

LFC Requester:	Sunny Liu
-----------------------	------------------

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/19/2024

Bill No: SB45

Sponsor: Sen. Padilla
Short N/A
Title: _____

Agency Name and Code 361 - OBAE
Number: _____
Person Writing Drew Lovelace
Phone: 5057951672 **Email** Drew.lovelace@conne

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0	N/A	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	\$748	\$748	1,496	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
N/A

Duplicates/Relates to Appropriation in the General Appropriation Act for the Office of Broadband Access and Expansion (OBAE).

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB45 achieves 5 objectives for the Office.

- 1) Moves the Broadband Deployment and Connectivity Program (BDCP) from the New Mexico Public School Facilities Authority (PSFA) to OBAE, consolidating the broadband functions currently overseen by OBAE per a memorandum of understanding and giving OBAE the necessary authority and funding to implement the programs. To move the entire program to OBAE, SB45 amends:
 - NMSA 1978 Section 7-27
 - PSCOA
 - OBAE Act
 - Connect New Mexico Act
- 2) Amends sections of the Wireless Consumer Advanced Infrastructure Investment Act to include the State as an authority.
- 3) Amends the Connect New Mexico Act to clarify that OBAE owns the State-owned broadband infrastructure and equipment.
- 4) Amends the Procurement Act to allow OBAE to utilize multi-term contracts, which is consistent with the broadband industry practice.
- 5) Provides OBAE with rulemaking authority over pole owners not currently regulated by other regulatory bodies (i.e., electric co-ops, telephone co-ops, municipality pole owners).

FISCAL IMPLICATIONS

This legislation includes a wholesale move of an existing program from the Public School Facilities Authority to OBAE. PSFA salaries and benefits funded through Public School Capital Outlay Fund (PSCOF) would see a decrease. Currently only three of five positions are filled at PSFA. The FY25 executive recommendation for OBAE includes a \$748,000 recurring increase in general fund to cover estimated salaries for three employees transferred from PSFA into classified service with appropriate placement plus estimated employee salary and benefits for the two vacant positions in BDCP program. This recurring budget increase does not account for potential legislative increase to state employee salaries.

It is unclear whether OBAE's recurring staff expenses could be met, in whole or in part, through transfer of funding from PSCOF.

SIGNIFICANT ISSUES

Broadband Deployment and Connectivity Program

Transferring BDCP from PSFA to OBAE will allow OBAE to move more quickly and efficiently to deploy the State Education Network (SEN) in conjunction with other Federal and State Broadband programs, leading to better outcomes for our schools. While an MOU exists with PSFA, OBAE has struggled with moving funding from PSFA to OBAE. Lack of funding and differing procurement rules for PSFA and OBAE has added to the difficulty to execute the SEN. Despite this difficulty, OBAE has been able to place first nodes under contract.

OBAE anticipates, upon the transfer of the BDCP program and its funding from PSFA that is the subject of this legislation, the OBAE Director will annually certify that up to 10 million dollars of proceeds of supplemental severance tax bonds per fiscal are needed for expenditures relating to education technology infrastructure. Upon this annual certification, SB45 authorizes the State Board of Finance to issue and sell supplemental severance tax bonds pursuant to the OBAE Director certification. Senate Bill 45 provides that the proceeds from the sale of the bonds are to be appropriated to the Education Technology Infrastructure Fund. Senate bill 45 creates a new section of the Broadband Access and Expansion Act to create the Education Technology Infrastructure Fund to receive the up to ten-million-dollar appropriation.

Pole Attachments

OBAE has worked with NMECG and NMRECA to address issues of projects from other federal funds not controlled by the state from being descope. Similar issues in the rollout of the Broadband Equity Access and Deployment funds could jeopardize the federal funding. As of this FIR filing date, OBAE remains committed to meet with and address this issue with the industry associations.

PERFORMANCE IMPLICATIONS

Lack of program movement to OBAE from PSFA will cause OBAE to terminate the MOU because the challenges of procurement across the two agencies and associated administrative tasks occupy too much time and energy and would be a distraction from statutory obligations of OBAE without the funding or authority. While OBAE would continue to collaborate with PSFA on the SEN, keeping the BDCP team at PSFA would prevent easy operational efficiencies of broadband program deployment and would seriously impact the e-rate services to schools, potentially costing schools millions of dollars. SEN deployment would likely slow down with and unclear deployment timeline.

ADMINISTRATIVE IMPLICATIONS

Moving the PSFA program would require the transfer of employees to the classified service. OBAE has already reached out to SPO to put a process in place.

Procurement change for allowance of multi-term contracts aligns with industry practice of service provided longer than four years in network operations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The Wireless Consumer Advanced Infrastructure Investment Act amendment proposed in HB45 allows for the state to allow for small cell sites on state land. This will help deployment of 5G towers for cell phones which have increased speed but require more cell sites to provide similar coverage to 4G. This also benefits wireless internet providers with similar capabilities.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failure to move PSFA BDCP team may disrupt e-rate services to schools. PSFA support of the program has been slow with not enough resources put behind the SEN. If HB45 is not enacted, OBAE will end the MOU due to ongoing strain on OBAE staff and mission programs. Deployment time for the SEN will increase and operational efficiencies with OBAE broadband programs will not be easy to manage across a non-executive agency and an executive agency.

AMENDMENTS

None.