

SENATE BILL 239

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

INTRODUCED BY

George K. Munoz

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING FOR THE EXPENDITURE OF MONEY IN THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR SCHOOL SECURITY SYSTEM SEC → ~~REPAIRS, RENOVATIONS AND REPLACEMENTS~~ **PROJECTS** ← SEC; AUTHORIZING RECONCILIATION OF MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW.

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

SECTION 1. A new section of the Public School Capital Outlay Act, Section 22-24-4.7 NMSA 1978, is enacted to read:

"22-24-4.7. [NEW MATERIAL] SCHOOL SECURITY SYSTEM

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SEC→REPAIR, RENOVATION OR REPLACEMENT PROJECTS←SEC.--

A. The council shall develop guidelines for a school security system SEC→repair, renovation or replacement←SEC project grant initiative in accordance with this section.

B. A school district seeking a grant for a school security system SEC→repair, renovation or replacement←SEC project shall apply to the council on a form that includes an assessment of a school's security system and a statement of opinion by the school district that the SEC→repair, renovation or replacement project ←SEC sought would improve the security of the school's buildings, property and occupants.

C. The public school facilities authority shall verify the assessment made by the school district and rank all applications it receives for school security system SEC→repair, renovation or replacement project ←SEC grants according to the methodology adopted by the council for that purpose.

D. After a public hearing, and to the extent that money is available in the fund for the purpose, the council shall make school security system SEC→repair, renovation or replacement←SEC project grants to school districts that the council determines are willing and able to pay for the portion of the total project cost not funded with grant assistance from the fund and according to those applicants' ranking.

E. The state share of the cost of an approved

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school security system SEC → ~~repair, renovation or~~
~~replacement~~ ← SEC project shall be calculated according to the
methodology outlined in Paragraph (5) of Subsection B of
Section 22-24-5 NMSA 1978.

F. A school district that receives a grant in
accordance with this section shall expend the grant money
within three years after the grant allocation. Money not spent
in that time shall revert to the fund."

SECTION 2. Section 22-24-3 NMSA 1978 (being Laws 1975,
Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School
Capital Outlay Act:

A. "building system" means a set of interacting
parts that makes up a single, nonportable or fixed component of
a facility and that, together with other building systems,
makes up an entire integrated facility or property, including
[~~but not limited to~~] roofing, electrical distribution,
electronic communication, plumbing, lighting, mechanical, fire
prevention, facility shell, interior finishes, [~~and~~] heating,
ventilation and air conditioning systems and school security
systems, as defined by the council;

B. "constitutional special schools" means the New
Mexico school for the blind and visually impaired and the New
Mexico school for the deaf;

C. "constitutional special schools support spaces"

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means all facilities necessary to support the constitutional special schools' educational mission that are not included in the constitutional special schools' educational adequacy standards, including [~~but not limited to~~] performing arts centers, facilities for athletic competition, school district administration and facility and vehicle maintenance;

D. "council" means the public school capital outlay council;

E. "education technology infrastructure" means the physical hardware used to interconnect education technology equipment for school districts and school buildings necessary to support broadband connectivity as determined by the council;

F. "fund" means the public school capital outlay fund; and

G. "school district" includes state-chartered charter schools and the constitutional special schools."

SECTION 3. 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] Q of this section, money in the fund may be used

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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 classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the public school facilities authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the public school facilities authority with prior approval of the state board of finance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) as used in this subsection:

(a) "MEM" means: 1) the average full-time-equivalent enrollment using leased classroom facilities on the ~~[eightieth and one hundred twentieth days]~~ second and third reporting dates of the prior school year; or 2) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased classroom facilities in the first year of instruction, as shown in the approved charter school

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

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

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

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

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

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

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

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the [~~eightieth and one hundred twentieth days~~] second and third reporting dates of the prior school year; or

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

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

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

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

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

(3) the council may enter into an agreement

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

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

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

O. Up to ten million dollars (\$10,000,000) of the

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fund may be expended in each of fiscal years 2019 through 2022 for school security system SEC→~~repair, renovation or replacement~~ project grants←SEC made in accordance with Section 22-24-4.7 NMSA 1978."

SECTION 4. TEMPORARY PROVISION--COMPILATION

INSTRUCTION--RECONCILIATION.--If acts making amendments to Section 22-24-4 NMSA 1978 are enacted by the first and second sessions of the fifty-third legislature, the provisions of those acts shall be reconciled and compiled in accordance with the provisions of Section 12-1-8 NMSA 1978, notwithstanding that the amendments were not made in the same session of the legislature.