FISCAL IMPACT REPORT

		ORIGINAL DATE	02/06/14		
SPONSOR	Gonzales	**LAST UPDATED**		**HB**	320
SHORT TITLE	Electric Transmission Right-of-Way Fees			**SB**	
				ANALYST	Chabot

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**		
	TBD	TBD		Road Project Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HM 17, SM 26, HB 2 and HB 4

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)
Public Regulations Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 320 amends Section 67-3-12 NMSA 1978 to allow the State Transportation Commission to prescribe by rule a schedule of right of way fees to be paid by electric transmission companies who sell product directly to utilities but not to end users. The Commission is to complete this rule making by August 1, 2014. Fees collected are to be deposited in the Road Project Fund. The bill redefines utilities to include transmission of electricity, sanitary sewage collection, natural gas systems, communication systems including cell phone, television, internet and other technologies, cables, microwaves, fiber optics and others means of transmission.

FISCAL IMPLICATIONS

Any fees collected are to be deposited in the Road Project Fund. However, responding agencies could not provide an estimate of revenue that could be earned. The bill creates the Road Project

Fund administered by DOT and consists of fees collected. Balances are non-reverting and may not be transferred to any other fund. Money in the fund is solely for planning, design, engineering, construction or improvement of state road and highway projects identified in the statewide transportation improvement program.

This bill creates a new fund with earmarking language. 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

DOT states "under current law, all utilities, without distinction, may use state highway rights-of-way at no charge upon the condition that the utilities agree by permit to relocate and adjust their facilities, if necessary, due to highway construction and upon compliance with existing regulations. The legislature has previously determined that accommodation of utility facilities within highway rights-of-way is in the public interest…" DOT further states "the ratepayer of the utility will bear the added cost of the fee through their rates."

The PRC assesses the bill may have "the impact of an indirect tax where a utility would bear additional cost…"

RELATIONSHIP

HB 2 and HB 4 contain language directing "The state transportation commission shall repot to the legislature and the legislative finance committee the progress of publishing a fee schedule to reflect fair market value and charging and collecting fees pursuant to the fee schedule from a utility that places equipment along, across, over or under public highways over which the state transportation commission or department controls the rights-of-way."

TECHNICAL ISSUES

The PRC states "Electric transmission companies who seek to transmit electricity by using highway rights-of-way may be able to avoid fees by structuring their companies to sell to some end users as well as utilities.'

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current practice of will continue.

GAC/svb:ds