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SENATE BILL 43

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

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; 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  
enacted to read:

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

A. "burdened parcel" means a parcel of real

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1 property subject to a utility easement other than lands under  
2 the custody and control of the commissioner of public lands;

3 B. "communications infrastructure" means any  
4 wireline or wireless facilities and equipment, including  
5 amplifiers, antennae, cable, conduits, ducts, fiber,  
6 optronics, poles, structures, towers, transmitters, wires or  
7 other facilities or equipment owned by a public utility and  
8 used in connection with the provision of communications  
9 service;

10 C. "communications service" means any technology  
11 having the capacity to transmit data or other signals to enable  
12 a user of the service to originate and receive graphics, data,  
13 video, voice or other modes of communication;

14 D. "public utility" means "public utility" as  
15 defined in the Public Utility Act; and

16 E. "utility easement" means a franchise, easement,  
17 whether recorded or unrecorded, license, permit, right of way  
18 or similar right in real property, including a prescriptive  
19 right or any right of way acquired pursuant to Chapter 62,  
20 Article 1 NMSA 1978 held by a public utility."

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

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

24 A. For a burdened parcel with a utility easement  
25 that does not already provide for or permit the installation,

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1 maintenance, removal or use of communications infrastructure, a  
2 public utility may:

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

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

11 (3) enter and access the burdened parcel for  
12 the purposes or actions as may be reasonably necessary or  
13 desirable in connection with actions pursuant to this  
14 subsection.

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

19 (1) an ordinance regarding subdivision plats  
20 pursuant to Chapter 3, Articles 19 and 20 NMSA 1978, or Chapter  
21 47, Articles 5 and 6 NMSA 1978, as applicable; or

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

24 C. Upon a public utility's exercise of rights under  
25 Subsection A of this section, such rights run with the land and

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1 are valid and binding on successors-in-interest of the owner  
2 and any holder of an interest in the burdened parcel regardless  
3 of a lack of privity of estate or contract."

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

6 "[NEW MATERIAL] OTHER PROVISIONS REGARDING UTILITY  
7 EASEMENTS.--

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

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

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

24 D. Nothing in the Utility Easements for Broadband  
25 Act shall be deemed to obligate a public utility to provide any

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1 communications service to any person, but a public utility may  
2 provide communications service subject to such laws and rules  
3 as may be generally applicable to other communications service  
4 providers."

5 SECTION 5. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2024.

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