

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>SB338/aSEC</u>	Sponsor	<u>Senator Ivey-Soto & Representative Smith</u>
Tracking Number	<u>.206857.1</u>	Committee Referrals	<u>SEC/SCORC</u>
Short Title	<u>Statewide Broadband Network</u>		
Analyst	<u>Rogne</u>	Original Date	<u>2/7/17</u>
		Last Updated	<u>2/10/17</u>

BILL SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment removes the words “and maintain” on page 1, line 19, so that the chief information officer is required to coordinate the development, but not maintenance, of a statewide broadband network by aggregating demand among governmental and educational institutions that request to be included in the network.

Synopsis of Bill

Senate Bill 338 (SB338) requires the chief information officer to coordinate the development and maintenance of a statewide broadband network by aggregating demand among governmental and educational institutions that request to be included in the network. The chief information officer would develop the network in partnership with the Public Education Department (PED), the Higher Education Department (HED), state universities, other educational institutions, and the Public School Facilities Authority (PSFA).

SB338 tasks the chief information officer with developing the network through contractual services with providers; applying for reimbursements from the federal universal fund, also known as E-rate, managed by the Federal Communications Commission (FCC); and charging participants compensation for administrative costs.

Lastly, SB338 allows Indian nations, tribes, and pueblos to connect to the broadband network in exchange for a right-of-way agreement.

FISCAL IMPACT

SB338/aSEC does not contain an appropriation.

This bill can be widely interpreted as to which agencies are involved in broadband development. As such, the fiscal implications of SB338/aSEC are too various to provide one estimate, but agency fiscal impact responses are summarized below.

The Department of Information Technology (DoIT) estimates about \$200 thousand in nonrecurring costs in FY17 to establish the program and between \$320 thousand to \$1 million annually for administrative staff. According to DoIT, enterprise revenues (and thus budget) impacts could be in the \$5 million to \$10 million range annually. However, these are estimates, as SB338/aSEC does not precisely define which components of the proposed network are to be owned and operated by the state versus owned and operated by third-party providers, or a combination. It is unclear whether executing this bill would require DoIT to invest in creating, maintaining, and operating significant new broadband infrastructure.

In addition to the impact on DoIT, the business model selected for a statewide broadband network may change the overall cost to the state. DoIT's fiscal analysis assumes the minimum necessary for DoIT to provide additional broadband services, any actual operation or maintenance of additional state owned infrastructure would be a larger fiscal impact.

The Public School Facilities Authority (PSFA) reported the cost to purchase broadband services for all K12 public schools in 2015 in New Mexico was approximately \$10.5 million, according to FCC E-rate applications. E-rate, also known as the federal universal service fund, provides an 80 percent match for deploying broadband to public schools.

SUBSTANTIVE ISSUES

SB338/aSEC requires the chief information officer to work in partnership with the Public Education Department (PED), the Higher Education Department (HED), political subdivisions, state universities and other educational institutions to develop and maintain a statewide broadband network. The network would provide broadband access on a voluntary basis to each school district, community college, state college, and four-year state university at the earliest feasible date. The chief information officer would be required to aggregate demand and reduce costs whenever feasible, and establish a cost structure based on actual costs. SB338/aSEC also requires the chief information officer to adopt technical standards for connection to the statewide broadband network.

DoIT is currently prohibited from servicing New Mexico public schools, except “as necessary to facilitate a state-mandated program,” pursuant to Subsection B of Section 9-27-13 NMSA 1978. While this legislation could ostensibly be considered a “state-mandated program,” there could be a legal liability if the department provided services to public school as part of a statewide network.

In New Mexico, over 90 percent of schools are connected to fiber, among the highest in the nation, but school connection speeds are among the lowest in the nation. This implies that the broadband infrastructure gap is in the electronics, not the fiber. According to a Legislative Finance Committee report, providers can't afford to upgrade electronics without enough user demand to see a return on investment, and in New Mexico, institutions purchase broadband independently. The report recommends New Mexico pools public users (government and education institutions) to increase demand to attract substantial provider investment in electronics infrastructure in that region. The report provides evidence that providers are likely to upgrade infrastructure to deliver faster service to homes and businesses in the region as well.

ADMINISTRATIVE IMPLICATIONS

It is unclear from SB338/aSEC if existing state agencies, DoIT and PED, would implement the legislation, or if a new agency would be created.

According to DoIT agency analysis, their agency assumes responsibility for carrying out this legislation. Depending on the business model selected for implementation of SB338/aSEC, DoIT would need to expand its Office of Broadband and Geospatial Initiatives from 4 to 10 FTE. DoIT would also need to expand the technical staff used to operate its current state-agency network from five to as many as 10 to 15. In addition to the staff and technical resources needed to plan, procure, and operate such a network, the department would also need to allocate resources to managing any FCC funds awarded. Agency staff would need to closely coordinate these resources with other federal subsidies, such as E-Rate, which is currently managed by PED. As the rules and requirements to apply for, receive, and administer federal universal service and E-Rate funds are exceedingly complex, and require substantial accounting and auditing, DoIT would likely need additional administrative staff to operate this program.

DoIT noted that SB338/aSEC does not articulate policy and security requirements, or the responsibility for setting these out, but that they could be handled administratively via rule making.

According to PED, making participation voluntary may result in a low level of participation. Schools with a high discount rate for E-Rate may not want to be thrown into a consortium application with schools that have a lower discount rate. In addition, the provisions of SB338/aSEC may require staffing at the PED that is not available at this time.

The New Mexico Department of Health (DOH) reports SB338/aSEC may improve electronic systems that relate to more efficient administrative processes for DOH facilities, such as the timely ability to admit, discharge, or transfer clients, as well as to enable better medical records and billing applications.

At this time, PSFA has 1.0 permanent FTE and 3.0 temporary FTE dedicated to the PSCOC broadband deficiencies correction program, with a program sunset of FY19. Senate Bill 64 (SB64) introduced in the 2017 regular session removes this sunset date; as of the date of this analysis SB64 is still in committee. As PSFA's role in SB338/aSEC is unclear, staffing requirements to support this bill are indeterminate. Any FTEs needed to support this bill would require potential reclassification to a permanent FTE status and would have an impact to the operating budget beginning in FY20 and recurring thereafter.

According to Central New Mexico Community College (CNM), should CNM choose to join the statewide broadband network, the college would need to replace its current wide area network service, as well as our internet service provider. Other than some minor device changes, SB338/aSEC would likely have little or no significant impact on CNM users.

TECHNICAL ISSUES

The proposed legislation is lacking many definitions for key terms that could significantly alter the meaning of this bill. For example, terms such as “statewide broadband network,” “aggregation,” “chief information officer,” and, “educational institutions.”

OTHER SIGNIFICANT ISSUES

There are already several sources of funding available for broadband deployment in New Mexico.

The federal universal service fund, or E-rate program, provides an 80 percent match for deploying broadband to public schools.

The broadband deficiencies correction program (BDCP) of the public school capital outlay fund works with many K-12 school districts throughout the state to leverage funds allocated by the Public School Capital Outlay Council to maximize E-rate funds to implement or expand broadband infrastructure.

Currently, the PED, DoIT, PSFA and the Governor’s office are working a broadband initiative, the Governor’s Broadband for Education (BB4E) initiative that is on schedule to make high speed internet accessible in all K-12 public schools in New Mexico by 2018. This effort includes work to provide fiber access to all schools, a statewide price agreement on equipment needed for classrooms and to provide the lowest cost for broadband to every school district and charter school. In addition, schools are starting to collaborate with their local libraries to acquire E-Rate funds to improve network connectivity. BB4E encourages school districts to work together and utilize E-Rate funds to create regional “points of presence” serving multiple districts and charter schools within those districts.

The state rural universal service fund provides \$20 million for deploying telecommunications to areas without service.

RELATED BILLS

Duplicates HB113, Statewide Broadband Network, which proposes to have the chief information officer establish a statewide broadband network and apply for reimbursements from the federal universal fund managed by the FCC on behalf of state agencies, political subdivisions, and educational institutions that request to be included in the network.

Relates to HB60, Broadband Infrastructure Development, a bill amending a section of the Local Economic Development Act to provide for broadband infrastructure development.

Relates to SB24, Local Gov’t Broadband Infrastructure, a bill amending the Infrastructure Development Zone Act to provide for broadband infrastructure development by a local government.

SOURCES OF INFORMATION

- LESC Files
- New Mexico Department of Health
- Department of Information Technology
- Public Education Department
- Public School Facilities Authority
- Central New Mexico Community College
- New Mexico Independent Community Colleges
- Legislative Finance Committee

MCR/rab