

1 SENATE BILL 346

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Cynthia Nava

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10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; CREATING THE PUBLIC
12 SCHOOL FACILITY OPPORTUNITY PROGRAM; AUTHORIZING GRANTS FROM
13 THE PUBLIC SCHOOL CAPITAL OUTLAY FUND TO CERTAIN SCHOOL
14 DISTRICTS FOR CERTAIN PURPOSES.

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 [H] M of this section, money in the fund may be used

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1 only for capital expenditures deemed necessary by the council
2 for an 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

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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

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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. Up to ten million dollars (\$10,000,000) of the
14 fund may be allocated annually by the council for expenditure
15 in fiscal years 2010 through 2015 for a roof repair and
16 replacement initiative with projects to be identified by the
17 council pursuant to Section 22-24-4.3 NMSA 1978; provided that
18 money allocated pursuant to this subsection shall be expended
19 within two years of the allocation.

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

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1 school shall be made by the school district, but, if the school
2 district fails to make an application on behalf of a charter
3 school, the charter school may submit its own application. The
4 following criteria shall apply to the grants:

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

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

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

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

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

25 (4) no grant shall be made for lease payments

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1 due pursuant to a financing agreement under which the
2 facilities may be purchased for a price that is reduced
3 according to the lease payments made unless:

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

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

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

18 (6) as used in this subsection:

19 (a) "MEM" means: 1) the average
20 full-time-equivalent enrollment using leased classroom
21 facilities on the eightieth and one hundred twentieth days of
22 the prior school year; or 2) in the case of an approved charter
23 school that has not commenced classroom instruction, the
24 estimated full-time-equivalent enrollment that will use leased
25 classroom facilities in the first year of instruction, as shown

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1 in the approved charter school application; provided that,
2 after the eightieth day of the school year, the MEM shall be
3 adjusted to reflect the full-time-equivalent enrollment on that
4 date; and

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

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

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1 back to the fund if the initial payments exceed the actual
2 expenditures. Money distributed from the fund to the state
3 fire marshal or the construction industries division pursuant
4 to this subsection shall be used to supplement, rather than
5 supplant, appropriations to those entities.

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

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

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

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

25 (b) the school district meets all of the

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

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

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

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

25 (3) the council may enter into an agreement

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

5 M. Upon application by a qualifying school
6 district, allocations from the fund may be made by the council
7 through the public school opportunity program pursuant to
8 Section 22-24-4.5 NMSA 1978 for the purpose of providing
9 certain facilities, such as performing arts centers and
10 auxiliary gymnasiums, that, generally, are not included in the
11 public school capital outlay council adequacy standards and
12 that, therefore, school districts with low property tax
13 valuations cannot afford to build on their own."

14 SECTION 2. A new section of the Public School Capital
15 Outlay Act, Section 22-24-4.5 NMSA 1978, is enacted to read:

16 "22-24-4.5. [NEW MATERIAL] PUBLIC SCHOOL FACILITY
17 OPPORTUNITY PROGRAM--LEGISLATIVE FINDINGS.--

18 A. The legislature finds that most school districts
19 in this state either contain enough taxable property with
20 sufficient assessed valuation or have other additional local
21 resources available to schools so that public school facilities
22 can exceed the minimum statewide adequacy standards; however:

23 (1) for many years, public school facilities
24 in a few school districts in New Mexico have been so
25 inadequate, because of a scarcity of local resources, that the

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1 quality of education offered to students in those school
2 districts could not match the quality of education provided by
3 school districts with more resources;

4 (2) in response to these inequities, the
5 legislature implemented a program to bring all public schools
6 up to the statewide adequacy standards;

7 (3) because of a low total assessed property
8 valuation and a continuing shortage of other available local
9 resources, some school districts will still not be able to
10 exceed statewide adequacy standards in the foreseeable future
11 and, therefore, will not have the opportunity to provide their
12 students with the same quality of public school facilities as
13 students in school districts that have the resources available
14 to surpass minimum adequacy standards; and

15 (4) a program is needed to provide state
16 support to those qualifying school districts that do not have
17 any other resources available to provide students with some of
18 the public school facilities that school districts with more
19 resources available are able to provide.

20 B. The council shall develop the "public school
21 facility opportunity program". The program shall provide
22 additional state support through grant assistance from the fund
23 for qualifying school districts located within areas with low
24 total assessed property valuations that are not sufficient to
25 provide students with some of the public school facilities that

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1 school districts that contain taxable property with sufficient
2 assessed valuation are able to provide.

3 C. A school district may qualify for grant
4 assistance under the public school facility opportunity program
5 if the council determines that:

6 (1) the school district meets all
7 qualifications to apply for grant assistance pursuant to
8 Section 22-24-5 NMSA 1978;

9 (2) the value calculated for the school
10 district pursuant to Subparagraph (k), (m), (n) or (o) of
11 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 is
12 equal to or greater than seven-tenths;

13 (3) at the time of application for grant
14 assistance and at all times during the previous four years, the
15 school district has a residential property tax rate of at least
16 nine dollars (\$9.00) on each one thousand dollars (\$1,000) of
17 taxable value, as measured by the sum of all rates imposed by
18 resolution of the local school board plus rates set to pay
19 interest and principal on outstanding school district general
20 obligation bonds;

21 (4) at least seventy percent of the students
22 in the school district are eligible for free or reduced-fee
23 lunch; and

24 (5) for the next four years after the
25 application for grant assistance, any local resources of the

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1 school district will be expended for the local match required
2 for public school capital outlay projects and, therefore, the
3 school district will have no available local resources to
4 expend on school district public school facilities for the
5 purpose of exceeding the statewide adequacy standards.

6 D. Applications for grant assistance from the
7 public school facility opportunity program shall be made by
8 school districts to the council in accordance with the
9 requirements of the council. Using criteria developed by the
10 council, the council shall evaluate applications and prioritize
11 those applications most in need for grant assistance from the
12 fund. To the extent that money in the fund is available for
13 such purposes, the council may award grant assistance for those
14 prioritized applications.

15 E. All provisions of the Public School Capital
16 Outlay Act relating to the expenditure of grant assistance
17 awarded from the fund, including those relating to reporting,
18 oversight, project access and accountability, apply to the use
19 and expenditure of grants made pursuant to this section. In
20 addition, in awarding grant assistance pursuant to this
21 section, the council may require conditions and procedures
22 necessary to ensure that the money is expended in the most
23 prudent manner."