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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/07
 LAST UPDATED 2/13/07 HB 188/aHTRC/aHAFC

SPONSOR Campos

SHORT TITLE Renewable Energy Transmission Authority Act SB _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

* The executive budget proposal provides a \$1 million non-recurring recommendation to establish the Authority. This bill, however, does not propose any appropriation.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring Or Non-Rec	Fund Affected
FY08	FY09	Subsequent Years		
0.0	0.0	(\$1,000.0)	Recurring	General Fund*
0.0	0.0	(\$600.0)	Recurring	Local Governments*
0.0	0.0	(\$1,000.0)	Recurring	General Fund**
0.0	0.0	(\$125.0)	Recurring	Small Cities Assistance**
0.0	0.0	(\$125.0)	Recurring	Small Counties Assistance**

(Parenthesis () Indicate Revenue Decreases)

* Gross Receipts Tax impacts

**Compensating Tax impacts

According to TRD, fiscal impacts of the GRT and compensating tax deductions depend on the expenditures by the Authority that would otherwise be taxable. Determining this amount is complicated because (1) it is unclear how quickly the Authority will be able to issue bonds and begin operations and (2) the Authority is intended to fill a market niche that might not be filled by private companies who would otherwise pay GRT and compensating tax. According to officials of EMNRD, there is unlikely to be a significant amount of spending during the next 2 to

3 years. After that, spending amounts are uncertain, and are likely to fluctuate from year-to-year. The fiscal impacts shown in the “Subsequent Years Impact” column assume that spending will average \$50 million per year and will be split 50/50 between GRT and compensating tax. These impacts appear unlikely to occur before FY 2011.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Public Regulation Commission (PRC)

Energy, Minerals and Natural Resources Department (EMNRD)

Attorney General’s Office (AG)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of House Appropriations and Finance Committee (HAFC) Amendment

The HAFC amendment adds two members to the authority – the State Treasurer or designee and the State Investment Office or designee – and makes other changes to the composition of the board. The amendment adds a requirement that the Authority report quarterly to the Legislative Finance Committee on all expenditures made and activities conducted in the fiscal year to date pursuant to the provisions of the New Mexico Renewable Energy Transmission Authority Act.

Synopsis of House Taxation and Revenue Committee (HTRC) Amendment

The HTRC amendment revises the definition of “eligible facilities” to require 30% of the “electric energy” instead of “electric capacity” come from renewable sources. The amendment adds a compensating tax deduction for the value of equipment installed on Authority projects. The terms of appointments made by the Legislative to the board of the Authority would be staggered. Finally, the amendment eliminates the creation of a new legislative oversight committee for the Authority. Instead, the New Mexico Finance Authority would have oversight responsibilities.

Synopsis of Original Bill

House Bill 188 creates the New Mexico Renewable Energy Transmission Authority (Authority), a quasi-governmental agency to help facilitate the transmission and use of renewable energy. The Authority is authorized to:

- Hire an executive director and staff and set salaries;
- Acquire, maintain, and operate eligible energy transmission facilities that, within one year after beginning operation, produce at least 30 percent of the electric capacity from renewable energy sources;
- Issue and sell revenue bonds, known as renewable energy transmission bonds, and set their denomination, maturities, and rates of interest;
- Enter into agreements, contracts and partnerships that plan, acquire, maintain, operate, or lease eligible renewable energy facilities;

- Set rates for public utilities and other persons using facilities owned by the Authority; and
- Exercise the power of eminent domain for acquiring property or rights of way.

Renewable energy is defined as electrical energy that is generated with low or zero emission equipment or generated by solar, wind, hydropower, geothermal, non-fossilized fuel cells and biomass resources. Electrical energy produced by fossil fuels or nuclear energy is not considered renewable energy.

The bill creates two new funds in the state treasury. The “renewable energy transmission bonding fund” would consist of revenues from operating or leasing facilities, fees, and interest earnings. The renewable energy transmission bonds would be repayable from the fund. Proceeds from the bonds will be appropriated to the Authority to finance or acquire electric transmission and storage facilities, and money in the fund will be pledged for bond debt service. On the last day of January 31 and July 30 of each year, the Authority will transfer the balance of the bonding fund, except for the amount needed for the next 12 months of debt service, to the newly-created “renewable energy transmission authority operational fund.” This non-reverting fund would also consist of appropriated monies.

Renewable energy transmission bonds are exempt from state tax. Receipts from selling equipment or providing services to the Authority or any agent or lessee of the Authority may be deducted from gross receipts tax.

Section 4 (B) (8) provides the Authority with powers of eminent domain, pursuant to the Eminent Domain Code, for acquiring property or rights-of-way for public use if needed for projects, possibly including existing transmission facilities.

The Authority will be required to submit a report of its activities to the governor and legislature no later than December 1 of each year.

The bill also creates the New Mexico renewable energy transmission oversight committee, a joint interim legislative committee. Members of the committee will be chosen by the legislative council, and the legislative council will staff the committee.

FISCAL IMPLICATIONS

According to TRD, fiscal impacts of the GRT and compensating tax deductions depend on the expenditures by the Authority that would otherwise be taxable. Determining this amount is complicated because (1) it is unclear how quickly the Authority will be able to issue bonds and begin operations and (2) the Authority is intended to fill a market niche that might not be filled by private companies who would otherwise pay GRT and compensating tax. According to officials of EMNRD, there is unlikely to be a significant amount of spending during the next 2 to 3 years. After that, spending amounts are uncertain, and are likely to fluctuate from year-to-year. The fiscal impacts shown in the “Subsequent Years Impact” column assume that spending will average \$50 million per year and will be split 50/50 between GRT and compensating tax. These impacts appear unlikely to occur before FY 2011.

Continuing Appropriations language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created

funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

EMNRD estimates the need for a \$1 million appropriation to implement HB 188 and provide for the Authority's operations and staff. The executive has recommended a \$1 million special appropriation in the Governor's budget.

According to EMNRD, the lack of transmission capacity is the most significant factor limiting wind development in the West. New Mexico has tremendous renewable energy resources such as wind that can provide a clean, renewable source of energy. However, in order to fully develop these resources and sell them to markets both within New Mexico and in other states, additional transmission capacity is greatly needed. HB 188 would provide a mechanism for developing this capacity through the creation of the Renewable Energy Transmission Authority, which will have the Authority to construct or acquire the needed facilities.

DFA finds that the authority is not required to make a profit, but is expected to be self-supporting. It is allowed to charge lease fees sufficient to operate as well as service and retire bonds sold to build the facilities. The Authority is prohibited from competing directly with an investor owned utility. To ensure that the project is economically feasible, up to 70% of the capacity of the transmission facilities developed by the Authority may be derived from non-renewable sources. The Authority is not subject directly to the jurisdiction of the Public Regulation Commission. However, any fees or lease charges paid to the Authority are subject to rate review by the PRC of the operating company. In addition, the Authority's capital costs are not recoverable unless and until PRC has allowed these costs or charges to enter the rate base. This implies that the costs must be prudent and reasonable. The act requires that any facilities built by the Authority will be leased to an investor owned utility,

PRC notes that there is an existing process to facilitate generator interconnections through the Federal Energy Regulatory Commission (FERC). A generator seeking interconnection makes an application to the utility and pays study costs. The utility conducts the technical study and determines the facilities needed to interconnect. The generator pays the costs to construct the facilities. After the facilities are built and the generator commences operation, the interconnection facility costs are refunded to the generator over a few years. Any disputes can be taken to FERC. This procedure is same for any form of generation. The 204 MW wind facility that is interconnected to Public Service Company of New Mexico's (PNM) system went through this process and is in commercial operation. It is reported that PNM currently has several hundred MWs of renewable generator applications in its queue. PRC questions whether the Authority is needed: "Given this streamlined process, which has not broken down, is it in the public interest to create this Authority? If the intent is to finance renewable energy projects, why can't existing state vehicles be used or limit the powers of the Authority to provide financing?"

On the other hand, DFA indicates that part of the overall market failure for renewable energy development is a transmission void in federal programs. In particular, FERC's transmission pricing policy that is intended to spur transmission investments has bogged down throughout the western states amidst opposition from state regulators and consumer groups. It is doubtful that FERC's backstop authority to approve transmission siting will, on its own, spur new transmission construction. The U.S. Department of Energy's new authority under the Energy Policy Act of 2005 to help finance new transmission lines in the West and Southwest applies only to

constrained areas. It is unlikely that renewable energy would benefit from any new lines created under the referenced authority.

The AGO is concerned about several instances where the bill is written more broadly than necessary. For example, Section 4(B)(5) gives the Authority the power to establish corridors for the transmission of electricity in the state and Section 4(B)(6) authorizes the Authority to investigate, plan, prioritize and negotiate with entities within and outside the state for the establishment of interstate transmission corridors. These powers granted to the Authority may encroach on powers of the PRC pursuant to Sections 62-9-1 and 62-9-3 NMSA 1978.

AGO notes that Section 4(B)(14) give the Authority the power to collect “reasonable rates” for use of the transmission facilities and Section 4(E) provides that the Authority and “eligible facilities acquired by it” are not subject to the jurisdiction of the Public Regulation Commission. This leaves many questions regarding the status of facilities if they are leased to public utilities or other entities. Even if rates are not established by the PRC, rates would probably be subject to some jurisdiction or oversight by FERC. Some readings of these sections would also view the Authority as a utility that has condemnation and rate-setting power, but is not subject to hearing and public notice requirements.

ADMINSTRATIVE IMPLICATIONS

EMNRD will provide legal, operational and technical support during the creation phase of the Renewable Energy Transmission Authority. EMNRD may be placed in the position to assist with recruitment of Authority personnel, provide office space until a suitable location may be found to house the Authority and its documents, and other costs associated with the creation of a new department.

PERFORMANCE IMPLICATIONS

For EMNRD, HB 188 could increase the output of its programs by greatly facilitating agency efforts to expand renewable energy development.

TECHNICAL ISSUES

PRC raises two technical questions with the language in the bill:

1. Page 13, line 8: “rate base” may be replaced by “rates”. Transmission costs can go into rates as an expense without going into rate base. The general term “rates” covers both investment and expense and is preferable.
2. Page 13, line 13: “such other person” is not defined. Does it include an individual, Tri-State Generation and Transmission Cooperative etc.?

AGO finds that there are no guidelines in the bill regarding the standards the authority should apply in making a determination whether to finance a project. There should probably be a requirement that a project is “commercially viable or feasible” or that sufficient transmission capacity has been contracted for prior to financing.

OTHER SUBSTANTIVE ISSUES

The Authority will have five voting members: three appointed by the governor and approved by the senate, one appointed by the Speaker of the House, and one appointed by the Senate President Pro Tempore. One of the governor's appointees will need expertise in major electrical transmission financing. The other four members will need special knowledge of the public utility industry and renewable energy development. The secretary of EMNRD will also serve as a non-voting member. Authority members will receive per diem and mileage reimbursements.

According to TRD, Section 3 makes the Authority separate and apart from the State and provides that the Authority shall not be considered a state agency or instrumentality under any law unless the law specifically refers to the Authority (Subsection H). This means that the Authority is not covered by statutes that generally apply to state government bodies, including the Personnel Act, Procurement Code and governmental gross receipts tax provisions. However, the Authority remains subject to provisions of the New Mexico Constitution that apply to the state, including the extra compensation clause of Article IV, Section 27 and the anti-donation clause of Article IX, Section 14.

As the bond payments are limited to a defined special fund, under New Mexico Constitutional law these obligations would not be general obligations of the state (and therefore not "State debt" in the constitutional sense) and would not need voter approval, be subject to or affect constitutional debt limitations.

Board of Finance bond counsel notes that the provision allowing for withdrawals from the proposed Renewable Energy Transmission Bonding Fund for operational purposes could potentially affect the creditworthiness of the bonds, if misused, and the provision relating to the pledge of other funds, requiring bondholder approval, might present awkward compliance questions.

POSSIBLE QUESTIONS

An eligible facility is defined as one in which "at least thirty percent of electric capacity, as estimated by the authority, originates from renewable energy sources." Should capacity be defined, i.e. to specify thirty percent of transmission capacity or storage capacity?

How is seventy percent of non-renewable energy capacity determined to be the amount necessary to keep a facility competitive?

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