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## FISCAL IMPACT REPORT

Sariñana/Garratt/  
 Figueroa/Herrera/ **ORIGINAL DATE** 1/29/2021  
**SPONSOR** Matthews **LAST UPDATED** \_\_\_\_\_ **HB** 141 \_\_\_\_\_  
**SHORT TITLE** Ed Infrastructure Technology Definition **SB** \_\_\_\_\_  
**ANALYST** Liu \_\_\_\_\_

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0.0 - \$7,000.0	\$0.0 - \$7,000.0	\$0.0 - \$14,000.0	Recurring	Public School Capital Outlay Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB85, HB86, SB93

### SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

#### Responses Received From

Public School Facilities Authority (PSFA)

Public Education Department (PED)

Attorney General's Office (NMAG)

Department of Information Technology (DoIT)

### SUMMARY

#### Synopsis of Bill

House Bill 141 expands the definition of education 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.

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

### FISCAL IMPLICATIONS

Current statutory provisions allow the Public School Capital Outlay Council (PSCOC) to expend up to \$10 million of the public school capital outlay fund for education technology infrastructure, which the council has historically used to correct broadband deficiencies within school buildings.

PSCOC granted \$2.5 million for on-site school broadband projects in FY20 and budgeted \$3 million for broadband in subsequent years, leaving up to \$7 million of remaining authority each year for other education technology infrastructure projects contemplated under the provisions of this bill.

For FY21 and FY22, New Mexico schools will receive substantial federal aid for education technology infrastructure and districts can also levy property taxes for educational technology or use cash balances for similar purposes. Federal aid from the Coronavirus Aid, Relief, and Economic Security (CARES) Act and Consolidation Appropriations Act (CAA) of 2021 will provide New Mexico schools over \$520 million by early 2021 to address pandemic-related costs, such as educational technology. According to PED, New Mexico has budgeted nearly \$46 million from federal CARES Act funds to provide students access to education technology in response to school closures in FY20 and FY21. Additionally, the governor directed \$2.9 million of CARES Act coronavirus relief funds to Cochiti Pueblo for broadband infrastructure.

The federal CAA includes \$3.2 billion to subsidize home Internet for low-income families nationally by \$50 per month for most households or up to \$75 per month for households on tribal land. Initial estimates suggest New Mexico's portion of this funding could be \$16 million, equivalent to a \$75 Internet subscription for 213 thousand households. The CAA also includes \$1 billion in grants to tribes to build out broadband infrastructure, at least a portion of which will be available to tribes and pueblos in New Mexico.

The General Appropriation Act of 2020 included \$18.9 million from the public school capital outlay fund for maintenance, repairs, and infrastructure at Impact Aid districts, primarily districts with large numbers of Native American students because of proximity to tribal lands but any district with impact from federally connected students. PSFA notes Impact Aid districts can use this appropriation for technology related to distance learning.

In December 2020, the Federal Communications Commission approved \$165 million to 18 companies to build out broadband infrastructure in underserved areas of New Mexico. Over the next 10 years, the funding is expected to support buildout of broadband services to 64 thousand houses, businesses, and other locations. And in October 2020, the U.S. Department of Agriculture (USDA) announced \$20 million of federal ReConnect funding would be targeted for broadband buildout in Eddy, Chaves, Lea, Lincoln, Otero, Cibola, and Sierra counties. USDA estimates the funding will establish connectivity for 1,400 homes and businesses.

## **SIGNIFICANT ISSUES**

On March 13, 2020, the governor ordered schools to close for three weeks, starting on March 16, in response to the Covid-19 pandemic. On March 27, the governor extended school closures through the remainder of the school year. Although PED provided guidance for schools to reopen in a remote or hybrid setting in September, the department limited in-person instruction to special education students, small school districts, and elementary grade levels. A March 2020 PSFA survey of school officials indicated 21.8 percent of students did not have access to Internet service at home and 31.9 percent of students did not have access to their own devices, such as a computer or smartphone. PSFA also found that 55 percent of students in Bureau of Indian Education (BIE) schools did not have access to the Internet, and 50 percent did not have access to their own device at home.

Continuous learning plans submitted by public schools in the last quarter of FY20 showed 82 percent of school districts reported distributing laptops, tablets, or other forms of technology to students. To provide students' access to the Internet, 13.5 percent of districts provided Wi-Fi devices to students, 43.8 percent of districts established Wi-Fi hotspots at the school or in the community, and 53.9 percent of districts partnered with private or public sector companies to provide Wi-Fi or Internet access in student's homes. With the rapid ramping up of purchasing and distributing computers, about one in five districts report they will now have a device for every student.

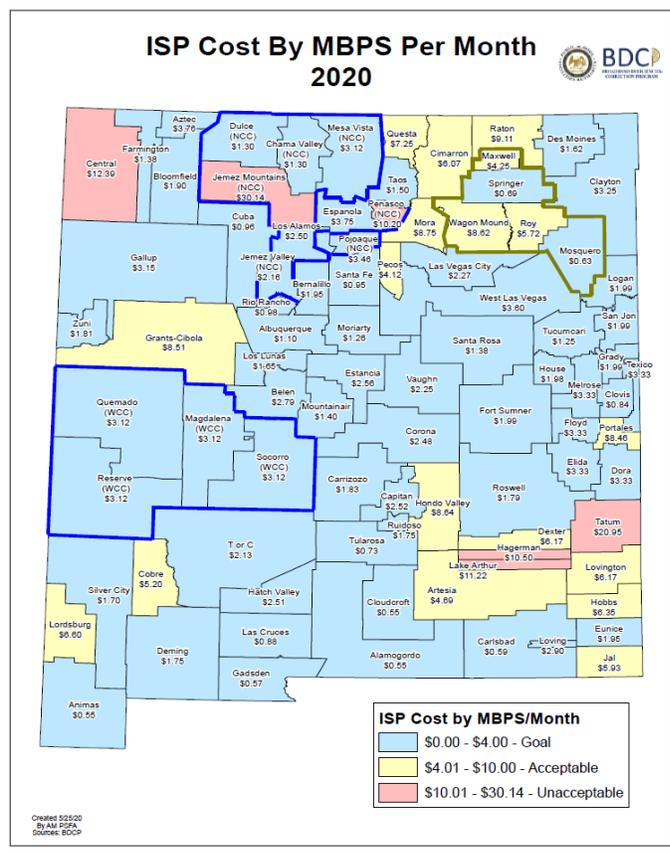
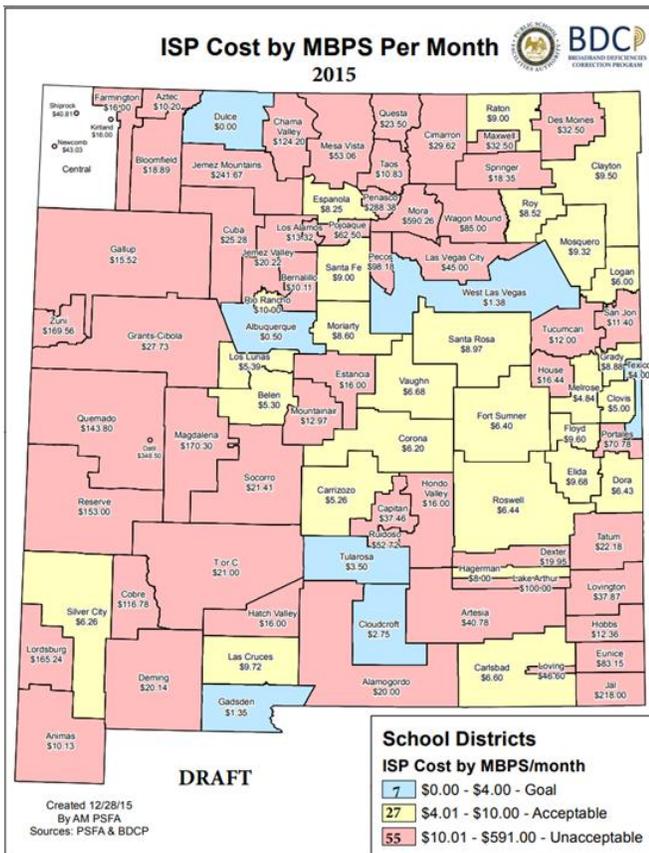
The PSFA survey and FY20 continuous learning plans indicate a portion of districts were unable to provide home Internet options (about half of districts) or Chromebooks or other learning devices (about a quarter of districts.) In the PSFA survey, many rural districts expressed concerns about their ability to provide Internet access to their students, given the remoteness of the region. An estimated 20.5 thousand students live in a household without a computer and in a district without an existing 1:1 technology setup. Providing each of those students with a \$350 Chromebook would cost approximately \$7.2 million, with a recurring replacement cost every two to three years.

In the summer of 2020, LFC estimated 66.2 thousand, or 21 percent, of students in public schools did not have an Internet subscription (assuming 1.5 children per household, approximately 44.1 thousand households). Of the 66.2 thousand students, approximately

- 19 thousand students (or 12 thousand households) live in areas with existing broadband infrastructure but no household Internet subscription, likely due to the monthly cost. In response to the Covid-19 public health emergency, many Internet service providers offered low-cost broadband to families during the pandemic – some as low as \$10 per month – and PSFA deployed an online quote portal for schools and districts to easily shop for quotes. Using a high-end estimate of \$30 per month for subsidized Internet service, providing one year of broadband service to 12 thousand households would cost \$4.3 million each year.
- 45.8 thousand students live in areas outside of current broadband reach but can access basic cell service for texting, file sharing, and low-resolution video streaming. (See maps of 3G, 4G, and LTE coverage at <https://nmbbmapping.org/mapping/>). While not as fast as broadband, residential cellular hotspots can provide Internet access immediately available to students without any additional infrastructure build-out. Providing each student with a hotspot and a year's data subscription would cost approximately \$300, or \$13.7 million statewide each year.
- 1,410 students live both outside of adequate cell and broadband coverage. For these students, satellite Internet is still an option but can be slow and cost-prohibitive. A household connection for satellite Internet can cost \$1,200 per year, or \$1.1 million statewide each year.

In FY21, the New Mexico Center on Law and Poverty, representing the *Yazzie* plaintiffs in the *Martinez-Yazzie* education sufficiency lawsuit, filed a new motion requesting further relief in the lawsuit for essential technology to at-risk students. The motion noted the state failed to provide students (particularly Native American students and students in rural districts) with reliable access to digital devices, high-speed Internet, and funding for district technical support while students were learning in remote settings and requested an order compelling the state to provide immediate funding for these purposes.

Since 2014, PSCOC has awarded education technology infrastructure funding to school districts in the form of category 1 projects (fiber-optic cable) and category 2 projects (network equipment).



Renamed as the Broadband Deficiencies Correction Program (BDCP), the initiative has made substantial progress getting school districts connected to high-speed fiber optic Internet. Between 2015 and 2020, school districts across the state increased Internet speeds and lowered costs for access.

PSFA notes provisions of this bill could significantly expand the scope of BDCP by

1. Expanding “fiber optic” upgrades to include Internet service (New Mexico public schools spend \$16 million on broadband each year, with about 80 percent covered by federal E-rate funds);
2. Providing assistance to school districts on optimization of internal network operations; and
3. Assisting school districts in connecting students and teachers outside the school campus. This could possibly include user devices and software necessary for distance learning thereby reducing digital opportunity gaps to ensure that students have uniform access to Internet resources at school and at home.

**PERFORMANCE IMPLICATIONS**

In light of school closures from the Covid-19 public health emergency, expansion of education technology infrastructure could improve access to online learning and extend instructional time for students without devices or Internet. Multiple 2020 LFC evaluation reports on remote learning and school reopening found lower student engagement and lost learning time from school closures and noted the lack of access to devices and Internet for at-risk students would further widen the

achievement gap.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill would require PSFA to develop guidelines on education technology services that interconnect students and teachers to broadband and remote learning. PSFA's expertise in connecting schools to broadband could be leveraged to identify cost-efficient ways to connect students across the state, particularly in regions with significant demand and low coverage.

Section 14 of Article IX of the New Mexico Constitution prohibits the state or local governments to provide direct or indirect donations or aid to any person or organization. As such, PED notes PSCOC must award education technology infrastructure to students and teachers in a way that does not conflict with provisions of the anti-donation clause.

## **RELATIONSHIP**

This bill relates to House Bill 85, which appropriates funds to establish tribal IT departments to improve education technology infrastructure on tribal lands; House Bill 86, which appropriates funds to tribes for broadband and IT infrastructure; and Senate Bill 93, which creates the Office of Broadband and Access Expansion.

## **OTHER SUBSTANTIVE ISSUES**

In 2000, the 11th Judicial District Court ruled in the *Zuni Public District v. State of New Mexico* lawsuit that New Mexico's public school capital outlay system violated constitutional requirements and ordered the state to establish and implement a uniform funding system for capital improvements and for correcting past inequities. Since the *Zuni* lawsuit, the state has spent \$2.7 billion to build school facilities up to the approved statewide adequacy standards. Despite significant improvements in statewide facility conditions, the *Zuni* lawsuit was never closed, and in December 2020, the court ruled in favor of plaintiff school districts on new claims of inequity. The major claim of the plaintiffs was their inability to raise sufficient local capital outlay revenue to maintain capital assets and build facilities that were outside of the statewide adequacy standards like other districts with available local resources.

Expanding the use of the public school capital outlay fund for educational technology infrastructure may divert funding from the state's effort to address the *Zuni* findings and PSCOC's core function of replacing and renovating school facilities. PED notes additional uses of the public school capital outlay fund have increased considerably in recent years, significantly reducing available revenues for standard-based construction projects.

The state has no single entity or agency tasked with tracking broadband investment funds and does not require private investments from Internet service providers to connect households. This bill would require PSFA to develop guidelines for deployment of broadband technology and infrastructure services to meet the educational needs of students, whether on a school site or for remote learning services, which could significantly improve oversight of investments for eligible education technology funding.

In FY20, PSCOC awarded \$200 thousand for planning, procurement, contracting, and project management support services for Internet infrastructure expenditures in school districts and state-

chartered charter schools to improve student connectivity for remote learning. These funds may be prioritized to school districts based on the number of at-risk students within the districts. PSFA personnel and a group of Cooperative Extension Service consultants are helping 60 school districts and state-chartered charter schools leverage federal funding that will expire in five months to provide connectivity for approximately 7,500 unconnected and underconnected students for remote learning.

## **ALTERNATIVES**

Given the significant costs of providing broadband to extremely rural areas of the state and progress toward reopening schools following the rollout of the Covid-19 vaccine, the state may want to consider leveraging federal funds to address immediate connectivity and device needs. The LFC's FY22 budget recommendation includes \$20 million to DoIT for broadband expansion.

Public schools can also use local revenues for education technology infrastructure. School districts and charter schools held a combined \$319.8 million in cash balances at the end of FY20, of which at least some portion could be used to support Internet and technology access and needs of students. Districts receiving HB33 and SB9 funding, local property tax revenue, received about \$253.7 million collectively in FY19 – all of which could be used to purchase technology to support remote learning. SB9, the Public School Capital Improvements Act or the “two-mill levy,” allows districts, with voter approval, to impose a levy of up to two mills for a maximum of six years. Funds can be used to purchase computer software and hardware for student use in classrooms. HB33, the Public Schools Building Act, allows districts to ask voters to approve the imposition of up to 10 mills for a maximum of six years on the net taxable value of property in the district.

To secure better cost-savings for broadband connectivity, DoIT contracted with Burger, Carroll & Associates, Inc. in September 2020 for assistance in issuing a request for quotes and procuring a multi-year statewide price agreement by March 2021. The price agreement will allow DoIT and other eligible agencies to secure better pricing for the necessary infrastructure for rural broadband, including fiber optics and fixed-wireless solutions, as well as broadband grant writing services. Schools and districts could potentially secure better pricing for infrastructure buildout and service expansion through use of the DoIT's planned statewide price agreement.

DoIT notes the Federal Communications Commission's (FCC) Universal Service Fund E-rate grant program provides discounts of up to 90 percent to help eligible schools and libraries obtain affordable telecommunications and Internet access. PSFA has utilized the E-rate grant program to pay for Internet services for schools and libraries in New Mexico. It is not clear if extending Internet services from public schools and libraries to student and teacher homes can be paid with E-rate grant funding.

PED notes this bill aligns with the department's legislative initiatives for closing the digital divide. The executive's FY22 budget recommendation includes \$10 million from the public education reform fund to help close the digital divide. This bill would support continued efforts to ensure students have devices and the connection needed to use it, in order to access digital content and instruction, both during the health pandemic and in the future.