

HOUSE BILL 120

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

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AN ACT

RELATING TO BROADBAND; AMENDING THE RURAL TELECOMMUNICATIONS  
ACT OF NEW MEXICO AND THE CONNECT NEW MEXICO ACT TO REMOVE  
CONTINGENT WORDING FROM THE DEFINITION OF "STATEWIDE BROADBAND  
PLAN"; AMENDING THE CONNECT NEW MEXICO ACT AND THE BROADBAND  
ACCESS AND EXPANSION ACT TO ALIGN THE TIMING OF REQUIRED  
VARIOUS ANNUAL REPORTS TO BE OCTOBER 1 OF EACH YEAR; ADDING AND  
REMOVING DEFINITIONS FROM THE CONNECT NEW MEXICO ACT TO ALIGN  
WITH THE DEFINITIONS IN THE BROADBAND ACCESS AND EXPANSION ACT;  
AMENDING THE CONNECT NEW MEXICO ACT TO PROVIDE FOR THE ADOPTION  
OF A PRELIMINARY POLICY ESTABLISHING A COMPETITIVE GRANT  
PROGRAM FROM THE CONNECT NEW MEXICO FUND FOR ONE YEAR PRIOR TO  
THE ADOPTION OF THE POLICY BY RULE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 63-9H-3 NMSA 1978 (being Laws 1999,

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1 Chapter 295, Section 3, as amended by Laws 2021, Chapter 118,  
2 Section 1 and by Laws 2021, Chapter 120, Section 8) is amended  
3 to read:

4 "63-9H-3. DEFINITIONS.--As used in the Rural  
5 Telecommunications Act of New Mexico:

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

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

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

17 D. "cable service" means the transmission to  
18 subscribers of video programming or other programming service  
19 and subscriber interaction, if any, that is required for the  
20 selection or use of the video programming or other programming  
21 service;

22 E. "commission" means the public regulation  
23 commission;

24 F. "comparable carrier" means an eligible  
25 telecommunications carrier established prior to enactment of

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1 the Rural Telecommunications Act of New Mexico that has a  
2 similar number of access lines as an eligible  
3 telecommunications carrier established after enactment of that  
4 act;

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

11 H. "digital inclusion" means access to and the  
12 ability to use information technologies;

13 I. "eligible telecommunications carrier" means an  
14 eligible telecommunications carrier as defined in the federal  
15 act;

16 J. "federal act" means the federal  
17 Telecommunications Act of 1996;

18 K. "fund" means the state rural universal service  
19 fund;

20 L. "incumbent local exchange carrier" means a  
21 person that:

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

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1 1996; or

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

4 M. "incumbent rural telecommunications carrier"  
5 means an incumbent local exchange carrier that serves fewer  
6 than fifty thousand access lines within the state and has been  
7 designated as an eligible telecommunications carrier by the  
8 state corporation commission or the public regulation  
9 commission;

10 N. "local exchange area" means a geographic area  
11 encompassing one or more local communities, as described in  
12 maps, tariffs or rate schedules filed with the commission,  
13 where local exchange rates apply;

14 O. "local exchange service" means the transmission  
15 of two-way interactive switched voice communications furnished  
16 by a telecommunications carrier within a local exchange area;

17 P. "long distance service" means telecommunications  
18 service between local exchange areas that originate and  
19 terminate within the state;

20 Q. "private telecommunications service" means a  
21 system, including its construction, maintenance or operation  
22 for the provision of telecommunications service, or any portion  
23 of that service, by a person for the sole and exclusive use of  
24 that person and not for resale, directly or indirectly. For  
25 purposes of this definition, the person that may use the

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1 service includes any affiliates of the person if at least  
2 eighty percent of the assets or voting stock of the affiliates  
3 is owned by the person. If any other person uses the  
4 telecommunications service, whether for hire or not, the  
5 private telecommunications service is a public  
6 telecommunications service;

7 R. "public telecommunications service" means the  
8 transmission of signs, signals, writings, images, sounds,  
9 messages, data or other information of any nature by wire,  
10 radio, lightwaves or other electromagnetic means originating  
11 and terminating in this state regardless of actual call  
12 routing. "Public telecommunications service" does not include  
13 the provision of terminal equipment used to originate or  
14 terminate the service; private telecommunications service;  
15 broadcast transmissions by radio, television and satellite  
16 broadcast stations regulated by the federal communications  
17 commission; radio common carrier services, including mobile  
18 telephone service and radio paging; or cable service;

19 S. "statewide broadband plan" means the *State of*  
20 *New Mexico Broadband Strategic Plan and Rural Broadband*  
21 *Assessment* published by the department of information  
22 technology in June 2020 [~~provided that, upon Senate Bill 93 of~~  
23 ~~the first session of the fifty-fifth legislature becoming law,~~  
24 ~~"statewide broadband plan" means the statewide broadband plan~~  
25 ~~developed pursuant to that law]~~ or an updated revision of that

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1 plan developed pursuant to the Broadband Access and Expansion  
2 Act; and

3 T. "telecommunications carrier" means a person that  
4 provides public telecommunications service."

5 SECTION 2. Section 63-9J-3 NMSA 1978 (being Laws 2021,  
6 Chapter 123, Section 3) is amended to read:

7 "63-9J-3. OFFICE OF BROADBAND ACCESS AND EXPANSION  
8 CREATED--DIRECTOR--STANDARDS--DATA COLLECTION--STATEWIDE  
9 BROADBAND PLAN--ASSISTANCE FOR POLITICAL SUBDIVISIONS.--

10 A. The "office of broadband access and expansion"  
11 is created and is administratively attached to the department  
12 of information technology.

13 B. The broadband office shall be managed by the  
14 director, who shall be appointed by the governor. The director  
15 may hire staff as needed to meet the responsibilities of the  
16 broadband office.

17 C. The broadband office shall:

18 (1) establish by rule standards for quality of  
19 service for homes, businesses and public institutions;

20 (2) create and maintain an official, publicly  
21 accessible online New Mexico broadband access map showing  
22 broadband availability and quality of service for homes,  
23 businesses and public institutions on a county-by-county basis;  
24 and

25 (3) create and maintain a repository for

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1 broadband data and information in New Mexico on a county-by-  
2 county basis, including:

3 (a) the number of homes and businesses  
4 that do not have access to broadband service;

5 (b) the number of homes and businesses  
6 that have broadband service that falls below the quality of  
7 service standards established by the broadband office; and

8 (c) the locations of broadband  
9 infrastructure currently owned or projected for construction by  
10 the state or local governments on a county-by-county basis.

11 D. On or before January 1, 2022, the broadband  
12 office shall develop and provide to the governor and the  
13 legislature a three-year statewide broadband plan.

14 E. On or before ~~[January 1, 2023]~~ October 1, 2022,  
15 and on or before ~~[January]~~ October 1 of each year thereafter,  
16 the broadband office shall update and revise the statewide  
17 broadband plan developed pursuant to this section for the  
18 ensuing three years and report the updated and revised  
19 statewide broadband plan to the governor and the ~~[legislature]~~  
20 appropriate legislative interim committees. In its initial  
21 plan pursuant to Subsection D of this section and in its annual  
22 revised and updated plan pursuant to this subsection, the  
23 broadband office shall provide an assessment of broadband  
24 service across the state compared to the standards established  
25 by the various federal broadband regulatory and assistance

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1 programs.

2 F. In the development of the statewide broadband  
3 plan, the broadband office shall request advice and provide  
4 opportunities for meaningful input from each local and tribal  
5 government within New Mexico, and all state agencies and public  
6 educational institutions shall cooperate with and provide  
7 relevant broadband-related information collected or developed  
8 by the agencies as requested by the broadband office.

9 G. The broadband office shall implement the  
10 statewide broadband plan.

11 H. The broadband office shall provide technical and  
12 planning assistance to local governments, public educational  
13 institutions and state agencies in the design, development or  
14 implementation of their own plans for the development of  
15 broadband service. When providing planning and technical  
16 assistance, the broadband office shall encourage the use of  
17 regional planning and may provide planning and technical  
18 assistance to tribal government agencies and schools when those  
19 entities are participants in a joint powers agreement with a  
20 county, municipality, political subdivision, public educational  
21 institution or state agency or memorandum of understanding for  
22 the design, development or implementation of a regional  
23 broadband plan.

24 I. The broadband office may form an advisory  
25 committee comprising representatives of state, local and tribal

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1 government agencies and the general public to facilitate the  
2 collection of information and the development of proposals for  
3 the statewide broadband plan; provided that if an advisory  
4 committee is formed, at least three different tribal agencies  
5 shall be represented on the committee."

6 SECTION 3. Section 63-9K-2 NMSA 1978 (being Laws 2021,  
7 Chapter 120, Section 2) is amended to read:

8 "63-9K-2. DEFINITIONS.--As used in the Connect New Mexico  
9 Act:

10 A. "2020 broadband plan" means the *State of New*  
11 *Mexico Broadband Strategic Plan and Rural Broadband Assessment*  
12 published by the department of information technology in June  
13 2020;

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

18 C. "broadband office" means the office of broadband  
19 access and expansion established pursuant to the Broadband  
20 Access and Expansion Act;

21 [~~C.~~] D. "council" means the connect New Mexico  
22 council;

23 [~~D.~~] "~~department~~" means the department of  
24 information technology; provided that, upon Senate Bill 93 of  
25 the first session of the fifty-fifth legislature becoming law,

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1 ~~"department" means a state agency, department, division or~~  
2 ~~other organization unit designated in that law to plan or~~  
3 ~~coordinate broadband development efforts by all state~~  
4 ~~agencies;]~~

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

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

13 G. "director" means the director of the broadband  
14 office;

15 [~~G.~~] H. "federal assistance funding" means federal  
16 grant and loan programs that provide full or matching funding  
17 for the development or maintenance of broadband infrastructure,  
18 training in the use or administration of internet-based  
19 services or the purchase of computers or other devices that  
20 access the internet;

21 [~~H.~~] I. "local government" means the government of  
22 a municipality, county or political subdivision of the state or  
23 an entity operating pursuant to a joint powers agreement  
24 pursuant to the Planning District Act or the Regional Planning  
25 Act;

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1           ~~[F.]~~ J. "public educational institution" means a  
2 public school that receives state funding for its operations, a  
3 school district, a public post-secondary educational  
4 institution or a state agency that provides administrative  
5 services, funding or technical support to public schools,  
6 school districts and public post-secondary educational  
7 institutions;

8           ~~[J.]~~ K. "quality of service" means the standards  
9 for broadband service established by the ~~[department]~~ broadband  
10 office that meet or exceed the baseline standards established  
11 by the federal communications commission;

12           ~~[K.]~~ L. "statewide broadband plan" means ~~[a plan~~  
13 ~~developed by the department that may be an updated revision of~~  
14 ~~the 2020 broadband plan; provided that, upon Senate Bill 93 of~~  
15 ~~the first session of the fifty-fifth legislature becoming law,~~  
16 ~~"statewide broadband plan" means the statewide broadband plan~~  
17 ~~developed pursuant to that law]~~ the 2020 broadband plan or an  
18 updated revision of that plan developed pursuant to the  
19 Broadband Access and Expansion Act;

20           ~~[L.]~~ M. "tribal government" means the government of  
21 a federally or state-recognized Indian nation, pueblo or tribe;

22           ~~[M.]~~ N. "underserved" means an area or property  
23 that does not receive internet quality of service access; and

24           ~~[N.]~~ O. "unserved" means an area or property that  
25 does not have internet access that meets the baseline standards

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1 established by the federal communications commission."

2 SECTION 4. Section 63-9K-3 NMSA 1978 (being Laws 2021,  
3 Chapter 120, Section 3) is amended to read:

4 "63-9K-3. COUNCIL CREATED--POWERS.--

5 A. The "connect New Mexico council" is created and  
6 administratively attached to the department of information  
7 technology.

8 B. The council is composed of the following  
9 [~~fifteen~~] nineteen members:

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

12 (2) the secretary of economic development or  
13 the secretary's designee;

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

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

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

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

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

25 (8) the secretary of Indian affairs or the

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1 secretary's designee;

2 (9) the secretary of public education or the  
3 secretary's designee;

4 (10) the secretary of health or the  
5 secretary's designee;

6 (11) the director or the director's designee;

7 ~~(8)~~ (12) five members of the public who have  
8 experience with broadband access and connectivity challenges  
9 for either private business or public institutions, appointed  
10 as follows:

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

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

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

17 (d) one member appointed by the minority  
18 floor leader ~~(in)~~ of the senate; and

19 (e) one member appointed by the  
20 governor; and

21 ~~(9)~~ (13) three members appointed by the  
22 secretary of Indian affairs: one representative of the Navajo  
23 Nation, one representative of Apache tribal governments and one  
24 representative of Indian pueblo tribal governments, who are  
25 experienced with broadband access and connectivity issues.

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1           C. The ~~[chair of the council shall be elected by a~~  
2 ~~quorum of the council members]~~ director or the director's  
3 designee shall be the chair of the council. The council shall  
4 meet monthly or at the call of the chair. A majority of  
5 members constitutes a quorum for the transaction of business.  
6 The affirmative vote of at least a majority of a quorum present  
7 shall be necessary for an action to be taken by the council.

8           D. Each member of the council appointed pursuant to  
9 Paragraph ~~[(8) or (9)]~~ (12) or (13) of Subsection B of this  
10 section shall be appointed to a four-year term; provided that  
11 to provide for staggered terms:

12                   (1) two of the members initially appointed  
13 pursuant to Paragraph ~~[(8)]~~ (12) of Subsection B of this  
14 section shall be appointed for a term of two years by lot; and

15                   (2) one member initially appointed pursuant to  
16 Paragraph ~~[(9)]~~ (13) of Subsection B of this section shall be  
17 initially appointed for a term of two years by lot.

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

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

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

3 H. The council shall be staffed by the [~~department~~]  
4 broadband office."

5 SECTION 5. Section 63-9K-4 NMSA 1978 (being Laws 2021,  
6 Chapter 120, Section 4) is amended to read:

7 "63-9K-4. COUNCIL--DUTIES.--The council shall:

8 A. in consultation with the [~~department~~] broadband  
9 office, coordinate state agency broadband programs and  
10 broadband projects in accordance with the statewide broadband  
11 plan;

12 B. evaluate and prioritize grant proposals and make  
13 grant awards from the connect New Mexico fund; [~~and~~]

14 C. on or before July 1, 2022, adopt [~~rules~~] a  
15 policy establishing a competitive grant program to receive  
16 funds from the connect New Mexico fund. The [~~rules~~] policy  
17 shall include the application procedure, the required  
18 qualifications for projects and the purposes for which the  
19 grants may be used; and

20 D. on or before July 1, 2023, revise and update the  
21 policy adopted pursuant to Subsection C of this section and  
22 adopt the revision by rule."

23 SECTION 6. Section 63-9K-5 NMSA 1978 (being Laws 2021,  
24 Chapter 120, Section 5) is amended to read:

25 "63-9K-5. BROADBAND KNOWLEDGE AND DIGITAL EQUITY ANALYSIS

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1 AND PLAN--REPORT--INCLUSION IN STATEWIDE BROADBAND PLAN.--

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

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

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

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

18 B. On or before August 1, 2023, the council shall  
19 report on the digital equity analysis and plan to the  
20 [department] broadband office and appropriate interim  
21 legislative committees.

22 C. On or before [~~January 1, 2024~~] October 1, 2023,  
23 the [department] broadband office shall incorporate the digital  
24 equity analysis and plan and its recommendations into the  
25 statewide broadband plan.

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1           D. The [~~department~~] broadband office shall  
2 cooperate with and provide relevant broadband-related  
3 information collected or developed by the [~~department with~~]  
4 broadband office to the council."

5           SECTION 7. Section 63-9K-7 NMSA 1978 (being Laws 2021,  
6 Chapter 120, Section 7) is amended to read:

7           "63-9K-7. DATA COLLECTION--ANNUAL REPORT.--

8           A. By October 1 of each year, the [~~department~~]  
9 broadband office, in coordination with the council, shall  
10 provide to the appropriate legislative interim committees a  
11 report on the access to and quality of service of broadband  
12 across the state. Information shall be provided on a county-  
13 by-county basis.

14           B. The report shall contain the following  
15 information:

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

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

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

25                   (4) recommended statutory, regulatory or

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1 policy changes and budget recommendations for the development  
2 and expansion of broadband infrastructure and digital equity  
3 and digital inclusion; and

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

6 (a) a list of grant recipients;  
7 (b) the amount and date of each grant;  
8 (c) a description of each project

9 funded; and

10 (d) a description of how each project  
11 contributes to the statewide broadband plan and demonstrates  
12 increased access and quality of service for the unserved and  
13 underserved populations of New Mexico."

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