

LFC Requester:	Theresa Rogers
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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:

Date _____

Original ___ **Amendment** X
Correction ___ **Substitute** ___

Bill No: HB113/HSIVCS/a/HLEDC/a/SPAC

Sponsor: House State Government, Indian and Veteran Affairs Committee

Agency Code: 924

Short Title: STATEWIDE BROADBAND NETWORK

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	See fiscal implications	Recurring	General Fund School Districts Operating Budgets Governmental Entity Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		220.0	220.0	440.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Companion to SB338. Related to HB69, SB63, and SB64.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of SPAC amendment to House Bill 113/HSVICS/aHLEDC

The SPAC amendment strikes the previous version of the bill and inserts provisions from it into the Department of Information Technology Act, NMSA 1978 Section 9-27.

The amendment defines a “telecommunication network” and directs the state chief information officer (CIO) to develop a statewide broadband network plan along with with public institutions and broadband service providers.

The amendments allows DoIT to provide a broadband network to education institutions, apply for E-rate reimbursements and charge institutions for participating in the network.

The amendment allows Indian nations, tribes, and pueblos to connect to the network in exchange for right of way.

SIGNIFICANT ISSUES

The SPAC amendment makes changes from the original bill by:

- Changing the requirements placed on the DoIT Secretary (CIO):
 - Develop a network plan
 - Design, and implement a network
 - “may” provide access
 - Coordinate and aggregate service.

The amendment removes the provision that the access may be provided through aggregation points and removes the deadline for when the development of the network shall be provided for

FISCAL IMPLICATIONS OF SPAC AMENDMENT

DoIT published a *Statewide Final Strategic Plan* for broadband availability and adoption in 2014 and the Governor has adopted several broadband initiatives in conjunction with the department, so the fiscal impact on continuing the development of a statewide broadband network plan is expected to be minimal. DoIT may reallocate resources to more fully incorporate developing a statewide broadband network into their strategic plan.

Synopsis: The House State Government, Indian and Veteran Affairs Committee Substitute for House bill 113 provides for the creation of a statewide broadband network for schools and other governmental agencies to be coordinated by the State Chief Information Officer.

FISCAL IMPLICATIONS

Estimated operational budget impact is for PED only. There is no appropriation for this bill and revenue is dependent upon voluntary participation by entities defined in the bill, and wouldn't impact this bill until after FY19.

The federal Universal Service Fund (USF) as referenced in the bill was created by the Federal Communications Commission (FCC), which regulates all telecommunications companies, in 1997. All long distance, local telephone companies, cellular companies, paging companies and pay phone providers that provide service between states contribute a percentage of the total amount they bill to the fund.

Money in the fund is used to help **schools, libraries, rural health care providers and telephone companies** that operate in high cost areas by giving them discounts on telecommunications services. Provisions contained in the substitute for House Bill 113 give the appearance that funding from USF (E-Rate for schools and libraries) would pay for a large part of a statewide broadband network. This expectation may be too ambitious as “state agencies and other political subdivisions” are not eligible for USF funding and if they can’t be included in the infrastructure, sufficient funding may not be available to construct this framework.

Initial discussions concerning this bill were focused on the expectation that the development of a statewide broadband system would be accomplished by existing providers and that the State Chief Information Officer would coordinate this effort. This committee substitute appears to shift the responsibility of developing the system to the state. If it is the desire of the legislature to make this a provider developed system, this needs to be included in the bill.

Under E-Rate rules, only schools and libraries are eligible for reimbursement. Since the legislation is explicit in making the network available to ineligible entities, any application for funds under the program must be cost allocated so that only eligible entities receive funding, which will impact the cost for construction and recurring services. According to the USAC web site:

- “A service can in some cases serve both an eligible and ineligible location. An itemized bill identifying which locations are receiving services may be used to ensure only eligible sites are being funded. Absent itemized vendor documentation, a snapshot or statistical sample that shows the percent of use for each location may be submitted. Entities, including consortia, may review the number of lines/circuits each entity is receiving and perform a straight line allocation from the total charges to attribute costs per entity.”
- “In some cases, the up-front infrastructure costs of a telecommunications or Internet access service provider can be eligible for support, but only the portion that is attributable to the applicant. The cost may be pro-rated based on the number of eligible or ineligible recipients if a direct cost per entity is not feasible.”

SIGNIFICANT ISSUES

HB113-hsivcsub as amended clarifies some of the problems with the original language. There is still some problematic language:

- **It is clear that the Department of Information Technology is the lead on development of a regional aggregation networks by repealing and amending Section 9-27-3 NMSA 1978 to allow the Department of Information Technology to engage private sector to develop such a network.**
- **Section 3 on page 10, sub-section B limits participation to educational institutions, although it is unclear if the intent is to include post-secondary institutions that are NOT eligible for federal funding under the E-Rate**

program. This should be made clear, and include public and tribal libraries recognized by the State Library.

- **Sub-section C should be limited to public K-12 schools, public libraries, tribal grant schools, and tribal libraries. By including state agencies and political subdivisions in the legislation, the E-Rate funding to pay for this will be reduced. The full amount of any special construction will have to be requested, and ineligible entities will need to be cost allocated out of any E-Rate funding request. Participation by ineligible entities can be added at any time via the rule making process. The rest of the amended language should be modified to make it clear that the network is intended to be built for use by E-Rate eligible entities – schools and libraries. Rural Healthcare also has their own program and can be eligible entities. The language in this section conflicts with language in Section A on page 10.**
- **Participation is still voluntary, and language in the amendment allows DoIT to determine if regional aggregation is feasible and allows the department to develop a rate structure to recover the costs associated with a state-wide broadband network.**
- **Allows DoIT to request operational funding. PED should be allowed to request operational funding as well to manage the E-Rate funding process.**
- **Section 8 seems to conflict with Section 3, sub-section A.**
- **Section 9 states that DoIT should apply for E-Rate funds, which poses a potential conflict. PED is the state E-Rate coordinator for K-12 public schools, the state library is the coordinator for public and tribal libraries. This section should state that DoIT shall work with PED, the state library, and tribal governments for E-Rate funding, not have the state CIO be the primary applicant.**
- **The amended language MUST make it clear that the intent of the legislation is to provision a state-wide network through a competitive bidding process for E-Rate eligible institutions only. This will maximize the use of E-Rate dollars on any special construction needed for a state-wide network. Language should be included to allow the state CIO and DoIT to promulgate rules as to who may or may not participate to make such a network economically viable.**

The Governor's Broadband for Education (BB4E) has completed the development of a database of education infrastructure, services, and applications and further characterizes the potentials for using technologies in teaching and learning and identifies challenges and barriers to using broadband services.

The BB4E steering group has identified seven major goals that are driving the project:

- Ensuring quality and reliability of current bandwidth for education;
- Supporting underserved students and provide equal opportunity for all students;
- Supporting digital learning;
- Expanding distance education;
- Providing broadband for virtual-classroom, online learning;
- Developing infrastructure so that students can take tests online; and,
- Support collaboration among education teams.

As a result of this work, almost 98 percent of New Mexico's K-12 schools are connected or in the process of being connected to fiber-optic cable, providing the infrastructure needed to achieve high speed data access.

As part of the BB4E effort, a statewide price agreement has been established to ensure schools have access to the best price available for the equipment needed to take advantage of their access to fiber.

A second statewide price agreement is also being finalized with internet providers to make available internet access at the best price available. This should be available in the third quarter of FY17

This substitute bill appears to shift the burden of building a state-wide network from the state to private sector. As outlined in the fiscal implications section, any E-Rate funding applications for special construction would require some form of cost allocation to ensure that E-Rate funding only pays for providing services to K-12 schools and libraries.

There are other federal programs available to help offset the costs associated with carrying out this legislation, but the bill as currently written does not direct the chief information officer to explore all the possible funding options that can be leveraged for such a build out.

Network Nebraska took ten years to achieve significant cost savings for eligible entities. Other states that have state-wide networks include Wisconsin, Pennsylvania, and Utah. Utah benefitted from a substantial influx of state and federal money to build and maintain their network. Wisconsin relies primarily on E-Rate funding for their network serving schools and libraries. Pennsylvania has lost participants after rolling out demand aggregation because some larger districts are able to negotiate better pricing separate from the aggregation network.

E-Rate rules require schools and libraries, when seeking service, to weigh cost more heavily than other factors, and to choose the most cost effective solution. It is unclear as to whether this legislation will result the most cost effective solution for E-Rate eligible entities.

Section 1D states that the chief information officer shall apply for funding on behalf of tribal entities, which puts DoIT in the position of being a recipient of service, and this poses a risk that as a recipient of service, they cannot be a provider or broker of services.

PERFORMANCE IMPLICATIONS

The provisions of this bill may require staffing at the PED that is not available at this time. Resources to support this effort should be considered and applicable funding should be appropriated.

The fee for service model proposed in the legislation depends of revenues from the public school capital outlay fund provided for in Section 22-24-4 NMSA 1978. This funding mechanism works for capital projects, but may present challenges when paying for non-capital recurring services. Network Nebraska uses tiered pricing, with all E-Rate eligible entities paying the same flat fee per unit of connectivity and ineligible entities paying a higher fee to cover the higher cost of delivering the service. Lines 1 and 2 on page 3 direct the state CIO and DoIT to reduce costs to participating institutions whenever feasible.

ADMINISTRATIVE IMPLICATIONS

Current statutes prohibit DoIT from providing broadband services to schools, libraries and political subdivisions. HB113 substitute appears to address this issue by making DoIT a broker of services instead of a service provider; however, language is still somewhat ambiguous. This role of DoIT should be better defined.

Without mandated participation, districts are free to negotiate pricing directly from service providers and may obtain pricing that is lower than the cost to participate in an aggregation network.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion bill in the senate is SB338. Related to HB69, SB63, and SB64.

TECHNICAL ISSUES

The bill states that the CIO shall define technical standards. There are technical standards that the CIO can define, but there are performance guidelines that PED can assist with. For schools, the State Educational Technology Directors Association (SETDA) recently released their Broadband Imperative II paper that helps provide broad suggestions that meet present and future needs depending on the size of the school or district. Libraries have Library Edge standard that can be used to develop connectivity standards based on the size and number of patrons at the library.

OTHER SUBSTANTIVE ISSUES

Because libraries are eligible entities for E-Rate, the state library division of the Department of Cultural Affairs should be included as a participating agency.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The state can continue to encourage collaboration among eligible entities to meet their unique needs. One county in southwest New Mexico is taking the first steps toward county wide aggregation.

DoIT already has the ability to negotiate state-wide price agreements for Internet Services. This bill seems to clarify the role of DoIT and the chief information officer to allow for negotiation with private sector to provide service to a range of public entities. Given current statutes limiting the role of DoIT to provide service to local public bodies, DoIT may not be able to work with providers to reduce cost and improve service without this legislation.