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FISCAL IMPACT REPORT

LAST UPDATED 03/05/25
SPONSOR Small **ORIGINAL DATE** 2/12/25
SHORT TITLE Tax on Property Owned by NM RETA **BILL NUMBER** House Bill 295

ANALYST Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Property tax	$0	$0	See fiscal implications			Recurring	General Obligation Bonds
	$0	$0	See fiscal implications			Recurring	Counties, Municipalities, School Districts, Hospital Districts, Special Districts

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
County Assessors	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with Senate Bill 112
Relates to House Bill 46

Sources of Information

LFC Files

Agency Analysis was Received From
New Mexico Attorney General (NMAG)
State Land Office (SLO)
Taxation and Revenue Department (TRD)
State Treasurer's Office (STO)

Agency Analysis was Solicited but Not Received From
Department of Finance/Local Government Division (DFA/LGD)
Energy, Minerals and Natural Resources Department (EMNRD)
New Mexico Counties (NMC)

SUMMARY

Synopsis of House Bill 295

House Bill 295 (HB295) confirms that real property, including transmission lines, owned by the Renewable Energy Transmission Authority (RETA) – an instrumentality of the state – is property tax exempt pursuant to Section 7-36-4 NMSA 1978, even though the transmission line and ancillary equipment are or will be constructed and leased to and operated by non-exempt entities, including Pattern Energy.

If enacted, HB295 would exempt from the property tax fractional interests in real property held by nonexempt entities, including leasehold interests, if the property is owned by an exempt entity. Improvements on the property would remain taxable if owned by the nonexempt entity, except in cases where the nonexempt entity is an electrical transmission line or interconnected storage facility acquired by RETA under the RETA Act, in which case the exemption would still apply.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The provisions of the bill are applicable to the 2026 property tax year.

FISCAL IMPLICATIONS

There are no general fund impacts of the provisions of this bill.

The State Treasurer's Office (STO) points out the provisions of the bill may have unexpected impacts:

> If enacted, HB295 would abate property taxes for 30 years, including the state's debt service. This 30-year period mirrors a portion of the Industrial Revenue Bonds (IRB) Act which grants a 30-year property tax abatement; however, with an IRB, the project developer is required to negotiate with the county or municipality the amount of Payment in Lieu of Taxes (PILT) payments that will be paid to the county or municipality and to all school districts within the county.
>
> Another difference between property tax abatement by HB295 and property tax abatement through an IRB is that the IRB Act 3-32-6.2 Electric transmission projects; payments to the state requires that a person proposing an electric transmission facility project pursuant to Paragraph (2) of Subsection A of Section 3-32-5 NMSA 1978 shall pay the state annual payments equal to five percent of the total amount of in-lieu tax payments to be made in that calendar year by such person to counties, municipalities or other local entities authorized to levy taxes on property, including in-lieu tax payments made to school districts pursuant to Paragraph (2) of Subsection A of Section 3-32-6 NMSA 1978, and five percent of the value of any other consideration related to the project paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project. It continues to state that a copy of any agreement providing for such in-lieu tax payments shall be provided to the secretary of finance and administration within thirty days of written approval of such agreement by all of the parties. Each annual payment to the state shall be made no later than the end of each fiscal year in which in-lieu tax payments are made to local taxing entities.

Each payment shall be made to the department of finance and administration for deposit to the general fund. HB295 does not require any payment to the state.

A project like this goes through multiple counties. A project developer stated that they entered into Community Benefit Agreements (CBA) with counties at $20,000 per mile in-lieu of taxes. Payments are broken up across several years as the project is constructed until the full amount is paid. No further payments will be made to the counties. Currently, taxes are abated for school districts, too; however, the project developer has not stated that they offered CBAs to school districts.

For example, Torrance County's CBA stipulates that the county may only use funds for a list of what the project developer deems to be community benefits instead of allowing the governing body to determine the best use of the funds, like the governing body does with property tax payments and PILT payments. Also, the CBAs are not negotiable like the PILT payments, which is evidenced by the standard language of payment in the amount of $20,000 per mile. Torrance County attempted to negotiate a higher amount and was told that if they did not accept the CBA as presented, they would get nothing because the project developer did not have to give them anything.

Pursuant to 3-32-6.2, due to the project developers' CBAs with counties, the project developer is required to provide copies of the CBAs to the secretary of finance and administration and to pay to the state five percent of the value of each CBA, since the CBA is a consideration related to the project paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project.

If this legislation is enacted, the project developer will have no incentive to execute CBAs with counties, and school districts if in fact they have CBAs with them, and the state could potentially also lose the five percent annual required payments into the general fund.

New Mexico State Land Office (SLO), notes that this is a continuing issue involving some of the state land beneficiaries:

While the bill does not have a direct fiscal impact on the SLO, the lack of clarity regarding the application of the fractional interest statute creates business uncertainty that may negatively impact earnings from state trust lands. This uncertainty has been driven recently by some county assessors taking a more aggressive approach in their interpretation and application of Section 7-36-4 (B) (1) NMSA 1978.

State trust lands were granted to the state from the federal government for the purpose of generating revenue for public institutions, primarily for educational purposes. This framework relies on the leasing of state land, including state-owned improvements to those lands in certain circumstances, to various public and private entities. The SLO does not believe it is constitutionally permissible to tax state-owned property (including state-owned improvements) under Article VII, Section 3, of the state constitution, because the earnings from leases of state trust lands directly benefit the public. Money earned by the SLO is money that taxpayers do not need to come up with to support public schools, universities and hospitals throughout the state. See, e.g., *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 32, 401 P.3d 751.

Imposing a tax on a lessee's leasehold interest in state-owned improvements necessarily affects the lessee's *pro forma* calculation, and thus the amount they are willing and able

to pay in rent. See, e.g., *Cutter Flying Service, Inc. v. Property Tax Department*, 1977-NMCA-105: "We think there can be little doubt that, should these valuations be allowed to stand, it would have an adverse effect on the rents and fees that the City could charge in the future. And thus, ultimately, the city would bear a large part of the economic burden of the tax." *United States v. Detroit*, 355 U.S. 466, 472 (1958): "It is undoubtedly true, as the Government points out, that it will not be able to secure as high rentals if lessees are taxed for using its property."

If assessors are allowed to tax state-owned improvements, that will directly lead to reduced income to state land trust beneficiaries, presumptively in the amount of the taxes levied. Of more concern would be prospective lessees that decline to bid on state trust lands because the tax levy renders their business plan infeasible.

Improvements owned by private parties that are situated on leased state trust lands are, and should remain, subject to property taxation.

SIGNIFICANT ISSUES

The New Mexico Attorney General (NMAG) provides a simplified description of the actions of this bill:

> The statute addresses the taxability of fractional interests in improvements made on land owned by the New Mexico Renewable Energy Transmission Authority (RETA) when the fractional interest in the improvement – a leasehold -- is held by a nonexempt entity.
>
> Under § 7-36-4(1)(B), when a nonexempt entity owns a fractional interest in the real property of an exempt entity, the fractional interest is exempt from property taxation, EXCEPT FOR: (1) improvements that are owned or leased by a nonexempt entity. Fractional interests in such improvements owned or leased by a nonexempt entity are subject to property taxes.
>
> HB295 proposes to add language to § 7-36-4(1)(B)(1) to identify one situation where a nonexempt fractional ownership in an improvement to land owned by RETA is exempt from property taxation.
>
> Under the proposed language in § 7-36-4(1)(B)(a) and (b), fractional interests in improvements consisting of "electric transmission and interconnected storage facilities and all related structures" owned by RETA and that qualify as eligible facilities under the RETA Act; AND that are leased by RETA to a nonexempt entity to assist RETA in constructing or operating the facility, are exempt from property taxation.
>
> In short, the proposed amendment exempts from property taxation those fractional interests held by nonexempt entities in electric transmission and storage facilities, when the facility has been acquired by RETA and leased to the nonexempt entity to assist in constructing or operating the facility.

The first fully RETA-sponsored transmission project, the SunZia line, is currently under construction by Pattern Energy and is expected to be operational by July 2025. Beyond the SunZia project, RETA is involved in acquisition, co-development, and lease-back agreements for several additional transmission projects, including the RioSol AC line, which will parallel

SunZia; the Mora Line, a smaller transmission line in the northeast corner of the state; the Crossroads-Hobbs-Roadrunner project, a transmission line similar in scale to the Western Spirit project in southeastern New Mexico; and the North Path project, a large DC transmission line crossing the northern third of the state. Additional projects are anticipated to be announced in the future.

STO concludes that future projects would not only be property exempt on the fractional leasehold interest but would no longer be liable for payments in lieu of taxes, a process that has become common with industrial revenue bond contracts for electric generation and transmission projects.

> If enacted, HB295 would abate property taxes for 30 years, including the state's debt service. This 30-year period mirrors a portion of the Industrial Revenue Bonds (IRB) Act which grants a 30-year property tax abatement; however, with an IRB, the project developer is required to negotiate with the county or municipality the amount of Payment in Lieu of Taxes (PILT) payments that will be paid to the county or municipality and to all school districts within the county.

LFC notes that any negotiated PILT pursuant to IRB treatment for energy generation projects must be shared by formula with public schools, but not special districts, hospitals or higher education institutions.

TRD's complete analysis follows:

> TRD has concerns that the exemption proposed by the bill may be unconstitutional. This is TRD's analysis and is not determinative of the meaning of the New Mexico constitution, nor of the relevant section of law, Section 7-36-4 NSMA 1978. TRD is also aware that other agencies, including the New Mexico Attorney General, have reached different conclusions regarding this legal issue.
>
> Article VIII, Section 3 of the New Mexico Constitution exempts from property taxation the property of "the state … [and] all property used for educational or charitable purposes," among other property. It is well established that the exemption cannot be expanded beyond what is provided for in the Constitution. See, e.g., *Sims v. Vosberg*, 1939-NMSC-026, 43 N.M. 255; *Dillard v. NM Tax Comm*., 1948-NMSC-069, 53 N.M. 12; *Sisters of Charity v. Bernalillo Co*., 1979-NMSC-044, 93 N.M. 42. There is no dispute that the property of RETA is property of the state and therefore exempt from property taxation.
>
> HB295 seeks to extend the exemption to fractional interests of owners of otherwise exempt property, including to lessee's interest in improvements owned by RETA, but leased to non-exempt entities. Section 7-36-4(A)(1) defines a "fractional interest" in property as "a tangible interest in real property, except for mineral property … that is less than the total of interests existing in the property…" That section further exempts fractional interests from property taxation, but the exemption does not apply to "improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity." Section 7-36-4(B)(1). The leasehold interest of the lessee in an improvement constructed by RETA on land it owns is a fractional interest under Section 7-36-4(A)(1) that would not be exempt under Section 7-36-4(B)(1), in its current form. Because the tax is not being imposed on the real property of the exempt entity, but rather on the non-exempt entity's leasehold property interest, TRD is of the opinion that the tax is not

being imposed on the property of the state. *See, e.g.*, *Cutter Flying Service, Inc. v. Property Tax Dept.*, 1977-NMCA-105, 91 N.M. 215, {18}, ("[G]enerally the leasehold interest of a nonexempt lessee in property leased from an exempt owner is taxable."), *citing Trimble v. Seattle,* 231 U.S. 683, 34 S.Ct. 218, 58 L.Ed. 435 (1914) ("When an interest in land, whether freehold or for years, is severed from the public domain and put into private hands, the natural implication is that it goes there with the ordinary incidents of private property, and therefore is subject to being taxed.") TRD's previous FIR cited case law indicating that the "charitable purpose" exception to that section did not apply, as economic development is not a charitable purpose. But it is also the opinion of TRD that the lessee's interest in the improvements is no longer "property of the state" once the private leasehold is created, *Cutter Flying Service, Inc., supra.*

However, TRD notes that there was a special concurrence in *Cutter Flying Service* by Judge Sutin, who opined that the lessee of real property was not the "owner" of the fractional interest in the property, because ownership required that title be vested in the person claiming ownership. *Id.* at {53-54}, (treating the lessee as an owner for property tax purposes "would permit all lessees as well as deed holders to be taxed on the same property. That is neither the intent of the Legislature nor the Property Tax Department. No explicit provision in the Code imposes the tax liability on the 'owner', but the obvious underlying assumption throughout the Code does, indeed, burden the 'owner' not the lessee. Property taxes are assessed against the real owner of the property, not one who is in possession thereof, and therefore the lessee's interest was exempt from property taxation.) *And see*, Section 7-38-47 NMSA 1978, ("Property taxes imposed are the personal obligation of the person *owning the property…*") (emphasis supplied); Section 7-35-2(H) NMSA 1978, (defining "owner" as "the person in whom is vested any title to property.") So, despite the authorities holding that private leasehold interests in real property of exempt entities may be taxed, there is a colorable argument that the tax obligation is imposed only on owners of real property and therefore may not be imposed on a lessee when the owner of the property is exempt.

However, TRD notes that under its analysis, the entire exemption granted to other fractional interests by Section 7-36-4 might also be considered unconstitutional, but that those exemptions have never been challenged. Other fractional interests, such as a lessee's interests in the land itself (rather than improvements to the land), or the interests of a holder of rights of way or an easement, do appear to be covered by the exemption, even though these would not be considered "state property" either under TRD's analysis. TRD does not see a legal difference for property tax analysis under Art. VIII, Sec. 3, between a lessee's interest in its leasehold interest in land versus a lessee's leasehold interest in improvements to the land. If a property tax exemption is legal for the former type of interest, it should also be legal for the latter type of interest. Furthermore, to call into question the constitutionality of the existing exemption for other types of fractional interests would be very disruptive to many existing lease arrangements between non-exempt entities and exempt property owners. The agency's analysis also potentially calls into question the property tax exemption for property leased by non-exempt entities that is granted by Section 7-36-3(A) under industrial revenue bond and similar acts. TRD is conscious of the fact that its analysis, if adopted, may have far-reaching implications.

STO concurs in this statement:

The State Treasurer or designee is a statutorily required voting member on the RETA Board. The State Treasurer's Office voted against this piece of legislation when it came

before the RETA Board.

The State Treasurer's Office (STO) is also concerned about the constitutionality of HB 295 for the reasons stated in other state agencies' analyses.

STO also has concerns that HB 295 does not align with all the committee-adopted tax policy principles:

1. **Adequacy:** Revenue should be adequate to fund needed government services.
    a. STO's comment: Rural counties struggle with adequate funding to provide for basic public services such as Fire/EMS and public safety. If the property taxes are NOT abated, this revenue may help fund those and other county priorities and initiatives. School districts consistently advocate for additional funding to provide educational and student support services. If the property taxes are NOT abated, this revenue would also greatly benefit the school districts. Since HB295 does not require any type of payments to taxing entities that are adversely affected by the legislation, any payments made to these taxing entities by private project developers cannot be relied upon as recurring funds, making it difficult for governing bodies to plan for long-term, sustained continuity of services.

2. **Efficiency:** Tax base should be broad as possible and avoid excess reliance on one tax.
    a. STO's comment: Currently, rural counties that receive PILT payments may rely on these payments to supplement their general fund to provide basic services to their residents. If more value is added to their property tax assessment, that will provide a more sustainable revenue source, not just for the counties, but also for the school districts.

3. **Equity:** Different taxpayers should be treated fairly.
    a. STO's comment: Other renewable energy project developers, such as those that are developing wind farms or solar farms, or other types of economic developments such as Intel or Facebook, who obtained funding through the issuance of IRBs, must enter into negotiations for PILT payments. These types of developments also pay the state five percent of their PILT agreements. If HB295 is enacted, it creates an inequity and economic advantage for those who enter into project partnership with RETA versus those who enter into project partnerships with counties or municipalities. RETA's public partners will not pay PILT payments nor the 5 percent of the PILT payment agreements to the state.

       Other project developers or owners (taxpayers) who do not enter into agreements with RETA or who do not partner with counties or municipalities through the issuance of IRBs, must pay the full property taxes for their transmission lines, interconnected storage facilities and all related structures.

       If IRBs are viewed by some as a mechanism that creates winners and losers as it relates to economic development projects in New Mexico, then HB295, if enacted, will further broaden the distance between winners and losers.

4. **Simplicity:** Collection should be simple and easily understood.
    a. STO's comment: Currently, there is no property tax collection for improvements on RETA owned projects. If HB 295 is enacted, it will clarify that no property taxes on

these improvements will continue for 30 years, as long as RETA owns the project during that time.

5. **Accountability:** Preferences should be easy to monitor and evaluate.
    a. STO's comment: If HB295 is enacted, per GASB Statement 77, RETA will be required to provide their agreements to affected counties, school districts, and special districts whose property taxes are abated, as well as annually provide the gross amount of property taxes abated to each of these taxing entity, including the state, as it is required to be included in each taxing entity's financial statements as part of their annual audit. If any portion of this disclosure is confidential, then RETA shall cite the legal authority for the determination

Under existing law, fractional interests in real property, including leasehold interests, held by nonexempt, profit-generating entities and owned by exempt entities are generally exempt from property taxation. However, this exemption remains legally contested, as the absence of a constitutional amendment explicitly authorizing such exemptions has led to ongoing controversy. Additionally, if a nonexempt entity owns the improvements on the property, the leasehold interest is subject to taxation. The proposed amendments would extend property tax exemptions to leasehold interests held by nonexempt entities, such as Pattern Energy, for transmission lines and related infrastructure. Under the bill, improvements constructed by a nonexempt entity on land owned by an exempt entity and leased for the operation of a transmission line and its ancillary structures and equipment would be exempt from property taxation. This provision would remove the tax liability that would otherwise apply due to private ownership of the improvements.

With current understanding and agreements between various contractors/developers and the sponsoring counties, both the transmission lines and the wind farms completed or under construction are covered by public benefit agreements or payments in lieu of taxes (PILT). Currently, there are five counties in New Mexico that have property subject to the provisions of this bill within their jurisdictions. (Curry, Guadalupe, Lincoln, San Miguel and Torrance Counties). There is a small chance that if the bill does not pass, the nonexempt developer may have to pay both a property tax and the previously negotiated PILTs.

SLO continues analysis of the finer legal points:

The Commissioner of Public Lands manages approximately 9 million acres of land for the trust beneficiaries. State trust lands were provided to the state with the sole purpose of generating revenue for public schools and other state institutions, such as hospitals and universities, throughout the state. Any taxation that has the effect of diminishing income from state trust land is categorically prohibited by Section 10 of the Enabling Act. In *Lassen v. Arizona*, 385 U.S. 458, 468 (1967), The U.S. Supreme Court held that "the grants cannot be too carefully safeguarded for the purpose for which they are appropriated [and] the purposes of Congress require that the Act's designated Beneficiaries derive the full benefit of the grant." (internal punctuation omitted).

The decision by one county assessor to pursue a novel interpretation of Section 7-36-4 to apply to leasehold interests in improvements on state trust land has created confusion around the issue in a way that potentially runs afoul of the Enabling Act and the New Mexico constitution. The confusion is related to the text of Section 7-36-4 that imposes taxation not just on improvements *owned* by lessees of state trust land, but also on improvements *owned by the state* and only leased to the private lessee.

> It would presumptively be unconstitutional to value and tax property owned by an exempt entity. See, N.M. Const. Art. VIII, Sec. 3. The potential for assessors to tax any interest in state trust land acts as a tax on that land itself. Amending the bill as suggested below would confirm that all interests in state trust land and state-owned improvements are exempt from taxation. Lessee- owned improvements would continue to be subject to taxation.
>
> While there is some ambiguity as to how leaseholds are treated under New Mexico law, the most recent, and most definitive, statement is found in *Resolution Trust Corporation v. Binford*, 1992- NMSC-068, holding that "New Mexico courts have always held that leaseholds are personal property; yet we have also noted that a leasehold is an interest in land." The *Binford* court characterized leaseholds as "hybrid" because they are personal property but are conveyed as real property: "The hybrid nature of leaseholds necessitates that they be conveyable in the same manner as real estate, notwithstanding the fact that a leasehold is personal property." Moreover, under State Land Office rule 19.2.9.18.A NMAC, the "interest of a lessee in a business lease and in the improvements is a personal property interest." Therefore, a fractional interest is personal property, subject to exemption by the Legislature.

SLO has a simple fix noted in "Alternatives."

ADMINISTRATIVE IMPLICATIONS

Currently there are at least five counties with renewable energy and electricity transmission projects within their jurisdictions. The provisions of this bill may require coordination between assessor and treasurer and county commissions in each of the affected counties.
Taxation and Revenue's Property Tax Division's (PTD), State Assessed Bureau, would need to be notified of any projects for tracking purposes. For projects that meet this qualification, the State Assessed Bureau would issue a notice of value with zero tax due. If the project is no longer owned by the NM RETA, PTD would assess and send out a notice of value.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with Senate Bill 112, which amends 7-36-4 NMSA 1978 to provide a real property tax exemption for a nonexempt entity which provides student housing to a college or university in the state.

This bill relates to House Bill 46, which imposes a property tax on real property constructed with Hospital Equipment Loan Act funds.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.

- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In this case, however, the issue is largely technical and these technical issues trump tax policy considerations.

ALTERNATIVES

SLO suggests an alternative:

> The goal of SB112, HB295, and the State Land Office concerns expressed herein could all be realized in a simpler and no less effective manner by making the following revision to Section 7- 36-4(B)(1):
>
> > … improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity;<u> provided that improvements, including a leasehold interest in the improvements, are exempt if the improvements are owned by a governmental entity;</u>
>
> This proposed change avoids the specter of assessors attempting to tax interests in state-owned land. It would address the issue of potential taxation of UNM-owned dorms leased to private parties, taxation of RETA-owned transmission line infrastructure leased to private parties, and taxation of State Land Office-owned improvements leased to private parties.
>
> To our knowledge, these are the only three types of state-owned improvements leased to private parties as to which there is a taxation issue.

LFC staff notes that this alternative would not restore a requirement for the local government to negotiate PILTs or Community Benefit Agreements and rural counties would be deprived of even those revenues for 30 years.

LG/rl/SL2/sgs/sl2/rl