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HOUSE BILL 273

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Sheryl Williams Stapleton

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE  
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY LEASE PAYMENTS; MAKING  
OPTIONAL THE ADJUSTMENT FOR LEASE PAYMENTS BASED UPON THE  
CONSUMER PRICE INDEX.

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

19 I. The fund may be expended annually by the council  
20 for grants to school districts for the purpose of making lease  
21 payments for classroom facilities, including facilities leased  
22 by charter schools. The grants shall be made upon application  
23 by the school districts and pursuant to rules adopted by the  
24 council; provided that an application on behalf of a charter  
25 school shall be made by the school district, but, if the school

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

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

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

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

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

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

24 (4) no grant shall be made for lease payments  
25 due pursuant to a financing agreement under which the

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1 facilities may be purchased for a price that is reduced  
2 according to the lease payments made unless:

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

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

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

17 (6) as used in this subsection:

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

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1 after the eightieth day of the school year, the MEM shall be  
2 adjusted to reflect the full-time-equivalent enrollment on that  
3 date; and

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

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

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1 expenditures. Money distributed from the fund to the state  
2 fire marshal or the construction industries division pursuant  
3 to this subsection shall be used to supplement, rather than  
4 supplant, appropriations to those entities.

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

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

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

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

24 (b) the school district meets all of the  
25 following requirements: 1) the school district has fewer than

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

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

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

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

24 (3) the council may enter into an agreement  
25 with the school district under which an amount equal to the

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1 savings to the district in lower insurance premiums are used to  
2 reimburse the fund fully or partially for the demolition costs  
3 allocated to the district."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2013.

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