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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO
PROVIDE FOR OWNERSHIP OF CERTAIN CHARTER SCHOOL FACILITIES
UNDER CERTAIN CONDITIONS.

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

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

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

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

B. The facilities of a charter school whose charter
has been renewed at least once shall be evaluated, prioritized

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

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

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

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

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

24 (b) subject to a lease-purchase
25 arrangement that has been entered into and approved pursuant to

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1 the Public School Lease Purchase Act; or

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

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

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

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1 facility for the charter school to the nonprofit entity upon
2 final payment of the first mortgage by the nonprofit entity.

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

6 F. The public school capital outlay council:

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

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

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

18 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
19 USE.--

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

23 B. Except as provided in Subsections G and I
24 through N of this section, money in the fund may be used only
25 for capital expenditures deemed necessary by the council for an

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1 adequate educational program.

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

20 D. Applications for assistance from the fund shall
21 be made by school districts to the council in accordance with
22 requirements of the council. Except as provided in Subsection
23 K of this section, the council shall require as a condition of
24 application that a school district have a current five-year
25 facilities plan, which shall include a current preventive

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1 maintenance plan to which the school adheres for each public
2 school in the school district.

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

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

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

20 (2) the council may authorize payments
21 directly to the contractor.

22 G. Balances in the fund may be annually
23 appropriated for the core administrative functions of the
24 public school facilities authority pursuant to the Public
25 School Capital Outlay Act, and, in addition, balances in the

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1 fund may be expended by the public school facilities authority,
2 upon approval of the council, for project management expenses;
3 provided that:

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

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

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

18 I. The fund may be expended annually by the council
19 for grants to school districts for the purpose of making lease
20 payments for classroom facilities, including facilities leased
21 by charter schools; provided that a charter school is in
22 compliance with Subsection D of Section 22-8B-4.2 NMSA 1978, as
23 determined by the council. The grants shall be made upon
24 application by the school districts and pursuant to rules
25 adopted by the council; provided that an application on behalf

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1 of a charter school shall be made by the school district, but,
2 if the school district fails to make an application on behalf
3 of a charter school, the charter school may submit its own
4 application. The following criteria shall apply to the grants:

5 (1) the amount of a grant to a school district
6 shall not exceed:

7 (a) the actual annual lease payments
8 owed for leasing classroom space for schools, including charter
9 schools, in the school district; or

10 (b) seven hundred dollars (\$700)
11 multiplied by the number of MEM using the leased classroom
12 facilities; provided that in fiscal year 2009 and in each
13 subsequent fiscal year, this amount shall be adjusted by the
14 percentage change between the penultimate calendar year and the
15 immediately preceding calendar year of the consumer price index
16 for the United States, all items, as published by the United
17 States department of labor;

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

22 (3) at the end of each fiscal year, any
23 unexpended or unencumbered balance of the appropriation shall
24 revert to the fund;

25 (4) no grant shall be made for lease payments

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1 due pursuant to a financing agreement under which the
2 facilities may be purchased for a price that is reduced
3 according to the lease payments made unless:

4 (a) the agreement has been approved
5 pursuant to the provisions of the Public School Lease Purchase
6 Act; and

7 (b) the facilities are leased by a
8 charter school;

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

18 (6) as used in this subsection:

19 (a) "MEM" means: 1) the average
20 full-time-equivalent enrollment using leased classroom
21 facilities on the eightieth and one hundred twentieth days
22 of the prior school year; or 2) in the case of an approved
23 charter school that has not commenced classroom instruction,
24 the estimated full-time-equivalent enrollment that will use
25 leased classroom facilities in the first year of instruction,

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1 as shown in the approved charter school application; provided
2 that, after the eightieth day of the school year, the MEM shall
3 be adjusted to reflect the full-time-equivalent enrollment on
4 that date; and

5 (b) "classroom facilities" or "classroom
6 space" includes the space needed, as determined by the minimum
7 required under the statewide adequacy standards, for the direct
8 administration of school activities.

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

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1 for repayments back to the fund if the initial payments exceed
2 the actual expenditures. Money distributed from the fund to
3 the state fire marshal or the construction industries division
4 pursuant to this subsection shall be used to supplement, rather
5 than supplant, appropriations to those entities.

6 K. Pursuant to guidelines established by the
7 council, allocations from the fund may be made to assist school
8 districts in developing and updating five-year facilities plans
9 required by the Public School Capital Outlay Act; provided
10 that:

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

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

21 (a) the school district has fewer than
22 an average of six hundred full-time-equivalent students on the
23 eightieth and one hundred twentieth days of the prior school
24 year; or

25 (b) the school district meets all of the

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

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

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

22 (2) there is no practical use for the
23 abandoned facility without the expenditure of substantial
24 renovation costs; and

25 (3) the council may enter into an agreement

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1 with the school district under which an amount equal to the
2 savings to the district in lower insurance premiums are used to
3 reimburse the fund fully or partially for the demolition costs
4 allocated to the district.

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

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