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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/10/15  
 SPONSOR SJC LAST UPDATED 3/17/15 HB \_\_\_\_\_  
 SHORT TITLE Utility Economic Development Rates SB 352/SJCS/aSFI#1  
 ANALYST Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	\$0.0	\$0.0	Minimal	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)  
 Public Regulation Commission (PRC)  
 Economic Development Department (EDD)

### SUMMARY

#### Synopsis of SFI Amendment #1

The Senate Floor Amendment adds language to the definition for “incremental cost” to include in the economic development rate all additional costs necessary to serve that customer. The amendment also adds the following language: “The commission shall not impute to the electric utility revenues that would have been received from the economic development rate or load retention customer if they had been provided service under the corresponding rate for which they would have otherwise qualified.”

The second language addition appears to prohibit the Public Regulation Commission (PRC) from allowing the utility to recover the difference between revenues received from an economic

development rate customer and the rate that customer otherwise would have paid from other customers. However, the language is unclear, and if this is the intent, it might increase clarity to replace the language with that supplied by the Attorney General's Office in its original response: "A utility may not collect from its other customers any deficit in revenues or other costs incurred from its economic development rate customers." However, PRC suggests it could resolve any ambiguities in the language by subsequent rulemaking.

### Synopsis of Original Bill

The Senate Judiciary Committee Substitute for Senate Bill 352 allows gas and electric utilities to offer economic development rates with or without the existing requirement for excess capacity, but only without this requirement under the following conditions:

- The economic development rate offered must not be lower than the incremental cost of providing the service to the economic development rate customer as determined by the Public Regulation Commission (PRC); and
- An economic development rate approved for any customer shall last no longer than four years, except that PRC may approve the rate for up to 12 additional months if it finds the additional period is necessary to attract a particular economic development rate customer to New Mexico.

The bill defines "incremental cost" to mean at a minimum "fuel and purchased power costs, costs recoverable from customers pursuant to the Renewable Energy Act and the Efficient Use of Energy Act and the direct costs of facilities necessary to provide service to the customer."

The bill also deletes a reference to Subsection F of Section 62-8-7 NMSA 1978, instead referencing the entire section of law that pertains to cooperative utility rate changes. This clarifies existing statute by explicitly including references to such items as required notice by the utility to PRC of proposed rate changes and the agency's ability to hold a hearing and temporarily suspend the proposed rate change.

### **FISCAL IMPLICATIONS**

There is no direct impact on revenues; however, the ability of utilities to offer economic development rates could assist business recruitment and retention efforts, which in turn could result in increased job creation and business investment. This potential economic growth would presumably result in a larger tax base.

PRC currently has a rule in place regarding economic development rates, 17.9.590 NMAC. The bill would require PRC to amend its existing rule to conform to statute, which could result in a minimal incremental cost to the agency for the rulemaking.

### **SIGNIFICANT ISSUES**

The Attorney General's Office (AGO) reports that from the agency's perspective of protecting the interests of residential and small commercial customers, it would be helpful if the bill made it clear that in no event should costs which are not recovered from economic development rate customers be shifted to other customers. This could be accomplished by inserting a new first sentence in Subsection E of the bill on page 5, as follows:

“A utility may not collect from its other customers any deficit in revenues or other costs incurred from its economic development rate customers.”

Some states allow utilities to offer economic development rates as a tool to provide competitive rates to prevent the loss of existing customers, to encourage customers to expand present facilities and operations in the state, and to attract new customers where necessary or appropriate to promote economic development.

The Economic Development Department (EDD) reported to LFC an economic development rate will enhance New Mexico’s competitiveness for job creation and retention and encourage investments for new and existing businesses. This bill would add an additional tool in the professional industrial recruitment tool kit and add New Mexico to a list of more than 20 states that have already adopted similar laws, including Texas, Nevada, and Oklahoma.

EDD reports this bill would particularly help the agency recruit manufacturing facilities and data centers. According to the U.S. Bureau of Labor Statistics, New Mexico lost 3,000 manufacturing jobs within a 12-month period ending in August 2014. As of that date, manufacturing jobs accounted for 3 percent of all the state’s nonfarm jobs compared with the national average of 9 percent.

The bill removes the following existing requirement for excess capacity under the two conditions listed in the Summary.

Economic development rates shall be approved or otherwise allowed to become effective for an electric utility or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Subsection F of Section 62-8-7 NMSA 1978 only when the utility or the substantially full requirements supplier of the utility has excess capacity. For purposes of this section, “excess capacity” means the amount of electric generating and purchased power capacity available to the utility or such supplier that is greater than the utility’s or such supplier’s peak load plus a fixed percentage reserve margin set by the commission.

The bill’s requirement to charge at least the incremental cost of service protects non-participating customers, such that economic development rates and rates designed to retain load are set at a level lower than the corresponding service rate for which a customer would otherwise qualify, but in no case lower than the incremental cost of providing service to each customer.

### **ADMINISTRATIVE IMPLICATIONS**

The bill could result in increased utility filings with PRC for utilities seeking to establish economic development rates, which would require review by agency staff. The bill could also increase utility cases in instances where a hearing may be required if the rate is reviewed by the commission.

### **OTHER SUBSTANTIVE ISSUES**

The Public Service Company of New Mexico (PNM) filed a rate case with PRC on December 11, 2014, including an economic development tariff to support state and local efforts to retain and attract companies that provide economic based jobs. If approved, the tariff would be effective January 1, 2016.