

1 SENATE BILL 624

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 John M. Sapien

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6
7 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND THE
8 PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO
12 PROVIDE FOR OWNERSHIP OF CERTAIN CHARTER SCHOOL FACILITIES
13 UNDER CERTAIN CONDITIONS.

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

16 SECTION 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
17 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
18 as amended) is amended to read:

19 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

20 A. The facilities of a charter school that is
21 approved on or after July 1, 2005 and before July 1, 2015 shall
22 meet educational occupancy standards required by applicable New
23 Mexico construction codes.

24 B. The facilities of a charter school whose charter
25 has been renewed at least once shall be evaluated, prioritized

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1 and eligible for grants pursuant to the Public School Capital
2 Outlay Act in the same manner as all other public schools in
3 the state; provided that for charter school facilities in
4 leased facilities, grants may be used to provide additional
5 lease payments for leasehold improvements made by the lessor.

6 C. On or after July 1, 2011, a new charter school
7 shall not open and an existing charter school shall not
8 relocate unless the facilities of the new or relocated charter
9 school, as measured by the New Mexico condition index, receive
10 a condition rating equal to or better than the average
11 condition for all New Mexico public schools for that year or
12 the charter school demonstrates, within eighteen months of
13 occupancy or relocation of the charter, the way in which the
14 facilities will achieve a rating equal to or better than the
15 average New Mexico condition index.

16 D. On or after July 1, 2015, a new charter school
17 shall not open and an existing charter shall not be renewed
18 unless the charter school:

19 (1) is housed in a building that is:

20 (a) owned by the charter school, the
21 school district, the state, an institution of the state,
22 another political subdivision of the state, the federal
23 government or one of its agencies or a tribal government; or

24 (b) subject to a lease-purchase
25 arrangement that has been entered into and approved pursuant to

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1 the Public School Lease Purchase Act; or

2 (2) if it is not housed in a building
3 described in Paragraph (1) of this subsection, demonstrates
4 that:

5 (a) the facility in which the charter
6 school is housed meets the statewide adequacy standards
7 developed pursuant to the Public School Capital Outlay Act and
8 the owner of the facility is contractually obligated to
9 maintain those standards at no additional cost to the charter
10 school or the state and public buildings are not available or
11 adequate to meet the educational program needs of the charter
12 school; or

13 (b) [~~either: 1) public buildings are not~~
14 ~~available or adequate for the educational program of the~~
15 ~~charter school; or 2)~~] the facility in which the charter school
16 is housed meets the statewide adequacy standards developed
17 pursuant to the Public School Capital Outlay Act, the owner of
18 the facility is contractually obligated to maintain those
19 standards at no additional cost to the charter school or the
20 state and the owner of the facility is a nonprofit entity
21 specifically organized for the purpose of providing the
22 facility for the charter school; provided that if the charter
23 school makes lease payments to a nonprofit entity specifically
24 organized for the purpose of providing a facility for the
25 charter school, the charter school demonstrates that it has

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1 entered into a legally binding agreement requiring the
2 nonprofit entity to transfer to the charter school the title to
3 the facility immediately after the nonprofit entity's
4 acquisition of title to the facility.

5 E. Without the approval of the public school
6 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
7 charter school shall not enter into a lease-purchase agreement.

8 F. The public school capital outlay council:

9 (1) shall determine whether facilities of a
10 charter school meet the educational occupancy standards
11 pursuant to the requirements of Subsection A of this section
12 or the requirements of Subsections B, C and D of this section,
13 as applicable; and

14 (2) upon a determination that specific
15 requirements are not appropriate or reasonable for a charter
16 school, may grant a variance from those requirements for that
17 charter school."

18 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
19 Chapter 235, Section 4, as amended by Laws 2017, Chapter 142,
20 Section 1 and by Laws 2018, Chapter 71, Section 3) is amended
21 to read:

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

24 A. The "public school capital outlay fund" is
25 created. Balances remaining in the fund at the end of each

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1 fiscal year shall not revert.

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

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

25 D. Applications for assistance from the fund shall

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1 be made by school districts to the council in accordance with
2 requirements of the council. Except as provided in Subsection
3 K of this section, the council shall require as a condition of
4 application that a school district have a current five-year
5 facilities plan, which shall include a current preventive
6 maintenance plan to which the school adheres for each public
7 school in the school district.

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

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

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

25 (2) the council may authorize payments

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1 directly to the contractor.

2 G. Balances in the fund may be annually
3 appropriated for the core administrative functions of the
4 [~~public school facilities~~] authority pursuant to the Public
5 School Capital Outlay Act, and, in addition, balances in the
6 fund may be expended by the [~~public school facilities~~]
7 authority, upon approval of the council, for project management
8 expenses; provided that:

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

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

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

23 I. The fund may be expended annually by the council
24 for grants to school districts for the purpose of making lease
25 payments for classroom facilities, including facilities leased

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1 by charter schools; provided that a charter school is in
2 compliance with Subsection D of Section 22-8B-4.2 NMSA 1978, as
3 determined by the council; and provided further that if a
4 charter school obtains money from the fund to make lease
5 payments to a nonprofit entity specifically organized for the
6 purpose of providing a facility for the charter school, the
7 charter school demonstrates that it has entered into a legally
8 binding agreement with the nonprofit entity that requires the
9 nonprofit entity to transfer to the charter school the title to
10 the facility immediately after the nonprofit entity's
11 acquisition of title to the facility. The grants shall be made
12 upon application by the school districts and pursuant to rules
13 adopted by the council; provided that an application on behalf
14 of a charter school shall be made by the school district, but,
15 if the school district fails to make an application on behalf
16 of a charter school, the charter school may submit its own
17 application. The following criteria shall apply to the grants:
18 (1) the amount of a grant to a school district
19 shall not exceed:
20 (a) the actual annual lease payments
21 owed for leasing classroom space for schools, including charter
22 schools, in the school district; or
23 (b) seven hundred dollars (\$700)
24 multiplied by the MEM using the leased classroom facilities;
25 provided that in fiscal year 2009 and in each subsequent fiscal

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1 year, this amount shall be adjusted by the percentage change
2 between the penultimate calendar year and the immediately
3 preceding calendar year of the consumer price index for the
4 United States, all items, as published by the United States
5 department of labor;

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

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

13 (4) no grant shall be made for lease payments
14 due pursuant to a financing agreement under which the
15 facilities may be purchased for a price that is reduced
16 according to the lease payments made unless:

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

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

22 (5) if the lease payments are made pursuant to
23 a financing agreement under which the facilities may be
24 purchased for a price that is reduced according to the lease
25 payments made, neither a grant nor any provision of the Public

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1 School Capital Outlay Act creates a legal obligation for the
2 school district or charter school to continue the lease from
3 year to year or to purchase the facilities nor does it create a
4 legal obligation for the state to make subsequent grants
5 pursuant to the provisions of this subsection; and

6 (6) as used in this subsection:

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

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

22 J. In addition to other authorized expenditures
23 from the fund, up to one percent of the average grant
24 assistance authorized from the fund during the three previous
25 fiscal years may be expended in each fiscal year by the [~~public~~

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1 ~~school facilities~~] authority to pay the state fire marshal, the
2 construction industries division of the regulation and
3 licensing department and local jurisdictions having authority
4 from the state to permit and inspect projects for expenditures
5 made to permit and inspect projects funded in whole or in part
6 under the Public School Capital Outlay Act. The [~~public school~~
7 ~~facilities~~] authority may enter into contracts with the state
8 fire marshal, the construction industries division or the
9 appropriate local authorities to carry out the provisions of
10 this subsection. Such a contract may provide for initial
11 estimated payments from the fund prior to the expenditures if
12 the contract also provides for additional payments from the
13 fund if the actual expenditures exceed the initial payments and
14 for repayments back to the fund if the initial payments exceed
15 the actual expenditures. Money distributed from the fund to
16 the state fire marshal or the construction industries division
17 pursuant to this subsection shall be used to supplement, rather
18 than supplant, appropriations to those entities.

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

24 (1) no allocation shall be made unless the
25 council determines that the school district is willing and able

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1 to pay the portion of the total cost of developing or updating
2 the plan that is not funded with the allocation from the fund.
3 Except as provided in Paragraph (2) of this subsection, the
4 portion of the total cost to be paid with the allocation from
5 the fund shall be determined pursuant to the methodology in
6 [~~Paragraph (5) of~~] Subsection B of Section 22-24-5 NMSA 1978;
7 or

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

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

13 (b) the school district meets all of the
14 following requirements: 1) the school district has fewer than
15 an average of one thousand full-time-equivalent students on the
16 second and third reporting dates of the prior school year; 2)
17 the school district has at least seventy percent of its
18 students eligible for free or reduced-fee lunch; 3) the state
19 share of the total cost, if calculated pursuant to the
20 methodology in [~~Paragraph (5) of~~] Subsection B of Section
21 22-24-5 NMSA 1978, would be less than fifty percent; and 4) for
22 all educational purposes, the school district has a residential
23 property tax rate of at least seven dollars (\$7.00) on each one
24 thousand dollars (\$1,000) of taxable value, as measured by the
25 sum of all rates imposed by resolution of the local school

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1 board plus rates set to pay interest and principal on
2 outstanding school district general obligation bonds.

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

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

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

13 (3) the council may enter into an agreement
14 with the school district under which an amount equal to the
15 savings to the district in lower insurance premiums are used to
16 reimburse the fund fully or partially for the demolition costs
17 allocated to the district.

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

24 N. For each fiscal year from 2018 through 2022,
25 twenty-five million dollars (\$25,000,000) of the public school

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1 capital outlay fund is reserved for appropriation by the
2 legislature to the instructional material fund or to the
3 transportation distribution of the public school fund. The
4 secretary shall certify the need for the issuance of
5 supplemental severance tax bonds to meet an appropriation from
6 the public school capital outlay fund to the instructional
7 material fund or to the transportation distribution of the
8 public school fund. Any portion of an amount of the public
9 school capital outlay fund that is reserved for appropriation
10 by the legislature for a fiscal year, but that is not
11 appropriated before the first day of that fiscal year, may be
12 expended by the council as provided in this section.

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

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