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SENATE BILL 4

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2016

INTRODUCED BY

John Arthur Smith and Stuart Ingle

AN ACT

RELATING TO STATE EXPENDITURES; REMOVING CERTAIN RESTRICTIONS ON EXPENDITURES FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR BUILDING SYSTEM REPAIR, RENOVATION OR REPLACEMENT INITIATIVES; RESERVING AMOUNTS FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND FOR APPROPRIATION TO THE INSTRUCTIONAL MATERIAL FUND OR THE TRANSPORTATION DISTRIBUTION OF THE PUBLIC SCHOOL FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-27-12.2 NMSA 1978 (being Laws 2001, Chapter 338, Section 2, as amended) is amended to read:

"7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL OUTLAY AND OTHER PROJECTS.--

A. The public school capital outlay council is authorized to certify by resolution that proceeds of

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1 supplemental severance tax bonds are needed for expenditures
2 relating to public school capital outlay projects pursuant to
3 the Public School Capital Outlay Act or for the state
4 distribution for public school capital improvements pursuant to
5 the Public School Capital Improvements Act. The resolution
6 shall specify the total amount needed.

7 B. The state board of finance may issue and sell
8 supplemental severance tax bonds in compliance with the
9 Severance Tax Bonding Act when the public school capital outlay
10 council certifies by resolution the need for the issuance of
11 the bonds or when the secretary of public education certifies
12 the need for the issuance of the bonds pursuant to Section
13 22-24-4 NMSA 1978 or Section 3 of this 2016 act. The amount of
14 the bonds sold at each sale shall not exceed the lesser of:

15 (1) the ~~[amount]~~ total of the amounts
16 certified by the council and the secretary of public education;
17 or

18 (2) the amount that may be issued pursuant to
19 the restrictions of Section 7-27-14 NMSA 1978.

20 C. The state board of finance shall schedule the
21 issuance and sale of the bonds in the most expeditious and
22 economical manner possible.

23 D. The proceeds from the sale of the bonds are
24 appropriated as follows:

25 (1) the amount certified by the secretary of

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1 public education as necessary to make the distribution pursuant
2 to Section 22-25-9 NMSA 1978 is appropriated to the public
3 school capital improvements fund for the purpose of carrying
4 out the provisions of the Public School Capital Improvements
5 Act; and

6 (2) the remainder of the proceeds is
7 appropriated to the public school capital outlay fund for the
8 purpose of carrying out the provisions of the Public School
9 Capital Outlay Act."

10 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
11 Chapter 235, Section 4, as amended) is amended to read:

12 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
13 USE.--

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

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

21 C. The council may authorize the purchase by the
22 public school facilities authority of portable classrooms to be
23 loaned to school districts to meet a temporary requirement.
24 Payment for these purchases shall be made from the fund. Title
25 to and custody of the portable classrooms shall rest in the

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1 public school facilities authority. The council shall
2 authorize the lending of the portable classrooms to school
3 districts upon request and upon finding that sufficient need
4 exists. Application for use or return of state-owned portable
5 classroom buildings shall be submitted by school districts to
6 the council. Expenses of maintenance of the portable
7 classrooms while in the custody of the public school facilities
8 authority shall be paid from the fund; expenses of maintenance
9 and insurance of the portable classrooms while in the custody
10 of a school district shall be the responsibility of the school
11 district. The council may authorize the permanent disposition
12 of the portable classrooms by the public school facilities
13 authority with prior approval of the state board of finance.

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

22 E. The council shall review all requests for
23 assistance from the fund and shall allocate funds only for
24 those capital outlay projects that meet the criteria of the
25 Public School Capital Outlay Act.

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

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

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

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

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

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

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

6 H. [~~Up to fifteen million dollars (\$15,000,000) of~~]
7 The fund may be expended [~~annually~~] by the council for
8 [~~expenditure in fiscal years 2016 through 2020 for a~~] building
9 system repair, renovation or replacement [~~initiative~~]
10 initiatives with projects to be identified by the council
11 pursuant to Section [~~3 of this 2015 act~~] 22-24-4.6 NMSA 1978;
12 provided that money allocated pursuant to this subsection shall
13 be expended within three years of the allocation.

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

24 (1) the amount of a grant to a school district
25 shall not exceed:

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1 (a) the actual annual lease payments
2 owed for leasing classroom space for schools, including charter
3 schools, in the school district; or

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

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

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

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

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

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

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

12 (6) as used in this subsection:

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

23 (b) "classroom facilities" or "classroom
24 space" includes the space needed, as determined by the minimum
25 required under the statewide adequacy standards, for the direct

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1 administration of school activities.

2 J. In addition to other authorized expenditures
3 from the fund, up to one percent of the average grant
4 assistance authorized from the fund during the three previous
5 fiscal years may be expended in each fiscal year by the public
6 school facilities authority to pay the state fire marshal, the
7 construction industries division of the regulation and
8 licensing department and local jurisdictions having authority
9 from the state to permit and inspect projects for expenditures
10 made to permit and inspect projects funded in whole or in part
11 under the Public School Capital Outlay Act. The public school
12 facilities authority may enter into contracts with the state
13 fire marshal, the construction industries division or the
14 appropriate local authorities to carry out the provisions of
15 this subsection. Such a contract may provide for initial
16 estimated payments from the fund prior to the expenditures if
17 the contract also provides for additional payments from the
18 fund if the actual expenditures exceed the initial payments and
19 for repayments back to the fund if the initial payments exceed
20 the actual expenditures. Money distributed from the fund to
21 the state fire marshal or the construction industries division
22 pursuant to this subsection shall be used to supplement, rather
23 than supplant, appropriations to those entities.

24 K. Pursuant to guidelines established by the
25 council, allocations from the fund may be made to assist school

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1 districts in developing and updating five-year facilities plans
2 required by the Public School Capital Outlay Act; provided
3 that:

4 (1) no allocation shall be made unless the
5 council determines that the school district is willing and able
6 to pay the portion of the total cost of developing or updating
7 the plan that is not funded with the allocation from the fund.
8 Except as provided in Paragraph (2) of this subsection, the
9 portion of the total cost to be paid with the allocation from
10 the fund shall be determined pursuant to the methodology in
11 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

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

14 (a) the school district has fewer than
15 an average of six hundred full-time-equivalent students on the
16 eightieth and one hundred twentieth days of the prior school
17 year; or

18 (b) the school district meets all of the
19 following requirements: 1) the school district has fewer than
20 an average of one thousand full-time-equivalent students on the
21 eightieth and one hundred twentieth days of the prior school
22 year; 2) the school district has at least seventy percent of
23 its students eligible for free or reduced-fee lunch; 3) the
24 state share of the total cost, if calculated pursuant to the
25 methodology in Paragraph (5) of Subsection B of Section 22-24-5

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1 NMSA 1978, would be less than fifty percent; and 4) for all
2 educational purposes, the school district has a residential
3 property tax rate of at least seven dollars (\$7.00) on each one
4 thousand dollars (\$1,000) of taxable value, as measured by the
5 sum of all rates imposed by resolution of the local school
6 board plus rates set to pay interest and principal on
7 outstanding school district general obligation bonds.

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

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

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

18 (3) the council may enter into an agreement
19 with the school district under which an amount equal to the
20 savings to the district in lower insurance premiums are used to
21 reimburse the fund fully or partially for the demolition costs
22 allocated to the district.

23 M. Up to ten million dollars (\$10,000,000) of the
24 fund may be expended each year in fiscal years 2014 through
25 2019 for an education technology infrastructure deficiency

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1 corrections initiative pursuant to Section 22-24-4.5 NMSA 1978;
2 provided that funding allocated pursuant to this section shall
3 be expended within three years of its allocation.

4 N. For each fiscal year from 2018 through 2022,
5 twenty-five million dollars (\$25,000,000) of the public school
6 capital outlay fund is reserved for appropriation by the
7 legislature to the instructional material fund or to the
8 transportation distribution of the public school fund. The
9 secretary shall certify the need for the issuance of
10 supplemental severance tax bonds to meet an appropriation from
11 the public school capital outlay fund to the instructional
12 material fund or to the transportation distribution of the
13 public school fund. Any portion of an amount of the public
14 school capital outlay fund that is reserved for appropriation
15 by the legislature for a fiscal year, but that is not
16 appropriated before the first day of that fiscal year, may be
17 expended by the council as provided in this section."

18 **SECTION 3. APPROPRIATION.**--Twelve million five hundred
19 thousand dollars (\$12,500,000) is appropriated from the public
20 school capital outlay fund to the instructional material fund
21 for expenditure in fiscal year 2017 and subsequent fiscal years
22 for the purchase of instructional material pursuant to the
23 Instructional Material Law; provided that the secretary of
24 public education certifies the need for the issuance of
25 supplemental severance tax bonds to meet that appropriation.

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1 Any unexpended or unencumbered balance remaining at the end of
2 a fiscal year shall not revert to the public school capital
3 outlay fund.

4 SECTION 4. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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