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SENATE BILL 54

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

INTRODUCED BY

William P. Soules

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL  
OUTLAY ACT; CHANGING THE FORMULA FOR EXPENDITURES FOR CORE  
ADMINISTRATIVE FUNCTIONS OF THE PUBLIC SCHOOL FACILITIES  
AUTHORITY.

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 by Laws 2019, Chapter 179,  
Section 2 and by Laws 2019, Chapter 180, Section 1) 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.

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1           B. Except as provided in Subsections G and I  
2 through Q of this section, money in the fund may be used only  
3 for capital expenditures deemed necessary by the council for an  
4 adequate educational program.

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

22           D. Applications for assistance from the fund shall  
23 be made by school districts to the council in accordance with  
24 requirements of the council. Except as provided in Subsection  
25 K of this section, the council shall require as a condition of

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1 application that a school district have a current five-year  
2 facilities plan, which shall include a current preventive  
3 maintenance plan to which the school adheres for each public  
4 school in the school district.

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

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

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

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

24 G. Balances in the fund may be [~~annually~~]  
25 appropriated annually for the core administrative functions of

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1 the authority pursuant to the Public School Capital Outlay Act,  
2 and, in addition, balances in the fund may be expended by the  
3 authority, upon approval of the council, for project management  
4 expenses; 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 five 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

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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 school district; or

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

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

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1 reporting date 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  
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,  
5 would 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~~] is  
25 used to reimburse the fund fully or partially for the

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1 demolition costs allocated to the district.

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

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

22 O. Up to ten million dollars (\$10,000,000) of the  
23 fund may be expended in each of fiscal years 2019 through 2022  
24 for school security system project grants made in accordance  
25 with Section 22-24-4.7 NMSA 1978.

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