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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING THAT THE STATE
TRANSPORTATION COMMISSION ASSESS AND COLLECT FEES FROM A
UTILITY THAT PLACES EQUIPMENT ALONG, ACROSS, OVER OR UNDER
PUBLIC HIGHWAYS OVER WHICH THE COMMISSION OR DEPARTMENT OF
TRANSPORTATION CONTROLS THE RIGHTS OF WAY; UPDATING UTILITY
TERMINOLOGY; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 67-3-12 NMSA 1978 (being Laws 1929,
Chapter 110, Section 1, as amended) is amended to read:

"67-3-12. POWERS AND DUTIES.--In addition to the powers
now conferred upon it by law, the state transportation
commission:

A. may declare abandoned and close to public
traffic all grade crossings of railroads by state highways in

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1 cases where grade separations or other adequate crossings are
2 substituted therefor or where such grade crossings become
3 unnecessary to the public convenience by reason of changes in
4 highway locations;

5 B. may offer and, upon compliance with the
6 conditions of such offer, pay rewards for information leading
7 to the arrest and conviction of offenders in cases of theft,
8 defacement or destruction of markers or highway signs, lights
9 or other warning devices placed upon or along highways of this
10 state under the supervision of the state transportation
11 commission and for information leading to the arrest and
12 conviction of offenders or for the return of property in case
13 of theft or unlawful damaging of property under the control of
14 the commission. All such rewards when paid shall be paid from
15 the state road fund upon voucher drawn by the secretary or
16 other authorized officer or agent of the department;

17 C. shall publish a fee schedule and charge and
18 collect fees pursuant to the fee schedule from a utility that
19 places equipment along, across, over or under public highways
20 over which the state transportation commission or department
21 controls the rights of way. The revenues from the fees
22 collected pursuant to this subsection shall be deposited into
23 the state road fund;

24 [~~G.~~] D. shall prescribe by rule the conditions
25 under which [~~pipelines, telephone, telegraph and electric~~

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1 ~~transmission lines and ditches may be placed]~~ a utility, as
2 defined in Section 67-8-16 NMSA 1978, may place equipment
3 along, across, over or under public highways in this state and
4 ~~[shall forcibly remove or cause to be removed pipelines,~~
5 ~~telephone, telegraph or electric transmission lines or ditches~~
6 ~~that may be placed along, across, over or under such public~~
7 ~~highways in violation of such rules and regulations]~~ the ways
8 in which a utility's placement of equipment along, across, over
9 or under public highways in this state would constitute a
10 violation of rules or laws and necessitate the removal of the
11 equipment;

12 ~~[D-]~~ E. shall employ an attorney to assist and
13 advise the state transportation commission and the department
14 in the discharge of their duties and to appear and represent
15 the interests of the commission or department in any case
16 before any court or tribunal in which the official duties,
17 powers, rights or privileges of the commission or department
18 may be involved or affected and to pay that attorney the
19 reasonable value of the attorney's services out of the state
20 road fund;

21 ~~[E-]~~ F. shall bring and maintain in the name of the
22 state actions and proceedings deemed necessary by the state
23 transportation commission for the condemnation of rights of way
24 for public highways or for the removal or condemnation of
25 buildings or other improvements that encroach in whole or part

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1 upon the rights of way of public highways or for the
2 condemnation of gravel pits or other deposits of materials or
3 supplies suitable for the construction of public highways.
4 The attorney general of New Mexico shall appear in and
5 prosecute all such cases on behalf of the state upon request of
6 the state transportation commission. All such proceedings
7 shall be conducted in the same manner as other cases for the
8 condemnation of real property. The damages assessed in
9 proceedings brought under the provisions of this section shall
10 be paid out of the state road fund from money furnished for
11 that purpose by cooperative agreement between the state, the
12 federal government and the county within which the condemned
13 property is situate or any such governmental bodies or out of
14 money furnished for the construction of the highway in
15 connection with which the condemnation is had, by the county in
16 which the condemned property is situate; provided, however,
17 that if no such money is available, the damages shall be
18 advanced on behalf of said counties out of their money in the
19 state road fund and the state treasurer shall thereafter
20 reimburse the state road fund for the money advanced out of the
21 next installment of money from motor vehicle license fees
22 accruing to the road fund of the county for which such funds
23 were so advanced;

24 ~~[F-]~~ G. shall designate in its discretion one of
25 its employees as acting secretary to act at all times when the

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1 secretary is absent from the state capital. The acting
2 secretary, when designated, has the right and is hereby given
3 authority at all times when the secretary is absent from the
4 state capital to sign all federal project statements, federal
5 project agreements and federal vouchers with the same force and
6 effect as if signed by the secretary in person, and the
7 certificate of the acting secretary attached to any federal
8 project statement, federal project agreement or federal voucher
9 to the effect that the secretary was absent from the state
10 capital at the time that the same was so signed by the acting
11 secretary shall be conclusive evidence of the truth of such
12 fact. The acting secretary may also be vested by the state
13 transportation commission with power and authority to act for
14 the secretary in such other matters as the state transportation
15 commission may determine;

16 ~~[G-]~~ H. subject to the provisions of Subsection [H]
17 I of this section, may conduct, permit or authorize commercial
18 enterprises or activities on department- or commission-owned
19 land or land leased to or from the department for the purpose
20 of providing goods and services to the users of the property or
21 facilities on the land, including commercial enterprises or
22 activities, other than commercial enterprises or activities on
23 a controlled-access facility conducted, permitted or authorized
24 pursuant to Section 67-11-9 NMSA 1978. In furtherance of these
25 commercial enterprises or activities, the commission may:

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1 (1) authorize the lease of department- or
2 commission-owned land as it deems necessary, in which case
3 consideration for the lease shall be payments in cash or cash
4 equivalent that shall be deposited into the state road fund; or

5 (2) authorize the sale or exchange or lease
6 with in-lieu value consideration of department- or commission-
7 owned land; provided that the sale or exchange or lease with
8 in-lieu value shall be subject to the ratification and approval
9 by joint resolution of the state legislature prior to the sale
10 or exchange or lease with in-lieu value becoming effective; and

11 [~~H.~~] I. for the purposes of Subsection [~~G~~] H of
12 this section shall:

13 (1) adopt rules necessary to carry out the
14 provisions of Subsection [~~G~~] H of this section;

15 (2) prior to initiating any action to conduct,
16 permit or authorize commercial enterprises or activities, adopt
17 a rule providing a procedure to involve residents of the
18 municipality or county in which the commercial enterprises or
19 activities are proposed to occur in the department's planning
20 and decision-making process for the sole purpose of advising
21 the commission and department on the feasibility and
22 suitability of the proposed commercial enterprises or
23 activities;

24 (3) comply with the Procurement Code in the
25 acquisition process whenever commercial enterprises or

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1 activities result in the commission or department acquiring
2 construction, services or tangible personal property, as those
3 terms are defined in the Procurement Code;

4 (4) if the commercial enterprises or
5 activities are to be developed or operated by a private entity,
6 direct that private entity to:

7 (a) create its plans to be not
8 necessarily in compliance but generally compatible with local
9 zoning and land use policies, including affordable housing and
10 historic and architectural standards, if any, and, to the
11 extent the private entity will obtain water or other services
12 from a local authority, negotiate an agreement between relevant
13 parties for those services, the terms and conditions of which
14 shall be no more stringent than the local authority's then
15 current laws, rules and policies; and

16 (b) submit its plans to the local zoning
17 and land use authority for comment. The local authority shall
18 communicate its recommendations and comments in writing to the
19 department and private entity within thirty days of receiving
20 the plans. The department, commission and private entity shall
21 take no action on the project in reliance on those plans until
22 they have received the local authority's recommendations and
23 comments or until the thirty-day comment period has expired,
24 whichever comes first; provided that the local authority's
25 approval is not required under this section, and this section

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1 does not delegate to the local authority power that it does not
2 otherwise have; and

3 (5) not use the power of eminent domain to
4 acquire land to be developed or operated by a private entity."

5 SECTION 2. Section 67-8-15 NMSA 1978 (being Laws 1959,
6 Chapter 310, Section 1) is amended to read:

7 "67-8-15. DECLARATION OF POLICY.--

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

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

24 (1) the business and activities of utilities
25 involve the rendition of essential public services to large

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1 numbers of the general public, and no cessation of utility
2 service is permitted without authority of law;

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

6 (3) the development and extension of utilities
7 directly [~~affects~~] affect the development, growth and expansion
8 of the general welfare, business and industry of this state;
9 and

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

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

22 C. Federal-aid highways of the interstate system
23 and other modern highway improvements serve the need of non-
24 local and long-distance traffic.

25 D. The burden of such utility relocations is a

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1 burden on the public in this state whether initially borne by
2 the state or the utility or in part by both, and it is,
3 therefore, in the public interest that such burden be minimized
4 to the extent that [~~same~~] it can be done consistently with the
5 principal purpose of such highways for vehicular movement of
6 persons and property. Therefore, it is the intent of the
7 legislature to insure that the state's police power in
8 requiring relocation of utilities shall be exercised in a
9 reasonable manner.

10 E. Utility relocations necessitated by construction
11 of public highways or improvements thereto are a public
12 governmental function, properly a part of such construction,
13 and to the extent [~~in this Act~~] provided in Sections 67-8-15
14 through 67-8-21 NMSA 1978, such relocations shall be made at
15 state expense. However, although made in obedience to the
16 commission's orders in exercise of the police power under [~~this~~
17 ~~act~~] Sections 67-8-15 through 67-8-21 NMSA 1978, relocations
18 hereunder for which compensation is not provided by [~~this act~~]
19 Sections 67-8-15 through 67-8-21 NMSA 1978 or otherwise by law
20 are declared to be damnum absque injuria, and no claim therefor
21 shall be enforceable against the state. Utility relocations to
22 which [~~this act is~~] Sections 67-8-15 through 67-8-21 NMSA 1978
23 are applicable shall be made only in pursuance hereof.

24 F. The statements in this section [~~±~~] are
25 legislative determinations and declarations of public policy,

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1 and [~~this act~~] Sections 67-8-15 through 67-8-21 NMSA 1978 shall
2 be liberally construed in conformity with [~~its~~] their
3 declarations and purposes to promote the public interest;
4 provided, however, that nothing contained in this section or
5 other law shall preclude the commission from charging and
6 collecting fees from a utility that places equipment along,
7 across, over or under public highways over which the commission
8 or department controls the rights of way."

9 SECTION 3. Section 67-8-16 NMSA 1978 (being Laws 1959,
10 Chapter 310, Section 2, as amended) is amended to read:

11 "67-8-16. DEFINITIONS.--As used in Sections 67-8-15
12 through 67-8-21 NMSA 1978:

13 A. "utility" means publicly, privately and
14 cooperatively owned utilities, without distinction, for the
15 rendition of water; electric power; transmission of
16 electricity; sanitary sewer, storm sewer, sanitary sewage
17 collection, steam, fuel gas and natural gas systems;
18 communication systems, including telephone [~~or~~], telegraph
19 [~~service~~], cell phone, television, internet and other
20 communication technologies; and other services delivered
21 through a system of pipes [~~or~~], wires, cables, microwaves,
22 fiber optics or other means of transmission, devoted to public
23 utility service. The term "utility" does not include utility
24 systems devoted solely to private use or utility systems whose
25 product is not for sale or use by the public;

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

5 C. "commission" means the state transportation
6 commission;

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

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

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

25 G. "urban area" means an area in this state,

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1 including and adjacent to a municipality or other urban place
2 having a population of five thousand or more, as determined by
3 the latest available federal census, within reasonable
4 boundaries fixed by the commission."

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