

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 1/18/2024

Bill No: HB 118

Sponsor: Representatives Ortez and Harper
Short Title: Electric Generation Tax Sunset

Agency Name and Code: EMNRD-521
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act – N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 118 removes a sunset date in the section of the tax code dealing with apportionment of business income, specifically in 7-4-10-E(3) NMSA 1978, to allow for the definition of “manufacturing” to permanently include power generation operations which do not require location approval and a certificate of convenience and necessity (CCN) from the Public Regulation Commission (PRC) to commence construction. As “manufacturing” businesses are exempt from the provisions in 7-4-10 NMSA 1978, this bill would enable those qualifying power generation facilities to elect single sales factor apportionment permanently.

FISCAL IMPLICATIONS

None for EMNRD.

SIGNIFICANT ISSUES

The statute in question in HB 118 relates to corporate taxation, specifically whether a corporation is allowed to select single-sales-factor apportionment when paying state taxes or whether they are subject to three-factor apportionment like all other corporations. The statute specifies that manufacturers are able to select single sales factor apportionment, but not other types of businesses, unless they are headquartered in New Mexico. Single sales factor apportionment usually results in a lower tax rate for the corporation.

Under the statute as it stands, electric power generation is not considered a manufacturing business and must use three-factor apportionment, *unless* the electric power generation business does not require location approval and a CCN from the PRC to commence construction – but that exception expires in the 2024 tax year.

The exception provides a financial benefit to independent power producers (IPPs), who usually do not need to apply to the PRC for location approval and a CCN, as they are presently allowed to elect single sales factor apportionment if they wish to. Most IPPs that operate in New Mexico are renewable energy companies. IPPs own 95% of extant wind and solar generation in New Mexico, and 94% of power generation owned by IPPs in the state is in fact wind and solar.

However, while three-factor corporate taxation is a burden on the corporation, it is more equitable for the state. Three-factor apportionment is calculated by taking the New Mexico-based percentage of a corporation's payroll, property, and sales, adding those together, and dividing by three to get the percentage of the corporation's net profit taxable in New Mexico. This means that the corporation is taxed in a way that reflects the 'benefit principle' – the benefits the corporation receives from the state, i.e. infrastructure, education, the legal system, police and fire protection, etc. Single sales factor apportionment taxes a corporation using a rate calculated only from the percentage of their sales which take place in New Mexico, ignoring payroll and land ownership (and thus the 'benefit principle').

Understanding the impact of the calculation requires an understanding of the assets a renewable energy-focused IPP tends to own in New Mexico. New Mexico is a secondary energy market for most national IPPs. Most of their sales by percentage are to other states such as California. What IPPs tend to own in New Mexico is land acreage, particularly for wind farm facilities. The percentage of their overall land portfolio which is in New Mexico is much higher than the percentage of their overall sales. Thus, three-factor apportionment will likely raise their corporate tax rates substantially, and will make New Mexico a less attractive market for renewable energy companies.

The exception and its sunset was amended into 7-4-10 NMSA 1978 in the 2020 legislative session. Neither the apparent intent of the legislature nor the policy of the Lujan Grisham administration – which supports the development of a strong renewable energy industry in New Mexico – has changed in the intervening four years. HB 118 will make the exception permanent, and thus continue to make New Mexico an attractive environment for renewable energy companies.

PERFORMANCE IMPLICATIONS

None for EMNRD.

ADMINISTRATIVE IMPLICATIONS

None for EMNRD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The exception that allows power generation businesses that do not require location approval and a certificate of convenience and necessity from the Public Regulation Commission to commence construction to elect single sales factor apportionment will expire for taxable years after January 1, 2024.

AMENDMENTS