

LFC Requester:	Jon Clark
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date February 18, 2015
Bill No: HB 442

Sponsor: Rep. Alonzo Baldonado
Short Telecommunications
Title: Safeguard Act

Agency Code: Attorney General's Office - 305
Person Writing Tannis L. Fox, AAG
Phone: 827-6695 **Email** tfox@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

Section 3 of HB 442 prohibits municipalities from offering “video service, telecommunications service or broadband service” except in an “unserved area.” An “unserved area” is one or more contiguous census blocks within a municipality where at least nine out of ten households lack access to defined telecommunication services.

Section 4 of HB 442 prohibits municipalities from exercising their eminent domain authority to condemn “a plant and equipment of a private provider of video service, telecommunications service or broadband service.” It prohibits municipalities from exercising their eminent domain authority to condemn real property except in unserved areas for purposes of establishing easements for such services.

Section 5 of HB 442 waives any antitrust immunity provided to municipalities under the state Antitrust Act, NMSA 1978, § 57-1-16.

Section 7 of HB 442 grandfathers-in municipalities providing video service, telecommunications service or broadband service through a municipally owned system as of the effective date of the act.

HB 442 has an emergency clause.

FISCAL IMPLICATIONS N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Various current state laws prohibit or limit municipalities' authority to provide telecommunication services. Two municipalities, Chattanooga, Tennessee and Wilson, North Carolina, have filed petitions with the Federal Communications Commission (FCC) challenging their states' laws preventing municipalities from developing broadband services. The FCC, pursuant to its authority under the Communications Act to promote and develop broadband networks within the United States, is reviewing the petitions. See "FCC Investigates Municipal Broadband Battle in North Carolina and Tennessee" (Feb. 2, 2015) at <http://www.tomshardware.com/news/fcc-considers-action-municipal-broadband,28492.html>. On February 26, 2015, the FCC will consider during an open meeting a Memorandum Opinion and Order addressing the two petitions, which request the Commission to preempt provisions of state laws in North Carolina and Tennessee that restrict effective competition and the authority of communities to provide broadband service. <http://www.fcc.gov/events/open-commission-meeting-february-2015>. The draft Memorandum Opinion and Order is reported to aim to "remove barriers that prevent the development of Internet services under city management currently imposed by state laws." <http://www.tomshardware.com/news/fcc-considers-action-municipal-broadband,28492.html>. Therefore, HB 442's prohibition on municipalities developing broadband could be the subject of preemption by the FCC.

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP None identified.

TECHNICAL ISSUES None identified.

OTHER SUBSTANTIVE ISSUES None identified.

ALTERNATIVES None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Municipalities will continue to be able to provide video service, telecommunications service and broadband service.

AMENDMENTS None offered.