

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 401

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

INTRODUCED BY

Michael Padilla and Debra M. Sariñana and Tara L. Lujan
and Joy Garratt and Nicole Tobiassen

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.

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

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

underscored material = new
[bracketed material] = delete

1 all severance tax bonds when authorized to do so by any law
2 that sets out the amount of the issue and the recipient of the
3 money.

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

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

19 D. Proceeds from supplemental severance tax bonds
20 issued pursuant to Paragraph (2) of Subsection A of Section 19
21 of Chapter 6 of Laws 1999 (1st S.S.) and Laws 2017 (1st S.S.),
22 Chapter 1, Section 1 [~~of this 2017 act~~] shall be used for the
23 purposes specified in those provisions.

24 E. Except as provided in Subsection F of this
25 section, the state board of finance shall issue and sell all

.230058.2

underscoring material = new
[bracketed material] = delete

1 supplemental severance tax bonds when so instructed by
2 resolution of the public school capital outlay council pursuant
3 to Section 7-27-12.2 NMSA 1978 or by certification by the
4 director of the office of broadband access and expansion
5 pursuant to Section 7-27-12.6 NMSA 1978.

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

8 (1) Paragraph (2) of Subsection A of Section
9 19 of Chapter 6 of Laws 1999 (1st S.S.) when so instructed by
10 resolution of the commission on higher education; and

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

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

17 "7-27-12.6. [NEW MATERIAL] SUPPLEMENTAL SEVERANCE TAX
18 BONDS--EDUCATION TECHNOLOGY INFRASTRUCTURE.--

19 A. The director of the office of broadband access
20 and expansion may certify that up to ten million dollars
21 (\$10,000,000) of proceeds of supplemental severance tax bonds
22 per fiscal year are needed for expenditures relating to
23 education technology infrastructure pursuant to the Broadband
24 Access and Expansion Act. The certification shall specify the
25 total amount needed.

.230058.2

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

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

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

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

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

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

18 SECTION 3. Section 22-24-4 NMSA 1978 (being Laws 1975,
19 Chapter 235, Section 4, as amended) is amended to read:

20 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
21 USE.--

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

25 B. Except as provided in Subsections G and I

.230058.2

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

1 through [Ø] N of this section, money in the fund may be used
2 only for capital expenditures deemed necessary by the council
3 for an adequate educational program.

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

21 D. Applications for assistance from the fund shall
22 be made by school districts to the council in accordance with
23 requirements of the council. Except as provided in Subsection
24 K of this section, the council shall require as a condition of
25 application that a school district have a current five-year

.230058.2

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

1 facilities plan that shall include a current preventive
2 maintenance plan to which the school adheres for each public
3 school in the school district.

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

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

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

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

23 G. Balances in the fund may be annually
24 appropriated for the core administrative functions of the
25 authority pursuant to the Public School Capital Outlay Act,

.230058.2

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

1 and, in addition, balances in the fund may be expended by the
2 authority, upon approval of the council, for project management
3 expenses; provided that:

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

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

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

18 I. The fund shall be expended annually by the
19 council for grants to school districts for the purpose of
20 making lease payments for facilities, including facilities
21 leased by charter schools. The grants shall be made upon
22 application by the school districts and pursuant to rules
23 adopted by the council; provided that an application on behalf
24 of a charter school shall be made by the school district, but,
25 if the school district fails to make an application on behalf

.230058.2

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

1 of a charter school, the charter school may submit its own
2 application. The following criteria shall apply to the grants:

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

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

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

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

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

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

.230058.2

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

1 (a) the agreement has been approved
2 pursuant to the provisions of the Public School Lease Purchase
3 Act; and

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

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

15 (6) as used in this subsection:

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

.230058.2

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

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

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

25 K. Pursuant to guidelines established by the

.230058.2

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

1 council, allocations from the fund may be made to assist school
2 districts in developing and updating five-year facilities plans
3 required by the Public School Capital Outlay Act; provided
4 that:

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

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

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

18 (b) the school district meets all of the
19 following requirements: 1) the school district has fewer than
20 an average of one thousand full-time-equivalent students on the
21 second and third reporting dates of the prior school year; 2)
22 the school district has at least seventy percent of its
23 students eligible for free or reduced-fee lunch; 3) the state
24 share of the total cost, if calculated pursuant to the
25 methodology in Subsection B of Section 22-24-5 NMSA 1978, would

.230058.2

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

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

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

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

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

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

22 ~~[M. Up to ten million dollars (\$10,000,000) of the~~
23 ~~fund may be expended each year for an education technology~~
24 ~~infrastructure deficiency corrections initiative pursuant to~~
25 ~~Section 22-24-4.5 NMSA 1978; provided that funding allocated~~

.230058.2

underscored material = new
[bracketed material] = delete

1 ~~pursuant to this section shall be expended within three years~~
2 ~~of its allocation.~~

3 ~~N.]~~ M. The fund may be expended in each of fiscal
4 years 2020 through 2024 for a pre-kindergarten classroom
5 facilities initiative project in accordance with Section
6 22-24-12 NMSA 1978.

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

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

16 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
17 APPLICATION--GRANT ASSISTANCE.--

18 A. Applications for grant assistance, approval of
19 applications, prioritization of projects and grant awards shall
20 be conducted pursuant to the provisions of this section.

21 B. Except as provided in Sections 22-24-4.3,
22 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
23 govern grant assistance from the fund for a public school
24 capital outlay project not wholly funded pursuant to Section
25 22-24-4.1 NMSA 1978:

.230058.2

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

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

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

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

10 (b) the council may award grants
11 annually to school districts for the purpose of repairing,
12 renovating or replacing public school building systems in
13 existing buildings as identified in Section 22-24-4.6 NMSA
14 1978;

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

18 (d) in an emergency in which the health
19 or safety of students or school personnel is at immediate risk
20 or in which there is a threat of significant property damage,
21 the council may award grant assistance for a project using
22 criteria other than the statewide adequacy standards;

23 (3) the council shall establish criteria to be
24 used in public school capital outlay projects that receive
25 grant assistance pursuant to the Public School Capital

.230058.2

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

1 Outlay Act. In establishing the criteria, the council shall
2 consider:

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

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

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

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

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

17 (5) no later than May 1 of each calendar year,
18 the phase two formula value shall be calculated for each school
19 district in accordance with the following procedure:

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

24 (b) the maximum allowable gross square
25 foot per student multiplied by the replacement cost per square
.230058.2

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

1 foot divided by forty-five is calculated for each school
2 district;

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

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

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

16 (f) in those instances in which the
17 calculation pursuant to Subparagraph (c) of this paragraph
18 yields a value less than ninety-hundredths, the phase two
19 formula value shall be one minus the value calculated in
20 Subparagraph (c) of this paragraph plus the school district
21 population density factor;

22 (6) the state share of a project approved by
23 the council shall be funded within available resources pursuant
24 to the provisions of this paragraph. Except as provided in
25 Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
.230058.2

1 Paragraph (8), (9) or (10) of this subsection, the amount to be
2 distributed from the fund for an approved project shall equal
3 the total project cost multiplied by the following percentage,
4 except that in no case shall the state share be less than six
5 percent:

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

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

15 (7) as used in this subsection:

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

18 (b) "phase two formula value" for a
19 state-chartered charter school means the phase two formula
20 value calculated pursuant to Paragraph (5) of this subsection
21 for the school district in which the state-chartered charter
22 school is physically located;

23 (c) "subject school district" means the
24 school district that has submitted the application for funding
25 and in which the approved public school capital outlay project

.230058.2

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

1 will be located; and

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

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

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

18 (a) the school district has insufficient
19 bonding capacity over the next four years to provide the local
20 match necessary to complete the project and, for all
21 educational purposes, has a residential property tax rate of at
22 least ten dollars (\$10.00) on each one thousand dollars
23 (\$1,000) of taxable value, as measured by the sum of all rates
24 imposed by resolution of the local school board plus rates set
25 to pay interest and principal on outstanding school district

.230058.2

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

1 general obligation bonds;

2 (b) the school district: 1) has fewer
3 than an average of eight hundred full-time-equivalent students
4 on the second and third reporting dates of the prior school
5 year; 2) has at least seventy percent of its students eligible
6 for free or reduced-fee lunch; 3) has a phase two formula value
7 calculated pursuant to Paragraph (5) of this subsection that
8 would be greater than fifty percent; and 4) for all educational
9 purposes, has a residential property tax rate of at least seven
10 dollars (\$7.00) on each one thousand dollars (\$1,000) of
11 taxable value, as measured by the sum of all rates imposed by
12 resolution of the local school board plus rates set to pay
13 interest and principal on outstanding school district general
14 obligation bonds; or

15 (c) the school district: 1) has an
16 enrollment growth rate over the previous school year of at
17 least two and one-half percent; 2) pursuant to its five-year
18 facilities plan, will be building a new school within the next
19 two years; and 3) for all educational purposes, has a
20 residential property tax rate of at least ten dollars (\$10.00)
21 on each one thousand dollars (\$1,000) of taxable value, as
22 measured by the sum of all rates imposed by resolution of the
23 local school board plus rates set to pay interest and principal
24 on outstanding school district general obligation bonds;

25 (10) the local match for the constitutional

.230058.2

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

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

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

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

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

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

19 (d) the school district has submitted a
20 five-year facilities plan that includes: 1) enrollment
21 projections; 2) a current preventive maintenance plan that has
22 been approved by the council pursuant to Section 22-24-5.3 NMSA
23 1978 and that is followed by each public school in the
24 district; 3) the capital needs of charter schools located in
25 the school district; and 4) projections for the facilities

.230058.2

underscored material = new
[bracketed material] = delete

1 needed in order to maintain a full-day kindergarten program;

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

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

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

17 C. After consulting with the public school capital
18 outlay oversight task force and other experts, the council
19 shall regularly review and update statewide adequacy standards
20 applicable to all school districts. The standards shall
21 establish the acceptable level for the physical condition and
22 capacity of buildings, the educational suitability of
23 facilities and the need for career-technical education
24 facilities or classrooms [~~and the need for education technology~~
25 ~~infrastructure~~]. The council shall collaborate with the office

.230058.2

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

1 of broadband access and expansion in the development of
2 education technology infrastructure standards in accordance
3 with the provisions of the Broadband Access and Expansion Act
4 and apply those standards to the statewide adequacy standards.

5 Except as otherwise provided in the Public School Capital
6 Outlay Act, the amount of outstanding deviation from the
7 standards shall be used by the council in evaluating and
8 prioritizing public school capital outlay projects.

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

16 (1) no grant shall be awarded unless the
17 council determines that, at the time of exercising the option
18 to purchase the facility by the school district or charter
19 school, the facility will equal or exceed the statewide
20 adequacy standards and the building standards for public school
21 facilities;

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

.230058.2

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

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

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

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

12 (6) neither a grant award nor any provision of
13 the Public School Capital Outlay Act creates a legal obligation
14 for the school district or charter school to continue the lease
15 from year to year or to purchase the facility.

16 E. In order to encourage private capital investment
17 in the construction of public school facilities, the purchase
18 of a privately owned school facility that is, at the time of
19 application, in use by a school district may be considered a
20 public school capital outlay project and eligible for grant
21 assistance pursuant to this section if the council finds that:

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

.230058.2

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

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

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

14 F. It is the intent of the legislature that grant
15 assistance made pursuant to this section allows every school
16 district to meet the standards developed pursuant to Subsection
17 C of this section; provided, however, that nothing in the
18 Public School Capital Outlay Act or the development of
19 standards pursuant to that act prohibits a school district from
20 using other funds available to the district to exceed the
21 statewide adequacy standards.

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

25 H. The council may establish committees or task

.230058.2

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

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

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

13 J. No later than December 15 of each year, the
14 council shall prepare a report summarizing its activities
15 during the previous fiscal year. The report shall describe in
16 detail all projects funded, the progress of projects previously
17 funded but not completed, the criteria used to prioritize and
18 fund projects and all other council actions. The report shall
19 be submitted to the public education commission, the governor,
20 the legislative finance committee, the legislative education
21 study committee and the legislature.

22 K. For any school district that received a
23 standards- or systems-based award from the council in fiscal
24 year 2023, the state share for any future phase of the project
25 for which funding has not yet been awarded shall be the amount
.230058.2

underscoring material = new
[bracketed material] = delete

1 calculated pursuant to Subsection B of this section for fiscal
2 year 2024, regardless of the state share at the time of the
3 initial award.

4 L. As used in this section:

5 (1) "MEM" means membership; and

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

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

18 "63-9J-1. SHORT TITLE.--~~[This act]~~ Chapter 63, Article 9J
19 NMSA 1978 may be cited as the "Broadband Access and Expansion
20 Act"."

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

23 "63-9J-2. DEFINITIONS.--As used in the Broadband Access
24 and Expansion Act:

25 A. "broadband infrastructure" means facilities and

.230058.2

1 equipment used to provide internet service, excluding
2 telecommunications equipment owned, controlled or operated by a
3 public or private end user;

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

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

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

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

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

18 ~~[E.]~~ G. "end user" means an individual, business,
19 institution or governmental entity that subscribes to an
20 internet service and does not resell that service to other
21 individuals or entities;

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

- 25 (1) physical facilities that the entity owns

underscored material = new
[bracketed material] = delete

1 and that terminate at the end user premises;

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

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

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

16 (5) unlicensed spectrum;

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

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

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

25 [~~I.~~] L. "open access" means equal nondiscriminatory

.230058.2

underscoring material = new
[bracketed material] = delete

1 access to the state-owned broadband network by eligible
2 entities on a technologically and competitively neutral basis,
3 regardless of whether the entity is privately or publicly
4 owned;

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

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

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

15 P. "school district population density" means the
16 population density on a per-square-mile basis of a school
17 district as estimated by the broadband office based on the most
18 current tract level population estimates published by the
19 United States census bureau;

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

23 [M.] R. "statewide broadband plan" means a plan,
24 including recommended statutory changes and implementation
25 procedures, for the development and expansion of broadband

.230058.2

underscored material = new
[bracketed material] = delete

1 infrastructure and services throughout the state to meet the
2 needs:

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

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

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

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

16 [~~0.~~] T. "unserved" means an area or property that
17 either does not have access to internet service at all or only
18 has access to internet service offering speeds below twenty-
19 five megabits per second downstream or three megabits per
20 second upstream."

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

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

25 A. The "education technology infrastructure fund"
.230058.2

underscored material = new
[bracketed material] = delete

1 is created in the state treasury. The fund consists of:

2 (1) appropriations, gifts, grants and
3 donations; and

4 (2) the proceeds of supplemental severance tax
5 bonds appropriated to the fund pursuant to Section 7-27-12.6
6 NMSA 1978 for education technology projects.

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

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

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

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

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

.230058.2

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

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

5 (1) minimum adequacy standards for education
6 technology infrastructure;

7 (2) a methodology to determine reasonable
8 costs for:

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

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

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

17 B. The broadband office shall develop guidelines
18 for a statewide education technology infrastructure network
19 that integrates regional hub locations for network services and
20 the installation and maintenance of equipment. The broadband
21 office may fund education technology infrastructure projects or
22 items that the broadband office determines are in accordance
23 with the guidelines and necessary to education for:

24 (1) students;

25 (2) school buses;

.230058.2

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

1 (3) internet connectivity within a school
2 district;

3 (4) a multi-district regional education
4 network; and

5 (5) a statewide education network."

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

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

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

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

17 (1) school district geographic size and
18 population;

19 (2) school district population density;

20 (3) local property tax base;

21 (4) the current condition of education
22 technology infrastructure relative to the adequacy standards
23 established in collaboration with the public school capital
24 outlay council and public school facilities authority; and

25 (5) whether the broadband office has

.230058.2

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

1 designated the school district as a high-growth area pursuant
2 to Subsection C of this section.

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

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

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

16 F. In an emergency in which the health or safety of
17 students or school personnel is at immediate risk or in which
18 there is a threat of significant property damage, the broadband
19 office may award grant assistance for a project using criteria
20 other than the adequacy standards.

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

.230058.2

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

1 In establishing the criteria, the broadband office shall
2 consider:

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

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

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

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

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

17 (1) the education technology infrastructure
18 project is needed and included in the school district's
19 five-year facilities plan among its top priorities;

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

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

.230058.2

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

- 1 (4) the school district has submitted an
2 education technology infrastructure plan that includes:
3 (a) enrollment projections;
4 (b) a current preventive maintenance
5 plan that has been approved by the broadband office and that is
6 followed by each public school in the district; and
7 (c) the education technology
8 infrastructure needs of charter schools located in the school
9 district;
- 10 (5) the school district is willing and able to
11 pay any portion of the total cost of the education technology
12 infrastructure project that is not funded with grant assistance
13 from the fund;
- 14 (6) the application includes the education
15 technology infrastructure needs of any charter school located
16 in the school district, or the school district has shown that
17 the education technology infrastructure needs of the charter
18 school have a smaller deviation from the statewide adequacy
19 standards than other district education technology
20 infrastructure included in the application; and
- 21 (7) the school district has agreed, in
22 writing, to comply with any reporting requirements or
23 conditions imposed by the broadband office pursuant to the
24 Broadband Access and Expansion Act.

25 I. After consulting with the public school

.230058.2

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

1 facilities authority and other experts, the broadband office
2 shall regularly review and update statewide adequacy standards
3 applicable to all school districts. Except as otherwise
4 provided in the Broadband Access and Expansion Act, the amount
5 of outstanding deviation from the standards shall be used by
6 the broadband office in evaluating and prioritizing education
7 technology infrastructure projects.

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

18 SECTION 10. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
19 PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL
20 OBLIGATIONS AND STATUTORY REFERENCES.--

21 A. On the effective date of this act:

22 (1) all functions, personnel, money,
23 appropriations, records, furniture, equipment, supplies and
24 other property pertaining to the broadband deployment and
25 connectivity program are transferred to the office of broadband

.230058.2

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

1 access and expansion;

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

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

9 B. As used in this section, "broadband deployment
10 and connectivity program" means the program administratively
11 established by the public school facilities authority to
12 fulfill its support functions to the public school capital
13 outlay council to meet the council's duties pursuant to Section
14 22-24-4.5 NMSA 1978 as that section existed prior to July 1,
15 2025.

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

18 SECTION 12. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2025.

20 - 38 -

21
22
23
24
25