

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

The Wireless Consumer Advanced Infrastructure Act provides for an “authority” (defined as a municipality or county) to regulate the timelines, costs and requirements for the placement, timing and cost of cellular provider facilities on municipal or county rights of way (as defined in the Act).

This bill would amend the Act to include all political subdivisions of the state and state agencies as an “authority” whose regulation of provider use of rights of way are authorized and restricted by the Act.

With regard to the Act’s exemptions for provider use of federal interstate highways and state highways, the bill would amend the exemptions to include “a federal or state highway, road or patrol yard, including patrol yards owned, controlled or maintained by the department of transportation,” with a clarification that “road” and “highway” include a travel lane, roadside area, shoulder, median, ditch, culvert, ramp, turnout and construction or maintenance easement.

FISCAL IMPLICATIONS

The bill would have a negative and unknown fiscal impact if additional uses were allowed on rights of way on state trust land without compensation to the State Land Office.

SIGNIFICANT ISSUES

The bill amends the definition of “authority,” as part of the Wireless Telecommunications Act (Section 63-9I-2 NMSA 197), to include the “state agencies.” To the extent that companies would be allowed to piggyback off of existing utility rights of way on state trust land without seeking authorization from the Commissioner of Public Lands for the additional use, this would also violate the Enabling Act. Rights of way issued on state trust land are exclusive to the authorized permitted use and any additional use must receive additional authorization (and compensation) from the State Land Office. As indicated below, the bill should be amended to exclude rights of way on state trust lands under the custody or control of the State Land Office.

The Enabling Act of 1910 confirmed this foundational principle guiding the management of the state trust lands, and provides that the agency must receive “true value” from the use of state trust lands or their resources, and that leases or other transactions “not made in substantial conformity with the ... [A]ct shall be null and void.” Act June 20, 1910, § 10, 36 Stat. 557.

The New Mexico Constitution vests the Commissioner of Public Lands with the “direction, control, care and disposition of all public lands,” that is, the state trust lands conveyed by the United States to New Mexico. N.M. Const., art. XIII, § 2; see also N.M. Const., art. V, § 1 (creating the office of Commissioner of Public Lands); NMSA 1978, § 19-1-1 (creating State

Land Office as agency through which the Commissioner maintains “jurisdiction over all lands owned [in trust] by the state”). The Commissioner’s core statutory duty is as a fiduciary for the land trust, which includes “maximizing revenues and profits” for New Mexico’s schools and other public beneficiaries. *King v. Lyons*, 2011-NMSC-004, ¶ 103, 149 N.M. 330.

In *State ex rel. State Highway Commission v. Walker*, the New Mexico Supreme Court considered whether the Commissioner could be required to waive right of way fees for the state Highway Department (now DOT), which intended to construct a public highway across state trust land. 1956-NMSC-080, 61 N.M. 374. Although the Court recognized that the highway provided a public benefit, it determined that the Enabling Act requires the Commissioner to administer state trust lands “solely for the purpose of the trust imposed – that is, for the benefit of the various state institutions for which the lands were granted.” *Id.*, ¶ 5. Rejecting the Highway Department’s argument that “an agency of the state [should not] be charged for the use of state property,” the Court held that the Enabling Act “permit[s] no license of construction” for free use of state trust land or resources, and that the Highway Department “must ... compensate the trust for rights-of-way...” *Id.*, ¶¶ 12, 29. *Walker* makes clear that easements or rights of way across state trust land cannot be obtained without consideration. There is a further consideration that to the extent easements or rights-of-way are intended for private party use, obtaining state land (including state trust land) for such use without consideration would violate the Anti-Donation Clause of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

Page 4, line 9, strike “or”

Page 4, line 11, after”;” insert: “or (d) a right of way to the extent that it is located on lands under the custody and control of the commissioner of public lands;”