

LFC Requester:	Julisa Rodriguez
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/18/2024
Bill No: SB43

Sponsor: Padilla
Short Title: Utility Easements for Broadband

Agency Name and Code PRC-430
Number: _____
Person Writing Mike Ripperger
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Indirectly relates to SB 45.
 Duplicates/Relates to Appropriation in the General Appropriation Act N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

This bill enacts four new sections (1, 2, 3, and 4) of the Public Utility Act (NMSA § 62) with the overall aim to provide that permissible uses of public utility easements may include communications services by public utilities and third parties.

(New section 1) Sets forth the name of this proposed legislation as the “Utility Easements for Broadband Act”.

(New Section 2) Provides definitions for the proposed legislation. **Definitions** are created for “burdened parcel”, “communications infrastructure”, “communications service”, “public utility”, and “utility easement”.

A burdened parcel is a parcel of land subject to utility easement but not under control of the commissioner of public lands. Communications infrastructure and service are broadly defined and would include telecommunications and broadband facilities. A public utility is the same as defined in the Public Utility Act, and would include gas, water, wastewater, electric IOUs and cooperatives, but would exclude municipally owned utilities.

(New section 3) A. For a burdened parcel that *does not already* provide for the installation, maintenance, removal or use of communications infrastructure, it allows the utility to 1) develop, maintain, operate or upgrade **its** communications infrastructure or allow a third party to do the same **on its behalf** in a utility easement, or to 3) access, 2) lease, license and provide a right of transfer of its communications infrastructure in a utility easement. B. A utilities’ rights in A. for locating utilities underground are subject ordinances regarding subdivision plats (B.1) and zoning authority (B.2). C. The rights under Subsection A. inure to successors in interest in the land subject to the easement.

(New section 4) A, The rights of access in Section 4, subsection A are subject to the public utilities’ power of eminent domain (NMSA § 62-1-4). B. It would also not dedicate a utility easement for public or “compatible use”. C. The bill does not provide retroactive rights or access for a utility to a communications service provider or impose any obligations or restrictions on the terms and conditions by which a utility my contract with a communications provider for communications infrastructure in a utility easement. D. It also

does not provide for an obligation to provide communications services but allows them to do so under laws applicable to other communications providers.

FISCAL IMPLICATIONS

None to the NMPRC.

SIGNIFICANT ISSUES

If not explicitly provided for in statute previously, the statutory changes in this bill allow for a public utility as defined in the Public Utility Act to deploy, maintain, or upgrade communications infrastructure in its own right of way, or to contract with a third party to do so to provide communications services on its own or enter into contracts with other communications providers to do the same on that burdened parcel. It does not appear to provide any obligation to provide access to a burdened parcel to other utilities or communications providers.

The subject of other communications providers or utilities access to utility poles, ducts, conduits and rights-of-way is subject to federal regulation under 47 U.S.C. § 224. Related bill SB 54, among other things, will provide for state regulation of those jurisdictional entities not subject to federal regulation by the Federal Communications Commission (“FCC”) under that statute to include electric and telephone cooperatives, municipalities, and state-owned facilities.

It is not clear in the language provided for in subsection 3.A why the criteria in this subsection would apply to a burdened parcel that “does not already” provide for the installation, maintenance, removal or use of communications infrastructure, when it can simply apply to any burdened parcel as defined in this bill. It also implies that those burdened parcels where improvements to the parcel have been made by a utility as defined in this bill may be subject to the rights contained in the bill, but not to those burdened parcels where such communications improvements were implemented prior to the passage of the bill. If this is not the objective of the bill, then removal or clarification of that language may be appropriate.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

Public utilities that enter into non-utility business such as communications and broadband will continue to be required to file a general diversification plan and ensure there is no cross-subsidization between the regulated utility and unregulated division, subsidiary, or affiliated company as required by the Public Utility Act. Furthermore, public utilities that wish to enter the telecommunications business may need to seek additional regulatory approvals where appropriate, for example, designation as an Eligible Telecommunications Carrier (“ETC”).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 45. See above.

TECHNICAL ISSUES

This bill makes it clear that a public utility may provide communications service subject to law and rules applicable to other communications service providers. If a public utility provides wholesale and/or retail communications services to customers in the State of New Mexico, it is a

general requirement that business not directly related to its provision of service as a utility under the PUA file a general diversification plan to show there will be no cross subsidization between the regulated utility and the division, affiliate or subsidiary of the utility offering the non-utility related service. Subject to such Commission approval, there is nothing limiting a public utility under the PUA from offering such services to wholesale or retail customers at the current time.

OTHER SUBSTANTIVE ISSUES

There is a substantial push to deploy broadband facilities throughout the state of New Mexico, including up to \$1 billion in broadband deployment overseen by the Office of Broadband Access and Expansion (OBAAE): [CONNECT NEW MEXICO - Home \(nm.gov\)](http://connectnewmexico.com) over the next several years. Access to broadband rights-of-way and broadband resources in the future will be instrumental in helping with the deployment of broadband projects which will reach the more remote portions of the state.

Utilities have various communications and controls systems that are used to run utility operations. Electric utilities in particular have extensive fiber networks used for this purpose, sometimes with excess fiber capacity and extensive rights-of-way available. Where the rights of a utility are more expressly defined in their use, deployment, or permission of use for communications facilities on a utilities right-of-way, this bill may assist with that and possibly enable easier access to and use of communications facilities to assist in broadband buildout throughout the state.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. A Utility regulated under the current PUA will continue to manage its communications facilities in its right-of-way and easements according to the current PUA statutory construction and current federal law without the legal prescriptions included in this bill.

AMENDMENTS

Strike “that does not already provide for or permit” and replace with “regarding”.