

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: *HB 260

51st Legislature, 2nd Session, 2014

Tracking Number: .195691.1

Short Title: Education Technology Infrastructure Funding

Sponsor(s): Representative Mimi Stewart

Analyst: Ian Kleats

Date: February 12, 2014

Bill Summary:

HB 260 repeals the *Technology for Education Act* and amends the *Public School Capital Outlay Act* to define “education technology infrastructure”; establish an education technology infrastructure deficiency corrections initiative and provide for allocations through the initiative in FY 14 through FY 19 under certain conditions; and assign duties to the Public Education Department (PED).

Among its provisions, which are outlined by section, HB 260:

- introduces a definition for “education technology infrastructure” (**Section 1**);
- dedicates up to \$10.0 million per year from the Public School Capital Outlay Fund (PSCOF) in FY 14 through FY 19 for education technology infrastructure deficiency corrections (**Section 2**);
- allows the Public School Capital Outlay Council (PSCOC) to adjust the local share of public school capital projects when a school district has made a good-faith effort to use all of its local resources, rather than having exhausted all local resources (**Section 3**);
- allows the PSCOC to allocate funds for education technology infrastructure deficiency correction projects, and requires that PSCOC develop a methodology and standards for those projects (**Section 4**); and
- assigns certain duties to PED related to education technology (**Section 5**).

Section 1 amends definitions in the *Public School Capital Outlay Act* to include a definition for “education technology infrastructure,” which means:

- the physical hardware used to interconnect education technology equipment for school districts and school buildings as defined in the *Education Technology Equipment Act*.

Section 2 amends a section of the *Public School Capital Outlay Act* relating to the PSCOF to allow:

- up to \$10.0 million to be expended each year in FY 14 through FY 19 from the PSCOF for education technology infrastructure deficiency corrections pursuant to the provisions of **Section 4**; and
- provided that funding allocated must be expended within three years of allocation.

Section 3 amends a section of the *Public School Capital Outlay Act* pertaining to the adjustments to the local share of capital outlay projects as determined by the PSCOC to require that the PSCOC:

- determine that a school district has a “good-faith effort” in using all of the local resources before the PSCOC will adjust a school districts local share match, required for grant assistance approval.

Section 4 enacts a new section of the *Public School Capital Outlay Act* which:

- requires that, no later than September 1, 2014, the PSCOC define and develop:
 - minimum adequacy standards for an education technology infrastructure deficiency correction and determining reasonable costs for correcting those deficiencies;
 - a methodology for prioritizing education technology infrastructure deficiency correction projects; and
 - a methodology for determining a school district’s share of the project’s cost; and
- allows the PSCOC to approve allocations from the PSCOF for education technology infrastructure deficiency correction projects pursuant to the amendments provided in **Section 2**, provided that:
 - the PSCOC may reduce or waive a school district’s share of the project’s cost in accordance with the provisions amended in **Section 3** or the methodology developed by PSCOC for determining a school district’s share of the project’s cost.

Section 5 enacts a new section of the *Public School Capital Outlay Act* to require that PED:

- develop and implement a statewide plan for integration of education technology into public schools, and coordinate technology-related education activities with other state agencies, the federal government, business consortia and others;
- assist school districts and state-chartered charter schools to develop and implement strategic, long-term education technology plans;
- approve school districts and state-chartered charter schools strategic education technology plans;
- recommend funding mechanisms and partnerships with other state agencies that will support an effective education technology infrastructure in the state;
- promote collaboration between government, business, educational organizations, and telecommunications entities to expand and improve the use of technology in education; and
- assess and determine technology needs for school districts and state-chartered charter schools.

Section 6 repeals the *Technology for Education Act* in its entirety.

*HB 260 contains an emergency clause.

Fiscal Impact:

HB 260 does not contain an appropriation; instead it provides guidelines for expending a portion of the PSCOF.

Fiscal Issues:

Because of the amounts dedicated by HB 260 from the PSCOF for education technology infrastructure deficiency corrections, available funding for current programs under the *Public School Capital Outlay Act* would be decreased by the \$10.0 million for FY 14 through FY 19. According to the Public School Facilities Authority (PSFA) bill analysis, the redirection of these funds could impair the statewide facility condition index of public school buildings.

Substantive Issues:

At its August 2013 interim meeting, the Legislative Education Study Committee (LESC) heard testimony regarding school readiness for computer-based testing (CBT) for assessments based on the Common Core State Standards (CCSS) that will commence in school year 2014-2015 through the Partnership for Assessment of Readiness for College and Careers (PARCC), of which New Mexico is a member state.

According to the PSFA bill analysis, PED has estimated it will cost the state approximately \$8.4 million to purchase computers needed to administer the PARCC assessment, an estimate which does not include other technology infrastructure needs. Dedicating a portion of the PSCOF for education technology infrastructure may allow school districts to address those costs.

Technical Issues:

On Page 11, lines 7-12, HB 260 allows up to \$10.0 million to be expended each year in FY 14 through FY 19 from the PSCOF for education technology infrastructure deficiency corrections. However, HB 260 gives the PSCOC until September 1, 2014 to develop:

- minimum adequacy standards for an education technology infrastructure deficiency correction and determining reasonable costs for correcting those deficiencies;
- a methodology for prioritizing education technology infrastructure deficiency correction projects; and
- a methodology for determining a school district's share of the project's cost.

It is unclear whether the PSCOC would be able to fulfill those requirements in time to allocate grant awards for projects before FY 15.

Background:

Technology for Education Act

HB 260 repeals the *Technology for Education Act*, which has been included in its entirety as an attachment.

Committee Referrals:

HRC

Related Bills:

HB 68a *School Capital Outlay for Building Systems*

HB 149 *School Capital Outlay for Building Systems*

*SB 159A *Education Technology Infrastructure Funding* (Identical to *HB 260)

SB 6A *Charter School Share of Ed. Technology Act*

ARTICLE 15A Technology for Education

Section

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22-15A-1. Short title.

Chapter 22, Article 15A NMSA 1978 may be cited as the "Technology for Education Act".

History: Laws 1994, ch. 96, § 1; 2005, ch. 222, § 1.

The 2005 amendment, effective June 17, 2005, added the statutory reference of the act.

22-15A-2. Definitions.

As used in the Technology for Education Act:

- A. "bureau" means the education technology bureau in the department of education [public education department];
- B. "chief" means the chief of the bureau;
- C. "council" means the council on technology in education; and
- D. "educational technology" means tools used in the educational process that constitute learning resources and may include closed circuit television systems, educational television and radio broadcasting, cable television, satellite, copper and fiber optic transmission, computer, video and audio laser and CD ROM [CD-ROM] discs, video and audio tapes or other technologies and the training, maintenance, equipment and computer infrastructure information, techniques and tools, used to implement technology in classrooms and library and media centers.

History: Laws 1994, ch. 96, § 2.

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-15A-3. Bureau established; chief appointed.

A. The "education technology bureau" is created within the department of education [public education department].

B. With the approval of the state board [department], the state superintendent [secretary] shall appoint a chief of the bureau.

History: Laws 1994, ch. 96, § 3.

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-15A-4. Bureau duties.

In accordance with the policies and regulations of the state board [department], the bureau shall:

- A. administer the provisions of the Technology for Education Act;
- B. develop a statewide plan for the integration of educational technology into the public schools and coordinate technology-related education activities with other state agencies, the federal government, business consortia and public or private agencies or individuals;
- C. assist school districts to develop and implement a strategic, long-term plan for utilizing educational technology in the school system;
- D. upon approval of a school district's technology plan, make distributions to school districts from the educational technology fund;
- E. recommend funding mechanisms that will support the development and maintenance of an effective educational technology infrastructure in the state;
- F. promote collaboration among government, business, educational organizations and telecommunications entities to expand and improve the use of technology in education;
- G. assess and determine the educational technology needs of school districts; and
- H. provide staff support for and coordinate the activities of the council.

History: Laws 1994, ch. 96, § 4.

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-15A-5. Council on technology in education; created; purpose.

The "council on technology in education" is created. The council shall advise the bureau, the state board [department] and the legislature regarding the establishment of appropriate educational technology standards, technology-enhanced curricula, instruction, appropriations for educational technology and administrative resources and services for the public schools.

History: Laws 1994, ch. 96, § 5.

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-15A-6. Council membership.

A. The council shall be composed of seventeen members. Members shall be appointed by the state board [department] for terms of four years. As designated by the state board at the time of initial appointment, the terms of five members shall expire at the end of two years, the terms of five members shall expire at the end of three years and the terms of seven members shall expire at the end of four years.

B. When appointing members, the state board [department] shall appoint:

- (1) one member who shall have expertise in state government;
- (2) three members who shall have expertise in school district administration;
- (3) two members who shall have expertise in providing instructional services in post-secondary, technical-vocational or adult education;
- (4) three members who shall have expertise in providing instructional services in elementary or secondary schools;
- (5) two members who shall be parents of school-age children;
- (6) one member who shall be a public school secondary student;
- (7) three members who shall have expertise in educational technology; and

(8) two members at large.

C. In making appointments to the council, the state board [department] shall give due consideration to gender and ethnicity to achieve a membership representative of the geographic and cultural diversity of New Mexico.

D. Members of the council shall elect a chairman from among the membership. The council shall meet at the call of the chairman not less than quarterly.

E. Members of the council shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

History: Laws 1994, ch. 96, § 6.

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-15A-7. Council duties.

The council shall:

A. advise the bureau on implementation of the provisions of the Technology for Education Act;

B. work with the bureau to conduct periodic assessments of the need for educational technology in the public school system to support on-site and distance learning and make recommendations to the department on how to meet those needs;

C. promote the collaborative development and implementation of educational technologies, projects and practices to enhance on-site and distance learning instruction capabilities;

D. develop and recommend to the department a statewide plan to infuse educational technology into the public school system in support of state and national education goals, including a statewide cyber academy plan that states short- and long-range goals for distance learning; and

E. provide assistance to the bureau in review of school district technology plans to support on-site and distance learning.

History: Laws 1994, ch. 96, § 7; 2007, ch. 292, § 8.

The 2007 amendment, effective June 15, 2007, required the council to support on-site and distance learning, and to develop and recommend a statewide cyber academy plan. Laws 2007, ch. 292, § 8

enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 293, § 8. See 12-1-8 NMSA 1978.

22-15A-8. Educational technology fund; created.

The "educational technology fund" is created in the state treasury. Money in the fund is appropriated to the department of education [public education department] for the purpose of implementing the provisions of the Technology for Education Act. Money in the fund shall be distributed in the manner provided in the Technology for Education Act. Money in the fund shall only be expended pursuant to warrants issued by the department of finance and administration pursuant to vouchers signed by the chief or the state superintendent [secretary]. Money in the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

History: Laws 1994, ch. 96, § 8.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

22-15A-9. Educational technology fund; distribution.

A. Upon annual review and approval of a school district's educational technology plan, the bureau shall determine a separate distribution from the educational technology fund for each school district.

B. On or before July 31 of each year, the bureau shall distribute money in the educational technology fund directly to each school district in an amount equal to ninety percent of the school district's estimated adjusted entitlement calculated pursuant to Subsection C of this section. A school district's unadjusted entitlement is that portion of the total amount of the annual appropriation that the projected membership bears to the projected membership of the state. Kindergarten membership shall be calculated on a one-half full-time-equivalent basis.

C. A school district's estimated adjusted entitlement shall be calculated by the bureau using the following procedure:

(1) a base allocation is calculated by multiplying the total annual appropriation by seventy-five thousandths percent;

(2) the estimated adjusted entitlement amount for a school district whose unadjusted entitlement is at or below the base allocation shall be equal to the base allocation. For a school district whose unadjusted entitlement is higher than the base allocation, the estimated adjusted entitlement shall be calculated pursuant to Paragraphs (3) through (6) of this subsection;

(3) the total projected membership in those school districts that will receive the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total projected state membership;

(4) the total of the estimated adjusted entitlement amounts that will be distributed to those school districts receiving the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total appropriation;

(5) the projected membership for the district is divided by the result calculated pursuant to Paragraph (3) of this subsection; and

(6) the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Paragraph (5) of this subsection multiplied by the value calculated pursuant to Paragraph (4) of this subsection.

D. On or before January 30 of each year, the bureau shall recompute each adjusted entitlement using the final funded membership for that year and, without making any additional reductions, shall allocate the balance of the annual appropriation adjusting for any over- or under-projection of membership.

E. A school district receiving funding pursuant to the Technology for Education Act is responsible for the purchase, distribution, use and maintenance of educational technology.

F. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawal of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days.

History: Laws 1994, ch. 96, § 9; 2000, ch. 89, § 1; 2003, ch. 147, § 11; 2004, ch. 125, § 5; 2005, ch. 274, § 3.

The 2005 amendment, effective April 6, 2005, in Subsection C(6), provided that the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Subsection C(5) multiplied by the value calculated pursuant to Subsection C(6); and deleted former Subsections C(7) through (13).

The 2004 amendment, effective May 19, 2004, amended Subsection C to rewrite Paragraph (7) to substitute for "legislative council service" the "department of finance and administration" and to add at the end of the paragraph "An appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to July 15 of the fiscal year following the appropriation, the district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation" and to amend Paragraph (10) to substitute "the immediately two preceding" for "prior" preceding "fiscal years".

The 2003 amendment, effective April 4, 2003, rewrote Subsection C and inserted "without making any additional reductions" preceding "shall allocate" in Subsection D.

The 2000 amendment, effective May 17, 2000, in Subsection B, inserted "adjusted" following "district's estimated", substituted "calculated pursuant to Subsection C of this section" for "as determined by the projected membership for the school year" in the first sentence and inserted "unadjusted" following "school district's" in the second sentence; added present Subsection C and redesignated the remaining subsections accordingly; and inserted "adjusted" preceding "entitlement" in present Subsection D.

22-15A-10. Annual report.

Annually, at a time specified by the department of education [public education department], each school district receiving distributions from the educational technology fund shall file a report with the department of education [public education department] regarding distributions received, direct legislative appropriations for educational technology made and not rejected, expenditures made and educational technology obtained by the district and such other related information as may be required by the department of education [public education department].

History: Laws 1994, ch. 96, § 10; 2003, ch. 147, § 12.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

The 2003 amendment, effective April 4, 2003, substituted "each school district" for "each local school district" and inserted "direct legislative appropriations for educational technology made and not rejected" following "distributions received".

22-15A-11. Educational technology deficiencies; correction.

A. No later than September 1, 2005, the bureau, with the advice of the council and the office of the chief information officer, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the educational technology deficiency correction fund, the bureau shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement

Code [13-1-28 through 13-1-199 NMSA 1978], enter into contracts to correct the deficiencies.

E. No allocation shall be made pursuant to this section unless:

- (1) the method for prioritizing projects developed by the bureau has been reviewed and approved by the council;
- (2) the school district has agreed to consult and coordinate with the public school facilities authority before installing any educational technology infrastructure;
- (3) the council has approved the proposed allocation; and
- (4) for the 2009 and subsequent fiscal years, the initial assessment required in the Technology for Education Act has been verified by an independent third party as determined in consultation with the public school capital outlay council.

F. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible consistent with the original purpose.

History: Laws 2005, ch. 222, § 2; 2007, ch. 290, § 23; 2007, ch. 292, § 9; 2007, ch. 293, § 9; 2007, ch. 294, § 1.

2007 Multiple Amendments. — Laws 2007, ch. 290, § 23, Laws 2007, ch. 292, § 9, Laws 2007, ch. 293, § 9 and Laws 2007, ch. 294, § 1 all enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 294, § 1, as the last act signed by the governor, has been compiled into the NMSA as set out above. Laws 2007, ch. 290, § 23, Laws 2007, ch. 292, § 9 and Laws 2007, ch. 293, § 9, while not compiled pursuant to 12-1-8 NMSA 1978, are set out below.

Laws 2007, ch. 294, § 1 [set out above], effective July 1, 2007, added Subsection E and relettered former Subsection E as F.

Laws 2007, ch. 290, § 23 [set out below], effective July 1, 2007, provided:

"22-15A-11. Educational technology deficiencies; correction.--

A. No later than September 1, 2005, the bureau, with the advice of the council and the secretary of information technology, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council, for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the educational technology deficiency correction fund, the bureau shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code, enter into contracts to correct the deficiencies.

E. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include

such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible consistent with the original purpose."

Laws 2007, ch. 292, § 9 and Laws 2007, ch. 293, § 9 [set out below], effective June 15, 2007, enacted identical amendments and provided:

"22-15A-11. Educational technology deficiencies; correction.--

A. No later than September 1, 2005, the bureau, with the advice of the council and the office of the chief information officer, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the educational technology deficiency correction fund, the bureau shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code, enter into contracts to correct the deficiencies.

E. No allocation shall be made pursuant to this section unless:

- (1) the method for prioritizing projects developed by the bureau has been reviewed and approved by the council;
- (2) the school district has agreed to consult and coordinate with the public school facilities authority before installing any educational technology infrastructure;
- (3) the council has approved the proposed allocation; and
- (4) for the 2009 and subsequent fiscal years, the initial assessment required in the Technology for Education Act has been verified by an independent third party as determined in consultation with the public school capital outlay council.

F. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible consistent with the original purpose."

22-15A-12. Educational technology deficiency correction fund

The "educational technology deficiency correction fund" is created in the state treasury. The fund shall consist of money appropriated, distributed or transferred to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the education technology bureau for the purpose of making allocations to correct educational technology deficiencies pursuant to Section 22-15A-11 NMSA 1978. Except as otherwise provided, any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chief of the education technology bureau.

History: Laws 2005, ch. 222, § 3.

Effective dates. — Laws 2005, ch. 222 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

22-15A-13. Obsolete computer replacement.

To the extent that money has been appropriated to replace functionally obsolete computers and network devices in public schools, including charter schools, on a five-year cycle, the bureau shall base allocations on a ratio of one computer to three students in each school. Prior to making allocations, the bureau shall compile and maintain an inventory of computer and network devices in public schools, including charter schools, and develop a methodology for prioritizing the replacement of computers and network devices to ensure that state money is expended in the most prudent manner possible consistent with the original purpose.

History: Laws 2007, ch. 292, § 10; 2007, ch. 293, § 10.

Compiler's notes. — Laws 2007, ch. 292, § 10 and Laws 2007, ch. 293, § 10 enacted identical new sections, effective June 15, 2007.
