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FISCAL IMPACT REPORT

SPONSOR Chandler **LAST UPDATED** 1/30/24
ORIGINAL DATE 1/27/24
BILL
SHORT TITLE Energy Story Facility IRB Eligibility **NUMBER** House Bill 143
ANALYST Graeser

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
TRD		(\$2,000.0)	(\$2,000.0)	(\$2,000.0)	(\$2,000.0)	Recurring	General Fund
Local Treasurers		Indeterminate but minimal loss	Recurring	State GOBs			
Local Treasurers		**	**	**	**	Recurring	Local Jurisdictions

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

**Could be positive for the adopting jurisdictions and schools and negative for special districts

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	\$1.2			\$1.2	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 232

Sources of Information

LFC Files

LFC FIRs for 2022 HB14 and 2023 HENRC/CS/HB67

Agency Analysis Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Taxation and Revenue Department (TRD)

Agency Analysis was Solicited but Not Received From

New Mexico Municipal League (NMML)

New Mexico Counties (NMC)

SUMMARY

Synopsis of House Bill 143

House 143 (HB143) adds “energy storage facilities” to the authority granted municipalities and counties for negotiating an industrial revenue bond (IRB). This parallels the authority granted these jurisdictions to negotiate an IRB for solar and wind production projects and for renewable energy transmission facilities. The bill also provides a gross receipts tax deduction for sales of energy storage equipment to governments. In addition, it adds energy storage facilities to the school district hold harmless provisions of Sections 3-32-6 and 4-59-4 NMSA 1978.

The bill changes the definition of “energy storage facility” to a as “a facility that uses mechanical, chemical, thermal, kinetic or other processes to store energy from a zero-carbon emission source for release at a later time.” The bill also strikes existing language in section 7-9-54.3 NMSA 1978 that barred taxpayers from claiming the GRT deduction if that taxpayer also claimed any of three specific tax credits—all of which have been previously repealed. HB143 also expands the definition of “related equipment” to include power conversion equipment and equipment used to connect an energy storage facility to the electric grid or to a wind or solar generation facility.

HB143 adds a sunset date for the GRT deductions in the bill, both for this new deduction and the existing deductions for solar and wind equipment. The sunset date is July 1, 2044.

The effective date of this bill is July 1, 2024. The provisions of the bill sunset for installations completed after July 1, 2044.

FISCAL IMPLICATIONS

Overall fiscal impacts of this proposal can only be illustrated and not calculated because the impacts are critically dependent on adoption by developers and counties and municipalities. Most new renewable projects to date that have been approved for IRB treatment have not involved energy storage facilities. The provisions of this bill treat energy storage systems identically with renewable generation and slightly differently than energy transmission projects. The similarity is that school districts in the sponsoring county share in the negotiated amount of payments-in-lieu-of-taxes, or PILT. The difference is that energy transmission projects are required to share PILT with the state (general obligation bonds). Energy storage projects are not required to share the PILT with the state. Pursuant to the provisions of this bill, community colleges and other special districts, such as soil and water conservation districts, will not share the PILT.

Developers installing mixed facilities with wind generation and battery energy storage (BESS) or solar facilities and BESS probably do not need the authority granted in this bill. It is likely that the provisions of this bill are intended to incentivize retrofitting existing utility scale wind or solar projects with BESS capability.

The fiscal impact exhibited in the table is based on a hypothetical utility scale, stand-alone BESS project in Santa Fe County. This county was chosen because parts of four school districts are

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within the boundaries of the county and the provisions of this bill would impact these four school districts. Further, it is assumed there will be 200 megawatt-hours of installation pursuant to the provisions of this bill in each year throughout the exhibit period.

Project	
200 MWH lithium solar battery	200,000,000
Cost per KWH	\$200
Capital Cost	\$40,000,000
35-year life	
Santa Fe Remainder GRT rate	2%
State GRT Rate	0.04875
Property Tax	
Valuation Ratio	0.33
PROPERTY LOCATION	Santa Fe County Remainder
CURRENT TAXABLE VALUE:	\$321,824,867
CATEGORY:	C OUT NR
Total State	1.36 mills
Total County	13.974 mills
School District average	9.788 mills
Santa Fe Comm.Col.(1)	3.335 mills
Santa Fe Col. Bldg.Levy (1)	0.65 mills
GRAND TOTAL	29.127 mills

Without the IRB approval, the first six years of the project would generate the following revenue for the entities:

	Thousands of Dollars
Initial County GRT/Comp	\$800
Initial State GRT/Comp	\$1,950
Property NR Tax Obligation Total State	\$41
Property NR Tax Obligation Total County	\$425
Property NR Tax Obligation Total School District	\$298
Property NR Tax Obligation Santa Fe Comm.Col.(1)	\$121
All jurisdictions	\$3,635

With IRB approval and a payment-in-lieu-of-taxes (PILT) amount that holds only the county harmless (without adjustment for the time value of money) for the property tax for the first six years of the project , the following would be the first six years of revenue with the differences.

First Six Year Revenue Totals			
(in thousands)			
	(\$ thousands)	(\$ thousands)	Difference (\$1,000)
Initial County GRT/Comp	\$800	\$0	(\$800)
Initial State GRT/Comp	\$1,950	\$0	(\$1,950)

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County PILT	\$0	\$425	\$425
Property NR Tax Obligation Total State	\$41	0	(\$41)
Property NR Tax Obligation Total County	\$425	\$0	(\$425)
Property NR Tax Obligation Total School District	\$298	\$0	(\$298)
Property NR Tax Obligation Santa Fe Comm.Col.(1)	\$121	\$0	(\$121)
All jurisdictions	\$3,635	\$425	(\$3,210)

In the short run, all jurisdictions lose money, with the state losing the most. The exact amount of PILT negotiated is up to the sponsoring jurisdiction. Pursuant to the provisions of this bill, the provisions of Sections 3-32-6 or 4-59-2 NMSA 1978 would apply, and any negotiated PILT would be automatically shared with school districts in the county. The bill provides a gross receipts tax and compensating tax deduction. Therefore, both the state and the sponsoring local government would forgo the initial construction phase GRT and compensating tax and the initial high level of property tax measured by accelerated depreciation of tangible personal property.

TRD notes similar considerations:

Estimated Revenue Impact*					R or NR* *	Fund(s) Affected
FY24	FY25	FY26	FY27	FY28		
--	(Unknown but up to \$100 per megawatt)	R	General Fund – Section 5			
--	(Unknown but up to \$60 per megawatt)	R	Local Governments – Section 5			

The Taxation and Revenue Department (TRD) cannot anticipate whether a government will purchase energy storage equipment to estimate a precise fiscal impact of the gross receipts tax deduction. However, estimations from the New Mexico Public Regulation Commission suggest that the cost of 1,000 megawatts of new energy storage capacity would be \$2.3 billion.¹ This implies the cost per megawatt is \$2.3 million. TRD used this amount to calculate the potential revenue loss from this bill's deduction. The analysis assumed a constant cost during the periods of revenue impact and used the statewide effective gross receipts tax (GRT) rate.

While the energy storage market is still considered underdeveloped, notable New Mexico private projects have emerged. One significant project is the Buena Vista Energy Center, developed by NextEra Energy Resources. This facility, completed in early 2023 with a capacity of 50 megawatts (MW), is one of the largest battery storage projects in the United States. The U.S. Energy Information Administration (EIA) provides data and reports on battery storage in the United States, including New Mexico. Their reports, such as the "Battery Storage in the United States: An Update on Market Trends²," highlighted New

¹ <https://nmlegis.gov/Sessions/23%20Regular/firs/SB0456.PDF>

² <https://www.eia.gov/analysis/studies/electricity/batterystorage/>

Mexico as a developing market.

Sections 1-4: The expansion of the Industrial Revenue Bond (IRB) program to include energy storage facilities will reduce property tax and GRT revenues for the state, local governments, and other taxing districts as property purchased pursuant to an issuance of IRBs is owned by the local government, and therefore is not subject to property taxes, and equipment is not subject to GRT, until the completion of the IRB lease and the property is turned over to the business or organization that owns the project.

The table on page 1 retains the LFC quantitative estimate based on a scenario.

This bill expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. In this case, the state general fund has no input into a local decision to approve an industrial revenue bond for an electrical energy storage system.

SIGNIFICANT ISSUES

This bill narrows the gross receipts tax (GRT) base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues—the tax on tax from taxing each step of taking something from source to consumer—and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

TRD notes the following policy impact considerations:

Energy storage is vital to building a modernized electric grid in New Mexico and is critical for the state's energy transition toward clean sources as renewables continue to grow. Thus, this deduction aligns with the goals of using energy efficiently, modernizing the energy supply, and replacing extant nonrenewable energy sources.

The expansion of the IRB Acts to include energy storage facilities is consistent with the existing electric generation and transmission facilities allowed for under IRBs. This, however, comes at the cost of foregone property taxes on the project for the period of the ownership of the property by the local government, and its concurrent lease of that property by the local government to the owner of the project.

GRT rests upon the general presumption that all receipts of a person engaged in business in New Mexico are subject to the gross receipts tax and that this rate represents the rate upon which the state collects taxes on transactions. GRT represents the largest recurring revenue source for the state General Fund at around 34 percent, about 80 percent of municipal revenue, and 30 percent of county revenue.

While tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures or narrowing the tax base, with a negative impact on the General Fund; and (2)

increases the burden of compliance on both taxpayers and TRD. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy. Tax incentives are also properly used to stimulate developing markets in goods and services.

EMNRD has provided commentary on the policy and historical implications of the bill:

HB143 is a continuation of the policy first enacted in 2002, when that year's HB143 added renewable energy projects to the industrial revenue bond statutes, and continued in 2020's HB50, which added electric transmission line projects to the eligible project types. Those two bills, as well as this current HB143, all support the growth of renewable energy in New Mexico by enabling local governments to receive in-lieu-of-tax payments resulting from the development of renewable energy projects built in their jurisdictions.

HB143 specifically concerns energy storage projects and makes them eligible for industrial revenue bonds. The main role of energy storage in today's electric grid is to capture surplus energy when it is available and store it until it is needed—i.e., when electricity generation may not be sufficient to meet demand or renewable sources, which are variable in availability, are not generating. Energy storage therefore increases the reliability and resilience of the electric grid and supports the deployment of solar and wind projects. As New Mexico's electric grid decarbonizes, becoming more reliant on wind and solar generation, energy storage facilities are increasingly important in ensuring the continued reliability and resilience of our state's electricity grid.

Energy storage projects are often co-located with renewable energy generation facilities. However, the current costs of energy storage equipment, particularly for longer-duration storage (equipment which can store more than four hours' worth of energy), may be prohibitive for renewable generation developers if they must be borne by the developer outright. Industrial revenue bond eligibility for these projects will increase the likelihood that developers will choose to add storage to their construction plans, making it more likely that these reliability-increasing facilities will be built in New Mexico. Simultaneously, industrial revenue bond eligibility for energy storage will give financing tools to local governments which enable them to benefit their tax base directly from the development and deployment of an energy storage project.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability may not be met. The fiscal impact is created by the sale of tangible personal property to government is deductible in current statute. TRD does not have direct information on the sale of tangible personal property sold to a government (the local jurisdiction sponsoring the IRB) and, therefore, cannot include this information in the annual tax expenditure report. The gross receipts tax deduction specific to the sale of energy storage systems to government does not create additional fiscal impact and may not be reported by the developer. This comment is true regarding any IRB project, not just those created pursuant to the provisions of this bill.

ADMINISTRATIVE IMPLICATIONS

EMNRD reports no significant administrative impacts for the bill.

TRD reports minimal administrative impacts:

TRD will update forms, instructions, and publications and make information system changes. TRD’s Administrative Services Division (ASD) anticipates this bill will take approximately 20 hours and two existing full-time employees (FTE). TRD’s Information Technology Division (ITD) estimates no impact as the deduction is not separately reported.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY24	FY25	FY26	3 Year Total Cost		
--	\$1.2	--	\$1.2	NR	TRD – ASD – staff workload

* In thousands of dollars. Parentheses () indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicate of SB232; similar to 2023’s committee substitute for HB67; TRD previously noted the following: similar to HB14 (2022 Regular Session), Similar HB262 (2021 Regular Session), SB301 (2021 Regular Session) and Similar to HB201 (2020 Regular Session)

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy:** Revenue should be adequate to fund needed government services.
- **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity:** Different taxpayers should be treated fairly.
- **Simplicity:** Collection should be simple and easily understood.
- **Accountability:** Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✓	Tax Expenditures for Renewable energy projects have been extensively debated.
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	✗ ✗ ✗	No long-term goals or measurable targets, nor any annual caps.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✗	No reporting on state or local costs of IRB projects.
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.		

Public analysis	x	
Expiration date	✓	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure. Fulfills stated purpose Passes “but for” test	x	No measurable targets.
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met x Not Met ? Unclear		

LG/hg/al/rl/ne