

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 97

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

AN ACT

RELATING TO STATE PROPERTIES; 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; AUTHORIZING THE WAIVER OF FEES OR LEASING COSTS FOR
INFRASTRUCTURE THAT IS TO BE USED TO PROVIDE BROADBAND INTERNET
SERVICES TO UNSERVED OR UNDERSERVED LOCATIONS AS DEFINED IN THE
CONNECT NEW MEXICO ACT.

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

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

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

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1 commission:

2 A. may declare abandoned and close to public
3 traffic all grade crossings of railroads by state highways in
4 cases where grade separations or other adequate crossings are
5 substituted therefor or where such grade crossings become
6 unnecessary to the public convenience by reason of changes in
7 highway locations;

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

20 C. shall prescribe by rule the conditions under
21 which fiber cable lines, microwave towers or other
22 infrastructure used for broadband internet services, pipelines,
23 telephone, telegraph and electric transmission lines and
24 ditches may be placed along, across, over or under public
25 highways in this state and shall forcibly remove or cause to be

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1 removed fiber cable lines, conduit, poles, pipelines,
2 telephone, telegraph or electric transmission lines, wireless
3 technology or other infrastructure or ditches that may be
4 placed along, across, over or under such public highways in
5 violation of such rules and regulations;

6 D. may waive fees or leasing costs for
7 infrastructure authorized pursuant to Subsection C of this
8 section that is to be used to provide broadband internet
9 services to unserved or underserved locations, as defined in
10 the Connect New Mexico Act;

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

20 ~~[E-]~~ F. shall bring and maintain in the name of the
21 state actions and proceedings deemed necessary by the state
22 transportation commission for the condemnation of rights of way
23 for public highways or for the removal or condemnation of
24 buildings or other improvements that encroach in whole or part
25 upon the rights of way of public highways or for the

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

23 [F-] G. shall designate in its discretion one of
24 its employees as acting secretary to act at all times when the
25 secretary is absent from the state capital. The acting

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

15 ~~[G.]~~ H. subject to the provisions of Subsection ~~[H]~~
16 I of this section, may conduct, permit or authorize commercial
17 enterprises or activities on department- or commission-owned
18 land or land leased to or from the department for the purpose
19 of providing goods and services to the users of the property or
20 facilities on the land, including commercial enterprises or
21 activities, other than commercial enterprises or activities on
22 a controlled-access facility conducted, permitted or authorized
23 pursuant to Section 67-11-9 NMSA 1978. In furtherance of these
24 commercial enterprises or activities, the commission may:

25 (1) authorize the lease of department- or

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1 commission-owned land as it deems necessary, in which case
2 consideration for the lease shall be payments in cash or cash
3 equivalent that shall be deposited into the state road fund; or

4 (2) authorize the sale or exchange or lease
5 with in-lieu value consideration of department- or commission-
6 owned land; provided that the sale or exchange or lease with
7 in-lieu value shall be subject to the ratification and approval
8 by joint resolution of the state legislature prior to the sale
9 or exchange or lease with in-lieu value becoming effective; and

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

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

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

23 (3) comply with the Procurement Code in the
24 acquisition process whenever commercial enterprises or
25 activities result in the commission or department acquiring

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1 construction, services or tangible personal property, as those
2 terms are defined in the Procurement Code;

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

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

15 (b) submit its plans to the local zoning
16 and land use authority for comment. The local authority shall
17 communicate its recommendations and comments in writing to the
18 department and private entity within thirty days of receiving
19 the plans. The department, commission and private entity shall
20 take no action on the project in reliance on those plans until
21 they have received the local authority's recommendations and
22 comments or until the thirty-day comment period has expired,
23 whichever comes first; provided that the local authority's
24 approval is not required under this section, and this section
25 does not delegate to the local authority power that it does not

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1 otherwise have; and

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

4 SECTION 2. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2023.

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