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FISCAL IMPACT REPORT

SPONSOR <u>HRDLC</u>	LAST UPDATED <u>02/09/23</u>
SHORT TITLE <u>Broadband Infrastructure</u>	ORIGINAL DATE <u>02/06/23</u>
	BILL NUMBER <u>CS/House Bill 160/HRDLC</u>
	ANALYST <u>Hitzman</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
Indeterminate	Indeterminate	Indeterminate	Recurring	Land Maintenance Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	See Fiscal Implications		
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Is a companion to SB97

Sources of Information

LFC Files

Responses Received From

Department of Information Technology (DoIT)

Public Regulation Commission (PRC)

Department of Transportation (NMDOT)

State Land Office (SLO)

SUMMARY

Synopsis of HRDLC Substitute for House Bill 160

The House Rural Development, Land Grants and Cultural Affairs Committee substitute for House Bill 160 (HB160) amends Section 67-3-12 NMSA 1978 to authorize the State Transportation Commission to prescribe conditions for the installation of fiber cable lines, conduit, poles,

wireless technology, and other infrastructure used for broadband internet services along, across, over, or under public highways or other property under the jurisdiction of the Department of Transportation (NMDOT).

The bill also gives the State Transportation Commission discretion to waive fees for installation, of infrastructure that is to be used to provide broadband internet services to unserved or underserved locations as defined in the Connect New Mexico Act. The Connect New Mexico Act defines “unserved” locations as areas or properties that do not receive fixed, terrestrial internet access which meet federal standards for minimum transmission speeds and defines “underserved” locations as areas or properties that do not receive internet quality of service access.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. The Department of Transportation (NMDOT) notes it cannot assess the fiscal impact related to implementation at this time. The agency notes “NMDOT anticipates a large increase in the number of ROW (right of way) use applications from private entities desiring to use public ROW for broadband deployment, but it would be speculative for NMDOT to estimate the fiscal impact of the additional applications or possible fee waivers at this time.” Therefore, the cost is scored as indeterminate but minimal given an anticipated but unknown increase in applications.

Additional implications are difficult to determine for NMDOT given that this is dependent on how frequently those agencies exercise the discretion to waive fees or leasing costs

SIGNIFICANT ISSUES

According to NMDOT:

[The bill] allows for a significant change in the way the agency manages the public ROW, by permissibly allowing NMDOT to waive ROW use fees, in compliance with the newly created Constitutional exception to the anti-donation clause. N.M. Const., Article IX, Section 14, paragraph (H), as amended November 8, 2022. Previously NMDOT was constitutionally prohibited from allowing private businesses to use public ROW for less than fair market value.

[The bill] will allow NMDOT to maintain its managerial role over state road and highway public ROW, with additional statutory authority to collaboratively provide private businesses access to the public ROW for broadband deployment. NMDOT is engaged in rulemaking to manage the private use of public ROW and is well positioned to include the rulemaking required to implement. NMDOT ROW Utility Accommodation Rule, 17.4.2 NMAC. NMDOT anticipates rule adoption by the State Transportation Commission in summer 2023.

In addition to NMDOT, the Office of Broadband Access and Expansion (OBAE), administratively attached to the Department of Information Technology (DoIT), is tasked with ensuring internet access statewide. The Connect New Mexico Act was enacted 2021 through the passage of HB10, which provided for the creation of the Connect New Mexico Council (CNMC)

to coordinate state broadband programs with the cooperation of the DoIT and newly created OBAE, also created in 2021 through the passage of SB93.

According to OBAE, the office carries out this mission by identifying and addressing areas within the state for which communities and individuals are unserved or underserved. CNMC and OBAE are responsible for statewide mapping, statewide broadband planning including updating the statewide broadband plan, and various statewide broadband programs including administering substantial federal grants. To serve these communities and individuals, OBAE identifies and manages the provision of financial and other resources and acts as a liaison for the installation of fiber or other types of infrastructure. Providers must be granted rights of way across various jurisdictions, which can be a cumbersome, time-consuming, and expensive undertaking. The amendments provided in this bill would potentially apply to all of those broadband grants and projects.

The Public Regulation Commission, who provides broadband funding through the State Rural Universal Service Fund (SRUSF), provides the following:

Definitions of “unserved” areas and “underserved” are provided in the Connect New Mexico Act. Unserved areas are defined as an area or property where internet access does not meet the Federal Communications Commission’s baseline standard (currently 25Mbps download/3Mbps upload speeds). Underserved areas are areas or properties that do not receive “quality of internet access”, which can lend itself to liberal interpretation. The buildout requirements for most if not all of the broadband projects CNMC and OBAE will be overseeing are required to meet 100Mbps upload/20 Mbps download requirements, with the potential to scale to 100/100 Mbps.

The current SRUSF rule definition for unserved area is an area where fifty percent of the households lack access to fixed or wireless broadband service of at least 10/1 Mbps and an underserved area is an area where fifty percent of the households lack access to fixed or wireless broadband service of at least 25/3 Mbps. The Commission has an open rulemaking in Case No. 21-00258-UT to implement the statutory changes from the passage of HB10, SB93, and SB204. The comment cycle is complete, but a final rule has not been issued. The current definition of unserved and underserved areas in the current SRUSF rule are not as expansive as those provided for in the Connect New Mexico Act, and therefore the areas included in any SRUSF broadband program awards would be encompassed in the broader definitions for unserved and underserved areas in the Connect New Mexico Act.

Since the Connect New Mexico Council per the new language added to NMSA § 63-9H-6(O) is to work with the Commission in reviewing SRUSF broadband program applications for prioritization and alignment with the statewide broadband plan, which is still being developed by OBAE, SRUSF broadband projects may be subject to the proposed provisions of this bill. The incidental effect may be that SRUSF broadband project awards would qualify for the granting of easements or rights of way or waiver of fees or leasing costs by the Commissioner of Public Lands or State Transportation Commission for those projects. That in turn would reduce the time for or costs of the buildout of those projects. Currently, there is a three-year timeline upon approval by the NMPRC for the completion of a broadband program project under the SRUSF rule (NMAC 17.11.10.31.(H)(1)).

According to the PRC, the SRUSF has funded approximately \$5 million to \$14 million per year on broadband projects over the last five years. The Connect New Mexico Act (HB10, 2021) raised the funding floor for SRUSF broadband program project funding to a minimum of \$8 million per year.

PERFORMANCE IMPLICATIONS

The PRC notes any relief granted to a SRUSF Broadband Program Project after NMPRC approval as a result of the passage of the bill could result in a faster buildout time or reduced costs for the completion of the project. However, it is unclear the number of projects that would be granted relief, nor the total estimated budgetary or schedule impact on those projects.

Implementation of the bill requires NMDOT to set regulations for the use of NMDOT ROW by broadband internet applicants. NMDOT reports a likely need to increase its personnel to process, review, and manage the anticipated increase in ROW use applications for broadband infrastructure projects. However, the agency did not provide additional estimates of needed personnel, but the agency's average FTE cost in September 2022 totaled \$83 thousand, so any additional FTE would result in an increased recurring cost to the general fund of around \$83 thousand per FTE annually.

NMDOT is also creating an electronic ROW use permit system, anticipated to go-live by the end of FY23, and the department notes the bill will require minor changes to that system but is not expected to have significant performance implications on that project.

ADMINISTRATIVE IMPLICATIONS

Both the PRC and OBAE note there will not be additional administrative costs or capacity needed to implement provisions of the bill. The PRC notes the commission already reports on the progress of SRUSF broadband project buildout at the mid-point of and end of project completion, where cost and buildout information is provided at that time of the submission of the project report, and any granting of easements and cost information would be included in those reports.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

A companion bill Senate Bill 97, was introduced in the Senate, with minor changes to the way in which broadband infrastructure is described in Section 1. A. Both bills arise from the amendment to the anti-donation clause of the State Constitution, Article IX, Section 14, new exception paragraph (H), passed by the state's voters in November 2022.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to NMDOT, "conflicts will continue to arise between private entities and NMDOT regarding whether NMDOT may waive ROW use fees and administrative review fees."