F I S C A L I M P A C T R E P O R T

SPONSOR Small/Stewart **ORIGINAL DATE** 1/30/19 **LAST UPDATED** **HB** 283

SHORT TITLE Increase Renewable Portfolio Standards **SB**

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates: SB275

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

HB283 amends the Renewable Portfolio Standard (RPS) as defined in the Renewable Energy Act (REA) (Chapter 62, Article 16 NMSA 1978) as well as the RPS section within the New Mexico Statutes governing Rural Electric Cooperatives (Chapter 62, Article 15, Section 34 Renewable Portfolio Standard).

HB 283 provides a pathway to reaching an ultimate RPS requirement of 80 percent by 2045 through significant percentage increases every five years between 2020 and 2045 for both rural electric distribution cooperatives as well as public utilities.

The Following was provided by the Public Regulation Commission:

In addition to significantly amending the Renewable Energy Act and the Rural Electric Cooperative RPS section, HB 283 includes economic development and workforce solutions mandates that are outside of the scope of the Public Regulation Commission (PRC). HB 283 removes the reasonable cost threshold (RCT) and the large customer adjustments that modify compliance with the required RPS mandate under the current REA, replacing the RCT with a

$60 per megawatt-hour (MWh) average annual levelized cost of energy (adjusted for inflation after 2020) as the RCT level for both cooperatives and public utilities. This is for the entire procurement portfolio in a given year although public utilities and distribution cooperatives may still accept projects that exceed the RCT threshold. The requirement that the RPS procurement portfolio be diverse is eliminated for public utilities although the mandate for diverse renewable energy resources is kept for distribution electric cooperatives.

HB283 increases reporting requirements in annual reports and procurement plans for both cooperatives and public utilities. It requires renewable energy procurements be the result of competitive bidding practices but does not provide guidance for this process. HB283 also requires all RECs to be retired if they are associated with renewable energy from public utility-owned facilities that are in rate base. Those RECs can no longer be traded or sold. HB283 also disallows the use of paper RECs for compliance purposes. Finally, HB283 adds a completely new section to the REA that is related to workforce development. It appears that qualified apprenticeship programs will be determined by the Workforce Solutions Department, but there is no indication who will oversee and verify the employment requirements. Such issues are not generally within the PRC's area of expertise.

SECTION-BY-SECTION SUMMARY

The Following was provided by the Public Regulation Commission:

Section 1

Increases the RPS requirements for rural electric distribution cooperatives and requires that they prove compliance by retiring renewable energy certificates (RECs). The new RPS percentage mandates increase in a systematic manner up to the ultimate mandate of 80 percent of total retail sales to New Mexico customers in 2045. The general diversity requirement is retained for electric cooperatives. Annual reporting requirements on actual procurement and generation of renewable resources are increased and distribution electric cooperatives will now be required to file 3-year compliance plans, which they were not required to file before. The cost cap protections of the reasonable cost threshold are eliminated. A new cost cap is established based on the average annual levelized cost of renewable energy, which for these purposes is set at $60/MWh (in 2020-dollars, adjusted for inflation after 2020) where the renewable energy resource interconnects with the bulk grid (transmission system). Distribution electric cooperatives may still accept renewable energy projects whose electricity prices would be greater than $60.00/MWh. Electricity prices are often expressed in $ per kilowatt-hour; the conversion is $60.00/MWh = $0.06/kWh.

Sections 2 – 9:

Amends the existing REA. Section 10 adds a new section to the REA that deals with workforce development. Section 2 amends the definitions section of the REA, by adding a definition for energy storage, redefines the reasonable cost threshold to be the <u>average annual levelized cost of $60.00/MWh (in 2020 dollars, to be inflation-adjusted after 2020) where the renewable energy resource interconnects with the bulk grid (transmission system).</u> Renewable energy is simplified to eliminate low- or zero-emissions generation technology with substantial long-term production potential and the specification of types of resources that qualify. The new definition simply says it is generated by renewable energy resources and delivered to a public utility. Renewable energy resources are defined in a separate

section, but are functionally the same as before with the exception of eliminating the inclusion of nuclear energy. Renewable energy resources now defined as only solar, wind, geothermal, hydropower (in service after July 1, 2007), fuel cells that do not generate electricity with fossil fuels, landfill gas, and anaerobically digested waste biogas. Finally, the RPS is defined now to be the minimum percentage of retail electricity sales by a public utility to New Mexico retail ratepayers. This differs from the current REA where the RPS standard is commonly interpreted as a maximum.

Section 3

Amends the RPS section of the REA (Section 62-16-4 NMSA 1978). Public utilities can only meet the RPS percentage mandate by retiring RECs whose renewable energy is delivered to the utility. Functionally, this eliminates the ability to use paper RECs for compliance purposes (see the Technical Issues section for a discussion of this issue).

Sections 1 and 3 of HB 283 lay out the step schedule by which the RPS mandate will increase to the ultimate level of 80% by 2045:

Date	RPS mandate (as a % of total retail sales to NM customers)	
(To be no later than)	Distribution cooperatives	Public utilities
January 1, 2015	5%	15%
January 1, 2020	10%	20%
January 1, 2025	25%	40%
January 1, 2030	40%	50%
January 1, 2035	55%	65%
January 1, 2040	70%	80%
January 1, 2045	80%	

The exemption for political subdivisions or educational institutions remains; however instead of certifying (to the state auditor and its serving electric utility) that it will spend 2.5 percent of its annual electric charges in a given year on developing renewable energy programs, it now must certify that it will develop within 24 months sufficient customer-owned renewable energy generation facilities that can meet the RPS compliance standards for the year.

Subsection 3.C

Amends the REA's Section 62-16-4.A.5 so that in addition to a public utility, any other person may make a motion or application to open a docket to develop and provide financial and other incentives to encourage public utilities to acquire renewable energy generation in excess of the compliance requirement.

Subsection 3.D

States that if a public utility's average annual levelized cost of renewable energy in its procurement plan exceeds the reasonable cost threshold of $60.00/MWh (in inflation-adjusted 2020 dollars), then it does not have to incur the costs beyond that threshold. This section removes the Commission's authority to set the reasonable cost threshold level. However, just because the public utility is not required to incur the extra cost of its procurement portfolio in a given year does not mean that it cannot accept a project whose

cost would exceed the RCT. And if the public utility can add renewable energy resources to its portfolio at a cost at or below the newly defined RCT, it must obtain those resources if it needs them to meet the RPS requirement in a given year.

Subsection 3.E

Includes an end date of June 30, 2020 on the current ongoing REA requirement that public utilities file annual renewable energy procurement plan for the upcoming year and an annual report detailing actual generation the prior calendar year for Commission approval.

Subsection 3.F

Sets future reporting requirements starting on July 1, 2020 and each July 1 after that for all public utilities. The reporting requirements mandate additional information beyond what the public utilities currently report in their procurement plans. Utilities will be required to report capital, operating, and fuel costs (in $/MWh) as well as emissions levels during the preceding calendar year for each non-renewable generation resource that is in rate-base or for which the utility has a PPA. Non-renewable generation resources are not part of a renewable energy procurement plan and often have a different cost recovery method (base rates versus a renewable energy rider), so it is unknown as of the writing of this bill what value this Subsection 3.F.2 adds to the procurement plan other than imposing additional costs to ratepayers resulting from additional labor hours incurred by the public utility. Subsection 3.F.3 requires public utilities to demonstrate that a proposed procurement: (i) went through a competitive procurement process, (ii) has reasonable cost, which is to be judged by comparing the electricity prices in the received bids to other published electricity prices in the southwestern United States; and (iii) is in the public interest, while considering factors such as overall cost and economic development opportunities.

Subsection 3.H

Allows the Commission to reject a procurement plan within 40 days of filing if the procurement plan is deficient in the required information and mandates that the Commission provide additional time for the public utility to refile its revised and complete plan. The amount of required renewable energy that the utility must procure will not be changed by allowing extra filing time.

Section 4

Addresses the renewable energy certificates ("RECs") (Section 62-16-5 NMSA 1978). One change is that RECs are owned by the generator of the renewable energy unless there is a PPA entered into prior to July 1, 2019 in which case the purchaser owns the RECs for the duration of the PPA "unless otherwise agreed to in a public utility contract approved by the commission." This part in quotations is new and puts the responsibility on the Commission to approve an agreement in which the generator of renewable energy retains the RECs. This approval is not needed currently. RECs from rate-based public utility plants (meaning utility-owned facilities whose costs are recovered from ratepayers through base rates, not a special rider) must all be retired and cannot be traded or sold. This penalizes ratepayers, who having paid for a renewable energy resource now may not earn revenues that they might otherwise from the sale of RECs that are not needed for RPS compliance and would expire

unused under HB 283. This does not financially impact a utility or its shareholders who will continue to earn a return (or profit) regardless on the renewable energy resource if it is utility-owned and in rate base. All PPAs that public utilities enter into on or after July 1, 2019 must include the associated RECs along with the electricity and all the RECs must be retired. There is a provision that says that all the RECs associated with a PPA that after July 1, 2019 must be conveyed to the NM public utility shall either be retired or "subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission." Finally, if a utility has traded, sold or transferred RECs from renewable energy resources, it cannot claim to be providing that renewable energy. This makes little sense because the preceding language mandates that utilities have to retire all RECs from utility-owned generation resources; given the four-year shelf life of RECs, if a REC was banked for future use and then possibly sold or traded in year 4 before its value expired, the electricity generated from the renewable energy resource would have been claimed towards RPS compliance back in Year 1. So it is unclear, if the public utility would have to go back 3 or 4 years to calculate RPS compliance and remove the associated energy from its statistics These requirements are new to the REC section of the REA.

Section 5

Concerns cost recovery for renewable energy (Section 62-16-6 NMSA 1978). This section has no substantive changes other than deleting a provision allowing for a commission docket to be opened upon commission motion or public utility application to consider appropriate performance-based financial or other incentives to encourage additional acquisition of renewable energy resources. This subsection was amended and moved into Subsection 3.C and is discussed further in the Significant Issues section of this FIR analysis.

Section 6

Concerns additional powers and duties of the PRC (Section 62-16-7 NMSA 1978). It is amended to require public utilities to offer retail customers a voluntary renewable energy program. The current REA states that public utilities may require such programs to be offered. These voluntary renewable energy programs offer retail customers the opportunity to buy blocks of renewable energy at a premium price. It is a subscriber program. The three public utilities currently offer voluntary programs (SkyBlue for PNM, Windsource for SPS, and EPE's Renewable Energy Tariff Program). The subsection 6.C is deleted in HB 283. This subsection currently allows the PRC to exempt from RPS compliance those public utilities with all-requirements electric supply contracts on July 1, 2004. To our knowledge, there are not any public utilities in NM with all-requirements electric supply contracts.

Section 7

Concerns voluntary tariffs for rural electric cooperatives (Section 62-16-8 NMSA 1978). It removes the qualifying condition that a distribution cooperative may only be required to offer a voluntary tariff to the extent that the generation & transmission cooperative or other supplier can provide renewable energy under the wholesale contract. Subsection 7.B appears to actually apply to voluntary tariffs offered to retail customers of public utilities, not rural electric cooperatives which are specifically excluded from being public utilities in the definitions section (Subsection 2.D). The commission may require that all RECs associated

with renewable energy purchased through a public utility's voluntary tariff program be: (i) retired and not used for RPS compliance; (ii) be excluded from total retail sales used to determine the RPS required quantity of renewable energy; and (iii) reduce the energy sales to the customers to which the renewable energy rider is applied.

Section 10

Is an entirely new section of the REA that is a workforce development/apprenticeship requirement for hiring apprentices for the construction of facilities that produce or provide electricity for New Mexico retail customers. The requirements of this section will be administered by the Workforce Solutions Department in terms of determining appropriate apprenticeship programs that may provide qualified applicants for the designated projects. The PRC has no real authority or responsibilities with this section. It is questionable whether this section belongs in the REA given that the stated purposes of the REA are to set the RPS levels with target dates, to allow public utilities to recover costs, and finally to protect public utilities and their ratepayers from excessively high costs of renewable energy.

FISCAL IMPLICATIONS

The Following was provided by the Public Regulation Commission:

HB 283 increases the annual procurement plan requirements for public utilities, which we estimate will require additional staff at the utility level as well as at the Commission staff level for analysis. The PRC is currently experiencing high vacancy rates as experienced, qualified FTE are difficult to hire. It should be noted that ratepayers will ultimately pay higher rates for increased administrative costs at the utility or distribution electric cooperative level because the associated salaries are recovered in rates.

SIGNIFICANT ISSUES

The Following was provided by the Public Regulation Commission:

Section 3.C allows anybody, regardless of whether the person is a ratepayer of a NM public utility or even a New Mexico resident, to petition the Commission to open a docket "to develop and provide financial or other incentives to encourage public utilities to produce or acquire electricity generated from renewable energy that exceeds the applicable annual" RPS requirement in a given year. This appears designed to pay public utilities (but not distribution electric cooperatives, which are specifically excluded in the definition of a public utility) to do what they normally do anyways. To provide a recent example, when New Mexico's public utilities filed their 2017 RPS procurement plans, they included plans for several years out knowing that the RPS requirement would increase from 15% to 20% in 2020. New Mexico Utility Company's sought approval to enter into new purchase power agreements ("PPAs"), to amend current PPAs through repowering agreements, or to build facilities that would generate sufficient renewable energy to meet the 2020 RPS requirement. In 2018 and 2019, as these approved facilities were projected to enter service and began producing more renewable energy, it was possible to have renewable energy in excess of the 15% actual RPS standard for those years. Because RECs can be banked for four years, it is not a waste of RECs because they can be saved and retired when the RPS requirement increases.

Under HB 283, incremental RPS requirement percentage increases will happen every five years between 2020 and 2045 with incremental increases of between 10% to 20% every five years. Public utilities will constantly be planning procurements under a scenario of increasing RPS requirements. It is unclear if the financial or other incentives that the docket that anyone can petition to open will basically be increasing the financial burden on ratepayers while financially rewarding utilities and their shareholders for business-as-usual procurement practices.

Section 10 of HB 283 appears at odds with the intent of the REA because it does not specify that facilities being constructed must produce or provide renewable electricity. It also is extremely limiting because it states that New Mexico facilities that are being built to produce or provide electricity for New Mexico retail customers are subject to the provisions in this section regarding apprentice requirements. However, it should be noted that many renewable energy facilities are being proposed or built today in New Mexico with the energy or electricity sent out of state, typically to Arizona or California retail ratepayers.

New facilities subject to these apprenticeship requirements are those that are built as a result of competitive solicitations issued after July 1, 2020. However, in Subsection 10.B (1) it requires that 10% of the total workforce be qualified apprentices for projects with on-site construction beginning between January 1, 2020 and December 31, 2023. But the competitive solicitations are not issued until after July 1, 2020 so these are conflicting dates and it is unclear which set of dates supersedes.

One additional complication is foreseen. This section encourages workforce development and requires that projects with construction beginning at certain time frames employ a certain percentage of apprentices at the site as long as qualified applicants are available. Workforce development programs seek to encourage participant diversity, participants from underrepresented populations in a particular industry, and participation from disadvantaged communities. However, the PRC is mandated to regulate utilities and electric cooperatives for the provision of safe, reliable energy at an affordable price to New Mexico retail customers. Subsection 3.F details the requirements for public utilities to file annual procurement plans for how they will meet the RPS requirements starting July 1, 2020 and every year after. Public utilities must show that proposed renewable energy procurements have a reasonable cost by comparing the prices from the bids received in the competitive bidding process to regional electricity prices. It is unclear how any potential additional costs from the apprenticeship mandate will impact the cost of a particular resource.

Competitive procurement practices figure heavily in this bill. Distribution electric cooperatives are mandated to explain how they have tried to minimize the cost of procuring renewable energy resources to satisfy RPS compliance goals. Competitive procurement appears to be one way that a distribution electric cooperative can prove that it tried to minimize costs, along with comparing prices of bids received (presumably under competitive procurement) to other recent electricity prices in the southwestern United States.

Nuclear energy cannot be counted as a renewable energy source under this bill since the definition of renewable energy in Subsection 2.F.1 eliminates “electric energy generated by use of low-or zero-emissions generation technology with substantial long-term production potential.” Under this definition, nuclear power is a low-emissions technology because it emits a lot less carbon into the atmosphere in comparison to coal and natural gas. In the current REA, nuclear energy is prohibited towards RPS compliance in Section 62-16-3(E) (3). But this section is also

eliminated in HB 283.

Paper RECs are an issue in HB 283. Renewable energy certificates are used, and required by the NMPRC and other regulatory bodies, for compliance. One REC is equivalent to the production of one megawatt-hour (MWh) of electricity. If a solar facility produces 50 MWh of energy, 50 RECs are produced and registered at the certifying agency. For the western United States, WREGIS is the certifying agency. If the public utility elects to use the 50 MWh towards its RPS compliance goals, then it retires the 50 MWh with WREGIS and then those RECs cannot be sold to another utility for compliance purposes. Essentially WREGIS prevents double counting. Paper RECs can happen because a public utility may not need to use all 50 RECs for compliance in a given year, so it can bank the extras for use in a future year when possibly the wind is not as productive. But since RECs have a four-year shelf life, if the extra RECs have not been used after three years, a utility may elect to sell them to another utility just for the value of the REC but without the associated energy, which was used when it was generated. The value of the energy with the REC might have been $25/MWh with the associated REC (for example purposes only), but if the stand-alone or paper REC is sold in the REC market, it might only sell for $1.00/MWh-REC or $3.50/MWh-REC. The PRC has expressed a preference for RPS compliance to be with New Mexico generated renewable energy and preferably with energy associated. However, it became clear in PNM's 2014 RPS case (Case No. 14-00158-UT) that there were previous years where PNM fell remarkably short of its RPS requirement because its renewable energy resources collectively failed to generate anywhere near their projections. PNM had no approved methodology for making up the gap between its RPS compliance projections in its RPS plan for a given year and the actual level of generation reported two years later. That is when the Commission approved the purchase of paper RECs to true-up PNM's compliance between the forecast and the actual generation. This is an example of how paper RECs are currently used when a New Mexico public utility purchases them. However, paper RECs also provide a revenue benefit to New Mexico ratepayers when they are sold. If a New Mexico public utility has more renewable energy resources in its portfolio currently than are needed for a given year's RPS compliance, then it banks the RECs for use in a future year or it can sell them in the REC market, thereby earning revenue to be refunded to its ratepayers, who have already paid for the renewable energy generation when the capital costs of the renewable energy resource were included in base rates or the renewable energy rider.

HB 283 eliminates the ability to use paper RECs for compliance purposes by requiring that public utilities shall retire RECs as long as the associated energy is actually delivered to the utility.

Subsection 3.E changes the reporting requirements for public utilities' annual procurement plans so that witness testimony describes proposed procurements in terms of reliability rather than dispatchability. Renewable energy resources for the most part are not dispatchable, meaning that utility grid operators cannot turn them on and off as needed, unless energy storage is involved and large-scale energy storage is in its development stage. Because it is non-dispatchable, the grid must absorb the renewable energy produced the moment when it is produced. Reliability refers to being able to consistently produce electricity for the grid. This assessment change allows renewable energy to be evaluated on a more positive basis with regards to what it can do rather than what it cannot.

Finally, HB 283 does not address the implications of belonging to region-wide energy markets,

such as the Southwest Power Pool or CAISO's Western Energy Imbalance Market, which facilitate greater renewable energy integration and generation for participants.

ADMINISTRATIVE IMPLICATIONS

The Following was provided by the Public Regulation Commission:

Compliance certification for qualifying political subdivisions or educational institutions as described in Subsection 3.B is harder to understand and enforce under HB 283 given the incremental annual increases to the RPS requirement. Under Subsection 3.B exempt institutions certify that they will develop sufficient resources for the percentage compliance in Year X within Year X+24 months. A similar situation exists under the current REA, but currently the exempt institution certifies that it will spend 2.5% of its annual electric charges on developing renewable energy generation within the next 24 months. In HB 283, the exempt institution is certifying that it will develop renewable energy facilities (and retire all associated RECs) that meet the compliance requirement over the next 24 months. This could be more complex under the new RPS requirement incremental increase schedule. For instance, if an exempt institution certifies in 2024 that it is exempt, it is certifying that by 2026 it will have developed sufficient generation resources to meet 2024's compliance standard of 20%, even though by 2026 the compliance standard will be 40%. This may not be an issue since in HB 283 the RPS requirements now set the requirement as a minimum level; there is nothing to stop an institution from developing more than the minimum.

Subsection 3.F requires public utilities to show that their chosen procurements are the result of competitive bids, which provides no more guidance than the currently contested mandate to use competitive bids. Furthermore, parts (b) and (c) have different mandates. §§3.F.3(b) mandates reasonably cost procurements, which is to be judged by comparing the prices received in the competitive bidding process (which is not the same thing as the resource ultimately chosen) to the price of electricity regionally. §§3.F.3(c) mandates the importance of public interest, which now says that overall cost is only one factor to be considered with economic development opportunities also taken into account. Harmonizing these goals is expected to be challenging.

With regards to the possibility that a public utility's annual procurement plan might be found deficient, Section 3.H provides the timeline and guideline. All three public utilities are to file on July 1 beginning in 2020 and every year after. There is a 40 day deadline for their applications to be deemed complete or rejected. That is a difficult deadline to meet for PRC Staff and interveners, who may need to file requests for discovery and production of documents in all 3 utility RPS cases. Discovery is a necessary part of analysis in order to appropriately assess the accuracy of the following: (i) capital, operating, and fuel costs plus emissions data of non-renewable generation resources (as required in §3.F.2); (ii) the competitive bidding process (as required in §3.F.3(a)); (iii) the information provided in utility witness testimony that shows the reasonableness of costs and the degree to which the procurement is in the public interest, while considering factors such as overall cost and economic development opportunities (as required in §3.F.3(b) and §3.F.3(c)); and (iv) a utility's strategies for minimizing the costs of integration (as required in §3.F.4). Per Commission rules, responses to discovery requests are due in 15 days, which makes the compressed schedule problematic.

There will be several rulemakings in front of the Commission as a result of these changes.

Subsection 7.C orders the PRC to develop rules and regulations to implement the RPS for rural electric cooperatives and Subsection 6.A orders the PRC to adopt rules regarding the RPS, specifically records and reports, for public utilities. Section 8 of HB 283 also orders the PRC to promulgate rules to implement the REA. Rulemakings allow all interested parties to weigh in on the proposed rules and therefore are processes that can take six months to a year. Given that some of the deadline dates in HB 283 begin in 2019 and 2020, it should be noted that there is no temporary provision allowing REA requirements to remain in effect until the conclusion of the rulemakings.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 283 is a duplication to SB 275.

Section 10 of HB 283 references the "Apprenticeship Assistance Act." It is not a conflict but it references the definition of "apprenticeship program" as defined in this act.

OTHER SUBSTANTIVE ISSUES

HB283 does not address the definition of baseload power. Baseload power is power that runs 24/7, year round, not requiring sun or wind. Baseload technologies include biomass, biogas, hydro, algae, and geothermal. Storage is also a possibility to meet renewable requirements. However, battery technology needs more advancement before it can reach the RPS goals. A combination of baseload power and battery storage will need to be considered to fully reach the goals for renewable energy in HB283.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current REA will continue in effect. The required RPS percentage will increase to 20 percent of retail sales in 2020 for public utilities, 10 percent of retail sales in 2020 for rural electric cooperatives. The RCT, the Large Customer Adjustment, and the Exempt Customer requirements will continue as is. The actual RPS percentage achieved will be substantially below the 20 percent goal for public utilities.

JM/al