

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 452

3 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

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10 AN ACT

11 RELATING TO BROADBAND; AMENDING, REPEALING AND ENACTING  
12 SECTIONS OF THE DEPARTMENT OF INFORMATION TECHNOLOGY ACT;  
13 AUTHORIZING THE LEASE OR SALE OF BROADBAND INFRASTRUCTURE AND  
14 THE PROVISION OF CYBERSECURITY, INFORMATION TECHNOLOGY AND  
15 TELECOMMUNICATION NETWORK SERVICES; PROVIDING FOR  
16 ADMINISTRATIVE HEARINGS; CLARIFYING THE BASES FOR SOME SERVICE  
17 RATES; PROVIDING DEFINITIONS; AMENDING SECTIONS OF THE  
18 BROADBAND ACCESS AND EXPANSION ACT; REQUIRING REPORTING BY SOME  
19 INTERNET SERVICE PROVIDERS; ESTABLISHING CONDITIONS FOR LEASE  
20 OF THE STATE-OWNED BROADBAND NETWORK.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. Section 9-27-3 NMSA 1978 (being Laws 2007,  
24 Chapter 290, Section 3, as amended) is amended to read:

25 "9-27-3. DEFINITIONS.--As used in the Department of

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1 Information Technology Act:

2 A. "agency", unless otherwise specified, means  
3 executive branch cabinet agencies and their administratively  
4 attached agencies, offices, boards and commissions;

5 B. "cybersecurity" means acts, practices or systems  
6 that eliminate or reduce the risk of loss of critical assets,  
7 loss of sensitive information or reputational harm as a result  
8 of a cyberattack or breach within an organization's  
9 telecommunication network;

10 ~~[A.]~~ C. "department" means the department of  
11 information technology;

12 ~~[B.]~~ D. "information technology" means computer  
13 hardware, ~~[and software and ancillary products and services,~~  
14 including:

- 15 ~~(1) systems design and analysis;~~  
16 ~~(2) acquisition, storage and conversion of~~  
17 ~~data;~~  
18 ~~(3) computer programming;~~  
19 ~~(4) information storage and retrieval;~~  
20 ~~(5) voice, radio, video and data~~  
21 ~~communications;~~  
22 ~~(6) requisite systems;~~  
23 ~~(7) simulation and testing; and~~  
24 ~~(8) related interactions between users and~~  
25 ~~information systems] storage media, networking equipment,~~

1 physical devices, infrastructure, processes and code, firmware,  
 2 software and ancillary products and services, including:

3 (1) systems design and analysis;

4 (2) development or modification of hardware or  
 5 solutions used to create, process, store, secure or exchange  
 6 electronic data;

7 (3) information storage and retrieval systems;

8 (4) voice, radio, video and data communication  
 9 systems;

10 (5) network, hosting and cloud-based systems;

11 (6) simulation and testing; and

12 (7) interactions between a user and an  
 13 information system;

14 ~~[G.]~~ E. "information technology project" means the  
 15 purchase, replacement, development or modification of a  
 16 hardware or software system;

17 ~~[D.]~~ F. "secretary" means the secretary of  
 18 information technology;

19 ~~[E.]~~ G. "state information architecture" means a  
 20 logically consistent set of principles, policies and standards  
 21 that guides the engineering of state government's information  
 22 technology systems and infrastructure in a way that ensures  
 23 alignment with state government's business needs;

24 ~~[F.]~~ H. "state information technology strategic  
 25 plan" means the information technology planning document for

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1 the state that spans a three-year period; and

2           ~~[6.]~~ I. "telecommunication network" means the  
3 physical and logical components and all associated  
4 infrastructure used in transporting, routing, aggregating and  
5 delivering voice and data information from computer and  
6 telecommunications systems in one location to peer systems in  
7 another."

8           **SECTION 2.** Section 9-27-6 NMSA 1978 (being Laws 2007,  
9 Chapter 290, Section 6, as amended by Laws 2017, Chapter 7,  
10 Section 2 and by Laws 2017, Chapter 45, Section 2) is amended  
11 to read:

12           "9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

13           A. The secretary is responsible to the governor for  
14 the operation of the department. It is the secretary's duty to  
15 manage all operations of the department and to administer and  
16 enforce the laws with which the secretary or the department is  
17 charged.

18           B. To perform the secretary's duties, the secretary  
19 has every power expressly enumerated in the laws, whether  
20 granted to the secretary or the department or any division of  
21 the department, except where authority conferred upon any  
22 division is explicitly exempted from the secretary's authority  
23 by statute. In accordance with these provisions, the secretary  
24 shall:

25                   (1) exercise general supervisory and

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1 appointing authority over all department employees, subject to  
 2 any applicable personnel laws and regulations;

3 (2) delegate authority to subordinates as the  
 4 secretary deems necessary and appropriate, clearly delineating  
 5 such delegated authority and the limitations thereto;

6 (3) organize the department into those  
 7 organizational units the secretary deems will enable it to  
 8 function most efficiently, subject to provisions of law  
 9 requiring or establishing specific organizational units;

10 (4) within the limitations of available  
 11 appropriations and applicable laws, employ and fix the  
 12 compensation of those persons necessary to discharge the  
 13 secretary's duties;

14 (5) take administrative action by issuing  
 15 orders and instructions, not inconsistent with the law, to  
 16 ensure implementation of and compliance with the provisions of  
 17 law for whose administration or execution the secretary is  
 18 responsible and to enforce those orders and instructions by  
 19 appropriate administrative action in the courts;

20 (6) conduct research and studies that will  
 21 improve the operations of the department and the provision of  
 22 services to state agencies and the residents of the state;

23 (7) provide courses of instruction and  
 24 practical training for employees of the department and other  
 25 persons involved in the administration of programs with the

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1 objective of improving the operations and efficiency of  
2 administration;

3 (8) prepare an annual budget of the  
4 department;

5 (9) provide cooperation, at the request of  
6 heads of administratively attached agencies, in order to:

7 (a) minimize or eliminate duplication of  
8 services and jurisdictional conflicts;

9 (b) coordinate activities and resolve  
10 problems of mutual concern; and

11 (c) resolve by agreement the manner and  
12 extent to which the department shall provide budgeting,  
13 recordkeeping and related clerical assistance to  
14 administratively attached agencies; ~~and~~

15 (10) appoint for each division a "director".

16 These appointed positions are exempt from the provisions of the  
17 Personnel Act. Persons appointed to these positions shall  
18 serve at the pleasure of the secretary; and

19 (11) acquire, hold and maintain, through  
20 lease, trade or purchase, any real or personal property  
21 necessary to meet customer requirements or department  
22 obligations, including obligations of administratively attached  
23 offices or bodies.

24 C. As the chief information officer, the secretary  
25 shall:

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1 (1) review executive agency plans regarding  
2 prudent allocation of information technology resources;  
3 reduction of duplicate or redundant data, hardware and  
4 software; and improvement of system interoperability and data  
5 accessibility among agencies;

6 (2) approve executive agency information  
7 technology requests for proposals and other executive agency  
8 requests that are subject to the Procurement Code, prior to  
9 final approval;

10 (3) promulgate rules for oversight of  
11 information technology procurement;

12 (4) approve executive agency information  
13 technology contracts and amendments to those contracts,  
14 including emergency procurements, sole source contracts and  
15 price agreements, prior to approval by the department of  
16 finance and administration;

17 (5) develop and implement procedures to  
18 standardize data elements, determine data ownership and ensure  
19 data sharing among executive agencies;

20 (6) verify compliance with state information  
21 architecture and the state information technology strategic  
22 plan before approving documents referred to in Paragraphs (2)  
23 and (4) of this subsection;

24 (7) monitor executive agency compliance with  
25 its agency plan, the state information technology strategic

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1 plan and state information architecture and report to the  
2 governor, executive agency management and the legislative  
3 finance committee on noncompliance;

4 (8) develop information technology cost  
5 recovery mechanisms and information systems rate and fee  
6 structures of state agencies and other public or private sector  
7 providers and make recommendations to the information  
8 technology rate committee;

9 (9) provide technical support to executive  
10 agencies in the development of their agency plans;

11 (10) ensure the use of existing public or  
12 private information technology or telecommunications resources  
13 when the use is practical, efficient, effective and financially  
14 prudent and is in compliance with the Procurement Code;

15 (11) review appropriation requests related to  
16 executive agency information technology requests to ensure  
17 compliance with agency plans and the state information  
18 technology strategic plan and make written recommendations by  
19 November 14 of each year to the department of finance and  
20 administration and by November 21 of each year to the  
21 legislative finance committee and the appropriate interim  
22 legislative committee; provided, however, that the  
23 recommendations to the legislative committees have been agreed  
24 to by the department of information technology and the  
25 department of finance and administration;

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1 (12) promulgate rules to ensure that  
 2 information technology projects satisfy criteria established by  
 3 the secretary and are phased in with funding released in phases  
 4 contingent upon successful completion of the prior phase;

5 (13) provide oversight of information  
 6 technology projects, including ensuring adequate risk  
 7 management, disaster recovery and business continuity practices  
 8 and monitoring compliance with strategies for information  
 9 technology projects that affect multiple agencies;

10 (14) conduct reviews of information technology  
 11 projects and provide written reports to the appropriate  
 12 legislative oversight bodies;

13 (15) conduct background checks on department  
 14 employees and prospective department employees that have or  
 15 will have administrative access or authority to sensitive,  
 16 confidential or private information or the ability to alter  
 17 systems, networks or other information technology hardware or  
 18 software; and

19 (16) perform any other information technology  
 20 function assigned by the governor.

21 D. As the chief information officer, the secretary  
 22 may:

23 (1) upon the advice and recommendation of the  
 24 director of the office of broadband access and expansion  
 25 pursuant to the provisions of the Broadband Access and

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1 Expansion Act, make available by lease or sale at the  
2 department's established rates on a competitively neutral basis  
3 such state-owned broadband network infrastructure or internet  
4 service that would connect underserved and unserved populations  
5 of New Mexico and otherwise support objectives of the state  
6 broadband plan;

7 (2) offer cybersecurity risk prevention and  
8 information technology mitigation and response solutions,  
9 including application and equipment selection, intrusion  
10 response, system monitoring or system testing for all users of  
11 agency-operated or -owned information technology, to include  
12 compliance standards for broadband infrastructure projects  
13 within the oversight or administration of the department; and

14 (3) establish an administrative hearing and  
15 enforcement process internal to the department or in  
16 coordination with the administrative hearings office to support  
17 the department's private sector regulatory activities or any  
18 administratively attached office or body.

19 ~~[D-]~~ E. Each executive agency shall submit an  
20 agency information technology plan to the secretary in the form  
21 and detail required by the secretary. Each executive agency  
22 shall conduct background checks on agency or prospective agency  
23 employees that have or will have administrative access or  
24 authority to alter systems, networks or other information  
25 technology hardware or software.

1           ~~[E-]~~ F. A state agency that receives an invoice  
2 from the department for services rendered to the agency shall  
3 have thirty days from receipt of the invoice to pay the  
4 department or to notify the department if the amount of the  
5 invoice is in dispute. The agency shall have fifteen days from  
6 its notification of dispute to the department to present its  
7 reasons in writing and request an adjustment. The department  
8 shall have fifteen days from its receipt of the reasons for  
9 dispute to notify the agency of its decision. If the  
10 department and the agency do not agree on a resolution, the  
11 secretary of finance and administration shall make a  
12 determination on the amount owed by the agency to the  
13 department. If the agency has not paid the department or  
14 notified the department of a dispute within thirty days of  
15 receipt of the invoice, the department shall notify the  
16 department of finance and administration and request that the  
17 department of finance and administration transfer funds from  
18 the agency to the department of information technology to  
19 satisfy the agency's obligation.

20           ~~[F-]~~ G. The secretary, as chief information  
21 officer, shall prepare a state information technology strategic  
22 plan for the executive branch and update it at least once every  
23 three years, which plan shall be available to agencies by July  
24 31 of each year. The plan shall comply with the provisions of  
25 the Department of Information Technology Act and provide for

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1 the:

2 (1) interchange of information related to  
3 information technology among executive agencies;

4 (2) coordination among executive agencies in  
5 the development and maintenance of information technology  
6 systems;

7 (3) protection of the privacy and security of  
8 individual information as well as of individuals using the  
9 state's information technology systems;

10 (4) development of a statewide broadband  
11 network plan in conjunction with the public education  
12 department, the higher education department, state  
13 universities, other educational institutions, the public school  
14 capital outlay council, political subdivisions of the state,  
15 Indian nations, tribes and pueblos, the public regulation  
16 commission and telecommunication network service providers; and

17 (5) coordination and aggregation of services  
18 where feasible for entities as provided for in Section 9-27-20  
19 NMSA 1978 and other publicly funded entities.

20 [~~G.~~] H. The secretary may apply for and receive,  
21 with the governor's approval, in the name of the department,  
22 any public or private funds, including United States government  
23 funds, available to the department to carry out its programs,  
24 duties or services or those of an administratively attached  
25 office or public body.

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1           ~~[H.]~~ I. Where information technology functions of  
 2 executive agencies overlap or a function assigned to one agency  
 3 could better be performed by another agency, the secretary may  
 4 recommend appropriate legislation to the next session of the  
 5 legislature for its approval.

6           ~~[I.—The]~~ J. Pursuant to the State Rules Act and  
 7 rules promulgated pursuant to that act, the secretary may make  
 8 and adopt such reasonable procedural rules as may be necessary  
 9 to carry out the duties, or relating to any matter within the  
 10 oversight, of the department and its administratively attached  
 11 offices or public bodies, divisions and requirements and  
 12 standards for the executive branch's information technology  
 13 needs, functions, systems and resources, including:

- 14                         (1) information technology security;
- 15                         (2) approval for procurement of information  
 16 technology not in conflict with the Procurement Code that  
 17 exceeds an amount set by rule;
- 18                         (3) detail and format for the agency  
 19 information technology plan;
- 20                         (4) acquisition, licensing and sale of  
 21 information technology; and
- 22                         (5) requirements for agency information  
 23 technology projects and related plan, analysis, oversight,  
 24 assessment and specifications.

25           ~~[J.]~~ K. Unless otherwise provided by statute, no

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1 rule affecting any person or agency outside the department  
2 shall be adopted, amended or repealed without a public hearing  
3 on the proposed action before the secretary or a hearing  
4 officer designated by the secretary. The public hearing shall  
5 be held in Santa Fe unless otherwise permitted by statute.  
6 Notice of the subject matter of the rule, the action proposed  
7 to be taken, the time and place of the hearing, the manner in  
8 which interested persons may present their views and the method  
9 by which copies of the proposed rule, proposed amendment or  
10 repeal of an existing rule may be obtained shall be published  
11 once at least thirty days prior to the hearing date in a  
12 newspaper of general circulation and mailed at least thirty  
13 days prior to the hearing date to all persons who have made a  
14 written request for an advance notice of hearing. Rules shall  
15 be filed in accordance with the State Rules Act."

16 SECTION 3. Section 9-27-7 NMSA 1978 (being Laws 2007,  
17 Chapter 290, Section 7, as amended) is amended to read:

18 "9-27-7. INFORMATION TECHNOLOGY RATE COMMITTEE--  
19 MEMBERSHIP--DUTIES.--

20 A. The "information technology rate committee" is  
21 created. The committee consists of seven members as follows:

22 (1) five members appointed by the governor  
23 from executive agencies that use information technology  
24 services and pay rates to an internal service fund;

25 (2) the secretary of finance and

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1 administration, who shall serve as chair of the committee; and

2 (3) the secretary of information technology.

3 B. The information technology rate committee shall:

4 (1) review the rate and fee schedule proposed  
5 by the secretary;

6 (2) ensure that the rate and fee schedule  
7 complies with the federal office of management and budget  
8 circular A-87 or its successor directive with respect to rates  
9 for expenditure of money from federal grant awards;

10 (3) consider for approval an equitable rate  
11 and fee schedule based on cost recovery for state agencies that  
12 use information technology services and pay rates to an  
13 internal service fund, with priority service to public safety  
14 agencies;

15 (4) present the committee's proposed rate and  
16 fee schedule by June 1 of each year to the office of the  
17 governor, the department of finance and administration and the  
18 legislative finance committee; and

19 (5) by July 15 of each year, implement a rate  
20 and fee schedule based on the committee's recommendations;  
21 provided, however, that a reduction in rates or fees by the  
22 department shall not require the committee's approval if the  
23 reduction is based on cost recovery and if the committee is  
24 notified timely."

25 SECTION 4. Section 9-27-15 NMSA 1978 (being Laws 1997,

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1 Chapter 263, Section 1, as amended by Laws 2007, Chapter 288,  
2 Section 2 and by Laws 2007, Chapter 290, Section 15) is amended  
3 to read:

4 "9-27-15. LEASE OF RADIO COMMUNICATIONS NETWORK--  
5 CONDITIONS AND REQUIREMENTS.--In exercising supervisory control  
6 pursuant to Section [~~15-2-2~~] 9-27-14 NMSA 1978, the department  
7 [~~of information technology~~] may lease to a private entity  
8 excess capacity relating to the provision of two-way radio  
9 services on its radio communications property, including  
10 buildings, towers or antennas, provided that:

11 [~~A.~~] ~~the lease conforms with competitive procurement~~  
12 ~~requirements of the Procurement Code;~~

13 ~~B.]~~ A. the lease is for an [~~equal~~] equivalent value  
14 exchange of money or property or services;

15 [~~C.]~~ B. the secretary [~~of information technology~~]  
16 certifies that the excess capacity will be available for at  
17 least the duration of the lease;

18 [~~D.]~~ C. if the lease exceeds ten years, the lease  
19 is first approved by the state board of finance;

20 [~~E.]~~ D. the department [~~of information technology~~]  
21 has submitted to the legislative finance committee a detailed  
22 plan for the use of excess capacity being leased and an  
23 assessment of how the lease will affect public sector uses and  
24 local telecommunication service providers; and

25 [~~F.]~~ E. income from the leases shall be deposited



1 to the credit of the department [~~of information technology~~] and  
 2 used to carry out the duties of the department."

3 SECTION 5. Section 9-27-20 NMSA 1978 (being Laws 1963,  
 4 Chapter 181, Section 1, as amended) is repealed and a new  
 5 Section 9-27-20 NMSA 1978 is enacted to read:

6 "9-27-20. [NEW MATERIAL] TELECOMMUNICATIONS--DUTIES.--

7 A. The department shall enter into necessary  
 8 agreements to provide, where feasible, a telecommunication  
 9 network and related facilities to all executive, legislative  
 10 and judicial branches and may, when capacity exists and it is  
 11 economical, provide a telecommunication network and related  
 12 facilities to educational institutions and other entities, with  
 13 a preference to public entities.

14 B. The department may, in compliance with the  
 15 Procurement Code, establish price agreements with vendors for  
 16 information technology goods and services. Any public body may  
 17 directly procure goods or services offered under a department-  
 18 placed price agreement other than a price agreement for an  
 19 enterprise service administered by the department.

20 C. On July 1, 2023, and on July 1 of each  
 21 subsequent year, the department shall provide a catalog listing  
 22 the information technology goods and services it has available  
 23 to offer with the approved rates.

24 D. Subject to capacity after meeting requirements  
 25 of agency customers, the department may offer catalog goods and

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1 services to non-agency customers. The department may require a  
2 non-agency customer to comply with all rules and guidance  
3 applicable to the department-provided good or service but shall  
4 not require a non-agency customer to comply with any other law  
5 administered by the department unless otherwise provided by  
6 law."

7 SECTION 6. Section 9-27-26 NMSA 1978 (being Laws 2017,  
8 Chapter 7, Section 9) is amended to read:

9 "9-27-26. INDIAN NATIONS, TRIBES AND PUEBLOS--AGENCY-  
10 OWNED OR -OPERATED BROADBAND NETWORK--STATEWIDE BROADBAND--  
11 RIGHT-OF-WAY AGREEMENT AND SERVICE AGREEMENT.--Indian nations,  
12 tribes and pueblos may connect to [~~the~~] an agency-owned or  
13 -operated statewide broadband network in exchange for a  
14 mutually agreed upon right-of-way agreement or a service  
15 agreement with the chief information officer. The chief  
16 information officer shall apply for reimbursements from the  
17 federal universal service fund pursuant to Section 254 of the  
18 federal Telecommunications Act of 1996, 47 U.S.C. 254, as such  
19 section existed on January 1, 2006, on behalf of Indian  
20 nations, tribes and pueblos that execute a right-of-way  
21 agreement or service agreement."

22 SECTION 7. Section 63-9J-2 NMSA 1978 (being Laws 2021,  
23 Chapter 123, Section 2) is amended to read:

24 "63-9J-2. DEFINITIONS.--As used in the Broadband Access  
25 and Expansion Act:

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1           A. "broadband infrastructure" means ~~[any cable or~~  
 2 ~~device used for high-capacity transmission of a wide range of~~  
 3 ~~frequencies enabling a large number of electronic messages to~~  
 4 ~~be transmitted or received simultaneously]~~ facilities and  
 5 equipment used to provide internet service, excluding  
 6 telecommunications equipment owned, controlled or operated by a  
 7 public or private end user;

8           B. "broadband office" means the office of broadband  
 9 access and expansion;

10          C. "department", unless otherwise specified, means  
 11 the department of information technology;

12          ~~[G.]~~ D. "director" means the director of the  
 13 broadband office;

14          E. "end user" means an individual, business,  
 15 institution or governmental entity that subscribes to an  
 16 internet service and does not resell that service to other  
 17 individuals or entities;

18          F. "facilities-based provider" means a provider of  
 19 internet service to end users in New Mexico using facilities  
 20 that satisfy any of the following criteria:

21                 (1) physical facilities that the entity owns  
 22 and that terminate at the end user premises;

23                 (2) facilities that the entity has obtained  
 24 the right to use from other entities, such as dark fiber or  
 25 satellite transponder capacity as part of its own network, or

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1 has obtained;

2 (3) unbundled network element loops, special  
3 access lines or other leased facilities that the entity uses to  
4 complete terminations to the end user premises;

5 (4) wireless spectrum for which the entity  
6 holds a license or that the entity manages or has obtained the  
7 right to use via a spectrum leasing arrangement or comparable  
8 arrangement pursuant to federal regulations promulgated  
9 pursuant to the federal Communications Act of 1934, as amended,  
10 or upon subsequent amendment or repeal of that act, by the  
11 broadband office by rule; or

12 (5) unlicensed spectrum;

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

17 ~~[D.]~~ H. "local government" means the government of  
18 a municipality, county or political subdivision of the state;

19 I. "open access" means equal nondiscriminatory  
20 access to the state-owned broadband network by eligible  
21 entities on a technologically and competitively neutral basis,  
22 regardless of whether the entity is privately or publicly  
23 owned;

24 ~~[E.]~~ J. "public educational institution" means a  
25 public school, a school district, a public post-secondary

1 educational institution or a state agency that provides  
 2 administrative, funding or technical support to public schools,  
 3 school districts and public post-secondary educational  
 4 institutions;

5 ~~[F.]~~ K. "quality of service" means the standards  
 6 established by the federal communications commission; ~~[and]~~

7 L. "state-owned broadband network" means the state-  
 8 owned broadband infrastructure that is owned, leased or  
 9 operated by the department;

10 ~~[G.]~~ M. "statewide broadband plan" means a plan,  
 11 including recommended statutory changes and implementation  
 12 procedures, for the development and expansion of broadband  
 13 infrastructure and services throughout the state to meet the  
 14 needs:

15 (1) for the delivery of internet-based  
 16 educational, medical and emergency services;

17 (2) for local and tribal communities to foster  
 18 and recruit internet-reliant business and industry and to  
 19 promote economic development and job creation; and

20 (3) to support internet-reliant state, local  
 21 and tribal government agency functions and facilitate the  
 22 delivery of governmental services in a manner that is  
 23 competitive with similar government agencies in neighboring  
 24 states;

25 N. "underserved" means an area or property that

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1 does not have access to internet service offering speeds  
2 greater than one hundred megabits downstream and twenty  
3 megabits upstream; and

4 0. "unserved" means an area or property that either  
5 does not have access to internet service at all or only has  
6 access to internet service offering speeds below twenty-five  
7 megabits per second downstream or three megabits per second  
8 upstream."

9 SECTION 8. Section 63-9J-3 NMSA 1978 (being Laws 2021,  
10 Chapter 123, Section 3) is amended to read:

11 "63-9J-3. OFFICE OF BROADBAND ACCESS AND EXPANSION  
12 CREATED--DIRECTOR--STANDARDS--DATA COLLECTION--STATEWIDE  
13 BROADBAND PLAN--ASSISTANCE FOR POLITICAL SUBDIVISIONS.--

14 A. The "office of broadband access and expansion"  
15 is created and is administratively attached to the department  
16 [~~of information technology~~].

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

21 C. The broadband office shall:

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

24 (2) create and maintain an official, publicly  
25 accessible online New Mexico broadband access map showing

1 broadband availability and quality of service for homes,  
 2 businesses and public institutions on a county-by-county basis;  
 3 and

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

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

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

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

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

18 E. On or before January 1, 2023, and on or before  
 19 January 1 of each year thereafter, the broadband office shall  
 20 update and revise the statewide broadband plan developed  
 21 pursuant to this section for the ensuing three years and report  
 22 the updated and revised statewide broadband plan to the  
 23 governor and the legislature. In its initial plan pursuant to  
 24 Subsection D of this section and in its annual revised and  
 25 updated plan pursuant to this subsection, the broadband office

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1 shall provide an assessment of broadband service across the  
2 state compared to the standards established by the various  
3 federal broadband regulatory and assistance programs.

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

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

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

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

8 J. In furtherance of statewide broadband planning,  
9 all facilities-based providers shall report semiannually to the  
10 broadband office the same data in the same format that is  
11 reported to the federal communications commission pursuant to  
12 federal law governing data submitted for broadband mapping.  
13 The reports shall be submitted each year on or before April 1,  
14 with regard to data existing as of December 31 of the prior  
15 year, and on or before October 1, with regard to data existing  
16 as of June 30 of the then current year. All information  
17 reported by a facilities-based provider pursuant to this  
18 subsection shall be maintained as confidential information by  
19 the broadband office in accordance with applicable state or  
20 federal law.

21 K. The reporting requirements set forth in  
22 Subsection J of this section do not apply to tribal  
23 corporations federally chartered by the bureau of Indian  
24 affairs.

25 L. The broadband office may adopt rules requiring

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1 facilities-based providers to report data in addition to the  
2 data required pursuant to Subsection J of this section;  
3 provided that no such rule shall require a facilities-based  
4 provider to report any such data more frequently than twice per  
5 year."

6 SECTION 9. Section 63-9J-4 NMSA 1978 (being Laws 2021,  
7 Chapter 123, Section 4) is amended to read:

8 "63-9J-4. COORDINATION OF STATE AND LOCAL GOVERNMENT  
9 BROADBAND EFFORTS.--

10 A. The broadband office shall identify federal and  
11 nongovernmental broadband funding assistance opportunities for  
12 local governments, public educational institutions, state  
13 agencies and tribal governments and shall publish a list of  
14 those opportunities in a manner that can be searched on a  
15 county-by-county basis.

16 B. The broadband office may be the applicant for  
17 such funding assistance for all state agencies except the  
18 department of transportation.

19 C. State agencies and public educational  
20 institutions shall coordinate with the broadband office  
21 concerning the purchase of broadband infrastructure and  
22 services with the goal of obtaining best-value or bulk pricing  
23 agreements where practicable.

24 D. The broadband office shall coordinate with and  
25 may enter into memoranda of understanding with federal, local

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1 government, state and tribal government agencies to create an  
2 integrated system of permits, licenses and rules for broadband  
3 infrastructure across all governmental jurisdictions within  
4 each region of the state, including the creation of a  
5 centralized repository, and an expedited review process for  
6 rights of way use applications, with the goal of creating  
7 uniform coordinated permitting and licensing requirements  
8 statewide. The broadband office shall develop proposals for  
9 government agencies at the local, county and state levels to  
10 build and pay for broadband networks, upon request for such  
11 assistance.

12 E. The broadband office shall advise and make  
13 recommendations to the department regarding proposals to use  
14 the state-owned broadband network for the purpose of connecting  
15 unserved and underserved populations of the state to internet  
16 service on the basis of open access that supports objectives of  
17 the state broadband plan; provided that:

18 (1) the department may lease a portion of the  
19 state-owned broadband network or provide internet service to a  
20 facilities-based provider that offers fixed wire broadband to  
21 end users in the state pursuant to the following conditions:

22 (a) the lease or internet service  
23 agreement shall allow the deployment of internet service to an  
24 area in which at least fifty percent of the residential and  
25 business locations are underserved or unserved;

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1                   (b) the broadband office shall post a  
2 notice on its website at least forty-five days prior to the  
3 execution of the lease or internet service agreement. The  
4 notice shall include: 1) the name of the facilities-based  
5 provider with which the department intends to enter into the  
6 lease or internet service agreement; 2) a statement describing  
7 the boundaries of the geographical area that will be served  
8 under the terms of the lease or internet service agreement; 3)  
9 the specifications of the broadband infrastructure or internet  
10 service that will be the subject of the lease or internet  
11 service agreement; and 4) the price upon which the lease or  
12 internet service agreement shall be offered by the department;

13                   (c) within the forty-five-day posting  
14 period required by Subparagraph (b) of this paragraph, no  
15 private facilities-based provider has notified the broadband  
16 office in writing that it can provide the same broadband  
17 infrastructure or internet service identified in the notice, as  
18 applicable, at a price that does not exceed one hundred ten  
19 percent of the price being offered by the department; and

20                   (d) if the lease exceeds ten years, the  
21 lease is first approved by the state board of finance;

22                   (2) the department may sell or otherwise  
23 transfer ownership of a portion of the state-owned broadband  
24 network pursuant to existing state law regarding the sale or  
25 disposition of such property; provided that the department and

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1 any successor in interest shall not transfer ownership of any  
2 portion of the state-owned broadband network to any wholly  
3 private entity for at least twenty years after construction of  
4 the broadband infrastructure to be sold was completed;

5 (3) the department shall not sell or otherwise  
6 deliver internet service directly to a nongovernmental end  
7 user; and

8 (4) the department shall adopt and implement  
9 rules to govern the lease or sale of state-owned broadband  
10 network capacity to the private sector. The rules shall  
11 include processes that will enable a facilities-based provider  
12 to challenge a determination that an area is eligible to  
13 receive state-owned broadband network capacity."

14 **SECTION 10. EFFECTIVE DATE.**--The effective date of the  
15 provisions of this act is July 1, 2023.

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