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## FISCAL IMPACT REPORT

**SPONSOR** HTPWC **ORIGINAL DATE** 02/18/21  
**LAST UPDATED** \_\_\_\_\_ **HB** 10/HTPWCS  
**SHORT TITLE** Connect New Mexico Act **SB** \_\_\_\_\_  
**ANALYST** Hitzman/Fischer

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$950.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$50.0	\$50.0	\$150.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act of 2021  
 Relates to SB93, SB144, HB141, HB85, and HB86

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Information Technology (DoIT)  
 Indian Affairs Department (IAD)  
 Public Schools Facilities Authority (PSFA)  
 General Services Department (GSD)  
 Department of Cultural Affairs (DCA)  
 Public Education Department (PED)

#### No Response Received

Public Regulation Commission (PRC)

### SUMMARY

Synopsis of Bill

The House Transportation, Public Works and Capital Improvements Committee substitute to House Bill 10 appropriates \$950 thousand from the general fund to DoIT for FY22 and subsequent fiscal years to legislatively create a division of broadband within the Department of Information Technology (DoIT). Unexpended or unencumbered balances from this appropriation are nonreverting.

The bill also increases the portion of the PRC's state rural universal service fund that is dedicated to broadband from \$5 million to \$8 million. Applications for funding require the PRC to consider applications on a technology-neutral basis, submit applications for funding to the division for prioritization and alignment with the broadband development plan, and require awards support be consistent with federal universal service support programs.

The bill requires a new division of broadband at DoIT to provide technical and planning assistance to local governments, public education institutions, and state agencies related to development and implementation of broadband programs. Assistance includes securing bulk-pricing agreements, applying for federal and private broadband funding assistance, and facilitating communication to minimize re-digging for broadband infrastructure. The bill requires the department to develop performance measures for the broadband division pursuant to the Accountability in Government Act. In addition, the bill directs the division to establish and administer a competitive broadband grant program, including the relevant rules, procedures, and qualifications for projects.

HB10/HTPWCS also requires the division to define and implement quality service standards for broadband, maintain broadband coverage maps, coordinate right-of-way policies, and coordinate with other governmental entities to create uniform permitting and licensing requirements for broadband infrastructure. HB10/HTPWCS tasks the new division with developing an analysis of broadband challenges, identifying federal and state programs available for addressing those challenges, and updating the state broadband development plan every three years following its creation. The bill also tasks the division with developing annual reports regarding the access to and quality of broadband services across the state, as well as the creation of a statewide advisory committee to participate in broadband development planning.

The bill requires agencies already involved in broadband development to coordinate with the division to ensure purchases and applications for funding assistance are made in accordance with the broadband development plan, and authorizes the division to apply for assistance on behalf of state agencies.

In addition, the committee included definitions within the Rural Telecommunications Act of New Mexico for the following:

- 1) "Broadband development plan," to be developed and revised by the division,
- 2) "Broadband infrastructure," which includes any cable or device used for high-capacity transmissions,
- 3) "Digital equity," meaning the access to essential services available to residents regardless of status, race, or cultural identity,
- 4) "Digital inclusion," which refers to the access and ability of residents to use information technology, and
- 5) "Division," referring to the broadband development division of DoIT.

HB10/HTPWCS also requires the PRC to report to the Legislature regarding the status of the

SRUSF by October 1<sup>st</sup> each year, rather than December 31<sup>st</sup>, including information regarding “the progress toward digital equity and digital inclusion,” rather than the “expansion of broadband internet services,” as well as information about the service areas that have received funds from those awards.

Lastly, the bill creates the nonreverting connect New Mexico fund for appropriations, gifts, grants, and donations as subject to appropriation by the Legislature.

The effective date of the Act is July 1, 2021.

## **FISCAL IMPLICATIONS**

HB10/HTPWCS appropriates \$950 thousand to DoIT to implement the bill and establish the division of broadband, which will be a recurring expense to the general fund, and, as substituted, increases the overall investment to broadband programs from \$5 million to \$8 million from the rural universal services fund each year.

New Mexico currently has no single entity or agency tasked with tracking broadband investment funds or coordinating activities between state agencies. DoIT does have a small, informal office of broadband with three authorized FTE. However, neither the office nor DoIT has the mission or resources to perform as an effective, centralized broadband lead entity.

DoIT reports that \$950 thousand would cover the salaries for three existing authorized FTE—a division director and two project managers. DoIT reports that these positions are currently funded out of overhead rates that DoIT charges to state agencies. DoIT notes that if the bill passes and these positions were to be instead funded from the general fund, that DoIT would reduce the overhead rates they charge to agencies accordingly. In effect, the Legislature would still be funding these positions from the general fund, but through direct appropriations to DoIT, rather than more indirectly by appropriating money to state agencies that is eventually paid to DoIT as service fees.

The \$950 thousand general fund budget would also fund two new positions—a higher-level project manager and a geographic information system (GIS) manager. DoIT does have an existing GIS officer, but DoIT proposes to add an additional GIS manager specifically dedicated to the broadband program.

Excluding the FTE, DoIT reports they would need \$290 thousand for contractual services and other spending to establish the office. Also of note, for FY21, DoIT has 12.2 funded vacant FTE and has already planned to reclassify some of its funded vacant positions to support the new division of broadband. In addition, DoIT estimates \$50 thousand in additional expenditures would be incurred within the Program Support and the Compliance and Project Management programs to support the additional duties within the division.

New Mexico state and tribal governments have received significant federal funding for broadband operations and infrastructure as part of the CARES Act and Consolidated Appropriations Act, 2021 stimulus packages. This funding includes a \$1.5 million CARES grant to DoIT to provide technical assistance for state government entities seeking to expand broadband infrastructure and services in response to the critical need for Internet access during the Covid-19 pandemic.

## SIGNIFICANT ISSUES

New Mexico lags behind the rest of the nation in broadband connectivity. State and federal investments and oversight have succeeded in connecting schools, hospitals, and other institutions, but the costs of “last-mile” infrastructure are high, and residents and businesses in many rural areas remain unserved. Recent federal and state investments as a result of the Covid-19 pandemic may significantly improve connectivity in some regions of the state. However, no singular state entity is responsible for identifying the remaining regions lacking broadband access or prioritizing investments for those regions. Nor is any agency held accountable to see that homes and businesses in those regions are connected.

In order to better coordinate state broadband investments and programming, a November 2019 LFC evaluation recommended that the Legislature consider designating in statute a single entity to be the state’s broadband lead and central point of contact, with a director appointed by the Governor and duties including (1) coordinating all statewide and intergovernmental broadband policies and initiatives, (2) defining unserved and underserved areas, (3) assisting with identifying and coordinating sources of funding, (4) assisting with navigating regulatory and permitting issues, and (5) setting goals and targets for broadband deployment and performance, collecting data on progress, and regularly reporting to the Governor and relevant legislative committees on the state’s progress in meeting these outcomes. The bill has the director of the newly created division of broadband reporting to the Secretary of DoIT, not the Governor. However, the office appears to fulfil all other recommendation of the LFC evaluation.

Despite having no centralized broadband office in New Mexico, broadband investments in recent years have been significant. Since 2015, the Legislature has appropriated nearly \$21.1 million for various projects either exclusively or partially devoted to improving broadband access and infrastructure. This includes a \$10 million general fund capital appropriation to DoIT in the 2018 session to expand broadband in rural areas between FY20 and FY23. To date, the agency spent this \$10 million mainly on emergency procurements related to the Covid-19 pandemic in Cochiti Pueblo (\$2.9 million) and Sierra County (\$2.1 million) and an additional \$1.1 million project matching local ISP and local private funding to build out fiber between Jal and Carlsbad. HB10/HTPWCS would direct similar new state appropriations for broadband infrastructure into the newly created connect New Mexico fund.

The IAD notes that New Mexico’s tribal nations have benefitted from these short-term programs and targeted investments. However, the IAD cites the U.S. Federal Communications Commission’s 2018 estimates that “35 percent of Americans living on tribal lands lacked access to broadband services” and estimates from the 2020 U.S. Government Accountability Office report stating “1.5 million people on tribal lands are without essential services,” which indicates a continued need for coordinated tribal broadband investments.

In addition to state funding, federal funding has and will likely continue to play a significant role in state broadband expansion. In October 2020, USDA announced \$20 million of federal ReConnect funding would be targeted to providers for broadband buildout in Eddy, Chaves, Lea, Lincoln, Otero, Cibola, and Sierra Counties. USDA estimates the funding will connect 1,400 homes and businesses. In December 2020, the Federal Communications Commission approved

\$165 million to 18 companies to build out broadband infrastructure in underserved areas of New Mexico. Over the next 10 years, the funding is expected to support buildout of broadband services to 64 thousand houses, businesses, and other locations. Finally, the most recent federal Covid-related stimulus package, the Consolidated Appropriations Act, 2021, included \$3.2 billion to subsidize home Internet for low-income families nationally by \$50 per month for most households or up to \$75 per month for households on tribal land. Initial estimates from LFC staff indicate that New Mexico’s portion of this funding could be \$16 million, or enough to cover over 200 thousand households at the \$75 per month subsidy. The Consolidation Appropriations Act of 2021 also included \$1 billion in grants to tribes to build out broadband infrastructure, at least a portion of which will be available to tribes and pueblos in New Mexico.

The PRC also administers over \$17 million in annual non-appropriated rural universal service funding for broadband. The funding financed by a surcharge on intrastate retail public telecommunications services, typically collected by telecommunications providers and passed on to PRC through a small portion of customers’ phone bills (\$1.24 per connection per month in 2019). This \$17 million is a portion of the total \$30 million (capped) annual service fund, of which at least \$5 million must be dedicated to broadband (the remaining can be used to provide phone or other communications services in rural areas, in addition to broadband.) Some other states, including Colorado, have recently increased the amount of state service funds that are dedicated to broadband as opposed to telephone or other communications expansion. Likewise, the bill increases the required amount of annual service funding dedicated to broadband from \$5 million to \$8 million.

DoIT notes that the bill does not reference Internet service providers (ISPs) nor their role in delivering services to NM residents and businesses, likely due to anti-donation concerns. The Indian Affairs Department also notes that, although the bill specifies requirements for membership of at least three tribal government representatives on the advisory committee, having representation from tribal broadband specialists who could benefit from the goals of the division could provide additional expertise on navigating federal, tribal, and state broadband development.

The PED notes changes to statute in the bill relating to the PED Secretary’s duties and amends the Public School Capital Outlay Act to require coordination with DoIT’s broadband division for purchases of education technology infrastructure. PED also notes the potential of the bill for including tribal governments to connect tribal students and encouraging a “dig-once” approach.

However, the bill does not include a definition for “awards of support” and “Federal universal service support programs,” nor does it identify criteria for considering applications on a “technology-neutral” basis.

## **ADMINISTRATIVE IMPLICATIONS**

HB10/HTWPC will require DoIT to research and analyze appropriate performance measures for the new division of broadband to ensure best practices. The bill will also change reporting requirements for PRC reporting to the Legislature to October each year, which is in alignment with reporting requirements for the division, according to DoIT.

DoIT notes the Department of Transportation and the State Land Office are currently responsible for managing rights of way permitting, and notes that those agencies may be more appropriate

for negotiating a uniform system of permits, licenses, and regulation for rights of way statewide for broadband infrastructure.

DoIT's compliance and project management program reviews all IT procurements, which may result in additional workload to coordinate and review broadband procurements. The division of broadband, alongside DoIT's administrative services division, would be required to manage, assess, and administer awards to eligible grant recipients. According to the bill, the division would be the administrative authority charged with making decisions about the grant application process as well as how awards are selected and administered to eligible state and tribal governments, public education institutions, and state agencies. DoIT would also need to update the 2014 Broadband Digital Literacy Strategic Plan to align with the State strategic plan published in June 2020 to establish methods for digital equity and inclusion.

The PSFA also notes their current role in providing technical and planning assistance to public school regarding federal funding applications. Adhering to federal requirements when submitting funding applications and paperwork is complex, according to PSFA, and the agency notes that adding another entity with which to coordinate may impose additional time constraints and complications related to the E-rate application process.

In addition, DCA notes that currently the New Mexico State Library oversees the Broadband for Libraries program on behalf of DoIT and supports broadband expansion through the federal FCC E-Rate program for libraries in New Mexico. The DCA director and the state librarian would have to coordinate and align its projects with the division's broadband development plan, potentially expanding the agency's capacity to administer such programs to public and tribal libraries as defined and recognized by the state librarian.

The GSD notes that the bill as written does not address broadband infrastructure projects affecting state owned or leased buildings and notes concerns regarding who would pay for and own the broadband infrastructure. GSD notes concern regarding whether DoIT will be the authorizing executing entity to procure broadband infrastructure contracts, as GSD currently manages the procurement process. However, the GSD does not have authority over agencies or local public bodies regarding purchases of items under statewide price agreements, which would be established under HB10/HTPWCS, and notes that the division may need to control spending under agencies' professional service and procured agreements. Regarding the purchase of infrastructure, GSD also notes that the bill does not clearly identify how DoIT's division will coordinate with agencies to implement bulk pricing agreements.

## **RELATIONSHIP**

This bill relates to the FY22 LFC budget and capital outlay recommendations, which combined include \$20 million for statewide broadband projects.

This bill partially duplicates Senate Bill 93, which also appropriates \$950 thousand to create a similar office of broadband access and expansion at DoIT, with a director reporting to the Governor but without defined responsibility for developing Accountability in Government Act performance measures. The bill relates to House Bill 85, which appropriates funds to establish tribal IT departments and infrastructure on tribal lands, and House Bill 86, which appropriates capital funding for tribal broadband infrastructure.

The bill also relates to Senate Bill 144 and House Bill 141, both of which expand the definition of education technology infrastructure in the Public School Capital Outlay Act to include services used to interconnect students, teachers, school districts, and school buildings to broadband and remote learning. Senate Bill 144 also requires the Public School Capital Outlay Council to develop guidelines for a statewide education technology infrastructure network and necessary technology projects for education.

Senate Bill 204 amends the original Rural Telecommunications Act of New Mexico to define additional provisions under which carriers can apply and receive support from the State Rural Universal Services Fund (SRUSF), and would allow additional carriers – particularly Sacred Winds Communications, Inc. – to receive support from the RUSF.

## **OTHER SUBSTANTIVE ISSUES**

Section 14 of Article IX of the New Mexico Constitution prohibits the state or local governments to provide direct or indirect donations or aid to any person or organization. As such grants from the Connect America Fund would need to be awarded in a way that does not conflict with provisions of the anti-donation clause. However, DoIT notes that HJR9 proposes to amend the Anti-Donation Clause to allow state-fund expenditures for essential household services, which includes Internet infrastructure. DoIT also notes that including Internet service providers within the grant program could allow expansion of broadband while processing potential amendments to the Anti-Donation Clause.

In addition, PSFA notes that their Broadband Deficiency Correction Program falls under an exception within the Public School Capital Outlay Act which allows dollars from the public school capital outlay fund to be used for capital expenditures deemed necessary for an adequate educational program. PSFA notes that “up to \$10 million of the fund may be expended each year for an education technology infrastructure deficiency corrections initiatives pursuant to Section 22-24-4.5 NMSA 1978.” Appropriations within this bill may duplicate funding provided for K-12 school districts under this funding mechanism.

## **ALTERNATIVES**

Currently, at least seven state agencies, including DoIT, have a claim of responsibility for broadband development in New Mexico. Rather than establish a new division that may duplicate the work of these existing state employees, the Legislature could consider the creation of a broadband chief advisor in the Governor's office with staffing support from other agencies. This is a broadband governance model that the Commonwealth of Virginia has employed.

In June 2020, DoIT released a Statewide Broadband Strategic Plan, but the plan does not outline specific actionable steps and provides exorbitant cost estimates for completing the project – between \$2 billion and \$5 billion. The strategic planning document would continue to serve as the primary planning document to coordinate further broadband investments across the state and, as currently developed, would not provide opportunities for state agencies, local and tribal governments, or public education institutions to be administered grant funding for broadband investments through the department.

## **POSSIBLE QUESTIONS**

Will grant awards duplicate existing funding for the office of broadband, DoIT, the equipment replacement fund, and other entities pursuing broadband programs?

JH/MF/sb/al