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## FISCAL IMPACT REPORT

SPONSOR Munoz ORIGINAL DATE 02/19/21  
 LAST UPDATED 03/03/21 HB \_\_\_\_\_

SHORT TITLE Evaluate Emerging Broadband Technology SB 366

ANALYST Fischer/Hitzman

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$20,000.0	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>		\$120.0	\$120.0	\$360.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to an appropriation in the General Appropriation Act of 2021

Relates to HB10, SB93, SB144, HB141, HB85, and HB86

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Information Technology (DoIT)

Economic Development Department (EDD)

Department of Cultural Affairs (DCA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 366 appropriates \$20 million from the general fund to the Economic Development Department through FY24. The \$20 million appropriation is for the purposes of funding the Economic Development Commission to evaluate and enter into 10-year leases or service agreements for high-altitude or satellite broadband transmission for New Mexico residents. It also directs the commission to identify federal or other sources of funding that might cover the costs of

the leases or service agreements. The bill specifies that \$200 thousand of the appropriations is for the evaluation component and the remaining \$19.8 million is for leases. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

The appropriation of \$20 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund. Although SB366 does not specify future appropriations, establishing a new leasing program could create an expectation the program will continue in future fiscal years; therefore, this cost is scored as recurring.

The bill tasks the Economic Development Commission with identifying federal or nongovernmental assistance sources the state could seek to pay for the leases or contracts. High-speed broadband from low-orbiting satellites has recently won the eligibility approval of the federal government for grants, meaning that (from one company, at least) there is potential for the state to leverage federal funds in securing the satellite broadband service agreements. Specifically, in December 2020, SpaceX was awarded \$886 million over 10 years in a Federal Communications Commission’s rural digital opportunity fund auction to provide broadband in 35 states, including New Mexico.

## **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.

In June 2020, DoIT released its commissioned [\*New Mexico Broadband Strategic Plan\*](#) outlining potential broadband projects throughout the state. The plan estimated a cost between \$2 billion and \$5 billion to build out fiber-based broadband to all homes and businesses in the state.

The \$2 billion to \$5 billion cost estimate to close the broadband access gap from DoIT’s strategic plan assumed bringing the Internet to remote areas meant trenching and running fiber optic cables to every remote home and business in the state. However, emerging technologies bringing high-speed wireless Internet access from low- and sub-orbit transmission companies like SpaceX and Skeye create a risk the state could be unnecessarily investing in expensive infrastructure. As such, LFC staff have recommended any state investments in broadband be flexible enough to be technology-neutral and minimize the risk of potentially stranding fiber assets in the future. On the other hand, DoIT noted, while low-Earth orbit satellite Internet services are emerging technologies and have been proven to work in the northern United States regions and Canada, high-altitude WiFi services are not yet proven and are still experimental.

DoIT also raised a concern that provisions in the bill may violate the anti-donation clause in the state constitution:

As written, Senate Bill 366 appears to state that service providers will be allowed use of the leased high-altitude or satellite platforms free of charge. If so, the bill arguably violates the Anti-Donation Clause. The Anti-Donation Clause is not violated where the state receives consideration for the expenditure of State funds and further contains an exception for economic development, pursuant to which the state may “create[e] new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses[.]” Because internet services under the bill are for residents rather than businesses, and because there is no requirement that the service providers create new job opportunities in the process, the bill arguably goes beyond the scope of the economic development exception to the Anti-Donation Clause. Also, because service providers appear to be allowed use of state-funded infrastructure free of charge, the state appears to receive no consideration in exchange for its expenditures for said infrastructure, thereby violating the general provisions of the Anti-Donation Clause.

DCA notes that, as the oversight and administrative entity for the Broadband for Libraries program, the New Mexico State Library (NMSL) staff will provide consultant support to evaluate options for procuring broadband. It may not be more cost effective, however, if the new technologies are not eligible for federal E-Rate funding depending on implementation factors. In addition, due to the cost effective nature of the current E-Rate process, NMSL does not advise waiting to implement the broadband expansion with the expectation that potential for satellite and high altitude broadband is technologically available or feasible, recommending a continuation of efforts through the E-Rate process to connect all the libraries that can be connected to fiber optic by January 2022.

### **ADMINISTRATIVE IMPLICATIONS**

The Economic Development Department noted a significant administrative impact on the department, including requiring 2 new FTE to work with contractors to complete the research, evaluations, recommendations, reporting, and contract generation required in the bill. Program support staff would also be impacted.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill relates to the FY22 LFC budget and capital outlay recommendations, which combined include \$45 million for statewide broadband projects.

This legislation also relates to Senate Bill 93 and House Bill 10, which create a centralized coordinating office of broadband 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 educational 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.