

1 SENATE BILL 43

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 William P. Soules

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10 AN ACT

11 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ALLOWING ALLOCATIONS
12 FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND TO FULLY FUND THE
13 DEMOLITION OF ABANDONED SCHOOL DISTRICT FACILITIES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,
17 Chapter 235, Section 4, as amended by Laws 2019, Chapter 179,
18 Section 2 and by Laws 2019, Chapter 180, Section 1) is amended
19 to read:

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

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

25 B. Except as provided in Subsections G and I

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1 through Q of this section, money in the fund may be used only
2 for capital expenditures deemed necessary by the council for an
3 adequate educational program.

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

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1 facilities plan ~~[which]~~ that 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 authority pursuant to the Public School Capital Outlay Act,

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1 and, in addition, balances in the fund may be expended by the
2 authority, upon approval of the council, for project management
3 expenses; 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. The grants shall be made upon application
22 by the school districts and pursuant to rules adopted by the
23 council; provided that an application on behalf of a charter
24 school shall be made by the school district, but, if the school
25 district fails to make an application on behalf of a charter

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1 school, the charter school may submit its own application. The
2 following criteria shall apply to the grants:

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

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

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

16 (2) a grant received for the lease payments of
17 a charter school may be used by that charter school as a state
18 match necessary to obtain federal grants pursuant to the
19 federal Every Student Succeeds Act;

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

23 (4) no grant shall be made for lease payments
24 due pursuant to a financing agreement under which the
25 facilities may be purchased for a price that is reduced

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1 according to the lease payments made unless:

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

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

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

16 (6) as used in this subsection:

17 (a) "MEM" means: 1) the average
18 full-time-equivalent enrollment using leased classroom
19 facilities on the second and third reporting dates of the prior
20 school year; or 2) in the case of an approved charter school
21 that has not commenced classroom instruction, the estimated
22 full-time-equivalent enrollment that will use leased classroom
23 facilities in the first year of instruction, as shown in the
24 approved charter school application; provided that, after the
25 second reporting date of the school year, the MEM shall be

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1 adjusted to reflect the full-time-equivalent enrollment on that
2 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
11 authority to pay the state fire marshal, the construction
12 industries division of the regulation and licensing department
13 and local jurisdictions having authority from the state to
14 permit and inspect projects for expenditures made to permit and
15 inspect projects funded in whole or in part under the Public
16 School Capital Outlay Act. The authority may enter into
17 contracts with the state fire marshal, the construction
18 industries division or the appropriate local authorities to
19 carry out the provisions of this subsection. Such a contract
20 may provide for initial estimated payments from the fund prior
21 to the expenditures if the contract also provides for
22 additional payments from the fund if the actual expenditures
23 exceed the initial payments and for repayments back to the fund
24 if the initial payments exceed the actual expenditures. Money
25 distributed from the fund to the state fire marshal or the

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1 construction industries division pursuant to this subsection
2 shall be used to supplement, rather than supplant,
3 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 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 second and third reporting dates of the prior school year; or

22 (b) the school district meets all of the
23 following requirements: 1) the school district has fewer than
24 an average of one thousand full-time-equivalent students on the
25 second and third reporting dates of the prior school year; 2)

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

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

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

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

22 (3) the council may enter into an agreement
23 with the school district ~~[under which an amount equal to the~~
24 ~~savings to the district in lower insurance premiums are used to~~
25 ~~reimburse the fund fully or partially for the demolition costs~~

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1 ~~allocated to the district]~~ to fully fund the demolition of the
2 abandoned school district facility if Paragraphs (1) and (2) of
3 this subsection are satisfied.

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

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

24 O. Up to ten million dollars (\$10,000,000) of the
25 fund may be expended in each of fiscal years 2019 through 2022

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1 for school security system project grants made in accordance
2 with Section 22-24-4.7 NMSA 1978.

3 P. The fund may be expended in each of fiscal years
4 2020 through 2024 for a pre-kindergarten classroom facilities
5 initiative in accordance with Section [~~1 of this 2019 act~~]
6 22-24-12 NMSA 1978.

7 Q. The council may fund pre-kindergarten classrooms
8 with a qualifying, awarded standards-based project; provided
9 that pre-kindergarten classroom space shall not be included in
10 the project prioritization calculation adopted by the council
11 pursuant to Section 22-24-5 NMSA 1978. The council shall
12 develop pre-kindergarten classroom standards to use when
13 funding pre-kindergarten space."