

HOUSE BILL 160

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO STATE PROPERTIES; AMENDING SECTION 19-7-57 NMSA
1978 (BEING LAWS 1912, CHAPTER 82, SECTION 53, AS AMENDED) TO
AUTHORIZE THE COMMISSIONER OF PUBLIC LANDS TO GRANT RIGHTS OF
WAY AND EASEMENTS ACROSS STATE LANDS FOR INFRASTRUCTURE USED
FOR BROADBAND INTERNET SERVICES; AMENDING SECTION 67-3-12 NMSA
1978 (BEING LAWS 1929, CHAPTER 110, SECTION 1, AS AMENDED) TO
AUTHORIZE THE STATE TRANSPORTATION COMMISSION TO PRESCRIBE
CONDITIONS FOR THE INSTALLATION OF BROADBAND INTERNET
INFRASTRUCTURE PLACED ALONG, ACROSS, OVER OR UNDER PUBLIC
HIGHWAYS OR OTHER PROPERTY UNDER THE JURISDICTION OF THE
DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE WAIVER OF FEES OR
LEASING COSTS FOR INFRASTRUCTURE THAT IS TO BE USED PRIMARILY
TO PROVIDE BROADBAND INTERNET SERVICES TO UNSERVED OR
UNDERSERVED LOCATIONS AS DEFINED IN THE CONNECT NEW MEXICO ACT.

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

2 SECTION 1. Section 19-7-57 NMSA 1978 (being Laws 1912,
3 Chapter 82, Section 53, as amended) is amended to read:

4 "19-7-57. COMMISSIONER--POWERS--EASEMENTS--RIGHTS OF
5 WAY.--

6 A. The commissioner may grant rights of way [~~and~~]
7 or easements over, upon or across state lands for fiber cable
8 lines, conduit, poles, wireless technology or other
9 infrastructure used for broadband internet services, public
10 highways, railroads, tramways, telegraph, telephone and power
11 lines, irrigation works, mining, logging and other purposes
12 upon payment by the grantee of the price fixed by the
13 commissioner, which shall not be less than the minimum price
14 for the lands, used, as fixed by law. The commissioner may
15 grant a right of way or easement over, upon or across state
16 lands for oil, hazardous liquid and gas pipelines if the right-
17 of-way grant or easement requires compliance with the Pipeline
18 Safety Act [~~Section 70-3-11, et seq., NMSA 1978~~] and rules
19 adopted pursuant to that act and provides for regulatory and
20 agencies' access to records of compliance.

21 B. The commissioner may waive fees or leasing costs
22 for rights of way or easements granted pursuant to Subsection A
23 of this section for infrastructure that is to be used primarily
24 to provide broadband internet services to unserved or
25 underserved locations, as defined in the Connect New Mexico

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1 Act."

2 SECTION 2. Section 67-3-12 NMSA 1978 (being Laws 1929,
3 Chapter 110, Section 1, as amended) is amended to read:

4 "67-3-12. POWERS AND DUTIES.--In addition to the powers
5 now conferred upon it by law, the state transportation
6 commission:

7 A. may declare abandoned and close to public
8 traffic all grade crossings of railroads by state highways in
9 cases where grade separations or other adequate crossings are
10 substituted therefor or where such grade crossings become
11 unnecessary to the public convenience by reason of changes in
12 highway locations;

13 B. may offer and, upon compliance with the
14 conditions of such offer, pay rewards for information leading
15 to the arrest and conviction of offenders in cases of theft,
16 defacement or destruction of markers or highway signs, lights
17 or other warning devices placed upon or along highways of this
18 state under the supervision of the state transportation
19 commission and for information leading to the arrest and
20 conviction of offenders or for the return of property in case
21 of theft or unlawful damaging of property under the control of
22 the commission. All such rewards when paid shall be paid from
23 the state road fund upon voucher drawn by the secretary or
24 other authorized officer or agent of the department;

25 C. shall prescribe by rule the conditions under

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1 which fiber cable lines, conduit, poles, wireless technology or
2 other infrastructure used for broadband internet services,
3 pipelines, telephone, telegraph and electric transmission lines
4 and ditches may be placed along, across, over or under public
5 highways in this state or other property under the jurisdiction
6 of the department and shall forcibly remove or cause to be
7 removed pipelines, telephone, telegraph or electric
8 transmission lines or ditches that may be placed along, across,
9 over or under such public highways in violation of such rules
10 and regulations;

11 D. may waive administrative fees and annual fees
12 for infrastructure authorized pursuant to Subsection C of this
13 section that is to be used primarily to provide broadband
14 internet services to unserved or underserved locations, as
15 defined in the Connect New Mexico Act;

16 ~~[D.]~~ E. shall employ an attorney to assist and
17 advise the state transportation commission and the department
18 in the discharge of their duties and to appear and represent
19 the interests of the commission or department in any case
20 before any court or tribunal in which the official duties,
21 powers, rights or privileges of the commission or department
22 may be involved or affected and to pay that attorney the
23 reasonable value of the attorney's services out of the state
24 road fund;

25 ~~[E.]~~ F. shall bring and maintain in the name of the

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1 state actions and proceedings deemed necessary by the state
2 transportation commission for the condemnation of rights of way
3 for public highways or for the removal or condemnation of
4 buildings or other improvements that encroach in whole or part
5 upon the rights of way of public highways or for the
6 condemnation of gravel pits or other deposits of materials or
7 supplies suitable for the construction of public highways.

8 The attorney general of New Mexico shall appear in and
9 prosecute all such cases on behalf of the state upon request of
10 the state transportation commission. All such proceedings
11 shall be conducted in the same manner as other cases for the
12 condemnation of real property. The damages assessed in
13 proceedings brought under the provisions of this section shall
14 be paid out of the state road fund from money furnished for
15 that purpose by cooperative agreement between the state,
16 federal government and the county within which the condemned
17 property is situate or any such governmental bodies or out of
18 money furnished for the construction of the highway in
19 connection with which the condemnation is had, by the county in
20 which the condemned property is situate; provided, however,
21 that if no such money is available, the damages shall be
22 advanced on behalf of said counties out of their money in the
23 state road fund and the state treasurer shall thereafter
24 reimburse the state road fund for the money advanced out of the
25 next installment of money from motor vehicle license fees

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1 accruing to the road fund of the county for which such funds
2 were so advanced;

3 ~~[F.]~~ G. shall designate in its discretion one of
4 its employees as acting secretary to act at all times when the
5 secretary is absent from the state capital. The acting
6 secretary, when designated, has the right and is hereby given
7 authority at all times when the secretary is absent from the
8 state capital to sign all federal project statements, federal
9 project agreements and federal vouchers with the same force and
10 effect as if signed by the secretary in person, and the
11 certificate of the acting secretary attached to any federal
12 project statement, federal project agreement or federal voucher
13 to the effect that the secretary was absent from the state
14 capital at the time that the same was so signed by the acting
15 secretary shall be conclusive evidence of the truth of such
16 fact. The acting secretary may also be vested by the state
17 transportation commission with power and authority to act for
18 the secretary in such other matters as the state transportation
19 commission may determine;

20 ~~[G.]~~ H. subject to the provisions of Subsection [~~H~~]
21 I of this section, may conduct, permit or authorize commercial
22 enterprises or activities on department- or commission-owned
23 land or land leased to or from the department for the purpose
24 of providing goods and services to the users of the property or
25 facilities on the land, including commercial enterprises or

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1 activities, other than commercial enterprises or activities on
2 a controlled-access facility conducted, permitted or authorized
3 pursuant to Section 67-11-9 NMSA 1978. In furtherance of these
4 commercial enterprises or activities, the commission may:

5 (1) authorize the lease of department- or
6 commission-owned land as it deems necessary, in which case
7 consideration for the lease shall be payments in cash or cash
8 equivalent that shall be deposited into the state road fund; or

9 (2) authorize the sale or exchange or lease
10 with in-lieu value consideration of department- or commission-
11 owned land; provided that the sale or exchange or lease with
12 in-lieu value shall be subject to the ratification and approval
13 by joint resolution of the state legislature prior to the sale
14 or exchange or lease with in-lieu value becoming effective; and

15 [~~H.~~] I. for the purposes of Subsection [~~G~~] H of
16 this section shall:

17 (1) adopt rules necessary to carry out the
18 provisions of Subsection [~~G~~] H of this section;

19 (2) prior to initiating any action to conduct,
20 permit or authorize commercial enterprises or activities, adopt
21 a rule providing a procedure to involve residents of the
22 municipality or county in which the commercial enterprises or
23 activities are proposed to occur in the department's planning
24 and decision-making process for the sole purpose of advising
25 the commission and department on the feasibility and

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1 suitability of the proposed commercial enterprises or
2 activities;

3 (3) comply with the Procurement Code in the
4 acquisition process whenever commercial enterprises or
5 activities result in the commission or department acquiring
6 construction, services or tangible personal property, as those
7 terms are defined in the Procurement Code;

8 (4) if the commercial enterprises or
9 activities are to be developed or operated by a private entity,
10 direct that private entity to:

11 (a) create its plans to be not
12 necessarily in compliance but generally compatible with local
13 zoning and land use policies, including affordable housing and
14 historic and architectural standards, if any, and, to the
15 extent the private entity will obtain water or other services
16 from a local authority, negotiate an agreement between relevant
17 parties for those services, the terms and conditions of which
18 shall be no more stringent than the local authority's then
19 current laws, rules and policies; and

20 (b) submit its plans to the local zoning
21 and land use authority for comment. The local authority shall
22 communicate its recommendations and comments in writing to the
23 department and private entity within thirty days of receiving
24 the plans. The department, commission and private entity shall
25 take no action on the project in reliance on those plans until

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1 they have received the local authority's recommendations and
2 comments or until the thirty-day comment period has expired,
3 whichever comes first; provided that the local authority's
4 approval is not required under this section, and this section
5 does not delegate to the local authority power that it does not
6 otherwise have; and

7 (5) not use the power of eminent domain to
8 acquire land to be developed or operated by a private entity."

9 SECTION 3. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2023.

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