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FISCAL IMPACT REPORT

SPONSOR Padilla/Stefanics **ORIGINAL DATE** 02/07/21
LAST UPDATED 03/19/21 **HB** _____
SHORT TITLE Broadband Access and Expansion Act **SB** 93/aSFC/aHF1#1
ANALYST Hitzman/Fischer

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|----------------------|----------------------|----------------------|------------------------------|------------------|
| Total | | See Fiscal Impact | See Fiscal Impact | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB141, SB144, and HB86
Companion to HB10

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Information Technology (DoIT)
Public Regulation Commission (PRC)
Public Schools Facilities Authority (PSFA)
Department of Cultural Affairs (DCA)
Department of Transportation (DOT)

SUMMARY

Synopsis of HF1#1 Amendment

The House floor amendment to Senate Bill 93 eliminates sections regarding the creation of the broadband access and expansion council, the council duties, and the creation of the broadband access and expansion fund and retains the ability of the office to form advisory committees to facilitate development of proposals. The eliminated items are now included in a companion bill, House Bill 10.

The amendment also clarifies the definition of “quality of service,” to be based on standards set by the Federal Communications Commission, and adds requirements for the broadband office to maintain a repository of the locations of broadband infrastructure owned or projected for construction by the state or local governments and to implement the statewide broadband plan.

Finally, the amendment allows for the broadband office to be the applicant for funding assistance but adds an exception for the department of transportation. Bulk-price agreements and best-value pricing shall be done where practicable, and the office shall coordinate with other entities to create an integrated system for permits, licenses, and rules for broadband infrastructure, including an expedited right-of-way review process.

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 93 eliminates the \$950 thousand appropriation to fund the office of broadband and adds language to create the broadband access and expansion council. The bill also creates a new, nonreverting “Broadband Access and Expansion Fund” for appropriations, gifts, grants, and donations as subject to appropriation by the Legislature.

The amendment outlines the powers of the council, administratively attached to DoIT, to be staffed by the broadband office. The council must include representation from the state Economic Development, Cultural Affairs, Information Technology, and Higher Education Departments, the Mortgage Finance Authority, Public School Facilities Authority, four legislatively-appointed members, and six public members, including tribal representatives. The council created within the bill is tasked with evaluating grant proposals and awarding grants from the broadband access and expansion fund, and to coordinate state agency broadband programs. Grants may be awarded to local governments, state agencies, public education institutions, tribal governments, and entities created by a joint powers agreement, with special consideration given to projects that connect the unserved/underserved, leverage existing infrastructure or regional collaboration, compliment the broadband development plan, foster digital inclusion, stimulate economic development, or leverages other funding sources.

The amendment also eliminates the requirement for the broadband office to create an advisory committee to facilitate proposal development for the statewide broadband plan.

Synopsis of Original Bill

Senate Bill 93 appropriates \$950 thousand from the general fund to DoIT for expenditure in FY22 to establish and operate the office of broadband access and expansion and for the hire of up to five FTE to support the operation of the broadband office.

SB93 outlines the responsibilities of the office of broadband access and expansion and its Governor-appointed director, which include developing and annually updating a state broadband plan, coordinating and providing technical assistance to other state and local government institutions, identifying broadband funding opportunities, and applying for federal and nongovernmental broadband funding. The office of broadband access and expansion is also required to maintain maps and information about broadband access for homes and businesses in the state, set standards of quality for broadband speeds, and coordinate with federal, local, state, and tribal government agencies to create a uniform system of permits, licenses, and regulation of rights-of-way for broadband infrastructure.

FISCAL IMPLICATIONS

The bill as amended does not contain an appropriation. However, once established, the office of broadband access and expansion will require recurring funding for ongoing operations.

DoIT estimates that a starting annual operating budget for the division would include \$660 thousand for personal services and benefits for up to five FTE staff, \$200 thousand for professional contractual services, and \$90 thousand for other costs, such as telephone services, supplies, and hardware/software purchases. DoIT also estimates \$50 thousand in additional expenditures would be incurred within the Program Support and the Compliance and Project Management programs to support the additional duties within the division.

In regard to personal services, DoIT reports that this budget would cover salaries for three existing authorized FTE for the office – a director and two project managers. DoIT recently filled the two project manager positions and reports that these positions are currently funded out of overhead included in rates DoIT charges to state agencies. DoIT notes if these positions were to be instead funded from the general fund, DoIT would reduce the overhead rates they charge to agencies accordingly. In effect, the Legislature would still be funding these positions from the general fund, but through direct appropriations to DoIT, rather than more indirectly by appropriating money to state agencies eventually paid to DoIT through their service fees.

The budget would also cover funding for two additional authorized FTE – a higher-level project manager and a geographic information system (GIS) manager. DoIT has an existing GIS officer, but DoIT proposes to add an additional GIS manager specifically dedicated to the broadband program.

Though DoIT has an existing office of broadband, two major reports in recent years have recommended the establishment of a centralized office of broadband in statute. First, a November 2019 LFC program evaluation recommended the Legislature designate a single entity to be the state's broadband lead and central point of contact, with a director appointed by the governor, and defined accountability reporting to the Legislature. A second, June 2020, Statewide Broadband Strategic Plan commissioned by DoIT recommended a similar centralized office of broadband with “resources of at least \$1 million per year to support appropriate staffing and programs.”

New Mexico state and tribal governments have received significant federal funding for broadband operations and infrastructure as part of the CARES Act and Consolidated Appropriations Act, 2021 stimulus packages. This funding includes a \$1.5 million CARES grant to DoIT to provide technical assistance to expand broadband infrastructure and services in response to the critical need for Internet access during the Covid-19 pandemic.

SIGNIFICANT ISSUES

New Mexico currently has no single entity or agency tasked with tracking broadband investment funds or coordinating activities between state agencies. However, several individuals across at least seven state agencies have a claim of responsibility for broadband development in the state.

Existing State Agency Roles in Broadband Infrastructure Development

| Agency | Role in Broadband |
|---|---|
| Department of Information Technology (DoIT) | Planning, mapping, fiscal agent for library broadband infrastructure fund |
| Public School Facilities Authority (PSFA) | Administer Broadband Deficiencies Correction Program for schools; provide technical assistance with E-Rate |
| Public Education Department (PED) | Statewide E-Rate coordination, including addressing gaps in tribal schools |
| Department of Cultural Affairs (DCA) | Through the State Library, assist public libraries with accessing E-Rate funds and state broadband support |
| Public Regulation Commission (PRC) | Administer the state rural universal service fund (SRUSF) and its Rural Broadband Program |
| Department of Transportation (DOT) | Administer utility and broadband right-of-way alongside and intersecting with state roads and transportation infrastructure |
| Indian Affairs Department (IAD) | Coordinate relationships with tribal governments; administer certain funds for tribal broadband projects |

Source: LFC November 2019 Program Evaluation "Funding, Oversight, and Coordination of Broadband Programs"

The existing office of broadband within DoIT employs a high-level IT project manager and two recently hired project managers who provide informal assistance and oversight to broadband initiatives and programs throughout the state. The existing office provides general guidance to agencies and governments related to broadband connectivity. DoIT reports their staff already serve a supporting role to assist agencies in securing federal funding for broadband initiatives. However, the department also expressed concern that the new office of broadband access and expansion might not have the authority to apply on behalf of other state entities, as the federal application processes generally requires the project owner to be the actual applicant and recipient of funds. DoIT further identified potential conflict between SB93 and Section 9-27-6(F)(4) NMSA 1978 which states that the Secretary of DoIT’s strategic plan “shall . . . provide for the . . . development of a statewide broadband network plan[.]”

In addition to potential duplication of work at DoIT’s current office of broadband, the bill may duplicate existing work at the PRC. The PRC currently administers the state’s Rural Universal Service Fund Broadband Program that disburses a minimum of \$5 million per year for broadband projects as directed by statute (NMSA § 1978 63-9H-6) and rule (NMAC 17.11.10.31). The PRC is also responsible by federal and state law for the designation of eligible telecommunications carriers for state and federal universal service funding eligibility. In doing so, the PRC is required to identify a carrier’s proposed service area and any applicable underserved or unserved areas, as well as mediate inter-carrier disputes. However, the PRC has no statutory authority to resolve right-of-way issues.

PRC reports their staff have provided assistance to and received assistance from DoIT’s existing office of broadband staff to identify and map areas receiving state or federal broadband support. PRC also provides DoIT staff with information needed regarding state and federal regulatory issues related to broadband, and this coordination appears likely to continue under the development of the broadband office.

The bill may also duplicate work completed by the DOT. The bill requires the office to create a uniform system of permits and regulations for broadband infrastructure use of rights-of-way, but this may duplicate functions already provided by the DOT and may conflict with DOT’s management of state highway rights- of-way. DOT notes that the bill would remove the agency’s negotiation and procurement authority for transportation-related broadband infrastructure, instead placing that authority in the broadband office. The office would not have authority or

jurisdiction over use of the state road fund, the source of DOT funding, which may cause procurement delays or conflicts. DOT may also experience procurement delays if approval of plans and procurements for use of the state road fund have to be managed by DoIT instead of DOT.

PSFA also works with the existing office of broadband within DoIT to provide guidance to public schools for technical support, and information and assistance with federal funding opportunities such as E-Rate. As a result, E-Rate funding for schools in New Mexico have almost doubled in the last five years, and the Public School Capital Outlay Council has invested roughly \$8.7 million and leveraged roughly \$88 million in E-Rate funding for public school broadband infrastructure since 2016. PSFA believes the creation of the office of broadband access and expansion may duplicate existing efforts to fund and connect New Mexico public schools and could potentially limit the ability for libraries and schools to leverage federal E-Rate funds if participating in bulk price agreements.

PERFORMANCE IMPLICATIONS

New Mexico lags behind the rest of the nation in broadband connectivity. State and federal investments and oversight have succeeded in connecting schools, hospitals, and other institutions, but the costs of infrastructure are high and residents and businesses in many rural areas remain unserved. However, recent federal and state investments as a result of the Covid-19 pandemic may significantly improve connectivity in some regions of the state.

In summer 2020, the Governor directed \$2.9 million of DoIT's \$10 million capital outlay appropriation from the General Appropriation Act of 2019 to Cochiti Pueblo and another \$2.1 million to Sierra County for broadband infrastructure. In October 2020, USDA announced \$20 million of federal ReConnect funding would be targeted for broadband buildout in Eddy, Chaves, Lea, Lincoln, Otero, Cibola, and Sierra Counties. USDA estimates the funding will connect 1,400 homes and businesses. In December 2020, the Federal Communications Commission approved \$165 million to 18 companies to build out broadband infrastructure in underserved areas of New Mexico. Over the next 10 years, the funding is expected to support buildout of broadband services to 64 thousand houses, businesses, and other locations.

However, no state entity is responsible for identifying remaining regions lacking broadband access or prioritizing investments for those regions. Nor is any agency held accountable to seeing that homes and businesses in those regions are connected. For that reason, the November 2019 LFC program evaluation on broadband recommended that if an office of broadband were to be established in DoIT, that it be elevated to it to its own "program" within the General Appropriation Act such that it would have its own associated Accountability in Government Act performance measures to ensure it meets statewide broadband goals. As it is written, SB93 does not elevate the office to its own program under DoIT. However, the bill does require the newly created office to provide an annually updated three-year broadband plan to the Legislature.

Finally, DoIT notes that the bill does not reference Internet service providers (ISPs) nor their role in delivering services to NM residents and businesses. According to DoIT, "without the ISP community involvement and coordination, governmental entities will resume the role of broadband expansion."

ADMINISTRATIVE IMPLICATIONS

DoIT reports that the creation of a new office of broadband access and expansion would require the department's administrative services division to facilitate and execute human resources, budget, procurement, and fiscal services including the annual audit that may duplicate efforts of the existing office.

DOT expresses concern that the bill's handling of rights-of-way could conflict with transportation uses and the exclusive authority of the State Transportation Commission over highway rights-of-way, conflicting with DOT's safety access control and maintenance obligations.

RELATIONSHIP

This bill relates to items in SB377, the Supplemental Appropriations Act and capital outlay recommendations, which combined include \$115 million for statewide broadband projects. It is a companion to House Bill 10 which created a broadband fund and governing council to be staffed by the new office of broadband created in SB93.

The bill relates to Senate Bill 144 and House Bill 141, both of which expand the definition of education technology infrastructure in the Public School Capital Outlay Act to include services used to interconnect students, teachers, school districts, and school buildings to broadband and remote learning. Senate Bill 144 also requires the Public School Capital Outlay Council to develop guidelines for a statewide education technology infrastructure network and necessary technology projects for education.

This bill also relates to Senate Bills 413, 204 and 361. Senate Bill 413 establishes regional franchise partnerships related to broadband development and use of infrastructure. Senate Bill 204 defines additional provisions under which Internet service providers can apply and receive support from the State Rural Universal Services Fund (SRUSF), and would allow additional carriers to receive support from the SRUSF. Senate Bill 361 allows for the use of the SRUSF for consumer broadband-only loops.

OTHER SUBSTANTIVE ISSUES

Section 14 of Article IX of the New Mexico Constitution prohibits the state or local governments to provide direct or indirect donations or aid to any person or organization. As such grants from the broadband access and expansion fund would need to be awarded in a way that does not conflict with provisions of the anti-donation clause. To comply with the anti-donation clause, the DOT's efforts to repeal and replace 17.4.2 NMAC with a new version to expand rights-of-way use to include non-transportation related, private businesses such as wireless and fiber-optic facilities for broadband infrastructure expansion allows DOT to "permit fair and equitable private use of NMDOT rights-of-way through the existing NMDOT permitting process."

DoIT expressed concern that the bill does not appear to grant the newly created broadband office with the statutory authority necessary to enforce broadband quality of service standards to nongovernment customers receiving broadband service from private corporations.

Additionally, DoIT noted, the Legislature may want to consider a potential amendment to the bill that would include “IPRA protections for the data in the proposed repository to the extent such data may expose businesses’ and homes’ security/safety vulnerabilities stemming from lack of connectivity.”

As written, the act would also require state agencies and public education institutions to coordinate with the broadband office for purchase of infrastructure and broadband services. However, DCA notes that, as the oversight body and entity for administering the Broadband for Libraries program, the requirement for participation in bulk pricing agreements outlined in this bill might result in loss of federal funds for those purchases typically funded through the federal E-Rate bidding process.

The bill also does not address whether fees obtained as a result of the broadband office rules and subsequent use of the state highway rights-of-way will be distributed to the Road Fund. The House Floor amendment to the bill does, however, narrow the scope of the broadband office so that DOT can still apply for funding assistance outside of the office.

JH/MF/sb/al