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SENATE BILL 452

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

INTRODUCED BY

Michael Padilla

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
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

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1 Information Technology Act:

2 A. "agency", unless otherwise specified, means an
3 agency within the executive branch of state government;

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

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

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

- 14 (1) systems design and analysis;
15 (2) acquisition, storage and conversion of
16 data;
17 (3) computer programming;
18 (4) information storage and retrieval;
19 (5) voice, radio, video and data
20 communications;
21 (6) requisite systems;
22 (7) simulation and testing; and
23 (8) related interactions between users and
24 information systems;

25 ~~[C.]~~ E. "information technology project" means the

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1 purchase, replacement, development or modification of a
2 hardware or software system;

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

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

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

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

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

23 "9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

24 A. The secretary is responsible to the governor for
25 the operation of the department. It is the secretary's duty to

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1 manage all operations of the department and to administer and
2 enforce the laws with which the secretary or the department is
3 charged.

4 B. To perform the secretary's duties, the secretary
5 has every power expressly enumerated in the laws, whether
6 granted to the secretary or the department or any division of
7 the department, except where authority conferred upon any
8 division is explicitly exempted from the secretary's authority
9 by statute. In accordance with these provisions, the secretary
10 shall:

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

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

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

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

25 (5) take administrative action by issuing

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1 orders and instructions, not inconsistent with the law, to
2 ensure implementation of and compliance with the provisions of
3 law for whose administration or execution the secretary is
4 responsible and to enforce those orders and instructions by
5 appropriate administrative action in the courts;

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

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

14 (8) prepare an annual budget of the
15 department;

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

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

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

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

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

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

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

12 (1) review executive agency plans regarding
13 prudent allocation of information technology resources;
14 reduction of duplicate or redundant data, hardware and
15 software; and improvement of system interoperability and data
16 accessibility among agencies;

17 (2) approve executive agency information
18 technology requests for proposals and other executive agency
19 requests that are subject to the Procurement Code, prior to
20 final approval;

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

23 (4) approve executive agency information
24 technology contracts and amendments to those contracts,
25 including emergency procurements, sole source contracts and

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1 price agreements, prior to approval by the department of
2 finance and administration;

3 (5) develop and implement procedures to
4 standardize data elements, determine data ownership and ensure
5 data sharing among executive agencies;

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

10 (7) monitor executive agency compliance with
11 its agency plan, the state information technology strategic
12 plan and state information architecture and report to the
13 governor, executive agency management and the legislative
14 finance committee on noncompliance;

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

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

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

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1 (11) review appropriation requests related to
2 executive agency information technology requests to ensure
3 compliance with agency plans and the state information
4 technology strategic plan and make written recommendations by
5 November 14 of each year to the department of finance and
6 administration and by November 21 of each year to the
7 legislative finance committee and the appropriate interim
8 legislative committee; provided, however, that the
9 recommendations to the legislative committees have been agreed
10 to by the department of information technology and the
11 department of finance and administration;

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

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

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

24 (15) conduct background checks on department
25 employees and prospective department employees that have or

1 will have administrative access or authority to sensitive,
2 confidential or private information or the ability to alter
3 systems, networks or other information technology hardware or
4 software; and

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

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

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

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

24 (3) establish an administrative hearing and
25 enforcement process internal to the department or in

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1 coordination with the administrative hearings office to support
2 private sector regulatory activities of the department or any
3 administratively attached office or body.

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

11 ~~[E-]~~ F. A state agency that receives an invoice
12 from the department for services rendered to the agency shall
13 have thirty days from receipt of the invoice to pay the
14 department or to notify the department if the amount of the
15 invoice is in dispute. The agency shall have fifteen days from
16 its notification of dispute to the department to present its
17 reasons in writing and request an adjustment. The department
18 shall have fifteen days from its receipt of the reasons for
19 dispute to notify the agency of its decision. If the
20 department and the agency do not agree on a resolution, the
21 secretary of finance and administration shall make a
22 determination on the amount owed by the agency to the
23 department. If the agency has not paid the department or
24 notified the department of a dispute within thirty days of
25 receipt of the invoice, the department shall notify the

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1 department of finance and administration and request that the
2 department of finance and administration transfer funds from
3 the agency to the department of information technology to
4 satisfy the agency's obligation.

5 ~~[F-]~~ G. The secretary, as chief information
6 officer, shall prepare a state information technology strategic
7 plan for the executive branch and update it at least once every
8 three years, which plan shall be available to agencies by July
9 31 of each year. The plan shall comply with the provisions of
10 the Department of Information Technology Act and provide for
11 the:

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

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

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

20 (4) development of a statewide broadband
21 network plan in conjunction with the public education
22 department, the higher education department, state
23 universities, other educational institutions, the public school
24 capital outlay council, political subdivisions of the state,
25 Indian nations, tribes and pueblos, the public regulation

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1 commission and telecommunication network service providers; and

2 (5) coordination and aggregation of services
3 where feasible for entities as provided for in Section 9-27-20
4 NMSA 1978 and other publicly funded entities.

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

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

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

24 (1) information technology security;

25 (2) approval for procurement of information

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1 technology not in conflict with the Procurement Code that
2 exceeds an amount set by rule;

3 (3) detail and format for the agency
4 information technology plan;

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

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

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

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

3 "9-27-7. INFORMATION TECHNOLOGY RATE COMMITTEE--
4 MEMBERSHIP--DUTIES.--

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

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

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

12 (3) the secretary of information technology.

13 B. The information technology rate committee shall:

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

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

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

25 (4) present the committee's proposed rate and

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1 fee schedule by June 1 of each year to the office of the
2 governor, the department of finance and administration and the
3 legislative finance committee; and

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

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

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

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

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

25 [~~C.]~~ B. the secretary [~~of information technology~~]

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1 certifies that the excess capacity will be available for at
2 least the duration of the lease;

3 ~~[D.]~~ C. if the lease exceeds ten years, the lease
4 is first approved by the state board of finance;

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

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

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

16 "9-27-20. [NEW MATERIAL] TELECOMMUNICATIONS--DUTIES.--

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

24 B. The department may, in compliance with the
25 Procurement Code, establish price agreements with vendors for

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1 information technology goods and services. Any public body may
2 directly procure goods or services offered under a department-
3 placed price agreement other than a price agreement for an
4 enterprise service administered by the department.

5 C. On July 1, 2023, and on July 1 of each
6 subsequent year, the department shall provide a catalog listing
7 the information technology goods and services it has available
8 to offer with the approved rates. Agencies shall acquire from
9 the department those enterprise services that are identified in
10 the service catalog.

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

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

21 "9-27-26. INDIAN NATIONS, TRIBES AND PUEBLOS--AGENCY-
22 OWNED OR -OPERATED BROADBAND NETWORK--STATEWIDE BROADBAND--
23 RIGHT-OF-WAY AGREEMENT AND SERVICE AGREEMENT.--Indian nations,
24 tribes and pueblos may connect to [the] an agency-owned or
25 -operated statewide broadband network in exchange for a

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1 mutually agreed upon right-of-way agreement or a service
2 agreement with the chief information officer. The chief
3 information officer shall apply for reimbursements from the
4 federal universal service fund pursuant to Section 254 of the
5 federal Telecommunications Act of 1996, 47 U.S.C. 254, as such
6 section existed on January 1, 2006, on behalf of Indian
7 nations, tribes and pueblos that execute a right-of-way
8 agreement or service agreement."

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

11 "63-9J-2. DEFINITIONS.--As used in the Broadband Access
12 and Expansion Act:

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

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

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

24 ~~[E.]~~ D. "director" means the director of the
25 broadband office;

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

5 F. "facilities-based provider" means a provider of
6 internet service to end users in New Mexico using facilities
7 that satisfy any of the following criteria:

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

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

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

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

24 (5) unlicensed spectrum;

25 G. "internet" means a global set of computing and

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1 electronic devices interconnected through networking
2 infrastructures to provide data and information sharing and
3 communication facilities;

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

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

11 [E.] J. "public educational institution" means a
12 public school, a school district, a public post-secondary
13 educational institution or a state agency that provides
14 administrative, funding or technical support to public schools,
15 school districts and public post-secondary educational
16 institutions;

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

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

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

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1 needs:

2 (1) for the delivery of internet-based
3 educational, medical and emergency services;

4 (2) for local and tribal communities to foster
5 and recruit internet-reliant business and industry and to
6 promote economic development and job creation; and

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

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

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

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

23 "63-9J-3. OFFICE OF BROADBAND ACCESS AND EXPANSION
24 CREATED--DIRECTOR--STANDARDS--DATA COLLECTION--STATEWIDE
25 BROADBAND PLAN--ASSISTANCE FOR POLITICAL SUBDIVISIONS.--

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

4 B. The broadband office shall be managed by the
5 director, who shall be appointed by the governor. The director
6 may hire staff as needed to meet the responsibilities of the
7 broadband office.

8 C. The broadband office shall:

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

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

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

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

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

24 (c) the locations of broadband
25 infrastructure currently owned or projected for construction by

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1 the state or local governments on a county-by-county basis.

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

5 E. On or before January 1, 2023, and on or before
6 January 1 of each year thereafter, the broadband office shall
7 update and revise the statewide broadband plan developed
8 pursuant to this section for the ensuing three years and report
9 the updated and revised statewide broadband plan to the
10 governor and the legislature. In its initial plan pursuant to
11 Subsection D of this section and in its annual revised and
12 updated plan pursuant to this subsection, the broadband office
13 shall provide an assessment of broadband service across the
14 state compared to the standards established by the various
15 federal broadband regulatory and assistance programs.

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

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

25 H. The broadband office shall provide technical and

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1 planning assistance to local governments, public educational
2 institutions and state agencies in the design, development or
3 implementation of their own plans for the development of
4 broadband service. When providing planning and technical
5 assistance, the broadband office shall encourage the use of
6 regional planning and may provide planning and technical
7 assistance to tribal government agencies and schools when those
8 entities are participants in a joint powers agreement with a
9 county, municipality, political subdivision, public educational
10 institution or state agency or memorandum of understanding for
11 the design, development or implementation of a regional
12 broadband plan.

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

20 J. In furtherance of statewide broadband planning,
21 all facilities-based providers shall report semiannually to the
22 broadband office in such form as the broadband office may
23 prescribe all data that is reported to the federal
24 communications commission pursuant to federal law governing
25 data submitted for broadband mapping. The reports shall be

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1 submitted each year on or before March 1, with regard to data
2 existing as of December 31 of the prior year, and on or before
3 September 1, with regard to data existing as of June 30 of the
4 then current year. All information reported by a facilities-
5 based provider pursuant to this subsection is critical
6 infrastructure security-sensitive data for which the broadband
7 office shall maintain confidentiality in accordance with
8 applicable state and federal law.

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

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

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

21 "63-9J-4. COORDINATION OF STATE AND LOCAL GOVERNMENT
22 BROADBAND EFFORTS.--

23 A. The broadband office shall identify federal and
24 nongovernmental broadband funding assistance opportunities for
25 local governments, public educational institutions, state

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1 agencies and tribal governments and shall publish a list of
2 those opportunities in a manner that can be searched on a
3 county-by-county basis.

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

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

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

25 E. The broadband office shall advise and make

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1 recommendations to the department regarding proposals to use
2 the state-owned broadband network for the purpose of connecting
3 unserved and underserved populations of the state to internet
4 service on the basis of open access that supports objectives of
5 the state broadband plan; provided that:

6 (1) the department may lease a portion of the
7 state-owned broadband network or provide internet service to a
8 facilities-based provider that offers fixed wire broadband to
9 end users in the state pursuant to the following conditions:

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

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

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1 (c) within the forty-five-day posting
2 period required by Subparagraph (b) of Paragraph (1) of this
3 subsection, no private facilities-based provider has notified
4 the broadband office in writing that it can provide the same
5 broadband infrastructure or internet service identified in the
6 notice, as applicable, at a price that does not exceed one
7 hundred ten percent of the price being offered by the
8 department; and

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

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

19 (3) the department shall not sell or otherwise
20 deliver internet service directly to a non-governmental end
21 user."

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