

Bullet Points:

1. In order to empower the NMDOT to receive a fee for the use of its state highway rights of way, existing statues would need to be amended.

2. Modification of State Transportation and NMDOT powers.

NMSA 1978 § 67-3-12. Powers and duties.-- **(pertinent part)**

“In addition to the powers now conferred upon it by law, the state transportation commission:

C. shall prescribe by rule the conditions under which pipelines, telephone, telegraph and electric transmission lines and ditches may be placed along, across, over or under public highways in this state and shall forcibly remove or cause to be removed pipelines, telephone, telegraph or electric transmission lines or ditches that may be placed along, across, over or under such public highways in violation of such rules and regulations;” (This provision should be modernized.)

3. Modification of Legislative Policy.

NMSA 1978 § 67-8-15. Declaration of policy. **(This statement of policy should probably be revised to reflect any change of the power of the State Transportation Commission (NMDOT) which would allow charging of a fee and that the obligation to relocate should not be affected by such change.)**

A. The construction of modern highways is necessary to promote public safety, facilitate the movement of present-day motor traffic, both interstate and intrastate in character, and to promote the national defense, and in the construction of such highways it is also in the public interest to provide for the orderly and economical relocation of utilities when made necessary by such highway improvements, including extensions thereof within urban areas, without occasioning utility service interruptions or unnecessary hazards to the health, safety and welfare of the traveling or utility consuming public.

B. Utilities have been authorized by statute for many years to locate their facilities within the boundaries of public roads and streets in this state; because utilities are subject to extensive regulation by state agencies and they are affected with the public interest in that, among other things:

(1) the business and activities of utilities involve the rendition of essential public services to large numbers of the general public, and no cessation of utility service is permitted without authority of law;

(2) the financing of utilities involves the investment of large sums of money, including capital obtained from many members of the general public;

(3) the development and extension of utilities directly affects the development, growth and expansion of the general welfare, business and industry of this state; and

(4) all persons in this state are actual or potential consumers of one or more utility services, and all consumers will be affected by the cost of relocation of their utilities as necessary to accommodate highway improvements.

Public highways are intended principally for public travel and transportation; but they are also intended for proper utility uses in serving the public, as authorized pursuant to the laws of this state, and such utility uses are for the benefit of the public served. Without making use of public ways utility lines could not reach or economically service the adjacent public, particularly in urban areas.

C. Federal-aid highways of the interstate system and other modern highway improvements serve the need of nonlocal and long distance traffic.

D. The burden of such utility relocations is a burden on the public in this state, whether initially borne by the state or the utility or in part by both, and it is, therefore, in the public interest that such burden be minimized to the extent that same can be done consistently with the principal purpose of such highways for vehicular movement of persons and property; therefore, it is the intent of the legislature to insure that the state's police power in requiring relocation of utilities shall be exercised in a reasonable manner.

E. Utility relocations necessitated by construction of public highways or improvements thereto are a public governmental function, properly a part of such construction and to the extent in this act provided such relocations shall be made at state expense; however, although made in obedience to the commission's orders in exercise of the police power under this act, relocations hereunder for which compensation is not provided by this act or otherwise by law are declared to be *damnum absque injuria* and no claim therefor shall be enforceable against the state. Utility relocations to which this act is applicable shall be made only in pursuance hereof.

F. The statements in this Section 1 are legislative determinations and declarations of public policy, and this act shall be liberally construed in conformity with its declarations and purposes to promote the public interest; however, nothing contained in this declaration of policy or otherwise, shall preclude the commission from charging a fee for the use of its public highway rights of way.

4. Modernization of definition of utility.

NMSA 1978 § 67-8-16 Definitions.—(The definition of utility should be modernized to include major electric transmission conduit and fiber optic lines. One could possibly make a distinction between typical or traditional utilities and interstate facilities which may or may not provide services to NM users.)

“As used in Sections 67-8-15 through 67-8-21 NMSA 1978:

A. “utility” means publicly, privately and cooperatively owned utilities, without distinction, for the rendition of water, electric power, sanitary sewer, storm sewer, steam, fuel gas, telephone or telegraph service through a system of pipes or wires devoted to public utility service;

B. “cost of relocation” means the entire amount paid properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility;

C. "commission" means the state transportation commission;

D. "public highway" means any state highway or other public way in this state, including extensions thereof within urban areas, constructed in whole or in part with state aid and shall include any incorporated or related physical facilities for the handling of traffic and the right of way;

E. "relocation" means any horizontal or vertical movement of utility facilities intact and any protective measures taken or, where found by the commission to be necessary, the construction of new or additional facilities, with or without contemporaneous removal and salvage of old facilities, in this state including in any case adjustment or protection of connecting off-highway utility lines to the extent necessary;

F. " federal-aid highways" means all roads constructed in whole or in part with federal aid and includes the "interstate system", the "primary system" and the "secondary system" in this state as designated by the commission; and

G. "urban area" means an area in this state including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within reasonable boundaries fixed by the commission."