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

Bill Number	<u>HB113/HSIVCS/aHLEDC/aSPAC</u>	Sponsor	<u>HSIVC</u>
Tracking Number	<u>.206470.3</u>	Committee Referrals	<u>HSIVC/HLEDC;SPAC/SCORC</u>
Short Title	<u>Statewide Broadband Network</u>		
Analyst	<u>Rogne</u>	Original Date	<u>2/9/17</u>
		Last Updated	<u>3/3/17</u>

BILL SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to HB113/HSIVCS/aHLEDC strikes the bill in its entirety and in its place amends sections of the Department of Information Technology Act.

The amendment instructs the secretary of the Department of Information Technology (DoIT), as the chief information officer, to develop a statewide broadband network in conjunction with the Public Education Department (PED), the Higher Education Department (HED), state universities, other educational institutions, the Public School Capital Outlay Council (PSCOC), political subdivisions of the state, Indian nations, tribes and pueblos, the Public Regulation Commission (PRC) and telecommunication network service providers. The secretary of DoIT would also be responsible for the coordination and aggregation of telecommunications network services for all executive, legislative, and judicial branches as well as other publicly funded entities and educational institutions that request to be included in the network.

To provide the network and related facilities, DoIT would enter into contractual agreements with telecommunications providers. DoIT and PED would coordinate to apply for reimbursements from the federal universal fund, also known as E-rate, managed by the Federal Communications Commission (FCC). In addition, DoIT is tasked with establishing a rate structure based on costs, including administrative expenses, and charging participants accordingly.

The amendment also adds a new section to the Department of Information Technology Act that allows Indian nations, tribes, and pueblos to connect to the statewide broadband network in exchange for a right-of-way agreement with the chief information officer of DoIT. The chief information officer would apply for reimbursements from the FCC on behalf of Indian nations, tribes, and pueblos that execute a right-of-way agreement.

Synopsis of HLEDC Amendment

The House Labor and Economic Development Committee amendment to HB113/HSIVCS adds “political subdivisions, Indian nations, tribes, and pueblos” to the list of entities which could

choose to participate in the statewide broadband network for which the chief information officer would aggregate demand and reduce costs. This amendment fixes a technical issue to make language in HB113/HSIVCS consistent.

Synopsis of Original Bill

The House State Government, Indian and Veterans Affairs Committee substitute for House Bill 113 (HB113/HSIVCS) requires the chief information officer to coordinate the development 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).

HB113/HSIVCS 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 for administrative costs.

Lastly, HB113/HSIVCS allows Indian nations, tribes, and pueblos to connect to the broadband network in exchange for a right-of-way agreement.

FISCAL IMPACT

HB113/HSIVCS/aHLEDC/aSPAC does not contain an appropriation.

The fiscal implications of HB113/HSIVCS/aHLEDC/aSPAC are too various to provide one estimate, but agency fiscal impact responses for the original version of HB113 are summarized below.

In its analysis, 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 the bill 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.

In its analysis, PSFA reported the cost to purchase broadband services for all K-12 public schools in 2015 in New Mexico were 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

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.

According to PSFA, the Gap Analysis study completed in 2015 by the broadband deficiencies correction program concluded that achieving the FCC connectivity goal of 1 Mbps (megabit per second) per student under the existing approach would be unattainable, even with a significant portion of the cost being covered by E-rate.

PSFA also noted HB113/HSIVCS/aHLEDC/aSPAC is similar to legislation that created Network Nebraska in 2006. Network Nebraska was established through contractual agreements with private vendors, leveraging their existing broadband infrastructure and upgrading or expanding it where needed. The government-coordinated education network is funded by E-rate and nominal membership fees. Network Nebraska did not require state appropriation to be established and has been operational for approximately 10 years. The voluntary participation in Network Nebraska by K-12 public schools is 100 percent. Network Nebraska accomplished one of the lowest internet access costs in the country, currently at \$0.79 per megabit per second per month. The low cost of internet access and the infrastructure to support it also benefits entities and organizations ineligible for E-rate funding.

ADMINISTRATIVE IMPLICATIONS

According to DoIT agency analysis, 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 manage 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.

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 HB113/HSIVCS/aHLEDC/aSPAC may require staffing at PED that is not available at this time.

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) removes this sunset date; as of the date of this analysis SB64 passed the Senate but is still in committee in the House. As PSFA's partnership in HB113/HSIVCS/aHLEDC/aSPAC 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.

TECHNICAL ISSUES

The amendment adds “repeal Laws 2007, Chapter 288, Section 3” to the title of the bill on page 1, but in the body of the bill Section 10 repeals “Laws 2007, Chapter 888, Section 3,” (emphasis added).

Section 1 adds a definition for “telecommunications network,” but not “statewide broadband network.” The majority of the bill refers to the telecommunications network, but the title, Number 4 of Subsection F of Section 2, and Section 9 reference “statewide broadband network.”

Section 5 replaces references to “telephone” with “telecommunication network” throughout the section, except the for the last sentence, which reads: “*Toll calls* not covered by the wide-area *telephone service* and supplemental equipment shall be segregated and paid for by agencies, institutions and departments making the *calls* or using the supplemental equipment,” (emphasis added).

Section 8 also replaces references to “telephone” with “telecommunication network” except the second sentence, which reads: “No agreement for any leased or purchased *telephone service* or for purchase of any *telephone equipment* shall be entered into by any department, institution or agency of the state participating in the central [~~telephone system~~] telecommunication network, except those institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, except upon prior written approval of the secretary or the secretary’s designee,” (emphasis added).

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 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, 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

Relates to HB60/aHLEDC/aHFI#1, 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.

Relates to SB64, Public School Capital Outlay Time Periods, which removes the PSCOC broadband deficiencies correction program sunset.

Companion bill to SB338/aSEC, Statewide Broadband Network, which requires the chief information officer to coordinate the development of and maintain a statewide broadband network.

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

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