Revenue Proposal Analysis
Fiscal Year 2028

Assessing the Fiscal Impact of Tax and Revenue Proposals — November 12, 2026

Proposal Summary

The proposal enacts the Data Center Electricity Use Tax Act, imposing an excise tax of 1.1 cents per kilowatt-hour on the use of electricity by a data center in New Mexico, payable monthly by the operator. It reaches only data centers with combined peak electrical demand of 50 megawatts or more, measured as the highest fifteen-minute average demand in any month, and excludes facilities used primarily for telecommunications switching or for the internal operations of a non-data business on the same site. Use by the United States, the state and its political subdivisions, Indian nations, tribes and pueblos on sovereign territory, and foreign nations where required by treaty is exempt. The act takes effect July 1, 2028.

The proposal could raise between $11 million and $123 million a year beginning in FY29, with a midpoint near $51 million. Estimates are heavily based on reporting and publicly available self-reported consumption, with high variability on actual use. The range is further complicated by timing and completion of proposed and currently under construction projects.

Data Center Electricity Use Tax

Sponsor(s): Rep. Silva

202#: 234409.2, November 12, 2026

One-Year Impact
+$11 M to $123 M general fund

Five-Year Impact
+$50 M to $552 M general fund

Revenue by Fund (in millions)

Fund	1 Year	5 Year
Low	11.0	49.6
Mid	51.3	231.3
High	122.6	552.2

Issues

Staff research indicates New Mexico may have as many as twenty operating data centers totaling 254 to 587 megawatts of disclosed capacity, but research indicates only one completed data center would pay this tax. Every site other than Meta's Los Lunas campus falls below the 50 megawatt threshold, and the largest of those below-50 megawatt threshold are exempt by ownership by the federal government, state universities, or tribal colleges.

In addition to the currently operating data centers in New Mexico, staff researched a rapidly evolving set of announced data centers for this analysis. Announced capacity, excluding cancellations, runs from 4.1 to 11.3 gigawatts, the largest of which is under construction in Santa Teresa, with a phase one of 700 to 900 megawatts against a full build of 2,450 megawatts, with its first operations slipping past an end of 2026 target.[1] Whether phase one is energized during the first year of effectiveness for this proposal moves the estimate more than any other single factor. The committee should expect revenue to be irregular and difficult to predict in its early years.

The Tax and Self-Generated Power. The tax falls on the use of electricity, not on its purchase, affecting grid-

Revenue Proposal Analysis reports are short assessments of proposals presented before the Revenue Stabilization and Tax Policy Committee. Proposals are evaluated against committee guidelines, and the analysis presented here is subject to change, with agency analysis included in the official Fiscal Impact Report. This analysis is prepared for the Revenue Stabilization and Tax Policy Committee by the Legislative Finance Committee economists.

[1] https://www.abqjournal.com/business/project-jupiter-permit-applications-forecast-massive-carbon-fuel-use/2932903

connected and micro-grid data center projects equally. Because many of the announced projects are expected to generate their own power, a tax written on purchased power would reach almost none of the announced pipeline. However, the tax on energy used rather than purchased may make it difficult to independently verify and administer, as discussed later in this analysis.

Cliff Effects at the Threshold. The tax begins for data centers at the 50 megawatt peak electrical demand threshold meaning a facility at 49 megawatts of peak demand pays nothing, and one at 51 megawatts pays on every kilowatt-hour it uses, including the first fifty megawatts' worth. At 1.1 cents per kilowatt-hour, crossing the threshold costs a facility operating at a 75 percent load factor roughly $3.6 million a year. That creates a strong incentive to configure sites just below the line, for instance by splitting a campus across separate ownership or non-contiguous parcels.

Comparison to Approved Guidelines

The affected activity and the liable taxpayer are defined carefully with strong definitions of a data center including the single site contiguous operation and adjacent parcels, common ownership or control, construction phases, co-location and lease arrangements, and exclusion of telecommunications switching and captive corporate facilities. The threshold is defined by a specific and auditable measurement. The exemptions for federal, state, tribal and treaty-protected use are enumerated rather than left to implication. However, no purpose is stated. The tax may be intended to raise general revenue to recover the costs that large loads impose on the electricity system and on water, or to influence where and whether data centers locate. No reporting is required of the department or the operator beyond payment; there is no provision for reviewing whether the rate remains appropriate as the industry grows.

Against the committee's tax principles, the proposal rates well on simplicity and administrability: the base is measurable, the taxpayer is identifiable, and payment is monthly on a familiar schedule. It also broadens rather than narrows the tax base, which the guidelines favor, and it reaches an activity that is growing rapidly and is not currently taxed on its consumption.

1	**Clearly Stated Purpose**	Does the proposal identify the problem to be solved?	☒
		Does it explain why a tax policy change is the right solution?	☒
		If an economic development incentive, is the purpose included in the language of the proposal itself?	N/A
2	**Theory of Change or Logic Model**	Does the proposal explain how the tax change will achieve the intended outcome?	☒
		Does it identify the taxpayer behavior it is intended to influence?	☑
3	**Measurable Goals and Targets**	Does the proposal identify expected outcomes?	☒
		Does it identify affected populations or activities?	☑
		Does it explain how success will be measured?	☒
4	**Fiscal Impact Analysis**	Does the proposal estimate the impact on the general fund?	☑
		Does it estimate the impact on the local government and other funds?	N/A
		Does it identify the impacts as recurring or nonrecurring?	☑
5	**Expiration Date (Sunset)**	Does the proposal include a delayed repeal?	☒
6	**Expenditure Cap**	If feasible, does the proposal include an annual or aggregate cap on total cost?	N/A
7	**Effective Targeting**	Does the proposal clearly identify eligible taxpayers or activities?	☑
		Does it limit benefits to those populations or activities necessary to achieve the state purpose?	
8	**Reporting Requirements**	Does the proposal require sufficient reporting on utilization, cost, and outcomes?	N/A
			☒
		Does it provide for data collection, sharing, and analysis?	☒
		Does it identify performance measures and targets?	☒

Fiscal Impacts

Staff estimates the proposal would raise between $11 million and $123 million a year beginning in FY29, with a midpoint of approximately $51 million, and between $50 million and $552 million over FY29 through FY32. The act takes effect FY29 and there is no impact on local government funds.

Methodology. The estimate is built in three components. The first is Meta's Los Lunas campus, which is reported to be using more than 1,000,000 megawatt-hours in 2023, which at the statutory rate is $11.0 million[2]. The second is Project Jupiter, scenarioed by average load during FY29 from zero to 675 megawatts[3]. The third is the remaining pipeline, which only the high scenario assumes contributes at all. All other operating facilities contribute nothing, because they are below the threshold or exempt by owner.

Project Jupiter spans zero to $65 million across the scenarios, more than half the total range. The low scenario assumes nothing is energized during FY29; the midpoint assumes phase one is operating but still ramping, at roughly half of 700 megawatts; the high assumes 900 megawatts at a 75 percent load factor.

The estimates assume no behavioral response, but the threshold cliff and the size of the liability give a strong incentive to configure facilities below 50 megawatts or to locate marginal capacity in another state. The 50 megawatt threshold is a cliff that costs about $3.6 million a year to cross, which is a large incentive to configure a site at 49 megawatts.

Administrative cost is not estimated. The department would stand up a new monthly filing for a small number of taxpayers, which is modest, but would also need a method for verifying consumption, including behind-the-meter generation, and for determining whether a site crosses the threshold on the fifteen-minute-demand measure.

Other Considerations

The State Both Subsidizes and Would Tax These Facilities. New Mexico has no specific data center tax incentive, but supports individual projects through industrial revenue bonds that provide generous tax incentives on property taxes and gross receipts taxes. The difference in taxation strategies is not necessarily inconsistent, since construction and operation are different stages with different fiscal profiles, where it may be beneficial to encourage construction and siting in New Mexico but an alternative form of tax on presence, but the policies should be evaluated together or considered against the purpose of the proposal.

A Fixed Rate in a Changing Industry. The rate is expressed in cents per kilowatt-hour and is not indexed to inflation, usage, or other measures. Its real value falls with inflation and relative to the value of the activity as computing efficiency improves, because the same economic output requires fewer kilowatt-hours over time. A rate set as a share of electricity cost, or indexed, would behave differently.

How This Instrument Compares to Other Ways of Taxing Artificial Intelligence. A Tax Policy Center brief published October 27, 2026 by Elena Patel and Aparna Mathur compares five proposed instruments: a tax on data center electricity consumption, a tax on tokens or compute, a tax on automation or labor displacement, a tax on artificial intelligence profits, and a tax on data collection or use.[4] Of the five, the electricity tax is rated easiest to administer, because electricity is usually metered and independently auditable, and because the liability arises immediately and continuously rather than depending on a future profit or a disputed measure of displacement. The authors pair that rating with a caution: a per-kilowatt-hour base may be verified but poorly targeted, since it measures electricity rather than artificial intelligence, profit or harm. Both halves of that assessment apply here. The base reaches colocation, cloud storage and ordinary enterprise computing on the same terms as artificial intelligence training, and the proposal does

[2] https://sustainability.atmeta.com/wp-content/uploads/2024/08/Meta-2024-Sustainability-Report.pdf
[3] https://www.abqjournal.com/business/project-jupiter-permit-applications-forecast-massive-carbon-fuel-use/2932903
[4] https://taxpolicycenter.org/briefs/taxing-artificial-intelligence

not distinguish between them.

The administrability rating rests on the existence of a utility meter and a third-party bill to audit against. Most of New Mexico's announced pipeline is self-powered, as discussed above, so for the facilities that would dominate the base in later years and there is no utility billing record, and the department would be auditing an operator's own metering of its own generation. The feature that makes this the easiest of the five instruments nationally is weaker in the New Mexico case than the national assessment implies.

Interstate Competition. Data center siting is mobile and several neighbouring states actively court these facilities. At 1.1 cents a kilowatt-hour the tax adds a large cost to an industrial electricity bill, which is material in a siting decision. Staff has no New Mexico-specific analysis of siting elasticity and notes Virginia has recently created a similar tax, that has not yet gone into affect to study the impacts. The relevant comparison is not the tax alone but the whole package of electricity price, tax treatment and incentives that competing states offer.

Potential Questions

Purpose and Rate

- What is the tax intended to accomplish: raising general revenue, recovering the costs large loads impose on the electricity system and on water, or influencing where data centers locate?
- How was 1.1 cents per kilowatt-hour chosen?
- Should the rate be indexed, or set as a share of electricity cost? As drafted its real value declines with inflation and with improvements in computing efficiency.
- If the concern is artificial intelligence specifically, is electricity the right base? A kilowatt-hour tax reaches colocation, cloud storage and enterprise computing identically, but may not target artificial intelligence if that is the purpose of the tax.

Threshold and Avoidance

- Is the definition of a data center strong enough to prevent a campus from being split across separate owners or non-contiguous parcels to stay below the threshold? What would the department need to enforce it?

Revenue Stabilization and Tax Policy

- The base could rest on a single to a few facilities. Is this an acceptable level of concentration for a large recurring revenue source?
- How does this interact with the industrial revenue bond and Local Economic Development Act support already extended to these projects?
- Should the act carry a review date, given that the industry and its electricity use are changing faster than most tax bases?
- The administrability case for this tax proposal may assume a utility meter and an independent bill to audit against. What would the department require to verify behind-the-meter generation at a facility that supplies its own power?

Appendix: Tax Policy Center AI Tax Comparison
https://taxpolicycenter.org/briefs/taxing-artificial-intelligence

Comparing Five Common AI Tax Proposals

TPC

Proposal	Tax Base	Revenue Timing/Stability	Administrability	Key Considerations	Examples
Training Compute Tax	Computing power used to train models	Early, ahead of profits Long-run base uncertain because of improved training efficiency	**Hard** Self-measured, self-reported	Early revenue, but relies on self-reported data; could slow AI improvements	"What Is a 'Compute Tax' and Why Is the Idea Gaining Traction?" Wall Street Journal
Data Center Electricity Tax	Electricity consumed (per kWh)	Immediate and ongoing	**Easy** Utility-metered, independently audited	Can be independently verified, but may be poorly targeted	"Proposal for the Taxation of Data Centers," Senate Finance Committee Democratic Staff White
Usage Tax	AI output per unit	Immediate and ongoing Per-unit revenue erodes as models become more efficient	**Moderate** Providers meter usage for billing, but using a self-defined measure	Well-targeted base, but taxes AI as a business input and cannot distinguish between productive and wasteful uses	H.R.10044 - AI Tax and Work Protection Act, introduced by Rep. Greg Casar (D-TX)
Windfall Profit Tax	Profit exceeding the normal return	Delayed, variable	**Hard** Under the current corporate tax, the true base varies by investment	Least distorting design, but revenues are delayed until companies become profitable	S.5518 - Make AI Work for Americans Act, introduced by Sen. Mark Kelly (D-AZ)
Automation Tax	Capital invested in automation, or the tasks it performs	Uncertain Tied to the pace of displacement itself	**Hardest** Base is undefined	Targeted on displacement, but revenue comes after displacement occurs	"Creating a corporate 'robot' tax," proposed by Sen. Ruben Gallego (D-AZ)

Notes: Analysis in this piece may not precisely reflect the details of examples given here. Examples in this table are only included as a reference for the type of proposals discussed.