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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/12/11

SPONSOR SCORC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Benefit to Public For Utility Eminent Domain SB 458/SCORCS

ANALYST Lucero

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Corporations and Transportation Committee (SCORC) substitute for Senate Bill 458 clarifies that when a duly qualified corporation or foreign utility corporation – as authorized in the Public Utility Act - exercises the power of “public use” eminent domain, the primary beneficiaries shall be the state and its residents. However, the bill expressly exempts rural electric cooperatives from this requirement.

The bill also amends the Section 62-16A-4 NMSA 1978, the New Mexico Renewable Energy Transmission Authority (RETA) Act, to similarly clarify that when the Authority exercises the power of “public use” eminent domain, the primary beneficiaries shall be the state and its residents.

### FISCAL IMPLICATIONS

No fiscal impacts for the state.

### SIGNIFICANT ISSUES

The Attorney General's Office (AGO) notes that the bill appears to be intended to define or limit the term “public use” to mean that the primary beneficiaries shall be the state or its residents. The bill implies that under current statute, an argument could be made for a “public use” applicable to the public in other states or jurisdictions, to the exclusion of New Mexico.

**TECHNICAL ISSUES**

The AGO suggests:

It seems that rather than using the “primary beneficiary” language, it would be more direct to simply require that to be a public use such a line be used primarily to serve the New Mexico public.

**OTHER SUBSTANTIVE ISSUES**

This bill appears to be narrowing the definition of what constitutes the primary principle of eminent domain - property can be taken away for public use for the benefit of the “greater good.” The constitution provides that the government can take away land provided it is in the name of public good and through due process and just compensation. However, it would seem that the burden of proof requires that eminent domain authority be used to serve the greatest amount of people, not less.

If each state had similar legislation that designating the primary beneficiary to be the state and its residents, a transcontinental railroad, pipeline, or telephone system may not have been possible, especially in less densely populated states.

DL/mew:svb