

Synopsis of Original Bill

The House Appropriations and Finance Committee substitute for House Transportation, Public Works and Capital Improvements Committee substitute for House Bill 10 creates a division of broadband within the Department of Information Technology (DoIT) and broadband council for purposes of supporting broadband investments across the state.

The council will establish and administer a competitive broadband grant program for projects, with special consideration given to projects that connect the unserved/underserved, leverage existing infrastructure or regional collaboration, compliment the broadband development plan, foster digital inclusion, stimulate economic development, or leverages other funding sources.

The council created in the bill is tasked with evaluating grant proposals and awarding grants, and to coordinate state agency broadband programs. The council must include representation from the state Economic Development, Cultural Affairs, Information Technology, and Higher Education Departments, the Mortgage Finance Authority, Public School Facilities Authority, four legislatively-appointed members, and six public members, including tribal representatives.

The bill increases the portion of the PRC’s state rural universal service fund that is dedicated to broadband from \$5 million to \$8 million.

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

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

FISCAL IMPLICATIONS

The bill does not contain an appropriation. However, the bill does increase the overall investment to broadband programs from \$5 million to \$8 million from the rural universal services fund each year.

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 to expand broadband infrastructure and services in response to the critical need for Internet access during the Covid-19 pandemic.

The council created in the bill would pay eligible public members a per-diem and mileage reimbursement in accordance with Sections 10-8-1 through 10-8-8 NMSA 1978 (the Per Diem and Mileage Act). Mileage costs would vary widely and are impossible to estimate. However, based on the rate of \$95 per meeting day for non-salaried public officers, per diem would have a minimal fiscal impact, likely less than \$10 thousand annually. However, the bill does not allocate responsibility of paying this per diem disbursements for appropriate members of the council.

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.

To better coordinate state broadband investments and programming, a November 2019 LFC evaluation recommended 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 that include (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 office of the Governor and relevant legislative committees on the state's progress in meeting these outcomes. New Mexico currently has no single entity or agency tasked with tracking broadband investment funds or coordinating activities between state agencies. 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. Encumbrances and expenditures from that appropriation, to date, total \$6.1 million for 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. The bill 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 council, having representation from tribal broadband specialists who could benefit from the goals of the council could provide additional expertise on navigating federal, tribal, and state broadband development.

ADMINISTRATIVE IMPLICATIONS

DoIT's compliance and project management program reviews all IT procurements, which may result in additional workload to coordinate and review broadband procurements as members of the connect NM council. According to the bill, the council would manage, assess, and administer awards to eligible grant recipients and would be the administrative authority charged with making decisions about the grant application process, which includes membership from the DoIT cabinet secretary on a monthly basis. 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.

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 strategic plan, potentially expanding the agency's capacity to administer such programs to public and tribal libraries as defined and recognized by the state librarian.

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.

RELATIONSHIP

This bill relates to items in SB377, the Supplemental Appropriations Act and capital outlay recommendations, which combined include \$115 million for statewide broadband projects.

This bill is a companion to Senate Bill 93 which creates an office of broadband access and expansion at DoIT. 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.

This bill also relates to Senate Bills 413, 204 and 361. Senate Bill 413 establishes regional franchise partnerships related to broadband development and use of infrastructure. Senate Bill 204 defines additional provisions under which Internet service providers can apply and receive support from the state rural universal services fund (SRUSF), and would allow additional carriers to receive support from the SRUSF. Senate Bill 361 allows for the use of the SRUSF for consumer broadband-only loops.

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.

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