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FISCAL IMPACT REPORT

SPONSOR <u>Dixon/Rubio/Ortez/Small/Lundstrom</u>	LAST UPDATED _____ ORIGINAL DATE <u>2/24/2023</u>
SHORT TITLE <u>Advanced Energy Technology Act</u>	BILL NUMBER <u>House Bill 12</u> Dick- ANALYST <u>Peddie/Faubion/Sanchez</u>

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
No fiscal impact					Recurring	General Fund

Parenthesis () indicate revenue decreases
 *Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EDD Administration Costs	No fiscal impact	See Fiscal Impact Section	\$1,250.0	\$1,250.0	Recurring	General Fund
NMFA Administration Costs	No fiscal impact	See Fiscal Impact Section	\$1,250.0	\$1,250.0	Recurring	General Fund
EMNRD Operating Budget (1 FTE)	No fiscal impact	\$130.0	\$130.0	\$250.0	Recurring	General Fund
NMED FTE and Administrative Costs	No fiscal impact	\$235.0	\$235.0	\$470.0	Recurring	General Fund
Total		\$365.0	\$2,865.0	\$3,220.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Relates to House Bill 188, House Bill 8, House Bill 118, Senate Bill 62
 Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Office of the Attorney General (NMAG)
 Office of Superintendent of Insurance (OSI)

Energy, Minerals, and Natural resources Department (EMNRD)
Economic Development Department (EDD)
Environment Department (NMED)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of House Bill 12

House Bill 12 (HB12) enacts the Advanced Energy Technology Act, which has provisions to support the development and implementation of advanced energy technologies in New Mexico. HB12 does the following:

- Establishes guidelines for public-private partnerships in support of advanced energy technology projects, including funding mechanisms and criteria for approval of advanced energy technology projects;
- Establishes the advanced energy technology board and the advanced energy technology fund, as well as creates the science, technology, and advanced energy division within the Economic Development Department (EDD) from the existing technology enterprise division;
- Establishes a new Economic Transition Division within EDD to support economic transitions for communities that are affected by the transition to clean energy in New Mexico;
- Specifies powers and duties of the New Mexico Finance Authority to administer the advanced energy technology fund, including make grants and loans from the fund, issue revenue and refunding bonds, and generally implement the act;
- Requires the Economic Transition Division, in consultation with the Sustainable Economy Task Force and the Sustainable Economy Advisory Council, to prepare and publish the Economic Transition Act plan;
- Establishes the economic transition fund, administered by the Economic Transition Division, to provide grants and loans for financing workforce development, apprenticeship programs, training programs, economic transition projects, and economic support programs;
- Creates a new exemption form the Procurement Code for agreements and contracts entered into pursuant to the act;
- Revises the membership of the existing technology research collaborative to include members with experience related to the purposes of the act.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

There is no anticipated general fund revenue impact of the provisions of this bill.

The House Appropriations and Finance Committee substitute for House Bill 2 (the General Appropriation Act) includes a \$50 million one-time appropriation to the Economic Development Department (EDD) for advanced energy-related projects. The appropriation allows EDD to expend up to 5 percent of the appropriation, or \$2.5 million, on administration, including up to

2.5 percent (\$1.25 million) to transfer to the New Mexico Finance Authority (NMFA) for administrative assistance. Though the funding exists for FY24, this analysis assumes the administrative costs would become recurring in FY25 and future years. The Economic Development Department estimated an additional nonrecurring cost for customized software to distribute funds to affected workers. The LFC analysis assumes the recurring \$1.25 million would be used in part to procure this software.

Analysis provided by the Energy, Minerals and Natural Resources Department (EMNRD) estimates the agency would require one additional full-time employee (FTE) to fulfill its obligations as a member of the Technology Research Collaborative (TRC). The Department of Environment (NMED) similarly estimates the need for 1 FTE to fulfill its responsibilities as a member of the TRC and estimates an additional \$95 thousand recurring cost for serving on the collaborative. Because the board will be responsible for reviewing and approving or rejecting proposed public-private partnership agreements, attending quarterly meetings, adoption and promulgating rules related to the application process, and other duties as described in the bill both agencies estimate that these duties would fall to their respective cabinet secretary's designee.

NMFA's costs to provide financial analysis support to and to administer the advanced energy technology fund are dependent on the size of the fund and the number of loans and grants made from the fund. NMFA anticipates additional budgetary needs to fulfill the duties contained in HB12, including the utilization of staff from several NMFA departments and specialized contract services. Based on actual costs incurred on other programs, the fund is estimated to incur direct costs across NMFA functions amounting to approximately 1.5 percent to 4 percent of transaction volume. Assuming a \$50 million capitalization and minimal transactions, the costs of administering this program will exceed the amount identified in House Bill 2, especially in FY25 and future years.

SIGNIFICANT ISSUES

Science, Technology and Advanced Energy Division

With the federal Infrastructure Investment and Jobs Act (IIJA), the Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS), and the Inflation Reduction Act (IRA), annual federal spending on climate and clean energy over the next decade will reach \$750 billion, over 3.5 times the level from 2009 to 2017¹. Funding in the bills targets a multitude of clean energy technologies, including hydrogen development, carbon capture utilization and storage, battery technologies, industrial decarbonization, technology transfer programs at national laboratories, rural electrification and energy savings programs, and methane reduction programs². HB12 may help New Mexico attract this federal funding.

Several bills of the 2023 regular session (see relationship and duplication section) propose new divisions to the Economic Development Department. The department has expressed concern that, if one or more of these bills is enacted, EDD would need new administrative FTE in

¹ Rocky Mountain Institute, Congress's Climate Triple Whammy: Innovation, Investment, and Industrial Policy: rmi.org/climate-innovation-investment-and-industrial-policy

² Wilson Sonsini, Federal Funding Opportunities for Scaling Climate Solutions: wsg.com/en/insights/energy-and-climate-solutions-white-paper-federal-funding-opportunities-for-scaling-climate-solutions.html

addition to programmatic FTE. House Bill 12 amends the existing Technology Enterprise Division to include science and advanced technology. Though the division still exists under the department’s enabling statute, it was administratively dissolved by the Department of Finance and Administration and LFC approximately 10 years ago. Still, EDD maintains infrastructure and expertise the department could leverage to accomplish the provisions of HB12. For example, the department’s Office of Science and Technology (currently under the Economic Development Division) provides small businesses and interested parties with resources and expertise on intelligent manufacturing, cybersecurity, bioscience, sustainable and green energy, and aerospace, may be aware of existing projects or financing gaps in the state’s advanced technology sector. If HB12 were enacted, the department should consider consolidating these resources.

Economic Transition Division

According to a policy paper on renewable energy transmission published by the United Nations, transitioning workers away from extractive industries is one of the biggest obstacles facing “net zero” initiatives, such as that mandated by the Energy Transition Act. The paper notes:

The green transition will involve a challenge for countries and regions that rely heavily on revenues and jobs generated by fossil fuel production, especially as the skills required for the energy transition do not necessarily match existing skills in the sector [...] leading to lower production and job losses in vulnerable communities heavily reliant on [these industries].

New Mexico saw this when the Public Service Company of New Mexico closed the San Juan Generating Station. The city of Farmington, which held a 5 percent ownership stake in the generating plant, lost approximately \$70 million in the closure, in addition to the loss of approximately 450 jobs and a key power source for the city.

Section 61-18-1 NMSA 1978 through Section 62-18-23 NMSA 1978 create the Energy Transition Act (ETA). The ETA sets a statewide renewable energy standard of 50 percent by 2030 for New Mexico investor-owned utilities and rural electric cooperatives and a goal of 80 percent by 2040, in addition to setting zero-carbon resources standards for investor-owned utilities by 2045 and rural electric cooperatives by 2050.

The laws create three funds—managed by the Indian Affairs Department (IAD), the Economic Development Department (EDD), and the Workforce Solutions Department (WSD) to be used to assist communities affected by the transition, funded through transition bonds issued by “qualifying utilities.” When the Public Service Company of New Mexico closed the San Juan Generating Station, funding from transition bonds amounted to approximately \$2 million to the Indian Affairs Department fund, \$6 million to the economic development fund, and \$12 million to the Workforce Solutions Department fund, all subject to legislative appropriation. The Economic Development Department created the Energy Transition Act Committee (ETAC) in compliance with statute to consult with tribal and community entities to determine how to spend the funds. Though the committee has held three public meetings, as of January 6, 2023, no plan to spend EDD’s \$6 million allocation has been published.

While the funds created by the ETA are similar to the transition fund created in House Bill 12, the ETA fund revenues were generated from the closures of the San Juan and Four Corners generating stations to provide one-time relief programs for affected workers. In contrast, the fund

created by HB12 would provide ongoing grants, loans, and training opportunities to transitional workers across the state, including in the Permian Basin.

The Economic Development Department notes in agency analysis it is “extremely supportive of efforts of the statewide strategic plan and objectives of the Sustainable Economy Task Force and Advisory Council to transition the state away from its reliance on natural resources and diversify the economy.” The department further states that broadening membership of the boards would add a diversity of expertise and background to help EDD technical staff administer loan and grant programs. Similarly, EMNRD notes the potential positive impact of the Energy Transition Division:

[F]or the first time in New Mexico, [HB12 provides] a comprehensive framework to begin addressing the needs of frontline communities dealing with energy transition challenges. Especially in the context of creating economic development opportunities for new sectors of the energy industry, this comprehensive approach aligns with the equity principles developed by the Governor’s Climate Change Task Force.

Currently, EDD has a Justice, Equity, Diversity, and Inclusion Office already involved in some transition efforts. EDD also has representative employees within the Workforce Solutions Department that work to promote the state’s strategic 20-year plan and assist with connecting transitional workers, business, and industries with developing workforce program recommendations. The department would need to ensure the new division worked with these existing entities closely to avoid duplicating efforts.

The Advanced Energy Technology Fund and Board

HB12 assigns various powers and duties to the Advanced Energy Transition Board (AETB), specifically the review, approval or disapproval, funding, and monitoring of P3 (public-private partnerships) agreements for advanced energy technology projects. HB12 does not assign NMFA with any administrative responsibility relating to supporting the AETB on the legal review, approval, and monitoring of P3 agreements for advanced energy projects. HB12 only directs NMFA staff to provide financial analysis support related to proposed advanced energy technology projects and support on developing applications for the AETB. Further, HB12 requires the AETB to approve P3 agreements but does not provide staff support for the review and approval process and may result in significant delays in the approval of P3 agreements and related funding from the fund.

NMFA is tasked with administering the newly created advanced energy technology fund, including making grants and loans from the fund, issuing revenue and refunding bonds, developing applications, promulgating rules, and collecting fees. Money in the fund may be used to make grants and loans for financing advanced energy technology projects or an advance market commitment through a public-private partnership agreement, given the private partner matches or exceeds the amount pledged by the fund. Money in the fund may be used to make grants of up to \$250 thousand to a public partner to study the costs and benefits of entering into a public-private partnership for a proposed project, again assuming the private partner provides matching funds. The duties assigned to NMFA in HB12 to administer the advanced energy technology fund will require specialized expertise in technology finance that will need to be developed. In the interim, NMFA will rely on specialized contract services, which will likely be more costly.

HB12 gives the Advanced Energy Transition Board (AETB) the authority to approve applications for grants or loans from the fund, which is to be administered by NMFA. This provision is contrary to the NMFA Act that states, the “authority [NMFA] shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act.” NMFA recommends a system, similar to other programs administered by the NMFA, whereby the AETB would recommend advanced energy technology projects to the NMFA board of directors, which would then allow NMFA staff to complete the underwriting analysis and present its findings and recommendations to the NMFA Board. In those instances, NMFA may not make a loan or a grant to a project that was not recommended by the AETB but would not be compelled to make a grant or loan simply because it was recommended by the AETB.

Procurement Code Changes

Senate Bill 76 (SB76), LFC-endorsed legislation, would amend the Procurement Code to tighten or remove several existing exemptions from the Procurement Code. The legislation was the result of two evaluations of the state’s purchasing practices, which recommended removing widely used exemptions that circumvent competitive bidding practices and placing guardrails around the use of sole source contracts and statewide price agreements. As a result, HB12, though not directly in conflict with SB76, could be seen as in conflict by adding a new, specific exemption to the Procurement Code.

Energy, Minerals and Natural Resources Division Implications:

In agency analysis, EMNRD notes the broad definition for advanced energy projects provided for in House Bill 12 are beneficial in ensuring both future and existing technologies are eligible for assistance under the act. However, the department also notes the broad definitions may include “activities that make less of a contribution to the [reduced] emissions goal than others.” As a result, NMED and EMNRD will need to ensure “high level engagement” with the newly created board for vetting projects.

ADMINISTRATIVE IMPLICATIONS

EDD notes it can support an additional 1 to 2 FTE; however, the passage of HB12 in combination with other proposed legislation would overly strain EDD administration. The agency does not have the office space to support more than 2 additional FTE and moving locations would incur increased lease costs. The agency also notes it does not have the administrative staff, including human resources and All Services Division personnel, to manage more than one new program in the agency.

NMED notes the following administrative implications:

HB12 states that funds in the Advanced Energy Technology Fund may be used for administrative and reimbursable costs incurred by NMED and other agencies. These administrative and reimbursable costs will be reimbursed only if rules adopted by the board specifically provide for that. Without the certainty of all costs being covered by HB12 and regardless of whether NMED supports the intent of proposed legislation, NMED does not support legislation placing additional duties on the agency and its employees unless the proposal is fully funded.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 12 related to the General Appropriation Act, which includes \$50 million for public-private partnerships to secure federal funding for advanced technology.

House Bill 12 relates to House Bill 118 and Senate Bill 62, which both create an Office of Entrepreneurship within the Economic Development Department. House Bill 12 also relates to House Bill 8, which creates a Creative Industries Division in the Economic Development Department.

House Bill 213 creates the Public-Private Partnership Act and authorizes public and private entities to enter into agreements that provide economic and administrative efficiencies in developing public projects to construct or improve public transportation infrastructure (excluding toll roads) and broadband telecommunications network facilities. HB12 similarly seeks to create a legal framework for the approval of P3 agreements, specifically relating to advanced energy technology projects.

TECHNICAL ISSUES

The Office of the Attorney General notes the following technical issues:

HB12 may conflict with general laws governing the issuance of bonds, as this bill establishes that bonds issued according to the provisions of the Advanced Energy Technology Act “need not comply with the requirements of any other law applicable to the issuance of bonds, except the Public Securities Act, the Public Securities Short-Term Interest Rate Act and the Public Securities Limitation of Action Act.”

Section 14E is a duplicate of the existing Section 14B. Section 14F is a duplicate of the existing Section 14C.

EDD notes Section 2, Subsection D, defines “board” as the board of the Technology Research Collaborative. Section 3, Subsection E., line 11, uses the word board but refers to the Advanced Energy Technology Board.

NMFA notes language relating to issuing revenue or refunding bonds needs to be the most precise, given federal oversight of municipal bonds. Bonding language in the act is sufficient for its purposes, although bond impairment language would be beneficial. NMFA recommends the following amendments:

- Amend Section 4.J – “adopt and promulgate rules establishing the application process and criteria, including the ability to charge and collect reasonable fees from public and private partners, in accordance with the provisions of the State Rules Act;”
- NEW INSERT - “4.O. charge and collect reasonable fees from both public and private partners necessary for the collection, review and dissemination of executed public-private partnership agreements received as part of its reporting requirements”
- The NMFA Act, in Section 6-21-18, contains a pledge made by the legislature on behalf of the State to holders of PPRF bonds issued by the NMFA. NMFA suggest the following language:

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the Advanced Energy Technology Act that the state will not limit or alter

the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and agreements made with the holders thereof or in any way impair the rights and remedies of those holders until the bonds or notes together with the interest thereon, with interest on any unpaid installments or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

EMNRD recommends the following amendments that would add additional clarity to the measures in HB12 and ensure consistency with other initiatives in the state:

- Pg. 2 lines 14-15 – “that employs for carbon capture and sequestration technologies to significantly reduce or eliminate greenhouse gas emissions.” (Note: carbon capture and sequestration itself does not generate energy and should not be considered an advanced energy technology.)
- Pg. 3 line 8 – “...as applicable, of an advanced energy technology property; (note: Advanced energy property is not a defined term, we think the drafter meant advanced energy technology)
- Pg. 3, line 11 – “...of that facility to a level substantially below....”
- P. 10, lines 1-2 – the expression “advance market commitments” is unclear and could use further definitions.
- Pg. 11, Sec. 5, puts the burden on demonstrating advanced energy projects emissions on the applicants to the public private partnership, which could imply a burden on the public partner. A burden that entity may not be able to meet. These emission reduction burden showing should be on the private partner clearly. Revision would be on lines 17-20 (pg. 11) – “the private partner in a parties to the public-private partnership agreement shall demonstrate the their proposed project will contribute to the following applicable emission reduction limits”
- Pg. 11, line 11 “...into joint-powers and other agreements with other agencies.”
- Paragraph N does not provide a sufficient authority for the Board to hire its own legal counsel or experts. Such authority needs to be modeled more closely after provisions like the one authorizing the Water Quality Commission to retain its own legal representation.
- Pg. 15, Sec. (F) – the language here does not set out how the administrative costs paid for by this fund are divided between the agencies mentioned, nor how that funding can be appropriated (by warrant?)
- Clean energy technologies, advanced energy companies, advanced energy circular technologies, clean energy entities are used in a number of places, but those terms are not defined should either be defined for clarity or should be replaced with one of the existing defined terms.