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FISCAL IMPACT REPORT

SPONSOR McCamley **ORIGINAL DATE** 02/01/13
LAST UPDATED 02/21/13 **HB** 242/aHENRC/aH AFC
SHORT TITLE PRC Jurisdiction Over NM RETA Projects **SB** _____
ANALYST McCoy

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to HJM8, HB113, HB243
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 Renewable Energy Transmission Authority (RETA)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 242 (HB 242) limits the uses of the money appropriated to the Renewable Energy Transmission Authority Development Fund for the purpose of developing a multi-year, statewide transmission upgrade program, including the identification of priority corridors for development by 2017. The amendment deletes language allowing money in the fund to be appropriated for continued operations by the authority, to the Renewable Energy Transmission Authority Operational Fund to fund the operations of the authority.

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment to House Bill 242 (HB 242) removes a proposed purpose section of the Renewable Energy Transmission Authority Act. The amendment also inserts clarifying language in the eminent domain provision of Section 62-16A-4 NMSA 1978. The amendment deletes proposed language from Section 3-E of HB 242 that would have exempted from the PRC jurisdiction all eligible facilities “financed” by the RETA and “any facilities in transmission corridors identified by the authority as priority corridors for development.” The amendments scale back the changes to the Renewable Energy Transmission Authority Act in HB 242 and what remains in HB 242 is the creation of the Renewable Energy Transmission Authority Development Fund and the clarification of the use of eminent domain by the RETA.

Synopsis of Original Bill

House Bill 242 (HB242) proposes to amend the Renewable Energy Transmission Authority Act (RETA Act), Sections 62-16A-1 NMSA 1978, to include a statement of purpose, to clarify the jurisdiction of the Public Regulation Commission (PRC) over projects acquired or financed by the Renewable Energy Transmission Authority (a quasi-governmental agency), to create the Renewable Energy Transmission Authority Development Fund, and to clarify the use of eminent domain.

HB242 creates the Renewable Energy Transmission Authority Development Fund, which is a non-reverting fund, and appropriates money in the fund. HB 242 also deletes Section 3-B-8 of the RETA Act providing for the use of eminent domain if needed for projects if such action does not materially diminish electric service reliability of the transmission system in New Mexico, as determined by the PRC. Conversely, the bill enables the authority to use the power of eminent domain if the project for which property or rights of way are acquired is constructed in accordance with the standards set forth by the North American Electric Reliability Corporation, the Western Electricity Coordinating Council and the incumbent utility in New Mexico. HB 242 adds language to provide that any eligible facilities financed by the authority, as well as any facilities in transmission corridors identified by the authority as priority corridors for development, are not subject to the supervision, regulation, control or jurisdiction of the PRC. HB 242 adds a “purpose” section to the RETA Act which specifies the purpose of the RETA Act is to facilitate the development and construction of transmission to service renewable energy generation facilities, and that the focus of the RETA should be on the development and construction of eligible facilities through high priority transmission corridors.

FISCAL IMPLICATIONS

HB 242 creates a new fund, the renewable energy transmission authority development fund, and contains non-reverting language to ensure any unexpended or unencumbered balance remaining at the end of any fiscal year does not revert to the general fund. The fund is created to develop a multiyear statewide transmission upgrade program including the identification of priority corridors for development, and establishes a deadline of 2017 for the plan and corridors to be in place. According to the RETA, in 2010, the RETA commissioned Los Alamos National Labs to complete an independent study to evaluate a statewide plan for transmission.

The bill also enables the newly created fund to transfer funds to the RETA’s operating fund to

fund the operations of the quasi-governmental agency if insufficient funds exist for RETA's operational costs such as funding salaries for two full-time staff, travel and other administrative expenses, totaling more than \$400 thousand. The RETA indicated insufficient fund balance remains at the end of FY13 to support staff salaries and operating costs. HB242 relates to House Bill 243 (HB243), which appropriates \$1.5 million from the general fund to the renewable energy transmission authority development fund, created in HB242, for use in FY14 and subsequent fiscal years. Together, HB 242 and HB 243 enable the quasi-governmental agency to access \$1.5 million in general fund revenue for operational costs.

The RETA's generation of revenue and project fees remains an issue of concern. According to the RETA, in 5 years, the RETA received only 29 percent of its total operation costs from outside sources, and the remainder was from the general fund which totaled \$2 million since FY08. The RETA can be funded with revenues received by the authority from operating or leasing eligible facilities, fees and service charges collected and money from payments of principal and interest on loans, but does not receive annual appropriations from the Legislature's general fund. According to the RETA, the quasi-governmental agency does not expect project revenues to cover operations for the next five years. The Federal Energy Regulatory Commission denied a request by the RETA to commence the Central New Mexico Collector System before other projects in Public Service Company of New Mexico's transmission queue.

Currently, the RETA statute has two other funds, the bonding fund and the operational fund, for carrying out the provisions of the Renewable Energy Transmission Authority Act. NMSA 1978, §§62-16A-6 and -13.

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

The Public Regulation Commission (PRC) notes, the proposed amendment to Section 3(E) of the original bill removes potential conflicts of law between HB242 and the Public Utility Act (PUA), specifically Section 62-9-3 NMSA 1978 which grants location approval authority to the PRC of projects of a certain size and type and Section 62-9-1 NMSA 1978 which requires that public utilities get a certificate of public convenience and necessity from the PRC for facilities construction.

The EMNRD notes, the primary purpose of HB 242 is to provide additional guidance to the RETA through a new purpose section in the RETA Act and to limit the role of the PRC over the activities of the RETA and the transmission facilities that the RETA finances or identifies for development. According to the RETA, the PRC has the authority to govern the utilities and co-ops in the state, but only has sitting authority over the non-utility projects in the state. The RETA points out this legislation would allow the RETA to designate corridors for transmission.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Joint Memorial 8 requests the New Mexico Legislative Council to direct the appropriate

committee to review electric transmission capacity in New Mexico for renewable and conventional energy sources and to make a final report with recommendations to the Legislature and the governor by December 1, 2013. The committee is requested identify information concerning existing, planned and potential electric transmission projects in New Mexico and alternatives for financing of electric transmission infrastructure.

HB 2 contains a special appropriation of \$250 thousand from the general fund and \$50 thousand from other state funds for the Renewable Energy Transmission Authority's operating costs.

HB 243 is a companion bill to HB 242 with a general fund appropriation of \$1.5 million to the RETA development fund created in HB 242. HB 113 makes a general fund appropriation of \$393,200 to the RETA for administrative and operational costs such as salaries and travel.

TECHNICAL ISSUES

To reserve the legislative authority to appropriate, on page 2, line 14 after the word "appropriated" insert "by the legislature."

ALTERNATIVES

An alternative would be to design a plan, through the interim legislative process, to develop meaningful successful approaches to financing sources for the electric transmission infrastructure construction that will be needed in New Mexico for renewable and conventional energy sources. The interim legislative oversight committee for the NMFA adopted a motion to review electric transmission capacity in New Mexico for renewable and conventional energy sources during the committee's interim work plan for 2013.

An alternative to par back on operational costs, and allow the RETA to continue to exist as a separate entity, is to relocate executive director and deputy director to the same office space as New Mexico Finance Authority (NMFA), with which its functions largely align. This will enable the RETA to share administrative services with the NMFA and cut back on duplicate administrative costs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The interim legislative review of electric transmission capacity in New Mexico for renewable and conventional energy sources will actively address successful approaches to how New Mexico can best plan, design and finance the construction of the requisite transmission capacity.

POSSIBLE QUESTIONS

1. In 2010 the RETA commissioned Los Alamos National Labs to complete an independent study to evaluate a statewide plan for transmission. Is this plan complete? If so, was it comprehensive, what were the conclusions. If not, why not? How much did the study cost the state?
2. How much will developing a multi-year, statewide transmission upgrade program cost? Will the RETA issue a contract for the study or will the RETA conduct the study by the RETA personnel?
3. Why does the bill not specify the appropriation for the statewide transmission plan versus

how much will be transferred to operating costs such as salaries and travel? How many employees work for the RETA? What are the salaries of the employees working for the RETA? What are the RETA's yearly travel costs?

4. Is there an option to phase in funding for the multi-year, statewide transmission upgrade plan?
5. What are alternatives that other states and countries are using to finance electric transmission infrastructure construction?
6. How many state run and state funded renewable energy transmission initiatives or financing authorities have been shut down? Why have they been shut down?
7. What are the goals of the state in promoting the generation of electricity from renewable energy and conventional sources?
8. To advance those goals, where should "gathering systems" be constructed to provide transmission lines from the generation sources to interstate transmission lines for export (or, for use in state as needed and desired) to encourage the private sector to construct such generation facilities? How should the cost of the "gathering systems" be paid for?

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