

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 2/19/2025

Bill No: S357-341

Sponsor: Sen. Hamblen
Short Title: ESSENTIAL SERVICES
DEVELOPMENT ACT

Agency Name and Code: DFA-341
Number: _____
Person Writing: Ashley Leach, Director, State Board of Finance
Phone: _____ Email: _____

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	343.89	343.89	343.89	1,031.67	R	GF

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 21, Land Grant-Merced Assistance Fund Changes; HB 276, Public-Private Partnerships.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 357 (SB357) creates the Essential Services Development Act under which state support could be provided for infrastructure projects that allow access to internet, energy, water, and wastewater services for primarily residential purposes.

Definitions and Standards:

- SB357 defines "broadband telecommunications network facilities," "essential services project," "public support," "local government," "municipality," and "regional government."
- "Public support" refers explicitly to support provided by the state, either directly or indirectly, to assist in an essential services project. Support can include:
 - Payments for professional services contracts necessary to implement an essential services plan or provide public support for an essential services project;
 - Direct loans or grants for land, buildings, or infrastructure;
 - Loan guarantees securing the cost of land, buildings, or infrastructure; and
 - Grants for public works infrastructure improvements.

Provision of Public Support

- SB357 requires that public support be specifically authorized by law and prohibits the provision of public support by any entity except the state.
 - Authorizing laws must include provisions to safeguard public money and other resources; and
 - Allow the Local Government Division (LGD) of the Department of Finance & Administration (DFA) to recover money and resources from local and regional governments if essential services projects are not completed to the satisfaction of the DFA or does not meet the Act's requirements.

Essential Services Development Plans and Regional Plans

- SB357 requires any local and/or regional government seeking public support for an essential services project to adopt via ordinance a development plan to implement said project.
- SB357 requires the creation of regional essential services development plans through a joint powers agreement and allows plans to be based on existing local plans.
 - Designates entities under the joint powers agreement as a regional government for the Act.
 - Requires the appointment of a project manager responsible for managing the projects and money from public support within a joint powers agreement.

Applications for Public Support

- SB357 establishes application requirements for essential services projects under essential services plans.
 - SB357 requires the local or regional government(s) to review applications and provide approval by ordinance; and
 - Provides parameters for the approval of applications based on the provisions of the essential services development plan and other information as deemed necessary for review.

Public Support Money Deposits into Special Fund

- SB357 Requires the creation of a special fund in which local or regional governments must hold public support.
 - SB357 limits expenditures to essential services projects and limits regional governmental entities' expenditures to regional plans and/or as authorized under a Joint Powers Agreement; and
 - Requires the establishment of separate accounts for essential services projects.

Plan and Project Termination, Deposit of Unexpended Funds in General Fund

- SB357 allows essential services development plans to be terminated by ordinance of the local governing body or local governing bodies of a regional government.
- Unexpended or unencumbered balances in the special fund revert to the state treasurer for deposit into the general fund.

State Participation and Project Participation Agreement

- SB357 tasks LGD with general oversight of essential services projects by creating project participation agreements with local or regional governments.
- SB357 establishes that agreements must describe public support, include project timelines

with goals and time limits, provide for performance review of actions for underperformance, and safeguard public money, specifically public support.

FISCAL IMPLICATIONS

SB357 will significantly impact the administrative operations of the Department of Finance and Administration, specifically its Local Government Division and State Board of Finance.

- **Administrative Costs:** DFA will incur costs related to reviewing, executing, and administering project participation agreements, ensuring compliance, and providing financial oversight for the expenditure of state funds.
 - **LGD:** The LGD will review, execute, administer, and monitor the project participation agreements. The exact fiscal impact will depend on the volume and complexity of the agreements.
 - LGD anticipates 4,160 additional work hours at a cost of \$189,260 (2 FTE) to administer and monitor these participation agreements.
 - DFA anticipates an additional 600 work hours per year to draft and review project participation agreements.
 - DFA has not included these costs in its base budget, and SB357 does not provide a funding mechanism for administrative costs.
 - **SBOF:** Any projects funded with the proceeds of bonds issued by the SBOF (i.e., severance tax bonds, general obligation bonds) would need to undergo additional review prior to being included in a bond or note sale by the SBOF to determine whether the projects do/do not meet federal IRS tax requirements for the issuance of tax-exempt bonds.
 - Further, SBOF will need to revise its post-issuance compliance policy and implement a thorough post-issuance process to ensure that nonprofit projects continue to comply with IRS tax regulations for the life of the asset (possibly decades). This will require extensive staff hours to review the status of projects, including private use regularly, spending down, asset disposition, and continued use of the asset for a “governmental purpose.” This process would be in addition to the process employed by LGD.
 - SBOF anticipates 2,080 additional work hours at a cost of \$94,630 (1 FTE) to implement these administrative requirements.
 - DFA has not included these costs in its base budget, and SB357 does not provide a funding mechanism for administrative costs.
 - **Legal and Compliance Costs:** Ensuring compliance with the terms of the project participation agreements, including potential legal remedies in case of breaches, will also have associated costs.

- SBOF anticipates an additional \$60,000 (approximately 135 hours at \$450/hour) in legal costs annually for updates to the post-issuance compliance policy, review of proposed essential services projects prior to bond issuance, and continued review of projects to ensure compliance with IRS tax regulations for the life of the asset (possibly decades).
- DFA has not included these costs in its base budget and SB357 does not provide a funding mechanism for administrative costs.
- **Potential Savings:** If the projects successfully improve access to essential services, improved infrastructure could provide long-term savings and economic benefits, such as increased property values, economic development, and enhanced quality of life for residents.
- **Risk of Uncompleted Projects:** There is a financial risk if projects are not completed to the satisfaction of LGD, as the state may need to recover money and resources from local or regional governments.

SIGNIFICANT ISSUES

- **Authorization by Law:** Under SB357, public support for an essential services project must be explicitly authorized by law.
 - However, a local government is not authorized to provide public support for essential services projects pursuant to Subsection H of Section 14 of Article 9 of the constitution of New Mexico.
 - As currently drafted, it is unclear whether SB357 requires any financial assistance or resources provided by the state for essential services projects to be approved through legislative action or local jurisdiction action.
- **Funding of Essential Services Projects with Bond Proceeds:** Article 9, Section 14 of the New Mexico Constitution was amended in 2022 to allow for an exception to the anti-donation clause for the provision of essential household services.
 - While the constitutional amendment essentially allows for public funds to be provided to non-government entities, the inclusion of financing for non-government entities may impact severance tax and general obligation bonds issued by the State Board of Finance.
 - Utilizing tax-exempt bond proceeds to fund private organizations' projects creates risk for the state that the bonds' tax-exempt status may be forfeited. The state may unwittingly have its tax-exempt bond portfolio converted to private activity bonds.
 - Potential recipients must meet the requirements of Section 145 of the Internal Revenue Code to retain their bond's tax-exempt status; a governmental unit must own the property financed with tax-exempt bonds; and the Private Business Tests and the Private Loan Financing Tests must not be met.

agreements with local or regional governments for each project receiving public support. These agreements must outline the support provided, project schedules, performance reviews, and safeguards for public resources.

- Performance Monitoring: LGD is responsible for monitoring project performance and taking action if performance is unsatisfactory, as outlined in the project participation agreements.
- **Local and Regional Governments:**
 - Development and Adoption of Plans: Local or regional governments must adopt an essential services development plan by ordinance before receiving public support. This involves describing goals, strategies, project types, eligibility criteria, application processes, and safeguards for public resources.
 - Application Review and Approval: Local or regional governments must establish a process for accepting and reviewing applications for public support. Each application must be evaluated based on the development plan, and eligible projects must be approved by ordinance.
 - Special Fund Management: Local or regional governments receiving public support must create a special fund to deposit and expend the money exclusively on essential services projects. Separate accounts must be maintained for each project.
- **DFA, State Board of Finance**
 - Essential Services Project Review, Compliance with IRS Requirements
 - SBOF is responsible for reviewing any essential services projects, specifically those in which a non-government entity is the recipient of public support, that would receive bond proceeds for potential compliance/non-compliance with IRS tax regulations.
 - SBOF is responsible for ongoing review of compliance/non-compliance with IRS tax regulations for any essential services project, specifically those in which a non-government entity is the recipient of public support for the life of the asset.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- **Public Project Revolving Fund:** Under §§ 6-21-6 and 6-21-6.1, NMSA 1978, the New Mexico Finance Authority is responsible for administering the public project revolving fund, which provides loans and other structured financial support for wastewater facility construction, rural infrastructure, solid waste facilities, drinking water, water and wastewater projects, local government planning and cultural affairs facilities.
 - As currently drafted, SB357 seems to provide financial support for many of the same types of projects already currently =funded through § 6-21-6.1.

TECHNICAL ISSUES

- **Performance Monitoring:** SB357 mandates performance reviews and actions for unsatisfactory project performance.
 - However, SB357 does not establish measurable goals, necessary progress, or types of corrective actions LGD is authorized to take to ensure satisfactory project performance.
- **Baseline Speed Standards:** SB357 specifies that new broadband facilities should not serve locations that already meet the Federal Communications Commission (FCC) baseline speed standards.
 - LGD has limited technical expertise to determine and verify these standards across various locations.

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A.

AMENDMENTS

N/A.