

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

**SPONSOR** Padilla/Stefanics      **ORIGINAL DATE** 02/07/21  
**LAST UPDATED** 02/10/21      **HB** \_\_\_\_\_  
**SHORT TITLE** Broadband Access and Expansion Act      **SB** 93  
**ANALYST** Hitzman/Fischer

### APPROPRIATION (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act  
 Conflicts with HB85  
 Relates to HB10, HB141, SB144, and HB86

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Information Technology (DoIT)  
 Public Regulation Commission (PRC)  
 Public Schools Facilities Authority (PSFA)  
 Department of Cultural Affairs (DCA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 93 appropriates \$950 thousand from the general fund to DoIT for expenditure in FY22 to establish and operate the office of broadband access and expansion and for the hire of up to five FTE to support the operation of the broadband office.

SB93 outlines the responsibilities of the office of broadband access and expansion and its Governor-appointed director, which include developing and annually updating a state broadband plan, coordinating and providing technical assistance to other state and local government institutions, identifying broadband funding opportunities, and applying for federal and nongovernmental broadband funding. The office of broadband access and expansion is also required to maintain maps and information about broadband access for homes and businesses in the state, set standards of quality for broadband speeds, and coordinate with federal, local, state, and

tribal government agencies to create a uniform system of permits, licenses, and regulation of rights-of-way for broadband infrastructure.

## **FISCAL IMPLICATIONS**

The appropriation of \$950 thousand contained in this bill is a recurring expense to the general fund. Any unexpended balance remaining at the end of FY22 shall revert to the general fund. Once established, the office of broadband access and expansion will require recurring funding for ongoing operations.

DoIT estimates the operating budget for an office of broadband access and expansion would include \$660 thousand for personal services and benefits; \$200 thousand for professional contractual services, and the remaining \$90 thousand for other costs such as telephone services, supplies, and hardware/software purchases.

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.

Though DoIT has an existing office of broadband, two major reports in recent years have recommended the establishment of a centralized office of broadband in statute. First, a November 2019 LFC program evaluation recommended the Legislature designate a single entity to be the state's broadband lead and central point of contact, with a director appointed by the governor, and defined accountability reporting to the Legislature. A second, June 2020, Statewide Broadband Strategic Plan commissioned by DoIT recommended a similar centralized office of broadband with "resources of at least \$1 million per year to support appropriate staffing and programs."

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 currently has no single entity or agency tasked with tracking broadband investment funds or coordinating activities between state agencies. However, several individuals across at least seven state agencies have a claim of responsibility for broadband development in the state.

**Existing State Agency Roles in Broadband Infrastructure Development**

Agency	Role in Broadband
Department of Information Technology (DoIT)	Planning, mapping, fiscal agent for library broadband infrastructure fund
Public School Facilities Authority (PSFA)	Administer Broadband Deficiencies Correction Program for schools; provide technical assistance with E-Rate
Public Education Department (PED)	Statewide E-Rate coordination, including addressing gaps in tribal schools
Department of Cultural Affairs (DCA)	Through the State Library, assist public libraries with accessing E-Rate funds and state broadband support
Public Regulation Commission (PRC)	Administer the state rural universal service fund (SRUSF) and its Rural Broadband Program
Department of Transportation (DOT)	Administer utility and broadband right-of-way alongside and intersecting with state roads and transportation infrastructure
Indian Affairs Department (IAD)	Coordinate relationships with tribal governments; administer certain funds for tribal broadband projects

Source: LFC November 2019 Program Evaluation “Funding, Oversight, and Coordination of Broadband Programs”

The existing office of broadband within DoIT employs a single IT project manager and plays an informal assistance and oversight role in broadband initiatives and programs throughout the state. However, the office currently has two staff vacancies for IT project managers and does not actively track broadband investment across the state. Instead, the existing office provides general guidance to agencies and governments related to broadband connectivity. DoIT reports their staff already serve a supporting role to assist agencies in securing federal funding for broadband initiatives. However, the department also expressed concern that the new office of broadband access and expansion might not have the authority to apply on behalf of other state entities, as the federal application processes generally requires the project owner to be the actual applicant and recipient of funds. DoIT further identified potential conflict between SB93 and Section 9-27-6(F)(4) NMSA 1978 which states that the Secretary of DoIT’s strategic plan “shall . . . provide for the . . . development of a statewide broadband network plan[.]”

In addition to potential duplication of work at DoIT’s current office of broadband, SB93 may duplicate existing work at the PRC. The PRC currently administers the state’s Rural Universal Service Fund Broadband Program that disburses a minimum of \$5 million per year for broadband projects as directed by statute (NMSA § 1978 63-9H-6) and rule (NMAC 17.11.10.31). The PRC is also responsible by federal and state law for the designation of eligible telecommunications carriers for state and federal universal service funding eligibility. In doing so, the PRC is required to identify a carrier’s proposed service area and any applicable underserved or unserved areas, as well as mediate inter-carrier disputes. However, the PRC has no statutory authority to resolve right-of-way issues.

PRC reports their staff have provided assistance to and received assistance from DoIT’s existing office of broadband staff to identify and map areas receiving state or federal broadband support. PRC also provides DoIT staff with information needed regarding state and federal regulatory issues related to broadband, and this coordination appears likely to continue under the development of the broadband office.

PSFA also works with the existing office of broadband within DoIT to provide guidance to public schools for technical support, and information and assistance with federal funding opportunities such as E-Rate. As a result, E-Rate funding for schools in New Mexico have almost doubled in the last five years, and the Public School Capital Outlay Council has invested roughly \$8.7 million and leveraged roughly \$88 million in E-Rate funding for public school

broadband infrastructure since 2016. PSFA believes the creation of the office of broadband access and expansion may duplicate existing efforts to fund and connect New Mexico public schools and could potentially limit the ability for libraries and schools to leverage federal E-Rate funds if participating in bulk price agreements.

## **PERFORMANCE IMPLICATIONS**

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 infrastructure are high and residents and businesses in many rural areas remain unserved. However, recent federal and state investments as a result of the Covid-19 pandemic may significantly improve connectivity in some regions of the state.

In summer 2020, the Governor directed \$2.9 million of the state's CARES Act coronavirus relief funds to Cochiti Pueblo and another \$2.1 million to Sierra County for broadband infrastructure. In October 2020, USDA announced \$20 million of federal ReConnect funding would be targeted 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.

However, no state entity is responsible for identifying remaining regions lacking broadband access or prioritizing investments for those regions. Nor is any agency held accountable to seeing that homes and businesses in those regions are connected. For that reason, the November 2019 LFC program evaluation on broadband recommended that if an office of broadband were to be established in DoIT, that it be elevated to it to its own "program" within the General Appropriations Act such that it would have its own associated Accountability in Government Act performance measures to ensure it meets statewide broadband goals. As it is written, SB93 does not elevate the office to its own program under DoIT. However, the bill does require the newly created office to provide an annually updated three-year broadband plan to the Legislature.

Finally, DoIT notes that SB93 does not reference Internet service providers (ISPs) nor their role in delivering services to NM residents and businesses. According to DoIT, "without the ISP community involvement and coordination, governmental entities will resume the role of broadband expansion."

## **ADMINISTRATIVE IMPLICATIONS**

DoIT reports that the creation of a new office of broadband access and expansion would require the department's administrative services division to facilitate and execute human resources, budget, procurement, and fiscal services including the annual audit that may duplicate efforts of the existing office.

## **RELATIONSHIP**

This bill relates to the FY22 LFC budget recommendation, which includes \$20 million for statewide broadband projects.

According to DoIT, the SB93 appears to conflict with portions of HB85 appropriating \$1 million to the University of New Mexico's Indigenous Design and Planning Institute "to prepare a statewide, long-range information technology comprehensive plan for tribal communities . . . in order to plan the provision of secure, reliable and distributed internet connections[.]"

The bill also relates to House Bill 86, which appropriates capital funding for tribal broadband infrastructure, and potentially duplicates House Bill 10, which appropriates \$950 thousand to DoIT for a division of broadband. 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.

### **OTHER SUBSTANTIVE ISSUES**

DoIT expressed concern that SB93 does not appear to grant the newly created broadband office with the statutory authority necessary to enforce broadband quality of service standards to nongovernment customers receiving broadband service from private corporations.

Additionally, DoIT noted, the Legislature may want to consider a potential amendment to SB93 that would include "IPRA protections for the data in the proposed repository to the extent such data may expose businesses' and homes' security/safety vulnerabilities stemming from lack of connectivity."

As written, the Act would also require state agencies and public education institutions to coordinate with the broadband office for purchase of infrastructure and broadband services. However, DCA notes that, as the oversight body and entity for administering the Broadband for Libraries program, the requirement for participation in bulk pricing agreements outlined in this bill might result in loss of federal funds for those purchases typically funded through the federal E-Rate bidding process.

### **ALTERNATIVES**

As an alternative to the provisions proposed within SB93, DoIT's existing office of broadband would continue to serve as the state's primary entity for managing and assessing broadband connectivity needs throughout the state. 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 would not provide opportunities for state agencies, local and tribal governments, or public education institutions to be administered grant funding for broadband investments as currently developed.

Currently, at least seven state agencies, including DoIT, have a claim of responsibility for broadband development in New Mexico. Rather than establish a new office of technicians 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.

**POSSIBLE QUESTIONS**

Is the appropriation in SB93 duplicative of federal grants or existing state funding of broadband personnel in other state agencies?

Will the work of the office of broadband access and expansion duplicate that of existing state agencies such as the Public Regulation Commission, Department of Cultural Affairs, or the Public School Facilities Authority?

What authority will the new office of broadband have to coordinate or control the work of state agencies already engaged in broadband access an infrastructure?

How will the performance or output of the new office of broadband be monitored and reported to the Legislature?

JH/MF/sb/al