

HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 262

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO BROADBAND; AMENDING SECTIONS OF THE CONNECT NEW MEXICO ACT; TRANSFERRING IMPLEMENTATION OF THE GRANT PROGRAM FROM THE CONNECT NEW MEXICO COUNCIL TO THE OFFICE OF BROADBAND ACCESS AND EXPANSION; MAKING TECHNICAL CORRECTIONS; PROVIDING DEFINITIONS.

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

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SECTION 1. 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~~] any facilities and equipment used to provide internet service, excluding telecommunications equipment owned, controlled or operated by a public or private end-user;

C. "broadband office" means the office of broadband access and expansion;

[G.] D. "council" means the connect New Mexico council;

[D.] E. "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~~

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agencies];

[E-] 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;

[F-] G. "digital inclusion" means access to and the ability to use information technologies;

H. "end-user" means an individual, business, institution or governmental entity that subscribes to an internet service and does not resell that service to other individuals or entities;

[G-] I. "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;

J. "internet" means a global set of computing and electronic devices interconnected through networking infrastructures to provide data and information sharing and communication facilities;

[H-] K. "local government" means the government of a municipality, county or political subdivision of the state or

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an entity operating pursuant to a joint powers agreement pursuant to the Planning District Act or the Regional Planning Act;

[F.] L. "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;

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

[K.] N. "statewide broadband plan" means a plan developed by the ~~[department]~~ broadband office 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.] O. "tribal government" means the government of a federally or state-recognized Indian nation, pueblo or tribe;

[M.] P. "underserved" means an area or property that does not ~~[receive internet quality of service access]~~ have access to internet service offering speeds greater than one

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hundred megabits downstream and twenty megabits upstream; and

[N-] Q. "unserved" means an area or property that ~~[does not have internet access that meets the baseline standards established by the federal communications commission]~~ either does not have access to internet service at all or only has access to internet service offering speeds below twenty-five megabits per second downstream or three megabits per second upstream."

SECTION 2. 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.

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 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

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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 [~~is~~] 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 [~~is~~] of 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 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

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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.

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H. The council shall be staffed by the department."

SECTION 3. 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 department, coordinate state agency~~] advise and make recommendations to the broadband office regarding the coordination of broadband programs and broadband projects in accordance with the statewide broadband plan;

B. [~~evaluate and prioritize grant proposals and make grant awards~~] advise the broadband office concerning the development of a grant program and make recommendations for grant awards from the connect New Mexico fund; and

C. adopt rules [~~establishing a competitive grant program to receive funds~~] regarding the administration of grants 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 4. 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 AND PLAN--REPORT--INCLUSION IN STATEWIDE BROADBAND PLAN.--

A. The council shall consult local and tribal governments, public educational institutions and state agencies

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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 ~~[department]~~ broadband office and appropriate interim legislative committees.

C. On or before January 1, 2024, the ~~[department]~~ 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]~~ it

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collects or develops with the council."

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

"63-9K-6. 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 H AFC → ~~[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]~~ ← H AFC H AFC → 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 ← H AFC H AFC → appropriated to and shall be administered by the broadband office pursuant to rules adopted by the council pursuant to Section 63-9K-4 NMSA 1978 for the purpose of issuing grants pursuant to Subsection B of this section ← H AFC . 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~~] broadband office shall implement [~~the broadband~~] a grant program to develop and expand broadband

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infrastructure and services and support digital inclusion; provided that the [~~council~~] broadband office 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~~]
- (5) entities created by a joint powers

agreement pursuant to the Joint Powers Agreements Act; and

(6) private entities for broadband infrastructure to provide service primarily for residential purposes.

C. When approving grants from the connect New Mexico fund, the [~~council~~] broadband office 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;

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- (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; and
- (9) for a grant award to a private entity, the extent to which the grantee contributes matching funds or in-kind support for the project, the number of existing residences to which internet services would be made available as a percentage of the total number of existing locations to which internet services would be made available by the project and the extent to which the project fosters digital equity."

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

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

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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;

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(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."

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