HOUSE BILL 10

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY
Natalie Figueroa and Joy Garratt and Susan K. Herrera and
Candie G. Sweetser and Christine Chandler

AN ACT
RELATING TO BROADBAND; ENACTING THE CONNECT NEW MEXICO ACT;
CREATING THE BROADBAND DEVELOPMENT DIVISION OF THE DEPARTMENT
OF INFORMATION TECHNOLOGY; ESTABLISHING DUTIES; ESTABLISHING
THE BROADBAND DEVELOPMENT DIVISION AS THE COORDINATOR OF STATE
BROADBAND PROGRAMS; PROVIDING FOR PLANNING; ESTABLISHING THE
CONNECT NEW MEXICO FUND; PROVIDING FOR GRANTS; REQUIRING
REPORTS; RAISING THE LEVELS OF DISBURSEMENT FOR BROADBAND FROM
THE STATE RURAL UNIVERSAL SERVICE FUND; REQUIRING THAT STATE
AGENCIES COORDINATE WITH THE BROADBAND DEVELOPMENT DIVISION
WHEN MAKING APPLICATIONS FOR FEDERAL OR OTHER FUNDING
ASSISTANCE FOR BROADBAND INFRASTRUCTURE OR FOR THE PURCHASE OF
BROADBAND INFRASTRUCTURE TO ENSURE THAT THE APPLICATIONS AND
PURCHASES ARE IN ACCORD WITH THE BROADBAND DEVELOPMENT PLAN
ESTABLISHED PURSUANT TO THE CONNECT NEW MEXICO ACT; MAKING AN
APPROPRIATION.

.218650.7
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Connect New Mexico Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Connect New Mexico Act:

A. "2020 broadband plan" means the State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment published by department of information technology in June 2020;

B. "broadband development plan" means a plan developed by the division that may be an updated revision of the 2020 broadband plan, including budget recommendations and recommended statutory changes for the development and expansion of broadband infrastructure and services throughout the state to:

(1) serve the continuing and growing needs of New Mexico's educational systems, governmental operations, health care systems, industry and businesses, public safety systems and residents;

(2) drive job creation, promote innovation and expand markets for New Mexico businesses; and

(3) improve accessibility for unserved and underserved communities and populations;

C. "broadband infrastructure" means any cable or...
device used for high-capacity transmission of a wide range of
frequencies enabling a large number of electronic messages to
be transmitted or received simultaneously;

D. "department" means the department of information
technology;

E. "digital equity" means information technology
needed for civic and cultural participation, employment,
business and economic development, life-long learning and
access to essential services generally available to residents
regardless of their racial grouping, socioeconomic status or
cultural identity;

F. "digital inclusion" means access to and the
ability to use information technologies by all state residents;

G. "director" means the director of the division;

H. "division" means the broadband development
division of the department;

I. "federal assistance funding" means federal grant
and loan programs that provide full or matching funding for the
development or maintenance of broadband infrastructure,
training in the use or administration of internet-based
services or the purchase of computers or other devices that
access the internet;

J. "local government" means the government of a
municipality, county or political subdivision of the state or
an entity operating pursuant to a joint powers agreement
pursuant to the Planning District Act or the Regional Planning Act;

K. "public educational institution" means a public school that receives state funding for its operations, a school district, a public post-secondary educational institution or a state agency that provides administrative services, funding or technical support to public schools, school districts and public post-secondary educational institutions;

L. "quality of service" means the standards for broadband service established by the division pursuant to the Connect New Mexico Act, including minimum upload and download speeds established pursuant to Subsection O of this section, number of days per month without service interruption and other standards that the division establishes by rule;

M. "tribal government" means the government of a federally or state-recognized Indian nation, pueblo or tribe;

N. "underserved" means an area or property that does not receive internet quality of service access; and

O. "unserved" means an area or property that does not receive fixed, terrestrial internet access with transmission speed at the minimum defined by federal standards promulgated pursuant to federal law.

SECTION 3. [NEW MATERIAL] BROADBAND DEVELOPMENT DIVISION--REPORTS--AGENCY COORDINATION--CONSULTATION--TECHNICAL AND PLANNING ASSISTANCE.--
A. On or before January 1, 2022, the division shall provide a report to the legislative finance committee on the progress and implementation of the broadband development plan.

B. The division shall oversee the coordination of state agency broadband programs and budget requests for broadband projects and may be the applicant for federal and private sector broadband funding assistance for state agencies.

C. The division shall coordinate with all state agencies and public educational institutions regarding budget requests for broadband and the purchase of broadband infrastructure, devices and services, with the goal of implementing bulk pricing agreements.

D. The division shall facilitate communication and coordination among local governments, public educational institutions, private entities and state agencies regarding infrastructure projects, with a goal toward minimizing the need to re-dig trenches over the same routes to install separate utility and broadband service lines.

E. The division shall consult and negotiate with federal, local, state and tribal government agencies, with the goal of creating a uniform system of permits, licenses and regulation of rights of way for broadband infrastructure across all governmental jurisdictions within each region of the state, with the goal of creating uniform permitting and licensing requirements statewide.
F. The division shall provide technical and planning assistance to local governments, public educational institutions, state agencies and tribal governments in the design, development or implementation of their own plans for the development of broadband service. The division shall prioritize such assistance based on a planning effort's potential to serve underserved or unserved populations, promote digital equity or digital inclusion or promote regional planning.

SECTION 4. [NEW MATERIAL] QUALITY OF SERVICE STANDARDS.--

A. The division shall establish by rule standards for quality of service for businesses, homes, state and local governmental agencies and public educational institutions. In establishing the quality of service standards, the division shall consider standards established by federal agencies and neighboring states, with the goal of ensuring that New Mexico remains regionally and nationally competitive in the areas of business, education and government services.

B. The division shall create and maintain maps identifying the location of state-owned cell towers and other telecommunication installations and broadband infrastructure, locations where broadband infrastructure is needed and identification of unserved and underserved areas on a county-by-county basis.

SECTION 5. [NEW MATERIAL] DEVELOPMENT COORDINATION--
FEDERAL AND STATE AGENCY AND LOCAL AND TRIBAL GOVERNMENT
OUTREACH--BROADBAND KNOWLEDGE AND DIGITAL EQUITY ANALYSIS AND
PLAN.--

A. The division may convene meetings on a regional
basis, with invitations to local and tribal governments, public
educational institutions and state agencies, to examine and
develop opportunities for coordinated applications for federal
assistance or private sector funding and for broadband
development investment on a regional basis.

B. The division shall consult local and tribal
governments, public educational institutions and state agencies
to develop a digital equity analysis and plan to address:

(1) the challenges to digital inclusion that
are posed by the lack of affordable quality service, broadband-
enabled devices or the knowledge of how to use the devices
effectively in different age, cultural or geographic
populations across the state;

(2) the federal and private sector programs
that could be applied to by state, local or tribal government
agencies to address the challenges identified in Paragraph (1)
of this subsection; and

(3) existing state programs or state programs
that could be established that address or could leverage
federal and private sector programs to address the challenges
identified in Paragraph (1) of this subsection.
SECTION 6. [NEW MATERIAL] BROADBAND DEVELOPMENT PLAN--
ADVISORY COMMITTEES--REPORTS.--

A. On or before September 1, 2025 and every three years after that, the division shall update and revise the statewide broadband development plan developed pursuant to the Connect New Mexico Act and report it to the governor and the legislature.

B. The division shall form a statewide advisory committee of educational, governmental, public and private sector interests to examine and develop opportunities for coordinated applications for federal or private sector assistance funding and to facilitate the collection of information and the development of proposals for the statewide broadband development plan, and all state agencies and public educational institutions shall provide relevant broadband-related information they have collected or developed as requested by the division; provided that when a statewide advisory committee is formed, agencies from at least three different tribal governments shall be invited to have representatives on the committee.

C. The division may form regional or issue-specific advisory committees of appropriate educational, governmental, public and private sector interests to develop regional broadband planning or a plan to resolve particular broadband challenges or to examine opportunities for applications for
federal or private sector funding assistance; provided that when a regional advisory committee is formed for a region with two or more tribal government jurisdictions or when an issue-specific advisory committee is formed to address a challenge generally faced by communities or government agencies regardless of jurisdiction, agencies from at least two different tribal governments shall be invited to have representatives on the committee.

SECTION 7. [NEW MATERIAL] CONNECT NEW MEXICO FUND CREATED.--

A. The "connect New Mexico fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature to the division for the purpose of administering the broadband grant program. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director or the director's designee. Any unexpended and unencumbered balance in the fund remaining at the end of any fiscal year shall not revert to the general fund.

B. The division shall establish a broadband grant program to develop, expand and support digital inclusion; provided that:

(1) the grants shall be on a competitive
basis; and

(2) the division shall each year seek to award
grants for proposals submitted by each of the following:

(a) local governments;
(b) state agencies;
(c) public educational institutions; and
(d) tribal governments.

C. The division shall adopt rules establishing the
application procedure, the required qualifications for projects
and the purposes for which the grants may be used. In
approving grants, consideration shall be given to:

(1) the extent to which the project connects
unserved and underserved populations of New Mexico, with
priority given to projects that will connect unserved
populations;

(2) the extent to which the project leverages
existing infrastructure;

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

(4) the extent to which the project
complements or coordinates with the statewide broadband
development plan;

(5) the extent to which the project stimulates
in-state economic development, including the creation of jobs
and apprenticeships; and
(6) the extent to which the project leverages in-kind or financial support from local agencies or entities.

SECTION 8. [NEW MATERIAL] DATA COLLECTION--ANNUAL REPORT.--

A. By October 1 of each year, the division shall provide to the appropriate legislative interim committees a report on the access to and quality of service of broadband across the state. Information shall be provided on a county-by-county basis.

B. The report shall contain the following information:

(1) progress achieved toward digital equity and digital inclusion;

(2) progress achieved on implementation of the broadband development plan;

(3) identified obstacles to the establishment of uniform right-of-way ordinances or rules across the state;

(4) recommended statutory, regulatory or policy changes and budget recommendations for the development and expansion of broadband infrastructure and digital equity and inclusion;

(5) the status of the creation of maps pursuant to Subsection B of Section 4 of the Connect New Mexico Act; and

(6) information on the broadband grant.
program, including:

  (a) a list of grant recipients;
  (b) the amount and date of each grant;
  (c) a description of each project funded;
  (d) a description of how each project contributes to the statewide broadband development plan and demonstrates increased access and quality of service for the unserved and underserved populations of New Mexico, creates economic benefits or pilots or demonstrates new technologies or new implementations of existing technologies; and
  (e) any identified challenges to successful grant applications.

SECTION 9. Section 9-4A-6 NMSA 1978 (being Laws 2004, Chapter 25, Section 6, as amended) is amended to read:

"9-4A-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department, or any division of the department, except where authority conferred upon any
division therein is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Cultural Affairs Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will
improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of the administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:
   (a) minimize or eliminate duplication of services and jurisdictional conflicts;
   (b) coordinate activities and resolve problems of mutual concern; and
   (c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; [and]

(10) appoint, with the governor's consent, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary; and

(11) coordinate with the broadband development
division of the department of information technology to ensure
that purchases of broadband infrastructure and applications for
federal assistance funding and for grants from other sources
for broadband infrastructure are made in accordance with the
broadband development plan established pursuant to the Connect
New Mexico Act.

C. The secretary may:

(1) apply for and receive, with the
governor's approval, in the name of the department, any public
or private funds, including United States government funds,
available to the department to carry out its programs, duties
or services; and

(2) acquire by purchase, gift, endowment or
legacy real or personal property and hold title to that
property in the name of the department for the purpose of
promoting, encouraging and supporting the performing arts in
New Mexico. Property acquired pursuant to this paragraph shall
be held under the control and authority of the department.

D. Where functions of departments overlap, or a
function assigned to one department could better be performed
by another department, a secretary may recommend appropriate
legislation to the next session of the legislature for its
approval.

E. The secretary may make and adopt such reasonable
procedural rules as may be necessary to carry out the duties of
the department and its divisions. A rule promulgated by the
director of a division in carrying out the functions and duties
of the division shall not be effective until approved by the
secretary. Unless otherwise provided by statute, a rule
affecting a person or agency outside the department shall not
be adopted, amended or repealed without a public hearing on the
proposed action before the secretary or a hearing officer
designated by the secretary. The public hearing shall be held
in Santa Fe unless otherwise permitted by statute. Notice of
the subject matter of the rule, the action proposed to be
taken, the time and place of the hearing, the manner in which
interested persons may present their views and the method by
which copies of the proposed rule or proposed amendment or
repeal of an existing rule may be obtained shall be published
once at least thirty days prior to the hearing date in a
newspaper of general circulation and mailed at least thirty
days prior to the hearing date to all persons who have made a
written request for advance notice of hearing. All rules shall
be filed in accordance with the State Rules Act.

F. The secretary may authorize vendors to sell
tickets, passes or other department products in compliance with
rules adopted by the secretary. A vendor authorized to sell
tickets, passes or other department products may retain a
portion of the sale price."

SECTION 10. Section 9-21-6 NMSA 1978 (being Laws 2004,
.218650.7
- 16 -
Chapter 18, Section 6 and Laws 2004, Chapter 24, Section 6) is amended to read:

"9-21-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform [his] the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or any division of the department, except where authority conferred upon any division in the department is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Indian Affairs Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units that will enable it to function most efficiently, subject to any provisions of law requiring or
establishing specific organizational units;

(4) within the limitations of available
appropriations and applicable laws, employ and fix the
compensation of those persons necessary to discharge the
secretary's duties;

(5) take administrative action by issuing
orders and instructions, not inconsistent with the law, to
ensure implementation of and compliance with the provisions of
law with the administration or execution of which the secretary
is responsible, and to enforce those orders and instructions by
appropriate administrative action or actions in the courts;

(6) conduct research and studies that will
improve the operations of the department and the provision of
services to the citizens of the state;

(7) provide courses of instruction and
practical training for employees of the department and other
persons involved in the administration of programs with the
objective of improving the operations and efficiency of
administration;

(8) prepare an annual budget of the
department;

(9) provide cooperation, at the request of
heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of
services and jurisdictional conflicts;
(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies; [and]

(10) appoint, with the governor's consent, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary; and

(11) coordinate with the broadband development division of the department of information technology to ensure that purchases of broadband infrastructure and applications for federal assistance funding and for grants from other sources for broadband infrastructure are made in accordance with the broadband development plan established pursuant to the Connect New Mexico Act.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap, or a function assigned to one department could better be performed
by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of a division in carrying out the functions and duties of the division shall not be effective until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person or agency outside the department shall not be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act."

SECTION 11. Section 9-24-8 NMSA 1978 (being Laws 2004, .218650.7

- 20 -
Chapter 27, Section 8) is amended to read:

"9-24-8. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's duties, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Public Education Department Act or the Public School Code, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

(2) delegate power to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available
appropriations and applicable laws, employ and fix the
compensation of those persons necessary to discharge [his] the
secretary's duties;

(5) take administrative action by issuing
orders and instructions, not inconsistent with law, to ensure
implementation of and compliance with the provisions of law for
which administration or execution [he] the secretary is
responsible and to enforce those orders and instructions by
appropriate administrative action in the courts;

(6) conduct research and studies that will
improve the operation of the department and the provision of
services to the citizens of the state;

(7) provide courses of instruction and
practical training for employees of the department and other
persons involved in the administration of programs with the
objectives of improving the operations and efficiency of
administration and of promoting comprehensive, coordinated and
culturally sensitive services that address the education of the
whole child;

(8) prepare an annual budget for the
department; [and]

(9) provide cooperation, at the request of
administratively attached agencies and adjunct agencies, in
order to:

(a) minimize or eliminate duplication of
services and jurisdictional conflicts;

(b) coordinate activities and resolve
problems of mutual concern; and

(c) resolve by agreement the manner and
extent to which the department shall provide budgeting, [record
keeping] recordkeeping and related clerical assistance to
administratively attached agencies; and

(10) coordinate with the broadband development
division of the department of information technology to ensure
that purchases of education technology infrastructure and
applications for federal assistance funding and for grants from
other sources for education technology infrastructure are made
in accordance with the broadband development plan established
pursuant to the Connect New Mexico Act.

C. The secretary may apply for and receive, with
the governor's approval, in the name of the department, any
public or private funds, including United States government
funds, available to the department to carry out its programs,
duties or services.

D. The secretary may make and adopt such reasonable
and procedural rules as may be necessary to carry out the
duties of the department and its divisions. No rule
promulgated by the director of any division in carrying out the
functions and duties of the division shall be effective until
approved by the secretary. Unless otherwise provided by

.218650.7
statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act."

SECTION 12. Section 9-27-4 NMSA 1978 (being Laws 2007, Chapter 290, Section 4) is amended to read:

"9-27-4. DEPARTMENT CREATED--DIVISIONS.--

A. The "department of information technology" is created. The department is a cabinet department and includes the following divisions:

(1) broadband development division;
[(1)] (2) program support division;
[(2)] (3) compliance and project management division;
[(3)] (4) public policy and outreach division;
[(4)] (5) service management division;
division; and

(4) enterprise services division.

B. The secretary:

(1) may organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy; and

(2) shall develop performance measures for the divisions pursuant to the Accountability in Government Act.

C. The broadband development division shall implement and periodically update the broadband development plan pursuant to the Connect New Mexico Act.

SECTION 13. Section 13-1-97 NMSA 1978 (being Laws 1984, Chapter 65, Section 70, as amended) is amended to read:

"13-1-97. CENTRALIZATION OF PROCUREMENT AUTHORITY.--

A. All procurement for state agencies shall be performed by the state purchasing agent except as otherwise provided in the Procurement Code.

B. All procurement for state agencies excluded from the requirement of procurement through the office of the state purchasing agent shall be performed by a central purchasing office, the chief procurement officer or as otherwise provided in the Procurement Code.

C. All procurement for local public bodies shall be performed by a central purchasing office designated by the
governing authority of the local public body except as
otherwise provided in the Procurement Code. Local public
bodies shall identify their designated central purchasing
office to the state purchasing agent and shall report their
chief procurement officers to the state purchasing agent.

D. All procurement of broadband infrastructure by
state agencies shall be in coordination with the broadband
development division of the department of information
technology to ensure that purchases of broadband infrastructure
and applications for federal assistance funding and for grants
from other sources for broadband infrastructure are made in
accordance with the broadband development plan established
pursuant to the Connect New Mexico Act."

SECTION 14. Section 18-2-4 NMSA 1978 (being Laws 1961,
Chapter 126, Section 4, as amended) is amended to read:

"18-2-4. DUTIES OF THE STATE LIBRARIAN.--

A. The state librarian shall:

(1) administer the state library;

(2) administer grants-in-aid and encourage
local library service and generally promote an effective
statewide library system;

(3) make studies and surveys of public library
needs;

(4) supply advice and information to existing
libraries and aid in the establishment of new libraries;
(5) obtain each year, from all libraries in the state, reports showing the conditions, growth and development together with such other facts and statistics regarding them as are of public interest;

(6) cooperate with other educational services and governmental agencies of the state and with library agencies of other states and with national library agencies;

(7) cooperate with the administrative services division of the cultural affairs department in preparing the budget for the state library;

(8) administer the library extension service;

(9) make rules and regulations necessary to administer the library division as provided by law and to perform other duties as provided by law; [and]

(10) establish and administer a library depository and distribution system for state documents and publications; and

(11) coordinate with the broadband development division of the department of information technology to ensure that purchases of broadband infrastructure and applications for federal assistance funding and for grants from other sources for broadband infrastructure are made in accordance with the broadband development plan established pursuant to the Connect New Mexico Act.

B. The state librarian may solicit and receive
funds or property, including federal funds and public and
private grants, for programs and activities administered by the
state librarian."

SECTION 15. Section 22-24-3 NMSA 1978 (being Laws 1975,
Chapter 235, Section 3, as amended by Laws 2018, Chapter 66,
Section 1 and by Laws 2018, Chapter 71, Section 2) is amended
to read:

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

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

B. "broadband infrastructure" means any cable or
device used for high-capacity transmission of a wide range of
frequencies enabling a large number of electronic messages to
be transmitted or received simultaneously;

[C-] C. "building system" means a set of
interacting parts that makes up a single, nonportable or fixed
component of a facility and that, together with other building
systems, makes up an entire integrated facility or property,
including roofing, electrical distribution, electronic
communication, plumbing, lighting, mechanical, fire prevention,
facility shell, interior finishes, heating, ventilation and air
conditioning systems and school security systems, as defined by
the council;

[D-] D. "constitutional special schools" means the
New Mexico school for the blind and visually impaired and the
New Mexico school for the deaf;

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

[E] F. "council" means the public school capital
outlay council;

[F] G. "education technology infrastructure" means
the physical hardware used to interconnect education technology
equipment for school districts and school buildings necessary
to support broadband connectivity as determined by the council;

[G] H. "fund" means the public school capital
outlay fund;

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

[I] J. "replacement cost per square foot" means
.218650.7
the statewide cost per square foot as established by the council;

[J-] K. "school district" includes state-chartered charter schools and the constitutional special schools;

[K-] L. "school district population density" means the population density on a per square mile basis of a school district as estimated by the authority based on the most current tract level population estimates published by the United States census bureau; and

[L-] M. "school district population density factor" means zero when the school district population density is greater than fifty people per square mile, six-hundredths when the school district population density is greater than fifteen but less than fifty-one persons per square mile and twelve-hundredths when the school district population density is less than sixteen persons per square mile."

SECTION 16. Section 22-24-9 NMSA 1978 (being Laws 2003, Chapter 147, Section 1, as amended) is amended to read:

"22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--CREATION--POWERS AND DUTIES.--

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the
council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director, deputies and all other employees of the authority shall be exempt from the provisions of the Personnel Act.

B. The authority shall:

(1) serve as staff to the council;

(2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;

(3) assist school districts with:

(a) the development and implementation of five-year facilities plans and preventive maintenance plans;

(b) procurement of architectural and engineering services;

(c) management and oversight of construction activities; and

(d) training programs;

(4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;

(5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;
(6) ensure that public school capital outlay projects are in compliance with applicable building codes;

(7) conduct on-site inspections as necessary to ensure that the construction specifications are being met and periodically inspect all of the documents related to projects;

(8) require the use of standardized construction documents and the use of a standardized process for change orders;

(9) have access to the premises of a project and any documentation relating to the project;

(10) after consulting with the department, recommend building standards for public school facilities to the council and ensure compliance with building standards adopted by the council;

(11) notwithstanding the provisions of Subsection D of Section 22-24-6 NMSA 1978, account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee and the legislature;

(12) maintain a database of the condition of school facilities and maintenance schedules;

(13) as a central purchasing office pursuant
to the Procurement Code and as directed by the council, select
contractors and enter into and administer contracts for certain
emergency projects funded pursuant to Subparagraph (b) of
Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978;

(14) ensure that outstanding deficiencies are
corrected pursuant to Section 22-24-4.1 NMSA 1978. In the
performance of this duty, the authority:

(a) shall work with school districts to
validate the assessment of the outstanding deficiencies and the
projected costs to correct the deficiencies;

(b) shall work with school districts to
provide direct oversight of the management and construction of
the projects that will correct the outstanding deficiencies;

(c) shall oversee all aspects of the
contracts entered into by the council to correct the
outstanding deficiencies;

(d) may conduct on-site inspections
while the deficiencies correction work is being done to ensure
that the construction specifications are being met and may
periodically inspect all of the documents relating to the
projects;

(e) may require the use of standardized
construction documents and the use of a standardized process
for change orders;
(f) may access the premises of a project and any documentation relating to the project; and

(g) shall maintain, track and account for deficiency correction projects separately from other capital outlay projects funded pursuant to the Public School Capital Outlay Act; and

(15) coordinate with the broadband development division of the department of information technology to ensure that purchases of broadband infrastructure and applications for federal assistance funding and for grants from other sources are made in accordance with the broadband development plan established pursuant to the Connect New Mexico Act.

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

D. A school district, aggrieved by a decision or recommendation of the authority, may appeal the matter to the council by filing a notice of appeal with the council within thirty days of the authority's decision or recommendation. Upon filing of the notice:

(1) the decision or recommendation of the authority shall be suspended until the matter is decided by the
council;

(2) the council shall hear the matter at its next regularly scheduled hearing or at a special hearing called by the chair for that purpose;

(3) at the hearing, the school district, the authority and other interested parties may make informal presentations to the council; and

(4) the council shall finally decide the matter within ten days after the hearing."

SECTION 17. Section 63-9H-3 NMSA 1978 (being Laws 1999, Chapter 295, Section 3, as amended) is amended to read:

"63-9H-3. DEFINITIONS.--As used in the Rural Telecommunications Act of New Mexico:

A. "affordable rates" means rates for basic service that promote universal service within a local exchange service area, giving consideration to the economic conditions and costs to provide service in the area in which service is provided;

B. "basic service" means service that is provided to a rural end-user customer that is consistent with the federal act;

C. "broadband infrastructure" means any cable or device used for high-capacity transmission over a wide range of frequencies that enables a large number of electronic messages to be transmitted or received simultaneously;

D. "cable service" means the transmission to
subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service;

[D-] E. "commission" means the public regulation commission;

F. "digital equity" means information technology needed for civic and cultural participation, employment, business and economic development, life-long learning and access to essential services generally available to residents regardless of their racial grouping, socioeconomic status or cultural identity;

G. "digital inclusion" means access to and the ability to use information technology by all residents of New Mexico;

[H-] H. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the federal act;

[I-] I. "federal act" means the federal Telecommunications Act of 1996;

[J-] J. "fund" means the state rural universal service fund;

[K-] K. "incumbent local exchange carrier" means a person that:

(1) was designated as an eligible
telecommunications carrier by the state corporation commission in Docket #97-93-TC by order dated October 23, 1997, or that provided local exchange service in this state on February 8, 1996; or

(2) became a successor or assignee of an incumbent local exchange carrier;

[I.] "incumbent rural telecommunications carrier" means an incumbent local exchange carrier that serves fewer than fifty thousand access lines within the state and has been designated as an eligible telecommunications carrier by the state corporation commission or the public regulation commission;

[J.] "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

[K.] "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications carrier within a local exchange area;

[L.] "long distance service" means telecommunications service between local exchange areas that originate and terminate within the state;

[P.] "division" means the broadband development division of the department of information technology;
"private telecommunications service" means a system, including its construction, maintenance or operation for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use the service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

"public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate the service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or cable service; and

"telecommunications carrier" means a person
that provides public telecommunications service."

SECTION 18. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--

ESTABLISHMENT.--

A. The commission shall implement and maintain a "state rural universal service fund" to maintain and support universal service that is provided by eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. As used in this section, "universal service" means basic local exchange service, comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan and broadband internet access service to unserved and underserved areas as determined by the commission.

B. The fund shall be financed by a surcharge on intrastate retail public telecommunications services to be determined by the commission, excluding services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose of funding the fund, the commission has the authority to apply the surcharge on intrastate retail public telecommunications services provided by telecommunications
carriers, including commercial mobile radio services and voice
over internet protocol services, at a competitively and
technologically neutral rate or rates to be determined by the
commission. The commission may establish the surcharge as a
percentage of intrastate retail public telecommunications
services revenue or as a fixed amount applicable to each
communication connection. For purposes of this section, a
"communication connection" means a voice-enabled telephone
access line, wireless voice connection, unique voice over
internet protocol service connection or other uniquely
identifiable functional equivalent as determined by the
commission. Such surcharges shall be competitively and
technologically neutral. Money deposited in the fund is not
public money, and the administration of the fund is not subject
to the provisions of law regulating public funds. The
commission shall not apply this surcharge to a private
telecommunications network; to the state, a county, a
municipality or other governmental entity; to a public school
district; to a public institution of higher education; to an
Indian nation, tribe or pueblo; or to Native American customers
who reside on tribal or pueblo land.

C. The fund shall be competitively and
technologically neutral, equitable and nondiscriminatory in its
collection and distribution of funds, portable between eligible
telecommunications carriers and additionally shall provide a
specific, predictable and sufficient support mechanism as
determined by the commission that ensures universal service in
the state.

D. The commission shall:

(1) establish eligibility criteria for
participation in the fund consistent with federal law that
ensure the availability of universal service at affordable
rates. The eligibility criteria shall not restrict or limit an
eligible telecommunications carrier from receiving federal
universal service support;

(2) provide for the collection of the
surcharge on a competitively neutral basis and for the
administration and disbursement of money from the fund;

(3) determine those services and areas
requiring support from the fund;

(4) provide for the separate administration
and disbursement of federal universal service funds consistent
with federal law; and

(5) establish affordability benchmark rates
for local residential and business services that shall be
utilized in determining the level of support from the fund.
The process for determining subsequent adjustments to the
benchmark shall be established through a rulemaking.

E. All incumbent telecommunications carriers and
competitive carriers already designated as eligible
telecommunications carriers for the fund shall be eligible for participation in the fund. All other carriers that choose to become eligible to receive support from the fund may petition the commission to be designated as an eligible telecommunications carrier for the fund. The commission may grant eligible carrier status to a competitive carrier in a rural area upon a finding that granting the application is in the public interest. In making a public interest finding, the commission may consider at least the following items:

(1) the impact of designation of an additional eligible carrier on the size of the fund;

(2) the unique advantages and disadvantages of the competitor's service offering; and

(3) any commitments made regarding the quality of telephone service.

F. The commission shall adopt rules, including a provision for variances, for the implementation and administration of the fund in accordance with the provisions of this section. The rules shall enumerate the appropriate uses of fund support and any restrictions on the use of fund support by eligible telecommunications carriers. The rules shall require that an eligible telecommunications carrier receiving support from the fund pursuant to Subsection K, L or M of this section must expend no less than [sixty ninety] percent of the support it receives to deploy and maintain broadband internet.
access services in rural areas of the state. The rules also
shall provide for annual reporting by eligible
telecommunications carriers verifying that the reporting
carrier continues to meet the requirements for designation as
an eligible telecommunications carrier for purposes of the fund
and is in compliance with the commission's rules, including the
provisions regarding use of support from the fund.

G. The commission shall, upon implementation of the
fund, select a neutral third-party administrator to collect,
administer and disburse money from the fund under the
supervision and control of the commission pursuant to
established criteria and rules promulgated by the commission.
The administrator may be reasonably compensated for the
specified services from the surcharge proceeds to be received
by the fund pursuant to Subsection B of this section. For
purposes of this subsection, the commission shall not be a
neutral third-party administrator.

H. The fund established by the commission shall
ensure the availability of universal service as determined by
the commission at affordable rates in rural areas of the state;
provided, however, that nothing in this section shall be
 construed as granting any authority to the commission to impose
the surcharge on or otherwise regulate broadband internet
access services.

I. The commission shall ensure that intrastate
switched access charges are equal to interstate switched access charges established by the federal communications commission as of January 1, 2006. Nothing in this section shall preclude the commission from considering further adjustments to intrastate switched access charges based on changes to interstate switched access charges.

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge determined pursuant to Subsection B of this section to be paid by the end-user customer will be held to a minimum, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting.

K. The commission shall authorize payments from the fund to incumbent local exchange carriers, in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates. Beginning in 2018, the commission shall make access reduction support payments in the amount made from the fund in base year 2014, adjusted each year thereafter by:

(1) the annual percentage change in the number of access lines served by the incumbent local exchange carriers receiving such support for the prior calendar year, as compared to base year 2014; and

(2) changes in the affordability benchmark rates that have occurred since 2014.
L. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status; provided, however, that nothing in this section shall limit the commission's authority to adopt rules pursuant to Subsection F of this section regarding appropriate uses of fund support and any restrictions on the use of the fund support by eligible telecommunications carriers.

M. The commission may also authorize payments from the fund to incumbent rural telecommunications carriers or to telecommunications carriers providing comparable retail alternative services that have been designated as eligible telecommunications carriers serving in rural areas of the state upon a finding, based on factors that may include a carrier's regulated revenues, expenses or investment, by the commission that such payments are needed to ensure the widespread availability and affordability of universal service. The commission shall decide cases filed pursuant to this subsection with reasonable promptness, with or without a hearing, but no later than six months following the filing of an application seeking payments from the fund, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

N. The commission shall adopt rules that establish .218650.7
and implement a broadband program to provide funding to eligible telecommunications carriers for the construction and maintenance of facilities capable of providing broadband internet access service. Such rules shall require that the commission consider applications for funding on a technology-neutral basis and shall require that the awards of support be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state broadband infrastructure. Each year, a minimum of [five million dollars ($5,000,000)] ten million dollars ($10,000,000) of the fund shall be dedicated to the broadband program.

O. Rules adopted pursuant to Subsection N of this section shall require that the commission:

(1) consider applications for funding on a technology-neutral basis;

(2) consult with the division to ensure that awards of support from the fund are in accord with the broadband development plan established pursuant to the Connect New Mexico Act to the extent otherwise allowed by the Rural Telecommunications Act of New Mexico;

(3) prioritize applications that support the construction and maintenance of broadband infrastructure that increases digital equity and digital inclusion in rural areas; and

(4) require that the awards of support be
consistent with federal universal service support programs.

[O P. The total obligations of the fund
determined by the commission pursuant to this section, plus
administrative expenses and a prudent fund balance, shall not
exceed a cap of thirty million dollars ($30,000,000) per year.
The commission shall evaluate the amount of the cap in an
appropriate proceeding to be completed by June 30, 2019 and
consider whether, based on the then-current status of the fund,
the cap should be modified, maintained or eliminated.

[By December 31, 2019] Q. By October 1 of each
year, the commission shall make a report to the legislature
regarding the status of the fund, including:

(1) relevant data relating to implementation
of the broadband program and [expansion of broadband internet
access services] the progress toward digital equity and digital
inclusion in rural areas of the state; [The report shall also
make]

(2) recommendations for [any] changes to the
structure, size and purposes of the fund and whether the cap on
the fund provided for in Subsection [O P of this section
should be modified, maintained or eliminated; and

(3) the service areas that received funding
awards from the broadband program and the amounts of those
awards."

SECTION 19. Section 67-3-8 NMSA 1978 (being Laws 1967,
Chapter 266, Section 7, as amended) is amended to read:

"67-3-8. POWERS AND DUTIES OF SECRETARY.--The secretary shall:

A. serve as the chief staff officer of the state transportation commission and shall be responsible to the commission for the operations and management of the work of the department;

B. organize the department in such a manner as to properly conduct the work of the department;

C. establish six highway construction districts with the approval of the state transportation commission. The secretary shall designate a district engineer in each construction district to supervise and manage the operations of the district. The district engineer shall be a professional engineer. The authority and responsibility for the actual construction for all construction projects within the district shall be delegated to the district engineer. District engineers shall attend state transportation commission meetings;

D. in accordance with the provisions of the Personnel Act, employ such assistants and employees as may be required for the efficient operation of the department, each of whom shall possess all the qualifications that may be prescribed for such position; provided that, notwithstanding the provisions of the Personnel Act, no more than five division
directors shall be covered by and subject to the Personnel Act;  
E. observe, administer and enforce the provisions of law now existing or hereafter enacted that pertain to the state highways, the state transportation commission or the department; [and]  
F. ensure that any behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978; and  
G. coordinate with the broadband development division of the department of information technology to ensure that purchases of broadband infrastructure and applications for federal assistance funding and for grants from other sources for broadband infrastructure are made in accordance with the broadband development plan established pursuant to the Connect New Mexico Act."

SECTION 20. APPROPRIATION.--Nine hundred fifty thousand dollars ($950,000) is appropriated from the general fund to the department of information technology for expenditure in fiscal year 2022 and subsequent fiscal years to implement the Connect New Mexico Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SECTION 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

.218650.7