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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Hamblen</u>	<b>LAST UPDATED</b> <u>3/2/25</u>	<b>ORIGINAL DATE</b> <u>2/25/25</u>
<b>SHORT TITLE</b> <u>Essential Services Development Act</u>	<b>BILL NUMBER</b> <u>Senate Bill 357/aSTBTC</u>	<b>ANALYST</b> <u>Hilla</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DFA	No fiscal impact	\$343.89	\$343.89	\$687.8	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 401

### Sources of Information

LFC Files

#### Agency Analysis Received From

Department of Finance and Administration (DFA)  
 Public Regulation Commission (PRC)  
 Office of Broadband Access and Expansion (OBAE)

#### Agency Analysis was Solicited but Not Received From

New Mexico Municipal League (ML)  
 New Mexico Counties (NMC)

## SUMMARY

### Synopsis of STBTC Amendment to Senate Bill 357

The Senate Tax, Business and Transportation Committee (STBTC) amendment to Senate Bill 357 (SB357) strikes language regarding public support for the Essential Services Development Act, removing state exclusivity for providing essential services projects.

### Synopsis of Senate Bill 357

Senate Bill 357 (SB357) creates the Essential Services Development Act to allow state support for infrastructure projects, primarily in residential areas, relating to broadband deployment, energy, water, and wastewater services. Important definitions included in SB357 are as follows:

- "Broadband telecommunications network facilities" is defined as the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current

federal communications commission baseline speed standard.

- “Essential services project” is defined as an infrastructure project that allows access to internet, energy, water, or wastewater services primarily for residential purposes.
- “Public support” is defined as assistance by the state to provide direct and indirect assistance to support an essential service project, including the provision of land, buildings, construction, placement of new broadband telecommunications network facilities, rights-of-way infrastructure, public works improvements, and payments for professional services contracts

Under SB357, only the state may provide public support for essential service projects, including grants, loans, loan guarantees, infrastructure improvements, and professional services; state support must also explicitly be authorized by law. SB357 tasks the Local Government Division at the Department of Finance and Administration (DFA) with overseeing projects, providing technical assistance, and setting project performance benchmarks and accountability measures.

SB357 requires localities to adopt a development plan for an essential services project prior to receiving state support. Multiple municipalities or counties can enter into a joint powers agreement to form a regional government to create a regional essential services development plan and appoint a project manager to be responsible for tracking the project and its funds. Public funds for these projects must be deposited into special accounts to ensure the funds are only used for essential services. If a project is terminated, unspent funds would return to the state’s general fund.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

This fiscal analysis assumes administrative costs to the Local Government Division at DFA, as well as the State Board of Finance (BOF) at DFA. DFA estimates an additional 2 FTE would be needed at the Local Government Division at a cost of \$189.2 thousand and an additional FTE for BOF at a cost of \$94.6 thousand should HB357 pass. Additionally, BOF anticipates \$60 thousand for legal costs for annual updates for compliance reporting with the federal Internal Revenue Service’s tax regulations.

## **SIGNIFICANT ISSUES**

Subsection H of Section 14 of Article 9 of the Constitution of New Mexico does not authorize local governments to provide public support for essential services projects. However, this section of the state’s constitution was amended in 2022 to provide an exception for the anti-donation clause for the provision of essential household services. DFA notes that while the amendment allows for public funds to be provided to non-government entities, the financing for non-government entities may impact severance tax and general obligation bonds issued by BOF. The department adds that utilizing tax-exempt bond proceeds to fund private organizations’ projects could put the state at risk of forfeiting its bonds’ tax-exempt status, inadvertently converting the tax-exempt bond portfolio to private activity bonds.

Additionally, DFA adds that potential recipients of the act must be in compliance with Section 145 of the Internal Revenue Code, which deals with qualified, tax-exempt bonds issues by states and local governments to finance projects for non-profit organizations. A government entity must own the property financed with tax-exempt bonds. DFA states that if a recipient does not meet these federal standards, the tax-exempt status of the bonds will be forfeited, which would affect the state's bonding programs and could be subject to litigation.

DFA adds that SB357's establishing of a special fund to disburse money for public support is contrary to previous and existing methods of providing state funding for capital purposes through a reimbursement process. DFA notes concern that disbursing money to a fund, as opposed to continuing a reimbursement process, provides an additional administrative burden for the department in monitoring, tracking, and overseeing compliance; the department notes it is more difficult to claw back money that has been disbursed than it is to review reimbursement requests for compliance. The disbursement methodology proposed by SB357 could also create hurdles with BOF's monetary tax regulation compliance with the federal Internal Revenue Service (IRS).

STBTC's amendments to SB357 still raise concern of the state's tax-exempt status on bonds by allowing local government funding. STBTC's amendments could allow a local government to provide direct financial assistance to an internet service provider, a private entity, which could convert state bonds into private activity bonds, making them taxable. Allowing local governments to provide funding assistance could make it harder for DFA to tack the various funding streams, which could make it harder for the state to recover from misused funds.

The Office of Broadband Access and Expansion (OBAE) states that although it has received almost \$1 billion across state and federal funding, it anticipates an additional \$2.2-5.5 billion to ensure connectivity in unserved and underserved regions in the state. OBAE states the bill could provide community anchor institutions in underserved communities to help fill the connectivity gap.

## **PERFORMANCE IMPLICATIONS**

SB357 provides mandatory performance reviews and actions for any unsatisfactory project without establishing measurable goals, or types of corrective actions DFA is tasked to ensure a satisfactory project. Additionally, DFA notes that the Local Government Division has limited technical expertise to determine the Federal Communications Commission (FCC) baseline speed standards across various locations, perhaps necessitating DFA to work with OBAE when considering eligible entities. OBAE states that local governments should consult with the office when creating broadband plans to maximize funding; this is not a requirement as outlined in SB357 but would help eliminate potential duplication.

## **ADMINISTRATIVE IMPLICATIONS**

DFA states that SB357 would require the Local Government Division to provide technical assistance to local or regional governments and monitor performance and project status. BOF is responsible for monitoring any essential services projects, specifically for non-government entities, to ensure ongoing compliance with the IRS tax regulations. The FCC requires geographic information system mapping reporting on broadband infrastructure projects, meaning the Local Government Division may require additional OBAE expertise to ensure federal compliance.

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

This bill relates to Senate Bill 401 which amends the Broadband Act.

## **ALTERNATIVES**

DFA states an alternative could be the public project revolving fund, which provides loans and other financial assistance for wastewater facilities, rural infrastructure, water, etc. The department notes that this fund provides financial support for the same projects as outlined in SB357.

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