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FISCAL IMPACT REPORT

SPONSOR Munoz ORIGINAL DATE 2/18/19
 LAST UPDATED _____ HB _____

SHORT TITLE Utility Eminent Domain Rights of Way SB 376

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

SB 376 amends 62-1-4 NMSA 1978 by

- (1) Changing the term “right-of-way” to “right of way”;
- (2) Changing the word “electric” to “electrical,” in reference to the national electrical safety code (“NESC”);
- (3) Dispensing with the requirement for a public utility seeking a right-of-way width greater than 100 feet, in the absence of agreement by the parties to the aforesaid right of way width, to seek commission approval for the same pursuant to NMSA 1978, Section 62-9-3.2;
- (4) Requiring that right-of-way widths greater than one hundred feet “shall be agreed to by the parties”; and
- (5) Providing for the repeal of 62-9-3.2 NMSA 1978.

FISCAL IMPLICATIONS

The following was provided by the Public Regulation Commission:

“It is estimated that if SB376 was passed it may carry modest but positive fiscal implications for the PRC. To the extent that the proposed repeal of NMSA 1978 62-9-3.2 was ratified and enacted by the Legislature, expenditure of NMPRC resources in the consideration, review, litigation, and determination of requests for right-of-way width determinations by regulated investor owned utilities (“IOUs”) and other entities pursuant to Section 62-9-3.2 would no longer be necessary.”

SIGNIFICANT ISSUES

The bill’s proposed amendments to 62-1-4 NMSA 1978 include a measure that would entirely repeal 62-9-3.2 NMSA 1978 from the Public Utility Act. However, it is worth noting that Section 62-9-3.2 applies to more than just regulated IOUs. The provisions of 62-9-3.2 are framed in more expansive terms, which provide that

“no person shall begin the construction of any transmission line requiring a width of greater than one hundred feet without first obtaining from the commission a determination of the necessary right-of-way width to construct and maintain the transmission line.”

62-9-3.2(A) NMSA 1978 (emphasis added)

The language of Section 62-9-3.2 makes the statute applicable to more than just IOUs. The statute is applicable and has been applied to any “person” who would build a transmission line requiring a right-of-way width greater than one hundred feet, including, for example, non-IOU or merchant entities such as SunZia and Pattern Energy.¹

Therefore, if Section 62-9-3.2 is repealed as intended by SB376, there will be no regulatory oversight by the NMPRC of IOUs or anyone else who would propose to build a transmission line or transmission lines allegedly requiring right-of-way widths in excess of 100 feet.

This means that there will be no regulatory review or determination by the PRC of whether any proposed right-of-way width in excess of 100 feet is actually necessary for the construction and maintenance of any given transmission line - including whether the proposed transmission line configuration and associated right-of-way width would actually be in conformance with applicable NESC standards. In other words, the PRC would no longer be in the position of reviewing and vetting the alleged engineering justifications for right-of-way widths in excess of one hundred feet, whether they are proposed and requested by IOUs or anyone else.

ADMINISTRATIVE IMPLICATIONS

Simply put, SB376 would eliminate regulatory oversight by the NMPRC regarding requests by

¹ See *In the Matter of SunZia Transmission, LLC’s Application for: (1) Approval of the Location of Two 500 KV Transmission Lines in Lincoln, Socorro, Sierra, Luna, Grant, Torrance and Hidalgo Counties; and (2) Determination that Right of Way Width Greater than 100 Feet is Necessary*, NMPRC Case No. 18-00049-UT; and *In the Matter of Corona Wind Companies’ Joint Application for the Location of the Corona Wind Projects and the Corona Gen-Tie System in Lincoln, Torrance, and Guadalupe Counties Pursuant to the Public Utility Act, NMSA 1978, § 62-9-3*, NMPRC Case No. 18-00065-UT.

IOUs and other entities for right-of-way widths in excess of 100 feet.

ALTERNATIVES

To the extent that the intended purpose of SB376 is to alleviate landowner concerns regarding proposed right-of-way widths in excess of 100 feet, remedies for such concerns already exist in , 62-9-3.2 NMSA 1978 (which requires notice to affected landowners, a public hearing, and an opportunity to contest the proposed right-of-way width) and the Eminent Domain Code, Sections 42A-1-1 through 42A-1-33 (which provides procedure and a forum regarding the nature and amount of land that an IOU would condemn, including measures for determining and if need be, adjudicating the value of such land).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The legal status quo will remain intact. See “Alternatives” section, above. Furthermore, PRC will retain regulatory oversight regarding requests by IOUs and non-IOUs for right-of-way widths in excess of 100 feet.

JM/al