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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/16  
 SPONSOR Sanchez, C LAST UPDATED 2/11/16 HB \_\_\_\_\_  
 SHORT TITLE Utility Facility Property Tax Valuation SB 47/aSCORC/aSFC  
 ANALYST Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
	(\$0.0)*	(\$0.0)*	(\$0.0)*	(\$0.0)*	Recurring	State GOB Fund
	(\$0.0)*	(\$0.0)*	(\$0.0)*	(\$0.0)*	Recurring	Local/School Capital Funds
	(\$0.0)*	(\$0.0)*	(\$0.0)*	(\$0.0)*	Recurring	Local/School Operating Funds

Parenthesis ( ) indicate revenue decreases

(\*) TRD has filed an extensive agency bill analysis indicating that the fiscal impacts of this bill are contingent upon an appeal of a district court ruling adverse to the complaining utility and ruling by an administrative hearing officer on appeals of assessments for 2011, 2012, 2013 and 2014. See attached ABA for SB-47 as amended.

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0.0	\$0.0	\$0.0	Recurring	TRD Operating Fund

Parenthesis ( ) indicate expenditure decreases

This bill as amended duplicates HB 229 as amended.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD) on HB-229 amended by HWMC  
 Public Regulation Commission (PRC)

## SUMMARY

### Synopsis of SFC Amendment

Makes a subtle redefinition of “tangible property cost” to read as follows.

“‘tangible property cost’ excludes the cost of property contributed to, or acquired with funds contributed to, a utility by or on behalf of a ratepayer or potential ratepayer for the expansion, improvement or replacement of property used for the transmission or distribution of electric power of the utility.”

### Synopsis of SCORC Amendment:

Amendments keep the identically same affect, but change the title from “Requiring that a contribution made to a utility ... shall not be subject to valuation for property tax purposes” to “Clarifying that a contribution made to a utility ... is not subject to valuation for property tax purposes and redefines “tangible property cost” to exclude the cost of property contributed to or acquired or constructed with funds contributed to a utility by a customer or potential customer for the expansion, improvement or replacement of serviced or a facility of the utility.” The SCORC amendments attempt to emphasize that the bill does not create an exemption from the property tax but only change the special method of valuation for electric utility property. A final amendment makes the provisions applicable for the 2017 property tax year, not the 2016 property tax year.

### Synopsis of Original Bill:

Senate Bill 47 proposes to create an exemption for real and tangible personal property when that property is owned by an electric utility and constructed or purchased using donations from state, local or federal governments. The section of statute amended here is the general authority granted to TRD/Property Tax Division to assess utility property – both real and tangible personal property – centrally and not leave the task to county assessors.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends (May 18, 2016). ~~The provisions are applicable for property tax years beginning on or after January 1, 2016. Note: that the property tax year is the value of property as of January 1 each year. The effective date of this bill would be after notices of valuation have been mailed and within the protest period.~~

## FISCAL IMPLICATIONS

TRD staff indicates that they are unable to quantify the implicit exemption created by this bill. Apparently, many utilities have not reported this property which is not includable in the rate base. Not knowing how much property value at stake renders the effort to quantify the effect of this bill dubious. Generally, this bill’s provisions will shift tax burden between the advantaged class and all other taxpayers. For debt, however, the status quo is that this property was not included in the 2011 through 2014 tax years and the inclusion by assessment has been protested. If the assessments are upheld, then future taxes will be somewhat lower than if the assessments are overturned. For operating rates, the valuation of this heretofore unvalued property will probably be considered “Net new value” and not subject to yield control. Therefore, if the bill

passes, the jurisdictions that host this contributed utility property will lose revenue that they have not previously received, but have the right to collect.

However, see TRD's analysis attached to this FIR for a more comprehensive discussion of fiscal effects. Note TR's caveat:

“While the district court has ruled that CIAC is subject to valuation, the fiscal effects of this bill on property tax beneficiaries will likely depend on the Administrative Hearing Office's (AHO) and ultimately the Court of Appeals' final ruling on whether CIAC is subject to valuation.”

## SIGNIFICANT ISSUES

The SFC amendment apparently narrows the applicability of this “clarification.” A negative inference is that if donated funds are used to “construct” something, then that new construction should be included in the property tax base. However, with the SFC amendment, the clarification apparently is restricted to equipment, such as wire, power poles and transformers, used to expand, improve or replace the transmission or distribution, but not generation of electric power. The policy discussed below remains, however. This more limited property is still owned by the utility even if it has been paid for by a direct charge to the ratepayer. A core concept of the property tax is that the owner of the property should be responsible for payment of the property tax. In many cases of extending electric lines to a potential ratepayer, the lines cross a number of properties owned by other people. It would not be reasonable or feasible to assess the equipment on a property-by-property basis. This is at least partially responsible for requiring utility property to be valued by the central assessment bureau of TRD.

The SCORC amendments would not alter the following comments nor (attached) TRD's comments on and history of the issues.

This is a highly technical bill that attempts to resolve a controversy between the central assessment bureau at TRD's Property Tax Division and a rural electric coop in favor of the coop. At issue is the tax treatment of property purchased with funds contributed by local, state or federal governments or other businesses. PRC asserts that plant and equipment purchased with funds classified as “Contribution In Aid of Construction (CIAC)” have historically not been assessed for property tax purposes.

PRC further points out that “Property tax, as other taxes and government fees, are direct flow through expenses in utility rates. Taxing CIAC property would directly result in bill increases to customers.”

TRD counters this view by acknowledging that contributed property or property purchased or constructed using contributed are not includable in the rate base for determining electric rates to customers. However, the property is owned by the utility and used in the production of marketable energy. TRD explains that there is a difference between CIAC and “Advances for Construction,” but both of these categories result in booking the value of the property as a plant cost.

**In common sense terms, the property is real, it is substantial and it should be considered and valued in the jurisdiction. Since the person who or entity that made the cash or property donation may not be available, the simplest interpretation is that the electric utility that received the donation and currently holds title to the property should be**

**directed to pay the tax.**

**Contributions in Aid of Construction (Non-Refundable)**

The contributions or donations in cash, property, or services from companies, states, municipalities, other governmental agencies, individuals, and others for construction purposes are generally carried as a plant item. The controversy revolves about booking these contributions as intangible property in order to escape property tax valuation.

**Advances for Construction**

A deferred credit account representing cash advances paid to the utility by customers requiring the construction of facilities in their behalf. These advances are refundable -- the time or extent of refund is dependent on the contract provisions of the advance (usually dependent on whether or not during a specified period the revenue from the installation warrants the refund). The unrefunded balance, if any, must be transferred to the appropriate plant account and are subject to valuation for property tax purposes. In FERC regulated properties CIAC already exists.

**B. FERC and NARUC Guidance on CIAC**

Applicants follow FERC’s Uniform System of Accounts (“USoA”) and NARUC’s publication, Public Utility Depreciation Practice (August 1996) in accounting for CIAC. These sources should not be in dispute, as they are the very sources that intervening parties also reference and rely upon in their testimonies. The section of FERC’s USoA quoted below specifically addresses how CIAC should be treated under utility accounting:

**Electric Plant**

The electric plant accounts shall not include the cost or other value of electric plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of electric plant shall be credited to accounts charged with the cost of such construction. Plant constructed from contributions of cash or its equivalent shall be shown as a reduction to gross plant constructed when assembling cost data in work orders for posting to plant ledgers of accounts. The accumulated gross costs of plant accumulated in the work order shall be recorded as a debit in the plant ledger of accounts along with the related amount of contributions concurrently be recorded as a credit. 3 NARUC also specifically addresses the accounting treatment of CIAC:

The plant accounts should not include the cost or other value of plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of plant should be credited to the accounts charged with the cost of such construction. When assembling cost data in work orders for posting to plant ledgers of accounts, plant constructed from contributions of cash or its equivalent should be shown as a reduction to gross plant constructed. The accumulated gross costs of plant accumulated in the work order should be recorded as a debit in the plant ledger of accounts along with the related amount of contributions concurrently being recorded as a credit. FERC and NARUC prescribe the same accounting treatment of CIAC; and, Applicants follow this consistent guidance whereby CIAC payments are credited (or offset) against the related projects’ actual costs.

## **ADMINISTRATIVE IMPLICATIONS**

The central assessment bureau of TRD's Property Tax division would have to be instructed in the changes wrought by this bill. There is a chance that redefining the core concept of property tax appraisal – that of tangible costs – by this bill would spill over into other areas and render uncertain other long-settled areas of law.

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

This bill as amended, is identical to HB 229 as amended (/a HWMC and /a HFI).

## **TECHNICAL ISSUES**

LFC staff criticized the original bill as creating an exemption from property tax. This is not allowed to the legislature. Despite the amendments, this bill continues to create a possible exemption from property tax valuation for both real and tangible personal property. The legislature is entitled to change the rules regarding tangible personal property, but changes to real property taxation can only proceed through a constitutional amendment.

“All tangible property in New Mexico is subject to taxation in proportion to value, and should be taxed, unless specifically exempted by the constitution or by its authority. Sims v. Vosburg, 43 N.M. 255, 91 P.2d 434 (1939)” is contained in the discussion of tangible property at Article VIII, Section 1 of the New Mexico Constitution.

The Senate floor amendment apparently attempts to remove construction from the ambit of this bill's provision. It is not certain that removing “construction” is an adequate surrogate for “real property.” Is a power pole, buried more than 10 feet in the earth and lasting 40- or 50-years real property or tangible personal property?

To the extent that this bill redefines what is considered “tangible property” to exclude property purchased with contributed funds, there could be undesirable ramifications.

## **OTHER SUBSTANTIVE ISSUES**

The central assessment bureau of TRD for the 2015 property tax year assessed 561 properties for a total assessed value of \$24,172,090,848 of which \$2,085,500,000 was electric generation, \$7,160,100,000 electric utilities, \$2,824,000 electric transmission and \$747,880,000 electric coops. For comparison, railroads were assessed at \$2.45 billion and pipelines at \$7.18 billion.

## **ALTERNATIVES**

Defer consideration of this issue until after the courts have decided the issue.

LG/jo/jle/al/jle

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Demesia Padilla, Secretary, Taxation and Revenue Department**

**February 8, 2016**

**Bill:** SB-47, as amended by SCORC      **Sponsor:** Senator Clemente Sanchez

**Short Title:** Utility Facility Property Tax Valuation

**Description:** SB-47 amends Section 7-36-29 NMSA 1978 to exclude from property tax, valuation of property contributed to a utility for the expansion, improvement or replacement of service or facility of the utility; and, the portion of property that is acquired or constructed with funds contributed to a utility for the expansion, improvement or replacement of service or facility of the utility by a customer or potential customer. This includes additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes. The bill proposes to make what are commonly referred to as “contributions in aid of construction” (CIAC) nontaxable to an electric utility, by excluding CIAC from the statutory method for determining value.

Some historical background on this bill provides additional context. This bill arises in response to a lawsuit filed by Harding County in the Board of Commissioners of Harding County, Mosquero Municipal Schools, Board of Education, and Roy Municipal Schools, Board of Education v. New Mexico Taxation and Revenue Department and Secretary Demesia Padilla, D-101-CV-2015-01239. In 2010, the Taxation and Revenue Department (TRD) became aware that Tri-State Generation and Springer Electric Coop built a utility line – the Hess Line. Springer Electric did not report this property when it submitted its rendering to the Property Tax Division (PTD). In 2011, TRD issued a valuation notice for the property and has issued notices of valuation for all subsequent years to the present. Springer Electric protested the valuation for all those tax years. The protests were not immediately taken to a hearing. In 2015, the Harding County Commissioners and school boards (BOCC) objected to TRD’s historical approach, raised the legal issue as to whether CIAC should or should not be valued under current statute and objected to TRD not acting on the protests. Ultimately, the BOCC filed a mandamus action in Santa Fe District Court, requiring that TRD, among other things, value the electric coops property as mandated in the law. The district court held that, as a matter of law, CIAC is subject to valuation. While the mandamus action was pending, TRD requested a hearing on the protests for tax years 2012, 2013, 2014 and 2015. That hearing was conducted on Wednesday, January 27, 2016, and the parties are waiting for the hearing officer’s decision.

The *Senate Corporations and Transportation Committee* amendment reorganizes some portions of the bill and strikes some of the applicability language.

**Effective Date:** Not specified; 90 days following adjournment (May 18, 2016).

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2016	FY2017	FY2018	FY2019	FY2020		
***	***	***	***	***	R	Property Tax Beneficiaries

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

\*\*\* See Methodology for Estimate Revenue Impact for details.

**Methodology for Estimated Revenue Impact:** While the district court has ruled that CIAC is subject to valuation, the fiscal effects of this bill on property tax beneficiaries will likely depend on the Administrative Hearing Office’s (AHO), and ultimately the Court of Appeals’ final ruling on whether

CIAC is subject to valuation.

The stipulation in the amended version of this bill that "tangible property cost excludes the cost of property contributed to, or acquired or constructed with funds contributed to, a utility by a customer or potential customer for the expansion, improvement or replacement of service or a facility of the utility" lessens the downside considerations of this legislation by eliminating prospective transactions that could be structured to keep property that should be valued from being valued. In short, it addresses the primary concern TRD had with the original.

It is not possible for TRD to know the amount of CIAC property that was not reported to SAPB because it has been taxpayers' opinion at the time of filing that they did not have to declare property contributed to them. Because CIAC properties were not reported to the Federal Energy Regulatory Commission or the Rural Utilities Service for rate-making purposes, they were assumed by their owners to be non-taxable even though statute in New Mexico was silent on the issue.

**Policy Issues:** CIAC, in most circumstances, is property paid for or constructed by the end-user for a special accommodation. For example, if a customer wants electric utility lines to its property buried or requires an inordinately long line installed so that power can be provided to the property. One reason CIAC is not included in a utilities rate base is because it involves accommodations to customers above and beyond what the utility typically provides to customers.

TRD has several policy concerns with this bill. First, the Legislature should recognize that the bill amends a definition – tangible property cost – which is used throughout the Property Tax Code. Consideration should be given to whether making this amendment could have broader future implications for other state assessed properties that receive CIAC. Second, the Legislature should consider that, should the courts ultimately determine that CIAC should be valued under current law, the fiscal impacts that result from the bills enactment will be borne directly by local governments.

The removal of the retroactivity in the amendment addresses several of the constitutional concerns raised by TRD with respect to the original bill.

Finally, with respect to accountability, as drafted, CIAC property and its value would not be reported to any state or local body. In short, there would be no means to either monitor the amount of CIAC property that is not being valued. TRD recommends some measure of CIAC reporting to ensure accountability.

**Technical Issues:** As noted in the original FIR, the proposed bill risks violating Article VIII. Section 3 of the New Mexico Constitution, but TRD believes this risk is minimal. Article VIII. Section 3 authorizes only certain types of property to be exempted from taxation. However, the bill does not enact an exemption; rather it relates to defining value.

**Other Issues:** The term "utility" is introduced in the proposed language, but it is not defined. The term "utility" appears elsewhere in the text of New Mexico statutes, as do terms such as "public utility" or "utility company" but it is not clear whether the term's intended meaning in the bill is one used elsewhere, or whether the intended meaning for purposes of this bill is different from its existing uses.

**Administrative & Compliance Impact:** The proposed legislation would have minor administrative consequences to the PTD, mostly in terms of compliance and verification. If assets are removed from the tax roll, assessment organizations would have to verify the reasons and verify that none of the contributions were utility to utility transfers rather than accommodations to the customer or prospective customer. The bill likely would increase the demand on DFA's Hearings Bureau and might cause some instances of litigation.

**Related Bills:** HB-229a (duplicate)