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AN ACT

RELATING TO FINANCE; REQUIRING THE PUBLIC SCHOOL CAPITAL
OUTLAY COUNCIL TO PROVIDE GRANTS FROM THE PUBLIC SCHOOL
CAPITAL OUTLAY FUND FOR LEASE ASSISTANCE.

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) 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 O 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
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

1 of state-owned portable classroom buildings shall be
2 submitted by school districts to the council. Expenses of
3 maintenance of the portable classrooms while in the custody
4 of the authority shall be paid from the fund; expenses of
5 maintenance and insurance of the portable classrooms while in
6 the custody of a school district shall be the responsibility
7 of the school district. The council may authorize the
8 permanent disposition of the portable classrooms by the
9 authority with prior approval of the state board of finance.

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

18 E. The council shall review all requests for
19 assistance from the fund and shall allocate funds only for
20 those capital outlay projects that meet the criteria of the
21 Public School Capital Outlay Act.

22 F. Money in the fund shall be disbursed by warrant
23 of the department of finance and administration on vouchers
24 signed by the secretary of finance and administration
25 following certification by the council that an application

1 has been approved or an expenditure has been ordered by a
2 court pursuant to Section 22-24-5.4 NMSA 1978. At the
3 discretion of the council, money for a project shall be
4 distributed as follows:

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

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

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

19 (1) the total annual expenditures from the
20 fund for the core administrative functions pursuant to this
21 subsection shall not exceed five percent of the average
22 annual grant assistance authorized from the fund during the
23 five previous fiscal years; and

24 (2) any unexpended or unencumbered balance
25 remaining at the end of a fiscal year from the expenditures

1 authorized in this subsection shall revert to the fund.

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

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

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

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

23 (b) seven hundred dollars (\$700)
24 multiplied by the MEM using the leased facilities; provided
25 that in fiscal year 2009 and in each subsequent fiscal year,

1 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
7 of a charter school may be used by that charter school as a
8 state match necessary to obtain federal grants pursuant to
9 the federal Every Student Succeeds Act;

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

13 (4) no grant shall be made for lease
14 payments due pursuant to a financing agreement under which
15 the 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
19 Purchase Act; and

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

22 (5) if the lease payments are made pursuant
23 to 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

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

7 (6) as used in this subsection:

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

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

20 J. In addition to other authorized expenditures
21 from the fund, up to one percent of the average grant
22 assistance authorized from the fund during the three previous
23 fiscal years may be expended in each fiscal year by the
24 authority to pay the state fire marshal, the construction
25 industries division of the regulation and licensing

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

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

22 (1) no allocation shall be made unless the
23 council determines that the school district is willing and
24 able to pay the portion of the total cost of developing or
25 updating the plan that is not funded with the allocation from

1 the fund. Except as provided in Paragraph (2) of this
2 subsection, the portion of the total cost to be paid with the
3 allocation from the fund shall be determined pursuant to the
4 methodology in Subsection B of Section 22-24-5 NMSA 1978; or

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

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

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

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

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

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

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

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

21 N. The fund may be expended in each of fiscal
22 years 2020 through 2024 for a pre-kindergarten classroom
23 facilities initiative project in accordance with Section
24 22-24-12 NMSA 1978.

25 O. The council may fund pre-kindergarten

