

1 SENATE BILL 45

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO BROADBAND; AMENDING THE TAX ADMINISTRATION ACT TO
12 PROVIDE FOR THE ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS
13 FOR EDUCATION TECHNOLOGY INFRASTRUCTURE; AMENDING THE
14 PROCUREMENT CODE TO INCLUDE PROFESSIONAL SERVICE CONTRACTS FOR
15 BROADBAND INFRASTRUCTURE WITHIN THE EXCEPTIONS TO THE FOUR-YEAR
16 LIMITATION ON MULTI-TERM PROFESSIONAL SERVICE CONTRACTS;
17 ENACTING A NEW SECTION OF CHAPTER 62 NMSA 1978 TO PROVIDE FOR
18 THE REGULATION OF UTILITY POLE ATTACHMENTS; AMENDING THE
19 WIRELESS CONSUMER ADVANCED INFRASTRUCTURE INVESTMENT ACT TO
20 INCLUDE THE STATE OF NEW MEXICO WITHIN THE DEFINITION OF
21 "AUTHORITY"; AMENDING THE BROADBAND ACCESS AND EXPANSION ACT;
22 ADDING DEFINITIONS; CREATING THE EDUCATION TECHNOLOGY
23 INFRASTRUCTURE FUND; PROVIDING FOR RULEMAKING; AUTHORIZING
24 GRANTS; AMENDING THE CONNECT NEW MEXICO ACT TO PROVIDE FOR
25 DISBURSEMENTS FROM THE CONNECT NEW MEXICO FUND PURSUANT TO

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1 VOUCHERS SIGNED BY THE DIRECTOR OF THE OFFICE OF BROADBAND
2 ACCESS AND EXPANSION; TRANSFERRING THE PUBLIC SCHOOL FACILITIES
3 AUTHORITY'S BROADBAND DEPLOYMENT AND CONNECTIVITY PROGRAM TO
4 THE OFFICE OF BROADBAND ACCESS AND EXPANSION; TRANSFERRING
5 BROADBAND INFRASTRUCTURE FROM THE DEPARTMENT OF INFORMATION
6 TECHNOLOGY TO THE OFFICE OF BROADBAND ACCESS AND EXPANSION.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

11 "7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

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

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

25 C. Except as provided in Subsection D of this

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1 section, proceeds from supplemental severance tax bonds shall
2 be used only for public school capital outlay projects pursuant
3 to the Public School Capital Outlay Act or the Public School
4 Capital Improvements Act or education technology infrastructure
5 projects pursuant to the Broadband Access and Expansion Act.

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

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

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

20 (1) Paragraph (2) of Subsection A of Section
21 19 of Chapter 6 of Laws 1999 (1st S.S.) when so instructed by
22 resolution of the commission on higher education; and

23 (2) Laws 2017 (1st S.S.), Chapter 1, Section 1
24 [~~of this 2017 act~~] upon certification by the secretary of
25 finance and administration of the need to use proceeds from

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1 those bonds as outlined in that section."

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

4 "7-27-12.6. [NEW MATERIAL] SUPPLEMENTAL SEVERANCE TAX
5 BONDS--EDUCATION TECHNOLOGY INFRASTRUCTURE.--

6 A. The director of the office of broadband access
7 and expansion is authorized to certify that up to ten million
8 dollars (\$10,000,000) of proceeds of supplemental severance tax
9 bonds per fiscal year are needed for expenditures relating to
10 education technology infrastructure pursuant to the Broadband
11 Access and Expansion Act. The certification shall specify the
12 total amount needed.

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

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

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

24 C. The state board of finance shall schedule the
25 issuance and sale of the bonds in the most expeditious and

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1 economical manner possible.

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

5 SECTION 3. Section 13-1-150 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 123, as amended) is amended to read:

7 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

8 A. A multi-term contract for items of tangible
9 personal property, construction or services except for
10 professional services, in an amount under twenty-five thousand
11 dollars (\$25,000), may be entered into for any period of time
12 deemed to be in the best interests of the state agency or a
13 local public body not to exceed four years; provided that the
14 term of the contract and conditions of renewal or extension, if
15 any, are included in the specifications and funds are available
16 for the first fiscal period at the time of contracting. If the
17 amount of the contract is twenty-five thousand dollars
18 (\$25,000) or more, the term shall not exceed ten years,
19 including all extensions and renewals, except that for a
20 contract entered into pursuant to the Public Facility Energy
21 Efficiency and Water Conservation Act, the term shall not
22 exceed twenty-five years, including all extensions and
23 renewals. Payment and performance obligations for succeeding
24 fiscal periods shall be subject to the availability and
25 appropriation of funds therefor.

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1 B. A contract for professional services may not
2 exceed four years, including all extensions and renewals,
3 except for the following:

4 (1) services required to support or operate
5 federally certified medicaid, financial assistance and child
6 support enforcement management information or payment systems;

7 (2) services to design, develop or implement
8 the taxation and revenue information management systems project
9 authorized by Laws 1997, Chapter 125;

10 (3) a multi-term contract for the services of
11 trustees, escrow agents, registrars, paying agents, letter of
12 credit issuers and other forms of credit enhancement and other
13 similar services, excluding bond attorneys, underwriters and
14 financial advisors with regard to the issuance, sale and
15 delivery of public securities, may be for the life of the
16 securities or as long as the securities remain outstanding;

17 (4) services relating to the implementation,
18 operation and administration of the Education Trust Act;

19 (5) services relating to measurement and
20 verification of conservation-related cost savings and utility
21 cost savings pursuant to the Public Facility Energy Efficiency
22 and Water Conservation Act;

23 (6) services relating to the design and
24 engineering of a state public works project:

25 (a) for a period not to exceed the

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1 requisite time for project completion and a subsequent warranty
2 period; and

3 (b) upon approval of the secretary of
4 finance and administration; ~~and~~

5 (7) services relating to the design and
6 engineering of a regional water project with an estimated cost
7 of more than five hundred million dollars (\$500,000,000):

8 (a) for a period not to exceed the
9 requisite time for project completion and a subsequent warranty
10 period; and

11 (b) upon approval of the secretary of
12 finance and administration; and

13 (8) services connected to the design,
14 engineering or operation of broadband infrastructure pursuant
15 to the Broadband Access and Expansion Act."

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

18 "22-24-3. DEFINITIONS.--As used in the Public School
19 Capital Outlay Act:

20 A. "authority" means the public school facilities
21 authority;

22 B. "building system" means a set of interacting
23 parts that makes up a single, nonportable or fixed component of
24 a facility and that, together with other building systems,
25 makes up an entire integrated facility or property, including

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1 roofing, electrical distribution, electronic communication,
2 plumbing, lighting, mechanical, fire prevention, facility
3 shell, interior finishes, heating, ventilation and air
4 conditioning systems and school security systems, as defined by
5 the council;

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 D. "constitutional special schools support spaces"
10 means all facilities necessary to support the constitutional
11 special schools' educational mission that are not included in
12 the constitutional special schools' educational adequacy
13 standards, including performing arts centers, facilities for
14 athletic competition, school district administration and
15 facility and vehicle maintenance;

16 E. "council" means the public school capital outlay
17 council;

18 ~~[F. "education technology infrastructure" means the~~
19 ~~physical hardware and services used to interconnect students,~~
20 ~~teachers, school districts and school buildings necessary to~~
21 ~~support broadband connectivity and remote learning as~~
22 ~~determined by the council;~~

23 ~~G.]~~ F. "fund" means the public school capital
24 outlay fund;

25 ~~[H.]~~ G. "maximum allowable gross square foot per
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1 student" means a determination made by applying the established
2 maximum allowable square foot guidelines for educational
3 facilities based on type of school and number of students in
4 the current published New Mexico public school adequacy
5 planning guide to the department's current year certified first
6 reporting date membership;

7 ~~[F.]~~ H. "replacement cost per square foot" means
8 the statewide cost per square foot as established by the
9 council;

10 ~~[J.]~~ I. "school district" includes state-chartered
11 charter schools and the constitutional special schools;

12 ~~[K.]~~ J. "school district population density" means
13 the population density on a per square mile basis of a school
14 district as estimated by the authority based on the most
15 current tract level population estimates published by the
16 United States census bureau; and

17 ~~[L.]~~ K. "school district population density factor"
18 means zero when the school district population density is
19 greater than fifty people per square mile, six-hundredths when
20 the school district population density is greater than fifteen
21 but less than fifty-one persons per square mile and twelve-
22 hundredths when the school district population density is less
23 than sixteen persons per square mile."

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

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1 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
2 USE.--

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

6 B. Except as provided in Subsections G and I
7 through [Ø] N of this section, money in the fund may be used
8 only for capital expenditures deemed necessary by the council
9 for an adequate educational program.

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

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1 of the state board of finance.

2 D. Applications for assistance from the fund shall
3 be made by school districts to the council in accordance with
4 requirements of the council. Except as provided in Subsection
5 K of this section, the council shall require as a condition of
6 application that a school district have a current five-year
7 facilities plan that shall include a current preventive
8 maintenance plan to which the school adheres for each public
9 school in the school district.

10 E. The council shall review all requests for
11 assistance from the fund and shall allocate funds only for
12 those capital outlay projects that meet the criteria of the
13 Public School Capital Outlay Act.

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

21 (1) up to ten percent of the portion of the
22 project cost funded with distributions from the fund or five
23 percent of the total project cost, whichever is greater, may be
24 paid to the school district before work commences with the
25 balance of the grant award made on a cost-reimbursement basis;

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or

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

G. Balances in the fund may be annually appropriated for the core administrative functions of the authority pursuant to the Public School Capital Outlay Act, and, in addition, balances in the fund may be expended by the authority, upon approval of the council, for project management expenses; provided that:

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

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

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

I. The fund may be expended annually by the council for grants to school districts for the purpose of making lease

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1 payments for facilities, including facilities leased by charter
2 schools. The grants shall be made upon application by the
3 school districts and pursuant to rules adopted by the council;
4 provided that an application on behalf of a charter school
5 shall be made by the school district, but, if the school
6 district fails to make an application on behalf of a charter
7 school, the charter school may submit its own application. The
8 following criteria shall apply to the grants:

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

11 (a) the actual annual lease payments
12 owed for leasing a facility; or

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

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

25 (3) at the end of each fiscal year, any

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1 unexpended or unencumbered balance of the grant shall revert to
2 the fund;

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

7 (a) the agreement has been approved
8 pursuant to the provisions of the Public School Lease Purchase
9 Act; and

10 (b) the facilities are leased by a
11 charter school;

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

21 (6) as used in this subsection:

22 (a) "MEM" means: 1) the average full-
23 time-equivalent enrollment using leased facilities on the
24 second and third reporting dates of the prior school year; or
25 2) in the case of an approved charter school that has not

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1 commenced classroom instruction, the estimated full-time-
2 equivalent enrollment that will use leased facilities in the
3 first year of instruction, as shown in the approved charter
4 school application; provided that, after the second reporting
5 date of the current school year, the MEM shall be adjusted to
6 reflect the full-time-equivalent enrollment on that date; and

7 (b) "facilities" includes the space
8 needed for school activities.

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

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1 if the initial payments exceed the actual expenditures. Money
2 distributed from the fund to the state fire marshal or the
3 construction industries division pursuant to this subsection
4 shall be used to supplement, rather than supplant,
5 appropriations to those entities.

6 K. Pursuant to guidelines established by the
7 council, allocations from the fund may be made to assist school
8 districts in developing and updating five-year facilities plans
9 required by the Public School Capital Outlay Act; provided
10 that:

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

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

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

24 (b) the school district meets all of the
25 following requirements: 1) the school district has fewer than

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1 an average of one thousand full-time-equivalent students on the
2 second and third reporting dates of the prior school year; 2)
3 the school district has at least seventy percent of its
4 students eligible for free or reduced-fee lunch; 3) the state
5 share of the total cost, if calculated pursuant to the
6 methodology in Subsection B of Section 22-24-5 NMSA 1978, would
7 be less than fifty percent; and 4) for all educational
8 purposes, the school district has a residential property tax
9 rate of at least seven dollars (\$7.00) on each one thousand
10 dollars (\$1,000) of taxable value, as measured by the sum of
11 all rates imposed by resolution of the local school board plus
12 rates set to pay interest and principal on outstanding school
13 district general obligation bonds.

14 L. Upon application by a school district,
15 allocations from the fund may be made by the council for the
16 purpose of demolishing abandoned school district facilities;
17 provided that:

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

21 (2) there is no practical use for the
22 abandoned facility without the expenditure of substantial
23 renovation costs; and

24 (3) the council may enter into an agreement
25 with the school district to fully fund the demolition of the

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1 abandoned school district facility if Paragraphs (1) and
2 (2) of this subsection are satisfied.

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

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

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

20 SECTION 6. Section 22-24-5 NMSA 1978 (being Laws 1975,
21 Chapter 235, Section 5, as amended) is amended to read:

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

24 A. Applications for grant assistance, approval of
25 applications, prioritization of projects and grant awards shall

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1 be conducted pursuant to the provisions of this section.

2 B. Except as provided in Sections 22-24-4.3,
3 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
4 govern grant assistance from the fund for a public school
5 capital outlay project not wholly funded pursuant to Section
6 22-24-4.1 NMSA 1978:

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

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

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

16 (b) the council may award grants
17 annually to school districts for the purpose of repairing,
18 renovating or replacing public school building systems in
19 existing buildings as identified in Section 22-24-4.6 NMSA
20 1978;

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

24 (d) in an emergency in which the health
25 or safety of students or school personnel is at immediate risk

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1 or in which there is a threat of significant property damage,
2 the council may award grant assistance for a project using
3 criteria other than the statewide adequacy standards;

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

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

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

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

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

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

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

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

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

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

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

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

22 (f) in those instances in which the
23 calculation pursuant to Subparagraph (c) of this paragraph
24 yields a value less than ninety-hundredths, the phase two
25 formula value shall be one minus the value calculated in

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1 Subparagraph (c) of this paragraph plus the school district
2 population density factor;

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

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

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

21 (7) as used in this subsection:

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

24 (b) "phase two formula value" for a
25 state-chartered charter school means the phase two formula

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1 value calculated pursuant to Paragraph (5) of this subsection
2 for the school district in which the state-chartered charter
3 school is physically located;

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

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

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

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

24 (a) the school district has insufficient
25 bonding capacity over the next four years to provide the local

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1 match necessary to complete the project and, for all
2 educational purposes, has a residential property tax rate of at
3 least ten dollars (\$10.00) on each one thousand dollars
4 (\$1,000) of taxable value, as measured by the sum of all rates
5 imposed by resolution of the local school board plus rates set
6 to pay interest and principal on outstanding school district
7 general obligation bonds;

8 (b) the school district: 1) has fewer
9 than an average of eight hundred full-time-equivalent students
10 on the second and third reporting dates of the prior school
11 year; 2) has at least seventy percent of its students eligible
12 for free or reduced-fee lunch; 3) has a share of the total
13 project cost, as calculated pursuant to provisions of this
14 section, that would be greater than fifty percent; and 4) for
15 all educational purposes, has a residential property tax rate
16 of at least seven dollars (\$7.00) on each one thousand dollars
17 (\$1,000) of taxable value, as measured by the sum of all rates
18 imposed by resolution of the local school board plus rates set
19 to pay interest and principal on outstanding school district
20 general obligation bonds; or

21 (c) the school district: 1) has an
22 enrollment growth rate over the previous school year of at
23 least two and one-half percent; 2) pursuant to its five-year
24 facilities plan, will be building a new school within the next
25 two years; and 3) for all educational purposes, has a

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1 residential property tax rate of at least ten dollars (\$10.00)
2 on each one thousand dollars (\$1,000) of taxable value, as
3 measured by the sum of all rates imposed by resolution of the
4 local school board plus rates set to pay interest and principal
5 on outstanding school district general obligation bonds;

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

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

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

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

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

25 (d) the school district has submitted a

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

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

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

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

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

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1 applicable to all school districts. The standards shall
2 establish the acceptable level for the physical condition and
3 capacity of buildings, the educational suitability of
4 facilities and the need for career-technical education
5 facilities or classrooms [~~and the need for education technology~~
6 ~~infrastructure~~]. Except as otherwise provided in the Public
7 School Capital Outlay Act, the amount of outstanding deviation
8 from the standards shall be used by the council in evaluating
9 and prioritizing public school capital outlay projects.

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

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

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

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1 Capital Outlay Act;

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

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

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

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

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

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

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1 standards for public school facilities;

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

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

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

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

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

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

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

23 K. For any school district that received a
24 standards- or systems-based award from the council in fiscal
25 year 2023, the state share for any future phase of the project

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1 for which funding has not yet been awarded shall be the amount
2 calculated pursuant to Subsection B of this section for fiscal
3 year 2024, regardless of the state share at the time of the
4 initial award.

5 L. As used in this section:

6 (1) "MEM" means membership; and

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

17 SECTION 7. A new section of Chapter 62 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] ATTACHMENTS TO UTILITY POLES.--

20 A. For utility pole attachments that are not
21 regulated by federal law, the commission, in consultation with
22 the office of broadband access and expansion, shall establish
23 reasonable rates, terms and conditions for utility pole
24 attachments by rule; provided that:

25 (1) the rate shall ensure a utility of the

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1 recovery of not less than the additional cost of providing a
2 utility pole attachment, but not more than the actual operating
3 expenses and return on capital of the utility attributed to
4 that portion of the utility pole used;

5 (2) the rate for a broadband internet
6 attachment and use shall be based on the percentage of total
7 usable space on a utility pole that is used by the attachment;

8 (3) the contract for attachments to utility
9 poles shall include all such utility poles located within a
10 given municipality pursuant to a negotiated site license and
11 any applicable commission requirements; provided that the
12 contract shall not impede the right of a utility pole owner to
13 issue licenses based on inspections undertaken on a utility-
14 pole-specific basis;

15 (4) responsibility for a utility pole
16 replacement shall not be unreasonably delayed because a utility
17 pole owner is waiting to receive a new attachment request;

18 (5) the rate for a utility pole attachment
19 shall be proportional to the cost of the use of the utility
20 pole by the attachment and shall not include the cost of
21 utility pole replacement or the cost of bringing a utility pole
22 or third-party equipment into compliance with current safety
23 and construction standards unless the utility pole replacement
24 or compliance upgrades to equipment are necessitated solely by
25 the new attachment; and

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1 (6) the rate for a utility pole replacement to
2 accommodate an attachment request may allow for the requester
3 to pay portions of the cost of replacement when the need for
4 replacement is partially due to insufficient capacity,
5 clearance or loading of an existing utility pole to accommodate
6 the attachment request.

7 B. As used in this section, "utility pole" means a
8 pole or similar structure used in whole or in part for
9 communications services, electricity distribution, lighting or
10 traffic signals, but does not include a wireless support
11 structure or electric transmission structure."

12 SECTION 8. Section 63-9I-2 NMSA 1978 (being Laws 2018,
13 Chapter 17, Section 2 and Laws 2018, Chapter 69, Section 2) is
14 amended to read:

15 "63-9I-2. DEFINITIONS.--As used in the Wireless Consumer
16 Advanced Infrastructure Investment Act:

17 A. "antenna" means communications equipment that
18 transmits or receives electromagnetic radio frequency signals
19 and that is used to provide wireless services;

20 B. "applicable codes" means uniform building, fire,
21 electrical, plumbing or mechanical codes adopted by a
22 recognized national code organization and enacted by the
23 authority, including the local amendments to those codes
24 enacted by the authority solely to address imminent threats of
25 destruction of property or injury to persons, to the extent

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1 that those amendments are consistent with the Wireless Consumer
2 Advanced Infrastructure Investment Act;

3 C. "applicant" means a wireless provider that
4 submits an application;

5 D. "application" means a request submitted by an
6 applicant to an authority for a permit to collocate one or more
7 small wireless facilities or to approve the installation,
8 modification or replacement of a utility pole or wireless
9 support structure;

10 E. "authority" means a municipality, ~~[or]~~ a county
11 or the state of New Mexico;

12 F. "authority utility pole" means a utility pole,
13 owned or operated by an authority, in a right of way;

14 G. "collocate" means to install, mount, maintain,
15 modify, operate or replace one or more wireless facilities on,
16 in or adjacent to a wireless support structure or utility pole;

17 H. "communications service" means cable service as
18 defined in 47 U.S.C. Section 522(6), information service as
19 defined in 47 U.S.C. Section 153(24), mobile service as defined
20 in 47 U.S.C. Section 153(33), telecommunications service as
21 defined in 47 U.S.C. Section 153(53) or wireless service other
22 than mobile service;

23 I. "fee" means a one-time charge;

24 J. "law" includes federal, state or local law;

25 K. "permit" means the written permission of an

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1 authority for a wireless provider to install, mount, maintain,
2 modify, operate or replace a utility pole or to collocate a
3 small wireless facility on a utility pole or wireless support
4 structure;

5 L. "person":

6 (1) means an individual, corporation, limited
7 liability company, partnership, association, trust or other
8 entity or organization; and

9 (2) includes an authority;

10 M. "private easement" means an easement or other
11 real property right given for the benefit of the grantee of the
12 easement and the grantee's successors and assigns;

13 N. "rate" means a recurring charge;

14 O. "right of way":

15 (1) means the area on, below or above a public
16 roadway, highway, street, sidewalk, alley or utility easement;
17 and

18 (2) does not include the area on, below or
19 above:

20 (a) a federal interstate highway;

21 (b) a state highway or route under the
22 jurisdiction of the department of transportation;

23 (c) a private easement; or

24 (d) a utility easement that does not
25 authorize the deployment sought by a wireless provider;

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P. "small wireless facility" means a wireless facility whose:

- (1) antennas are, or could fit, inside an enclosure with a volume of six or fewer cubic feet; and
- (2) other ground- or pole-mounted wireless equipment, not including the following, is twenty-eight or fewer cubic feet in volume:
 - (a) electric meter;
 - (b) concealment elements;
 - (c) telecommunications demarcation box;
 - (d) grounding equipment;
 - (e) power transfer switch;
 - (f) cutoff switch;
 - (g) vertical cable runs for the connection of power and other services; and
 - (h) elements required by an authority in accordance with Subsection H of Section ~~[3 of the Wireless Consumer Advanced Infrastructure Investment Act]~~ 63-9I-3 NMSA 1978;

Q. "utility pole":

- (1) means a pole or similar structure used in whole or in part for communications services, electricity distribution, lighting or traffic signals; and
- (2) does not include a wireless support structure or electric transmission structure;

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R. "wireless facility":

(1) means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(a) equipment associated with wireless communications; and

(b) radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration;

(2) includes a small wireless facility; and

(3) does not include:

(a) the structure or improvements on, under or within which the equipment is collocated;

(b) a wireline backhaul facility, coaxial cable or fiber-optic cable between wireless support structures or utility poles; or

(c) coaxial or fiber-optic cable otherwise not immediately adjacent to, or directly associated with, an antenna;

S. "wireless infrastructure provider" means a person, other than a wireless services provider, that may provide telecommunications service in New Mexico and that builds or installs wireless communications transmission equipment, wireless facilities' utility poles or wireless

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1 support structures;

2 T. "wireless provider" means a wireless
3 infrastructure provider or wireless services provider;

4 U. "wireless services" means services provided to
5 the public that use licensed or unlicensed spectrum, either
6 mobile or at a fixed location, through wireless facilities;

7 V. "wireless services provider" means a person that
8 provides wireless services;

9 W. "wireless support structure" means a
10 freestanding structure, including a monopole or guyed or
11 self-supporting tower, but not including a utility pole; and

12 X. "wireline backhaul facility" means a facility
13 used to transport services by wire from a wireless facility to
14 a network."

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

17 "63-9J-1. SHORT TITLE.--~~[This act]~~ Chapter 63, Article 9J
18 NMSA 1978 may be cited as the "Broadband Access and Expansion
19 Act"."

20 SECTION 10. Section 63-9J-2 NMSA 1978 (being Laws 2021,
21 Chapter 123, Section 2, as amended) is amended to read:

22 "63-9J-2. DEFINITIONS.--As used in the Broadband Access
23 and Expansion Act:

24 A. "broadband infrastructure" means facilities and
25 equipment used to provide internet service, excluding

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1 telecommunications equipment owned, controlled or operated by a
2 public or private end user;

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

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

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

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

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

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

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

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

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

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

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

15 (5) unlicensed spectrum;

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

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

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

24 [~~I.~~] L. "open access" means equal nondiscriminatory
25 access to the state-owned broadband network by eligible

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1 entities on a technologically and competitively neutral basis,
2 regardless of whether the entity is privately or publicly
3 owned;

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

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

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

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

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

22 ~~[M-]~~ R. "statewide broadband plan" means a plan,
23 including recommended statutory changes and implementation
24 procedures, for the development and expansion of broadband
25 infrastructure and services throughout the state to meet the

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1 needs:

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

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

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

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

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

20 SECTION 11. A new section of the Broadband Access and
21 Expansion Act is enacted to read:

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

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

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1 distributions pursuant to Section 7-27-12.6 NMSA 1978,
2 appropriations, gifts, grants and donations. Disbursements
3 from the fund shall be made upon warrants drawn by the
4 secretary of finance and administration pursuant to vouchers
5 signed by the director. Balances in the fund at the end of a
6 fiscal year shall not revert.

7 B. The fund may be expended annually by the
8 broadband office for education technology infrastructure
9 projects that are in conformance with the standards and
10 guidelines developed pursuant to Sections 12 and 13 of this
11 2024 act and grants to school districts for education
12 technology projects, including expenses for management of such
13 projects; provided that the total amount of project management
14 expense assistance from the fund per project shall not exceed
15 five percent of the project grant.

16 C. The broadband office, with the advice of the
17 connect New Mexico council, shall establish procedures and
18 cost-sharing requirements for applications to the fund by
19 rule."

20 SECTION 12. A new section of the Broadband Access and
21 Expansion Act is enacted to read:

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

24 A. No later than January 1, 2025, the broadband
25 office, with the advice of the connect New Mexico council,

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1 shall define and develop:

2 (1) minimum adequacy standards for an
3 education technology infrastructure deficiency corrections
4 initiative to identify and determine reasonable costs for
5 correcting education technology infrastructure deficiencies in
6 or affecting school districts;

7 (2) a methodology for prioritizing projects to
8 correct education technology infrastructure deficiencies in or
9 affecting school districts; and

10 (3) a methodology for determining a school
11 district's share of the project costs.

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

19 (1) students;
20 (2) school buses;
21 (3) internet connectivity within a school
22 district;

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

25 (5) a statewide education network."

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1 SECTION 13. A new section of the Broadband Access and
2 Expansion Act is enacted to read:

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

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

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

- 12 (1) school district geographic size and
13 population;
- 14 (2) school district population density;
- 15 (3) local property tax base;
- 16 (4) the current condition of education
17 technology infrastructure relative to the adequacy standards;
18 and

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

22 C. The broadband office may designate an area that
23 equals a contiguous attendance area of one or more existing
24 schools as a high-growth area if it determines that within five
25 years of the grant allocation decision, the estimated use of

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1 the proposed education technology infrastructure project will
2 exceed the functional capacity of the project as determined by
3 the broadband office by rule.

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

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

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

15 G. The broadband office shall establish criteria to
16 be used in education technology infrastructure projects that
17 receive grant assistance pursuant to the Broadband Access and
18 Expansion Act. In establishing the criteria, the broadband
19 office shall consider:

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

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

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

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

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

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

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

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

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

20 (a) enrollment projections;

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

24 (c) the education technology
25 infrastructure needs of charter schools located in the school

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1 district;

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

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

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

17 I. After consulting with the connect New Mexico
18 council and other experts, the broadband office shall regularly
19 review and update statewide adequacy standards applicable to
20 all school districts. Except as otherwise provided in the
21 Broadband Access and Expansion Act, the amount of outstanding
22 deviation from the standards shall be used by the broadband
23 office in evaluating and prioritizing education technology
24 infrastructure projects.

25 J. No later than November 1 of each year, the

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1 broadband office shall prepare a report summarizing its
2 education technology infrastructure activities during the
3 previous fiscal year. The report shall describe in detail all
4 projects funded, the progress of projects previously funded but
5 not completed, the criteria used to prioritize and fund
6 projects and all other broadband office actions. The report
7 shall be submitted to the public education commission, the
8 governor, the legislative finance committee, the legislative
9 education study committee and the legislature."

10 SECTION 14. Section 63-9K-1 NMSA 1978 (being Laws 2021,
11 Chapter 120, Section 1) is amended to read:

12 "63-9K-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
13 ~~act]~~ Chapter 63, Article 9K NMSA 1978 may be cited as the
14 "Connect New Mexico Act"."

15 SECTION 15. Section 63-9K-3 NMSA 1978 (being Laws 2021,
16 Chapter 120, Section 3, as amended) is amended to read:

17 "63-9K-3. COUNCIL CREATED--POWERS.--

18 A. The "connect New Mexico council" is created and
19 administratively attached to the department.

20 B. The council is composed of the following fifteen
21 members:

22 (1) the secretary of transportation or the
23 secretary's designee;

24 (2) the secretary of economic development or
25 the secretary's designee;

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1 (3) the secretary of cultural affairs or the
2 secretary's designee;

3 (4) the secretary of information technology or
4 the secretary's designee;

5 (5) the executive director of the New Mexico
6 mortgage finance authority or the executive director's
7 designee;

8 (6) the secretary of higher education or the
9 secretary's designee;

10 (7) the ~~[director of the public school~~
11 ~~facilities authority or the director's designee]~~ secretary of
12 public education or the secretary's designee;

13 (8) five members of the public who have
14 experience with broadband access and connectivity challenges
15 for either private business or public institutions, appointed
16 as follows:

17 (a) one member appointed by the speaker
18 of the house of representatives;

19 (b) one member appointed by the minority
20 floor leader of the house of representatives;

21 (c) one member appointed by the
22 president pro tempore of the senate;

23 (d) one member appointed by the minority
24 floor leader of the senate; and

25 (e) one member appointed by the

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1 governor; and

2 (9) three members appointed by the secretary
3 of Indian affairs: one representative of the Navajo Nation,
4 one representative of Apache tribal governments and one
5 representative of Indian pueblo tribal governments, who are
6 experienced with broadband access and connectivity issues.

7 C. The chair of the council shall be elected by a
8 quorum of the council members. The council shall meet monthly
9 or at the call of the chair. A majority of members constitutes
10 a quorum for the transaction of business. The affirmative vote
11 of at least a majority of a quorum present shall be necessary
12 for an action to be taken by the council.

13 D. Each member of the council appointed pursuant to
14 Paragraph (8) or (9) of Subsection B of this section shall be
15 appointed to a four-year term; provided that to provide for
16 staggered terms:

17 (1) two of the members initially appointed
18 pursuant to Paragraph (8) of Subsection B of this section shall
19 be appointed for a term of two years by lot; and

20 (2) one member initially appointed pursuant to
21 Paragraph (9) of Subsection B of this section shall be
22 initially appointed for a term of two years by lot.

23 E. Public members of the council shall be
24 reimbursed for attending meetings of the council as provided
25 for nonsalaried public officers in the Per Diem and Mileage Act

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1 and shall receive no other compensation, perquisite or
2 allowance.

3 F. Public members of the council are appointed
4 public officials of the state while carrying out their duties
5 and activities under the Connect New Mexico Act.

6 G. Council members shall be governed by the
7 Governmental Conduct Act.

8 H. The council shall be staffed by the department."

9 SECTION 16. Section 63-9K-6 NMSA 1978 (being Laws 2021,
10 Chapter 120, Section 6, as amended) is amended to read:

11 "63-9K-6. CONNECT NEW MEXICO FUND CREATED.--

12 A. The "connect New Mexico fund" is created in the
13 state treasury. The fund consists of appropriations, gifts,
14 grants and donations. Money in the fund is subject to
15 appropriation by the legislature to the ~~[council]~~ broadband
16 office for the purpose of administering the broadband grant
17 program. 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 ~~[chair of the council]~~
20 director of the broadband office. Any unexpended or
21 unencumbered balance in the fund remaining at the end of any
22 fiscal year shall not revert to the general fund.

23 B. The broadband office shall implement a grant
24 program to develop and expand broadband infrastructure and
25 services and support digital inclusion; provided that the

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1 broadband office shall each year seek to award grants for
2 proposals submitted by the following entities throughout the
3 state:

- 4 (1) local governments;
- 5 (2) state agencies;
- 6 (3) public educational institutions;
- 7 (4) tribal governments;
- 8 (5) entities created by a joint powers
9 agreement pursuant to the Joint Powers Agreements Act; and
- 10 (6) private entities for broadband
11 infrastructure to provide service primarily for residential
12 purposes.

13 C. When approving grants from the connect New
14 Mexico fund, the broadband office shall give consideration to:

- 15 (1) the extent to which the project connects
16 unserved and underserved populations of New Mexico, with
17 priority given to projects that will connect unserved
18 populations;
- 19 (2) the extent to which the project meets or
20 exceeds the baseline standards established by the federal
21 communications commission;
- 22 (3) the extent to which the project leverages
23 existing infrastructure;
- 24 (4) the extent to which the project
25 complements or coordinates with the statewide broadband plan;

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1 (5) the extent to which the project leverages
2 regional collaboration;

3 (6) the degree to which the project fosters
4 digital inclusion;

5 (7) the extent to which the project stimulates
6 in-state economic development, including the creation of jobs
7 and apprenticeships;

8 (8) the extent to which the project leverages
9 in-kind or financial support from local agencies or entities,
10 federal assistance funding or federal Coronavirus Aid, Relief,
11 and Economic Security Act, federal Consolidated Appropriations
12 Act, 2021 or federal American Rescue Plan Act of 2021 funding;
13 and

14 (9) for a grant award to a private entity, the
15 extent to which the grantee contributes matching funds or in-
16 kind support for the project, the number of existing residences
17 to which internet services would be made available as a
18 percentage of the total number of existing locations to which
19 internet services would be made available by the project and
20 the extent to which the project fosters digital equity."

21 SECTION 17. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
22 PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL
23 OBLIGATIONS AND STATUTORY REFERENCES.--

24 A. On the effective date of this act:

25 (1) all functions, personnel, money,

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1 appropriations, records, furniture, equipment, supplies and
2 other property pertaining to the broadband deployment and
3 connectivity program are transferred to the office of broadband
4 access and expansion;

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

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

12 B. As used in this section, "broadband deployment
13 and connectivity program" means the program administratively
14 established by the public school facilities authority to
15 fulfill its support functions to the public school capital
16 outlay council to meet the council's duties pursuant to Section
17 22-24-4.5 NMSA 1978.

18 SECTION 18. TEMPORARY PROVISION--TRANSFER OF BROADBAND
19 INFRASTRUCTURE.--On the effective date of this act, all
20 broadband infrastructure owned, leased or operated by the
21 department of information technology pursuant to the Broadband
22 Access and Expansion Act is transferred to the office of
23 broadband access and expansion.

24 SECTION 19. REPEAL.--Section 22-24-4.5 NMSA 1978 (being
25 Laws 2014, Chapter 28, Section 4, as amended) is repealed.

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SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2024.