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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number HB141 **Sponsor** Sariñana/Garratt/Figueroa/Herrera/Matthews
Tracking Number .219029.1 **Committee Referrals** HEC/HTPWC
Short Title Ed Infrastructure Technology Definition
Analyst Bedeaux **Original Date** 1/29/21
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FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

BILL SUMMARY

Synopsis of Bill

House Bill 141 (HB141) amends the definition of “education technology infrastructure” in the Public School Capital Outlay Act to include physical hardware and services for remote learning.

FISCAL IMPACT

The bill does not contain an appropriation.

If enacted, HB141 would allow the Public School Capital Outlay Council (PSCOC) to make awards to school districts and charter schools for remote learning technology using a \$10 million annual amount set aside for the Public School Facility Authority’s (PSFA) broadband deficiencies correction program (BDCP). The bill may dilute funding set aside for statewide broadband projects, though in recent years, awards to construct broadband infrastructure have not reached the statutory \$10 million threshold.

Passed by Congress and signed by the president on March 11, 2021, the American Rescue Plan includes \$7 billion for the federal E-Rate program and expands the program to create flexibility for home connectivity for students and teachers. Federal E-Rate funds can cover as much as 95 percent of the cost of a broadband project funded through the BDCP (See **Substantive Issues** below). However, PSFA staff notes HB141 or *SB144/aHEC will need to pass to authorize the public school capital outlay council to make awards for home connectivity.

SUBSTANTIVE ISSUES

HB141 would expand the scope of the PSFA’s broadband deficiency correction program to cover the cost of infrastructure and services for remote learning. Since the onset of the Covid-19 pandemic, educators, administrators, and other stakeholders statewide have worked to close the

digital divide by funding Wi-Fi hotspots, personal devices, and even subsidized Internet connections.

Given a significant statewide effort by multiple stakeholders, it is unclear how many students still have insufficient Internet access. The New Mexico Homework Gap Team, a collaborative task force between the Public Education Department (PED), the Department of Information Technology (DoIT), PSFA, and several other state agencies and regional actors noted in its December activity report the Broadband for Students initiative is now active and working to connect disconnected students. PED and DoIT have identified approximately 20 thousand unserved students in serviceable areas, and has offered projects to Internet service providers (ISP) through an online marketplace. The public marketplace allows ISPs to compete and serve unserved locations, and potentially work to drive down the costs.

As a result of cost-sharing and technical support from PSFA, the BDCP has been widely regarded as a success. Data from PSFA suggest that for a modest state investment in broadband, schools have been able to leverage significant amounts of federal E-Rate funding to create new broadband connections. Since the program’s inception in 2014, PSFA estimates nearly 100 percent of schools are connected to broadband Internet, and the average connection speed for New Mexico students has increased significantly over the past five years. However, due to the statutory limitations of BDCP and the federal E-Rate program, PSCOC determined the program could not be leveraged to provide direct connectivity to students to facilitate remote learning from home during the Covid-19 pandemic. A March 2021 expansion to the E-rate program could allow these expenses if the state passes HB141 or *SB144/aHEC.

Funding and Outcomes of New Mexico Broadband Deficiency Corrections Program

	FY17	FY18	FY19	FY20	FY21 Est.
Total State Funding Awarded	\$1,286,745	\$2,861,472	\$1,673,403	\$1,789,269	\$1,832,000
Total Federal E-Rate Funding Leveraged	\$14,790,325	\$25,889,972	\$12,880,732	\$17,215,075	\$16,100,000
Number of projects	57	37	41	48	100
Percent of Schools with Broadband Connection	85%	89%	93%	97%	99.8%
Average Statewide Connection Speed (per student)	157 Kbps	245 Kbps	340 Kbps	457 Kbps	518 Kbps

Source: PSFA

Many state and federal initiatives have also provided funding and resources to expand student Internet access, raising questions about how much additional funding is necessary. PSCOC authorized \$200 thousand to contract with a broadband consulting firm to assist school districts and charter schools to identify solutions to student connectivity issues. Additionally, DoIT was awarded a \$1.5 million grant from the U.S. Economic Development Administration to provide technical assistance for broadband development in partnership with local, tribal, and other government entities. However, it is unclear whether school districts and charter schools qualify for these funds.

The latest federal Covid-19 relief package included a \$3.2 billion appropriation to fund a Federal Communications Commission (FCC) program for broadband access for low-income families. The program will provide \$50 per month to subsidize low-income households, and \$75 per month to subsidize homes on tribal land. Additionally, the program would fund \$100 per household to purchase an Internet capable device. Funding will be distributed directly to ISPs to connect homes, meaning the responsibility lies with school districts and charter schools to reach out to low-income families and find solutions. The bill also included a \$1 billion appropriation to the federal tribal broadband fund to be distributed at the discretion of the National Telecommunications and

Information Administration (NTIA), as well as a \$300 million appropriation for a grant program administered by NTIA to fund broadband in rural areas of the country. The program would issue grants fund partnerships between ISPs and state and local governments, and would give priority to projects in rural areas of the country that reach a large amount of unserved families.

The Martinez and Yazzie Consolidated Lawsuit. The most recent plaintiff filing in the ongoing *Martinez-Yazzie* lawsuit argues at-risk students continue to lack access to technology and connectivity infrastructure, which they argue equates to a lack of access to a sufficient education during the Covid-19 pandemic. According to the plaintiffs, students in high needs areas of the state lack critical internet infrastructure and cellular service, requiring significant infrastructural investments that cannot be solved by piecemeal appropriations and uncoordinated state agencies.

Attorneys for the *Yazzie* plaintiffs specifically explain the state’s efforts, including the use of federal Governor’s Emergency Education Relief funds, the state’s efforts to expand broadband, and technical support provided to individual school districts, constitute a “patchwork” effort without a comprehensive systematic framework to target support to at-risk students. According to the plaintiffs, internet infrastructure development requires long term planning, coordination between multiple state agencies, targeted investments, and tribal consultation. The plaintiffs argue the state is best poised to conduct these functions, but it has not yet meaningfully done so.

While HB141 devotes additional resources for student connectivity and internet infrastructure, it may not do so in a way that meets the plaintiffs’ expectations that the system be carefully designed and well-coordinated to target resources to areas of the state with the greatest need.

ADMINISTRATIVE IMPLICATIONS

Section 22-24-4.5 NMSA 1978 requires PSFA and PSCOC to adopt minimum adequacy standards for education technology infrastructure. If enacted, HB141 may require PSFA and the PSCOC to revisit the statewide adequacy standards, the minimum standards a school must meet to be considered adequate for students’ education, and author additional standards for effective educational technology infrastructure given the new definition.

OTHER SIGNIFICANT ISSUES

The BDCP falls under an exception within the Public School Capital Outlay Act that allows dollars from the public school capital outlay fund to be used to make non-capital expenditures. Subsection B of Section 22-24-4 NMSA 1978 states “except as provided in subsections G and I through Q of this section, money in the fund may be used only for capital expenditures deemed necessary by the council for an adequate educational program.” The BDCP falls squarely within this exception under subsection M, which states “up to ten million dollars (\$10,000,000) of the fund may be expended each year for an education technology infrastructure deficiency corrections initiative pursuant to Section 22-24-4.5 NMSA 1978; provided that funding allocated pursuant to this section shall be expended within three years of its allocation.”

The Zuni Capital Outlay Lawsuit. HB141 amends the Public School Capital Outlay Act, a section of law recently found by the 11th Judicial District Court to be unconstitutional. In December 2020, the court issued a ruling in the *Zuni* lawsuit, finding the Public School Capital Outlay Act, along with the Public School Capital Improvements Act, have exacerbated “gross disparities” between property-wealthy and property-poor school districts. The plaintiff school districts, now including only Gallup and Zuni, argue the school districts’ lack of taxable property funds to account for

“outside-of-adequacy” spaces which are freely available to property-wealthy school districts with enough local revenue to construct them independent of the PSCOC awards project.

The 11th Judicial District Court ruling, however, leaves policymakers without a clear understanding of why the systems were found unconstitutional. The ruling did not cite specific evidence of disparities in the capital outlay funding system, adopted wholesale the plaintiffs findings of fact which contained inaccuracies and inconsistencies, and did not review appropriations and changes made to the capital outlay system during the 2019 and 2020 legislative sessions attempting to create greater equity. The Legislature has attempted to address the plaintiffs concerns by amending the state- and local-match calculation and appropriating \$53 million for outside-of-adequacy spaces in school districts receiving Impact Aid for Native American students, but these efforts were not mentioned in the district court’s 8-page ruling.

The state filed a notice of appeal and motion to reconsider on January 28, 2021. In the opinion of the Office of the Attorney General, the court’s order will be automatically stayed while the appeal is processed and actions of PSCOC and PSFA pursuant to the Public School Capital Outlay Act and Public School Capital Improvements Act will be able to continue until all rulings are final. Despite a stay, the Legislature will need to continue to focus on policy options and statutory changes that continue to provide for increased equity in the capital outlay system.

RELATED BILLS

Related to HB86, Native American Library, Internet, and Education, which makes several appropriations to New Mexico tribes, pueblos, and nations for internet connectivity equipment.

Related to *SB144/aHEC, Remote Education Technology Infrastructure, which also amends the definition of “education technology infrastructure” in the Public School Capital Outlay Act to include the physical hardware and educational resources necessary to establish broadband connectivity among students and teachers at schools and during remote learning.

SOURCES OF INFORMATION

- LESC Files

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