

1 SENATE BILL 64

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Mimi Stewart

5
6
7
8
9
10 AN ACT

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

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 N of this section, money in the fund may be used only

.205415.1

underscored material = new
[bracketed material] = delete

underscored material = new
~~[bracketed material] = delete~~

1 for capital expenditures deemed necessary by the council for an
2 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 of this section, the council shall require as a condition of
25 application that a school district have a current five-year

.205415.1

underscoring material = new
~~[bracketed material] = delete~~

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

.205415.1

underscoring material = new
~~[bracketed material] = delete~~

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. The fund may be expended by the council for
14 building system repair, renovation or replacement initiatives
15 with projects to be identified by the council pursuant to
16 Section 22-24-4.6 NMSA 1978; provided that money allocated
17 pursuant to this subsection shall be expended within three
18 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

.205415.1

underscored material = new
[bracketed material] = delete

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 school 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 be adjusted by the
13 percentage change between the penultimate calendar year and the
14 immediately preceding calendar year of the consumer price index
15 for the United States, all items, as published by the United
16 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

.205415.1

underscoring material = new
~~[bracketed material]~~ = delete

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

.205415.1

underscored material = new
~~[bracketed material] = delete~~

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

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

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

.205415.1

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

23 (b) the school district meets all of the
24 following requirements: 1) the school district has fewer than
25 an average of one thousand full-time-equivalent students on the

.205415.1

underscoring material = new
[bracketed material] = delete

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

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

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

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

23 (3) the council may enter into an agreement
24 with the school district under which an amount equal to the
25 savings to the district in lower insurance premiums are used to

.205415.1

underscoring material = new
[bracketed material] = delete

1 reimburse the fund fully or partially for the demolition costs
2 allocated to the district.

3 M. Up to ten million dollars (\$10,000,000) of the
4 fund may be expended each year [~~in fiscal years 2014 through~~
5 ~~2019~~] for an education technology infrastructure deficiency
6 corrections initiative pursuant to Section 22-24-4.5 NMSA 1978;
7 provided that funding allocated pursuant to this section shall
8 be expended within three years of its allocation.

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