

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

SECTION I: GENERAL INFORMATION

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

<i>Check all that apply:</i>				Date Prepared:	1/19/24
Original	x	Amendment		Bill No:	SB 43
Correction		Substitute			

Sponsor:	Sen. Michael Padilla	Agency Name and Code Number:	305 – New Mexico Department of Justice
Short Title:	UTILITY EASEMENTS FOR BROADBAND	Person Writing Analysis:	AAG, Gideon Elliot
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

The Utility Easement for Broadband Act would add a new Section to NMSA 1978 Chapter 62 – Electric, Gas and Water Utilities, to allow a public utility, as defined in the Public Utilities Act, to deploy communications infrastructure on private property that have an existing utility easement, but which does not provide for or permit the installation of communication infrastructure. The Bill would a public utility to use its authority to exercise eminent domain, pursuant to §62-1-4, to:

- (1) install communication infrastructure across, in, on, over or under the portion of the property subject to the easement, and to permit a third to do the same on its behalf;
- (2) lease, license, or provide a right of transfer of its communication infrastructure to a third party; and
- (3) enter and access the burdened parcel for such purposes.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

It’s unclear which, if any, utilities may be exempt from the provisions of the Bill. Section 2(D) defines a “public utility” to “mean a public utility as defined in the Public Utility Act. “Public Utility” is defined in § 62-3-3(E) and (G) of the Public Utility Act and includes Investor-Owned Utilities and Rural Electric Cooperatives subject that are subject to the jurisdiction of the Public Regulation Commission, while it only applies to those municipal utilities that have voluntarily elected to come within the jurisdiction of the Commission.

It's unclear if the intent of the Bill is to eliminate the need for a Public Utility to negotiate with a property owner, and presumably provide additional consideration for any amendment to an existing easement, to extend its use to include telecommunication infrastructure. Section 4(A) allows a public utility to use the power of eminent domain pursuant to NMSA 1978 § 62-1-4. According to the Office of Broadband Access and Expansion (“OBAE”) Three Year Broadband

Plan, 2024 Update, OBAE states that the context for the legislation is that:

Currently, holders of easements in New Mexico are not required to allow broadband infrastructure to be added to the easement like other utilities; broadband service providers must negotiate for their own easements under the current framework. By authorizing utility easements for broadband in the future, broadband service providers would only need to negotiate with a single party (the easement holder) instead of a multitude of parties, thereby streamlining broadband deployment projects.

[state of new mexico three-year broadband plan 1-2-24 version 1.0.pdf \(nm.gov\)](#) p. 123. Here, it is also notable that the context speaks to the “easement holder,” which would be a public utility, as opposed to the burdened parcel or property owner who may have intentionally sought to limit the permitted use of the easement. Accordingly, if only the holder of the easement is compensated and not the property owner, it may constitute a taking without compensation, and a violation of the 5th amendment of the U.S. Constitution.

In addition, the Bill appears to allow one utility to enter onto a second utility’s existing easement for the purpose of deploying telecommunication infrastructure. While § 62-1-4 does contemplate a procedure for a company to negotiate terms and conditions for a right of way with an easement holder, how that process is intended to operate in the context of the Bill is unclear.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

See above.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS