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SENATE BILL 360

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE UTILITY EASEMENTS FOR BROADBAND ACT; AUTHORIZING THE USE AND SHARING OF UTILITY EASEMENTS FOR THE PROVISION OF COMMUNICATIONS SERVICE THROUGHOUT THE STATE; REQUIRING NOTICE OF USE OF UTILITY EASEMENTS TO THE PROPERTY OWNER; PROVIDING FOR OPTIONAL RECORDING OF SUCH NOTICE; ESTABLISHING CLAIMS PURSUANT TO THE USE OF UTILITY EASEMENTS; ALLOWING COST RECOVERY FOR COMMUNICATIONS INFRASTRUCTURE PROJECTS; PROVIDING DEFINITIONS.

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

SECTION 1. A new section of Chapter 62 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Utility Easements for Broadband Act"."

SECTION 2. A new section of Chapter 62 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] DEFINITIONS.--As used in the Utility  
3 Easements for Broadband Act:

4 A. "burdened parcel" means a parcel of real  
5 property subject to a utility easement;

6 B. "commission" means the public regulation  
7 commission;

8 C. "communications infrastructure" means any  
9 wireline or wireless facilities and equipment, including  
10 amplifiers, antennae, cable, conduits, ducts, fiber,  
11 optronics, poles, structures, towers, transmitters, towers,  
12 wires or other facilities or equipment owned by a public  
13 utility and used in connection with the provision of  
14 communications service;

15 D. "communications service" means any technology  
16 having the capacity to transmit data or other signals to enable  
17 a user of the service to originate and receive graphics, data,  
18 video, voice or other modes of communication;

19 E. "notice address" means the mailing address of  
20 the owner of a burdened parcel, or holder of record of an  
21 exclusive interest in the burdened parcel for any form of  
22 communications service, as listed in the records of the  
23 applicable county assessor fourteen days prior to delivery of  
24 notice;

25 F. "public utility" means "public utility" as

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1 defined in the Public Utility Act; and

2 G. "utility easement" means a franchise, easement,  
3 whether recorded or unrecorded, license, permit, right of way  
4 or similar right in real property, including a prescriptive  
5 right or any right of way acquired pursuant to Chapter 62,  
6 Article 1 NMSA 1978 held by a public utility."

7 SECTION 3. A new section of Chapter 62 NMSA 1978 is  
8 enacted to read:

9 "[NEW MATERIAL] USE OF UTILITY EASEMENTS.--

10 A. For a burdened parcel with a utility easement  
11 that does not already provide for or permit the installation,  
12 maintenance, removal or use of communications infrastructure,  
13 upon complying with the notice provisions in Section 4 of the  
14 Utility Easements for Broadband Act and without approval or  
15 consent of the commission, a public utility may:

16 (1) acquire, construct, install, maintain,  
17 operate, own, remove or upgrade its communications  
18 infrastructure across, in, on, over or under the portion of a  
19 burdened parcel that is subject to a utility easement and may  
20 permit third parties to do so on behalf of the public utility;

21 (2) lease, license, provide a right to use or  
22 transfer in whole or in part any of its communications  
23 infrastructure located in a utility easement; and

24 (3) enter and access the burdened parcel for  
25 the purposes or actions as may be reasonably necessary or

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1 desirable in connection with actions pursuant to this  
2 subsection.

3 B. A public utility's exercise of rights under  
4 Subsection A of this section is subject to a generally  
5 applicable requirement on the burdened parcel to locate  
6 utilities underground if provided by:

7 (1) an ordinance regarding subdivision plats  
8 pursuant to Chapter 3, Articles 19 and 20 NMSA 1978, or Chapter  
9 47, Articles 5 and 6 NMSA 1978, as applicable; or

10 (2) rules promulgated by a zoning authority  
11 pursuant to Chapter 3, Article 21 NMSA 1978.

12 C. Upon a public utility's exercise of rights under  
13 Subsection A of this section, such rights run with the land and  
14 are valid and binding on successors-in-interest of the owner  
15 and any holder of an interest in the burdened parcel regardless  
16 of a lack of privity of estate or contract."

17 SECTION 4. A new section of Chapter 62 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] NOTICE REGARDING USE OF UTILITY  
20 EASEMENT.--

21 A. A public utility shall deliver a notice that  
22 substantially contains the information required in Subsection B  
23 of this section to the notice address by certified or  
24 registered mail or by regional or national delivery service,  
25 without requirement for signature upon delivery:

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1 (1) for an exercise of rights pursuant to  
2 Subsection A of Section 3 of the Utility Easements for  
3 Broadband Act that involves installation or construction, at  
4 least ten days prior to the start of such installation or  
5 construction; or

6 (2) for an exercise of rights under Subsection  
7 A of Section 3 of the Utility Easements for Broadband Act not  
8 involving any installation or construction, within forty-five  
9 days following such exercise of rights.

10 B. The notice required under Subsection A of this  
11 section shall:

12 (1) identify the public utility and provide  
13 contact information for a point of contact at the public  
14 utility;

15 (2) furnish a general description of the  
16 utility infrastructure already existing in the utility easement  
17 as of the date of notice or a general description of the  
18 location of the utility easement, which shall not require any  
19 legal description, land title survey or any other description  
20 of the exact boundaries of the utility easement;

21 (3) provide the parcel number or tax  
22 identification number of the burdened parcel, as set forth in  
23 the county assessor's records; and

24 (4) reference the Utility Easements for  
25 Broadband Act and state that the public utility is exercising

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1 its rights pursuant to that act.

2 C. The notice required under Subsection A of this  
3 section:

4 (1) shall be deemed delivered on the third  
5 business day after being deposited in the United States mail or  
6 with a delivery service; and

7 (2) is required to be sent only once, and no  
8 subsequent exercise of rights with respect to the burdened  
9 parcel by a public utility or anyone deriving rights through a  
10 public utility under Subsection A of Section 3 of the Utility  
11 Easements for Broadband Act shall require additional notice."

12 SECTION 5. A new section of Chapter 62 NMSA 1978  
13 is enacted to read:

14 "[NEW MATERIAL] OPTIONAL RECORDING OF NOTICE.--A public  
15 utility may, but is not obligated to, record a notice delivered  
16 pursuant to the Utility Easements for Broadband Act, or a  
17 recording memorandum of one or more notices in the applicable  
18 county clerk's office against all or any portion of a parcel  
19 that is subservient to the utility easement, containing the  
20 information set forth in Paragraphs (2), (3) and (4) of  
21 Subsection B of Section 4 of the Utility Easements for  
22 Broadband Act. Recording a memorandum of notice shall be  
23 effective to perfect the rights exercised under Subsection A of  
24 Section 3 of the Utility Easements for Broadband Act against  
25 all estates and persons holding any interest in the burdened

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1 parcel or real property appurtenant thereto, except that a  
2 crossing of the right of way of another public utility shall be  
3 effected in the manner provided in Section 62-1-4 NMSA 1978."

4 SECTION 6. A new section of Chapter 62 NMSA 1978 is  
5 enacted to read:

6 "[NEW MATERIAL] COST RECOVERY.--The commission shall,  
7 after notice and hearing, allow a public utility that acquires,  
8 constructs, installs, removes or upgrades communications  
9 infrastructure pursuant to the Utility Easements for Broadband  
10 Act to recover its reasonable costs through a commission-  
11 approved tariff rider, in base rates, or both. The public  
12 utility may include a mechanism for the return of costs  
13 recovered to customers from revenue as a result of leasing,  
14 licensing or other transfer of a right to use of the  
15 communications infrastructure by a third party in a future rate  
16 case. The commission shall within six months determine, and  
17 allow cost recovery of, reasonable utility expenditures on  
18 communications infrastructure projects. Failure to issue an  
19 order approving or denying cost recovery within six months  
20 shall be deemed to be approval."

21 SECTION 7. A new section of Chapter 62 NMSA 1978 is  
22 enacted to read:

23 "[NEW MATERIAL] CLAIMS--TIME LIMIT--CALCULATION OF  
24 DAMAGES.--

25 A. No claim or cause of action against a public

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1 utility exercising its rights pursuant to the Utility Easements  
2 for Broadband Act may be brought by any person more than one  
3 year after:

4 (1) in the case of a claim or cause of action  
5 brought by or on behalf of a person to whom notice under  
6 Section 4 of the Utility Easements for Broadband Act was  
7 required, the date of delivery of notice; or

8 (2) in the case of a claim or cause of action  
9 brought by or on behalf of an interest holder in real property  
10 subject to the utility easement, other than a person to whom  
11 notice under Section 4 of the Utility Easements for Broadband  
12 Act was required, the date of recording of the notice or a  
13 memorandum of notice.

14 B. For any claim or cause of action that is brought  
15 or may be brought by or on behalf of a person holding an  
16 interest in the burdened parcel or real property appurtenant  
17 thereto, whether in trespass, inverse condemnation or  
18 otherwise, with respect to a public utility's exercise of the  
19 rights set forth in Subsection A of Section 3 of the Utility  
20 Easements for Broadband Act, the following shall apply:

21 (1) the measure of damages for any and all  
22 such claims or causes of action, taken together, is the fair  
23 market value of the reduction in the value of the estate held  
24 by such interest holder, as contemplated by Section 42A-1-24  
25 NMSA 1978;

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1 (2) the following shall not be used and are  
2 not admissible as evidence in any proceeding: profits, fees or  
3 revenue derived from any such communications infrastructure;  
4 the rental value of the real property, utility easement or  
5 communications infrastructure; or the value of any  
6 communications corridor consisting of easements or similar  
7 rights over multiple parcels of real property;

8 (3) consideration shall be given to any  
9 increase in the fair market value to the property of the  
10 availability of communications service that arises from the  
11 installation or use of communications infrastructure in the  
12 utility easement;

13 (4) the interest holder bringing a claim or  
14 cause of action shall make reasonable accommodations to allow  
15 the public utility to conduct an appraisal of the real property  
16 within ninety days following a written request by the public  
17 utility. If an interest holder fails to make such  
18 accommodations, the public utility shall have no further  
19 liability to such interest holder with respect to the public  
20 utility's exercise of rights under Subsection A of Section 3 of  
21 the Utility Easements for Broadband Act;

22 (5) any claim, cause of action or damages  
23 shall be deemed to occur at the time of the public utility's  
24 initial exercise of rights, shall be fixed and shall not be  
25 deemed to continue, accrue or accumulate;

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1 (6) except in the case of another party's  
2 gross negligence or willful misconduct, no party to any such  
3 claim or cause of action shall be entitled to attorney fees or  
4 costs, reimbursement of the cost of any appraisal or any award  
5 of special, indirect, consequential, punitive or exemplary  
6 damages; and

7 (7) by accepting a damage award in respect of  
8 a public utility's exercise of rights under Subsection A of  
9 Section 3 of the Utility Easements for Broadband Act, an  
10 interest holder in the burdened parcel shall be deemed to have  
11 granted a permanent easement or right of way to the public  
12 utility for all of the rights set forth in that subsection.

13 C. A claim or cause of action under this section  
14 shall not be brought on behalf of a class.

15 D. The limitations on claims and causes of action  
16 set forth in Subsections A and B of this section shall not  
17 apply to a claim or cause of action based on physical damage to  
18 property or injury to natural persons.

19 E. Nothing in the Utility Easements for Broadband  
20 Act extends the statute of limitations for any claim or cause  
21 of action or shall be deemed to revive an expired claim or  
22 cause of action."

23 SECTION 8. A new section of Chapter 62 NMSA 1978 is  
24 enacted to read:

25 "[NEW MATERIAL] OTHER PROVISIONS REGARDING UTILITY

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EASEMENTS.--

A. A public utility's power of eminent domain pursuant to Section 62-1-4 NMSA 1978 shall include the power to enter upon the burdened parcel and appropriate the rights set forth in Subsection A of Section 3 of the Utility Easements for Broadband Act within the utility easement.

B. A public utility's exercise of rights under Subsection A of Section 3 of the Utility Easements for Broadband Act shall not be deemed to dedicate a utility easement for public or compatible use.

C. Nothing in the Utility Easements for Broadband Act shall be deemed to obligate a public utility to provide any rights or access to a communications service provider or to impose any obligations or restrictions on the terms and conditions on which a public utility may contract with a communications service provider regarding communications infrastructure in a utility easement.

D. Nothing in the Utility Easements for Broadband Act shall be deemed to obligate a public utility to provide any communications service to any person, but a public utility may provide communications service subject to such laws and rules as may be generally applicable to other communications service providers."

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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