FISCAL IMPACT REPORT

		LAST UPDATED	3/2/23
SPONSOR	Shendo	**ORIGINAL DATE**	2/24/23
SHORT TITLE	School District In-Lieu-Of-Taxes Payments	**BILL NUMBER**	Senate Bill 474/ec/aSJC
		ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**	**FY26**	**FY27**		
	No fiscal impact*	No fiscal impact*	No fiscal impact*	No fiscal impact*	Recurring	General Fund
	No fiscal impact**	No fiscal impact**	No fiscal impact**	No fiscal impact**	Recurring	Project Sponsoring Counties
	Significant impact on shares of PILT (see illustration in "Fiscal Implications" below) among districts				Recurring	School Districts located in sponsoring counties

Parenthesis ( ) indicate revenue decreases.
* Because the changes proposed in this bill may affect the negotiated amount of PILT, but that PILT is not shared with the state, the only impact on the general fund would be if more projects were negotiated. LFC staff does not expect an increase in the number of deals attributed to this change to be a factor.
** If counties receive a decreased share of the total PILT pursuant to the provisions of this bill, it is likely these counties would negotiate a greater amount of PILT so that the county's share of the increased PILT were equal to what they would have received in the absence of the provisions of this bill.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	County Treasurers or other officials in Sponsoring Counties

Parenthesis ( ) indicate expenditure decreases.

Sources of Information

LFC Files

<u>No Response Received</u>
Taxation and Revenue Department (TRD)
Department of Finance and Administration/Local Government Division (DFA/LGD)
Public Education Department (PED)
Municipal League
New Mexico Counties

SUMMARY

Synopsis of SJC Amendment to Senate Bill 474

The Senate Judiciary Committee amendment to Senate Bill 474 replaces an applicability section and an effective date section with an emergency clause, thus making the new school district sharing rule effective on signing. This may affect the provision for the proposed Curry County industrial revenue bond.

Synopsis of Senate Bill 474

Senate Bill 474 modifies the formula for distributions of payments-in-lieu-of-taxes (PILT or PILOT) to school districts for industrial revenue bond deals negotiated for renewable energy generation and transmission projects. The modifications would affect both projects located within municipalities and those located in county areas. The amount of PILT shared by school districts would increase by including the HB33 School Building levy and SB9 School Technology levy in the numerator of the sharing fraction formula but increase or decrease depending on geographical considerations. The current formula requires equal shares to all school districts within the county or municipality of a calculated total based on the amount negotiated by the county or municipality sponsoring the IRB deal. The proposed distribution would be:

1) 50 percent allocated equally among all school districts ***in which the project is located***;
2) 40 percent allocated to ***all*** the school districts within the county in proportion to the area of each school district within the county; and
3) 10 percent allocated to ***all*** the school districts [within the county] in proportion to the average of each school district's student membership pursuant to the Public School Code reported on the second and third reporting dates for the most recent school year for which data is available as of the date of issuance of the bonds.

The 50 percent allocation only to school districts in which the project is located may be a substantial change that will impact a number of districts.

With the amendment, the bill carries an emergency clause and would become effective and applicable when signed.

FISCAL IMPLICATIONS

While this bill does not change state gross receipts tax or GOB revenue, the entire premise of allowing counties to negotiate an industrial revenue bond for Renewable Energy generation or transmission projects constitutes a state level tax expenditure. The approval of the IRB creates the fiction that the project is owned by the sponsoring government and any tangible personal property will be deductible as sales of TPP to government. This creates an initial gross receipts or compensating tax revenue reduction for the state and the local, sponsoring government. In exchange, the sponsoring government receives a portion of the negotiated PILT, which is based on the property taxes foregone. The state's gross receipts tax share, as well as the sponsoring government's share, is abated.

Because the renewable wind, transmission, or solar projects tend to be located in areas with few or no residents, the impact on various school districts can be unrelated to the location of the project. Because this is such a specialized field, LFC has solicited help from Rob Burpo, First American Financial. LFC staff has confirmed the calculations presented here for Dona Ana, Sandoval, and Torrance Counties that have projects currently under construction or completed and Curry County which in the process of negotiating an IRB deal. The purpose of this is to illustrate differences if the provisions of this bill were in place for these actual projects. Total value of deals negotiated since July 2021 is approaching $4 billion. This issue is explored further in the “Other Substantive Issues” section below.

These illustrations are shown per $100 thousand of PILT value. According to authoritative sources, the level of PILT negotiated ranges from 25 percent to 35 percent of the average assessed value of the project for property tax purposes. Thus, the county or municipality is approximately held harmless to property tax losses but not the initial gross receipts tax abatement. The state bears a substantial burden of the tax abatement, but this is not quantified in this review because the bill would have no effect on the number or size of solar or wind energy deals.

With the addition of the HB33 (and SB9) levies in the numerator of the sharing formula, the counties would receive a different amount, but with other aspects of the proposed changes, some counties would receive more, some less. If counties were to receive less, these counties would probably negotiate a larger total PILT.

Jurisdiction	**Distribution per $100,000 of PILT**		
Doña Ana County	Current Distribution	SB447 Proposed	Change
Las Cruces 2 OUT NR *	$14,771	$10,344	($4,427)
Hatch 11 OUT NR	$14,771	$6,664	($8,107)
Gadsden 16 OUT NR *	$14,771	$31,511	$16,741
County	$55,688	$51,482	($4,207)
Torrance County			
Estancia 7 OUT NR *	$7,354	$3,520	($3,834)
Corona 20/35 NR	$7,354	$12,176	$4,822
Moriarty 8 OUT NR *	$7,354	$4,795	($2,559)
Mountainair 13 OUT NR *	$7,354	$3,495	($3,860)
Vaughn 16 OUT NR	$7,354	$12,135	$4,781
County	$63,228	$63,879	$650
Sandoval County			
Bernalillo 1 OUT NR *	$7,184	$3,574	($3,610)
Jemez Springs 31 OUT NR	$7,184	$24,028	$16,844
Cuba 20 OUT NR	$7,184	$3,463	($3,721)
Corrales 2A IN NR	$7,184	$3,562	($3,622)
Rio Rancho 94 OUT NR *	$7,184	$6,675	($509)
County	$64,079	$58,698	($5,381)
Curry County			
Clovis I OUT NR *	$10,109	$7,835	($2,274)
Texico 2 OUT NR	$10,109	$4,237	($5,872)
Melrose 12 OUT NR	$10,109	$4,087	($6,022)
Grady 61OUT NR *	$10,109	$24,277	$14,168
County	$59,564	$59,564	$0
* represents where workers are housed, which is generally not where the project is located.			

When looking at Doña Ana County, the illustration shows a slight increase in income to the school districts. But it also shows a large drop in income to two of the districts and one gets a substantial increase. Again, this is an illustration, not a forecast.

When looking at Sandoval County, the illustration shows there will be a small decrease in the total income to the school districts. But is also shows a large drop in income to three of the districts, one gets a slight decrease (Rio Rancho) and one gets a large increase (Jemez Springs).

When looking at Torrance County, the illustration shows there will be virtually no change in the total income to the school districts. But it also shows a very large drop in income to three of the districts and two get a very large increase.

Finally, when looking at Curry County, the illustration shows there is absolutely no increase in the income to the school districts, but the illustration shows a large drop in income to three of the districts and one (Grady) gets a very large increase with SB474.

Several facts should be noted. First, there are 17 different school districts in these four counties. Eleven do not impose any of the HB33 School Building or School District Tech Debt Service (SB9) mills that SB474 seeks to add, so SB474 does not help them with increased revenue. This was a known factor in 2021 as well. That is why the state debt mill rate of 1.36 was added to the formula in 2021. To give all school districts an extra increase in revenue over the mills that all school districts have, even if they did not have the HB33 School Building or School District Tech Debt Service mills in place. In the case of the other six who do impose the two other mills, their rate of imposition ranges from .65 mills (Vaughn) to 4.54 (Albuquerque Public Schools/Corrales Elementary).

An illustration for an additional three counties—Harding, Quay, and Sandoval—is attached.

SIGNIFICANT ISSUES

Renewable energy projects were added to the IRB provisions in Sections 3-32 NMSA 1978 and 4-59 NMSA 1978 in 2002 (HB143). 2020's HB50 added electric transmission line projects to the eligible project types. There was a House Floor amendment to HB50, quoting from the LFC FIR of that bill:

> The House Floor #1 amendment inserts a requirement in two places in the bill that … the school district[s] in which the project is located will receive the same amount, or greater, of annual in-lieu tax payments as would have been received in property taxes for the fully developed project had the project not been acquired.

For somewhat technical reasons, the counties stopped negotiating with renewable developers because this floor amendment required the county to use general funds to pay the school districts what was required in the bill. No projects were approved in the ensuing one-year period. This requirement was modified the following year with HB105 --Laws 2021, ch. 91, § 3. This bill reduced the distribution of payments in lieu of taxes to the school districts within a county or municipality to a defined percentage of the total amount rather than a share that could be all or more of the PILT depending on how much total PILT a county managed to negotiate.

The changes enacted in 2021 were an attempt to solve the problem that prior to 2021, only school districts where the renewable projects were to be located would get the PILT, not necessarily the school districts that were impacted by housing the workers and their families.

For example, in Torrance County virtually all of their wind farms are located in areas where both the Vaughn and Corona School District boundaries are located. However, both school districts confirmed to the County that they had no students living in that part of their districts (very remote). When all the construction crews came for their three-year employment, they located in the Estancia, Moriarty and Mountainair school districts and brought their children into those schools. But those districts got zero PILT due to the old statutory language. HB50 from 2021 changed that so that all school districts within a county got an equal share of the PILT. It should be noted that Vaughn is not located in Torrance County but in Guadalupe County. And Corona is not located in Torrance County but in Lincoln County.

SB474 has very little impact on new revenues for school districts. But is does have a major impact on redistributing revenues to school districts that have very little if any impact due to the renewable project coming into the County and away from school districts that are substantially impacted by the construction and operation of such projects.

This entire discussion ignores the fact that school districts receive Funding Formula (State Equalization Guarantee) based on the number of students in the various schools. Thus, the operating side of the additional burden to educate children of worker's families is taken care of. The other uses of property taxes include a minimum amount of operating levy and a variable amount of debt (generally used for school buildings), school technology and a special levy for school buildings. When the workers on a project only reside within a district for the period of time of the construction phase, then schools generally accommodate the need for additional school buildings with short-term solutions. If the workers put down roots and stay near to the project, then they will contribute directly or indirectly to the direct property tax support of the school district in which their children are members.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met because TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from counties or municipalities negotiating IRB deals—either industrial projects or renewable projects. Lack of reporting means the legislature is prevented from knowing whether the general fund costs of IRB deals of either kind provide an adequate return on state general fund revenues foregone.

ADMINISTRATIVE IMPLICATIONS

It is not clear whether the proposed changes will entail changes in administration. With traditional industrial revenue bonds, no cash changes hands. The "lease payment" from the developer to the sponsoring government are exactly equal to the bond service payments. It is uncertain pursuant to the current distribution provisions whether the payments to school districts are made in cash by the developer or whether the county treasurer receives the PILT money and distributes it to the county and school districts in proportions established by the bond agreement.

Treasurers or other officials in the sponsoring counties may have some difficulty gaining the information necessary to determine the correct distribution and including that information in the bond agreement. The IRB is a bond, subject to typical bond covenants. The amount of money to be shared with the school districts pursuant to the new formula will be made a part of those covenants and after the initial calculation included in the bond covenants, the treasurer or other officials will not have to recalculate annually.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB67 proposes IRB treatment for energy storage projects. The HENRC committee substitute requires the negotiated PILT amounts to be shared with school districts by the formulae modified by the provisions of this bill.

TECHNICAL ISSUES

Article II , Section 19, of the New Mexico Constitution prohibits the Legislature from passing any law impairing the obligation of contracts. This prohibition extends to bond contracts. This apparently means that IRB transactions already closed will not be affected by the new formula. Once the bond ordinances are put in place, the financing for the energy projects is finished. The county and municipality could not go back to the developers/investors/owners and ask for more money and also tell the school districts that their allocations are going to change. However, prohibition against bond impairment should be amended into the provisions of this bill.

There may be a transition problem because of the specification that the new distribution affects distributions for projects whose bonds are sold after the bill is passed and signed—approximately April 1, 2023, pursuant to the SJC amendment. Negotiations leading to a deal take many months and sometimes years. The bonds that will shortly be sold by Curry County would possibly be subject to the new distributions, depending on the exact date of the bond sale. However, the bond contracts have been calculated assuming the existing distribution formula. Pursuant to the provisions of this bill, the total amount of the PILT could change as explained in the "Fiscal Implications" section above and the distributions would certainly be affected. It might be appropriate to advance the internal reference of effective when signed to make the applicability date of the provisions of the bill January 1, 2024.

While the county treasurer or other official can easily determine school membership with a single call to school district administration, data on school district area may be more difficult. The most recent report published detailing district size was generated in 2002[1] and is no longer available on the PED website. The specific data needed is the area of each district within the IRB sponsoring county. TRD maintains maps of school districts within each county for property tax purposes. Property tax rate sheets showing residential and non-residential property tax rates and net taxable value are easily available from the Department of Finance and Administration/Local Government Division.[2] Amending the 40 percent distribution factor based on school district area within the sponsoring county to refer to net taxable value for property tax purposes for the year prior to the initiation of the renewable energy project would ease the task of the county treasurer in calculating the distribution shares but would result in approximately the same result as land area.

Requesting or requiring school districts in a sponsoring county to report school membership to the county treasurer at the same time these reports are transmitted to the Public Education Department (PED) would also assist the county treasurer in accurately calculating the distribution sharing.

Consider replacing the phase "average of the mills imposed by all entities levying taxes on property in the municipality" on page 3, lines 23 & 24 with "the average of the total the sum of

---

[1] "District Size in Square Miles" (PDF). New Mexico State Department of Education. August 15, 2002."

[2] https://www.nmdfa.state.nm.us/local-government/budget-finance-bureau/property-taxes/certificates-of-property-tax-rates/

state, municipal, county and school district rather than all jurisdictions including higher education, hospitals and special districts which vary widely and would not share in the PILT.

OTHER SUBSTANTIVE ISSUES

It may well be that there is no appropriate, enduring, "one-size fits all" solution to this problem. Each project will have different impacts on the sponsoring counties (or municipalities) and the regional school districts, and these different impacts will vary over time.

- To date, the renewable wind and solar projects have been placed in remote, rural areas, primarily because land is cheap and wind and solar are abundant.
- As the state moves to achieve the goal of 80 percent of power from renewable sources by 2040 and 100 percent renewable by 2045, solving issues arising from this IRB treatment will be important.
- Typically, projects involve a construction phase that uses substantial labor followed by 25 years of a typical useful life involving relatively small labor inputs.
- Because technology will gradually become more efficient, there may be periodic replacement of solar panels or portions of wind farms over the life of the project agreement. There will be labor inputs to accomplish these upgrades.
- The other thing needed, besides abundant wind or sun and cheap land, is access to distribution lines. The 96-Megawatt AES project proposed for mid-Santa Fe County was partially chosen because it has close access to a 25 kilovolt PNM transmission line. There may be more projects proposed in the rural-urban interface because of this fact. Also, the advent of community solar will mean more mid-scale projects will be located in urban areas.
- Housing the workers has been and will be an issue, because there is a big need for housing during the initial phase or during upgrades or replacement. Because the projects (to date) have been located in areas without worker housing, the impact on schools has been quite varied.
- The AES project mentioned above expects 200+ construction jobs for up to 12 months, and an average of six to 10 permanent jobs for ongoing maintenance.
- PILT offers are apparently calculated as 25 to 35 percent of the expected total average property tax obligations over the life of the project. Considering that both solar arrays and wind farms are eligible for double declining balance depreciation using a five-year life, the average net taxable value is about 30 percent of the installation net taxable value and installation net taxable value is $1/3^{rd}$ of initial capital cost (equipment and installation labor).
- PED may choose to develop expertise in this area in order to counsel school districts to participate formally or informally with county/municipal officials to negotiate the proper amount of PILT that is acceptable to the developer, the sponsoring government and the school district(s).

POSSIBLE QUESTIONS

1. Because counties and municipalities through the IRB mechanism can decrease state gross receipts tax revenues should these entities be required to seek approval from the Board of Finance or the Legislative Finance Committee prior to signing the IRB agreement?
2. At minimum, should counties and municipalities be required to report to the

Legislature the state impacts of county- or municipal-IRBs?

3. Do the provisions of this bill result in distribution of negotiated PILTs that are reasonably acceptable to the sponsoring government, the school district with project presence within the district, the school district housing workers and their families, and the developer?

Attachment

1. Harding, Quay, and Sandoval

LG/al/ne/hg/mg

Attachment 1:

Harding County - PILT Being Considered

District	MEM	% of Total MEM	Square Miles in County	% Sq. Miles in County	Is proj in this dist?	% Project in District	%PILT	Proposed Allocation	Current Law (2021 Law Change)	Pre-2020 Law
Mosquero	88	18.26%	1,253.1	58.96%	y	100%	75.41%	$67,867	$30,000	$90,000
Logan	317	65.77%	88.4	4.16%	n	0%	8.24%	$7,416	$30,000	
Roy	77	15.98%	784.0	36.89%	n	0%	16.35%	$14,716	$30,000	
Total	**482**	**100.00%**	**2,125.4**	**100.00%**		**100%**	**100.00%**	**$90,000**	**$90,000**	**$90,000**

Total County Miles Sq.	2125.44
PILT AMOUNT	$ 90,000

Quay County - Hypothetical PILT

District	Avg enrollment	% of Total MEM	Square Miles in County	% Sq. Miles in County	Is proj in this dist?	%projindistrict	%PILT	Proposed Allocation	Current Law (2021 Law Change)	Pre-2020 Law
Logan	317	16.94%	599.9	20.86%	y	100%	60.04%	$60,040	$16,667	$100,000
San Jon	125	6.68%	636.3	22.13%	n	0%	9.52%	$9,520	$16,667	$0
Tucumcari	907	48.48%	995.9	34.63%	n	0%	18.70%	$18,701	$16,667	$0
House	53	2.83%	435.3	15.14%	n	0%	6.34%	$6,339	$16,667	$0
Grady	174	9.30%	43.0	1.49%	n	0%	1.53%	$1,527	$16,667	$0
Melrose	295	15.77%	165.0	5.74%	n	0%	3.87%	$3,873	$16,667	$0
Total	**1,871**	**100.00%**	**2,875.4**	**100.00%**		**100%**	**100.00%**	**$100,000**	**$100,000**	**$100,000**

Total County Miles Sq.	2875.42
PILT AMOUNT	$100,000

Sandoval County

District	MEM	% of Total MEM	Square Miles in County	% Sq. Miles in County	Is proj in this dist?	% Project in District	%PILT	Proposed Allocation	Current Law (2021 Law Change)	Pre-2020 Law
Cuba	746	0.73%	1,763.8	47.53%	n	0%	19.09%	$7,024	$7,360	
Jemez Valley	359	0.35%	1,108.8	29.88%	y	100%	61.99%	$22,811	$7,360	$36,800
Bernalillo	2,803	2.76%	645.4	17.39%	n	0%	7.23%	$2,662	$7,360	
Rio Rancho	17,329	17.06%	153.8	4.15%	n	0%	3.36%	$1,238	$7,360	
Albuquerque	80,364	79.10%	38.9	1.05%	n	0%	8.33%	$3,065	$7,360	
Total	**101,601**	**100.00%**	3,710.7	**100.00%**		**100%**	**100.00%**	**$36,800**	**$36,800**	**$36,800**

Total County Miles Sq.	3,710.7
PILT AMOUNT	$36,800