

1 SENATE BILL 413

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; ENACTING THE REGIONAL BROADBAND
12 FRANCHISE ACT; PROVIDING FOR THE ESTABLISHMENT OF REGIONAL
13 BROADBAND FRANCHISES BY PUBLIC AGENCIES THROUGH PARTNERSHIP
14 AGREEMENTS; PROVIDING POWERS; PROVIDING REVENUE BONDS;
15 REQUIRING AUDITS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
19 cited as the "Regional Broadband Franchise Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Regional Broadband Franchise Act:

22 A. "bonds" means broadband infrastructure revenue
23 bonds;

24 B. "broadband infrastructure" means any cable or
25 device used for high-capacity transmission of a wide range of

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1 frequencies enabling a large number of electronic messages to
2 be transmitted or received simultaneously;

3 C. "chief broadband officer" means the secretary of
4 information technology or the secretary's designee; provided
5 that when a state agency is designated in statute to plan or
6 coordinate broadband development efforts by all state agencies,
7 "chief broadband officer" means the senior executive official
8 for that state agency;

9 D. "franchise" means a regional broadband franchise
10 established by two or more public agencies through a joint
11 powers agreement;

12 E. "franchise board" means a governing board of a
13 regional broadband franchise;

14 F. "notice of establishment" means a notice,
15 including a map showing the anticipated service boundaries for
16 a newly established regional broadband franchise, that is sent
17 to the chief broadband officer;

18 G. "pledgeable revenue" means net income from the
19 lease of trunk lines;

20 H. "project" means an undertaking by a franchise to
21 finance or plan, acquire, maintain or operate broadband
22 infrastructure;

23 I. "public agency" means the federal government or
24 a federal department, agency or instrumentality; this state or
25 a state department, agency or instrumentality; an Indian

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1 nation, tribe or pueblo located partly or wholly in New Mexico;
2 a subdivision of an Indian nation, tribe or pueblo located
3 partly or wholly in New Mexico that has authority pursuant to
4 the law of that Indian nation, tribe or pueblo to enter into
5 joint powers agreements directly with the state; a county,
6 municipality, public corporation or public district of this
7 state or another state; an educational institution specified in
8 Article 12, Section 11 of the constitution of New Mexico; or a
9 New Mexico school district;

10 J. "publicly owned" means to be owned by an agency
11 or instrumentality of the state;

12 K. "regional broadband franchise" means an entity
13 formed by two or more public agencies to provide trunk lines to
14 internet or other electronic data transmission service
15 providers;

16 L. "state agency" means an agency or
17 instrumentality of the state; and

18 M. "trunk line" means broadband infrastructure
19 leased on a wholesale basis to providers of retail internet or
20 other electronic data transmission services.

21 SECTION 3. ~~[NEW MATERIAL]~~ AGREEMENTS FOR USE OF STATE-
22 OWNED BROADBAND INFRASTRUCTURE--CHIEF BROADBAND OFFICER.--

23 A. The chief broadband officer is authorized to
24 contract with a regional broadband franchise for the use of
25 broadband infrastructure owned by a state agency.

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1 B. A contract for the use of broadband
2 infrastructure shall ensure that the:

3 (1) purposes for which a state agency owns the
4 broadband infrastructure shall have priority of use for that
5 infrastructure; and

6 (2) use of the infrastructure by a regional
7 broadband franchise shall be in compliance with the provisions
8 of the Regional Broadband Franchise Act.

9 **SECTION 4. [NEW MATERIAL] REGIONAL BROADBAND FRANCHISE**
10 **ESTABLISHMENT--FRANCHISE BOARD MEMBER REQUIREMENTS.--**

11 A. A franchise may be established by a combination
12 of two public agencies.

13 B. A franchise established pursuant to this section
14 shall be formed through a partnership agreement pursuant to the
15 Joint Powers Agreements Act filed with the secretary of state
16 and the chief broadband officer. The agreement shall specify
17 the responsibilities of each member entity and govern the
18 franchise and:

19 (1) specify that the franchise shall be
20 governed by a franchise board composed of one appointee from
21 each member entity, the secretary of finance and administration
22 or the secretary's designee and the chief broadband officer or
23 the chief's designee;

24 (2) provide for periodic franchise board
25 meetings with a minimum of four meetings per year;

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1 (3) provide that the franchise board shall
2 invite all internet service providers that are paying a leasing
3 fee to the franchise to participate at a franchise board
4 meeting at least once per year; and

5 (4) commit each member entity to identify all
6 of the broadband infrastructure that the member entity owns and
7 grant the franchise the ability to extend, lease to third
8 parties, renovate, upgrade or use that broadband
9 infrastructure.

10 C. A franchise established pursuant to this section
11 shall be an instrumentality of the franchise's member entities
12 and as such shall be a public corporate entity created pursuant
13 to state law, but shall not be subject to the general laws of
14 the state and shall not be an agency or department of the state
15 or of a public agency.

16 D. A franchise board member is a public officer
17 subject to the provisions of the Governmental Conduct Act.

18 E. A franchise board member shall not be employed
19 by an entity that has benefited from a contractual or other
20 activity with the franchise prior to two years after vacating a
21 position on the franchise board. A person who violates this
22 subsection is guilty of a fourth degree felony and shall be
23 sentenced pursuant to the provisions of Section 31-18-15 NMSA
24 1978.

25 F. For purposes of this subsection, "member entity"

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1 means a public agency that is a member of partnership agreement
2 forming a franchise.

3 SECTION 5. [NEW MATERIAL] NOTICES OF ESTABLISHMENT--CHIEF
4 BROADBAND OFFICER--BROADBAND INFRASTRUCTURE USE CONTRACTS--
5 REPORTS.--

6 A. When a franchise is established pursuant to this
7 section, the franchise shall file a notice of establishment
8 with the chief broadband officer. Upon receipt of the notice
9 of establishment, the chief broadband officer shall forward the
10 notice to each state agency. Within sixty days of the filing
11 of the notice of establishment with the chief broadband
12 officer, each state agency shall send to the chief broadband
13 officer:

14 (1) a list and a map of the broadband
15 infrastructure that is owned by that state agency within the
16 boundaries set out in the notice of establishment; and

17 (2) describe the purposes for which the
18 broadband infrastructure is owned by the state agency.

19 B. Within ninety days of receiving the lists and
20 maps of broadband infrastructure owned by state agencies
21 pursuant to Subsection A of this section, the chief broadband
22 officer shall enter into a contract with the franchise that
23 filed the notice of establishment for the use of publicly owned
24 broadband infrastructure within the service boundaries of that
25 franchise.

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1 C. No later than November 30 of each year, the
2 chief broadband officer shall provide a report regarding the
3 development of franchises, the extent of franchise service
4 areas and other information gathered from the franchise reports
5 submitted pursuant to Section 6 of the Regional Broadband
6 Franchise Act that the chief broadband officer deems relevant
7 to assess the condition and extent of the general broadband
8 system in New Mexico.

9 **SECTION 6. [NEW MATERIAL] FRANCHISE BOARD--DUTIES AND**
10 **POWERS--REPORTS.--**

11 A. A franchise board may lease broadband
12 infrastructure on a technologically neutral wholesale basis to
13 third-party internet or other data transmission service
14 providers for retail service, but shall not provide retail
15 internet or other data transmission services to consumers
16 itself.

17 B. Within one hundred twenty days of its
18 establishment, a franchise board shall adopt a mission
19 statement that describes its goals for the provision of trunk
20 lines within its service area, a broadband infrastructure
21 improvement and expansion plan designed to meet those goals and
22 a business plan that delineates the projected costs, required
23 revenues and any other factors that the franchise board
24 believes are necessary to achieve its goals by rule.

25 C. A franchise board shall charge lease fees for

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1 its broadband infrastructure that are in accordance with the
2 business plan adopted pursuant to Subsection B of this section.

3 D. A franchise board shall submit a report,
4 including the progress it has made toward implementing its
5 mission statement, its financial obligations and its projected
6 revenues, to the chief broadband officer no later than July 1
7 of each year.

8 E. A franchise board shall:

9 (1) do any and all things necessary or proper
10 to accomplish the purposes of its establishment;

11 (2) hire employees or other agents as it deems
12 necessary, including an executive director for the performance
13 of its powers and duties, consultants, financial advisors and
14 legal advisors, and prescribe the powers and duties to fix the
15 compensation of employees and agents. An executive director of
16 a franchise shall direct the affairs and business of the
17 franchise, subject to the policies, control and direction of
18 the franchise board; and

19 (3) maintain such records and accounts of
20 revenues and expenditures as required by the state auditor.
21 The state auditor or the state auditor's designee shall conduct
22 an annual financial and legal compliance audit of the accounts
23 of a franchise and file copies with the governor and the
24 legislature.

25 F. A franchise may:

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1 (1) make and execute agreements, contracts and
2 other instruments necessary or convenient in the exercise of
3 its powers and functions with any person or governmental
4 agency;

5 (2) enter into contractual agreements with
6 respect to one or more projects upon the terms and conditions
7 the franchise board considers advisable;

8 (3) enter into partnerships with public or
9 private entities;

10 (4) identify and establish corridors for the
11 installation of trunk-line broadband infrastructure within the
12 franchise's service area;

13 (5) through participation in appropriate
14 regional forums, coordinate, investigate, plan, prioritize and
15 negotiate with entities within and outside the state for the
16 establishment of interstate internet or other electronic data
17 transmission trunk lines;

18 (6) finance or plan, acquire, maintain and
19 operate broadband infrastructure necessary or useful for the
20 accomplishment of the purposes of its mission statement;

21 (7) pursuant to the provisions of the Eminent
22 Domain Code, exercise the power of eminent domain for acquiring
23 property or rights of way for public use if needed for
24 broadband infrastructure projects if such action does not
25 involve taking property owned by a provider of internet or

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1 other electronic data transmission services or does not
2 materially diminish service reliability of internet or other
3 electronic data transmission services within its service area,
4 as determined by the chief broadband officer;

5 (8) receive by gift, grant, donation or
6 otherwise, any sum of money, aid or assistance from the United
7 States, the state of New Mexico, any other state, any political
8 subdivision or any other public or private entity;

9 (9) for any project, provide information and
10 training to employees of the project regarding any unique
11 hazards that may be posed by the project, as well as training
12 in safe work practices and emergency procedures;

13 (10) issue bonds as necessary to undertake a
14 project;

15 (11) enter into contracts for the lease and
16 operation by the franchise of broadband infrastructure;

17 (12) enter into contracts for leasing
18 broadband infrastructure owned or operated by the franchise;

19 (13) borrow money necessary to carry out the
20 purposes of its mission statement and mortgage and pledge any
21 leases, loans or contracts executed and delivered by the
22 franchise;

23 (14) sue and be sued; and

24 (15) adopt such reasonable administrative and
25 procedural rules as may be necessary or appropriate to carry

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1 out its powers and duties.

2 SECTION 7. [NEW MATERIAL] BONDS NOT GENERAL OBLIGATIONS
3 OF FRANCHISE OR STATE.--

4 A. A franchise may issue bonds, known as "broadband
5 infrastructure revenue bonds", to finance the purchase,
6 construction or renovation of a project and shall irrevocably
7 pledge any or all pledgeable revenue to the payment of those
8 bonds and to a debt service reserve fund if one is established
9 for the bonds.

10 B. Bonds shall be payable solely from pledgeable
11 revenue and shall not constitute an indebtedness or general
12 obligation of the franchise, the state or the public agencies
13 that formed the franchise.

14 C. Prior to issuing bonds to finance the purchase,
15 construction or renovation of broadband infrastructure, a
16 franchise board shall make a determination that the project is
17 necessary and that estimated pledgeable revenue pledged to the
18 bonds is sufficient to repay the bonds.

19 SECTION 8. [NEW MATERIAL] REPORT--STATE BOARD OF FINANCE
20 APPROVAL.--

21 A. Prior to issuing bonds to finance a project, a
22 franchise board shall furnish to the state board of finance the
23 following information:

- 24 (1) a detailed description of the project;
25 (2) an explanation of the necessity for the

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1 project;

2 (3) an estimate of the total cost of the
3 project;

4 (4) an estimate of the net income from the
5 project and other revenues that will be pledged to pay for the
6 project; and

7 (5) an estimate of the yearly operating cost
8 of the project.

9 B. A franchise board shall obtain written approval
10 of the state board of finance before it issues bonds to finance
11 a project.

12 C. Prior to giving written approval to a project,
13 the state board of finance shall determine that the project is
14 necessary and that estimated pledgeable revenue pledged to the
15 bonds is sufficient to repay the bonds.

16 SECTION 9. [NEW MATERIAL] RECORDS--RESTRICTION ON USE OF
17 INCOME.--

18 A. A franchise shall retain complete and accurate
19 records of:

20 (1) the net income from the project; and

21 (2) the operating costs of the project.

22 B. Pledgeable revenue that is pledged to the
23 repayment of bonds shall first be used to pay the principal,
24 interest and service charges on the bonds issued and to fund a
25 debt service reserve fund, if applicable.

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1 SECTION 10. [NEW MATERIAL] BONDS--PLEDGE OF INCOME.--

2 A. Bonds shall be payable solely from any or all
3 pledgeable revenue, and the franchise board shall irrevocably
4 pledge that revenue to the prompt payment of the principal,
5 interest and service charges on the bonds. The bonds shall be
6 equally and ratably secured, without priority, by this pledge
7 of pledgeable revenue.

8 B. If the bonds are payable solely from the net
9 income of the project being financed, the franchise board shall
10 operate the project so as to ensure a sufficient income to
11 promptly pay the principal, interest and service charges as
12 they become due on the bonds.

13 C. The state pledges and agrees with the holders of
14 bonds issued by a franchise and payable from pledgeable revenue
15 that the state shall not limit or alter the rights of the
16 franchise board to receive, collect and account for pledgeable
17 revenue and to fulfill the terms of any agreement made with the
18 bondholders or in any way impair the rights and remedies of the
19 bondholders until the bonds, together with the interest on the
20 bonds, with interest on any unpaid installments of interest and
21 all costs and expenses in connection with any action or
22 proceedings by or on behalf of those bondholders, are fully
23 paid and discharged.

24 SECTION 11. [NEW MATERIAL] PROCEEDS OF BOND SALES--DEBT
25 SERVICE FUND--RESERVE FUND.--

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1 A. Proceeds from the sale of bonds shall be
2 deposited into a separate account to be used solely for the
3 specific purposes for which the bonds were issued, including a
4 debt service reserve fund. All costs incident to issuing and
5 selling the bonds may be paid out of the proceeds of the bonds.

6 B. The franchise board shall establish a "debt
7 service fund" to be used solely for the payment of principal,
8 interest and service charges on the bonds. Sufficient amounts
9 from the pledgeable revenue shall be deposited in the debt
10 service fund at least annually so that timely payments of
11 principal, interest and service charges may be made. All
12 proceeds remaining after completion of the project shall be
13 deposited into the debt service fund.

14 C. The franchise board may establish a "debt
15 service reserve fund" to be used to pay bond payments in case
16 the pledgeable revenue is insufficient.

17 SECTION 12. [NEW MATERIAL] BONDS--FORM--REQUIREMENTS.--
18 All bonds issued pursuant to the Regional Broadband Franchise
19 Act shall:

20 A. be fully negotiable within the provisions of the
21 Uniform Commercial Code;

22 B. have a duration of time not to exceed forty
23 years from their date of issuance;

24 C. have interest, appreciated principal value or
25 any part thereof payable at intervals or at maturity as

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1 determined by a franchise board;

2 D. be sold at a price that does not result in a net
3 effective interest rate in excess of twelve percent per year
4 unless a higher rate of interest is approved by the state board
5 of finance pursuant to the Public Securities Act;

6 E. have a principal maturity schedule as determined
7 by the franchise board; and

8 F. be sold at public or private sale at, above or
9 below par.

10 SECTION 13. [NEW MATERIAL] REFUNDING BONDS.--

11 A. A franchise board may issue refunding bonds to
12 refund outstanding bonds.

13 B. Except as otherwise provided in the Regional
14 Broadband Franchise Act, refunding bonds shall conform to the
15 provisions of that act that provide for the issuance of
16 broadband infrastructure revenue bonds by a franchise board.

17 C. A refunding bond issued by a franchise board may
18 have the same security or source of payment as was pledged for
19 the payment of the bond being refunded, but no source of
20 payment shall be pledged that is not authorized by the Regional
21 Broadband Franchise Act.

22 D. A refunding bond may be delivered in exchange
23 for a bond authorized to be refunded, sold at a public or
24 private sale or sold in part and exchanged in part as provided
25 in the Supplemental Public Securities Act. If the refunding

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1 bond is sold, the proceeds shall be immediately applied to the
2 retirement of the bond to be refunded or the proceeds shall be
3 placed in trust to be held and applied to payment of the bonds
4 to be refunded.

5 SECTION 14. [NEW MATERIAL] REFUNDING BONDS--ISSUANCE--
6 SALE--PROCEEDS.--

7 A. A bond shall not be refunded unless the bond
8 matures or is callable for prior redemption under its terms
9 within fifteen years from the date of issuance of the refunding
10 bond or unless the holder of the bond voluntarily surrenders it
11 for exchange or payment.

12 B. Outstanding bonds of more than one issue may be
13 refunded by refunding bonds of one or more issues. Bonds and
14 refunding bonds may be issued separately or in combinations of
15 one or more series.

16 C. When a refunding bond is sold, the net proceeds
17 may, in the discretion of the franchise board, be invested in
18 obligations of the federal government or an agency of the
19 federal government or in obligations fully guaranteed by the
20 federal government, but the obligations purchased shall have a
21 maturity and bear a rate of interest payable at times to ensure
22 the existence of sufficient money to pay the bond to be
23 refunded when it becomes due or redeemable pursuant to a call
24 for redemption, together with interest and redemption premiums,
25 if any.

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1 D. All obligations purchased with the net proceeds
2 from refunding bonds shall be deposited in trust with a bank
3 that has trust powers and that is a member of the federal
4 deposit insurance corporation. The obligations shall be held
5 and liquidated, and the proceeds of the liquidation shall be
6 paid out for payment of the principal, interest and redemption
7 premium of the bonds to be refunded as the bonds to be refunded
8 become due or where the bonds are subject to redemption under a
9 call for redemption previously made or where there is a
10 voluntary surrender with the approval of the franchise board.

11 E. The determination of the franchise board issuing
12 refunding bonds that the issuance has been in compliance with
13 the Regional Broadband Franchise Act is conclusively presumed
14 correct in the absence of fraud or arbitrary and gross abuse of
15 discretion.

16 F. As used in this section, "net proceeds" means
17 the gross proceeds of the refunding bonds after deducting all
18 accrued interest and expenses incurred in connection with the
19 authorization and issuance of the refunding bonds and the
20 refunding of outstanding bonds, including fiscal agent fees,
21 commissions and all discounts incurred in the resale of the
22 refunding bonds to the original purchaser.

23 SECTION 15. [NEW MATERIAL] TAX EXEMPTION--NO CHARGE
24 AGAINST STATE.--Bonds are exempt from taxation by the state or
25 any of its political subdivisions. No obligation created

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1 pursuant to the Regional Broadband Franchise Act shall be a
2 charge against or a debt of the state or any of its political
3 subdivisions.

4 SECTION 16. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2021.

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