

1 SENATE BILL 477

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO UTILITIES; PROVIDING FOR LOCAL RIGHT-OF-WAY ACCESS
12 FEES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. A new section of Chapter 5 NMSA 1978 is
16 enacted to read:

17 "[NEW MATERIAL] RIGHT-OF-WAY ACCESS FEE.--

18 A. Counties may by ordinance impose a right-of-way
19 access fee on a public utility, as "public utility" is defined
20 by Subsection G of Section 62-3-3 NMSA 1978, as compensation
21 for access to or use of public roads, streets, alleys,
22 highways, structures, places and other public rights of way for
23 construction, installation, operation, removal, replacement,
24 repair and maintenance of the public utility's property and
25 equipment on, above or under the public right of way. The

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1 ordinance may include mutually agreed-upon terms and conditions
2 regarding the process for and the timing of payment of right-
3 of-way access fees, verifying the accuracy of the amounts paid
4 and assuring the public utility's ability to abide by its
5 obligations regarding access to and use of public rights of
6 way.

7 B. The right-of-way access fee shall be expressed
8 as a percentage or as an annual flat fee equivalent to such
9 percentage, of the public utility's gross revenues derived from
10 its public utility business conducted within the county. The
11 right-of-way access fee shall be no larger than four percent of
12 gross revenues, unless otherwise mutually agreed upon by the
13 public utility and the county.

14 C. For purposes of this section, "gross revenues"
15 means the total monthly revenues actually collected by the
16 public utility for providing the public utility service to
17 customers located within the county, pursuant to tariffs
18 approved by the public regulation commission. "Gross revenues"
19 does not include any taxes, fees, assessments or other charges
20 billed directly to customers and paid to any governmental body
21 or agency and excludes revenues received from customers located
22 on the land of a federally recognized Indian nation, tribe or
23 pueblo or that are governing bodies or agencies or public
24 educational institutions.

25 D. The fee imposed pursuant to this section shall

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1 be in lieu of all other fees, taxes, assessments, charges and
2 any other form of consideration or compensation related,
3 directly or indirectly, to access to or use of public rights of
4 way except for general ad valorem property taxes, special
5 assessments for local improvements and locally adopted gross
6 receipts tax increments.

7 E. No ordinance imposing a right-of-way access fee
8 shall become effective until at least thirty days after its
9 adoption, during which time the ordinance shall be twice
10 published in full, not less than seven days apart.

11 F. Revenue from a right-of-way access fee imposed
12 by a county pursuant to this section shall be used for economic
13 development, infrastructure or behavioral health services."

14 SECTION 2. A new section of Chapter 5 NMSA 1978 is
15 enacted to read:

16 "[NEW MATERIAL] CONDITIONS FOR USE OF PUBLIC RIGHTS OF
17 WAY.--A county may impose by ordinance conditions for the use
18 of public rights of way that may be necessary to assure that
19 the use does not unnecessarily obstruct public travel and to
20 require public utilities to comply with zoning laws and
21 applicable building codes, ordinances and regulations."

22 SECTION 3. [NEW MATERIAL] EFFECT ON EXISTING FRANCHISE
23 AGREEMENTS.--This 2013 act shall not be construed as
24 invalidating any existing franchise agreement, including any
25 existing franchise fees or charges, between a public utility

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1 and a municipality or county; provided, however, that the
2 municipality or county and the public utility may agree to
3 terminate the existing franchise agreement and proceed under
4 this 2013 act. Upon expiration of existing franchise
5 agreements, access to public rights of way by public utilities
6 shall be governed by this 2013 act.

7 SECTION 4. Section 3-42-1 NMSA 1978 (being Laws 1965,
8 Chapter 300, Section 14-43-1) is amended to read:

9 "3-42-1. FRANCHISES--AUTHORIZATION.--

10 A. A municipality or county may grant by ordinance
11 a franchise to any person, firm or corporation for the
12 construction and operation of any public utility; provided that
13 this section shall not apply to a public utility as defined in
14 Subsection G of Section 62-3-3 NMSA 1978 and which public
15 utility's access to public rights of way is granted by statute
16 and not by franchise agreements.

17 B. No franchise ordinance shall become effective
18 until at least thirty days after its adoption, during which
19 time the franchise ordinance shall be twice published in full,
20 not less than seven days apart.

21 C. If during the thirty-day period a petition,
22 signed by bona fide adult residents of the municipality or
23 county equal in number to twenty percent of the number of those
24 who voted at the last [~~regular municipal~~] general election, and
25 objection to the granting of the franchise is presented to the

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1 governing body of the municipality or county, the governing
2 body of the municipality or county shall submit the question of
3 granting the franchise to a vote of the qualified electors at a
4 regular or special municipal or county election. If the date
5 for the next regular municipal or county election is not more
6 than ninety days after the date the petition is filed, the
7 question shall be submitted at the regular municipal or county
8 election; otherwise, a special municipal or county election
9 shall be held.

10 D. If [~~the~~] the majority of the qualified electors
11 voting on the question favor the granting of a franchise, the
12 franchise ordinance becomes effective. If [~~the~~] the majority of
13 the qualified electors voting on the question do not favor
14 granting the franchise, the ordinance is repealed and the
15 applicant for the franchise acquires no rights or privileges.

16 E. The expense of publishing the franchise
17 ordinance and of holding a special election shall be paid by
18 the applicant for the franchise.

19 F. No franchise ordinance shall be in effect for
20 more than twenty-five years. The municipality or county may
21 contract with the public utility for such services as are
22 necessary for the health and safety of the municipality or
23 county and may pay a sum agreed upon by the contracting parties
24 for such services."

25 SECTION 5. Section 62-1-3 NMSA 1978 (being Laws 1909,

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1 Chapter 141, Section 3, as amended) is amended to read:

2 "62-1-3. USE OF HIGHWAYS AND STREETS--POWER OF COUNTY
3 COMMISSIONERS.--The boards of county commissioners of the
4 several counties are authorized to permit [~~corporations~~
5 ~~organized pursuant to Section 62-1-1 NMSA 1978, public~~
6 ~~utilities under the Public Utility Act and]~~ companies that
7 provide public telecommunications service pursuant to the New
8 Mexico Telecommunications Act to use the public highways and
9 the streets and alleys of unincorporated towns for their pipes,
10 poles, wires, cables, conduits, towers, transformer stations
11 and other fixtures, appliances and structures; provided that
12 such use shall not unnecessarily obstruct public travel; and
13 provided further that the boards of county commissioners and
14 municipal authorities of incorporated cities and towns are
15 authorized to grant franchises not exceeding twenty-five years'
16 duration to corporations for such purposes within their
17 respective jurisdictions. A board of county commissioners is
18 authorized to impose charges for reasonable actual expenses
19 incurred in the granting of any franchise pursuant to this
20 section."

21 SECTION 6. Section 62-6-4.5 NMSA 1978 (being Laws 2003,
22 Chapter 336, Section 4) is amended to read:

23 "62-6-4.5. BILLING--~~[FRANCHISE]~~ RIGHT-OF-WAY FEES--GROSS
24 RECEIPTS TAXES.--

25 A. A [~~franchise~~] right-of-way fee or similar charge

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1 shall be stated as a separate line entry on a bill sent by a
2 public utility or a distribution cooperative utility to a
3 customer and shall only be recovered from a customer located
4 within the jurisdiction of the government authority imposing
5 the [~~franchise~~] right-of-way fee or similar charge.

6 B. Any gross receipts taxes collected on [~~electric~~]
7 public utility services received by a retail customer in the
8 state shall be stated as a separate line entry on a bill for
9 [~~electric~~] public utility service sent to the customer by a
10 public utility or distribution cooperative utility."

11 SECTION 7. Section 62-9-6 NMSA 1978 (being Laws 1967,
12 Chapter 96, Section 8) is amended to read:

13 "62-9-6. CERTIFICATES--APPLICATION--ISSUANCE.--

14 A. Before any certificate may be issued under
15 [~~Sections 68-7-1 through 68-7-4 New Mexico Statutes Annotated,~~
16 ~~1953 Compilation~~] Chapter 62, Article 9 NMSA 1978, a certified
17 copy of its articles of incorporation or charter, if the
18 applicant [~~be~~] is a corporation, shall be on file in the office
19 of the commission. Every applicant for a certificate shall
20 give such reasonable notice of its application as the
21 commission may require, [~~and shall file in the office of the~~
22 ~~commission such evidence as shall be required by the commission~~
23 ~~to show that such applicant has received the consent and~~
24 ~~franchise from the~~] including notice to any county or
25 municipality [~~wherein~~] in which construction [~~and~~] or operation

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1 is proposed. The commission shall have power, after hearing,
2 to issue [~~said~~] the certificate [~~as prayed for~~] or to refuse to
3 issue [~~the same~~] it, or to issue it for the construction or
4 operation of a portion only of the contemplated facility, line,
5 plant or system, or extension thereof, or for the partial
6 exercise only of said rights or privilege [~~and~~]. The
7 commission may attach to the exercise of the rights granted by
8 [~~said~~] the certificates such terms and conditions in harmony
9 with the Public Utility Act [~~as amended~~] as in its judgment the
10 public convenience and necessity may require. Except as
11 otherwise provided in Section [~~68-7-1.1 New Mexico Statutes~~
12 ~~Annotated, 1953 Compilation~~] 62-9-2 NMSA 1978, in determining
13 whether any certificate shall [~~issue as prayed for~~] be issued,
14 the commission shall give due regard to public convenience and
15 necessity, including but not limited to any reasonable service
16 agreement between the applicant and another utility and
17 unnecessary duplication and economic waste.

18 B. Whenever a public utility is engaged or is about
19 to engage in construction or operation without having secured a
20 certificate of public convenience and necessity as required by
21 the provisions of the Public Utility Act, [~~as amended~~] any
22 interested person may file a complaint with the commission.
23 The commission may, with or without notice, make its order
24 requiring the public utility complained of to cease and desist
25 from [~~such~~] the construction or operation until the commission

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1 makes and files its decision on [~~said~~] the complaint or until
2 the further order of the commission. The commission may, after
3 hearing after reasonable notice, make such order and prescribe
4 such terms and conditions in harmony with the Public Utility
5 Act [~~as amended~~] as are just and reasonable."

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