

FIFTY-FIFTH LEGISLATURE
FIRST SESSION, 2021

HB 10/a

March 18, 2021

Mr. President:

Your **FINANCE COMMITTEE**, to whom has been referred

**HOUSE APPROPRIATIONS & FINANCE COMMITTEE
SUBSTITUTE FOR HOUSE TRANSPORTATION, PUBLIC WORKS &
CAPITAL IMPROVEMENTS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 10**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, strike line 12 in its entirety and strike line 13 through the semicolon.

2. On page 1, line 15, strike "THE COORDINATOR" and insert in lieu thereof "A CO-COORDINATOR".

3. On page 1, line 15, after "PROGRAMS", insert "WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY OR A STATE BROADBAND PLANNING ENTITY ESTABLISHED BY OTHER LAW".

4. On page 1, strike line 16 through the semicolon.

5. On page 1, line 23, strike "10" and insert in lieu thereof "7".

6. On page 1, line 25, through page 28, line 2, strike Sections 2 through 13 in their entirety and insert in lieu thereof the following new sections:

"SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Connect New Mexico Act:

A. "2020 broadband plan" means the *State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment* published by the department of information technology in June 2020;

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B. "broadband infrastructure" means any cable or device used for high-capacity transmission of a wide range of frequencies enabling a large number of electronic messages to be transmitted or received simultaneously;

C. "council" means the connect New Mexico council;

D. "department" means the department of information technology; provided that, upon Senate Bill 93 of the first session of the fifty-fifth legislature becoming law, "department" means a state agency, department, division or other organization unit designated in that law to plan or coordinate broadband development efforts by all state agencies;

E. "digital equity" means information technology needed for civic and cultural participation, employment, education, business and economic development, lifelong learning and access to essential services generally available to residents regardless of their racial grouping, socioeconomic status or cultural identity;

F. "digital inclusion" means access to and the ability to use information technologies;

G. "federal assistance funding" means federal grant and loan programs that provide full or matching funding for the development or maintenance of broadband infrastructure, training in the use or administration of internet-based services or the purchase of computers or other devices that access the internet;

H. "local government" means the government of a municipality, county or political subdivision of the state or an entity operating pursuant to a joint powers agreement pursuant to the Planning District Act or the Regional Planning Act;

I. "public educational institution" means a public school that receives state funding for its operations, a school district, a public post-secondary educational institution or a state agency that

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provides administrative services, funding or technical support to public schools, school districts and public post-secondary educational institutions;

J. "quality of service" means the standards for broadband service established by the department that meet or exceed the baseline standards established by the federal communications commission;

K. "statewide broadband plan" means a plan developed by the department that may be an updated revision of the 2020 broadband plan; provided that, upon Senate Bill 93 of the first session of the fifty-fifth legislature becoming law, "statewide broadband plan" means the statewide broadband plan developed pursuant to that law;

L. "tribal government" means the government of a federally or state-recognized Indian nation, pueblo or tribe;

M. "underserved" means an area or property that does not receive internet quality of service access; and

N. "unserved" means an area or property that does not have internet access that meets the baseline standards established by the federal communications commission.

SECTION 3. [NEW MATERIAL] COUNCIL CREATED--POWERS.--

A. The "connect New Mexico council" is created and administratively attached to the department.

B. The council is composed of the following fifteen members:

(1) the secretary of transportation or the secretary's designee;

(2) the secretary of economic development or the

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secretary's designee;

(3) the secretary of cultural affairs or the secretary's designee;

(4) the secretary of information technology or the secretary's designee;

(5) the executive director of the New Mexico mortgage finance authority or the executive director's designee;

(6) the secretary of higher education or the secretary's designee;

(7) the director of the public school facilities authority or the director's designee;

(8) five members of the public who have experience with broadband access and connectivity challenges for either private business or public institutions, appointed as follows:

(a) one member appointed by the speaker of the house of representatives;

(b) one member appointed by the minority floor leader in the house of representatives;

(c) one member appointed by the president pro tempore of the senate;

(d) one member appointed by the minority floor leader in the senate; and

(e) one member appointed by the governor; and

(9) three members appointed by the secretary of Indian affairs: one representative of the Navajo Nation, one

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representative of Apache tribal governments and one representative of Indian pueblo tribal governments, who are experienced with broadband access and connectivity issues.

C. The chair of the council shall be elected by a quorum of the council members. The council shall meet monthly or at the call of the chair. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the council.

D. Each member of the council appointed pursuant to Paragraph (8) or (9) of Subsection B of this section shall be appointed to a four-year term; provided that to provide for staggered terms:

(1) two of the members initially appointed pursuant to Paragraph (8) of Subsection B of this section shall be appointed for a term of two years by lot; and

(2) one member initially appointed pursuant to Paragraph (9) of Subsection B of this section shall be initially appointed for a term of two years by lot.

E. Public members of the council shall be reimbursed for attending meetings of the council as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. Public members of the council are appointed public officials of the state while carrying out their duties and activities under the Connect New Mexico Act.

G. Council members shall be governed by the Governmental Conduct Act.

H. The council shall be staffed by the department.

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SECTION 4. [NEW MATERIAL] COUNCIL--DUTIES.--The council shall:

A. in consultation with the department, coordinate state agency broadband programs and broadband projects in accordance with the statewide broadband plan;

B. evaluate and prioritize grant proposals and make grant awards from the connect New Mexico fund; and

C. adopt rules establishing a competitive grant program to receive funds from the connect New Mexico fund. The rules shall include the application procedure, the required qualifications for projects and the purposes for which the grants may be used.

SECTION 5. [NEW MATERIAL] BROADBAND KNOWLEDGE AND DIGITAL EQUITY ANALYSIS AND PLAN--REPORT--INCLUSION IN STATEWIDE BROADBAND PLAN.--

A. The council shall consult local and tribal governments, public educational institutions and state agencies to develop a digital equity analysis and plan to address:

(1) the challenges to digital inclusion that are posed by the lack of affordable quality service, broadband-enabled devices or the knowledge of how to use the devices effectively in different age, cultural or geographic populations across the state;

(2) the federal and private sector programs that could be applied to by state agencies or local or tribal governments to address the challenges identified in Paragraph (1) of this subsection; and

(3) existing state programs or state programs that could be established that address or could leverage federal and private sector programs to address the challenges identified in Paragraph (1) of this subsection.

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B. On or before August 1, 2023, the council shall report on the digital equity analysis and plan to the department and appropriate interim legislative committees.

C. On or before January 1, 2024, the department shall incorporate the digital equity analysis and plan and its recommendations into the statewide broadband plan.

D. The department shall cooperate with and provide relevant broadband-related information collected or developed by the department with the council.

SECTION 6. [NEW MATERIAL] CONNECT NEW MEXICO FUND CREATED.--

A. The "connect New Mexico fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature to the council for the purpose of administering the broadband grant program. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chair of the council. Any unexpended or unencumbered balance in the fund remaining at the end of any fiscal year shall not revert to the general fund.

B. The council shall implement the broadband grant program to develop, expand and support digital inclusion; provided that the council shall each year seek to award grants for proposals submitted by the following entities throughout the state:

- (1) local governments;
- (2) state agencies;
- (3) public educational institutions;
- (4) tribal governments; and

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(5) entities created by a joint powers agreement pursuant to the Joint Powers Agreements Act.

C. When approving grants from the connect New Mexico fund, the council shall give consideration to:

(1) the extent to which the project connects unserved and underserved populations of New Mexico, with priority given to projects that will connect unserved populations;

(2) the extent to which the project meets or exceeds the baseline standards established by the federal communications commission;

(3) the extent to which the project leverages existing infrastructure;

(4) the extent to which the project complements or coordinates with the statewide broadband plan;

(5) the extent to which the project leverages regional collaboration;

(6) the degree to which the project fosters digital inclusion;

(7) the extent to which the project stimulates in-state economic development, including the creation of jobs and apprenticeships; and

(8) the extent to which the project leverages in-kind or financial support from local agencies or entities, federal assistance funding or federal Coronavirus Aid, Relief, and Economic Security Act, federal Consolidated Appropriations Act, 2021 or federal American Rescue Plan Act of 2021 funding.

SECTION 7. [NEW MATERIAL] DATA COLLECTION--ANNUAL REPORT.--

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A. By October 1 of each year, the department, in coordination with the council, shall provide to the appropriate legislative interim committees a report on the access to and quality of service of broadband across the state. Information shall be provided on a county-by-county basis.

B. The report shall contain the following information:

(1) progress achieved toward digital equity and digital inclusion as identified in the digital equity analysis and plan;

(2) progress achieved on implementation of the statewide broadband plan;

(3) identified obstacles to an integrated system of permits, licenses and rules for broadband infrastructure across the state, including an expedited review process for rights of way use applications;

(4) recommended statutory, regulatory or policy changes and budget recommendations for the development and expansion of broadband infrastructure and digital equity and digital inclusion; and

(5) information on the broadband grant program, including:

(a) a list of grant recipients;

(b) the amount and date of each grant;

(c) a description of each project funded; and

(d) a description of how each project contributes to the statewide broadband plan and demonstrates increased access and quality of service for the unserved and underserved populations

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of New Mexico.

SECTION 8. Section 63-9H-3 NMSA 1978 (being Laws 1999, Chapter 295, Section 3, as amended) is amended to read:

"63-9H-3. DEFINITIONS.--As used in the Rural Telecommunications Act of New Mexico:

A. "affordable rates" means rates for basic service that promote universal service within a local exchange service area, giving consideration to the economic conditions and costs to provide service in the area in which service is provided;

B. "basic service" means service that is provided to a rural end-user customer that is consistent with the federal act;

C. "broadband infrastructure" means any cable or device used for high-capacity transmission over a wide range of frequencies that enables a large number of electronic messages to be transmitted or received simultaneously;

~~[G.]~~ D. "cable service" means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service;

~~[D.]~~ E. "commission" means the public regulation commission;

F. "digital equity" means information technology needed for civic and cultural participation, employment, education, business and economic development, lifelong learning and access to essential services generally available to residents regardless of their racial grouping, socioeconomic status or cultural identity;

G. "digital inclusion" means access to and the ability to use information technologies;

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~~[E.]~~ H. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the federal act;

~~[F.]~~ I. "federal act" means the federal Telecommunications Act of 1996;

~~[G.]~~ J. "fund" means the state rural universal service fund;

~~[H.]~~ K. "incumbent local exchange carrier" means a person that:

(1) was designated as an eligible telecommunications carrier by the state corporation commission in Docket #97-93-TC by order dated October 23, 1997, or that provided local exchange service in this state on February 8, 1996; or

(2) became a successor or assignee of an incumbent local exchange carrier;

~~[I.]~~ L. "incumbent rural telecommunications carrier" means an incumbent local exchange carrier that serves fewer than fifty thousand access lines within the state and has been designated as an eligible telecommunications carrier by the state corporation commission or the public ~~[regulations]~~ regulation commission;

~~[J.]~~ M. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

~~[K.]~~ N. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications carrier within a local exchange area;

~~[L.]~~ O. "long distance service" means telecommunications service between local exchange areas that originate and terminate

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within the state;

[M.] P. "private telecommunications service" means a system, including its construction, maintenance or operation for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use the service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

[N.] Q. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate the service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or cable service;

R. "statewide broadband plan" means the State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment published by the department of information technology in June 2020; provided that, upon Senate Bill 93 of the first session of the fifty-fifth legislature becoming law, "statewide broadband plan" means the statewide broadband plan developed pursuant to that law; and

[O.] S. "telecommunications carrier" means a person that provides public telecommunications service."

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SECTION 9. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
ESTABLISHMENT.--

A. The commission shall implement and maintain a "state rural universal service fund" to maintain and support universal service that is provided by eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. As used in this section, "universal service" means basic local exchange service, comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan and broadband internet access service to unserved and underserved areas as determined by the commission.

B. The fund shall be financed by a surcharge on intrastate retail public telecommunications services to be determined by the commission, excluding services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose of funding the fund, the commission has the authority to apply the surcharge on intrastate retail public telecommunications services provided by telecommunications carriers, including commercial mobile radio services and voice over internet protocol services, at a competitively and technologically neutral rate or rates to be determined by the commission. The commission may establish the surcharge as a percentage of intrastate retail public telecommunications services revenue or as a fixed amount applicable to each communication connection. For purposes of this section, a "communication connection" means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection or other uniquely identifiable functional equivalent as determined by the commission. Such surcharges shall

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be competitively and technologically neutral. Money deposited in the fund is not public money, and the administration of the fund is not subject to the provisions of law regulating public funds. The commission shall not apply this surcharge to a private telecommunications network; to the state, a county, a municipality or other governmental entity; to a public school district; to a public institution of higher education; to an Indian nation, tribe or pueblo; or to Native American customers who reside on tribal or pueblo land.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that ensures universal service in the state.

D. The commission shall:

(1) establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of universal service at affordable rates. The eligibility criteria shall not restrict or limit an eligible telecommunications carrier from receiving federal universal service support;

(2) provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the fund;

(3) determine those services and areas requiring support from the fund;

(4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and

(5) establish affordability benchmark rates for local

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residential and business services that shall be utilized in determining the level of support from the fund. The process for determining subsequent adjustments to the benchmark shall be established through a rulemaking.

E. All incumbent telecommunications carriers and competitive carriers already designated as eligible telecommunications carriers for the fund shall be eligible for participation in the fund. All other carriers that choose to become eligible to receive support from the fund may petition the commission to be designated as an eligible telecommunications carrier for the fund. The commission may grant eligible carrier status to a competitive carrier in a rural area upon a finding that granting the application is in the public interest. In making a public interest finding, the commission may consider at least the following items:

(1) the impact of designation of an additional eligible carrier on the size of the fund;

(2) the unique advantages and disadvantages of the competitor's service offering; and

(3) any commitments made regarding the quality of telephone service.

F. The commission shall adopt rules, including a provision for variances, for the implementation and administration of the fund in accordance with the provisions of this section. The rules shall enumerate the appropriate uses of fund support and any restrictions on the use of fund support by eligible telecommunications carriers. The rules shall require that an eligible telecommunications carrier receiving support from the fund pursuant to Subsection K, L or M of this section must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state. The rules also shall provide for annual reporting by eligible telecommunications carriers

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verifying that the reporting carrier continues to meet the requirements for designation as an eligible telecommunications carrier for purposes of the fund and is in compliance with the commission's rules, including the provisions regarding use of support from the fund.

G. The commission shall, upon implementation of the fund, select a neutral third-party administrator to collect, administer and disburse money from the fund under the supervision and control of the commission pursuant to established criteria and rules promulgated by the commission. The administrator may be reasonably compensated for the specified services from the surcharge proceeds to be received by the fund pursuant to Subsection B of this section. For purposes of this subsection, the commission shall not be a neutral third-party administrator.

H. The fund established by the commission shall ensure the availability of universal service as determined by the commission at affordable rates in rural areas of the state; provided, however, that nothing in this section shall be construed as granting any authority to the commission to impose the surcharge on or otherwise regulate broadband internet access services.

I. The commission shall ensure that intrastate switched access charges are equal to interstate switched access charges established by the federal communications commission as of January 1, 2006. Nothing in this section shall preclude the commission from considering further adjustments to intrastate switched access charges based on changes to interstate switched access charges.

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge determined pursuant to Subsection B of this section to be paid by the end-user customer will be held to a minimum, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting.

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K. The commission shall authorize payments from the fund to incumbent local exchange carriers, in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates. Beginning in 2018, the commission shall make access reduction support payments in the amount made from the fund in base year 2014, adjusted each year thereafter by:

(1) the annual percentage change in the number of access lines served by the incumbent local exchange carriers receiving such support for the prior calendar year, as compared to base year 2014; and

(2) changes in the affordability benchmark rates that have occurred since 2014.

L. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status; provided, however, that nothing in this section shall limit the commission's authority to adopt rules pursuant to Subsection F of this section regarding appropriate uses of fund support and any restrictions on the use of the fund support by eligible telecommunications carriers.

M. The commission may also authorize payments from the fund to incumbent rural telecommunications carriers or to telecommunications carriers providing comparable retail alternative services that have been designated as eligible telecommunications carriers serving in rural areas of the state upon a finding, based on factors that may include a carrier's regulated revenues, expenses or investment, by the commission that such payments are needed to ensure the widespread availability and affordability of universal service. The commission shall decide cases filed pursuant to this subsection with reasonable promptness, with or without a hearing, but no later than six months following the filing of an application seeking payments from the fund, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

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N. The commission shall adopt rules that establish and implement a broadband program to provide funding to eligible telecommunications carriers for the construction and maintenance of ~~[facilities capable of providing broadband internet access service. Such rules shall require that the commission consider applications for funding on a technology-neutral basis and shall require that the awards of support be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state]~~ broadband infrastructure. Each year, a minimum of ~~[five million dollars (\$5,000,000)]~~ eight million dollars (\$8,000,000) of the fund shall be dedicated to the broadband program.

O. Rules adopted pursuant to Subsection N of this section shall require that the commission:

(1) consider applications for funding on a technology-neutral basis;

(2) submit applications for funding to the connect New Mexico council for prioritization and alignment with the statewide broadband plan to ensure digital equity and digital inclusion; and

(3) require that the awards of support be consistent with federal universal service support programs.

~~[O.]~~ P. The total obligations of the fund determined by the commission pursuant to this section, plus administrative expenses and a prudent fund balance, shall not exceed a cap of thirty million dollars (\$30,000,000) per year. The commission shall evaluate the amount of the cap in an appropriate proceeding to be completed by June 30, 2019 and consider whether, based on the then-current status of the fund, the cap should be modified, maintained or eliminated.

~~[P. By December 31, 2019]~~ Q. By October 1 of each year,

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the commission shall make a report to the legislature regarding the status of the fund, including:

(1) relevant data relating to implementation of the broadband program and [~~expansion of broadband internet access services~~] the progress toward digital equity and digital inclusion in rural areas of the state; [The report shall also make]

(2) recommendations for [~~any~~] changes to the structure, size and purposes of the fund and whether the cap on the fund provided for in Subsection [0] P of this section should be modified, maintained or eliminated; and

(3) the service areas that received funding awards from the broadband program and the amounts of those awards."

7. Renumber the succeeding section accordingly.

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Respectfully submitted,

—

GEORGE MUÑOZ, CHAIRMAN

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

No: 0

Excused: None

Absent: None

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