

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

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

16 "7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

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

21 B. The state board of finance shall also issue
22 and sell severance tax bonds authorized by Sections 72-14-36
23 through 72-14-42 NMSA 1978, and such authority as has been
24 given to the interstate stream commission to issue and sell
25 such bonds is transferred to the state board of finance.

1 The state board of finance shall issue and sell all severance
2 tax bonds only when so instructed by resolution of the
3 governing body or by written direction from an authorized
4 officer of the recipient of the bond money.

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

12 D. Proceeds from supplemental severance tax
13 bonds issued pursuant to Paragraph (2) of Subsection A of
14 Section 19 of Chapter 6 of Laws 1999 (1st S.S.) and Laws 2017
15 (1st S.S.), Chapter 1, Section 1 shall be used for the
16 purposes specified in those provisions.

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

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

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

5 (2) Laws 2017 (1st S.S.), Chapter 1,
6 Section 1 upon certification by the secretary of finance
7 and administration of the need to use proceeds from those
8 bonds as outlined in that section."

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

11 "7-27-12.6. SUPPLEMENTAL SEVERANCE TAX BONDS--EDUCATION
12 TECHNOLOGY INFRASTRUCTURE.--

13 A. The director of the office of broadband access
14 and expansion may certify that up to ten million dollars
15 (\$10,000,000) of proceeds of supplemental severance tax bonds
16 per fiscal year are needed for expenditures relating to
17 education technology infrastructure pursuant to the Broadband
18 Access and Expansion Act. The certification shall specify
19 the total amount needed.

20 B. The state board of finance may issue and sell
21 supplemental severance tax bonds in compliance with the
22 Severance Tax Bonding Act when the director of the office of
23 broadband access and expansion certifies the need for the
24 issuance of the bonds pursuant to the Broadband Access and
25 Expansion Act. The amount of the bonds sold at each sale

1 shall not exceed the lesser of:

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

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

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

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

13 E. The provisions of this section shall be
14 repealed effective July 1, 2030."

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

17 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
18 USE.--

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

22 B. Except as provided in Subsections G and I
23 through N of this section, money in the fund may be used only
24 for capital expenditures deemed necessary by the council for
25 an adequate educational program.

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

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

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

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

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

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

21 G. Balances in the fund may be annually
22 appropriated for the core administrative functions of the
23 authority pursuant to the Public School Capital Outlay Act,
24 and, in addition, balances in the fund may be expended by the
25 authority, upon approval of the council, for project

1 management expenses; provided that:

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

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

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

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

1 apply to the grants:

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

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

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

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

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

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

25 (a) the agreement has been approved

1 pursuant to the provisions of the Public School Lease
2 Purchase Act; and

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

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

15 (6) as used in this subsection:

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

1 enrollment on that date; and

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

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

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

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

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

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

20 (b) the school district meets all of
21 the following requirements: 1) the school district has fewer
22 than an average of one thousand full-time-equivalent students
23 on the second and third reporting dates of the prior school
24 year; 2) the school district has at least seventy percent of
25 its students eligible for free or reduced-fee lunch; 3) the

1 state share of the total cost, if calculated pursuant to
2 the methodology in Subsection B of Section 22-24-5 NMSA 1978,
3 would be less than fifty percent; and 4) for all educational
4 purposes, the school district has a residential property tax
5 rate of at least seven dollars (\$7.00) on each one thousand
6 dollars (\$1,000) of taxable value, as measured by the sum of
7 all rates imposed by resolution of the local school board
8 plus rates set to pay interest and principal on outstanding
9 school district general obligation bonds.

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

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

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

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

24 M. The fund may be expended in each of fiscal
25 years 2020 through 2024 for a pre-kindergarten classroom

1 facilities initiative project in accordance with Section
2 22-24-12 NMSA 1978.

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

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

12 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
13 APPLICATION--GRANT ASSISTANCE.--

14 A. Applications for grant assistance, approval
15 of applications, prioritization of projects and grant awards
16 shall be conducted pursuant to the provisions of this
17 section.

18 B. Except as provided in Sections 22-24-4.3,
19 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
20 govern grant assistance from the fund for a public school
21 capital outlay project not wholly funded pursuant to Section
22 22-24-4.1 NMSA 1978:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 square foot divided by forty-five is calculated for each
2 school 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
14 one, 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
23 by the council shall be funded within available resources
24 pursuant to the provisions of this paragraph. Except as
25 provided in Section 22-24-5.7 NMSA 1978 and except as

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

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

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

17 (7) as used in this subsection:

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

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

25 (c) "subject school district" means

1 the school district that has submitted the application for
2 funding and in which the approved public school capital
3 outlay project will be located; and

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

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

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

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

1 the sum of all rates imposed by resolution of the local
2 school board plus rates set to pay interest and principal on
3 outstanding school district general obligation bonds;

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

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

1 interest and principal on outstanding school district general
2 obligation bonds;

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

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

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

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

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

23 (d) the school district has submitted
24 a five-year facilities plan that includes: 1) enrollment
25 projections; 2) a current preventive maintenance plan

1 that has been approved by the council pursuant to
2 Section 22-24-5.3 NMSA 1978 and that is followed by each
3 public school in the district; 3) the capital needs of
4 charter schools located in the school district; and 4)
5 projections for the facilities needed in order to maintain a
6 full-day kindergarten program;

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

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

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

22 C. After consulting with the public school
23 capital outlay oversight task force and other experts, the
24 council shall regularly review and update statewide adequacy
25 standards applicable to all school districts. The standards

1 shall establish the acceptable level for the physical
2 condition and capacity of buildings, the educational
3 suitability of facilities and the need for career-technical
4 education facilities or classrooms. The council shall
5 collaborate with the office of broadband access and expansion
6 in the development of education technology infrastructure
7 standards in accordance with the provisions of the Broadband
8 Access and Expansion Act and apply those standards to the
9 statewide adequacy standards. Except as otherwise provided
10 in the Public School Capital Outlay Act, the amount of
11 outstanding deviation from the standards shall be used by the
12 council in evaluating and prioritizing public school capital
13 outlay projects.

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

21 (1) no grant shall be awarded unless the
22 council determines that, at the time of exercising the option
23 to purchase the facility by the school district or charter
24 school, the facility will equal or exceed the statewide
25 adequacy standards and the building standards for public

1 school facilities;

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

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

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

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

17 (6) neither a grant award nor any provision
18 of the Public School Capital Outlay Act creates a legal
19 obligation for the school district or charter school to
20 continue the lease from year to year or to purchase the
21 facility.

22 E. In order to encourage private capital
23 investment in the construction of public school facilities,
24 the purchase of a privately owned school facility that is, at
25 the time of application, in use by a school district may be

1 considered a public school capital outlay project and
2 eligible for grant assistance pursuant to this section if the
3 council finds that:

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

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

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

22 F. It is the intent of the legislature that grant
23 assistance made pursuant to this section allows every school
24 district to meet the standards developed pursuant to
25 Subsection C of this section; provided, however, that nothing

1 in the Public School Capital Outlay Act or the development of
2 standards pursuant to that act prohibits a school district
3 from using other funds available to the district to exceed
4 the statewide adequacy standards.

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

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

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

21 J. No later than December 15 of each year, the
22 council shall prepare a report summarizing its activities
23 during the previous fiscal year. The report shall describe
24 in detail all projects funded, the progress of projects
25 previously funded but not completed, the criteria used to

1 prioritize and fund projects and all other council actions.
2 The report shall be submitted to the public education
3 commission, the governor, the legislative finance committee,
4 the legislative education study committee and the
5 legislature.

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

13 L. As used in this section:

14 (1) "MEM" means membership; and

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

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

3 "63-9J-1. SHORT TITLE.--Chapter 63, Article 9J
4 NMSA 1978 may be cited as the "Broadband Access and Expansion
5 Act"."

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

8 "63-9J-2. DEFINITIONS.--As used in the Broadband Access
9 and Expansion Act:

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

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

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

19 D. "department", unless otherwise specified, means
20 the department of information technology;

21 E. "director" means the director of the broadband
22 office;

23 F. "education technology infrastructure" means the
24 physical hardware and services used to interconnect students,
25 teachers, school districts and school buildings necessary to

1 support broadband connectivity and remote learning as
2 determined by the broadband office;

3 G. "end user" means an individual, business,
4 institution or governmental entity that subscribes to an
5 internet service and does not resell that service to other
6 individuals or entities;

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

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

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

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

19 (4) wireless spectrum for which the entity
20 holds a license or that the entity manages or has obtained
21 the right to use via a spectrum leasing arrangement or
22 comparable arrangement pursuant to federal regulations
23 promulgated pursuant to the federal Communications Act of
24 1934, as amended, or upon subsequent amendment or repeal of
25 that act, by the broadband office by rule; or

1 (5) unlicensed spectrum;

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

4 J. "internet" means a global set of computing and
5 electronic devices interconnected through networking
6 infrastructures to provide data and information sharing and
7 communication facilities;

8 K. "local government" means the government of a
9 municipality, county or political subdivision of the state;

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

15 M. "public educational institution" means a
16 public school, a school district, a public post-secondary
17 educational institution, a tribal school or an agency that
18 provides administrative, funding or technical support to
19 public schools, school districts and public post-secondary
20 educational institutions;

21 N. "quality of service" means the standards
22 established by the federal communications commission;

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

25 P. "school district population density" means the

1 population density on a per-square-mile basis of a school
2 district as estimated by the broadband office based on the
3 most current tract level population estimates published by
4 the United States census bureau;

5 Q. "state-owned broadband network" means the
6 state-owned broadband infrastructure that is owned, leased
7 or operated by the department;

8 R. "statewide broadband plan" means a plan,
9 including recommended statutory changes and implementation
10 procedures, for the development and expansion of broadband
11 infrastructure and services throughout the state to meet the
12 needs:

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

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

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

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

1 T. "unserved" means an area or property that
2 either does not have access to internet service at all or
3 only has access to internet service offering speeds below
4 twenty-five megabits per second downstream or three megabits
5 per second upstream."

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

8 "EDUCATION TECHNOLOGY INFRASTRUCTURE FUND CREATED--USE.--

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

11 (1) appropriations, gifts, grants and
12 donations; and

13 (2) the proceeds of supplemental
14 severance tax bonds appropriated to the fund pursuant to
15 Section 7-27-12.6 NMSA 1978 for education technology
16 projects.

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

20 C. The fund may be expended annually by the
21 broadband office for education technology infrastructure
22 projects that are in conformance with the standards and
23 guidelines developed pursuant to this 2025 act and grants to
24 school districts for education technology projects, including
25 expenses for management of such projects; provided that the

1 total amount of project management expense assistance from
2 the fund per project shall not exceed five percent of the
3 project grant.

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

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

9 "EDUCATION TECHNOLOGY INFRASTRUCTURE DEFICIENCY
10 CORRECTIONS.--

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

15 (1) minimum adequacy standards for education
16 technology infrastructure;

17 (2) a methodology to determine reasonable
18 costs for:

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

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

24 (3) a methodology for prioritizing projects
25 to correct education technology infrastructure deficiencies

1 in or affecting school districts.

2 B. The broadband office shall develop guidelines
3 for a statewide education technology infrastructure network
4 that integrates regional hub locations for network services
5 and the installation and maintenance of equipment. The
6 broadband office may fund education technology infrastructure
7 projects or items that the broadband office determines are in
8 accordance with the guidelines and necessary to education
9 for:

- 10 (1) students;
- 11 (2) school buses;
- 12 (3) internet connectivity within a school
13 district;
- 14 (4) a multi-district regional education
15 network; and
- 16 (5) a statewide education network."

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

19 "EDUCATION TECHNOLOGY INFRASTRUCTURE PROJECTS--
20 APPLICATION-- GRANT ASSISTANCE.--

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

25 B. The broadband office shall establish project funding

1 requirements and priority standards for school districts by
2 rule based on the following factors:

- 3 (1) school district geographic size and
4 population;
- 5 (2) school district population density;
- 6 (3) local property tax base;
- 7 (4) the current condition of education
8 technology infrastructure relative to the adequacy standards
9 established in collaboration with the public school capital
10 outlay council and public school facilities authority; and
- 11 (5) whether the broadband office has
12 designated the school district as a high-growth area pursuant
13 to Subsection C of this section.

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

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

24 E. The broadband office shall adopt and apply
25 adequacy standards appropriate to the unique needs of the

1 constitutional special schools.

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

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

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

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

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

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

25 H. No application for grant assistance from the

1 fund shall be approved unless the broadband office determines
2 that:

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

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

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

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

14 (a) enrollment projections;

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

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

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

25 (6) the application includes the education

1 technology infrastructure needs of any charter school located
2 in the school district, or the school district has shown that
3 the education technology infrastructure needs of the charter
4 school have a smaller deviation from the statewide adequacy
5 standards than other district education technology
6 infrastructure included in the application; and

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

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

19 J. No later than November 1 of each year, the
20 broadband office shall prepare a report summarizing its
21 education technology infrastructure activities during the
22 previous fiscal year. The report shall describe in detail all
23 projects funded, the progress of projects previously funded
24 but not completed, the criteria used to prioritize and fund
25 projects and all other broadband office actions. The report

1 shall be submitted to the public education commission,
2 the governor, the legislative finance committee, the
3 legislative education study committee and the legislature."

4 SECTION 10. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
5 PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL
6 OBLIGATIONS AND STATUTORY REFERENCES.--

7 A. On the effective date of this act:

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

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

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

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

1 July 1, 2025.

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

4 SECTION 12. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2025. _____

SB 401
Page 39

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