



terms, the use of the Public School Capital Outlay Fund (Fund) for education technology infrastructure deficiency corrections (removing the \$10M allocation), eliminating the requirement of the Public School Capital Outlay Council (PSCOC) and Public School Outlay Oversight Task Force (PSCOOTF) requirement to update and establish acceptable standards for the need for educational technology infrastructure and repeals Section 22-24-4.5 NMSA 1978 related the PSCOCs duties related to education technology infrastructure deficiency corrections.

In addition to the proposed changes related to the Public School Capital Outlay Act, the Bill proposes a transfer of the Broadband Deficiencies Correction Program Staff of the Public School Facilities Authority (PSFA) to the OBAE.

The Broadband Access and Expansion Act would also be subject amendment by the Bill to include changes to defined terms and new material to include an education technology infrastructure fund and an education technology infrastructure deficiency corrections program with the advice of the Connect New Mexico Council. The program would be responsible for developing adequacy standards for an education technology infrastructure deficiency corrections initiative, guidelines for a statewide education technology network and to provide grant assistance based on guidelines to school districts to include charter and constitutional schools.

SB45 also proposes to change the composition of the Connect New Mexico Council to remove participation of the PSFA Director and to instead include a designee selected by the PED Secretary and to allow disbursements from Connect New Mexico Council to the broadband office.

In addition, the Bill proposes a new section to the regulation of utility pole attachments and proposes amendments to the Wireless Consumer Advanced Infrastructure Investment Act.

The effective date of the provisions of the act is July 1, 2024.

## **FISCAL IMPLICATIONS**

This Bill does not contain an appropriation. It divests the Public School Capital Outlay Fund (Fund) of the up to \$10M that may be expended each year by the Public School Capital Outlay Council (PSCOC) for an education technology infrastructure deficiency correction initiatives and instead proposes to allow the Office of Broadband Access and Expansion (OBAE) to directly request up to \$10M from the Department of Finance and Administration's Board of Finance by certification of the sale of supplemental severance tax bonds (SSTB) proceeds per fiscal year for expenditures related to education technology infrastructure pursuant to the Broadband Access and Expansion Act.

OBAE will not be required to request nor be dependent on the PSCOC approval of funds based on the proposed changes to the Severance Tax Bonding Act. In addition, the \$10M would not be subject to use for only capital expenditures as deemed necessary by the PSCOC as required by Section 22-24-4 NMSA 1978 (B) nor would the funds be subject to the provisions of Section 22-24-5 NMSA 1978 related to the state and local match grant requirements.

At Section 17, SB45 proposes in part that personnel pertaining to the broadband deployment and connectivity program are transferred to the OBAE. It is important to note, the PSFA operational funds inclusive of staff salaries is derived from the Fund at Section 22-24-4 instead of the General Fund. Therefore, the PSFA and the OBAE operating budgets will each require adjustments and approvals from the Department of Finance and Administration rather than a simple transfer of salary costs from PSFA to OBAE.

## **SIGNIFICANT ISSUES**

### *Severance Tax Bonding Act*

At Sections 1 and 2, SB45 proposes to amend the Severance Tax Bonding Act to allow OBAE to directly certify the need for funds for education technology infrastructure from the

Board of Finance. This proposed amendment places the responsibility of the use of the funds directly with OBAE and eliminates any accountability on the part of PSFA.

#### *Procurement Code*

SB45 proposes to amend the NM State Procurement Code at Section 3, to allow for the purchase of services connected to the design, engineering or operation of broadband infrastructure pursuant to the Broadband Access and Expansion Act to exceed more than four years. While this may facilitate broadband procurements, it may eliminate competitive solicitations and innovation of services if suppliers/vendors are allowed to exceed more than four year contracts.

#### *Public School Capital Outlay Act, Broadband Access and Expansion Act, Connect New Mexico Council*

The proposed amendments of SB45 to the Public School Capital Outlay Act at sections 4, 5, 6 and the proposed transfer of functions, personnel, money, appropriations, property, contractual obligations and broadband infrastructure at Sections 17, 18 and the repeal of Section 22-24-4.5 NMSA 1978 along with the amendments and new sections to the Broadband Access and Expansion Act and Connect New Mexico Council are all precipitated by the Intergovernmental Agreement (IGA) executed by the PSCOC, PSFA and the New Mexico Department of Information Technology (DoIT) and OBAE on March 1, 2023. The PSFA and the PSCOC do not object to the transfer of the functions of the PSFA Broadband Deficiencies Correction Program (BDCP) nor to the transfer of the BDCP staff. In effect, the IGA has already made the temporary transfer of the BDCP functions and staff on March 1, 2023.

The purpose of the IGA was an effort of collaboration between the parties and to leverage the resources of both agencies in the effort to expand broadband connectivity statewide for those school districts that did not have adequate connectivity. To that end, it was the expectation that the expertise of the OBAE and the PSFA BDCP along with the PSCOC funding resources would allow both agencies to cooperatively provide services or share responsibilities outside each agency's normal authority in the development and management of broadband initiatives. Pursuant to the IGA, the parties agreed that OBAE was better positioned to implement and manage the Statewide Education Network (SEN) and all of PSFA's broadband projects and the PSFA's Broadband Deficiencies Correction Program staff (BDCP staff) inclusive of five staff members (BDCP Technical Manager, 2 BDCP Project Managers, and 2 Broadband Coordinators).

While the PSFA does not object to the transfer of the functions of the PSFA Broadband Deficiencies Correction Program (BDCP) nor to the transfer of the BDCP staff, collaboration between the two agencies is still necessary. Although SB45 proposes that OBAE in consultation with the Connect New Mexico Council shall develop the adequacy standards for education technology infrastructure deficiency corrections initiatives, PSFA must still be involved in the development of these standards because they are a comprehensive tool for new school construction. The standards impact the architectural design and overall construction projects that may be funded by the Fund. At a minimum, PSFA should still be a member of the Connect New Mexico Council.

## **PERFORMANCE IMPLICATIONS**

### **ADMINISTRATIVE IMPLICATIONS**

Moving the PSFA program would require the transfer of employees from non-exempt positions to the classified.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

### **TECHNICAL ISSUES**

- At page 43, lines 24 and 24 reference is made to the broadband office and for consistency it should be changed to the office of broadband access and expansion.
- The definition of education technology infrastructure is limited to equipment may want to make it inclusive of software and software as a service.
- At pages 47 and 48, SBX proposes funding for charter schools this may be inconsistent with the Anti-donation clause.
- Sections 17 and 18 are titled, Temporary Provisions; however, SB45 proposes to repeal Section 22-24-4.5 NMSA 1978 related the PSCOCs duties related to education technology infrastructure deficiency corrections.

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Failure to move the PSFA BDCP team and functions will require more resources on the part of PSFA to accomplish all of the broadband initiatives inclusive of the SEN.

### **AMENDMENTS**