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HOUSE BILL 207

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

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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; MAKING AN APPROPRIATION.

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

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1 adequate educational program.

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

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

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1 school in the school district.

2 E. The council shall review all requests for
3 assistance from the fund and shall allocate funds only for
4 those capital outlay projects that meet the criteria of the
5 Public School Capital Outlay Act.

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

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

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

21 G. Balances in the fund may be annually
22 appropriated for the core administrative functions of the
23 authority pursuant to the Public School Capital Outlay Act,
24 and, in addition, balances in the fund may be expended by the
25 authority, upon approval of the council, for project management

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1 expenses; provided that:

2 (1) the total annual expenditures from the
3 fund for the core administrative functions pursuant to this
4 subsection shall not exceed five percent of the average annual
5 grant assistance authorized from the fund during the five
6 previous fiscal years; and

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

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

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

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

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

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

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

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

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

24 (a) the agreement has been approved
25 pursuant to the provisions of the Public School Lease Purchase

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1 Act; and

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

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

13 (6) as used in this subsection:

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

24 (b) "facilities" includes the space
25 needed for 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 to fully fund the demolition of the
18 abandoned school district facility if Paragraphs (1) and
19 (2) of this subsection are satisfied.

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

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1 N. The fund may be expended in each of fiscal years
2 2020 through 2024 for a pre-kindergarten classroom facilities
3 initiative project in accordance with Section 22-24-12 NMSA
4 1978.

5 O. The council may fund pre-kindergarten classrooms
6 with a qualifying, awarded standards-based project; provided
7 that pre-kindergarten classroom space shall not be included in
8 the project prioritization calculation adopted by the council
9 pursuant to Section 22-24-5 NMSA 1978. The council shall
10 develop pre-kindergarten classroom standards to use when
11 funding pre-kindergarten space."

12 SECTION 2. APPROPRIATION.--Ten million dollars
13 (\$10,000,000) is appropriated from the general fund to the
14 department of finance and administration for expenditure in
15 fiscal year 2025 and subsequent fiscal years for the New Mexico
16 finance authority to provide loans for leasing expenses as
17 required to administer the charter school facility revolving
18 fund. Any unexpended or unencumbered balance remaining at the
19 end of a fiscal year shall not revert to the general fund.