

1 SENATE BILL 60

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 William P. Soules

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9  
10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "22-24-3. DEFINITIONS.--As used in the Public School  
20 Capital Outlay Act:

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

23 B. "building system" means a set of interacting  
24 parts that makes up a single, nonportable or fixed component of  
25 a facility and that, together with other building systems,

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1 makes up an entire integrated facility or property, including  
2 roofing, electrical distribution, electronic communication,  
3 plumbing, lighting, mechanical, fire prevention, facility  
4 shell, interior finishes, heating, ventilation and air  
5 conditioning systems, photovoltaic systems and school security  
6 systems, as defined by the council;

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

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

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

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

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

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

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

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

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

18           ~~[K.]~~ L. "school district population density" means  
19 the population density on a per square mile basis of a school  
20 district as estimated by the authority based on the most  
21 current tract level population estimates published by the  
22 United States census bureau; and

23           ~~[E.]~~ M. "school district population density factor"  
24 means zero when the school district population density is  
25 greater than fifty people per square mile, six-hundredths when  
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1 the school district population density is greater than fifteen  
2 but less than fifty-one persons per square mile and twelve-  
3 hundredths when the school district population density is less  
4 than sixteen persons per square mile."

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

7 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--  
8 USE.--

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

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

16 C. The council may authorize the purchase by the  
17 authority of portable classrooms to be loaned to school  
18 districts to meet a temporary requirement. Payment for these  
19 purchases shall be made from the fund. Title to and custody of  
20 the portable classrooms shall rest in the authority. The  
21 council shall authorize the lending of the portable classrooms  
22 to school districts upon request and upon finding that  
23 sufficient need exists. Application for use or return of  
24 state-owned portable classroom buildings shall be submitted by  
25 school districts to the council. Expenses of maintenance of

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

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

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

20 F. Money in the fund shall be disbursed by warrant  
21 of the department of finance and administration on vouchers  
22 signed by the secretary of finance and administration following  
23 certification by the council that an application has been  
24 approved or an expenditure has been ordered by a court pursuant  
25 to Section 22-24-5.4 NMSA 1978. At the discretion of the

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1 council, money for a project shall be distributed as follows:

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

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

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

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

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

24 H. The fund may be expended by the council for  
25 building system repair, renovation or replacement initiatives

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1 with projects to be identified by the council pursuant to  
2 Section 22-24-4.6 NMSA 1978; provided that money allocated  
3 pursuant to this subsection shall be expended within three  
4 years of the allocation.

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

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

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

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

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1 of labor;

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

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

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

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

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

18 (5) if the lease payments are made pursuant to  
19 a financing agreement under which the facilities may be  
20 purchased for a price that is reduced according to the lease  
21 payments made, neither a grant nor any provision of the Public  
22 School Capital Outlay Act creates a legal obligation for the  
23 school district or charter school to continue the lease from  
24 year to year or to purchase the facilities nor does it create a  
25 legal obligation for the state to make subsequent grants

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1 pursuant to the provisions of this subsection; and

2 (6) as used in this subsection:

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

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

15 J. In addition to other authorized expenditures  
16 from the fund, up to one percent of the average grant  
17 assistance authorized from the fund during the three previous  
18 fiscal years may be expended in each fiscal year by the  
19 authority to pay the state fire marshal, the construction  
20 industries division of the regulation and licensing department  
21 and local jurisdictions having authority from the state to  
22 permit and inspect projects for expenditures made to permit and  
23 inspect projects funded in whole or in part under the Public  
24 School Capital Outlay Act. The authority may enter into  
25 contracts with the state fire marshal, the construction

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1 industries division or the appropriate local authorities to  
2 carry out the provisions of this subsection. Such a contract  
3 may provide for initial estimated payments from the fund prior  
4 to the expenditures if the contract also provides for  
5 additional payments from the fund if the actual expenditures  
6 exceed the initial payments and for repayments back to the fund  
7 if the initial payments exceed the actual expenditures. Money  
8 distributed from the fund to the state fire marshal or the  
9 construction industries division pursuant to this subsection  
10 shall be used to supplement, rather than supplant,  
11 appropriations to those entities.

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

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

25 (2) the allocation from the fund may be used

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1 to pay the total cost of developing or updating the plan if:

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

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

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

24 (1) the costs of continuing to insure an  
25 abandoned facility outweigh any potential benefit when and if a

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1 new facility is needed by the school district;

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

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

9 M. Any new public school proposed to be constructed  
10 after July 1, 2023 with grant assistance from the fund shall  
11 include a photovoltaic system sufficient to meet the energy  
12 needs of the public school.

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

19 ~~[N.]~~ O. For each fiscal year from 2018 through  
20 2022, twenty-five million dollars (\$25,000,000) of the fund is  
21 reserved for appropriation by the legislature to the  
22 instructional material fund or to the transportation  
23 distribution of the public school fund. The secretary shall  
24 certify the need for the issuance of supplemental severance tax  
25 bonds to meet an appropriation from the public school capital

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1 outlay fund to the instructional material fund or to the  
2 transportation distribution of the public school fund. Any  
3 portion of an amount of the public school capital outlay fund  
4 that is reserved for appropriation by the legislature for a  
5 fiscal year, but that is not appropriated before the first day  
6 of that fiscal year, may be expended by the council as provided  
7 in this section.

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

12 ~~[P.]~~ Q. The fund may be expended in each of fiscal  
13 years 2020 through 2024 for a pre-kindergarten classroom  
14 facilities initiative in accordance with Section 22-24-12 NMSA  
15 1978.

16 ~~[Q.]~~ R. The council may fund pre-kindergarten  
17 classrooms with a qualifying, awarded standards-based project;  
18 provided that pre-kindergarten classroom space shall not be  
19 included in the project prioritization calculation adopted by  
20 the council pursuant to Section 22-24-5 NMSA 1978. The council  
21 shall develop pre-kindergarten classroom standards to use when  
22 funding pre-kindergarten space."

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

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