

SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 452

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO BROADBAND; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE DEPARTMENT OF INFORMATION TECHNOLOGY ACT;
AUTHORIZING THE LEASE OR SALE OF BROADBAND INFRASTRUCTURE AND
THE PROVISION OF CYBERSECURITY, INFORMATION TECHNOLOGY AND
TELECOMMUNICATION NETWORK SERVICES; PROVIDING FOR
ADMINISTRATIVE HEARINGS; CLARIFYING THE BASES FOR SOME SERVICE
RATES; PROVIDING DEFINITIONS; AMENDING SECTIONS OF THE
BROADBAND ACCESS AND EXPANSION ACT; REQUIRING REPORTING BY SOME

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INTERNET SERVICE PROVIDERS; ESTABLISHING CONDITIONS FOR LEASE
OF THE STATE-OWNED BROADBAND NETWORK.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-27-3 NMSA 1978 (being Laws 2007,
Chapter 290, Section 3, as amended) is amended to read:

"9-27-3. DEFINITIONS.--As used in the Department of
Information Technology Act:

A. "agency", unless otherwise specified, means
executive branch cabinet agencies and their administratively
attached agencies, offices, boards and commissions;

B. "cybersecurity" means acts, practices or systems
that eliminate or reduce the risk of loss of critical assets,
loss of sensitive information or reputational harm as a result
of a cyberattack or breach within an organization's
telecommunication network;

~~[A.]~~ C. "department" means the department of
information technology;

~~[B.]~~ D. "information technology" means computer
hardware, ~~[and software and ancillary products and services,~~
~~including:~~

~~(1) systems design and analysis;~~

~~(2) acquisition, storage and conversion of
data;~~

~~(3) computer programming;~~

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~~(4) information storage and retrieval;~~

~~(5) voice, radio, video and data~~

~~communications;~~

~~(6) requisite systems;~~

~~(7) simulation and testing; and~~

~~(8) related interactions between users and~~

~~information systems]~~ storage media, networking equipment, physical devices, infrastructure, processes and code, firmware, software and ancillary products and services, including:

(1) systems design and analysis;

(2) development or modification of hardware or solutions used to create, process, store, secure or exchange electronic data;

(3) information storage and retrieval systems;

(4) voice, radio, video and data communication systems;

(5) network, hosting and cloud-based systems;

(6) simulation and testing; and

(7) interactions between a user and an information system;

[~~G.~~] E. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

[~~D.~~] F. "secretary" means the secretary of information technology;

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~~[E-]~~ G. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs;

~~[F-]~~ H. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period; and

~~[G-]~~ I. "telecommunication network" means the physical and logical components and all associated infrastructure used in transporting, routing, aggregating and delivering voice and data information from computer and telecommunications systems in one location to peer systems in another."

SECTION 2. Section 9-27-6 NMSA 1978 (being Laws 2007, Chapter 290, Section 6, as amended by Laws 2017, Chapter 7, Section 2 and by Laws 2017, Chapter 45, Section 2) is amended to read:

"9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's duties, the secretary

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has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary is responsible and to enforce those orders and instructions by

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appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to state agencies and the residents of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; ~~and~~

(10) appoint for each division a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary; and

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(11) acquire, hold and maintain, through lease, trade or purchase, any real or personal property necessary to meet customer requirements or department obligations, including obligations of administratively attached offices or bodies.

C. As the chief information officer, the secretary shall:

(1) review SJC→~~executive~~←SJC agency plans regarding prudent allocation of information technology resources; reduction of duplicate or redundant data, hardware and software; and improvement of system interoperability and data accessibility among agencies;

(2) approve SJC→~~executive~~←SJC agency information technology requests for proposals and other SJC→~~executive~~←SJC agency requests that are subject to the Procurement Code, prior to final approval;

(3) promulgate rules for oversight of information technology procurement;

(4) approve SJC→~~executive~~←SJC agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and price agreements, prior to approval by the department of finance and administration;

(5) develop and implement procedures to standardize data elements, determine data ownership and ensure

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data sharing among executive agencies;

(6) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(7) monitor SJC→**executive**←SJC agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, executive agency management and the legislative finance committee on noncompliance;

(8) develop information technology cost recovery mechanisms and information systems rate and fee structures of state agencies and other public or private sector providers and make recommendations to the information technology rate committee;

(9) provide technical support to executive agencies in the development of their agency plans;

(10) ensure the use of existing public or private information technology or telecommunications resources when the use is practical, efficient, effective and financially prudent and is in compliance with the Procurement Code;

(11) review appropriation requests related to SJC→**executive**←SJC agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations by

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November 14 of each year to the department of finance and administration and by November 21 of each year to the legislative finance committee and the appropriate interim legislative committee; provided, however, that the recommendations to the legislative committees have been agreed to by the department of information technology and the department of finance and administration;

(12) promulgate rules to ensure that information technology projects satisfy criteria established by the secretary and are phased in with funding released in phases contingent upon successful completion of the prior phase;

(13) provide oversight of information technology projects, including ensuring adequate risk management, disaster recovery and business continuity practices and monitoring compliance with strategies for information technology projects that affect multiple agencies;

(14) conduct reviews of information technology projects and provide written reports to the appropriate legislative oversight bodies;

(15) conduct background checks on department employees and prospective department employees that have or will have administrative access or authority to sensitive, confidential or private information or the ability to alter systems, networks or other information technology hardware or software; and

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(16) perform any other information technology function assigned by the governor.

D. As the chief information officer, the secretary may:

(1) upon the advice and recommendation of the director of the office of broadband access and expansion pursuant to the provisions of the Broadband Access and Expansion Act, make available by lease or sale at the department's established rates on a competitively neutral basis such state-owned broadband network infrastructure or internet service that would connect underserved and unserved populations of New Mexico and otherwise support objectives of the state broadband plan;

(2) offer cybersecurity risk prevention and information technology mitigation and response solutions, including application and equipment selection, intrusion response, system monitoring or system testing for all users of agency-operated or -owned information technology, to include compliance standards for broadband infrastructure projects within the oversight or administration of the department; and

(3) establish an administrative hearing and enforcement process internal to the department or in coordination with the administrative hearings office to support the department's private sector regulatory activities or any administratively attached office or body.

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[D-] E. Each SJC→~~executive~~←SJC agency shall submit an agency information technology plan to the secretary in the form and detail required by the secretary. Each SJC→~~executive~~←SJC agency shall conduct background checks on agency or prospective agency employees that have or will have administrative access or authority to alter systems, networks or other information technology hardware or software.

[E-] F. SJC→~~A-state~~←SJC SJC→~~An~~←SJC agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department or to notify the department if the amount of the invoice is in dispute. The agency shall have fifteen days from its notification of dispute to the department to present its reasons in writing and request an adjustment. The department shall have fifteen days from its receipt of the reasons for dispute to notify the agency of its decision. If the department and the agency do not agree on a resolution, the secretary of finance and administration shall make a determination on the amount owed by the agency to the department. If the agency has not paid the department or notified the department of a dispute within thirty days of receipt of the invoice, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to

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satisfy the agency's obligation.

[F-] G. The secretary, as chief information officer, shall prepare a state information technology strategic plan for the executive branch and update it at least once every three years, which plan shall be available to agencies by July 31 of each year. The plan shall comply with the provisions of the Department of Information Technology Act and provide for the:

(1) interchange of information related to information technology among executive agencies;

(2) coordination among executive agencies in the development and maintenance of information technology systems;

(3) protection of the privacy and security of individual information as well as of individuals using the state's information technology systems;

(4) development of a statewide broadband network plan in conjunction with the public education department, the higher education department, state universities, other educational institutions, the public school capital outlay council, political subdivisions of the state, Indian nations, tribes and pueblos, the public regulation commission and telecommunication network service providers; and

(5) coordination and aggregation of services where feasible for entities as provided for in Section 9-27-20

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NMSA 1978 and other publicly funded entities.

[G.] H. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services or those of an administratively attached office or public body.

[H.] I. Where information technology functions of executive agencies overlap or a function assigned to one agency could better be performed by another agency, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

[I.—The] J. Pursuant to the State Rules Act and rules promulgated pursuant to that act, the secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties, or relating to any matter within the oversight, of the department and its administratively attached offices or public bodies, divisions and requirements and standards for the executive branch's information technology needs, functions, systems and resources, including:

- (1) information technology security;
- (2) approval for procurement of information technology not in conflict with the Procurement Code that exceeds an amount set by rule;
- (3) detail and format for the agency

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information technology plan;

(4) acquisition, licensing and sale of information technology; and

(5) requirements for agency information technology projects and related plan, analysis, oversight, assessment and specifications.

~~[J-]~~ K. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for an advance notice of hearing. Rules shall be filed in accordance with the State Rules Act."

SECTION 3. Section 9-27-7 NMSA 1978 (being Laws 2007, Chapter 290, Section 7, as amended) is amended to read:

"9-27-7. INFORMATION TECHNOLOGY RATE COMMITTEE--

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MEMBERSHIP--DUTIES.--

A. The "information technology rate committee" is created. The committee consists of seven members as follows:

(1) five members appointed by the governor from executive agencies that use information technology services and pay rates to an internal service fund;

(2) the secretary of finance and administration, who shall serve as chair of the committee; and

(3) the secretary of information technology.

B. The information technology rate committee shall:

(1) review the rate and fee schedule proposed by the secretary;

(2) ensure that the rate and fee schedule complies with the federal office of management and budget circular A-87 or its successor directive with respect to rates for expenditure of money from federal grant awards;

(3) consider for approval an equitable rate and fee schedule based on cost recovery for state agencies that use information technology services and pay rates to an internal service fund, with priority service to public safety agencies;

(4) present the committee's proposed rate and fee schedule by June 1 of each year to the office of the governor, the department of finance and administration and the legislative finance committee; and

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(5) by July 15 of each year, implement a rate and fee schedule based on the committee's recommendations; provided, however, that a reduction in rates or fees by the department shall not require the committee's approval if the reduction is based on cost recovery and if the committee is notified timely."

SECTION 4. Section 9-27-15 NMSA 1978 (being Laws 1997, Chapter 263, Section 1, as amended by Laws 2007, Chapter 288, Section 2 and by Laws 2007, Chapter 290, Section 15) is amended to read:

"9-27-15. LEASE OF RADIO COMMUNICATIONS NETWORK--
CONDITIONS AND REQUIREMENTS.--In exercising supervisory control pursuant to Section ~~[15-2-2]~~ 9-27-14 NMSA 1978, the department ~~[of information technology]~~ may lease to a private entity excess capacity relating to the provision of two-way radio services on its radio communications property, including buildings, towers or antennas, provided that:

~~[A. the lease conforms with competitive procurement requirements of the Procurement Code;~~

B.] A. the lease is for an ~~[equal]~~ equivalent value exchange of money or property or services;

~~[G.]~~ B. the secretary ~~[of information technology]~~ certifies that the excess capacity will be available for at least the duration of the lease;

~~[D.]~~ C. if the lease exceeds ten years, the lease

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is first approved by the state board of finance;

[E.] D. the department [~~of information technology~~] has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses and local telecommunication service providers; and

[F.] E. income from the leases shall be deposited to the credit of the department [~~of information technology~~] and used to carry out the duties of the department."

SECTION 5. Section 9-27-20 NMSA 1978 (being Laws 1963, Chapter 181, Section 1, as amended) is repealed and a new Section 9-27-20 NMSA 1978 is enacted to read:

"9-27-20. [NEW MATERIAL] TELECOMMUNICATIONS--DUTIES.--

A. The department shall enter into necessary agreements to provide, where feasible, a telecommunication network and related facilities to all executive, legislative and judicial branches and may, when capacity exists and it is economical, provide a telecommunication network and related facilities to educational institutions and other entities, with a preference to public entities.

B. The department may, in compliance with the Procurement Code, establish price agreements with vendors for information technology goods and services. Any public body may directly procure goods or services offered under a department-placed price agreement other than a price agreement for an

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enterprise service administered by the department.

C. On July 1, 2023, and on July 1 of each subsequent year, the department shall provide a catalog listing the information technology goods and services it has available to offer with the approved rates.

D. Subject to capacity after meeting requirements of agency customers, the department may offer catalog goods and services to non-agency customers. The department may require a non-agency customer to comply with all rules and guidance applicable to the department-provided good or service but shall not require a non-agency customer to comply with any other law administered by the department unless otherwise provided by law."

SECTION 6. Section 9-27-26 NMSA 1978 (being Laws 2017, Chapter 7, Section 9) is amended to read:

"9-27-26. INDIAN NATIONS, TRIBES AND PUEBLOS--AGENCY-OWNED OR -OPERATED BROADBAND NETWORK--STATEWIDE BROADBAND--RIGHT-OF-WAY AGREEMENT AND SERVICE AGREEMENT.--Indian nations, tribes and pueblos may connect to [~~the~~] an agency-owned or -operated statewide broadband network in exchange for a mutually agreed upon right-of-way agreement or a service agreement with the chief information officer. The chief information officer shall apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such

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section existed on January 1, 2006, on behalf of Indian nations, tribes and pueblos that execute a right-of-way agreement or service agreement."

SECTION 7. Section 63-9J-2 NMSA 1978 (being Laws 2021, Chapter 123, Section 2) is amended to read:

"63-9J-2. DEFINITIONS.--As used in the Broadband Access and Expansion Act:

A. "broadband infrastructure" means [~~any cable or device used for high-capacity transmission of a wide range of frequencies enabling a large number of electronic messages to be transmitted or received simultaneously~~] facilities and equipment used to provide internet service, excluding telecommunications equipment owned, controlled or operated by a public or private end user;

B. "broadband office" means the office of broadband access and expansion;

C. "department", unless otherwise specified, means the department of information technology;

[G.] D. "director" means the director of the broadband office;

E. "end user" means an individual, business, institution or governmental entity that subscribes to an internet service and does not resell that service to other individuals or entities;

F. "facilities-based provider" means a provider of

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internet service to end users in New Mexico using facilities that satisfy any of the following criteria:

(1) physical facilities that the entity owns and that terminate at the end user premises;

(2) facilities that the entity has obtained the right to use from other entities, such as dark fiber or satellite transponder capacity as part of its own network, or has obtained;

(3) unbundled network element loops, special access lines or other leased facilities that the entity uses to complete terminations to the end user premises;

(4) wireless spectrum for which the entity holds a license or that the entity manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement pursuant to federal regulations promulgated pursuant to the federal Communications Act of 1934, as amended, or upon subsequent amendment or repeal of that act, by the broadband office by rule; or

(5) unlicensed spectrum;

G. "internet" means a global set of computing and electronic devices interconnected through networking infrastructures to provide data and information sharing and communication facilities;

[D.] H. "local government" means the government of a municipality, county or political subdivision of the state;

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I. "open access" means equal nondiscriminatory access to the state-owned broadband network by eligible entities on a technologically and competitively neutral basis, regardless of whether the entity is privately or publicly owned;

[E-] J. "public educational institution" means a public school, a school district, a public post-secondary educational institution or SJC→a state←SJC SJC→an←SJC agency that provides administrative, funding or technical support to public schools, school districts and public post-secondary educational institutions;

[F-] K. "quality of service" means the standards established by the federal communications commission; [and]

L. "state-owned broadband network" means the state-owned broadband infrastructure that is owned, leased or operated by the department;

[G-] M. "statewide broadband plan" means a plan, including recommended statutory changes and implementation procedures, for the development and expansion of broadband infrastructure and services throughout the state to meet the needs:

- (1) for the delivery of internet-based educational, medical and emergency services;
- (2) for local and tribal communities to foster and recruit internet-reliant business and industry and to

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promote economic development and job creation; and

(3) to support internet-reliant state, local and tribal government SJC→agency←SJC functions and facilitate the delivery of governmental services in a manner that is competitive with similar government agencies in neighboring states;

N. "underserved" means an area or property that does not have access to internet service offering speeds greater than one hundred megabits downstream and twenty megabits upstream; and

O. "unserved" means an area or property that either does not have access to internet service at all or only has access to internet service offering speeds below twenty-five megabits per second downstream or three megabits per second upstream."

SECTION 8. Section 63-9J-3 NMSA 1978 (being Laws 2021, Chapter 123, Section 3) is amended to read:

"63-9J-3. OFFICE OF BROADBAND ACCESS AND EXPANSION CREATED--DIRECTOR--STANDARDS--DATA COLLECTION--STATEWIDE BROADBAND PLAN--ASSISTANCE FOR POLITICAL SUBDIVISIONS.--

A. The "office of broadband access and expansion" is created and is administratively attached to the department [~~of information technology~~].

B. The broadband office shall be managed by the director, who shall be appointed by the governor. The director

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may hire staff as needed to meet the responsibilities of the broadband office.

C. The broadband office shall:

(1) establish by rule standards for quality of service for homes, businesses and public institutions;

(2) create and maintain an official, publicly accessible online New Mexico broadband access map showing broadband availability and quality of service for homes, businesses and public institutions on a county-by-county basis; and

(3) create and maintain a repository for broadband data and information in New Mexico on a county-by-county basis, including:

(a) the number of homes and businesses that do not have access to broadband service;

(b) the number of homes and businesses that have broadband service that falls below the quality of service standards established by the broadband office; and

(c) the locations of broadband infrastructure currently owned or projected for construction by the state or local governments on a county-by-county basis.

D. On or before January 1, 2022, the broadband office shall develop and provide to the governor and the legislature a three-year statewide broadband plan.

E. On or before January 1, 2023, and on or before

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January 1 of each year thereafter, the broadband office shall update and revise the statewide broadband plan developed pursuant to this section for the ensuing three years and report the updated and revised statewide broadband plan to the governor and the legislature. In its initial plan pursuant to Subsection D of this section and in its annual revised and updated plan pursuant to this subsection, the broadband office shall provide an assessment of broadband service across the state compared to the standards established by the various federal broadband regulatory and assistance programs.

F. In the development of the statewide broadband plan, the broadband office shall request advice and provide opportunities for meaningful input from each local and tribal government within New Mexico, and all state agencies and public educational institutions shall cooperate with and provide relevant broadband-related information collected or developed by the agencies as requested by the broadband office.

G. The broadband office shall implement the statewide broadband plan.

H. The broadband office shall provide technical and planning assistance to local governments, public educational institutions and state agencies in the design, development or implementation of their own plans for the development of broadband service. When providing planning and technical assistance, the broadband office shall encourage the use of

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regional planning and may provide planning and technical assistance to tribal government agencies and schools when those entities are participants in a joint powers agreement with a county, municipality, political subdivision, public educational institution or SJC→state←SJC agency or memorandum of understanding for the design, development or implementation of a regional broadband plan.

I. The broadband office may form an advisory committee comprising representatives of state, local and tribal government agencies and the general public to facilitate the collection of information and the development of proposals for the statewide broadband plan; provided that if an advisory committee is formed, at least three different tribal agencies shall be represented on the committee.

J. In furtherance of statewide broadband planning, all facilities-based providers shall report semiannually to the broadband office the same data in the same format that is reported to the federal communications commission pursuant to federal law governing data submitted for broadband mapping. The reports shall be submitted each year on or before April 1, with regard to data existing as of December 31 of the prior year, and on or before October 1, with regard to data existing as of June 30 of the then current year. All information reported by a facilities-based provider pursuant to this subsection shall be maintained as confidential information by

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the broadband office in accordance with applicable state or federal law.

K. The reporting requirements set forth in Subsection J of this section do not apply to tribal corporations federally chartered by the bureau of Indian affairs.

L. The broadband office may adopt rules requiring facilities-based providers to report data in addition to the data required pursuant to Subsection J of this section; provided that no such rule shall require a facilities-based provider to report any such data more frequently than twice per year."

SECTION 9. Section 63-9J-4 NMSA 1978 (being Laws 2021, Chapter 123, Section 4) is amended to read:

"63-9J-4. COORDINATION OF STATE AND LOCAL GOVERNMENT BROADBAND EFFORTS.--

A. The broadband office shall identify federal and nongovernmental broadband funding assistance opportunities for local governments, public educational institutions, state agencies and tribal governments and shall publish a list of those opportunities in a manner that can be searched on a county-by-county basis.

B. The broadband office may be the applicant for such funding assistance for all state agencies except the department of transportation.

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C. State agencies and public educational institutions shall coordinate with the broadband office concerning the purchase of broadband infrastructure and services with the goal of obtaining best-value or bulk pricing agreements where practicable.

D. The broadband office shall coordinate with and may enter into memoranda of understanding with federal, local government, state and tribal government agencies to create an integrated system of permits, licenses and rules for broadband infrastructure across all governmental jurisdictions within each region of the state, including the creation of a centralized repository, and an expedited review process for rights of way use applications, with the goal of creating uniform coordinated permitting and licensing requirements statewide. The broadband office shall develop proposals for government agencies at the local, county and state levels to build and pay for broadband networks, upon request for such assistance.

E. The broadband office shall advise and make recommendations to the department regarding proposals to use the state-owned broadband network for the purpose of connecting unserved and underserved populations of the state to internet service on the basis of open access that supports objectives of the state broadband plan; provided that:

(1) the department may lease a portion of the

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state-owned broadband network or provide internet service to a facilities-based provider that offers fixed wire broadband to end users in the state pursuant to the following conditions:

(a) the lease or internet service agreement shall allow the deployment of internet service to an area in which at least fifty percent of the residential and business locations are underserved or unserved;

(b) the broadband office shall post a notice on its website at least forty-five days prior to the execution of the lease or internet service agreement. The notice shall include: 1) the name of the facilities-based provider with which the department intends to enter into the lease or internet service agreement; 2) a statement describing the boundaries of the geographical area that will be served under the terms of the lease or internet service agreement; 3) the specifications of the broadband infrastructure or internet service that will be the subject of the lease or internet service agreement; and 4) the price upon which the lease or internet service agreement shall be offered by the department;

(c) within the forty-five-day posting period required by Subparagraph (b) of this paragraph, no private facilities-based provider has notified the broadband office in writing that it can provide the same broadband infrastructure or internet service identified in the notice, as applicable, at a price that does not exceed one hundred ten

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percent of the price being offered by the department; and

(d) if the lease exceeds ten years, the lease is first approved by the state board of finance;

(2) the department may sell or otherwise transfer ownership of a portion of the state-owned broadband network pursuant to existing state law regarding the sale or disposition of such property; provided that the department and any successor in interest shall not transfer ownership of any portion of the state-owned broadband network to any wholly private entity for at least twenty years after construction of the broadband infrastructure to be sold was completed;

(3) the department shall not sell or otherwise deliver internet service directly to a nongovernmental end user; and

(4) the department shall adopt and implement rules to govern the lease or sale of state-owned broadband network capacity to the private sector. The rules shall include processes that will enable a facilities-based provider to challenge a determination that an area is eligible to receive state-owned broadband network capacity."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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