

1 SENATE BILL 401

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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5 and Joy Garratt  
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10 AN ACT

11 RELATING TO BROADBAND; AMENDING THE SEVERANCE TAX BONDING ACT  
12 TO PROVIDE FOR THE ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS  
13 FOR EDUCATION TECHNOLOGY INFRASTRUCTURE; AMENDING THE BROADBAND  
14 ACCESS AND EXPANSION ACT; ADDING DEFINITIONS; CREATING THE  
15 EDUCATION TECHNOLOGY INFRASTRUCTURE FUND; PROVIDING FOR  
16 RULEMAKING; AUTHORIZING GRANTS; TRANSFERRING THE PUBLIC SCHOOL  
17 FACILITIES AUTHORITY'S BROADBAND DEPLOYMENT AND CONNECTIVITY  
18 PROGRAM AND STATEWIDE EDUCATION NETWORK TO THE OFFICE OF  
19 BROADBAND ACCESS AND EXPANSION; MAKING AN APPROPRIATION.  
20

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

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

24 "7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

25 A. The state board of finance shall issue and sell

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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

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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.

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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

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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

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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,

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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

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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:

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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

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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

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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

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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~~

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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:

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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

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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  
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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  
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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

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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

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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

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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

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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

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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;

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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;

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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

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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  
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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

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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

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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

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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

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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"  
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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.--

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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;



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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

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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.

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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;

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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

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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

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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.