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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>STBTC</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/20/23</u>
<b>SHORT TITLE</b> <u>State Land Broadband Easements</u>	<b>BILL</b> <u>CS/Senate Bill</u>
	<b>NUMBER</b> <u>97/STBTCS</u>
	<b>ANALYST</b> <u>Gaussoin</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Is a Companion to House Bill 160

### Sources of Information

LFC Files

Responses Received From

State Land Office (SLO)

Department of Information Technology (DoIT)

Department of Transportation (NMDOT)

## SUMMARY

### Synopsis of STBTC Substitute for Senate bill 97

The Senate Tax, Business and Transportation Committee substitute for Senate Bill 97 (SB97/STBCS) would require the State Transportation Commission to regulate the placement of fiber cable lines, microwave towers, or other broadband infrastructure along, across, over, or under public highways and would authorize the department to waive fees or leasing costs for broadband infrastructure serving unserved or underserved communities as defined in the Connect New Mexico Act.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

The Department of Transportation (NMDOT) declined to estimate the financial impact to the department but noted it could prompt a “large” increase in the number of right-of-way (ROW) applications from private entities. From NMDOT:

Implementation of SB97/STBTCS requires NMDOT to set regulations for the use of NMDOT ROW by broadband internet applicants. After promulgation of any amended or new rule, NMDOT may expect hundreds of new ROW use applications across the state for private business broadband internet use. These additional applications will require review, on paper and in-the-field, by environmental, historical and cultural specialists, and surveyors and engineers, for compliance with industry technical and safety standards, and for potential conflicts with existing ROW users (utilities) and the traveling public’s use of state roads and highways.

To implement SB97/STBTC, NMDOT will likely need to increase its personnel to process, review, and manage the anticipated increase in ROW use applications for broadband infrastructure projects.

However, the department might overstate the potential impact. NMDOT reports a new electronic right-of-way use permit system is expected to be operable by the end of FY23, and the specificity of the parameters of SB97/STBTCS—broadband companies seeking a right of way for lines that would serve unserved or underserved communities—is likely to limit the number of companies that apply.

## **SIGNIFICANT ISSUES**

The Office of Broadband Access and Expansion reported the original Senate Bill 97 would ease its efforts to ensure internet access statewide, and NMDOT says waiving right-of-way use fees is allowed under an exception to the constitutional anti-donation clause (which prohibits the use of public money to benefit private interests) approved by voters in November 2022. It notes the department was constitutionally prohibited from allowing private business to use public rights-of-way before the amendment. From NMDOT:

SB97/STBTCS will allow NMDOT to maintain its managerial role over state road and highway public ROW, with additional statutory authority to collaboratively provide private businesses access to the public ROW for broadband deployment. NMDOT is engaged in rulemaking to manage the private use of public ROW and is well positioned to include the rulemaking required to implement SB97/STBTCS. ... NMDOT anticipates rule adoption by the State Transportation Commission in summer 2023.

The committee substitute addresses concerns with the original bill raised by the State Land Office by removing state trust lands from the proposal.

## **ADMINISTRATIVE IMPLICATIONS**

NMDOT expects a significant increase in the administrative burden of administering rights of way along public highways; however, that impact might be overstated. (See “Fiscal Implications.”)

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The committee substitute for SB97 relates to House rural Development, Land Grants and Cultural Affairs Committee Substitute for House Bill 160, which would also authorize the State Transportation Commission to regulate the installation of broadband infrastructure along, across, over, and under public highways and authorizes them to waive fees.

## TECHNICAL ISSUES

From NMDOT:

SB97/STBTCS does not include state owned parcels that may lie outside of documented ROW boundaries, referred to as non-right-of-way (NRW) parcels, but which may be of interest and available for wireless facilities (antennae on poles and towers). See “Amendments” below.

SB 97/STBTC proposes to waive “fees.” NMDOT notes the term “fees” is generally associated with nominal administrative application fees, which are different from recurring, annual fees associated with long-term, permitted installations.

To clarify the language in the bill and to ensure it mirrors the language in the closely related House Bill 160, NMDOT proposes the following amendments. (Double underline is used to identify the NMDOT’s proposed added text.):

Amend the Title:

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 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 TO PROVIDE BROADBAND INTERNET SERVICES TO UNSERVED OR UNDERSERVED LOCATIONS AS DEFINED IN THE CONNECT NEW MEXICO ACT.

Amend SB 97/STBTC Section 1, C and D, as follows:

C. shall prescribe by rule the conditions under which fiber cable lines, microwave towers, conduit, poles, wireless technology or other infrastructure used for broadband internet services, pipelines, telephone, telegraph and electric transmission lines and ditches may be placed along, across, over or under public highways in this state or other property under the jurisdiction of the department and shall forcibly remove or cause to be removed fiber cable lines, conduit, poles, pipelines, telephone, telegraph or electric transmission lines, wireless technology or other infrastructure or ditches that may be placed along, across, over or under such public highways in violation of such rules and regulations;

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