

LFC Requester:	Antonio Ortega
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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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 1-31-24
Bill No: SB 45

Sponsor: Padilla
Short Title: Broadband Changes

Agency Name and Code PRC-430
Number: _____
Person Writing Mike Ripperger
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A	N/A	N/A

(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	300	300	300	900	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

This bill affects a number of statutory sections. In short it:

- 1) Expands the use of proceeds from supplemental severance tax bonds to education technology infrastructure projects subject to certification by the director of broadband access and expansion (NMSA § 7-27-12 Amended).
- 2) Adds a new section to the Severance Tax Bonding Act (NMSA § 7-27-12.6) authorizing up to \$10 million for educational technology infrastructure pursuant to the Broadband Access and Expansion Act (NMSA § 63-9J), removing this funding from the Public School Capital Outlay Act (NMSA § 22-23-3, 4 and 5 Amended).
- 3) Revises the Public Utility Act (NMSA § 62) to empower the NMPRC to regulate utility pole attachments not regulated by federal law in consultation with the New Mexico Office of Broadband Access and Expansion (“OBAE”) for the establishment of reasonable rates, terms and conditions of utility pole attachments by rule.
- 4) Amends the Wireless Advanced Infrastructure Investment Act (NMSA § 63-9I) to expand authority over small cell deployment beyond a municipality or county to include the state of New Mexico.
- 5) Amends and adds sections to the Broadband Access and Expansion Act (NMSA § 63-9J) to create the Education Technology Infrastructure Fund and define the standards for the qualification for and use of those grant funds for qualifying school districts.
- 6) Revises the Connect New Mexico Act (NMSA § 63-9K) by replacing the Connect New Mexico Council (“council”) with the Office of Broadband Access and Expansion for the administration of the broadband grant program and replacing the Chair of the council with the director of OBAE for responsibility for vouchers to be drawn by the Secretary of Finance and Administration. Also, the CNMC membership is revised by the replacement of the director of the public school facilities authority with the secretary of public education.
- 7) Adds two temporary provisions at the end of the bill transferring the Public School Finance Authority broadband deployment and connectivity program and all broadband infrastructure owned, leased, or operated by the New Mexico Department of Information Technology go the Office of Broadband Access and expansion.

Synopsis:

As stated above, the bill implements a number of modifications to the Tax Administration Act, Severance Tax Bonding Act, Public Utility Act, Wireless Advanced Infrastructure Investment

Act, Broadband Access and Expansion Act, and Connect New Mexico Act affecting the funding and administration of broadband infrastructure in the State of New Mexico. The primary impact to the New Mexico Public Regulation Commission is the delegation of pole attachment regulation for non-federally regulated pole attachments, and the expansion of the applicability of the Wireless Advanced Infrastructure Investment Act to State of New Mexico wireless network facilities.

FISCAL IMPLICATIONS

Potential need for an additional 2 or 3 FTEs to promulgate and administer pole attachment rules and adjudicate disputes between pole owners and companies seeking to attach to those poles.

SIGNIFICANT ISSUES

Aside from the potential regulation of municipal and county small cell deployment through the Wireless Advanced Infrastructure Investment Act (NMSA NMSA § 63-9I), the NMPRC does not regulate pole attachments for cable and telecommunications providers in the State of New Mexico. Pole attachments for cable television system or provider of telecommunications service are regulated by default by the Federal Communications Commission (“FCC”) (47 U.S.C. § 224), unless specifically preempted by a state (47 U.S.C. § 224(c)). However, the FCC regulation of pole attachments does not include railroads, cooperatively organized entities, or state or federal government facilities (47 U.S.C § 224(a)(1)). The term telecommunications as applied by the FCC includes the deployment of broadband facilities (47 U.S.C. § 153(50)).

This bill does not preempt the FCC’s regulation of pole attachments for which the FCC has authority but would assert jurisdiction over those other pole owning entities such as railroads, state owned facilities, and cooperatively organized entities such as telephone and electric cooperatives not regulated by the FCC per 47 U.S.C. § 224(a)(1). The bill would essentially allow for a two-layer system of pole attachment regulation in the state, with the state asserting pole attachment regulation where the FCC currently does not. This bulk of the regulation would involve pole attachments for rural electric and telephone cooperatives. The FCC is active in its pole attachment regulation and continues to modify its approach through rulemaking proceedings, with sensitivity toward a push for a nationwide broadband buildout: [DOC-399086A1.pdf \(fcc.gov\)](#).

24 states have certified to the FCC of their intent to regulate pole attachments, relieving the FCC of those responsibilities. [DA-22-630A1.pdf \(fcc.gov\)](#). This legislation, in contrast, appears not to preempt the FCC of its regulation of “utilities” as defined in 47 U.S.C § 224(a)(1) but supplements pole attachment regulation in the state through the regulation of those pole owners not regulated by the FCC.

The bill (Section 7, page 31) mandates the Commission in consultation with OBAE establish reasonable rates, terms and conditions for utility pole attachments not regulated by the FCC by rule. Conditions for the establishment of pole attachment and replacement rates (Section 7, items A) 1, 2, 5 and 6) and rights for those attaching to poles (items 3 and 4) are prescribed in the legislation. For the purpose of this section a definition of “utility” is provided which appears to eliminate wireless and electric transmission towers. Items 1,2, 5 and 6 appear to be in line with FCC standards for rate setting and pole replacement costs under cost causation principles,

mirroring in part language from 47 U.S.C § 224 and FCC precedent in prior orders. Condition 3 is specific to contracts for attachments to utility poles subject to “any applicable commission requirements”. Any applicable commission requirements would be further defined through rulemaking and orders of the commission. Condition 4 states the responsibility for a utility pole replacement “shall not be unreasonably delayed” because a utility pole owner is waiting to receive a new attachment request. Again, the commission would need to further define what is meant by “unreasonably delayed” in this context.

The process of implementing rules to develop and enforce the pole attachment regulatory framework will take time and Commission resources. FCC pole attachment rules provide an example of the potential scope of those rulemaking proceedings: [CFR :: 47 CFR Part 1 Subpart J -- Pole Attachment Complaint Procedures](#). These rules include complaint proceeding processes and remedies, the imputation of rates, allocation of unusable space costs, timeline for access to utility poles, survey and make ready, complaints for incumbent local exchange carriers, review period for pole attachment complaints, and overlashing.

Commission Staff informally queried those states that have reversed preempted the FCC’s pole attachment regulation, and found the regulatory resources required to enforce that preemption varied widely among states depending on the manner of preemption, the population density of the state, the jurisdictional nature of pole ownership, preexisting law, and willingness of the state to proactively manage the pole attachment regulatory process. Some states did not promulgate rules but did reserve the right in statute to do so if necessary to resolve pole attachment complaints. Other states adopted FCC rules and procedures, modifying them as necessary for their own needs. Some states never received pole attachment complaints, others arbitrated or adjudicated them on a regular basis. A number of states actively managed pole attachment rates, others did not. Additional Commission FTEs of zero to five persons were needed to enforce pole attachment regimes in these states. Since the bill prescribes the adoption of rules and regulations for the establishment of reasonable rates, terms and conditions of utility pole attachments, Staff would anticipate several additional FTEs may be needed to develop, administer, and adjudicate the pole attachment regulatory process at the Commission.

Currently, states are seeing a surge in broadband deployment and development spurred by consumer demand and a tremendous amount of state and federal broadband funding, spearheaded by the Infrastructure Investment and Jobs Act (“IIJA”) and Broadband Equity, Access, and Deployment (“BEAD”) Program. The New Mexico Office of Broadband Access and Expansion is spearheading these efforts in New Mexico to allocate and oversee close to \$1 billion in broadband funding over the next several years to rural areas of the state: [About OBAE - CONNECT NEW MEXICO \(nm.gov\)](#). In order to facilitate the deployment of broadband throughout the state, effective access to rights-of-way including pole attachments will be necessary. Currently, FCC regulation of pole attachments in New Mexico does not include cooperatives, state owned facilities, or municipalities with the exception of small cell deployments (NMSA § 63-9I). This legislation will cover that gap in pole attachment regulation in the state.

PERFORMANCE IMPLICATIONS

An increased workload at the Commission as a result of the adoption of pole attachment regulation may cause a bleed over effect onto other Commission cases and work timelines.

ADMINISTRATIVE IMPLICATIONS

Promulgation, administration, and adjudication of pole attachment regulation at the Commission may require several additional (2-3) FTEs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

When promulgating pole attachment rules, the Commission will need to be mindful of the requirements in conditions in Section 7, items (1) to (6) enumerated in the legislation for pole attachment regulation.

OTHER SUBSTANTIVE ISSUES

none

ALTERNATIVES

- 1) The status quo which will mean continued regulation of pole attachments by the FCC for other than cooperatives, state-owned facilities, counties, and municipalities not currently subject to pole attachment regulation.
- 2) Full preemption of pole attachments from the FCC, including electric and telephone investor-owned utilities (“IOUs”), but not to include regulation of those entities the FCC currently does not regulate including cooperatives, state-owned facilities, counties, and municipalities.
- 3) Full preemption of pole attachments from the FCC, and also regulation of pole attachments the FCC does not regulate including cooperatives, state-owned facilities, counties, and municipalities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.