

SENATE TAX, BUSINESS AND TRANSPORTATION  
COMMITTEE SUBSTITUTE FOR  
SENATE BILL 413

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE REGIONAL BROADBAND  
FRANCHISE ACT; PROVIDING FOR THE ESTABLISHMENT OF REGIONAL  
BROADBAND FRANCHISES BY PUBLIC AGENCIES THROUGH PARTNERSHIP  
AGREEMENTS; PROVIDING POWERS; PROVIDING REVENUE BONDS;  
REQUIRING AUDITS; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Regional Broadband Franchise Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Regional Broadband Franchise Act:

A. "bonds" means broadband infrastructure revenue  
bonds;

B. "broadband infrastructure" means any cable or  
device used for high-capacity transmission of a wide range of

1 frequencies enabling a large number of electronic messages to  
2 be transmitted or received simultaneously;

3 C. "chief broadband officer" means the secretary of  
4 information technology or the secretary's designee; provided  
5 that when a state agency, department, division or other  
6 organizational entity is designated in statute to plan or  
7 coordinate broadband development efforts by all state agencies,  
8 "chief broadband officer" means the senior executive official  
9 for that state agency, department, division or other  
10 organizational entity;

11 D. "franchise" means a regional broadband franchise  
12 established by two or more public agencies through a joint  
13 powers agreement;

14 E. "franchise board" means a governing board of a  
15 regional broadband franchise;

16 F. "notice of establishment" means a notice,  
17 including a map showing the anticipated service boundaries for  
18 a newly established regional broadband franchise, that is sent  
19 to the chief broadband officer;

20 G. "pledgeable revenue" means net income from the  
21 lease of trunk lines after accounting for the operation and  
22 maintenance expenses of a franchise;

23 H. "project" means an undertaking by a franchise to  
24 finance or plan, acquire, maintain or operate broadband  
25 infrastructure;

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1 I. "public agency" means the federal government or  
2 a federal department, agency or instrumentality; this state or  
3 a state department, agency or instrumentality; an Indian  
4 nation, tribe or pueblo located partly or wholly in New Mexico;  
5 a subdivision of an Indian nation, tribe or pueblo located  
6 partly or wholly in New Mexico that has authority pursuant to  
7 the law of that Indian nation, tribe or pueblo to enter into  
8 joint powers agreements directly with the state; a county,  
9 municipality, public corporation or public district of this  
10 state or another state; an educational institution specified in  
11 Article 12, Section 11 of the constitution of New Mexico; or a  
12 New Mexico school district;

13 J. "publicly owned" means to be owned by an agency  
14 or instrumentality of the state;

15 K. "regional broadband franchise" means an entity  
16 formed by two or more public agencies to provide trunk lines to  
17 internet or other electronic data transmission service  
18 providers;

19 L. "state agency" means an agency or  
20 instrumentality of the state;

21 M. "trunk line" means broadband infrastructure  
22 leased on a wholesale basis to providers of retail internet or  
23 other electronic data transmission services;

24 N. "underserved" means an area or property that  
25 does not receive quality of service access that meets the

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1 baseline standards established by the federal communications  
2 commission; and

3 O. "unserved" means an area or property that does  
4 not have internet access that meets the baseline standards  
5 established by the federal communications commission.

6 SECTION 3. [NEW MATERIAL] AGREEMENTS FOR USE OF STATE-  
7 OWNED BROADBAND INFRASTRUCTURE--CHIEF BROADBAND OFFICER.--

8 A. The chief broadband officer may contract with a  
9 regional broadband franchise for the use of broadband  
10 infrastructure owned by a state agency.

11 B. A contract for the use of broadband  
12 infrastructure shall ensure that the:

13 (1) purposes for which a state agency owns the  
14 broadband infrastructure shall have priority of use for that  
15 infrastructure;

16 (2) use of the infrastructure by a regional  
17 broadband franchise shall be in compliance with the provisions  
18 of the Regional Broadband Franchise Act; and

19 (3) state agency that owns the broadband  
20 infrastructure shall be compensated for the additional  
21 maintenance cost incurred due to a lease of the infrastructure  
22 pursuant to Section 6 of the Regional Broadband Franchise Act.

23 SECTION 4. [NEW MATERIAL] REGIONAL BROADBAND FRANCHISE  
24 ESTABLISHMENT--FRANCHISE BOARD MEMBER REQUIREMENTS.--

25 A. A franchise may be established by a combination

1 of two or more public agencies for the purpose of sharing their  
2 broadband infrastructure and gaining access to state-owned  
3 broadband infrastructure and leasing the unused capacity of the  
4 combined infrastructure to promote the expansion of internet  
5 access; provided that the chief broadband officer determines in  
6 writing that there is sufficient evidence that the franchise  
7 will be able to establish one or more leases of the broadband  
8 infrastructure within six months of the formation of the  
9 franchise.

10 B. A franchise established pursuant to this section  
11 shall be formed through a partnership agreement pursuant to the  
12 Joint Powers Agreements Act filed with the secretary of state  
13 and the chief broadband officer. The agreement shall specify  
14 the responsibilities of each member entity and govern the  
15 franchise and:

16 (1) specify that the franchise shall be  
17 governed by a franchise board composed of one appointee from  
18 each member entity, the secretary of finance and administration  
19 or the secretary's designee and the chief broadband officer or  
20 the chief's designee;

21 (2) provide for periodic franchise board  
22 meetings with a minimum of four meetings per year;

23 (3) provide that the franchise board shall  
24 invite all internet service providers that are paying a leasing  
25 fee to the franchise to participate at a franchise board

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1 meeting at least once per year;

2 (4) commit each member entity to identify all  
3 of the broadband infrastructure that the member entity owns and  
4 grant the franchise the ability to extend, lease to third  
5 parties, renovate, upgrade or use that broadband  
6 infrastructure; and

7 (5) establish rules for determining ownership  
8 of new construction of infrastructure.

9 C. A franchise established pursuant to this section  
10 shall be an instrumentality of the franchise's member entities  
11 with the same eligibility as any of its member entities to  
12 receive money from a state program that provides financial  
13 assistance to public agencies for development of broadband  
14 infrastructure. A franchise shall be a public corporate entity  
15 created pursuant to state law, but to effectuate the separation  
16 of the state and the member entities from the franchise, the  
17 use of the terms "public agency" or "instrumentality" in a law  
18 that does not provide financial assistance for the development  
19 of broadband infrastructure shall not be deemed to refer to a  
20 franchise unless "regional broadband franchise" is specifically  
21 named.

22 D. A franchise board member is a public officer  
23 subject to the provisions of the Governmental Conduct Act.

24 E. A franchise board member shall not be employed  
25 by a private entity that has benefited from a contractual or

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1 other activity with the franchise within two years prior to  
 2 when that board member vacated a position on the franchise  
 3 board. A franchise shall not enter into a new agreement,  
 4 contract or lease and a franchise contractor, lessee or a  
 5 partner to an agreement with a franchise shall not offer a new  
 6 service agreement, contract or lease with a private sector  
 7 entity that employs a member of the franchise board prior to  
 8 two years after the board member vacates a position on the  
 9 board. A person who violates this subsection is guilty of a  
 10 fourth degree felony and shall be sentenced pursuant to the  
 11 provisions of Section 31-18-15 NMSA 1978.

12 F. For purposes of this subsection, "member entity"  
 13 means a public agency that is a member of partnership agreement  
 14 forming a franchise.

15 SECTION 5. [NEW MATERIAL] NOTICES OF ESTABLISHMENT--CHIEF  
 16 BROADBAND OFFICER--BROADBAND INFRASTRUCTURE USE CONTRACTS--  
 17 REPORTS.--

18 A. When a franchise is established pursuant to the  
 19 Regional Broadband Franchise Act, the franchise shall file a  
 20 notice of establishment with the chief broadband officer. Upon  
 21 receipt of the notice of establishment, the chief broadband  
 22 officer shall forward the notice to each state agency. Within  
 23 sixty days of the filing of the notice of establishment with  
 24 the chief broadband officer, each state agency shall send to  
 25 the chief broadband officer:

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1 (1) a list and a map of the broadband  
2 infrastructure that is owned by that state agency within the  
3 boundaries set out in the notice of establishment; and

4 (2) describe the purposes for which the  
5 broadband infrastructure is owned by the state agency.

6 B. Within ninety days of receiving the lists and  
7 maps of broadband infrastructure owned by state agencies  
8 pursuant to Subsection A of this section, the chief broadband  
9 officer shall enter into a contract with the franchise that  
10 filed the notice of establishment for the use of publicly owned  
11 broadband infrastructure within the service boundaries of that  
12 franchise.

13 C. No later than November 30 of each year, the  
14 chief broadband officer shall provide a report to the  
15 appropriate interim legislative committee regarding the  
16 development of franchises, the extent of franchise service  
17 areas and other information gathered from the franchise reports  
18 submitted pursuant to Section 6 of the Regional Broadband  
19 Franchise Act that the chief broadband officer deems relevant  
20 to assess the condition and extent of the general broadband  
21 system in New Mexico.

22 SECTION 6. [NEW MATERIAL] FRANCHISE BOARD--DUTIES AND  
23 POWERS--REPORTS.--

24 A. A franchise board may lease broadband  
25 infrastructure on a technologically neutral wholesale basis to



1 third-party internet or other data transmission service  
2 providers for retail service; provided that:

3 (1) if the leasing entity intends to provide  
4 retail internet service to consumers, the broadband  
5 infrastructure may only be leased to provide retail internet  
6 service in underserved or unserved areas;

7 (2) the franchise board shall not provide  
8 retail internet or other data transmission services to  
9 consumers;

10 (3) the service provider maintains  
11 cybersecurity protocols as deemed necessary by the franchise  
12 board; and

13 (4) the service provider maintains or exceeds  
14 data transmission speeds at the baseline defined by federal  
15 standards promulgated pursuant to federal law.

16 B. Within one hundred twenty days of its  
17 establishment, a franchise board shall adopt a mission  
18 statement that describes its goals for the provision of trunk  
19 lines within its service area, a broadband infrastructure  
20 improvement and expansion plan designed to meet those goals and  
21 a business plan that delineates the projected costs, required  
22 revenues and any other factors that the franchise board  
23 believes are necessary to achieve its goals by rule.

24 C. A franchise board shall charge lease fees for  
25 its broadband infrastructure that are in accordance with the

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1 business plan adopted pursuant to Subsection B of this section.

2 D. A franchise board shall submit a report,  
3 including the progress it has made toward implementing its  
4 mission statement, its financial obligations and its projected  
5 revenues, to the chief broadband officer no later than July 1  
6 of each year.

7 E. A franchise board shall:

8 (1) do any and all things necessary or proper  
9 to accomplish the purposes of its establishment;

10 (2) hire employees or other agents as it deems  
11 necessary, including an executive director for the performance  
12 of its powers and duties, consultants, financial advisors and  
13 legal advisors, and prescribe the powers and duties to fix the  
14 compensation of employees and agents. An executive director of  
15 a franchise shall direct the affairs and business of the  
16 franchise, subject to the policies, control and direction of  
17 the franchise board; and

18 (3) maintain such records and accounts of  
19 revenues and expenditures as required by the state auditor.

20 The state auditor or the state auditor's designee shall conduct  
21 an annual financial and legal compliance audit of the accounts  
22 of a franchise and file copies with the governor and the  
23 legislature.

24 F. A franchise may:

25 (1) make and execute agreements, contracts and

1 other instruments necessary or convenient in the exercise of  
2 its powers and functions with any person or governmental  
3 agency;

4 (2) enter into contractual agreements with  
5 respect to one or more projects upon the terms and conditions  
6 the franchise board considers advisable;

7 (3) enter into partnerships with public or  
8 private entities;

9 (4) identify and establish corridors for the  
10 installation of trunk-line broadband infrastructure within the  
11 franchise's service area;

12 (5) through participation in appropriate  
13 regional forums, coordinate, investigate, plan, prioritize and  
14 negotiate with entities within and outside the state for the  
15 establishment of interstate internet or other electronic data  
16 transmission trunk lines;

17 (6) finance or plan, acquire, maintain and  
18 operate broadband infrastructure necessary or useful for the  
19 accomplishment of the purposes of its mission statement;

20 (7) receive by gift, grant, donation or  
21 otherwise, any sum of money, aid or assistance from the United  
22 States, the state of New Mexico, any other state, any political  
23 subdivision or any other public or private entity;

24 (8) for any project, provide information and  
25 training to employees of the project regarding any unique

.220480.3

1 hazards that may be posed by the project, as well as training  
2 in safe work practices and emergency procedures;

3 (9) issue bonds as necessary to undertake a  
4 project or to carry out the purposes of its mission statement;

5 (10) enter into contracts for the lease and  
6 operation by the franchise of broadband infrastructure;

7 (11) enter into contracts for leasing  
8 broadband infrastructure owned or operated by the franchise;

9 (12) sue and be sued; and

10 (13) adopt such reasonable administrative and  
11 procedural rules as may be necessary or appropriate to carry  
12 out its powers and duties.

13 SECTION 7. [NEW MATERIAL] BONDS--PLEDGEABLE REVENUE--  
14 LIMITATIONS ON OBLIGATIONS.--

15 A. A franchise may issue bonds, known as "broadband  
16 infrastructure revenue bonds", to finance the purchase,  
17 construction or renovation of a project and shall irrevocably  
18 pledge any or all pledgeable revenue to the payment of those  
19 bonds and to a debt service reserve fund if one is established  
20 for the bonds.

21 B. Bonds shall be payable solely from pledgeable  
22 revenue and shall not constitute an indebtedness or general  
23 obligation of the franchise, the state or the public agencies  
24 that formed the franchise.

25 C. Prior to issuing bonds to finance the purchase,

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1 construction or renovation of broadband infrastructure, a  
2 franchise board shall make a determination that the project is  
3 necessary and that estimated pledgeable revenue pledged to the  
4 bonds is sufficient to repay the bonds.

5 SECTION 8. [NEW MATERIAL] REPORT--STATE BOARD OF FINANCE  
6 APPROVAL.--

7 A. Prior to issuing bonds to finance a project, a  
8 franchise board shall furnish to the state board of finance the  
9 following information:

- 10 (1) a detailed description of the project;
- 11 (2) an explanation of the necessity for the  
12 project;
- 13 (3) an estimate of the total cost of the  
14 project;
- 15 (4) an estimate of the net income from the  
16 project and other revenues that will be pledged to pay for the  
17 project; and
- 18 (5) an estimate of the yearly operating cost  
19 of the project.

20 B. A franchise board shall obtain written approval  
21 of the state board of finance before it issues bonds to finance  
22 a project.

23 C. Prior to giving written approval to a project,  
24 the state board of finance shall determine that the project is  
25 necessary and that estimated pledgeable revenue pledged to the

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1 bonds is sufficient to repay the bonds.

2 SECTION 9. [NEW MATERIAL] RECORDS--RESTRICTION ON USE OF  
3 INCOME.--

4 A. A franchise shall retain complete and accurate  
5 records of:

6 (1) the net income from the project; and

7 (2) the operating costs of the project.

8 B. Pledgeable revenue that is pledged to the  
9 repayment of bonds shall first be used to pay the principal,  
10 interest and service charges on the bonds issued and to fund a  
11 debt service reserve fund, if applicable.

12 SECTION 10. [NEW MATERIAL] BONDS--PLEDGE OF INCOME.--

13 A. Bonds shall be payable solely from any or all  
14 pledgeable revenue, and the franchise board shall irrevocably  
15 pledge that revenue to the prompt payment of the principal,  
16 interest and service charges on the bonds. The bonds shall be  
17 equally and ratably secured, without priority, by this pledge  
18 of pledgeable revenue.

19 B. If the bonds are payable solely from the net  
20 income of the project being financed, the franchise board shall  
21 operate the project so as to ensure a sufficient income to  
22 promptly pay the principal, interest and service charges as  
23 they become due on the bonds.

24 C. The state pledges and agrees with the holders of  
25 bonds issued by a franchise and payable from pledgeable revenue

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1 that the state shall not limit or alter the rights of the  
2 franchise board to receive, collect and account for pledgeable  
3 revenue and to fulfill the terms of any agreement made with the  
4 bondholders or in any way impair the rights and remedies of the  
5 bondholders until the bonds, together with the interest on the  
6 bonds, with interest on any unpaid installments of interest and  
7 all costs and expenses in connection with any action or  
8 proceedings by or on behalf of those bondholders, are fully  
9 paid and discharged.

10 SECTION 11. [NEW MATERIAL] PROCEEDS OF BOND SALES--DEBT  
11 SERVICE FUND--RESERVE FUND.--

12 A. Proceeds from the sale of bonds shall be  
13 deposited into a separate account to be used solely for the  
14 specific purposes for which the bonds were issued, including a  
15 debt service reserve fund. All costs incident to issuing and  
16 selling the bonds may be paid out of the proceeds of the bonds.

17 B. The franchise board shall establish a "debt  
18 service fund" to be used solely for the payment of principal,  
19 interest and service charges on the bonds. Sufficient amounts  
20 from the pledgeable revenue shall be deposited in the debt  
21 service fund at least annually so that timely payments of  
22 principal, interest and service charges may be made. All  
23 proceeds remaining after completion of the project shall be  
24 deposited into the debt service fund.

25 C. The franchise board may establish a "debt

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1 service reserve fund" to be used to pay bond payments in case  
2 the pledgeable revenue is insufficient.

3 SECTION 12. [NEW MATERIAL] BONDS--FORM--REQUIREMENTS.--

4 All bonds issued pursuant to the Regional Broadband Franchise  
5 Act shall:

6 A. be fully negotiable within the provisions of the  
7 Uniform Commercial Code;

8 B. have a duration of time not to exceed forty  
9 years from their date of issuance;

10 C. have interest, appreciated principal value or  
11 any part thereof payable at intervals or at maturity as  
12 determined by a franchise board;

13 D. not be sold with a variable interest rate and  
14 shall be sold at a price that does not result in a net  
15 effective interest rate in excess of twelve percent per year  
16 unless a higher rate of interest is approved by the state board  
17 of finance pursuant to the Public Securities Act;

18 E. have a principal maturity schedule as determined  
19 by the franchise board; and

20 F. be sold at public or private sale at, above or  
21 below par.

22 SECTION 13. [NEW MATERIAL] REFUNDING BONDS.--

23 A. A franchise board may issue refunding bonds to  
24 refund outstanding bonds.

25 B. Except as otherwise provided in the Regional



1 Broadband Franchise Act, refunding bonds shall conform to the  
2 provisions of that act that provide for the issuance of  
3 broadband infrastructure revenue bonds by a franchise board.

4 C. A refunding bond issued by a franchise board may  
5 have the same security or source of payment as was pledged for  
6 the payment of the bond being refunded, but no source of  
7 payment shall be pledged that is not authorized by the Regional  
8 Broadband Franchise Act.

9 D. A refunding bond may be delivered in exchange  
10 for a bond authorized to be refunded, sold at a public or  
11 private sale or sold in part and exchanged in part as provided  
12 in the Supplemental Public Securities Act. If the refunding  
13 bond is sold, the proceeds shall be immediately applied to the  
14 retirement of the bond to be refunded or the proceeds shall be  
15 placed in trust to be held and applied to payment of the bonds  
16 to be refunded.

17 SECTION 14. [NEW MATERIAL] REFUNDING BONDS--ISSUANCE--  
18 SALE--PROCEEDS.--

19 A. A bond shall not be refunded unless the bond  
20 matures or is callable for prior redemption under its terms  
21 within fifteen years from the date of issuance of the refunding  
22 bond or unless the holder of the bond voluntarily surrenders it  
23 for exchange or payment.

24 B. Outstanding bonds of more than one issue may be  
25 refunded by refunding bonds of one or more issues. Bonds and

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1 refunding bonds may be issued separately or in combinations of  
2 one or more series.

3 C. The determination of the franchise board issuing  
4 refunding bonds that the issuance has been in compliance with  
5 the Regional Broadband Franchise Act is conclusively presumed  
6 correct in the absence of fraud or arbitrary and gross abuse of  
7 discretion.

8 SECTION 15. [NEW MATERIAL] TAX EXEMPTION--NO CHARGE  
9 AGAINST STATE.--Bonds are exempt from taxation by the state or  
10 any of its political subdivisions. No obligation created  
11 pursuant to the Regional Broadband Franchise Act shall be a  
12 charge against or a debt of the state or any of its political  
13 subdivisions.

14 SECTION 16. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2021.