

1 SENATE BILL 232

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Cynthia Nava

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10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; DESIGNATING A PORTION OF
12 THE PUBLIC SCHOOL CAPITAL OUTLAY FUND TO BE USED EACH YEAR FOR
13 A FIVE-YEAR PERIOD TO ADDRESS MIDDLE SCHOOL SCIENCE FACILITIES
14 NEEDS.

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

17 SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,
18 Chapter 235, Section 4, as amended) is amended to read:

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

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

24 B. Except as provided in Subsections G [~~and I~~]
25 through [~~E~~] M of this section, money in the fund may be used

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1 only for capital expenditures deemed necessary by the council
2 for an adequate educational program.

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

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

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1 facilities plan, which shall include a current preventive
2 maintenance plan to which the school adheres for each public
3 school in the school district.

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

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

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

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

23 G. Balances in the fund may be annually
24 appropriated for the core administrative functions of the
25 public school facilities authority pursuant to the Public

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1 School Capital Outlay Act, and, in addition, balances in the
2 fund may be expended by the public school facilities authority,
3 upon approval of the council, for project management expenses;
4 provided that:

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

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

13 H. Up to ten million dollars (\$10,000,000) of the
14 fund may be allocated annually by the council for expenditure
15 in fiscal years 2010 through 2015 for a roof repair and
16 replacement initiative with projects to be identified by the
17 council pursuant to Section 22-24-4.3 NMSA 1978; provided that
18 money allocated pursuant to this subsection shall be expended
19 within two years of the allocation.

20 I. Up to ten million dollars (\$10,000,000) of the
21 fund may be allocated annually by the council for expenditure
22 in fiscal years 2013 through 2017 for an initiative to
23 renovate, remodel or provide middle school science facilities,
24 including provision of scientific materials and equipment, with
25 projects to be identified by the council pursuant to Section

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1 22-24-4.5 NMSA 1978; provided that money allocated pursuant to
2 this subsection shall be expended within two years of the
3 allocation.

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

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

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

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

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1 States department of labor;

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

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

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

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

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

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

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1 pursuant to the provisions of this subsection; and

2 (6) as used in this subsection:

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

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

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

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

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

20 (1) no allocation shall be made unless the
21 council determines that the school district is willing and able
22 to pay the portion of the total cost of developing or updating
23 the plan that is not funded with the allocation from the fund.
24 Except as provided in Paragraph (2) of this subsection, the
25 portion of the total cost to be paid with the allocation from

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1 the fund shall be determined pursuant to the methodology in
2 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

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

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

24 [~~H-~~] M. Upon application by a school district,
25 allocations from the fund may be made by the council for the

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1 purpose of demolishing abandoned school district facilities,
2 provided that:

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

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

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

14 SECTION 2. A new section of the Public School Capital
15 Outlay Act, Section 22-24-4.5 NMA 1978, is enacted to read:

16 "22-24-4.5. [NEW MATERIAL] INITIATIVE TO REMODEL,
17 RENOVATE OR PROVIDE BUILDINGS FOR MIDDLE SCHOOL SCIENCE
18 FACILITIES, INCLUDING PROVISION OF EQUIPMENT AND MATERIALS.--

19 A. The council shall develop guidelines for an
20 initiative to remodel, renovate or provide buildings for middle
21 school science facilities, including provision of equipment and
22 materials, pursuant to the provisions of this section.

23 B. A school district, desiring a grant award
24 pursuant to this section, shall submit an application to the
25 council. The application shall include an assessment of the

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1 middle school science facilities, including needed equipment
2 and materials, that are significantly below adequacy standards
3 as defined in rule.

4 C. The public school facilities authority shall
5 verify the assessment made by the school district and rank the
6 application with similar applications pursuant to a methodology
7 adopted by the council.

8 D. After a public hearing and to the extent that
9 money is available in the fund for such purposes, the council
10 shall approve remodeling, renovating or building projects for
11 middle school science facilities, including materials and
12 equipment, on the established priority basis; provided that no
13 project shall be approved unless the council determines that
14 the school district is willing and able to pay the portion of
15 the total cost of the project that is not funded with grant
16 assistance from the fund. In order to pay its portion of the
17 project cost, a school district may use state distributions
18 made to the school district pursuant to the Public School
19 Capital Improvements Act or the Public School Buildings Act or,
20 if within the scope of the authorizing resolution, proceeds of
21 the property tax imposed pursuant to those acts.

22 E. The state share of the cost of an approved
23 middle school science facilities project shall be calculated
24 pursuant to the methodology in Paragraph (5) of Subsection B of
25 Section 22-24-5 NMSA 1978.

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F. A grant made pursuant to this section shall be expended by the school district within two years of the grant allocation."