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FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/19

SPONSOR Soules LAST UPDATED _____ HB _____

SHORT TITLE Utility Securitization Financing SB 492

ANALYST Iglesias

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$ 117.2 *	\$ 468.7	\$ 468.7	\$ 1,054.6	Recurring	Public Regulation Commission

Parenthesis () indicate expenditure decreases

* PRC's FY19 additional operating budget impact assumes 4.5 FTE from April – June.

Relates to and Conflicts with SB 489 and HB604

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 492 creates the Ratepayer Relief Act (RRA). There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. The following bill summary was provided by Public Regulation Commission (PRC) staff.

This bill establishes a financing mechanism that would facilitate the use of low-cost AAA-rated bonds to help utilities recover their undepreciated investments (a.k.a “stranded costs”) and other costs associated with the abandonment of a qualifying generating facility that is being abandoned. Qualifying facilities are broadly defined as an electric generating facility that has been granted a certificate and for which abandonment has been granted by the PRC. The RRA preserves PRC authority over the total amount of the stranded costs to be financed, defining “securitization costs” as including the amount of undepreciated investment “deemed by the Commission to be the financial obligation of the utility’s ratepayers. A non-bypassable charge would be imposed on every customer’s bill to provide for full repayment of the bonds. A financing application must include the utility’s “proposed methodology for allocating the revenue requirement for the charges among customer classes.”

This bill allows PRC to issue a financing order if the proposed issuance of securitization bonds and collection of the non-bypassable charges are “just and reasonable”, “consistent with the public interest”, a “reasonable and prudent mechanism for the financing of the securitization costs” and are “reasonably expected to lower net present value to customers and mitigate rate impacts to customers relative to traditional utility rate financing mechanisms” while allowing the utility to recover approved securitization costs. The bill allows PRC to require the use of securitization bonds and may attach such conditions to the approval of a financing order to “optimize financial benefits or minimize the financial risks of the transaction to customers” or may include in its financing order any additional findings or conclusions deemed appropriate by PRC. This bill would require PRC to take final action on the financing application within one hundred twenty (120) days. The PRC also has the power to refinance the securitization bonds so long as the covenants and terms of the securitization bonds are not impaired.

If the financing application is approved, PRC would be required to perform a comprehensive due diligence evaluation of the financing application and oversee the structuring, marketing and pricing of the bonds to ensure that the process results in the lowest bond charges “consistent with market conditions.” The PRC is directed to ensure that securitization bonds “receive the broadest possible distribution” and that they are “offered to New Mexico residents and investment funds for the benefit of New Mexico residents.”

This bill requires an immediate reduction of the utility’s rates to reflect the abandonment savings achieved through securitization financing. The utility would be required “simultaneously with the imposition of charges, to reduce its rates through a reduction in base rates or by a negative rider on customer bills in an amount equal to the revenue requirement associated with the qualifying utility’s assets being financed by securitization bonds.” The bill also requires the utility to use the proceeds from the issuance of securitization bonds only for purposes related to providing utility service to customers. The financing order must “specify the purposes related to providing utility service to customers for which the proceeds from the issuance of securitization bonds may be used, including any specific directives for the use of the proceeds.”

Other provisions contained in this bill are included to protect the credit quality of the bonds, including.

FISCAL IMPLICATIONS

PRC staff estimate the review of analysis and filing of applications for financing orders and related applications for abandonment and securitization or to issue certificates of convenience and necessity for replacement power would require, at a minimum, one Certified Public Accountant (range 80), one Public Utility Engineer (range EF), one Staff counsel (range LG), a half-time Associate General Counsel (range LG), and one Hearing Examiner (range 90) at a mid-point estimate of \$468,683 per year. This includes fixed costs from GSD & DoIT. PRC states it does not have a special revenue fund to cover these proposed expenditures.

SIGNIFICANT ISSUES

PRC staff provided the following discussion regarding this bill:

[This bill] is an alternative to the securitization financing provisions of SB489 (the “Energy Transition Act” or “ETA”). Unlike the ETA, the RRA does not link securitization financing

to any increase to the renewable portfolio standard or to a zero carbon resource standard. Nor does the RRA link securitization financing to the types, amounts, locations of, or ownership of replacement power resources in connection with the abandonment of a qualifying generating facility. Finally, the RRA does not predetermine the amount of undepreciated investment (a.k.a. “stranded costs”) or other abandonment-related costs to be recovered by the utility from its ratepayers.

It is critical that any securitization legislation preserve sufficient Commission authority to act in the public interest which involves a balancing of investor and ratepayer interests. Ratepayers would be obligated to repay these bonds for up to 25-30 years and the charges may be adjusted only for purposes of assuring repayment.

[This bill] does not limit the use of securitization financing to coal plants located in New Mexico therefore this financing mechanism could be in connection with the abandonment of other types or locations of generating facilities that are owned or controlled by various utilities subject to PRC jurisdiction. Moreover, [this bill] would allow the Commission to condition the recovery by the utility of a certain amount of stranded and other abandonment related costs on the utility’s use of securitization financing in order to mitigate customer rate impacts.

The Attorney General’s Office (NMAG) points out this bill allows PRC to require the use of securitization bonds, seemingly without the consent of the utility. NMAG states that such use of the bonds, removes the reasonable rate of return from the utilities investment, and this may constitute an impermissible taking of the utilities property.

ADMINISTRATIVE IMPLICATIONS

According to PRC staff, this bill allows the Commission to retain outside financial advisors and other consultants and counsel “with substantial experience representing regulatory bodies in securitized investor-owned electric utility ratepayer-backed bond financing.” Such expenses would be included as financing costs and assigned solely to the financing transaction so would therefore not be an obligation of the state. PRC staff state this provision should give the Commission the expertise it needs to fulfill its “comprehensive due diligence obligation”.

However, PRC staff note the reconciliation required by Section 5(B)(9) and the periodic adjustment required by Section 5(B)(6) to guarantee timely repayment of securitization bonds would impose additional tasks on PRC Staff.

PRC staff note that Section 7 of the bill leaves parties’ full appeal rights under current law (30 days per Section 62-11-1 NMSA 1978 but shortens the time for rehearing from thirty (30) to ten (10) days.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts in part, and duplicates in other part, the securitization financing provisions of SB489 and HB604.

TECHNICAL ISSUES

NMAG note the following technical issues:

Section 5(B)(5) references “previously approved abandonment of qualifying generating facility approved in the financing order.” This language inadvertently makes it seem that abandonment would be approved in a financing order rather than an abandonment proceeding.

Section 12(B) provides that a qualifying utility subject to a financing order may apply to the commission for a subsequent financing order amending or refinancing the original. This may be redundant with Section 5(G).

OTHER SUBSTANTIVE ISSUES

NMAG provided the following additional discussion:

Section 4(B) includes requirements for a qualifying utility’s application for a financing order but it is not clear from the Act’s language that the Commission may also require this information from a facility if the Commission issues the order sua sponte.¹

Under Section 6(F), if a qualifying utility’s application for a financing order is denied or withdrawn, or if for any reason securitization bonds are not issued, costs associated with the Commission’s investigation of the application “shall be paid by the qualifying utility and shall be considered by the commission as a prudent deferred expense for recovery in the qualifying utility’s next general rate case.” It seems as though this section should qualify that such expenses will only be deemed prudent if the application was reasonable and submitted in good faith.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill, or related utility securitization bills SB489 or HB 604, are not enacted, the stranded and other costs related to the abandonment of San Juan Generating Station, Four Corners Power Plant, and other plants that utilities decide to retire before they are fully depreciated would be recovered from customers as determined by the Commission and in accordance with traditional utility rate financing mechanisms.

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¹ Sua sponte (Latin: “of his, her, its or their own accord”) describes an act of authority taken without formal prompting from another party.