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,
.221581.2
Chapter 295, Section 3, as amended by Laws 2021, Chapter 118, Section 1 and by Laws 2021, Chapter 120, Section 8) 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;

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;

E. "commission" means the public regulation commission;

F. "comparable carrier" means an eligible telecommunications carrier established prior to enactment of
the Rural Telecommunications Act of New Mexico that has a
similar number of access lines as an eligible
telecommunications carrier established after enactment of that
act;

G. "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;

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

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

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

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

L. "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;

M. "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 regulation commission;

N. "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;

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

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

Q. "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;

R. "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;

S. "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] or an updated revision of that.
plan developed pursuant to the Broadband Access and Expansion Act; and

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

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

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

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

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

C. The broadband office shall:

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

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

(3) create and maintain a repository for
broadband data and information in New Mexico on a county-by-county basis, including:

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

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

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

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

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

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

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

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

I. The broadband office may form an advisory committee comprising representatives of state, local and tribal
government agencies and the general public to facilitate the
collection of information and the development of proposals for
the statewide broadband plan; provided that if an advisory
committee is formed, at least three different tribal agencies
shall be represented on the committee."

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

"63-9K-2. 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;

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

[D.] D. "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. "director" means the director of the broadband office;

H. "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;

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

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

"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] the 2020 broadband plan or an updated revision of that plan developed pursuant to the Broadband Access and Expansion Act;

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

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

"unserved" means an area or property that does not have internet access that meets the baseline standards
SECTION 4. Section 63-9K-3 NMSA 1978 (being Laws 2021, Chapter 120, Section 3) is amended to read:

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

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

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

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

(2) the secretary of economic development or the 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) the secretary of Indian affairs or the
secretary's designee;

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

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

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

(12) 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 of 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 of the senate; and

(e) one member appointed by the
governor; and

(13) three members appointed by the
secretary of Indian affairs: one representative of the Navajo
Nation, one 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] director or the director's designee shall be the chair of the council. 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)] (12) or (13) 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)] (12) 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)] (13) 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 broadband office."

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

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

A. in consultation with the broadband office, 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. on or before July 1, 2022, adopt a policy establishing a competitive grant program to receive funds from the connect New Mexico fund. The policy shall include the application procedure, the required qualifications for projects and the purposes for which the grants may be used; and

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

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

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

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

C. On or before [January 1, 2024] October 1, 2023, the broadband office shall incorporate the digital equity analysis and plan and its recommendations into the statewide broadband plan.
D. The [department] broadband office shall cooperate with and provide relevant broadband-related information collected or developed by the [department with broadband office to the council."

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

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

A. By October 1 of each year, the [department] broadband office, 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 of New Mexico."