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## FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 2/8/17  
 LAST UPDATED 2/18/17 HB \_\_\_\_\_

SHORT TITLE Energy & Water Project Financing SB 215/aSCONC

ANALYST Armstrong

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			None			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Department of Finance and Administration (DFA)

NM Municipal League (NMML)

NM Association of Counties (NMAC)

### SUMMARY

#### Synopsis of SCONC Amendment

The Senate Conservation Committee (SCONC) amendment removed Section 10, which would have required EMNRD to adopt rules for the Renewable Energy Financing District Act. Further, the amendment adds a three-day contract cancellation provision, adds an incidental improvement costs clause to the list of costs eligible to be financed, and changes the calculation formula for what constitutes a viable project.

#### Synopsis of Bill

Senate Bill 215 (SB215) amends, repeals, and enacts new sections of the Renewable Energy Financing District Act (“the Act”) to make energy efficiency, energy storage, water conservation improvements, and distributed renewable energy eligible for financing with special assessments by energy financing districts. These measures can be implemented in existing and new real property. The bill also changes the priority of liens. SB215 eliminates elections for district board members, allowing appointment by the governing body of a municipality or county. Finally, the bill requires EMNRD to adopt rules for the Act by April 1, 2018, including model ordinances and resolutions for creation of districts.

## FISCAL IMPLICATIONS

According to EMNRD, the SCONC amendment removes any fiscal impact to the agency.

## SIGNIFICANT ISSUES

Existing law allows a municipality or county to form a district to encourage and finance renewable energy improvements by working with property owners and agreeing to the district imposing a special assessment on their property tax bill to finance renewable energy improvements. No county or municipality has implemented the existing law, in part due to a 2010 rule by the Federal Home Loan Bank Board objecting to other liens subordinating home mortgage liens. Santa Fe County adopted an ordinance, but it is on hold because of the federal rule. In states that have modified their enabling legislation to accommodate this rule, many local governments have successfully adopted the financing model at the heart of SB215.

SB215 provides that a resolution creating a renewable energy financing district must state that energy and water conservation improvements shall not exceed 20 percent of the total amount financed. The bill also requires the resolution to include a form contract to be used for assessments between the district, property owners, and, if applicable, a third-party lender; the application process and eligibility requirements for financing energy improvements and water conservation improvements; and that the district shall only finance energy improvements for which the reasonably estimated economic benefits are equal to or greater than the principal cost of the improvement less the estimated cost of a similar improvement to the property that does not provide such benefits and less property value increase.

According to EMNRD analysis:

Allowance for 20 percent of total cost for incidental improvements is difficult to define in rule and in practice based on experience with current and past tax credits. As costs incurred for a 20 percent incidental increase upfront could negate the value of returns over 20 years, limiting incidental improvements to 10 percent may be prudent.

It may be difficult to determine the value of a “similar improvement to property that does not provide similar benefit” through the rulemaking process. This is usually done in large new buildings with complex computer programs that compare the costs of alternative building configurations, systems, and equipment designs. It is not clear if only the additional cost of the efficiency improvements needs to be financed. It is more cost effective to only finance the additional cost.

SB215 requires EMNRD to adopt rules that include model ordinances and resolutions for creation of districts, any municipality or county has the authority to develop all requirements for its program. However, counties and municipalities are not required to use these models.

The bill provides that only the delinquent portion of the special assessment shall have priority to liens for a first lien mortgage, such as those insured by the Federal Housing Administration. In the event a scheduled payment of the special assessment is not paid when due, only the scheduled payment and collection costs shall have priority over the first lien mortgage. Payment of obligations shall not accelerate for any reason, including late payments and the property shall not be subject to an enforceable accelerated claim or lien superior to the first lien mortgage.

Under SB215, there is no limit on the transfer of the property; however, the assessment remains on the property until it is paid in full. The buyer assumes the obligation unless it is paid in full by the sale.

The bill also allows renewable energy financing districts to establish maturity dates up to 30 years, increasing from 20 years under current law. The bill allows a district to raise capital from third-party lenders or permit owners to finance the improvements by using “property assessed clean energy” financing directly with third-party lenders. Such lenders shall be entitled to the full benefits of the Act, and loans shall be secured by the special assessment lien in favor of the lender with the same protections granted to the district. However, the district does not have a repayment obligation.

Finally, SB215 allows two or more counties and municipalities to enter a joint powers agreement to create a regional district. Each entity within a region must approve an identical resolution. The regional district shall have the same powers, except as limited by the joint powers agreement, and allow for the formation of a regional board.

NMAC provided the following:

The Association strongly supports advancing the development of renewable energy and energy efficiency technologies to protect the public health of its citizens and to further New Mexico's economic future and energy stability. Counties should be afforded every opportunity to be involved as a significant partner and to provide input during the formative stages in the development of energy standards, policies, and guidance. The Association asserts that prior to passage of environmental legislation or regulations, New Mexico counties be provided adequate funding for the implementation of renewable and energy efficiency technologies.

## **TECHNICAL ISSUES**

EMNRD notes interest costs are not mentioned in the initial process of evaluating the costs and benefits of the project. Larger projects can qualify if interest costs are not included. However, in subsequent provisions it appears that all financing costs need to be paid.

## **ALTERNATIVES**

According to EMNRD, a statewide uniform program could be established to enable local counties and cities to simply pass local legislation to join the state program. This approach would simplify and standardize programs across the state. In some states, nonprofit organizations are helping to implement uniform statewide programs. In others, like Minnesota, a public body runs the program on behalf of most cities and counties in the state.

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