BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 24, 2024

Bill: HB-118 **Sponsor:** Representatives Kristina Ortez and Jason C. Harper

Short Title: Electric Generation Tax Sunset

Description: This bill removes the sunset date from the provision in Section 7-4-10(E)3 NMSA 1978 that currently allows taxpayers receiving income from certain electricity generation facilities to apportion business income using only the single sales factor. Under current law, the provision sunsets after taxable year 2023, but this bill would allow these taxpayers to continue using singe sales factor apportionment permanently.

Effective Date: Not specified; 90 days following adjournment (May 15, 2024). Applicable to tax years beginning on or after January 1, 2024.

Taxation and Revenue Department Analyst: Asif Rasool and Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	(Less than $500)	(Less than $500)	(Less than $500)	(Less than $500)	R	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

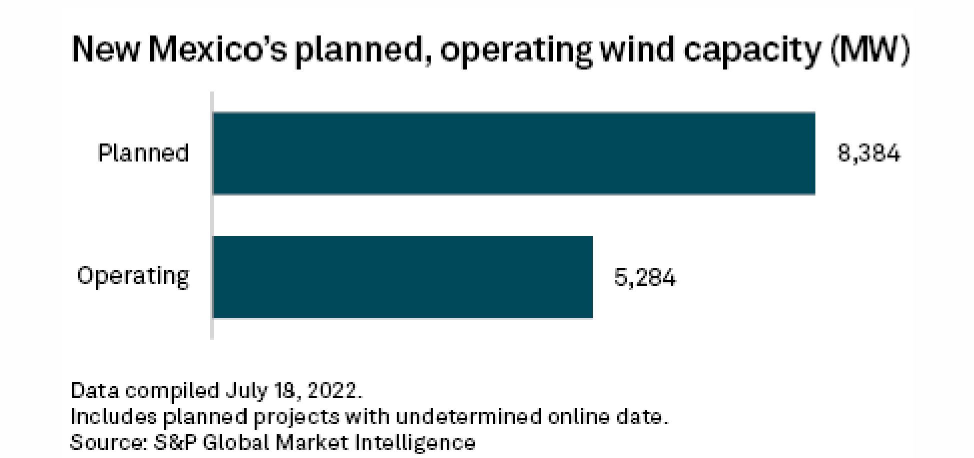
Methodology for Estimated Revenue Impact: In the last three years, as reported in the 2023 New Mexico Tax Expenditure Report, approximately 37 taxpayers have opted to use the manufacturing single sales factor for apportionment, resulting in an average annual revenue reduction of $43 million. Among these taxpayers, a small fraction comprise electricity-generating facilities. The potential revenue increase that would have occurred with the sunset on January 1, 2024, is currently not factored into the December 2023 Consensus Revenue Estimating Group (CREG) forecast. Therefore, while the fiscal impact notes a loss in general fund revenue, this loss is already considered in the CREG's December 2023 projections for FY2025 through FY2028.

With the completion of new electricity generation projects in the state, such as the Pattern Energy Western Spirit wind project, additional taxpayers are now eligible to make the apportionment election for manufacturers, specifically under the power generation category. The Western Spirit Wind project, finalized in 2021, encompasses four wind energy sites in Central New Mexico: Red Cloud, Duran Mesa, Clines Corners, and Tecolote, boasting a total installed capacity of 1,050 MW, or 1.05 GW.

Western Spirit Wind utilizes a total of 377 GE wind turbines ranging from 2.3 to 2.8 MW in capacity, supplying renewable energy to both California and New Mexico through long-term power purchase agreements. In California, these agreements involve the Los Angeles Department of Water and Power, San José Clean Energy, East Bay Community Energy, California Choice Energy Authority, and various member cities. In 2021, Pattern Energy entered into a 15-year power purchase agreement with Uniper SE for up to 219,000 MWh per year of wind energy. Uniper Global Commodities, an international energy company, plays a crucial role in providing power to New Mexicans.

As a result, a significant portion of electricity sales will take place in the large markets of California, providing substantial benefits to companies that choose to elect the manufacturing single sales factor for apportionment under the power generation category.

The chart below highlights the planned expansion of wind capacity in New Mexico.



At the current planned capacity of 8,384 megawatts (MW) in wind power—equivalent to 8.4 million kilowatts (KW)—and assuming full utilization each day, the monthly kilowatt hours[1] (kWh) could potentially reach as high as 252 million. The average cost per kilowatt hour (cents/kWh) in New Mexico, spanning residential, commercial, and industrial sectors, is 9.73 cents/kWh[2]. While electric generation companies' average three-factor apportionment may not be significantly higher than the single sales factor, the potential revenue loss in Corporate Income Tax (CIT) revenue from wind generation alone may still be in the millions of dollars in the future as more companies establish in New Mexico.

Policy Issues:
The Public Utility Act of New Mexico is a comprehensive set of laws that governs the regulation of public utilities in the state. It establishes the framework for the oversight, operation, and regulation of utilities that provide essential services such as electricity, natural gas, water, and telecommunications. The Act empowers the New Mexico Public Regulation Commission (NMPRC) to regulate and oversee public utilities to ensure that they operate in the best interest of the public. Electricity sold to New Mexico public utilities from generating stations is subject to this Act. The single sales factor election only applies to electricity generation at facilities that do not require NMPRC approval prior to commencing construction or operation' companies that are selling out-of-state do not require these approvals, and thus can elect the manufacturing single sales factor.

In general, corporations in New Mexico are required to apportion a share of their income to New Mexico for Corporate Income Tax purposes based on three factors. These three factors are the corporation's share of property, employment, and sales within New Mexico. Current law temporarily allows an exception to this three-factor apportionment formula for certain corporations receiving income from electricity generation facilities. Instead, those taxpayers are allowed to apportion income to New Mexico based only on their sales, and not on their property or employment.

The single sales factor apportionment is an incentive for multi-state firms the majority of whose sales are outside New Mexico. For qualifying domestic New Mexico companies, the single sales factor will reduce their income tax liability to the extent they have sales outside New Mexico. The purpose for having a single sales factor formula election for manufacturers is to encourage investment and employment in this state by manufacturers who do not anticipate substantial sales revenue within this state. Removing the

[1] Kilowatt hours represent the energy usage in an hour and function as a measure of associated prices.
[2] (1) Electricity Data - U.S. Energy Information Administration (EIA). https://www.eia.gov/electricity/data.php (accessed 2024-01-23).

sunset on the provision for electric generation taxpayers to elect the single sales factor supports future electric generation investment in particular renewable and sustainable electrical generation in the state as the majority of this generation will be sold outside of the state.

The removal of the sunset will maintain the erosion of horizontal equity among corporate tax filers who though equal in all other respects, i.e. taxable income, payroll, property and sales factors, are not eligible to elect the single sales factor.

Technical Issues: None.

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev will make updates to forms, instructions, and publications. These changes will be included in annual tax year changes.