

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

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/19/2024

Bill No: SB43

Sponsor: Sen. Michael Padilla
Short Title: UTILITY EASEMENT FOR BROADBAND

Agency Name and Code State Land Office - 539
Number: _____
Person Writing Sunalei Stewart
Phone: 505-827-5755 **Email:** sstewart@slo.state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Indeterminate	Indeterminate			

(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	None	None	None			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to SB45, Broadband Infrastructure.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

SB43 would allow public utilities to condemn private land and most forms of public land (not including state trust lands) to obtain easements for communications infrastructure (including wireless facilities and equipment, cables, poles, and towers) anywhere another utility easement is already located. Although the bill’s title indicates it is intended to facilitate broadband infrastructure, its text is much more expansive, and would authorize public utilities to create easements through eminent domain for any communications-related infrastructure, such as cellphone towers or lines.

FISCAL IMPLICATIONS

The bill would have an unquantifiable fiscal impact on the New Mexico State Land Office (NMSLO). The increased number of broadband lines across New Mexico will likely bring an undetermined amount of additional revenue to the NMSLO for future rights-of-way, easements and access permits. More immediate revenue could come primarily by rights of way easements on NMSLO lands adjoining lands in the line of the pre-approved broadband easements.

SIGNIFICANT ISSUES

SB43 defines the lands that are subject to the new public utility easement (“burdened parcels”) to exclude state trust lands, an exclusion that is well-considered in light of constitutional and legislative constraints on the disposition of state trust lands. State trust lands are not subject to condemnation by the state as the lands it manages were granted from the federal government with certain legal restrictions under the Enabling Act on their use (including the requirement to pay appropriate compensation) and disposition.

Commissioner Garcia Richard strongly supports efforts to expand broadband access for New Mexico’s underserved rural communities, and has directed NMSLO staff to process broadband-related right of way applications on an expedited basis, which is already authorized under NMSLO rules. Since she took office in 2019, the State Land Office has processed and issued around 117 rights-of-way for telecommunications infrastructure, including broadband.

The bill does not make clear whether public utilities may bypass reviews that may otherwise be required by state law – such as for archaeological/cultural properties and tribal consultation.

The bill does not limit new communications-related easements to the footprint of the pre-existing easements where the communications infrastructure would be co-located. Under the bill, if a pre-existing utility easement exists for a 16” water pipe on one corner of a residential lot, a public utility could seize an easement for a telecommunications tower that is located above the portion of ground where the pipe is located, since that lot is already a “burdened parcel with a utility easement that does not already provide for or permit ... communications infrastructure” (Section 3(A)).

SB43 does not afford property owners the same protections that they currently enjoy under state law with respect to telephone easements. Telephone companies may obtain easements by condemnation, but may not “enter or appropriate any dwelling ... or ... building erected for any commercial, agricultural or manufacturing purposes, or to erect poles so near such structure as to materially inconvenience the condemnee in their use or to damage such structure.” NMSA 1978, Section 42A-2-2.

The bill singles out communications infrastructure for a special fast-track condemnation process. There are numerous other vital services – electrical transmission, water pipelines, irrigation, public roads – that also require easements and rights of way, which NMSLO regularly and successfully processes to the benefit of the communities that depend on those services and the trust beneficiaries alike.

SB43 allows public utilities to create communications easements but does not require the utilities to afford communications services. Easements should terminate if they are not put to their intended use within a prescribed period of time.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The bill would create an increase in the number of easements, rights-of-way and power poles on both public and private lands. Although the bill does not directly apply to state trust land, some new infrastructure located on “burdened parcels” (real property subject to the bill) would necessarily be adjacent to or connected with state trust lands. This would create an indeterminate amount of time pressured work for archeological, environmental and other internal administrative reviews at NMSLO. To date, NMSLO is capable of processing, and has processed, all such applications in a reasonable amount of time.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB45 includes a new provision authorizing and establishing rules for utility pole attachments. These would, in many cases, be located on an existing right or way and/or easement. HB49, relating to public schools, calls for “including a school safety communications system.” That system would almost certainly involve broadband at some step in the topology.

TECHNICAL ISSUES

Because the bill would expand eminent domain powers, Chapter 42A (condemnation proceedings) should also be amended.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The NMSLO will continue to collaborate with applicants to efficiently process applications and expedite processing when appropriate.

AMENDMENTS