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## FISCAL IMPACT REPORT

SPONSOR: Marquardt DATE TYPED: 02/10/03 HB 286

SHORT TITLE: Natural Gas Fueled Electric Generation Plant SB \_\_\_\_\_

ANALYST: Valenzuela

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$50.0		\$40.0	Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From

Office of the Attorney General

Public Regulation Commission (PRC)

Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

Synopsis of Bill

House Bill 286 appropriates \$50.0 from the general fund to Energy, Minerals and Natural Resources Department for the purpose of creating a “state power board” to conduct a study on state options for financing the construction of an electric generation plant in Otero County fueled with natural gas. The bill also makes technical corrections to the EMNRD enabling act.

Significant Issues

EMNRD reports several concerns about the regulation over a state-run power plant:

The extent to which the Public Utility Act (and related legislation in Chapter 62, NMSA) and the Public Regulation Commission have jurisdiction over the proposed plant is not spelled out. When electric generation facilities are operated by municipalities, broad exemptions from the Public Utility Act apply and such facilities are generally operated under the authority of the Municipal Code. The ramifications of regulation over the proposed state-owned plant under the Public Utility Act should be addressed to prevent in-

consistencies and ambiguities . . . . The bill also seems to provide for both the generation and distribution of electrical power, which may be prohibited by the Electric Industry Restructuring Act, NMSA 1978, 62-3A-8. . . . The requirement in Section 2(D)(3)(a) could be read to restrict purchases of natural gas by the new plant to New Mexico natural gas producers, and might be a questionable restriction on interstate commerce under the dormant commerce clause of the United States Constitution.

### **FISCAL IMPLICATIONS**

The appropriation of \$50.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

Enactment of the bill will likely have further impacts on several state agencies. EMNRD reports that it will need an additional 0.5 FTE to implement the provisions of the bill, estimated at \$35.0 annual costs, and the PRC will likely be required to use its expert technical and legal staff in writing the study. The bill requires the state power board members to be paid mileage and per diem for attendance at official meetings, for which a minimum cost would be \$5.0, which is dependent on the number of days of meetings.

**MFV/prr**