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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** 02/15/21
LAST UPDATED 03/03/21 **HB** _____
SHORT TITLE Rural Telecom Fund for Broadband **SB** 361
ANALYST Fischer/Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act of 2021

Relates to HB10, SB93, SB144, HB141, HB85, and HB86

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Information Technology (DoIT)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 361 amends the Rural Telecommunication Act (RTA) of New Mexico, allowing for the use of the PRC's state rural universal service fund (SRUSF) for consumer broadband-only loops. The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

SB361 does not contain an appropriation. As the bill makes new services eligible for payment from the fund, it is likely that less funding will be available for the services currently authorized for payment. In 2019, the SRUSF disbursed an estimated \$18.8 million to carriers for access reduction support and another \$1.4 million for need-based support. Of these amounts, statute requires 60 percent, or \$12.1 million in total, to go to broadband. This is in addition to the required \$5 million annually of the fund dedicated to support the construction and maintenance of broadband facilities consistent with federal universal service programs.

PRC notes the potential for increased demand upon the SRUSF due to this bill, which would “substantially diminish the funding available for the broadband program within the statutory cap of \$30 million per year.” However, this would depend on the number of broadband-related grant programs eligible for funding as well as any other proposed legislation altering the commitments of the SRUSF. For instance, other bills proposed during the current legislative session which contain proposals which would further increase demand on the SRUSF, such as the HB10/HAFCS and the SFC amendment to Senate Bill 93, which increases the minimum dedicated amount from the SRUSF to broadband from \$5 million to \$8 million.

Notable, however, is that the \$5 million broadband set aside from the SRUSF is awarded in a different manner than the remaining ARS broadband funding. A 2019 LFC evaluation noted that unlike the \$5 million broadband grant program portion of the SRUSF which requires an application and proposed project details, disbursements under the 60-percent ARS broadband requirement receive minimal oversight beyond self-reported filings, which include redacted proprietary information, limiting public knowledge of how these funds are used.

SIGNIFICANT ISSUES

SB361 defines a “consumer broadband-only loop” as a broadband Internet access service offered by a carrier that does not include telephone service. This bill defines “consumer broadband-only loop” as an “access line,” allowing companies that provide only broadband (but not telephone services) to apply for and receive need-based support payments (called “access reduction support” in the Act.) By statute, however, the SRUSF only receives funds from a fee on telephone connections. Therefore, SB361 may enable a situation wherein a company that offers broadband, but not telephone, service is able to access SRUSF funds but not necessarily pay back into the SRUSF via connection fees.

Currently, access reduction support serves essentially as hold-harmless payments to carriers to make up for past reductions in intrastate connection rates. However, new language added in SB361 would further allow carriers to apply for access reduction payments not only based on a lack of financial stability but also for a proposed specific network development project. This, in effect, would likely open up the use of the SRUSF to new broadband projects that were not previously eligible.

In a November 2019 evaluation, LFC staff noted that, unlike the \$5 million broadband grant program portion of the SUSF, which requires an application and proposed project details, disbursements under the 60-percent requirement receive minimal oversight beyond these self-reported filings, which include redacted proprietary information, limiting public knowledge of how these funds are used.

The PRC reports that, if the bill passes, they would need to conduct a rulemaking proceeding to revise the SRUSF rule NMAC 17.11.10 so that the affected provisions in NMAC 17.11.10 would comport with the proposed amendments to the provisions governing the SRUSF. However, the PRC estimates that no additional FTEs should be needed to accomplish this change. In addition, the PRC notes the proposed language in NMSA § 63-9H-6.M limiting needs based support may violate or conflict with the technological neutrality provision of NMSA § 63-9H-6.C.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to the FY22 LFC budget and capital outlay recommendations, which combined include \$45 million for statewide broadband projects.

This also relates to Senate Bill 93 and House Bill 10, which create a centralized coordinating office of broadband at DoIT. The bill relates to House Bill 85, which appropriates funds to establish tribal IT departments and infrastructure on tribal lands, and House Bill 86, which appropriates capital funding for tribal broadband infrastructure.

The bill also relates to Senate Bill 144 and House Bill 141, both of which expand the definition of education technology infrastructure in the Public School Capital Outlay Act to include services used to interconnect students, teachers, school districts, and school buildings to broadband and remote learning. Senate Bill 144 also requires the Public School Capital Outlay Council to develop guidelines for a statewide education technology infrastructure network and necessary technology projects for education.

SB 204 proposes to extend access reduction support to another rural eligible telecommunications provider – Sacred Winds Communications, Inc. which may add an approximately \$1 million or more per year in demand to the SRUSF.

ALTERNATIVES

According to the PRC, language restricting support based on need to rural ILECs could be eliminated to avoid conflict with the technological neutrality provision of the statute NMSA § 63-9H-6.C. Alternatively, the current language in the Rural Telecommunications Act for the SRUSF for access reduction and needs based support could remain unaltered, leaving the PRC to administer and govern the SRUSF according to requirements in the current version of the RTA.

JH/MF/al/rl