

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the agreement has been approved pursuant to the provisions of the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; and

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

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

(6) as used in this subsection:

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

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

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal

year by the authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

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

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

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

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

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

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

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

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

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

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

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

History: 1953 Comp., § 77-24-12, enacted by Laws 1975, ch. 235, § 4; 1978, ch. 152, § 4; 1983, ch. 301, § 70; 1993, ch. 226, § 50; 1994, ch. 88, § 2; 2001, ch. 338, § 5; 2001, ch. 339, § 1; 2002, ch. 65, § 1; 2003, ch. 147, § 3; 2004, ch. 125, § 7; 2005, ch. 274, § 5; 2006, ch. 95, § 4; 2007, ch. 366, § 3; 2008, ch. 90, § 1; 2009, ch. 258, § 2; 2010, ch. 104, § 1; 2014, ch. 28, § 2; 2015, ch. 93, § 2; 2016 (2nd S.S.), ch. 2, § 2; 2017, ch. 142, § 1; 2018, ch. 71, § 3; 2019, ch. 179, § 2; 2019, ch. 180, § 1; 2021, ch. 27, § 1; 2022, ch. 19, § 3; 2023, ch. 98, § 1; 2024, ch. 37, § 1; 2025, ch. 82, § 3.

ANNOTATIONS

Cross references. — For the federal Every Student Succeeds Act, see P.L. No. 114-95.

For the public school facilities authority, see **22-24-9** NMSA 1978.

The 2025 amendment, effective July 1, 2025, removed a provision authorizing up to ten million dollars from the public school capital outlay fund be expended for an education technology infrastructure deficiency corrections initiative; in Subsection B, after "Subsections G and I through" deleted "O" and added "N"; and deleted former Subsection M and redesignated former Subsections N and O as Subsections M and N, respectively.

The 2024 amendment, effective May 15, 2024, made it mandatory, when it was previously discretionary, for the public school capital outlay council to provide grants to school districts from the public school capital outlay fund for lease assistance; and in Subsection I, after "The fund" deleted "may" and added "shall".

The 2023 amendment, effective July 1, 2023, deleted former Subsections N and O and redesignated Subsections P and Q as Subsections N and O, respectively.

The 2022 amendment, effective 18, 2022, modified the terms applicable to grants from the public school capital outlay fund for lease facilities; in Subsection I, in the introductory paragraph, after "making lease payments for", deleted "classroom", in Paragraph I(1), after "school district", added "or charter school", in Subparagraph I(1)(a), after "owed for leasing", deleted "classroom space for schools, including charter schools, in the school district" and added "a facility", in Subparagraph I(1)(b), after "using the leased", deleted "classroom", in Paragraph I(3), after "unencumbered balance of the", deleted "appropriation" and added "grant", in Subparagraph I(6)(a), after "enrollment using leased", deleted "classrooms", after "will use leased", deleted "classroom", and after "reporting date of the", added "current", and in Subparagraph I(6)(b), deleted "classroom", after "facilities", deleted "or 'classroom space'", after "the space needed", deleted "as determined by the minimum required under the statewide adequacy standards", and after the next occurrence of "for", deleted "the direct administration of".

The 2021 amendment, effective June 18, 2021, authorized allocations from the public school capital outlay fund to fully fund the demolition of abandoned school district facilities; in Subsection L, Paragraph L(3), after the first occurrence of "school district", deleted "under which an amount equal to the savings to the district in lower insurance premiums are used to reimburse the fund fully or partially for the demolition costs allocated to the district" and added "to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied"; and in Subsection P, after "Section", changed "1 of this 2019 act" to "**22-24-12** NMSA 1978".

2019 Amendments. — Laws 2019, ch. 179, § 2, effective June 14, 2019, provided that the public school capital outlay fund may be expended for a pre-kindergarten classroom facilities initiative, provided that the council may fund pre-kindergarten classrooms, and made certain technical amendments; deleted "public school facilities" preceding "authority" throughout the section; in Subsection I, Paragraph I(2), after "federal grants", deleted "pursuant to the federal No Child Left Behind Act of 2001" and added "if required", and in Subparagraph I(6)(a), after "after the", deleted "eighteenth day" and added "second reporting date"; and in Subsection K, Paragraph K(1), after "methodology in", deleted "Paragraph (5) of", and in Subparagraph K(2)(b), after "methodology in", deleted "Paragraph (5) of"; and added Subsections P and Q.

Laws 2019, ch. 180, § 1, effective July 1, 2019, provided that a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal Every Student Succeeds Act, and made certain technical amendments; deleted "public school facilities" preceding "authority" throughout the section; in Subsection I, Paragraph I(2), after "pursuant to the federal", deleted "No Child Left Behind Act of 2001" and added "Every Student Succeeds Act", and in Subparagraph I(6)(a), after "after the", deleted "eighteenth day" and added "second reporting date"; and in Subsection K, Paragraph K(1), after "methodology in", deleted "Paragraph (5) of", and in Subparagraph K(2)(b), after "methodology in", deleted "Paragraph (5) of".

The 2018 amendment, effective May 16, 2018, authorized up to \$10,000,000 of the public school capital outlay fund to be expended in each of fiscal years 2019 through 2022 for school security system project grants and made technical changes; deleted three occurrences of "eightieth and one hundred twentieth days" and added "second and third reporting dates"; in Subsection B, after "through", deleted "N" and added "O"; in Subsection I, Subparagraph I(1)(b), after "multiplied by the", deleted "number of"; in Subsection M, after "expended", added "in", and after "each", deleted "year in" and added "of"; and added Subsection O.

Compiler's notes. — **Laws 2018, ch. 71, § 4** provided that if acts making amendments to Section 22-24-4 NMSA 1978 are enacted by the first and second sessions of the fifty-third legislature, the provisions of those acts shall be reconciled and compiled in accordance with the provisions of Section 12-1-8 NMSA 1978, notwithstanding that the amendments were not made in the same session of the legislature. This section includes language enacted by **Laws 2017, ch. 142, § 1**, which was given force of law by the New Mexico Supreme Court in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., S.Ct. Order No. S-1-SC-36731, which held that **Article IV, Section 22 of the New Mexico Constitution** requires that objections must accompany a returned bill, and has been reconciled with **Laws 2018, ch. 71, § 3**.

The 2017 amendment, effective June 16, 2017, removed the time period which limited the use of the public school capital outlay fund for an education technology infrastructure deficiency corrections initiative; and in Subsection M, after "expended each year", deleted "in fiscal years 2014 through 2019".

The 2016 (2nd S.S.) amendment, effective October 7, 2016, removed the four-year fifteen million dollar (\$15,000,000) cap on expenditures from the public school capital outlay fund for building system repairs, renovation or replacement initiatives, and reserved certain amounts from the public school capital outlay fund for appropriation by the legislature to the instructional material fund or the transportation distribution of the public school fund; in Subsection B, after "G and I through", deleted "M" and added "N"; in Subsection H, deleted "Up to fifteen million dollars (\$15,000,000) of", after "may be expended", deleted "annually", after "by the council for", deleted "expenditure in fiscal years 2016 through 2020 for a", after "renovation or replacement", changed "initiative" to "initiatives", and after "pursuant to Section", deleted "3 of this 2015 act" and added "**22-24-4.6 NMSA 1978**"; in Subparagraph I(1)(a), after "schools, in the", added "school"; and added new Subsection N.

The 2015 amendment, effective July 1, 2015, authorized the expenditure of fifteen million dollars (\$15,000,000) from the public school capital outlay fund to be used in fiscal years 2016 through 2020 for a

building system repair; in Subsection H, after "Up to", deleted "ten million dollars (\$10,000,000) of the fund may be allocated annually by the council for expenditure in fiscal years 2010 through 2015 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within two years of the allocation" and added the remainder of the subsection; and in Subsection M, after "pursuant to this Section", deleted "4 of this 2014 act" and added "22-24-4.5 NMSA 1978".

The 2014 amendment, effective March 6, 2014, established an education technology infrastructure deficiency corrections initiative; in Subsection J, in the second sentence, added "public school facilities"; and added Subsection M.

The 2010 amendment, effective March 9, 2010, in Subsection C, in the third sentence, after "Title", added "to" and after "custody" deleted "to"; in Subsection H, after "fund may be allocated", added "annually" and after "fiscal years 2010 through", changed "2012" to "2015"; and in Subsection J, in the second sentence, after "The authority", changed "shall" to "may"; and added the last sentence.

The 2009 amendment, effective April 8, 2009, in Subsection B, added the reference to Subsection I; in Paragraph (1) of Subsection G, after "expenditures from the fund", added "for the core administrative functions"; in Subsection H, after "Up to", deleted "thirty million dollars (\$30,000,000)" and added "ten million dollars (\$10,000,000)"; after "allocated", deleted "annually"; after "by the council", changed "in fiscal years 2006 and 2007" to "for expenditure in fiscal years 2010 through 2012"; and after "subsection shall be expended", deleted "prior to September 1, 2008" and added "within two years of the allocation"; in Subsection I, after "annually by the council", deleted "in fiscal years 2006 through 2020"; in Subparagraph (b) of Paragraph (1) of Subsection I, after "percentage", deleted "increase" and added "change"; and after "department of labor", deleted the remainder of the sentence, which provided for a rate if the total grants awarded exceed the total annual amount available; added Paragraph (4) of Subsection I; deleted former Subparagraph (a) of Paragraph (5) of Subsection I, which provided that a grant shall not be made unless the facilities met the statewide adequacy standards; and deleted former Paragraph (5) of Subsection I, which provided limitations on the amounts expended from the fund.

The 2008 amendment, effective May 14, 2008, in Subsection J, provided that the contract may provide for initial estimated payments from the fund prior to the expenditures if the contract provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments to the fund if the initial payments exceed the actual expenditures.

The 2007 amendment, effective July 1, 2007, provided that, except as permitted in 22-24-5.8 NMSA 1978, money in the fund shall be used for capital expenditures for an adequate educational program; eliminated the \$7,500,000 limitation on expenditures for lease payments; increased the maximum amount of a grant to a school district to \$700,000,000; provided a formula for adjustment of the maximum amount of grants; added Paragraphs (4) and (5) of Subsection I; and added Subparagraph (b) of Paragraph (6) of Subsection I.

The 2006 amendment, effective March 6, 2006, added the qualification "except as provided in Subsection K" in Subsection D; deleted former Subsection H, which provided for expenditure of balances in the fund in fiscal years 2003 and 2004; in Subsection I (formerly Subsection J), changed four million dollars to seven million five hundred thousand dollars, changed "2005" to "2006" and changed "2009" to "2010"; in Subparagraph (b) of Paragraph (1) of Subsection I (formerly Subsection J), deleted three hundred dollars for fiscal year 2005 and deleted fiscal years 2006 through 2006 after six hundred dollars; in Subparagraph (b) of Paragraph (4) of Subsection I (formerly Subsection J), changed "fortieth" to "eightieth"; added a new Subsection K to provide for allocations for five-year facilities plans; added Paragraphs (1) and (2) of Subsection K to provide criteria for allocations for five-year facilities plans; added Subsection L to provide for

allocations for demolishing abandoned school district facilities; and added Paragraphs (1) through (3) of Subsection L to provide criteria for allocations for demolishing abandoned school district facilities.

The 2005 amendment, effective April 6, 2005, changed the statutory reference in Subsection F from Section 22-24-5.5 NMSA 1978 to Section 22-24-5.4 NMSA 1978; deleted former Subsection I, which provided an appropriation to the council for core administrative functions of the deficiencies corrections program; deleted former Subsection J, which provided for the expenditures by the council for the core administrative functions of the public school facilities authority; provided in Subsection I for the allocation of funds for a roof repair and replacement initiative; provided in Subsection J that an application on behalf of a charter school shall be made by the school district, but if the school district fails to make an application, the charter school may submit its own application; provided in Subsection J(1)(b) that the amount of the grant shall not exceed \$300 for fiscal year 2005 and \$600 for fiscal years 2006 through 2009; changed "total" to "average" and "final funded prior school year" to "fortieth, eightieth and one hundred twentieth days of the prior school year" in Subsection J(4)(a); added Subsection J(4)(b) to define "MEM" in the case of a charter school that has not commenced classroom instruction; and added Subsection K to provide for the reimbursement of the state fire marshal, the construction industries division and local jurisdiction of costs incurred to permit and inspect projects.

The 2004 amendment, effective May 19, 2004, amended Subsection B to substitute "through K" for "and H", Subsection C to substitute in three places "public school facilities authority" for "property control division of the general services department" and to change in three places "property" to "portable classrooms", Subsection F to insert after "approved" "or an expenditure has been ordered by a court pursuant to Section 22-24-5.5 NMSA 1978" and Paragraph (2) to change "make" to "authorize", Subsection G to delete the present subsection and add new Subsection G, amended Subsection I to change "fiscal year 2004" to "fiscal years 2004 through 2007", and added new Subsection K.

The 2003 amendment, effective April 4, 2003, in Subsection F, inserted the second sentence and added Paragraphs F(1) and (2); rewrote Subsections G and H pertaining to distribution of money for projects; and added Subsections I and J.

The 2002 amendment, effective May 15, 2002, inserted the exception clause in Subsection B; and added Subsections G and H.

The 2001 amendment, effective July 1, 2001, added the last sentence of Subsection D; deleted "that cannot be financed by the school district from other sources and" following "capital outlay projects" in Subsection E; and added Subsection F.

The 1994 amendment, effective May 18, 1994, deleted "and the capital expenditures are limited to the purchase or construction of temporary or permanent classrooms" following "educational program" in Subsection B, and deleted "public" preceding "school" near the end of the fifth sentence of Subsection C.

The 1993 amendment, effective July 1, 1993, deleted "Annual" from the beginning of the fourth sentence of Subsection C.

Disposal of portable classrooms not limited to sale. — The discretion of the council to authorize the disposal of portable classrooms purchased by the fund is not limited to sale for consideration or exchange. 1980 Op. Att'y Gen. No. 80-05.

When gratis transfer of classrooms proper. — A gratis transfer by the public school capital outlay council of portable classrooms to local school boards does not violate N.M. Const., art. IX, § 14, since the prohibition there does not apply as between the state and one of its subordinate agencies. 1980 Op. Att'y Gen. No. 80-05.

Veto power over gratis transfer. — Section 13-6-2C NMSA 1978 (now Section 13-6-2D NMSA 1978) gives the secretary of finance and administration or the state board of finance (now the state budget division) veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-05.