

1 SENATE BILL 144

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

3 INTRODUCED BY

4 Pete Campos

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8 FOR THE LEGISLATIVE FINANCE COMMITTEE

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10 AN ACT

11 RELATING TO EDUCATION; INCLUDING HARDWARE NECESSARY TO
12 ESTABLISH BROADBAND CONNECTIVITY AMONG STUDENTS, TEACHERS AND
13 EDUCATIONAL RESOURCES IN THE DEFINITION OF "EDUCATION
14 TECHNOLOGY INFRASTRUCTURE" IN THE PUBLIC SCHOOL CAPITAL OUTLAY
15 ACT; REQUIRING THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL TO
16 ESTABLISH GUIDELINES TO FUND EDUCATION TECHNOLOGY
17 INFRASTRUCTURE TO ENSURE THAT THOSE EXPENDITURES ARE IN ACCORD
18 WITH THE DEVELOPMENT OF A STATEWIDE EDUCATION TECHNOLOGY
19 INFRASTRUCTURE NETWORK; DECLARING AN EMERGENCY.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
23 Chapter 235, Section 3, as amended by Laws 2018, Chapter 66,
24 Section 1 and by Laws 2018, Chapter 71, Section 2) is amended
25 to read:

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1 "22-24-3. DEFINITIONS.--As used in the Public School
2 Capital Outlay Act:

3 A. "authority" means the public school facilities
4 authority;

5 B. "building system" means a set of interacting
6 parts that makes up a single, nonportable or fixed component of
7 a facility and that, together with other building systems,
8 makes up an entire integrated facility or property, including
9 roofing, electrical distribution, electronic communication,
10 plumbing, lighting, mechanical, fire prevention, facility
11 shell, interior finishes, heating, ventilation and air
12 conditioning systems and school security systems, as defined by
13 the council;

14 C. "constitutional special schools" means the
15 New Mexico school for the blind and visually impaired and the
16 New Mexico school for the deaf;

17 D. "constitutional special schools support spaces"
18 means all facilities necessary to support the constitutional
19 special schools' educational mission that are not included in
20 the constitutional special schools' educational adequacy
21 standards, including performing arts centers, facilities for
22 athletic competition, school district administration and
23 facility and vehicle maintenance;

24 E. "council" means the public school capital outlay
25 council;

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1 F. "education technology infrastructure" means the
2 physical hardware [~~used to interconnect education technology~~
3 ~~equipment for school districts and school buildings necessary~~
4 ~~to support broadband connectivity~~] necessary to establish
5 broadband connectivity among students, teachers and the
6 educational resources used for school work, whether within a
7 school campus or for remote learning, and to create
8 interconnectivity for education personnel and students within
9 school districts as determined by the council;

10 G. "fund" means the public school capital outlay
11 fund;

12 H. "maximum allowable gross square foot per
13 student" means a determination made by applying the established
14 maximum allowable square foot guidelines for educational
15 facilities based on type of school and number of students in
16 the current published New Mexico public school adequacy
17 planning guide to the department's current year certified first
18 reporting date membership;

19 I. "replacement cost per square foot" means the
20 statewide cost per square foot as established by the council;

21 J. "school district" includes state-chartered
22 charter schools and the constitutional special schools;

23 K. "school district population density" means the
24 population density on a per square mile basis of a school
25 district as estimated by the authority based on the most

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1 current tract level population estimates published by the
2 United States census bureau; and

3 L. "school district population density factor"
4 means zero when the school district population density is
5 greater than fifty people per square mile, six-hundredths when
6 the school district population density is greater than fifteen
7 but less than fifty-one persons per square mile and twelve-
8 hundredths when the school district population density is less
9 than sixteen persons per square mile."

10 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
11 Chapter 235, Section 4, as amended by Laws 2019, Chapter 179,
12 Section 2 and by Laws 2019, Chapter 180, Section 1) is amended
13 to read:

14 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
15 USE.--

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

19 B. Except as provided in Subsections G and I
20 through [Q] R of this section, money in the fund may be used
21 only for capital expenditures deemed necessary by the council
22 for an adequate educational program.

23 C. The council may authorize the purchase by the
24 authority of portable classrooms to be loaned to school
25 districts to meet a temporary requirement. Payment for these

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1 purchases shall be made from the fund. Title to and custody of
2 the portable classrooms shall rest in the authority. The
3 council shall authorize the lending of the portable classrooms
4 to school districts upon request and upon finding that
5 sufficient need exists. Application for use or return of
6 state-owned portable classroom buildings shall be submitted by
7 school districts to the council. Expenses of maintenance of
8 the portable classrooms while in the custody of the authority
9 shall be paid from the fund; expenses of maintenance and
10 insurance of the portable classrooms while in the custody of a
11 school district shall be the responsibility of the school
12 district. The council may authorize the permanent disposition
13 of the portable classrooms by the authority with prior approval
14 of the state board of finance.

15 D. Applications for assistance from the fund shall
16 be made by school districts to the council in accordance with
17 requirements of the council. Except as provided in Subsection
18 K of this section, the council shall require as a condition of
19 application that a school district have a current five-year
20 facilities plan ~~[which]~~ that shall include a current preventive
21 maintenance plan to which the school adheres for each public
22 school in the school district.

23 E. The council shall review all requests for
24 assistance from the fund and shall allocate funds only for
25 those capital outlay projects that meet the criteria of the

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1 Public School Capital Outlay Act.

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

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

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

17 G. Balances in the fund may be annually
18 appropriated for the core administrative functions of the
19 authority pursuant to the Public School Capital Outlay Act,
20 and, in addition, balances in the fund may be expended by the
21 authority, upon approval of the council, for project management
22 expenses; provided that:

23 (1) the total annual expenditures from the
24 fund for the core administrative functions pursuant to this
25 subsection shall not exceed five percent of the average annual

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1 grant assistance authorized from the fund during the three
2 previous fiscal years; and

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

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

12 I. The fund may be expended annually by the council
13 for grants to school districts for the purpose of making lease
14 payments for classroom facilities, including facilities leased
15 by charter schools. The grants shall be made upon application
16 by the school districts and pursuant to rules adopted by the
17 council; provided that an application on behalf of a charter
18 school shall be made by the school district, but, if the school
19 district fails to make an application on behalf of a charter
20 school, the charter school may submit its own application. The
21 following criteria shall apply to the grants:

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

24 (a) the actual annual lease payments
25 owed for leasing classroom space for schools, including charter

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1 schools, in the school district; or

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

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

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

17 (4) no grant shall be made for lease payments
18 due pursuant to a financing agreement under which the
19 facilities may be purchased for a price that is reduced
20 according to the lease payments made unless:

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

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

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

10 (6) as used in this subsection:

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

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

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

23 K. Pursuant to guidelines established by the
24 council, allocations from the fund may be made to assist school
25 districts in developing and updating five-year facilities plans

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1 required by the Public School Capital Outlay Act; provided
2 that:

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

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

13 (a) the school district has fewer than
14 an average of six hundred full-time-equivalent students on the
15 second and third reporting dates of the prior school year; or

16 (b) the school district meets all of the
17 following requirements: 1) the school district has fewer than
18 an average of one thousand full-time-equivalent students on the
19 second and third reporting dates of the prior school year; 2)
20 the school district has at least seventy percent of its
21 students eligible for free or reduced-fee lunch; 3) the state
22 share of the total cost, if calculated pursuant to the
23 methodology in Subsection B of Section 22-24-5 NMSA 1978, would
24 be less than fifty percent; and 4) for all educational
25 purposes, the school district has a residential property tax

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1 rate of at least seven dollars (\$7.00) on each one thousand
2 dollars (\$1,000) of taxable value, as measured by the sum of
3 all rates imposed by resolution of the local school board plus
4 rates set to pay interest and principal on outstanding school
5 district general obligation bonds.

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

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

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

16 (3) the council may enter into an agreement
17 with the school district under which an amount equal to the
18 savings to the district in lower insurance premiums ~~[are]~~ is
19 used to reimburse the fund fully or partially for the
20 demolition costs allocated to the district.

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

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1 of its allocation.

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

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

20 P. The fund may be expended in each of fiscal years
21 2020 through 2024 for a pre-kindergarten classroom facilities
22 initiative in accordance with Section [~~1 of this 2019 act~~]
23 22-24-12 NMSA 1978.

24 Q. The council may fund pre-kindergarten classrooms
25 with a qualifying, awarded standards-based project; provided

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1 that pre-kindergarten classroom space shall not be included in
2 the project prioritization calculation adopted by the council
3 pursuant to Section 22-24-5 NMSA 1978. The council shall
4 develop pre-kindergarten classroom standards to use when
5 funding pre-kindergarten space.

6 R. The council shall develop guidelines for a
7 statewide education technology infrastructure network that
8 integrates regional hub locations for network services and the
9 installation and maintenance of equipment. The council may
10 fund education technology infrastructure projects or items that
11 the council determines are in accord with the guidelines and
12 necessary to education for:

- 13 (1) students;
- 14 (2) school buses;
- 15 (3) internet connectivity within a school
16 district;
- 17 (4) a multi-district regional education
18 network; and
- 19 (5) a statewide education network."

20 SECTION 3. EMERGENCY.--It is necessary for the public
21 peace, health and safety that this act take effect immediately.