

SENATE BILL 401

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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and Joy Garratt and Nicole Tobiassen

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO BROADBAND; AMENDING THE SEVERANCE TAX BONDING ACT TO PROVIDE FOR THE ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS FOR EDUCATION TECHNOLOGY INFRASTRUCTURE; AMENDING THE BROADBAND ACCESS AND EXPANSION ACT; ADDING DEFINITIONS; CREATING THE EDUCATION TECHNOLOGY INFRASTRUCTURE FUND; PROVIDING FOR RULEMAKING; AUTHORIZING GRANTS; TRANSFERRING THE PUBLIC SCHOOL FACILITIES AUTHORITY'S BROADBAND DEPLOYMENT AND CONNECTIVITY PROGRAM AND STATEWIDE EDUCATION NETWORK TO THE OFFICE OF BROADBAND ACCESS AND EXPANSION; MAKING AN APPROPRIATION.

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

SECTION 1. Section 7-27-12 NMSA 1978 (being Laws 1961, Chapter 5, Section 10, as amended) is amended to read:

"7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.

B. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. The state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or by written direction from an authorized officer of the recipient of the bond money.

C. Except as provided in Subsection D of this section, proceeds from supplemental severance tax bonds shall be used only for public school capital outlay projects pursuant to the Public School Capital Outlay Act or the Public School Capital Improvements Act or education technology infrastructure projects pursuant to the Broadband Access and Expansion Act.

D. Proceeds from supplemental severance tax bonds issued pursuant to Paragraph (2) of Subsection A of Section 19

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of Chapter 6 of Laws 1999 (1st S.S.) and Laws 2017 (1st S.S.),  
Chapter 1, Section 1 [~~of this 2017 act~~] shall be used for the  
purposes specified in those provisions.

E. Except as provided in Subsection F of this  
section, the state board of finance shall issue and sell all  
supplemental severance tax bonds when so instructed by  
resolution of the public school capital outlay council pursuant  
to Section 7-27-12.2 NMSA 1978 or by certification by the  
director of the office of broadband access and expansion  
pursuant to Section 7-27-12.6 NMSA 1978.

F. The state board of finance shall issue and sell  
the supplemental severance tax bonds authorized by:

(1) Paragraph (2) of Subsection A of Section  
19 of Chapter 6 of Laws 1999 (1st S.S.) when so instructed by  
resolution of the commission on higher education; and

(2) Laws 2017 (1st S.S.), Chapter 1, Section 1  
[~~of this 2017 act~~] upon certification by the secretary of  
finance and administration of the need to use proceeds from  
those bonds as outlined in that section."

**SECTION 2.** A new section of the Severance Tax Bonding  
Act, Section 7-27-12.6 NMSA 1978, is enacted to read:

"7-27-12.6. [NEW MATERIAL] SUPPLEMENTAL SEVERANCE TAX  
BONDS--EDUCATION TECHNOLOGY INFRASTRUCTURE.--

A. The director of the office of broadband access  
and expansion may certify that up to ten million dollars

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(\$10,000,000) of proceeds of supplemental severance tax bonds per fiscal year are needed for expenditures relating to education technology infrastructure pursuant to the Broadband Access and Expansion Act. The certification shall specify the total amount needed.

B. The state board of finance may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act when the director of the office of broadband access and expansion certifies the need for the issuance of the bonds pursuant to the Broadband Access and Expansion Act. The amount of the bonds sold at each sale shall not exceed the lesser of:

(1) the total of the amounts certified by the director of the office of broadband access and expansion; or

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

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

D. The proceeds from the sale of the bonds are appropriated to the education technology infrastructure fund for the purposes of the fund."

SFC→E. The provisions of this section shall be repealed effective July 1, 2030.←SFC

SECTION 3. Section 22-24-4 NMSA 1978 (being Laws 1975,

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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 [Ø] 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

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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

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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

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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;



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(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; 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

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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

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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

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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

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

N.] 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.

~~[O.]~~ 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."

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

"22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
APPLICATION--GRANT ASSISTANCE.--

A. Applications for grant assistance, approval of

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applications, prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section.

B. Except as provided in Sections 22-24-4.3, 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978:

(1) all school districts are eligible to apply for funding from the fund, regardless of percentage of indebtedness;

(2) priorities for funding shall be determined by using the statewide adequacy standards developed pursuant to Subsection C of this section; provided that:

(a) the council shall apply the standards to charter schools to the same extent that they are applied to other public schools;

(b) the council may award grants annually to school districts for the purpose of repairing, renovating or replacing public school building systems in existing buildings as identified in Section 22-24-4.6 NMSA 1978;

(c) the council shall adopt and apply adequacy standards appropriate to the unique needs of the constitutional special schools; and

(d) in an emergency in which the health

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or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards;

(3) the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs;

(c) concepts that promote efficient but flexible utilization of space; and

(d) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) no later than May 1 of each calendar year, the phase two formula value shall be calculated for each school

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district in accordance with the following procedure:

(a) the sum of the final prior five years net taxable value for a school district multiplied by nine ten-thousandths for that school district is calculated for each school district;

(b) the maximum allowable gross square foot per student multiplied by the replacement cost per square foot divided by forty-five is calculated for each school district;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph divided by the value calculated pursuant to Subparagraph (b) of this paragraph is calculated for each school district;

(d) in those instances in which the calculation pursuant to Subparagraph (c) of this paragraph yields a value equal to or greater than one, the phase two formula value shall be zero for the subject school district;

(e) in those instances in which the calculation pursuant to Subparagraph (c) of this paragraph yields a value of ninety-hundredths or more but less than one, the phase two formula value shall be one minus the value calculated in Subparagraph (c) of this paragraph; and

(f) in those instances in which the calculation pursuant to Subparagraph (c) of this paragraph yields a value less than ninety-hundredths, the phase two



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formula value shall be one minus the value calculated in Subparagraph (c) of this paragraph plus the school district population density factor;

(6) the state share of a project approved by the council shall be funded within available resources pursuant to the provisions of this paragraph. Except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (8), (9) or (10) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by the following percentage, except that in no case shall the state share be less than six percent:

(a) for fiscal year 2024 through fiscal year 2026, the percentage shall be the phase two formula value plus a percentage equal to one-third of the difference between one and the phase two formula value; provided that, for school districts with fewer than 200 MEM, the percentage shall be the phase two formula value plus a percentage equal to one-half of the difference between one and the phase two formula; and

(b) for fiscal year 2027 and thereafter, the percentage shall be the phase two formula value;

(7) as used in this subsection:

(a) "governmental entity" includes an Indian nation, tribe or pueblo;

(b) "phase two formula value" for a

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state-chartered charter school means the phase two formula value calculated pursuant to Paragraph (5) of this subsection for the school district in which the state-chartered charter school is physically located;

(c) "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located; and

(d) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project;

(8) the amount calculated pursuant to Paragraph (6) of this subsection may be increased by an additional five percent if the council finds that the subject school district has been exemplary in implementing and maintaining a preventive maintenance program. The council shall adopt such rules as are necessary to implement the provisions of this paragraph;

(9) the council may adjust the amount of local share otherwise required if it determines that a school district has made a good-faith effort to use all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient

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bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) 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;

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the second and third reporting dates of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a phase two formula value calculated pursuant to Paragraph (5) of this subsection that would be greater than fifty percent; and 4) for all educational purposes, 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; or

(c) the school district: 1) has an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next

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two years; and 3) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) 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;

(10) the local match for the constitutional special schools shall be set at fifty percent for projects that qualify under the educational adequacy category and one hundred percent for projects that qualify in the support spaces category; provided that the council may adjust or waive the amount of any direct appropriation offset to or local share required for the constitutional special schools if an applicant constitutional special school has insufficient or no local resources available; and

(11) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

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(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (6), (8) or (9) of this subsection, is not funded with grant assistance from the fund;

(f) the application includes the capital needs of any charter school located in the school district or the school district has shown that the facilities of the charter school have a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

(g) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978.

C. After consulting with the public school capital outlay oversight task force and other experts, the council

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shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for career-technical education facilities or classrooms [~~and the need for education technology infrastructure~~]. The council shall collaborate with the office of broadband access and expansion in the development of education technology infrastructure standards in accordance with the provisions of the Broadband Access and Expansion Act and apply those standards to the statewide adequacy standards. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. The acquisition of a facility by a school district or charter school pursuant to a financing agreement that provides for lease payments with an option to purchase for a price that is reduced according to lease payments made may be considered a public school capital outlay project and eligible for grant assistance under this section pursuant to the following criteria:

(1) no grant shall be awarded unless the council determines that, at the time of exercising the option to purchase the facility by the school district or charter

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school, the facility will equal or exceed the statewide adequacy standards and the building standards for public school facilities;

(2) no grant shall be awarded unless the school district and the need for the facility meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act;

(3) the total project cost shall equal the total payments that would be due under the agreement if the school district or charter school would eventually acquire title to the facility;

(4) the portion of the total project cost to be paid from the fund may be awarded as one grant, but disbursements from the fund shall be made from time to time as lease payments become due;

(5) the portion of the total project cost to be paid by the school district or charter school may be paid from time to time as lease payments become due; and

(6) neither a grant award 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 facility.

E. In order to encourage private capital investment in the construction of public school facilities, the purchase of a privately owned school facility that is, at the time of

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application, in use by a school district may be considered a public school capital outlay project and eligible for grant assistance pursuant to this section if the council finds that:

(1) at the time of the initial use by the school district, the facility to be purchased equaled or exceeded the statewide adequacy standards and the building standards for public school facilities;

(2) at the time of application, attendance at the facility to be purchased is at seventy-five percent or greater of design capacity and the attendance at other schools in the school district that the students at the facility would otherwise attend is at eighty-five percent or greater of design capacity; and

(3) the school district and the capital outlay project meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act; provided that, when determining the deviation from the statewide adequacy standards for the purposes of evaluating and prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

F. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of



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standards pursuant to that act prohibits a school district from using other funds available to the district to exceed the statewide adequacy standards.

G. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay oversight task force.

H. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs, interest groups and segments of society most concerned with a particular aspect of the council's work.

I. Upon the recommendation of the authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

J. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other council actions. The report shall

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be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature.

K. For any school district that received a standards- or systems-based award from the council in fiscal year 2023, the state share for any future phase of the project for which funding has not yet been awarded shall be the amount calculated pursuant to Subsection B of this section for fiscal year 2024, regardless of the state share at the time of the initial award.

L. As used in this section:

(1) "MEM" means membership; and

(2) "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting."

SECTION 5. Section 63-9J-1 NMSA 1978 (being Laws 2021, Chapter 123, Section 1) is amended to read:

"63-9J-1. SHORT TITLE.--~~[This act]~~ Chapter 63, Article 9J

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NMSA 1978 may be cited as the "Broadband Access and Expansion Act".

SECTION 6. Section 63-9J-2 NMSA 1978 (being Laws 2021, Chapter 123, Section 2, as amended) is amended to read:

"63-9J-2. DEFINITIONS.--As used in the Broadband Access and Expansion Act:

A. "broadband infrastructure" means facilities and equipment used to provide internet service, excluding telecommunications equipment owned, controlled or operated by a public or private end user;

B. "broadband office" means the office of broadband access and expansion;

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

~~[G.]~~ D. "department", unless otherwise specified, means the department of information technology;

~~[D.]~~ E. "director" means the director of the broadband office;

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

~~[E.]~~ G. "end user" means an individual, business,

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institution or governmental entity that subscribes to an internet service and does not resell that service to other individuals or entities;

[F-] H. "facilities-based provider" means a provider of internet service to end users in New Mexico using facilities that satisfy any of the following criteria:

(1) physical facilities that the entity owns and that terminate at the end user premises;

(2) facilities that the entity has obtained the right to use from other entities, such as dark fiber or satellite transponder capacity as part of its own network, or has obtained;

(3) unbundled network element loops, special access lines or other leased facilities that the entity uses to complete terminations to the end user premises;

(4) wireless spectrum for which the entity holds a license or that the entity manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement pursuant to federal regulations promulgated pursuant to the federal Communications Act of 1934, as amended, or upon subsequent amendment or repeal of that act, by the broadband office by rule; or

(5) unlicensed spectrum;

I. "fund" means the education technology infrastructure fund;

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[G-] J. "internet" means a global set of computing and electronic devices interconnected through networking infrastructures to provide data and information sharing and communication facilities;

[H-] K. "local government" means the government of a municipality, county or political subdivision of the state;

[I-] L. "open access" means equal nondiscriminatory access to the state-owned broadband network by eligible entities on a technologically and competitively neutral basis, regardless of whether the entity is privately or publicly owned;

[J-] M. "public educational institution" means a public school, a school district, a public post-secondary educational institution, a tribal school or an agency that provides administrative, funding or technical support to public schools, school districts and public post-secondary educational institutions;

[K-] N. "quality of service" means the standards established by the federal communications commission;

O. "school district" includes the constitutional special schools and state-chartered charter schools;

P. "school district population density" means the population density on a per-square-mile basis of a school district as estimated by the broadband office based on the most current tract level population estimates published by the

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United States census bureau;

[H.] Q. "state-owned broadband network" means the state-owned broadband infrastructure that is owned, leased or operated by the department;

[M.] R. "statewide broadband plan" means a plan, including recommended statutory changes and implementation procedures, for the development and expansion of broadband infrastructure and services throughout the state to meet the needs:

(1) for the delivery of internet-based educational, medical and emergency services;

(2) for local and tribal communities to foster and recruit internet-reliant business and industry and to promote economic development and job creation; and

(3) to support internet-reliant state, local and tribal government functions and facilitate the delivery of governmental services in a manner that is competitive with similar government agencies in neighboring states;

[N.] S. "underserved" means an area or property that does not have access to internet service offering speeds greater than one hundred megabits downstream and twenty megabits upstream; and

[O.] T. "unserved" means an area or property that either does not have access to internet service at all or only has access to internet service offering speeds below twenty-

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five megabits per second downstream or three megabits per second upstream."

SECTION 7. A new section of the Broadband Access and Expansion Act is enacted to read:

"[NEW MATERIAL] EDUCATION TECHNOLOGY INFRASTRUCTURE FUND CREATED--USE.--

A. The "education technology infrastructure fund" is created in the state treasury. The fund consists of:

- (1) appropriations, gifts, grants and donations; and
- (2) the proceeds of supplemental severance tax bonds appropriated to the fund pursuant to Section 7-27-12.6 NMSA 1978 for education technology projects.

B. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director.

C. The fund may be expended annually by the broadband office for education technology infrastructure projects that are in conformance with the standards and guidelines developed pursuant to this 2025 act and grants to school districts for education technology projects, including expenses for management of such projects; provided that the total amount of project management expense assistance from the fund per project shall not exceed five percent of the project grant.

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D. The broadband office shall promulgate rules necessary to administer the education technology infrastructure fund."

SECTION 8. A new section of the Broadband Access and Expansion Act is enacted to read:

"[NEW MATERIAL] EDUCATION TECHNOLOGY INFRASTRUCTURE DEFICIENCY CORRECTIONS.--

A. No later than January 1, 2026, the broadband office shall, in collaboration with the public school capital outlay council and the public school facilities authority, define and develop:

(1) minimum adequacy standards for education technology infrastructure;

(2) a methodology to determine reasonable costs for:

(a) correcting education technology infrastructure deficiencies in or affecting school districts; and

(b) reasonable costs for a school district's share of the project costs; and

(3) a methodology for prioritizing projects to correct education technology infrastructure deficiencies in or affecting school districts.

B. The broadband office shall develop guidelines for a statewide education technology infrastructure network

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that integrates regional hub locations for network services and the installation and maintenance of equipment. The broadband office may fund education technology infrastructure projects or items that the broadband office determines are in accordance with the guidelines and necessary to education for:

- (1) students;
- (2) school buses;
- (3) internet connectivity within a school district;
- (4) a multi-district regional education network; and
- (5) a statewide education network."

**SECTION 9.** A new section of the Broadband Access and Expansion Act is enacted to read:

"[NEW MATERIAL] EDUCATION TECHNOLOGY INFRASTRUCTURE PROJECTS--APPLICATION--GRANT ASSISTANCE.--

A. Applications for grant assistance, approval of applications, prioritization of projects and grant awards for education technology infrastructure shall be conducted pursuant to the provisions of this section.

B. The broadband office shall establish project funding requirements and priority standards for school districts by rule based on the following factors:

- (1) school district geographic size and population;

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(2) school district population density;  
(3) local property tax base;  
(4) the current condition of education technology infrastructure relative to the adequacy standards established in collaboration with the public school capital outlay council and public school facilities authority; and

(5) whether the broadband office has designated the school district as a high-growth area pursuant to Subsection C of this section.

C. The broadband office may designate an area that equals a contiguous attendance area of one or more existing schools as a high-growth area if it determines that within five years of the grant allocation decision, the estimated use of the proposed education technology infrastructure project will exceed the functional capacity of the project as determined by the broadband office by rule.

D. The broadband office shall apply the adequacy standards to state-chartered charter schools to the same extent that they are applied to other public schools.

E. The broadband office shall adopt and apply adequacy standards appropriate to the unique needs of the constitutional special schools.

F. In an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the broadband

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office may award grant assistance for a project using criteria other than the adequacy standards.

G. The broadband office shall, in collaboration with the public school capital outlay council and the public school facilities authority, establish criteria to be used in education technology infrastructure projects that receive grant assistance pursuant to the Broadband Access and Expansion Act. In establishing the criteria, the broadband office shall consider:

(1) the feasibility of using design, build and finance arrangements for education technology infrastructure projects;

(2) the potential use of more durable construction materials that may reduce long-term operating costs;

(3) concepts that promote efficient but flexible use of space; and

(4) any other financing or construction concept that may maximize the dollar effect of the state grant assistance.

H. No application for grant assistance from the fund shall be approved unless the broadband office determines that:

(1) the education technology infrastructure project is needed and included in the school district's

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five-year facilities plan among its top priorities;

(2) the school district has used its capital resources in a prudent manner;

(3) the school district has provided insurance for the district's education technology infrastructure in accordance with insurance requirements established by the broadband office by rule;

(4) the school district has submitted an education technology infrastructure plan that includes:

(a) enrollment projections;

(b) a current preventive maintenance plan that has been approved by the broadband office and that is followed by each public school in the district; and

(c) the education technology infrastructure needs of charter schools located in the school district;

(5) the school district is willing and able to pay any portion of the total cost of the education technology infrastructure project that is not funded with grant assistance from the fund;

(6) the application includes the education technology infrastructure needs of any charter school located in the school district, or the school district has shown that the education technology infrastructure needs of the charter school have a smaller deviation from the statewide adequacy

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standards than other district education technology infrastructure included in the application; and

(7) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the broadband office pursuant to the Broadband Access and Expansion Act.

I. After consulting with the public school facilities authority and other experts, the broadband office shall regularly review and update statewide adequacy standards applicable to all school districts. Except as otherwise provided in the Broadband Access and Expansion Act, the amount of outstanding deviation from the standards shall be used by the broadband office in evaluating and prioritizing education technology infrastructure projects.

J. No later than November 1 of each year, the broadband office shall prepare a report summarizing its education technology infrastructure activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other broadband office actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature."

**SECTION 10. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,**

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PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL  
OBLIGATIONS AND STATUTORY REFERENCES.--

A. On the effective date of this act:

(1) all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property pertaining to the broadband deployment and connectivity program are transferred to the office of broadband access and expansion;

(2) all contractual obligations of the broadband deployment and connectivity program are binding on the office of broadband access and expansion; and

(3) all references in law, rules, orders and other official acts to the broadband deployment and connectivity program shall be deemed to be references to the office of broadband access and expansion.

B. As used in this section, "broadband deployment and connectivity program" means the program administratively established by the public school facilities authority to fulfill its support functions to the public school capital outlay council to meet the council's duties pursuant to Section 22-24-4.5 NMSA 1978 as that section existed prior to July 1, 2025.

**SECTION 11. REPEAL.--**Section 22-24-4.5 NMSA 1978 (being Laws 2014, Chapter 28, Section 4, as amended) is repealed.

**SECTION 12. EFFECTIVE DATE.--**The effective date of the .230058.2AIC March 14, 2025 (6:41pm)

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provisions of this act is July 1, 2025.

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