

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

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*{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:*

<b>Original</b>	<input type="checkbox"/>	<b>Amendment</b>	<input checked="" type="checkbox"/>	<b>Date</b>	<u>2/12/2017</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>SB338/aSEC</u>

<b>Sponsor:</b>	<u>Ivy-Soto/Smith</u>	<b>Agency Code:</b>	<u>924</u>
<b>Short Title:</b>	<u>STATEWIDE BROADBAND NETWORK</u>	<b>Person Writing</b>	<u>Aguilar/Chadwick</u>
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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
<b>Total</b>		220.0	220.0	440.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB113/HSIVCS.  
Related to HB69, SB63, and SB64.

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

Synopsis: The Senate Education Committee amendment to Senate Bill 338 removes the word “and maintain” from the responsibilities of the State Chief Information Officer apparently providing for that responsibility to remain with providers.

Synopsis of the Original Bill: Senate Bill 338 provides for the creation of a statewide broadband network for schools and other governmental agencies to be coordinated and maintained 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 SB338/aSEC 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 bill 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**

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 school 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 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. SB338/aSEC 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**

Duplicate of HB113/HSIVCS. 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.