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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Padilla **ORIGINAL DATE** 2/3/2025

BILL

SHORT TITLE Wireless Consumer Infrastructure Changes **NUMBER** Senate Bill 164

ANALYST Ortega

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
State trust earnings		Indeterminate but minimal loss	Indeterminate but minimal loss	Indeterminate but minimal loss	Indeterminate but minimal loss	Recurring	Land Maintenance Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Department of Information Technology (DoIT)
Public Regulation Commission (PRC)
State Land Office (SLO)

Agency Analysis was Solicited but Not Received From

Department of Transportation (NMDOT)

SUMMARY

Synopsis of Senate Bill 164

Senate Bill 164 (SB164) amends the Wireless Consumer Advanced Infrastructure Investment Act, which guides and restricts city and county regulation of small cellular provider facilities on city or county property, to expand the definition of “authority” to include political subdivisions and state agencies, rather than just municipalities or counties. Additionally, SB164 clarifies the definition of "right of way" by specifying that it includes areas on, below, or above public roads, highways, streets, sidewalks, alleys, or utility easements, while explicitly excluding federal and state highways, patrol yards, private easements, and utility easements that do not authorize wireless deployment.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

SB164 does not include a direct appropriation and has no known fiscal impact on the operations of state agencies; however, it could mean a loss of revenue for the land maintenance fund of the State Land Office (SLO) if telecommunications companies take advantage of existing utility rights of way on state trust land. Because revenue from state trust lands is designated for beneficiaries such as public schools, any loss of compensation could reduce funding for those entities.

The Department of Information Technology (DoIT) notes, while it owns radio towers throughout the state, it does not own the underlying property or rights of way where those towers are located. As a result, DoIT would not be able to generate revenue under the bill's expanded definitions. The Office of Broadband Access and Expansion reports SB164 has no fiscal impact because it simply expands the authority of state agencies and political subdivisions to allow the collocation of small wireless facilities on their property or right of way at their discretion.

SIGNIFICANT ISSUES

SLO details that the New Mexico Supreme Court's decision in *State ex rel. State Highway Commission v. Walker* establishes a legal precedent that any state agency using state trust land must provide compensation to the trust. The ruling clarified, even when a public benefit is provided, state agencies cannot bypass the requirement to pay for easements or rights of way on state trust lands. SLO notes its fiduciary duty mandates that it maximize revenue from state trust lands for the benefit of New Mexico's schools and other public institutions. According to SLO, allowing private companies to utilize existing rights of way without additional compensation could be seen as diverting potential revenue away from public education and other beneficiaries of state trust lands.

Furthermore, SLO raises concerns SB164 may violate the Enabling Act of 1910 if it allows companies to use rights of way on state trust land without specific authorization and compensation to the agency. The Enabling Act requires SLO to receive "true value" from the use of state trust lands, and the New Mexico Supreme Court has ruled that rights of way across state trust lands cannot be granted without consideration. SLO cautions that failing to require compensation could violate the Anti-Donation Clause of the New Mexico Constitution and recommends amending SB164 to exclude rights of way on state trust lands under its jurisdiction.

DoIT highlights that expanding the definition of "authority" to include state agencies could generate revenue for state agencies while also expanding wireless service across the state because it would allow state agencies to charge fees for wireless providers to use rights of way for installing and maintaining infrastructure. The Office of Broadband Access and Expansion (OBAE) identifies a \$3.2 billion funding gap needed to achieve full broadband availability in New Mexico and states SB164 could enhance broadband and mobile coverage, particularly in rural areas allowing state agencies to collaborate with OBAE to address coverage gaps without direct cost to the state.

PERFORMANCE IMPLICATIONS

OBAE included the following:

This amendment will allow state agencies to address the statewide gaps in 5G availability. For example, the Energy, Minerals and Natural Resources Department would have the discretion to authorize a small wireless facility in State Parks, thus expanding 5G availability in extremely rural areas. Such an expansion of 5G would increase the safety and enjoyment of park visitors.

OTHER SUBSTANTIVE ISSUES

DoIT suggested the following alternative.

Section 9-27-15 NMSA 1978 allows DoIT to “lease to a private entity excess capacity relating to the provision of two-way radio services on its radio communications property, including buildings, towers or antennas.” If the Sections in this bill were amended to allow DoIT to lease space on radio towers to wireless providers, as well, then DoIT could help to expand wireless service in the state and generate revenue.

AO/hj/hg/sgs