F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/15/13		
SPONSOR	Lopez	**LAST UPDATED**		**HB**	
SHORT TITLE	Utility Right-of-Way Access Fees			**SB**	477
				ANALYST	Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**		
	See Fiscal Implications			

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Economic Development Department (EDD)
Human Services Department (HSD)
Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 477 makes five significant changes to existing law.

First, SB 477 would add a new section to Chapter 5 NMSA 1978 authorizing counties to impose a right-of-way access fee on a public utility. The fee would compensate for access to, or use of, public right of ways for the construction, operation, repair, and maintenance of the public utility's property and equipment on, above, or under the public right of way. The ordinance may include terms and conditions regarding the process for, and timing of, payment of the fees. The fee would be expressed as a percentage, or a flat fee, of no more than 4 percent of the public utility's gross revenues from business conducted in the county, unless otherwise mutually agreed upon. A new provision is added specifying that these changes to law may not be construed as invalidating existing franchise fees or charges between a public utility and a municipality or county, unless mutually agreed upon. Upon expiration of existing franchise agreements, the changes in this Act would govern.

Second, the bill specifies the revenue from the right-of-way access fee imposed by a county shall be used for economic development, infrastructure, or behavioral health services.

Third, the bill would add a new section to Chapter 5 NMSA 1978 authorizing counties to impose conditions for the use of public right of ways to assure that the use does not unnecessarily obstruct public travel and to require public utilities to comply with zoning laws and applicable codes, ordinances and regulations.

Fourth, the bill would amend Section 3-42-1 NMSA 1978 related to the authority of municipalities to grant, by ordinance, a franchise for the construction of a public utility. The changes would expand the authority to counties. The bill would further exempt public utilities defined in Subsection G of Section 62-3-3 NMSA 1978 for which access is granted by statute and not franchise agreements.

Fifth, the bill would amend Section 62-6-4.5 NMSA 1978 related to franchise fees and gross receipts taxes to strike the terms "franchise fees" and replace it with "right-of-way fees". Gross receipt provisions are modified to expand the provision related to customer billing to apply to all public utilities, instead of just electric public utilities. Section 62-9-6 is also amended related to the issuance of certificates to strike the filing requirement.

FISCAL IMPLICATIONS

There are no fiscal implications for any state agency or state fund. However, there are fiscal implications for counties and municipalities. The bill would allow up to 4 percent of a public utility's gross revenue to be collected as a right-of-way fee. Counties and municipalities could receive an unknown but perhaps significant amount each year from public utilities. Nothing in the bill prohibits a county from collecting a right-of-way fee in addition to a similar fee collected by a municipality.

SIGNIFICANT ISSUES

County funding availability for economic development, infrastructure, and behavioral health services could increase, allowing possible expansions of such projects and services.

The EDD analysis shows that most municipalities have a system to collect payments from public utilities for their occupation of rights-of-way, referred to as franchise fees. However, the analysis also reveals that the New Mexico Association of Counties reported in 2010 there were only a few counties benefiting from the collection of franchise fees.

Analysis by the PRC states that if county commissions decide to impose right-of-way fees at the county level, then ratepayers would likely see their utility bills increase by the addition of that particular line item.

ADMINISTRATIVE IMPLICATIONS

The PRC analysis notes the bill eliminates the requirement for a public utility to file such evidence as the PRC requires to show the applicant has received authorizations from the affected county and municipality for the construction and operation of its proposed facility, line, plant, or system before applying for a certificate from the PRC. According to the PRC, its staff might have to look into whether the county and local authorities are willing to provide their authorizations, adding a potential delay and administrative burden to the certification process.

TECHNICAL ISSUES

The PRC notes that on line 18 on page three of the bill, the word "assure" should be replaced by "ensure."

OTHER SUBSTANTIVE ISSUES

The EDD notes that additional resources are available for the collection of economic development funding within counties and municipalities, including the passage of the Local Economic Development Act (LEDA). Upon passage of LEDA, a local government can bring to ballot a measure to raise the local options gross receipts tax (LOGRT) by 1/8th of 1 percent. The additional revenue may be used exclusively for economic development projects.

JC/blm