F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 1/26/2020
SPONSOR Neville/Candelaria **LAST UPDATED** ____ **HB** ____

SHORT TITLE Electric Transmission Facilities IRB Eligible **SB** 6

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**	**FY23**	**FY24**		
	Indeterminate, but about neutral. See exhibit at FISCAL IMPLICATIONS					State GO Bond Fund
	Indeterminate, but generally negative. See exhibit at FISCAL IMPLICATIONS				Recurring	General Fund, GRT & compensating tax
	Indeterminate, but generally negative. See exhibit at FISCAL IMPLICATIONS				Recurring	Local Governments, GRT & compensating tax
	Indeterminate, but negative. See exhibit at FISCAL IMPLICATIONS				Recurring	Local Governments, property tax debt and operating
	Indeterminate, but negative, unless in-lieu payments are required. See exhibit at FISCAL IMPLICATIONS				Recurring	School Districts, property tax debt and operating
	Indeterminate, but negative, unless in-lieu payments are required. See exhibit at FISCAL IMPLICATIONS				Recurring	Higher Ed, Hospital, SWCD Districts, property tax debt and operating

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

Parenthesis ( ) indicate expenditure decreases

Duplicates HB50

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
Economic Development Department (EDD)

Responses Not Received From
Taxation and Revenue Department (TRD)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 6 amends the Industrial Revenue Bond Act (§§3-32-1 et seq. NMSA 1978) and the County Industrial Revenue Bond Act, (§§4-59-1 et seq. NMSA 1978) to include electric transmission facilities as eligible projects. The bill adds a new section to each Act that requires for electric transmission line projects, the state would receive 5 percent of the total amount of in-lieu tax payments to counties, municipalities and other local entities who levy taxes on the property. This also includes in-lieu tax payments to school districts and 5 percent of the value of other considerations paid by the transmission line project managers to local entities that are authorized to levy taxes on property. A copy of the agreement documenting the in lieu payments must be provided to the secretary of finance and administration with 30 days of written approval. Annual payments are to be made to DFA for deposit to the general fund no later than the end of the fiscal year as in-lieu tax payments are made to local taxing entities.

The effective date of this bill is July 1, 2020. There is no delayed repeal but LFC recommends adding one. This is an unusual tax expenditure and a delayed repeal date would give the legislature an opportunity to review the success or failure of the proposal.

FISCAL IMPLICATIONS

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations. This particular tax expenditure affects county governments and school districts more than the state, although the abatement of compensating taxes could be significant for the general fund.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

Estimating the cost of tax expenditures is difficult. For this bill, the difficulty is both in timing and magnitude. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

For the purpose of estimating an impact, we will assume one large project will qualify within the FY21 through FY24 period. Projects that must solicit both location approval and a certificate of necessity and convenience (CNC) from PRC are not eligible for IRB treatment. In addition, negotiation with numerous counties there will be very few projects that have the resources to pursue this tax elimination strategy.

As an exhibit, we choose to analyze the revenues foregone for the Western Spirit Transmission Line. This is a line intended to carry wind power from the plains to Albuquerque area and interconnect with existing transmission lines transmitting power throughout the Western power grid. This facility may or may not qualify for IRB treatment, but can be used to illustrate the magnitude and tax impacts if the facility did qualify. There has been a great deal of discussion in specialty journals and in the local media about this project. The Renewable Energy Transmission Authority (RETA) has apparently had a hand in this project. It is assumed that the construction phase Gross Receipts and Compensating Tax Act taxes will have been paid, in the absence of this IRB treatment to abate gross receipts taxes and that the sale of the Western Spirit Transmission line project to PNM might incur a second round of Gross Receipts Tax obligations. The following shows the property tax impacts in terms of revenue foregone by the exhibit project. In many cases, the sponsoring government entity (in this case the five counties) will require an annual payment in lieu of taxes of some or all of the foregone property tax for school districts and, possibly, hospital, institutions of higher education, SWCD districts, etc. In this exhibit, we will assume that PNM would pay 100 percent of the school district and special district impact as in-lieu of property taxes. The state, pursuant to provisions of the act, would receive 5 percent of these in lieu payments. This roughly equals the 1.36 state GO Bond rate divided by about an average of 25 mills for the total rate (exclusive of any debt or operating rate for municipalities).

WESTERN SPIRIT
Project scope: Transmission Line: 140 miles, 345 kV
Capacity: 1,000 MW, enough to power 590,000 homes
Investment: RETA and Pattern Development are co-developers of the $150 million project
Financial Benefit: $28 million property taxes to NM counties over first 40 years
Anticipated Operational Date: End of 2020
https://nmreta.com/transmission-lines/#impact

For Illustration, property tax revenue foregone	Property Tax Rate	Portion of Project	Annual Revenue Foregone	40-year sum	Net Present Value 4%
January 1, net property tax value					
State GO bond	1.36	100.0%	$116,280	$4,651,200	$2,301,504
County Debt & operating					
Bernalillo County	12.223	5.7%	$59,718	$2,388,723	$1,181,987
Santa Fe County	13.974	3.6%	$42,671	$1,706,824	$844,570
Socorro County	13.385	44.3%	$506,813	$20,272,539	$10,031,244
Torrance County	13.385	35.7%	$408,721	$16,348,821	$8,089,713
Valencia County	12.55	10.7%	$114,967	$4,598,679	$2,275,515
School District Debt, Operating & Special					
APS (Bern Co)	11.328	5.7%	$55,345	$2,213,815	$1,095,438
Moriarty School District (Santa Fe Co)	10.688	3.6%	$32,637	$1,305,463	$645,968
Socorro School District (Socorro Co)	10.166	44.3%	$384,928	$15,397,133	$7,618,799
Estancia School District (Torrance Co)	8.125	8.9%	$62,026	$2,481,027	$1,227,660
Moriarty School District (Torrance Co)	10.688	8.9%	$81,591	$3,263,657	$1,614,921
Mountainair School District (Torrance Co)	6.622	8.9%	$50,552	$2,022,075	$1,000,562
Encino School District (Torrance Co)	6.795	8.9%	$51,873	$2,074,902	$1,026,702

Los Lunas School District (Valencia Co)	13.63	5.4%	$62,430	$2,497,211	$1,235,668
Belen School District (Valencia Co)	10.121	5.4%	$46,358	$1,854,312	$917,549
Other beneficiaries					
Hospital 1: UNM Hospital (Bern Co)	6.400	5.7%	$31,269	$1,250,743	$618,892
Central NM Comm Col (Bern Co)	3.000	5.7%	$14,657	$586,286	$290,106
Cent NM CC Debt Serv (Bern Co)	1.000	5.7%	$4,886	$195,429	$96,702
Socorro General Hospital (Socorro Co)	4.250	44.3%	$160,923	$6,436,929	$3,185,117
UNM Valencia Branch (1)	2.000	10.7%	$18,321	$732,857	$362,632
UNM Valencia Bldg Debt Levy (2)	0.850	10.7%	$7,787	$311,464	$154,119
Assume 5% of 100% of school district in-lieu payments to State GO Bond fund			$41,387		

The 5 percent of in-lieu property tax payments to school district to the state GO bond fund is shown on the last line.

Gross Receipts and Compensating Tax foregone revenue is shown in a separate chart. It is uncertain how this would work if the original project is completed and then sold to PNM. Assume, for this exhibit, that the entire amount of the sale price from Pattern to PNM were subject to the GRT and that this entire amount would be exempted by the provisions of 7-9-54 NMSA 1978. This is not a realistic assumption, but is shown only to quantify the potential impact of the provisions of this bill. In fact, the actual transfer would be a capital transfer of stock in the operating company by PNM, and the physical assets would remain under the control of the operating company.

GRT impact

Assume 100% of Sale Price exempted as tangible personal property sold to sponsoring government entities.

	GRT Rate	$285,000,000
State GRT	5.1250%	$14,606,250
Bernalillo County	1.3125%	$3,740,625
Santa Fe County	1.3125%	$3,740,625
Socorro County	2.0000%	$5,700,000
Torrance County	1.2500%	$3,562,500
Valencia County	1.6250%	$4,631,250
Potential Revenue Foregone		$35,981,250

SIGNIFICANT ISSUES

It should be noted that when a county or municipality approves an industrial revenue bond project, there are a number of tax consequences. In fact, for most projects in the state's history, the tax consequences are the principal reason a company negotiates this treatment. The IRB treatment is usually not a financing mechanism, since the bonds are amortized with payments from the commercial enterprise that has received the IRB approval.

Specifically, once the IRB treatment has been approved and construction begun, the construction is fully taxable, but the project is considered to be owned by the sponsoring government. Any equipment installed in the project is then considered tangible personal project and subject to the GRT deduction of 7-9-54 NMSA 1978. Since the real property and equipment is considered owned by the sponsoring government, the property tax exception of 7-36-3 NMSA 1978 applies. Industrial Revenue Bonds may be executed for up to 30 years.

This bill narrows both the gross receipts tax (GRT) base and the property tax base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

Previously, the Industrial Revenue Acts provided that electric generation facilities were eligible for industrial revenue bonds. This bill expands the eligibility to also include electric transmission facilities. Neither the generation or transmission facility can be one where approvals are necessary pursuant to the Public Utility Act. This generally means that multi-state transmission lines which are regulated by FERC would be eligible to solicit IRB approvals from the various Counties along the transmission line route.

SB6 creates a new concept of sharing a small portion of any in-lieu tax payments with the state. This only applies to electric transmission projects.

A perhaps partial list of currently announced electric transmission projects, with at least a portion of the line in New Mexico follows:

1. Lucky Corridor Transmission Line (Mora Line; 180 MW; 115 kV, 110 miles all in NM), (Lucky Corridor; 850MW; 345 kV; 62 miles all in NM).
2. SunZia Transmission Line (500 KV; 520 miles – 315 miles in NM; 1,500 MW; project on hold)
3. Tres Amigas Super Station
4. High Plains Express
5. Centennial West Clean Line
6. Southline (may have sold to Pattern with an associated wind farm)
7. Tuco-Yoakum-Hobbs line (345 kV; 168 miles, 63 miles in NM; $242 million; in-service in mid-2020. (The New Mexico portion has been granted a certificate of necessity and convenience)
8. High Lonesome Mesa (115 KV, 100 MW capacity; $50 million; 2010)
9. Western Spirit[1] (345 KV; 1,000 MW; 140 miles; $150 million)

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[1] **New Mexico Utility PNM to Buy Renewable-Linked Transmission Project From Pattern :** The Western Spirit transmission line would bring more than 800 megawatts of new wind energy westward to bigger markets like California, with a scheduled completion date in 2021. https://www.greentechmedia.com/articles/read/utility-pnm-to-buy-wind-linked-western-spirit-transmission-project-from-pat

Plans to link New Mexico's abundant wind energy resource to bigger markets in California continue to come together, with utility group PNM Resources announcing it will buy Pattern Development's Western Spirit transmission project, designed to connect more than 800 megawatts of future wind capacity. Pattern acquired Western Spirit and the affiliated Mesa Canyons wind project last year from Clean Line Energy Partners, as part of its multi-gigawatt wind development push in central and eastern New Mexico. Pattern is developing the roughly 165-mile Western Spirit project in partnership with New Mexico Renewable Energy Transmission Authority, a state-backed authority focused on getting transmission lines built to tap the state's underutilized wind resource. PNM Resources, owner of two regulated utilities in the Southwest, has now agreed to buy Western Spirit for $285

10. Eddy County to Kiowa (345 KV; 34 miles in NM; $65 million)

Federal Regulation (FERC)

- ☐ Federal Power Act
- ☐ Wholesale sales of electricity for resale in interstate commerce
- ☐ Transmission of electricity in interstate commerce
- ☐ (Very) Limited "backstop" transmission siting authority
  See 16 U.S.C. § 824p
- ☐ Siting/Permitting of hydro plants
  Otherwise, no generation planning or siting control
- ☐ Reliability of bulk power system

State Regulation (PUCs)

- ☐ State Public Utility Acts or similar
  See, *e.g.*, VA. CODE ANN. §§ 56-235 *et seq.* and 56-576 *et seq.* (Electric Utility Regulation Act)
- ☐ Retail sales to end users
- ☐ Low-voltage distribution lines
- ☐ Siting of power plants and transmission lines
  See, e.g., MD. CODE ANN. PUB. UTIL. COS. § 7-207 (transmission and gen.)
- ☐ Resource planning; *i.e.* the generation types (coal, natural gas, renewable) used by a utility to serve customers

One of the most significant restrictions of this bill is that the transmission facility that requires both location approval and a certificate of convenience and necessity granted by the Public Regulation Commission (PRC) are not eligible for IRB treatment. We must, therefore, understand what projects are regulated by the Federal Energy Regulatory Commission (FERC) and which are regulated by the PRC. The box above provides some of these answers. The most important function assigned to FERC is wholesale sales of electricity for resale in interstate commerce.

Another important restriction may be contained at, for example, page 9 of the bill, lines 7 through 17 et seq, which state, "project" means any land and building …and all real and personal properties deemed necessary in connection therewith, whether or not now in existence that shall be suitable for use … any electric transmission facility." This provision could be interpreted to mean, for example, the Western Spirit project to be eligible for IRB treatment if the bill passes.

PERFORMANCE IMPLICATIONS

There are no performance implications, except that this would be something that RETA could claim as a successful effort.

ADMINISTRATIVE IMPLICATIONS

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million once the project is completed. The investment by a utility will be seen as a vote of confidence in Western Spirit and more broadly in the concept of exporting New Mexico wind energy westward.

None for EMNRD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicate of HB50.

OTHER SUBSTANTIVE ISSUES

Approval of Industrial Revenue projects by a county or municipal government, has fiscal consequences for the state as well as the sponsoring governments and property tax beneficiaries such as school districts, hospital districts, higher education facilities and SWCD projects. The state does not have the power to consent to the IRB treatment. School districts can negotiate all of portion of their property tax revenue foregone and request in-lieu of tax payments. The 5 percent provision in this bill is an innovative means of addressing this state GO bond revenue loss. However, the larger state revenue loss is the loss of gross receipts and compensating tax revenue for the sale of tangible personal property to a government entity. Pursuant to the provisions of HB-6 last year, local governments will receive the local option rate for compensating tax, effective July 1, 2021. This new provision may alter the willingness of local governments to approve projects forgiving the compensating tax, and may be more aggressive in requiring in-lieu payments to the sponsoring government as well as school and special districts.

This expansion to Electric Transmission lines sustains a policy goal to aggressively move New Mexico to become a renewable energy state. It is possible that this IRB treatment will result in more renewable projects because, currently, the bottleneck for this goal is that all of the renewable energy produced in the state cannot access interstate markets. We do not have sufficient electrical transmission lines.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	?	
Targeted		
Clearly stated purpose	✘	No purpose stated
Long-term goals	✘	No long-term goals stated
Measurable targets	✘	No measureable targets
Transparent	?	No required reporting to the state, although GASB 31 requires local governments to disclose tax incentive costs in the notes to annual audits
Accountable		
Public analysis	✘	Property Tax consequences ($30 million county property tax revenue foregone over 30 years can be inferred from careful reading of public disclosures
Expiration date	✘	Permanent addition to County and Municipality IRB statutes.
Effective		
Fulfills stated purpose	✘	No purpose stated
Passes "but for" test	?	
Efficient	?	
Key: ✓ Met ✘ Not Met ? Unclear		

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