total cost to be paid with the
12 allocation from the fund shall be determined pursuant to the
13 methodology in Paragraph (5) of Subsection B of Section
14 22-24-5 NMSA 1978; or

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

17 (a) the school district has fewer than
18 an average of six hundred full-time-equivalent students on
19 the eightieth and one hundred twentieth days of the prior
20 school year; or

21 (b) the school district meets all of
22 the following requirements: 1) the school district has fewer
23 than an average of one thousand full-time-equivalent students
24 on the eightieth and one hundred twentieth days of the prior
25 school year; 2) the school district has at least seventy

1 percent of its students eligible for free or reduced-fee
2 lunch; 3) the state share of the total cost, if calculated
3 pursuant to the methodology in Paragraph (5) of Subsection B
4 of Section 22-24-5 NMSA 1978, would be less than fifty
5 percent; and 4) for all educational purposes, the school
6 district has a residential property tax rate of at least
7 seven dollars (\$7.00) on each one thousand dollars (\$1,000)
8 of taxable value, as measured by the sum of all rates imposed
9 by resolution of the local school board plus rates set to pay
10 interest and principal on outstanding school district general
11 obligation bonds.

12 L. Upon application by a school district,
13 allocations from the fund may be made by the council for the
14 purpose of demolishing abandoned school district facilities;
15 provided that:

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

19 (2) there is no practical use for the
20 abandoned facility without the expenditure of substantial
21 renovation costs; and

22 (3) the council may enter into an agreement
23 with the school district under which an amount equal to the
24 savings to the district in lower insurance premiums are used
25 to reimburse the fund fully or partially for the demolition

1 costs allocated to the district.

2 M. Up to ten million dollars (\$10,000,000) of the
3 fund may be expended each year for an education technology
4 infrastructure deficiency corrections initiative pursuant to
5 Section 22-24-4.5 NMSA 1978; provided that funding allocated
6 pursuant to this section shall be expended within three years
7 of its allocation.

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

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