

1 SENATE BILL 230

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

3 INTRODUCED BY

4 Mimi Stewart

5
6
7
8 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CREATING A PRE-
12 KINDERGARTEN CLASSROOM FACILITIES INITIATIVE.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. A new section of the Public School Capital
16 Outlay Act is enacted to read:

17 "[NEW MATERIAL] PRE-KINDERGARTEN CLASSROOM FACILITIES
18 INITIATIVE.--

19 A. The council shall develop guidelines for a pre-
20 kindergarten classroom facilities initiative in accordance with
21 this section, including establishing and adopting pre-
22 kindergarten classroom standards.

23 B. The authority shall rank all applications it
24 receives for the pre-kindergarten classroom facilities
25 initiative according to the methodology adopted by the council

.211724.1

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 for that purpose.

2 C. After a public hearing, and to the extent that
3 money is available in the fund for that purpose, the council
4 may make pre-kindergarten classroom facilities initiative
5 grants to school districts that the council determines are
6 willing and able to pay for the portion of the total cost not
7 funded with grant assistance from the fund according to those
8 applicants' rankings.

9 D. The state share of the cost of an approved pre-
10 kindergarten classroom facilities initiative shall be
11 calculated according to the methodology outlined in Subsection
12 B of Section 22-24-5 NMSA 1978.

13 E. A school district that receives a grant in
14 accordance with this section shall expend the money within
15 three years after the grant allocation, or the money shall
16 revert to the fund."

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

21 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
22 USE.--

23 A. The "public school capital outlay fund" is
24 created. Balances remaining in the fund at the end of each
25 fiscal year shall not revert.

.211724.1

underscoring material = new
[bracketed material] = delete

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

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

24 D. Applications for assistance from the fund shall
25 be made by school districts to the council in accordance with

.211724.1

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

.211724.1

underscored material = new
~~[bracketed material] = delete~~

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

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

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

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

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

.211724.1

underscored material = new
[bracketed material] = delete

1 by the school districts and pursuant to rules adopted by the
2 council; provided that an application on behalf of a charter
3 school shall be made by the school district, but, if the school
4 district fails to make an application on behalf of a charter
5 school, the charter school may submit its own application. The
6 following criteria shall apply to the grants:

7 (1) the amount of a grant to a school district
8 shall not exceed:

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

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

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

24 (3) at the end of each fiscal year, any
25 unexpended or unencumbered balance of the appropriation shall

.211724.1

underscoring material = new
~~[bracketed material] = delete~~

1 revert to the fund;

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

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

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

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

20 (6) as used in this subsection:

21 (a) "MEM" means: 1) the average
22 full-time-equivalent enrollment using leased classroom
23 facilities on the second and third reporting dates of the prior
24 school year; or 2) in the case of an approved charter school
25 that has not commenced classroom instruction, the estimated

.211724.1

underscored material = new
[bracketed material] = delete

1 full-time-equivalent enrollment that will use leased classroom
2 facilities in the first year of instruction, as shown in the
3 approved charter school application; provided that, after the
4 [~~eightieth day~~] second reporting date of the school year, the
5 MEM shall be adjusted to reflect the full-time-equivalent
6 enrollment on that date; and

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

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

.211724.1

underscored material = new
~~[bracketed material] = delete~~

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

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

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

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

24 (a) the school district has fewer than
25 an average of six hundred full-time-equivalent students on the

.211724.1

underscoring material = new
[bracketed material] = delete

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

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

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

24 (2) there is no practical use for the
25 abandoned facility without the expenditure of substantial

.211724.1

underscored material = new
~~[bracketed material] = delete~~

1 renovation costs; and

2 (3) the council may enter into an agreement
3 with the school district under which an amount equal to the
4 savings to the district in lower insurance premiums are used to
5 reimburse the fund fully or partially for the demolition costs
6 allocated to the district.

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

13 N. For each fiscal year from 2018 through 2022,
14 twenty-five million dollars (\$25,000,000) of the public school
15 capital outlay fund is reserved for appropriation by the
16 legislature to the instructional material fund or to the
17 transportation distribution of the public school fund. The
18 secretary shall certify the need for the issuance of
19 supplemental severance tax bonds to meet an appropriation from
20 the public school capital outlay fund to the instructional
21 material fund or to the transportation distribution of the
22 public school fund. Any portion of an amount of the public
23 school capital outlay fund that is reserved for appropriation
24 by the legislature for a fiscal year, but that is not
25 appropriated before the first day of that fiscal year, may be

.211724.1

underscoring material = new
~~[bracketed material] = delete~~

1 expended by the council as provided in this section.

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

6 P. The fund may be expended in each of fiscal years
7 2020 through 2024 for a pre-kindergarten classroom facilities
8 initiative in accordance with Section 1 of this 2019 act.

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

16 SECTION 3. Section 22-25-2 NMSA 1978 (being Laws 1975
17 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

18 "22-25-2. DEFINITIONS.--As used in the Public School
19 Capital Improvements Act:

20 A. "program unit" means the product of the program
21 element multiplied by the applicable cost differential factor,
22 as defined in Section 22-8-2 NMSA 1978; and

23 B. "capital improvements" means expenditures,
24 including payments made with respect to lease-purchase
25 arrangements as defined in the Education Technology Equipment

.211724.1

underscored material = new
~~[bracketed material] = delete~~

1 Act or the Public School Lease Purchase Act but excluding any
2 other debt service expenses, for:

3 (1) erecting, remodeling, making additions to,
4 providing equipment for or furnishing public school buildings
5 and pre-kindergarten classroom facilities;

6 (2) purchasing or improving public school or
7 pre-kindergarten grounds;

8 (3) maintenance of public school buildings or
9 public school or pre-kindergarten grounds, including the
10 purchasing or repairing of maintenance equipment and
11 participating in the facility information management system as
12 required by the Public School Capital Outlay Act and including
13 payments under contracts with regional education cooperatives
14 for maintenance support services and expenditures for technical
15 training and certification for maintenance and facilities
16 management personnel, but excluding salary expenses of school
17 district employees;

18 (4) purchasing activity vehicles for
19 transporting students to extracurricular school activities;

20 (5) purchasing computer software and hardware
21 for student use in public school classrooms; and

22 (6) purchasing and installing education
23 technology improvements, excluding salary expenses of school
24 district employees, but including tools used in the educational
25 process that constitute learning and administrative resources,

.211724.1

underscored material = new
[bracketed material] = delete

1 and ~~[which]~~ that may also include:

2 (a) satellite, copper and fiber-optic
3 transmission; computer and network connection devices; digital
4 communication equipment, including voice, video and data
5 equipment; servers; switches; portable media devices, such as
6 discs and drives to contain data for electronic storage and
7 playback; and the purchase or lease of software licenses or
8 other technologies and services, maintenance, equipment and
9 computer infrastructure information, techniques and tools used
10 to implement technology in schools and related facilities; and

11 (b) improvements, alterations and
12 modifications to, or expansions of, existing buildings or
13 tangible personal property necessary or advisable to house or
14 otherwise accommodate any of the tools listed in this
15 paragraph."

16 SECTION 4. Section 22-26-2 NMSA 1978 (being Laws 1983,
17 Chapter 163, Section 2, as amended) is amended to read:

18 "22-26-2. DEFINITION.--As used in the Public School
19 Buildings Act, "capital improvements" means expenditures,
20 including payments made with respect to lease-purchase
21 arrangements as defined in the Education Technology Equipment
22 Act but excluding any other debt service expenses, for:

23 A. erecting, remodeling, making additions to,
24 providing equipment for or furnishing public school buildings,
25 including pre-kindergarten classrooms belonging to the school

underscored material = new
[bracketed material] = delete

1 district or charter school located in the school district;

2 B. payments made pursuant to a financing agreement
3 entered into by a school district or a charter school for the
4 leasing of a building or other real property with an option to
5 purchase for a price that is reduced according to payments
6 made;

7 C. purchasing or improving public school grounds;

8 D. purchasing activity vehicles for transporting
9 students to and from extracurricular school activities;
10 provided that this authorization for expenditure does not apply
11 to school districts with a student MEM greater than sixty
12 thousand;

13 E. administering the projects undertaken pursuant
14 to Subsections A and C of this section, including expenditures
15 for facility maintenance software, project management software,
16 project oversight and district personnel specifically related
17 to administration of projects funded by the Public School
18 Buildings Act; provided that expenditures pursuant to this
19 subsection shall not exceed five percent of the total project
20 costs; and

21 F. purchasing and installing education technology
22 improvements, excluding salary expenses of school district
23 employees, but including tools used in the educational process
24 that constitute learning and administrative resources, and
25 [~~which~~] that may also include:

.211724.1

underscoring material = new
~~[bracketed material] = delete~~

1 (1) satellite, copper and fiber-optic
2 transmission; computer and network connection devices; digital
3 communication equipment, including voice, video and data
4 equipment; servers; switches; portable media devices, such as
5 discs and drives to contain data for electronic storage and
6 playback; and purchase or lease of software licenses or other
7 technologies and services, maintenance, equipment and computer
8 infrastructure information, techniques and tools used to
9 implement technology in schools and related facilities; and

10 (2) improvements, alterations and
11 modifications to, or expansions of, existing buildings or
12 tangible personal property necessary or advisable to house or
13 otherwise accommodate any of the tools listed in this
14 subsection."