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FISCAL IMPACT REPORT

SPONSOR	Sens. Padilla and Tobiassen/Reps. Sariñana, Lujan and Garratt	LAST UPDATED	<u>3/14/25</u>
		ORIGINAL DATE	<u>2/26/25</u>
SHORT TITLE	<u>Broadband for Education</u>	BILL NUMBER	<u>Senate Bill 401/aSFC</u>
		ANALYST	<u>Hilla/Carswell/Liu</u>

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Supplemental Severance Tax Bonds	No fiscal impact	(\$10,000.0)	(\$10,000.0)	(\$10,000.0)	(\$10,000.0)	Recurring	Public School Capital Outlay Fund
Supplemental Severance Tax Bonds	No fiscal impact	\$10,000.0	\$10,000.0	\$10,000.0	\$10,000.0	Recurring	Education Infrastructure Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
LESC Files

Agency Analysis Received From

Department of Finance and Administration (DFA)
Office of Broadband Access and Expansion (OBAE)
Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of SFC Amendment to Senate Bill 401

The Senate Finance Committee amendment to Senate Bill 401 creates a delayed repeal date (sunset) of the bill's provisions of July 1, 2030, or FY31.

Synopsis of Senate Bill 401

Senate Bill 401 (SB401) amends multiple statutes, including Section 7-27-1, NMSA 1978 (Severance Tax Bonding Act) and Section 63-9J-1, NMSA 1978 (Broadband Access and Expansion Act). SB401 makes the following changes:

- Education technology infrastructure projects pursuant to the Broadband Access and Expansion Act are eligible for severance tax proceeds for public school capital outlay projects.
- The state Board of Finance (BOF) shall sell all supplemental severance tax bonds (STBs) as outlined by certification of the director of the Office of Broadband Access and Expansion (OBAE).

- The director of OBAE may certify up to \$10 million of proceeds of supplemental STBs per fiscal year relating to education infrastructure projects. BOF may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act and shall not exceed the lesser of:
 - o The total amount certified by the director of OBAE,
 - o Amounts that may be issued pursuant to 7-27-1 NMSA 1978,
 - o Proceeds of the sale of bonds are appropriated to the education infrastructure fund.
- The Public School Capital Outlay Council (PSCOC) shall collaborate with OBAE in the development of education technology infrastructure standards in accordance with the Broadband Act.
- PSCOC is stripped of its authority to spend up to \$10 million on the education technology deficiencies correction program.
- Education technology is defined as physical hardware and services used to interconnect students, teachers, school districts, and school buildings necessary to support broadband connectivity and remote learning as determined by OBAE.
- The education technology infrastructure fund is created to receive the supplemental STBs, with OBAE to promulgate rules of the fund's use.
- No later than January 1, 2026, OBAE and PSCOC and the Public School Facilities Authority (PSFA) shall define and develop minimum adequacy standards for education technology infrastructure and shall determine reasonable costs for correcting education technology infrastructure deficiencies in or affecting school districts and reasonable costs for a school district's share of the project costs.
- OBAE shall develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and installation of maintenance and equipment.
- OBAE may fund projects necessary for students, school buses, internet connectivity within a school district, multi-district regional education network, and a statewide education network.
- All functions, personnel, and everything else pertaining to the broadband deployment and connectivity program are transferred to OBAE.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The bill diverts or “earmarks” revenue, representing a recurring loss from the public school capital outlay fund. LFC has concerns with including continuing distribution language in the statutory provisions for funds because earmarking reduces the ability of the Legislature to establish spending priorities. Further, SB401 divests PSCOC of the authority to prioritize expenditures for educational technology from the public school capital outlay fund and to approve projects up to \$10 million proposed by OBAE on an annual basis, as is the current practice, until the sunset date. The council typically approves most of those projects but has recently determined some of the expenditures proposed by OBAE were not allowable uses of the fund. SB401 gives authority to OBAE directly request \$10 million from BOF by certification of the sale of supplemental STB proceeds per fiscal year for expenditures related to education technology infrastructure pursuant to the Broadband Access and Expansion Act. This would result in a proportional negative revenue impact to the public school capital outlay fund, to which all available supplemental STB proceeds are currently dedicated.

PSCOC prioritizes and approves awards from the public school capital outlay fund to address capital needs of public schools statewide, pursuant to the Public School Capital Outlay Act. The fund and the council's administration of it represent the state's remedy to a constitutional lawsuit from the 1990s, requiring the state to implement a uniform funding system for capital improvement of public schools. The Public School Capital Outlay Act provides that up to \$10 million may be expended each year for education technology deficiency corrections and infrastructure projects which the council determines are necessary. In 2000, the 11th Judicial District Court ruled in the *Zuni Public District v. State of New Mexico* lawsuit that New Mexico's public school capital outlay system violated constitutional requirements to provide "a uniform system of free public schools, sufficient for the education of and open to, all the children of school age," and ordered the state to establish and implement a uniform funding system for capital improvements and for correcting past inequities. Allowing OBAE to directly use the public school capital outlay fund for educational technology infrastructure may divert funding from the state's effort to address the *Zuni* findings and PSCOC's core function of replacing and renovating school facilities.

Should the \$10 million available to PSCOC be transferred to OBAE, it would not be subject to use for only capital expenditures as deemed necessary by PSCOC pursuant to Section 22-24-4 (B), NMSA 1978, 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.

OBAE is set to receive \$675.3 million in federal funding in July 2025 for the broadband deployment part of the Broadband, Equity, Access, and Deployment (BEAD) program. OBAE funding has been significant. However, project implementation and realization of projects has been slow. Broadband projects are capital in nature and tend to take a longer time to deploy. The 2025 General Appropriation Act (GAA) reauthorizes a \$124 million special nonrecurring appropriation through FY28, originally appropriated to OBAE in FY23. Of the original \$124 million appropriation, \$5.6 million has been expended and \$53.7 million has been encumbered, leaving a balance of \$64.5 million, or 52 percent. Additionally, a \$25 million special nonrecurring appropriation from FY24 to OBAE for broadband deployment has no encumbrance nor any expenditure. There are concerns that the state may potentially accumulate additional balances from supplemental STBs when previous general fund revenue has seen little to no expenditure for broadband deployments.

OBAE currently receives \$650 thousand in recurring operational transfers from PSFA to cover three full-time employees. For FY26, OBAE will still receive the \$650 thousand transfer, but it will cover now five full-time employees as outlined in the current version of the GAA.

SIGNIFICANT ISSUES

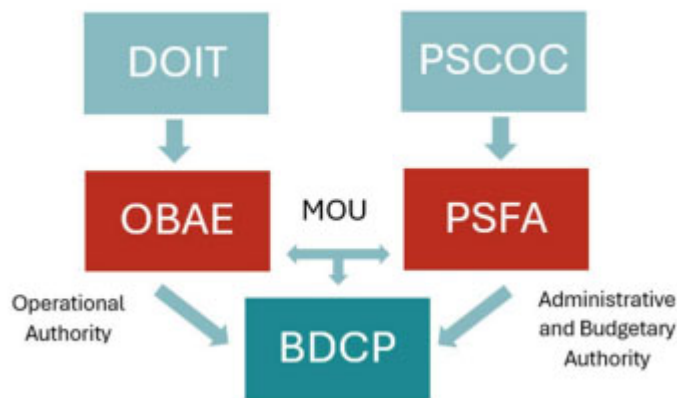
The New Mexico Broadband Deficiency Correction Program (BDCP) was enacted in 2014 with an emergency clause attached to PSFA to expand broadband in K-12 public schools across New Mexico, authorizing the use of \$10 million from the public school capital outlay fund for this purpose between FY14 through FY19. Since its inception, BDCP has funded network infrastructure upgrades, including Category 1 (Cat 1) fiber optic connections to schools and Category 2 (Cat 2) network equipment and wiring within buildings. Program expenditures have remained below the \$10 million cap, largely due to high participation in the federal schools and

libraries universal service support program (also called E-rate), which is approximately 85 percent of project costs.

In 2017, the Legislature removed the sunset date for BDCP, making it a permanent PSFA program. According to the Legislative Education Study Committee (LESC), nearly all public schools are now connected to scalable fiberoptic broadband infrastructure, capable of delivering high-speed internet as needed. The program funded upgrades to approximately 1,500 miles of infrastructure, valued at \$62 million. The final two schools without fiber, Lybrook Elementary School and Tse’ Yi’ Gai High School are expected to be connected by June 30, 2025.

In response to Covid-19 school closures and a court order from the *Martinez-Yazzie* education sufficiency lawsuit to provide at-risk students access to high-speed internet and technology for remote learning, the Legislature expanded the uses of the \$10 million BDCP initiative to connect students and teachers beyond the school facility in 2021. The bill required PSCOC to develop guidelines for a Statewide Education Network (SEN), which coincided with other legislation establishing OBAE, the Connect New Mexico Council, and significant legislative appropriations for broadband.

OBAE and PSFA have a joint powers agreement regarding the BDCP, which precipitates the proposed amendment changes of SB401. While BDCP staff are housed at OBAE, PSFA provides administrative and budgetary authority for staff and projects. Current statute allows PSCOC to spend up to \$10 million annually to correct technology infrastructure deficiencies in public schools. BDCP funding is limited to public school districts and charter schools; libraries, private schools, and Bureau of Indian Education Tribal Schools are not eligible for BDCP funding



Source: LESG

The bill proposes the creation of a grant program, overseen by OBAE, dedicated to funding education technology infrastructure, in addition to continuing the construction of the Statewide Education Network (SEN), supported by the BDCP. The SEN aims to establish a comprehensive connection among all interested public schools and public libraries, however it is important to note that participation in the network is voluntary, and schools incur no cost in their first year of the program but assume costs in subsequent years. The SEN is open to higher education institutions, libraries, museums, and other entities with access to the federal E-Rate program. According to a 2024 LESG brief, there are additional challenges that need to be addressed to make the SEN successful. While a program like the SEN can address and manage network services for schools across the state that may not have the capacity or technical experience to

manage broadband network and security, only a handful of schools have expressed interest in joining the network. LESC notes that while transferring the BDCP to OBAE could make functional sense, effective alignment of each agency's initiatives is essential to enhance efficiency, and it is important for OBAE to evaluate its capacity to provide the comprehensive support the BDCP requires should SB401 pass.

OTHER SUBSTANTIVE ISSUES

Should SB401 pass and divert capital outlay funds for broadband infrastructure following *Zuni*, it is possible that this could be challenged as a violation of the court mandate.

It is unclear what entity would be responsible for maintenance or completion of broadband projects after July 1, 2030.

During the second session of the fifty-sixth Legislature, Senate Bill 45 was introduced outlining the same provisions as SB401; however, the bill died.

EH/hj/SR/hg/sgs