

1 SENATE BILL 97

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

3 INTRODUCED BY

4 Michael Padilla and Christine Chandler

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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.

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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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