

1 SENATE BILL 97

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Michael Padilla

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9  
10 AN ACT

11 RELATING TO STATE PROPERTIES; AMENDING SECTION 19-7-57 NMSA  
12 1978 (BEING LAWS 1912, CHAPTER 82, SECTION 53, AS AMENDED) TO  
13 AUTHORIZE THE COMMISSIONER OF PUBLIC LANDS TO GRANT RIGHTS OF  
14 WAY AND EASEMENTS ACROSS STATE LANDS FOR INFRASTRUCTURE USED  
15 FOR BROADBAND INTERNET SERVICES; AMENDING SECTION 67-3-12 NMSA  
16 1978 (BEING LAWS 1929, CHAPTER 110, SECTION 1, AS AMENDED) TO  
17 AUTHORIZE THE STATE TRANSPORTATION COMMISSION TO PRESCRIBE  
18 CONDITIONS FOR THE INSTALLATION OF BROADBAND INTERNET  
19 INFRASTRUCTURE PLACED ALONG, ACROSS, OVER OR UNDER PUBLIC  
20 HIGHWAYS; AUTHORIZING THE WAIVER OF FEES OR LEASING COSTS FOR  
21 INFRASTRUCTURE THAT IS TO BE USED PRIMARILY TO PROVIDE  
22 BROADBAND INTERNET SERVICES TO UNSERVED OR UNDERSERVED  
23 LOCATIONS AS DEFINED IN THE CONNECT NEW MEXICO ACT.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1           SECTION 1. Section 19-7-57 NMSA 1978 (being Laws 1912,  
2 Chapter 82, Section 53, as amended) is amended to read:

3           "19-7-57. COMMISSIONER--POWERS--EASEMENTS--RIGHTS OF  
4 WAY.--

5           A. The commissioner may grant rights of way [~~and~~]  
6 or easements over, upon or across state lands for fiber cable  
7 lines, microwave towers or other infrastructure used for  
8 broadband internet services, public highways, railroads,  
9 tramways, telegraph, telephone and power lines, irrigation  
10 works, mining, logging and other purposes upon payment by the  
11 grantee of the price fixed by the commissioner, which shall not  
12 be less than the minimum price for the lands, used, as fixed by  
13 law. The commissioner may grant a right of way or easement  
14 over, upon or across state lands for oil, hazardous liquid and  
15 gas pipelines if the right-of-way grant or easement requires  
16 compliance with the Pipeline Safety Act [~~Section 70-3-11, et~~  
17 ~~seq., NMSA 1978~~] and rules adopted pursuant to that act and  
18 provides for regulatory and agencies' access to records of  
19 compliance.

20           B. The commissioner may waive fees or leasing costs  
21 for rights of way or easements granted pursuant to Subsection A  
22 of this section for infrastructure that is to be used primarily  
23 to provide broadband internet services to unserved or  
24 underserved locations, as defined in the Connect New Mexico  
25 Act."

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1           SECTION 2. Section 67-3-12 NMSA 1978 (being Laws 1929,  
2 Chapter 110, Section 1, as amended) is amended to read:

3           "67-3-12. POWERS AND DUTIES.--In addition to the powers  
4 now conferred upon it by law, the state transportation  
5 commission:

6           A. may declare abandoned and close to public  
7 traffic all grade crossings of railroads by state highways in  
8 cases where grade separations or other adequate crossings are  
9 substituted therefor or where such grade crossings become  
10 unnecessary to the public convenience by reason of changes in  
11 highway locations;

12           B. may offer and, upon compliance with the  
13 conditions of such offer, pay rewards for information leading  
14 to the arrest and conviction of offenders in cases of theft,  
15 defacement or destruction of markers or highway signs, lights  
16 or other warning devices placed upon or along highways of this  
17 state under the supervision of the state transportation  
18 commission and for information leading to the arrest and  
19 conviction of offenders or for the return of property in case  
20 of theft or unlawful damaging of property under the control of  
21 the commission. All such rewards when paid shall be paid from  
22 the state road fund upon voucher drawn by the secretary or  
23 other authorized officer or agent of the department;

24           C. shall prescribe by rule the conditions under  
25 which fiber cable lines, microwave towers or other

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1 infrastructure used for broadband internet services, pipelines,  
2 telephone, telegraph and electric transmission lines and  
3 ditches may be placed along, across, over or under public  
4 highways in this state and shall forcibly remove or cause to be  
5 removed pipelines, telephone, telegraph or electric  
6 transmission lines or ditches that may be placed along, across,  
7 over or under such public highways in violation of such rules  
8 and regulations;

9 D. may waive fees or leasing costs for  
10 infrastructure authorized pursuant to Subsection C of this  
11 section that is to be used primarily to provide broadband  
12 internet services to unserved or underserved locations, as  
13 defined in the Connect New Mexico Act;

14 ~~[D.]~~ E. shall employ an attorney to assist and  
15 advise the state transportation commission and the department  
16 in the discharge of their duties and to appear and represent  
17 the interests of the commission or department in any case  
18 before any court or tribunal in which the official duties,  
19 powers, rights or privileges of the commission or department  
20 may be involved or affected and to pay that attorney the  
21 reasonable value of the attorney's services out of the state  
22 road fund;

23 ~~[E.]~~ F. shall bring and maintain in the name of the  
24 state actions and proceedings deemed necessary by the state  
25 transportation commission for the condemnation of rights of way

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1 for public highways or for the removal or condemnation of  
2 buildings or other improvements that encroach in whole or part  
3 upon the rights of way of public highways or for the  
4 condemnation of gravel pits or other deposits of materials or  
5 supplies suitable for the construction of public highways.  
6 The attorney general of New Mexico shall appear in and  
7 prosecute all such cases on behalf of the state upon request of  
8 the state transportation commission. All such proceedings  
9 shall be conducted in the same manner as other cases for the  
10 condemnation of real property. The damages assessed in  
11 proceedings brought under the provisions of this section shall  
12 be paid out of the state road fund from money furnished for  
13 that purpose by cooperative agreement between the state,  
14 federal government and the county within which the condemned  
15 property is situate or any such governmental bodies or out of  
16 money furnished for the construction of the highway in  
17 connection with which the condemnation is had, by the county in  
18 which the condemned property is situate; provided, however,  
19 that if no such money is available, the damages shall be  
20 advanced on behalf of said counties out of their money in the  
21 state road fund and the state treasurer shall thereafter  
22 reimburse the state road fund for the money advanced out of the  
23 next installment of money from motor vehicle license fees  
24 accruing to the road fund of the county for which such funds  
25 were so advanced;

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1           [F-] G. shall designate in its discretion one of  
2 its employees as acting secretary to act at all times when the  
3 secretary is absent from the state capital. The acting  
4 secretary, when designated, has the right and is hereby given  
5 authority at all times when the secretary is absent from the  
6 state capital to sign all federal project statements, federal  
7 project agreements and federal vouchers with the same force and  
8 effect as if signed by the secretary in person, and the  
9 certificate of the acting secretary attached to any federal  
10 project statement, federal project agreement or federal voucher  
11 to the effect that the secretary was absent from the state  
12 capital at the time that the same was so signed by the acting  
13 secretary shall be conclusive evidence of the truth of such  
14 fact. The acting secretary may also be vested by the state  
15 transportation commission with power and authority to act for  
16 the secretary in such other matters as the state transportation  
17 commission may determine;

18           [G-] H. subject to the provisions of Subsection [H]  
19 I of this section, may conduct, permit or authorize commercial  
20 enterprises or activities on department- or commission-owned  
21 land or land leased to or from the department for the purpose  
22 of providing goods and services to the users of the property or  
23 facilities on the land, including commercial enterprises or  
24 activities, other than commercial enterprises or activities on  
25 a controlled-access facility conducted, permitted or authorized

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1 pursuant to Section 67-11-9 NMSA 1978. In furtherance of these  
2 commercial enterprises or activities, the commission may:

3 (1) authorize the lease of department- or  
4 commission-owned land as it deems necessary, in which case  
5 consideration for the lease shall be payments in cash or cash  
6 equivalent that shall be deposited into the state road fund; or

7 (2) authorize the sale or exchange or lease  
8 with in-lieu value consideration of department- or commission-  
9 owned land; provided that the sale or exchange or lease with  
10 in-lieu value shall be subject to the ratification and approval  
11 by joint resolution of the state legislature prior to the sale  
12 or exchange or lease with in-lieu value becoming effective; and

13 ~~[H.]~~ I. for the purposes of Subsection ~~[G]~~ H of  
14 this section shall:

15 (1) adopt rules necessary to carry out the  
16 provisions of Subsection ~~[G]~~ H of this section;

17 (2) prior to initiating any action to conduct,  
18 permit or authorize commercial enterprises or activities, adopt  
19 a rule providing a procedure to involve residents of the  
20 municipality or county in which the commercial enterprises or  
21 activities are proposed to occur in the department's planning  
22 and decision-making process for the sole purpose of advising  
23 the commission and department on the feasibility and  
24 suitability of the proposed commercial enterprises or  
25 activities;

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1 (3) comply with the Procurement Code in the  
2 acquisition process whenever commercial enterprises or  
3 activities result in the commission or department acquiring  
4 construction, services or tangible personal property, as those  
5 terms are defined in the Procurement Code;

6 (4) if the commercial enterprises or  
7 activities are to be developed or operated by a private entity,  
8 direct that private entity to:

9 (a) create its plans to be not  
10 necessarily in compliance but generally compatible with local  
11 zoning and land use policies, including affordable housing and  
12 historic and architectural standards, if any, and, to the  
13 extent the private entity will obtain water or other services  
14 from a local authority, negotiate an agreement between relevant  
15 parties for those services, the terms and conditions of which  
16 shall be no more stringent than the local authority's then  
17 current laws, rules and policies; and

18 (b) submit its plans to the local zoning  
19 and land use authority for comment. The local authority shall  
20 communicate its recommendations and comments in writing to the  
21 department and private entity within thirty days of receiving  
22 the plans. The department, commission and private entity shall  
23 take no action on the project in reliance on those plans until  
24 they have received the local authority's recommendations and  
25 comments or until the thirty-day comment period has expired,

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1       whichever comes first; provided that the local authority's  
2       approval is not required under this section, and this section  
3       does not delegate to the local authority power that it does not  
4       otherwise have; and

5                       (5) not use the power of eminent domain to  
6       acquire land to be developed or operated by a private entity."

7               **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
8       provisions of this act is July 1, 2023.

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