

SENATE BILL 60

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING PHOTOVOLTAIC SYSTEMS IN NEW PUBLIC SCHOOLS; CHANGING THE DEFINITION OF "BUILDING SYSTEM" IN THE PUBLIC SCHOOL CAPITAL OUTLAY ACT.

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

**SECTION 1.** Section 22-24-3 NMSA 1978 (being Laws 1975, Chapter 235, Section 3, as amended) is amended to read:

.223767.1AIC January 27, 2023 (1:02pm)

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"22-24-3. DEFINITIONS.--As used in the Public School

Capital Outlay Act:

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

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

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

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

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

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F. "education technology infrastructure" means the physical hardware and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the council;

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

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

I. "photovoltaic system" means a power system designed to supply usable solar power for the public school for which it is designed, including enough power for electric vehicle charging stations, which may be a grid-tied, grid-hybrid or off-grid system;

~~[F.]~~ J. "replacement cost per square foot" means the statewide cost per square foot as established by the council;

~~[J.]~~ K. "school district" includes state-chartered charter schools and the constitutional special schools;

~~[K.]~~ L. "school district population density" means

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the population density on a per square mile basis of a school district as estimated by the authority based on the most current tract level population estimates published by the United States census bureau; and

[~~H.~~] M. "school district population density factor" means zero when the school district population density is greater than fifty people per square mile, six-hundredths when the school district population density is greater than fifteen but less than fifty-one persons per square mile and twelve-hundredths when the school district population density is less than sixteen persons per square mile."

SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975, Chapter 235, Section 4, as amended) 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.

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

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

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

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

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

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Public School Capital Outlay Act.

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

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

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

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

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

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

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

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

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

(1) the amount of a grant to a school district or charter school shall not exceed:

(a) the actual annual lease payments owed for leasing a facility; or

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

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

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

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

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

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

(5) if the lease payments are made pursuant to



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

(6) as used in this subsection:

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

(b) "facilities" includes the space needed for school activities.

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

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authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

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

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

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

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

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

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

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district general obligation bonds.

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

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

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

(3) the council may enter into an agreement with the school district to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied.

M. Any new public school SEC→~~proposed~~←SEC  
SEC→~~awarded~~←SEC to be constructed after July 1, 2023 with grant assistance from the fund shall include a photovoltaic system sufficient to meet the SEC→~~majority of the~~←SEC energy needs of the public school.

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

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of its allocation.

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

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

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

~~[Q-]~~ R. The council may fund pre-kindergarten classrooms with a qualifying, awarded standards-based project;

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

**SECTION 3. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2023.

- 14 -