

HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 262

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

AN ACT

RELATING TO BROADBAND; AMENDING SECTIONS OF THE CONNECT NEW MEXICO ACT; TRANSFERRING IMPLEMENTATION OF THE GRANT PROGRAM FROM THE CONNECT NEW MEXICO COUNCIL TO THE OFFICE OF BROADBAND ACCESS AND EXPANSION; MAKING TECHNICAL CORRECTIONS; PROVIDING DEFINITIONS.

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

SECTION 1. Section 63-9K-2 NMSA 1978 (being Laws 2021, Chapter 120, Section 2) is amended to read:

"63-9K-2. DEFINITIONS.--As used in the Connect New Mexico Act:

A. "2020 broadband plan" means the *State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment* published by the department of information technology in June 2020;

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

8 C. "broadband office" means the office of broadband
9 access and expansion;

10 ~~[G.]~~ D. "council" means the connect New Mexico
11 council;

12 ~~[D.]~~ E. "department" means the department of
13 information technology ~~[provided that, upon Senate Bill 93 of~~
14 ~~the first session of the fifty-fifth legislature becoming law,~~
15 ~~"department" means a state agency, department, division or~~
16 ~~other organization unit designated in that law to plan or~~
17 ~~coordinate broadband development efforts by all state~~
18 ~~agencies];~~

19 ~~[E.]~~ F. "digital equity" means information
20 technology needed for civic and cultural participation,
21 employment, education, business and economic development,
22 lifelong learning and access to essential services generally
23 available to residents regardless of their racial grouping,
24 socioeconomic status or cultural identity;

25 ~~[F.]~~ G. "digital inclusion" means access to and the

1 ability to use information technologies;

2 H. "end-user" means an individual, business,
3 institution or governmental entity that subscribes to an
4 internet service and does not resell that service to other
5 individuals or entities;

6 [~~G.~~] I. "federal assistance funding" means federal
7 grant and loan programs that provide full or matching funding
8 for the development or maintenance of broadband infrastructure,
9 training in the use or administration of internet-based
10 services or the purchase of computers or other devices that
11 access the internet;

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

16 [~~H.~~] K. "local government" means the government of
17 a municipality, county or political subdivision of the state or
18 an entity operating pursuant to a joint powers agreement
19 pursuant to the Planning District Act or the Regional Planning
20 Act;

21 [~~F.~~] L. "public educational institution" means a
22 public school that receives state funding for its operations, a
23 school district, a public post-secondary educational
24 institution or a state agency that provides administrative
25 services, funding or technical support to public schools,

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1 school districts and public post-secondary educational
2 institutions;

3 ~~[J.]~~ M. "quality of service" means the standards
4 for broadband service established by the ~~[department]~~ broadband
5 office that meet or exceed the baseline standards established
6 by the federal communications commission;

7 ~~[K.]~~ N. "statewide broadband plan" means a plan
8 developed by the ~~[department]~~ broadband office that may be an
9 updated revision of the 2020 broadband plan; provided that,
10 upon Senate Bill 93 of the first session of the fifty-fifth
11 legislature becoming law, "statewide broadband plan" means the
12 statewide broadband plan developed pursuant to that law;

13 ~~[L.]~~ O. "tribal government" means the government of
14 a federally or state-recognized Indian nation, pueblo or tribe;

15 ~~[M.]~~ P. "underserved" means an area or property
16 that does not ~~[receive internet quality of service access]~~ have
17 access to internet service offering speeds greater than one
18 hundred megabits downstream and twenty megabits upstream; and

19 ~~[N.]~~ Q. "unserved" means an area or property that
20 ~~[does not have internet access that meets the baseline~~
21 ~~standards established by the federal communications commission]~~
22 either does not have access to internet service at all or only
23 has access to internet service offering speeds below twenty-
24 five megabits per second downstream or three megabits per
25 second upstream."

1 SECTION 2. Section 63-9K-3 NMSA 1978 (being Laws 2021,
2 Chapter 120, Section 3) is amended to read:

3 "63-9K-3. COUNCIL CREATED--POWERS.--

4 A. The "connect New Mexico council" is created and
5 administratively attached to the department.

6 B. The council is composed of the following fifteen
7 members:

8 (1) the secretary of transportation or the
9 secretary's designee;

10 (2) the secretary of economic development or
11 the secretary's designee;

12 (3) the secretary of cultural affairs or the
13 secretary's designee;

14 (4) the secretary of information technology or
15 the secretary's designee;

16 (5) the executive director of the New Mexico
17 mortgage finance authority or the executive director's
18 designee;

19 (6) the secretary of higher education or the
20 secretary's designee;

21 (7) the director of the public school
22 facilities authority or the director's designee;

23 (8) five members of the public who have
24 experience with broadband access and connectivity challenges
25 for either private business or public institutions, appointed

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1 as follows:

2 (a) one member appointed by the speaker
3 of the house of representatives;

4 (b) one member appointed by the minority
5 floor leader [~~in~~] of the house of representatives;

6 (c) one member appointed by the
7 president pro tempore of the senate;

8 (d) one member appointed by the minority
9 floor leader [~~in~~] of the senate; and

10 (e) one member appointed by the
11 governor; and

12 (9) three members appointed by the secretary
13 of Indian affairs: one representative of the Navajo Nation,
14 one representative of Apache tribal governments and one
15 representative of Indian pueblo tribal governments, who are
16 experienced with broadband access and connectivity issues.

17 C. The chair of the council shall be elected by a
18 quorum of the council members. The council shall meet monthly
19 or at the call of the chair. A majority of members constitutes
20 a quorum for the transaction of business. The affirmative vote
21 of at least a majority of a quorum present shall be necessary
22 for an action to be taken by the council.

23 D. Each member of the council appointed pursuant to
24 Paragraph (8) or (9) of Subsection B of this section shall be
25 appointed to a four-year term; provided that to provide for

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1 staggered terms:

2 (1) two of the members initially appointed
3 pursuant to Paragraph (8) of Subsection B of this section shall
4 be appointed for a term of two years by lot; and

5 (2) one member initially appointed pursuant to
6 Paragraph (9) of Subsection B of this section shall be
7 initially appointed for a term of two years by lot.

8 E. Public members of the council shall be
9 reimbursed for attending meetings of the council as provided
10 for nonsalaried public officers in the Per Diem and Mileage Act
11 and shall receive no other compensation, perquisite or
12 allowance.

13 F. Public members of the council are appointed
14 public officials of the state while carrying out their duties
15 and activities under the Connect New Mexico Act.

16 G. Council members shall be governed by the
17 Governmental Conduct Act.

18 H. The council shall be staffed by the department."

19 SECTION 3. Section 63-9K-4 NMSA 1978 (being Laws 2021,
20 Chapter 120, Section 4) is amended to read:

21 "63-9K-4. COUNCIL--DUTIES.--The council shall:

22 A. ~~[in consultation with the department, coordinate~~
23 ~~state agency]~~ advise and make recommendations to the broadband
24 office regarding the coordination of broadband programs and
25 broadband projects in accordance with the statewide broadband

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1 plan;

2 B. ~~[evaluate and prioritize grant proposals and~~
3 ~~make grant awards]~~ advise the broadband office concerning the
4 development of a grant program and make recommendations for
5 grant awards from the connect New Mexico fund; and

6 C. adopt rules ~~[establishing a competitive grant~~
7 ~~program to receive funds]~~ regarding the administration of
8 grants from the connect New Mexico fund. The rules shall
9 include the application procedure, the required qualifications
10 for projects and the purposes for which the grants may be
11 used."

12 SECTION 4. Section 63-9K-5 NMSA 1978 (being Laws 2021,
13 Chapter 120, Section 5) is amended to read:

14 "63-9K-5. BROADBAND KNOWLEDGE AND DIGITAL EQUITY ANALYSIS
15 AND PLAN--REPORT--INCLUSION IN STATEWIDE BROADBAND PLAN.--

16 A. The council shall consult local and tribal
17 governments, public educational institutions and state agencies
18 to develop a digital equity analysis and plan to address:

19 (1) the challenges to digital inclusion that
20 are posed by the lack of affordable quality service, broadband-
21 enabled devices or the knowledge of how to use the devices
22 effectively in different age, cultural or geographic
23 populations across the state;

24 (2) the federal and private sector programs
25 that could be applied to by state agencies or local or tribal

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1 governments to address the challenges identified in Paragraph
2 (1) of this subsection; and

3 (3) existing state programs or state programs
4 that could be established that address or could leverage
5 federal and private sector programs to address the challenges
6 identified in Paragraph (1) of this subsection.

7 B. On or before August 1, 2023, the council shall
8 report on the digital equity analysis and plan to the
9 ~~[department]~~ broadband office and appropriate interim
10 legislative committees.

11 C. On or before January 1, 2024, the ~~[department]~~
12 broadband office shall incorporate the digital equity analysis
13 and plan and its recommendations into the statewide broadband
14 plan.

15 D. The ~~[department]~~ broadband office shall
16 cooperate with and provide relevant broadband-related
17 information ~~[collected or developed by the department]~~ it
18 collects or develops with the council."

19 SECTION 5. Section 63-9K-6 NMSA 1978 (being Laws 2021,
20 Chapter 120, Section 6) is amended to read:

21 "63-9K-6. CONNECT NEW MEXICO FUND CREATED.--

22 A. The "connect New Mexico fund" is created in the
23 state treasury. The fund consists of appropriations, gifts,
24 grants and donations. Money in the fund is ~~[subject to~~
25 ~~appropriation by the legislature to the council for the purpose~~

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1 ~~of administering the broadband grant program. Disbursements~~
2 ~~from the fund shall be made upon warrants drawn by the~~
3 ~~secretary of finance and administration pursuant to vouchers~~
4 ~~signed by the chair of the council]~~ appropriated to and shall
5 be administered by the broadband office pursuant to rules
6 adopted by the council pursuant to Section 63-9K-4 NMSA 1978
7 for the purpose of issuing grants pursuant to Subsection B of
8 this section. Any unexpended or unencumbered balance in the
9 fund remaining at the end of any fiscal year shall not revert
10 to the general fund.

11 B. The [~~council~~] broadband office shall implement
12 [~~the broadband~~] a grant program to develop and expand broadband
13 infrastructure and services and support digital inclusion;
14 provided that the [~~council~~] broadband office shall each year
15 seek to award grants for proposals submitted by the following
16 entities throughout the state:

- 17 (1) local governments;
18 (2) state agencies;
19 (3) public educational institutions;
20 (4) tribal governments; [~~and~~]
21 (5) entities created by a joint powers
22 agreement pursuant to the Joint Powers Agreements Act; and
23 (6) private entities for broadband
24 infrastructure to provide service primarily for residential
25 purposes.

1 C. When approving grants from the connect New
2 Mexico fund, the ~~[council]~~ broadband office shall give
3 consideration to:

4 (1) the extent to which the project connects
5 unserved and underserved populations of New Mexico, with
6 priority given to projects that will connect unserved
7 populations;

8 (2) the extent to which the project meets or
9 exceeds the baseline standards established by the federal
10 communications commission;

11 (3) the extent to which the project leverages
12 existing infrastructure;

13 (4) the extent to which the project
14 complements or coordinates with the statewide broadband plan;

15 (5) the extent to which the project leverages
16 regional collaboration;

17 (6) the degree to which the project fosters
18 digital inclusion;

19 (7) the extent to which the project stimulates
20 in-state economic development, including the creation of jobs
21 and apprenticeships; ~~[and]~~

22 (8) the extent to which the project leverages
23 in-kind or financial support from local agencies or entities,
24 federal assistance funding or federal Coronavirus Aid, Relief,
25 and Economic Security Act, federal Consolidated Appropriations

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1 Act, 2021 or federal American Rescue Plan Act of 2021 funding;
2 and

3 (9) for a grant award to a private entity, the
4 extent to which the grantee contributes matching funds or
5 in-kind support for the project, the number of existing
6 residences to which internet services would be made available
7 as a percentage of the total number of existing locations to
8 which internet services would be made available by the project
9 and the extent to which the project fosters digital equity."

10 SECTION 6. Section 63-9K-7 NMSA 1978 (being Laws 2021,
11 Chapter 120, Section 7) is amended to read:

12 "63-9K-7. DATA COLLECTION--ANNUAL REPORT.--

13 A. By October 1 of each year, the [~~department~~]
14 broadband office, in coordination with the council, shall
15 provide to the appropriate legislative interim committees a
16 report on the access to and quality of service of broadband
17 across the state. Information shall be provided on a county-
18 by-county basis.

19 B. The report shall contain the following
20 information:

21 (1) progress achieved toward digital equity
22 and digital inclusion as identified in the digital equity
23 analysis and plan;

24 (2) progress achieved on implementation of the
25 statewide broadband plan;

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1 (3) identified obstacles to an integrated
2 system of permits, licenses and rules for broadband
3 infrastructure across the state, including an expedited review
4 process for rights of way use applications;

5 (4) recommended statutory, regulatory or
6 policy changes and budget recommendations for the development
7 and expansion of broadband infrastructure and digital equity
8 and digital inclusion; and

9 (5) information on the broadband grant
10 program, including:

11 (a) a list of grant recipients;
12 (b) the amount and date of each grant;
13 (c) a description of each project
14 funded; and

15 (d) a description of how each project
16 contributes to the statewide broadband plan and demonstrates
17 increased access and quality of service for the unserved and
18 underserved populations of New Mexico."