

1 SENATE JOINT MEMORIAL 38

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

3 INTRODUCED BY

4 John Arthur Smith

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10 A JOINT MEMORIAL

11 REQUESTING THE NEW MEXICO LEGISLATIVE COUNCIL TO DIRECT THE
12 REVENUE STABILIZATION AND TAX POLICY COMMITTEE TO STUDY
13 MUNICIPAL AND COUNTY FRANCHISE FEES.

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15 WHEREAS, Sections 3-42-1 and 3-42-2 NMSA 1978 authorize
16 municipalities in New Mexico to enter into franchise agreements
17 for the purpose of construction and operation of a public
18 utility; and

19 WHEREAS, Section 62-1-3 NMSA 1978 authorizes counties in
20 New Mexico to enter into franchise agreements to permit public
21 utilities to use public highways and streets to locate various
22 fixtures, appliances and structures; and

23 WHEREAS, municipalities are permitted to charge a
24 reasonable franchise fee as compensation for the use of the
25 public streets and rights of way by public utilities; and

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1 WHEREAS, counties have been prohibited by opinions of the
2 attorney general of New Mexico and a court decision from
3 charging a reasonable franchise fee as compensation for the use
4 of public streets and rights of way by public utilities; and

5 WHEREAS, Article 9, Section 14 of the constitution of New
6 Mexico, known as the anti-donation clause, provides in part
7 that counties and other governmental units and entities shall
8 not directly or indirectly make any donation to or in aid of
9 any person, association or public or private corporation; and

10 WHEREAS, the New Mexico court of appeals recently issued
11 its opinion in *State of New Mexico ex rel Madrid v. UU Bar*
12 *Ranch Ltd Partnership*, 137 N.M. 719, 114 P.3d 399, in which the
13 court ruled that public rights of way are interests in real
14 property and thus subject to the provisions of New Mexico
15 statutes preventing disposition of public rights of way without
16 first complying with statutory requirements for the disposition
17 of interests in real property; and

18 WHEREAS, the use of public rights of way by public utility
19 companies without the payment of a reasonable fee constitutes a
20 disposition of an interest in real property and violates the
21 anti-donation clause of the constitution of New Mexico; and

22 WHEREAS, the public utility companies of New Mexico have
23 embarked on a tactic to delay the negotiation and
24 implementation of new franchise agreements with various
25 counties and municipalities; and

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1 WHEREAS, the appropriate resolution of the issues
2 surrounding the negotiation of franchise fees may be
3 replacement of the negotiation process with the granting of
4 statutory authority for municipalities and counties to impose
5 reasonable franchise fees or a franchise tax;

6 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
7 STATE OF NEW MEXICO that the New Mexico legislative council
8 direct the revenue stabilization and tax policy committee to
9 study the issues raised by the current franchise fee provisions
10 and make recommendations for appropriate and equitable
11 legislation establishing statutory franchise fees or
12 authorizing imposition by municipalities and counties of a
13 franchise tax; and

14 BE IT FURTHER RESOLVED that copies of this memorial be
15 transmitted to the co-chairs of the New Mexico legislative
16 council, the public regulation commission, the New Mexico
17 association of counties and the New Mexico municipal league.