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HOUSE BILL 9

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO TELECOMMUNICATIONS; CREATING THE BROADBAND
INFRASTRUCTURE ADVISORY COMMITTEE; CREATING THE BROADBAND
INFRASTRUCTURE DEVELOPMENT FUND; ESTABLISHING STANDARDS FOR
PUBLIC AGENCIES TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP
AGREEMENTS FOR BROADBAND INFRASTRUCTURE; REQUIRING REPORTS;
MAKING AN APPROPRIATION.

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

SECTION 1. Section 9-27-3 NMSA 1978 (being Laws 2007,
Chapter 290, Section 3, as amended) is amended to read:

"9-27-3. DEFINITIONS.--As used in the Department of
Information Technology Act:

A. "broadband benefit" means the provision of
internet access to a previously unserved service area or a
significant increase in internet service speed to a service

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1 area that supports economic growth, provides service to
2 mobility-limited persons, allows for nationally competitive
3 remote learning or provides such other benefits that the
4 department establishes by rule;

5 B. "broadband infrastructure" means the
6 electronics, equipment, transmission facilities, fiber-optic
7 cables and any other items directly related to a system capable
8 of transmission of internet protocol or other formatted data at
9 the current federal communications commission minimum broadband
10 speed standard;

11 ~~[A.]~~ C. "department" means the department of
12 information technology;

13 ~~[B.]~~ D. "information technology" means computer
14 hardware and software and ancillary products and services,
15 including:

- 16 (1) systems design and analysis;
17 (2) acquisition, storage and conversion of
18 data;
19 (3) computer programming;
20 (4) information storage and retrieval;
21 (5) voice, radio, video and data
22 communications;
23 (6) requisite systems;
24 (7) simulation and testing; and
25 (8) related interactions between users and

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1 information systems;

2 ~~[G.]~~ E. "information technology project" means the
3 purchase, replacement, development or modification of a
4 hardware or software system;

5 F. "local government" means a municipality; a
6 county; or a regional entity created by a joint powers
7 agreement between one or more public agencies;

8 G. "material default" means a failure of a private
9 partner to perform any duties under a public-private
10 partnership agreement, which failure jeopardizes delivery of
11 adequate service to the public and remains unsatisfied after a
12 reasonable time and after the private partner has received
13 written notice from the public partner of the failure;

14 H. "non-state money" means money that does not
15 derive from revenue acquired from taxes, fees, fines
16 established pursuant to a state statute or from interest
17 accruing to a fund established pursuant to a state statute;

18 I. "private partner" means a nongovernmental
19 entity;

20 J. "public partner" means a local government, state
21 agency, state institution or instrumentality of the state;

22 K. "public-private partnership agreement" means a
23 contract between a public partner and private partner for the
24 development, operations and maintenance of infrastructure in
25 which the partners may negotiate to share the costs and the

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1 final disposition of the ownership of the infrastructure;

2 L. "rural area" means any part of the state other
3 than:

4 (1) an H class county;

5 (2) the state fairgrounds;

6 (3) an incorporated municipality within a
7 metropolitan statistical area if the municipality's population
8 is fifty thousand or more according to the most recent federal
9 decennial census; and

10 (4) any area within ten miles of the exterior
11 boundaries of a municipality described in Paragraph (3) of this
12 subsection;

13 [~~D-~~] M. "secretary" means the secretary of
14 information technology;

15 [~~E-~~] N. "state information architecture" means a
16 logically consistent set of principles, policies and standards
17 that guides the engineering of state government's information
18 technology systems and infrastructure in a way that ensures
19 alignment with state government's business needs;

20 [~~F-~~] O. "state information technology strategic
21 plan" means the information technology planning document for
22 the state that spans a three-year period; and

23 [~~G-~~] P. "telecommunication network" means the
24 physical and logical components and all associated
25 infrastructure used in transporting, routing, aggregating and

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1 delivering voice and data information from computer and
2 telecommunications systems in one location to peer systems in
3 another."

4 SECTION 2. A new section of the Department of Information
5 Technology Act is enacted to read:

6 "[NEW MATERIAL] CREATION OF BROADBAND INFRASTRUCTURE
7 ADVISORY COMMITTEE--DUTIES.--

8 A. The "broadband infrastructure advisory
9 committee" is created to develop recommendations to the
10 department regarding the award of grants or loans from the
11 broadband infrastructure development fund.

12 B. The governor may appoint members to the
13 broadband infrastructure advisory committee as necessary, but
14 at a minimum, the advisory committee shall be composed of:

- 15 (1) the secretary or the secretary's designee;
- 16 (2) the secretary of aging and long-term
17 services or the secretary's designee;
- 18 (3) the director of the department's office of
19 broadband and geospatial initiatives;
- 20 (4) the director of a rural public safety
21 answering point;
- 22 (5) a person responsible for a remote learning
23 program in a public school system or a post-secondary public
24 educational institution;
- 25 (6) a representative from an economic

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1 development organization in a county with fifty percent or more
2 of its jurisdiction in rural areas; and

3 (7) a representative of an Indian nation,
4 tribe or pueblo.

5 C. Members of the broadband infrastructure advisory
6 committee who are not state employees shall be reimbursed for
7 attending meetings of the advisory committee as provided for
8 nonsalaried public officers in the Per Diem and Mileage Act and
9 shall receive no other compensation, perquisite or allowance."

10 SECTION 3. A new section of the Department of Information
11 Technology Act is enacted to read:

12 "[NEW MATERIAL] BROADBAND INFRASTRUCTURE DEVELOPMENT FUND
13 CREATED--PLANNING GRANTS--INFRASTRUCTURE LOANS.--

14 A. The "broadband infrastructure development fund"
15 is created in the state treasury and shall be administered by
16 the department. The fund consists of appropriations, payments
17 of principal and of interest on loans made from the fund,
18 income from investment of the fund and any other money
19 appropriated, distributed or otherwise allocated to the fund.
20 Balances in the fund at the end of any fiscal year shall not
21 revert to the general fund. The fund may consist of such
22 subaccounts as the department deems necessary to carry out the
23 purposes of the fund. Disbursements from the fund shall be by
24 warrant of the secretary of finance and administration pursuant
25 to vouchers signed by the secretary of information technology.

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1 B. The department shall establish procedures and
2 adopt rules as required to administer the broadband
3 infrastructure development fund and to recover from the fund
4 the costs of administering the fund and originating grants and
5 loans.

6 C. Money in the broadband infrastructure
7 development fund may be used to make a grant of up to fifty
8 thousand dollars (\$50,000) to a local government for the
9 purposes of studying the need for and the costs and benefits of
10 providing broadband service to a rural area; provided that the
11 local government shall provide matching funding in non-state
12 money equal to at least fifty percent of the total cost of a
13 study.

14 D. Money in the broadband infrastructure
15 development fund may be used to provide a loan to a local
16 government for the construction and installation of broadband
17 infrastructure to provide broadband service to a rural area
18 through either a standard procurement process or a public-
19 private partnership agreement pursuant to Section 4 of this
20 2019 act; provided that:

21 (1) a loan award shall be made on a
22 competitive basis pursuant to a point system established
23 pursuant to Subsection E of this section;

24 (2) a local government shall provide matching
25 funding in non-state money that equals at least thirty percent

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1 of the entire cost of the construction and installation
2 project; and

3 (3) the local government has either:

4 (a) a demonstrated ability to provide
5 maintenance for the broadband infrastructure and operation of
6 the broadband service that is the purpose of the loan; or

7 (b) has established a contract with a
8 service provider that has a demonstrated ability to provide
9 maintenance for the broadband infrastructure and operation of
10 the broadband service that is the purpose of the loan. When
11 evaluating contract bids for service under this section, a
12 local government shall provide a five percent preference for
13 bids from incumbent rural telecommunications carriers as
14 defined in the Rural Telecommunications Act of New Mexico.

15 E. The department shall establish by rule:

16 (1) the standards for "demonstrated ability",
17 as that term is used in Subsection D of this section; and

18 (2) the point system for loan applications
19 required by Subsection D of this section; provided that
20 applications shall be awarded points for:

21 (a) the actual number or percentage of
22 households within a service area that has a mobility-limited
23 person in residence;

24 (b) the need for remote learning within
25 the service area;

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1 (c) the degree that economic or job
2 growth in a broadband service can reasonably be attributed to a
3 need for broadband infrastructure; and

4 (d) the need for telemedicine services
5 within the service area."

6 SECTION 4. A new section of the Department of Information
7 Technology Act is enacted to read:

8 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
9 STANDARDS--RULES--REPORTS.--

10 A. A public partner may enter into a public-private
11 partnership agreement for broadband infrastructure; provided
12 that:

13 (1) the public partner makes a formal
14 determination through rule or ordinance as appropriate that
15 entering into a public-private partnership agreement for the
16 development of broadband infrastructure will significantly
17 reduce the time or the cost of delivering broadband benefits to
18 an area within its jurisdiction in comparison to the use of its
19 standard procurement processes and files a copy of the
20 agreement with the department. A public partner may base its
21 decision in part on the degree that broadband benefits are in
22 demand in the projected service area;

23 (2) in a public-private partnership agreement
24 where a public partner provides fifty percent or more or five
25 million dollars (\$5,000,000) or more of the cost of broadband

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1 infrastructure development, the public-private partnership
2 agreement shall specify that a private partner will provide a
3 minimum of twenty-five years of broadband service; and

4 (3) in the instance of a material default, the
5 public-private partnership agreement shall specify that the
6 broadband infrastructure shall revert to a public partner.

7 B. The department shall promulgate rules as
8 necessary to implement the provisions of this section.

9 C. Each year the department shall report to the
10 appropriate interim legislative committee on the number, types
11 and locations of public-private partnership agreements for
12 broadband infrastructure that are in effect throughout the
13 state. The department shall also provide in a report
14 recommendations to strengthen the public benefits of using
15 public-private partnership agreements for the development of
16 broadband infrastructure in the state."

17 **SECTION 5. APPROPRIATION.**--Ten million dollars
18 (\$10,000,000) is appropriated from the general fund to the
19 broadband infrastructure development fund for expenditure in
20 fiscal year 2020 and subsequent fiscal years for the purposes
21 of the fund. Any unexpended or unencumbered balance remaining
22 at the end of a fiscal year shall not revert to the general
23 fund.

24 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2019.

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