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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number	<u>SB45/aSTBTC</u>	Sponsor	<u>Padilla</u>
Tracking Number	<u>.226452.4</u>	Committee Referrals	<u>SCC/STBTC/SFC</u>
Short Title	<u>Broadband Infrastructure</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>1/24/2024</u>
		Last Updated	<u>2/5/2024</u>

BILL SUMMARY

Synopsis of Senate Tax, Business and Transportation Committee Amendment

The Senate Tax, Business, and Transportation Committee Amendment to Senate Bill 45 (SB45/aSTBTC) corrects a technical issue in the title of the bill and strikes Section 7 of the original bill regarding utility pole attachments.

Synopsis of Original Bill

Senate Bill 45 (SB45) makes a number of changes to various sections of statute to consolidate duties related to broadband and education technology infrastructure at the Office of Broadband Access and Expansion (OBAE). The bill is organized as follows:

- Section 1 amends the Severance Tax Bonding Act to explicitly allow supplemental severance tax bond revenue to support education technology infrastructure.
- Section 2 would allow OBAE to issue up to \$10 million in supplemental severance tax bonds per year to support education technology infrastructure. The director of OBAE would be required to certify how much funding is needed and how it will be spent.
- Section 3 amends the Procurement Code to specify that professional service contracts for engineering or operation of broadband infrastructure may exceed the four-year limit typically imposed on government contracts.
- Sections 4, 5, and 6 strike references to “education technology infrastructure” from the Public School Capital Outlay Act. The bill stipulates the Public School Capital Outlay Council (PSCOC) will no longer have authority to spend up to \$10 million per year on the education technology deficiencies correction program.
- Section 7 enacts a new section of Chapter 62, NMSA 1978, regarding Electric, Gas, and Water Utilities, to specify that utility pole attachments that are not regulated by federal law will be regulated by the Public Regulation Commission (PRC). PRC shall oversee contracts and establish rates for the attachment of broadband infrastructure to utility poles.

- Section 8 amends the Wireless Consumer Advanced Infrastructure Investment Act to add “the State of New Mexico” to the definition of “authority,” expanding the power of the State to charge fees, issue permits, and monitor infrastructure installation of wireless providers.
- Sections 9, 10, 11, and 12 transfer the oversight of public schools’ education technology infrastructure from PSCOC to OBAE. The bill establishes definitions for education technology infrastructure, creates an education technology infrastructure fund, and establishes the education technology infrastructure deficiency corrections program under the oversight of OBAE.
- Section 13 creates a standards-based grant program overseen by the Connect New Mexico Council (CNMC) for education technology infrastructure projects which mirrors the existing PSCOC process.
- Sections 14 and 15 amend the Connect New Mexico Act to remove membership of the Public School Facilities Authority (PSFA) from the Connect New Mexico Council and replace that member with the secretary of the Public Education Department or the secretary’s designee.
- Section 16 amends the Connect New Mexico Fund to give fiscal oversight of the fund to OBAE, rather than the CNMC.
- Section 17 transfers all functions, personnel, money, appropriations, records, furniture, equipment, and supplies related to the broadband deployment and connectivity program (*sic*, see Technical Issues) from PSFA to OBAE
- Section 18 transfers all broadband infrastructure owned, leased, or operated by the Department of Information Technology to OBAE.
- Section 19 repeals the education technology deficiencies correction program in the Public School Capital Outlay Act.

FISCAL IMPACT

The bill does not contain an appropriation.

If enacted, SB45/aSTBTC would transfer the education technology deficiencies correction program from PSCOC to OBAE. PSCOC would no longer be authorized to set aside \$10 million annually from the public school capital outlay fund (PSCOF) for education technology infrastructure. Instead, OBAE would be given the authority to sell up to \$10 million in supplemental severance tax bonds per year (SSTBs) to fund education technology infrastructure. The changes in SB45/aSTBTC are net neutral and would not impact PSCOC’s ability to fund public school construction projects.

[The House Appropriations and Finance Committee Substitute for House Bills 2 and 3 as amended by the House \(HB2/HAFCS/aHF1#1\)](#) includes a \$650 thousand appropriation to OBAE from the PSCOF to create four new FTE to administer the education technology deficiencies correction program. While PSFA would lose four FTE associated with the education technology

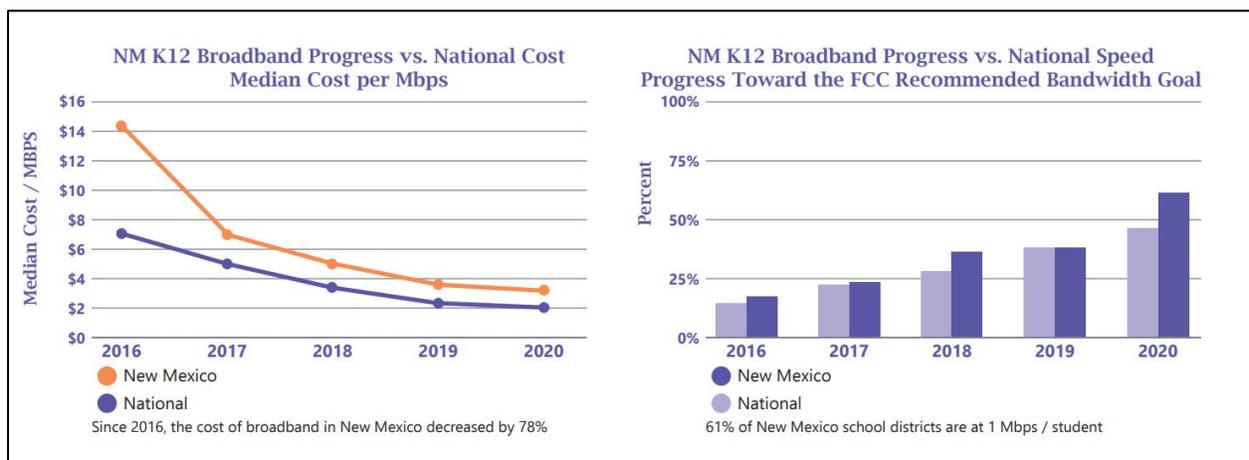
infrastructure corrections program, the agency would receive four new FTE for a programs analyst, a facilities specialist, and two regional project manager positions. According to the Legislative Finance Committee’s (LFC’s) [agency budget framework for FY25](#), LFC staff accounted for the transfer of four FTE from PSFA to OBAE in both agencies’ budget recommendations.

SUBSTANTIVE ISSUES

SB45/aSTBTC continues recent work to consolidate the state’s broadband internet expertise under OBAE. Both OBAE and PSFA are amenable to the relocation of the education technology deficiencies correction program and related staff to OBAE.

The educational technology deficiencies correction program, also known as the broadband deficiencies correction program and the broadband deployment and connectivity program, has successfully connected nearly every public school in New Mexico to a high-speed broadband internet connection. Since the program’s inception in 2014, PSCOC has used its annual \$10 million set aside from the PSCOF to secure a significant amount matching funds via the federal E-Rate program. For every \$1 invested in the program, PSFA secured approximately \$10 in federal funds, resulting in reduced cost for school districts to receive high speed internet connections and an average at-school internet speed that exceeded national average speeds.

Progress Expanding Broadband Access in K-12 Schools
2016-2020



Source: [PSFA Annual Report, 2020](#)

As the program matured and became more successful, PSCOC found it was unable to spend the full \$10 million allowance each year. [Laws 2021, Chapter 49 \(*Senate Bill 144\)](#) expanded the program to cover other educational technology needs revealed during the Covid-19 pandemic, including “projects or items that [PSCOC] determines are in accordance with the guidelines and necessary to education for students, school buses, internet connectivity within a school district, a multi-district regional education network, and a statewide education network.” SB45 does not modify the purpose of the education technology infrastructure deficiencies correction program, but gives OBAE oversight of the program and authority to use \$10 million in SSTB capacity to continue this work.

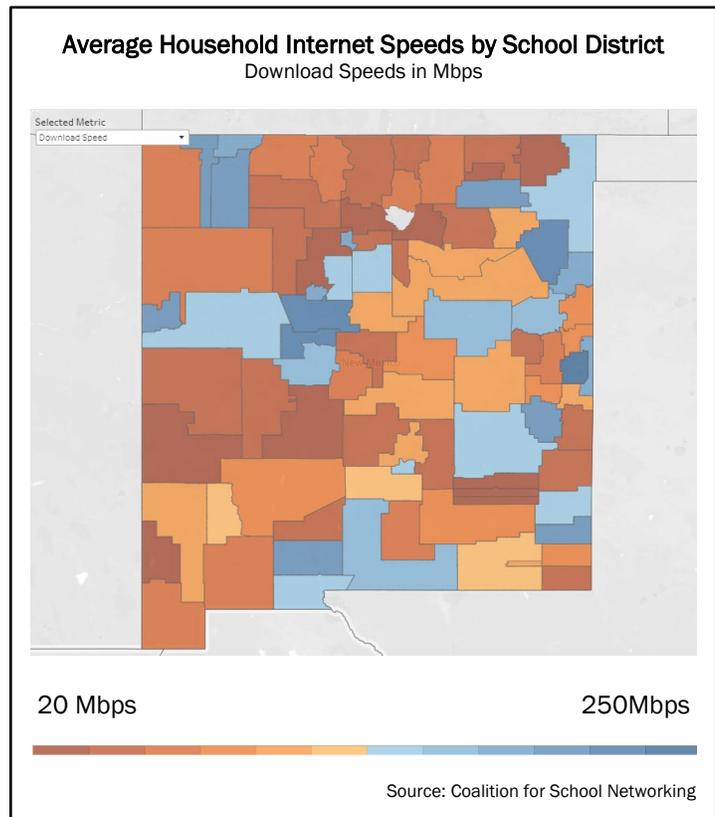
Since 2021, PSFA and OBAE have collaborated on constructing a statewide education network, connecting schools to a single high-speed education network via regional network hubs. A [recent update](#) from the statewide education network advisory committee show that the network is in “phase one” of its development; OBAE is expected to execute memoranda of understanding

(MOUs) with internet service providers (ISPs), complete engineering, install and test equipment, and begin operating the network by July 1, 2024.

In addition to continuing the construction of the statewide education network, SB45/aSTBTC would create a new grant program administered by OBAE to fund education technology infrastructure. The new program appears to mirror several requirements of the existing PSCOC standards- and systems-based awards programs. SB45 would require OBAE to develop the following:

- Adequacy standards for an education technology infrastructure deficiency corrections initiative;
- Reasonable costs for correcting education technology infrastructure deficiencies;
- A methodology for prioritizing projects;
- Criteria to be used in education technology infrastructure projects;
- A methodology to determine a school district's share of the project costs;
- A methodology to prioritize funding to school districts based on geographic size, population density, local property tax base, the current condition of education technology infrastructure relative to adequacy standards, and whether the area is a high growth area; and
- Guidelines for a statewide education network.

Depending on the adequacy standards adopted by OBAE, a new connectivity grant program could help support digital equity across New Mexico. During the Covid-19 pandemic, access to an internet connection became synonymous with access to education. In recent years, K-12 education has begun to necessitate the use of internet-capable digital devices. Students with no internet access or with slow connection speeds at home may begin to fall behind. A [comprehensive data dashboard](#) published by the Consortium for School Networking, a professional association for K-12 education technology leaders, indicates households in rural areas of New Mexico tend to have slower internet speeds than urban and suburban areas of the state. Download speeds in urban locales range from 180 to 214 megabits per second (Mbps), speeds in towns range from 124 to 186 Mbps, and speeds in rural New Mexico range from 75 to 96 Mbps.



ADMINISTRATIVE IMPLICATIONS

In the years since OBAE’s creation in 2021, PSFA has worked closely with the agency under a MOU to transfer the \$10 million annual allowance from the PSCOF to OBAE. During the 2023 legislative interim, the two agencies disagreed about the allowable uses of the \$10 million allowance, slowing the expenditure of funds. SB45/aSTBTC will streamline and expedite the expenditure process by creating specific supplemental severance tax bond revenue to support education technology infrastructure and giving OBAE direct authority to expend the funds.

The new grant program created in SB45/aSTBTC will result in a significant amount of new administrative responsibilities for OBAE. The agency will be required to develop adequacy standards for schools’ education technology infrastructure, use the adequacy standards to develop a methodology and rank priorities for projects, then use those rankings to prioritize and distribute awards. The new process may require OBAE to begin assessing the condition of all schools’ education technology infrastructure, a significant undertaking which may not be possible in one year. For reference, PSFA is able to assess the physical condition of only about one-fifth of the schools in the state per year. Agency analysis from OBAE does not appear to address this additional administrative workload; it is unclear whether the agency is prepared for the creation of a new grant program.

TECHNICAL ISSUES

Section 17, beginning on page 54 of the bill, commutes all statutory references to “the broadband deployment and connectivity program” from PSFA to OBAE. However, “the broadband deployment and connectivity program” is an informal name that is not used in statute. References in Section 17 should be updated to correctly refer to the statutory name of the program, “the educational technology deficiencies correction program.”

Analysis from the State Land Office (SLO) explains Section 8 of the bill, regarding right of way agreements, conflict with the Enabling Act. [Chapter 19, Article 1, NMSA 1978](#) confers jurisdiction over “state trust lands” – lands conveyed to the state from the federal government – to the commissioner of public lands. SLO proposes Section 8 both be amended to clarify that the rates, terms, and conditions of right-of-way agreements on state trust lands remain under the jurisdiction of the commissioner of public lands.

RELATED BILLS

Relates to SB129, Cybersecurity Act Changes, which makes a number of administrative changes to the state Cybersecurity Act.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority (PSFA)
- Office of Broadband Access and Expansion (OBAE)
- New Mexico State Board of Finance (BOF)
- Department of Information Technology (DoIT)
- Taxation and Revenue Department (TRD)
- State Land Office (SLO)