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

SPONSOR Small **ORIGINAL DATE** 01/27/21 **LAST UPDATED** 02/08/21 **HB** 105/aHENRC/ec

SHORT TITLE Electric Generation Project Requirements **SB**

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
Indeterminate but positive overall because of uptake by Counties, although school districts will receive less "windfall" property tax than with current law. See FISCAL IMPLICATIONS where fiscal consequences are discussed					Recurring	School Districts and (primarily) Counties sponsoring Electric Generation (Wind and Solar) Industrial Revenue Bond Projects

Parenthesis ( ) indicate revenue decreases

Duplicates SB 72

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of HENRC Amendment

The House Energy, Environment and Natural Resources Committee amendment slightly increases the aggregate amount allocated to school districts within a municipality or the school districts within a county by adding the 1.36 mills state GO bond debt rate to the numerator of the allocation formula. When the total rate in a county is 30 mills, this amendment will increase by an average 5 percent.

Synopsis of Original Bill

House Bill 105 proposes a major change to last year's HB50, which allowed IRB treatment for electric transmission and generating facilities and provided for in-lieu of property tax sharing for the state and various school districts. This bill further amends the municipal IRB statute (3-32.6.2 NMSA 1978) and the county IRB statute (4-59-4 NMSA 1978) to establish a formula to share negotiated in-lieu of property tax payments between the IRB sponsoring jurisdiction (generally County governments) and the school districts within that sponsoring jurisdiction and proposes that all school districts located within the County or Municipal jurisdictions would share the formula amount of sharing equally.

Specifically, the provisions of the bill:

(1) Retain the ability of a sponsoring County or Municipality to negotiate an appropriate in-lieu of property tax amount with a developer of an electrical generation or transmission project.
(2) Retains the requirement that 5 percent of any in-lieu payment be remitted to the state general obligation bond fund for electric transmission projects, but not electric generation projects.
(3) Requires the municipality or county to share the in-lieu payments in the ratio of the average of the sum of school district operating, capital improvement and debt for all districts within the sponsoring jurisdiction to the average total of all mills imposed by all beneficiaries in the jurisdiction (less the 5 percent required to reimburse the state for the loss of GO bond revenues in the case of electric transmission projects.).
(4) Require that the share of the in-lieu payments calculated per (1) above be shared equally among all school districts.
(5) Establish the minimum in-lieu payment for the school districts as the amount that would have been due the school districts in the tax year immediately preceding the issuance of the bonds from the property included in an industrial revenue project if the IRB had not been approved and created by the sponsoring jurisdiction. (This is a substantial modification of the requirement in HB50, as passed and signed, that the minimum amount of sharing of the in-lieu payment with the school districts with a share of the project would be calculated on the assumption that the property tax value of the project as acquired by the sponsoring jurisdiction.)

This bill contains an emergency clause and, if approved by two-thirds of each house, would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

In the preliminary analysis of this bill, LFC staff focused on the analysis of last year's HB-50 and the focus in that analysis on the Western Spirit renewable energy transmission line. On basis of further research and consideration, LFC staff has decided to change the nature and discussion of the analysis and focus on the ways in which the proposed changes would assist the development of renewable electric generation capacity in the state.

In the analysis of Laws 2020, Chapter 14 (HB50), LFC staff developed and published an exhibit based loosely on the Western Spirit renewable energy transmission line.

The fiscal impact of the provisions of this bill are largely indeterminate, since the impacts depend on negotiations concerning the amount of in-lieu of property taxes to be shared, the location of the project, the depreciated value of the project over time (roughly a 25-year straight-line depreciation schedule) and the number of school districts in the sponsoring jurisdiction. For example, assume that a solar array is built in Socorro County and the cost is about $2.35 per watt and that the array is 10 megawatts. This would be a net taxable value of $8 million.

We use Socorro County to further continue this exhibit.

			Net Taxable Value		
County/ Municipality	**School District**	**Notes:**	**Residential**	**Non-Residential**	**Total**

SOCORRO COUNTY	Socorro County			$152,200,691	$135,735,077	$287,935,768
Socorro Consolidated Schools	Socorro	1 IN R		$82,442,686	$37,753,117	$120,195,803
Socorro Consolidated Schools		1 OUT R		$32,394,948	$39,625,567	$72,020,515
Magdalena Municipal Schools	Magdalena	12 IN R		$5,132,041	$2,431,779	$7,563,820
Magdalena Municipal Schools		12 OUT R		$12,588,302	$11,178,960	$23,767,262
Belen Consolidated Schools		5 R	(1) To Belen Board of Education	$17,977,863	$35,194,090	$53,171,953
Carrizozo Municipal Schools		7L R	(2) To Carrizozo Board of Education	$165,804	$807,113	$972,917
Corona Municipal Schools		13L R	(3) To Corona Board of Education	$482,383	$2,464,318	$2,946,701
Mountainair Public Schools		13T R	(4) To Mountainair Board of Education	$1,016,664	$6,280,133	$7,296,797

The assumptions as shown in the box to the right.

Project -- 10 MW solar array	
Total Cost per watt	$2.40
Net Taxable Value (1/3rd)	$8,000,000
Project 100% in Socorro Schools Dist	
Assume in-lieu payment is 40% of the regular prop tax owed County and Socorro SD.	

The consequences of the provisions of this bill are shown the in the table below. This is not an unrealistic assumption on the savings a developer could negotiate. Since this is an electric generating example, there would be no in-lieu payment to the state GO bond fund. Note that the difference is negative for the school district in which the project is assumed to lie, but the other, smaller and more rural school districts would have a small windfall.

	No IRB	HB-50 (2020) Provisions	HB-105 Provisions	Net Difference
Developer	$232,952	$75,229	$75,229	$0
Socorro County	$106,680	($6,163)	$51,678	$57,841
State GO bonds	$10,880	0	0	$0
Socorro County Hospital	$34,000	0	0	$0
Socorro Consolidated Schools	$81,392	$81,392	$3,925	($77,467)
Magdalena Municipal Schools	$0	$0	$3,925	$3,925
Belen Consolidated Schools	$0	$0	$3,925	$3,925
Carrizozo Municipal Schools	$0	$0	$3,925	$3,925
Corona Municipal Schools	$0	$0	$3,925	$3,925

The HEENR amendment adds the 1.36 mills state GO bond debt rate to the numerator of the allocation formula. When the total rate in a county is 30 mills, this amendment will increase the aggregate amounts allocated to the school districts by the county by an average 5%.

SIGNIFICANT ISSUES

EMNRD provides some background:

In 2020, the Legislature amended the Industrial Revenue Bond Act in 2020 HB 50 to make certain transmission line construction projects eligible for industrial revenue bonds. In the

process of passing 2020 HB 50, Senator Neville amended the bill on the Senate Floor to hold school districts harmless, stipulating that school districts receive annual in-lieu tax payments in the same or greater amounts as they would have received from property taxes for a fully developed project had an IRB not been issued. One impact of this provision is that school districts no longer have the ability to negotiate alongside municipalities and counties over tax in-lieu payments, and this has had the apparent effect of reducing the likelihood that municipalities and counties will engage with transmission and renewable generation developers on their own. Transmission developers are reluctant to engage in projects without the benefits that an IRB provides.

SB 72, also sponsored by Senator Neville, repairs this situation by essentially removing the Senator's 2020 amendment. HB 105 is a precise duplicate of SB 72.
HB 105 ties the issuance of an IRB to tax in-lieu payments for school districts and assures that school districts continue to receive tax in-lieu payments throughout the duration of the bond period. In addition, HB 105 establishes a standardized mechanism for calculating those payments.

Without enactment of HB 105, school districts will be precluded from engaging in negotiations with generation and transmission developers over tax in-lieu payments. Use of IRBs for transmission construction will likely remain rare.

To understand the policy features proposed in this bill, it is necessary to provide some background on public finance and the use of IRBs for economic development.

- The purpose of a tax system is to fund public goods. At the national level, the primary public good is national defense. This involves foreign policy. To sustain national defense, the national government must ensure that the national economy is sound enough to generate the resources required for national defense. Sovereignty, in international law, is defined by the willingness to defend a nation's borders and a companion willingness to tax the people and economy of the nation to provide the resources for that defense.
- At the state and local level, public goods are necessary to support the provision of public goods at the national level, but also to ensure the well-being of the state and local population. At the state and local level, there seem to be four public goods that must be provided:
    - Education and training to allow the population access to participation in the affairs of the state and local governments providing public goods and to provide a well-trained workforce.
    - Economic development support to grow the economy and ensure that individuals can participate in that growing economy that generates the resources to provide the public goods;
    - Public health and safety – accessible health care, fire protection and mitigation, police agencies for protection of persons and property, courts and corrections, emergency medical assistance and disaster recovery assistance;
    - Environmental protection – mitigation of climate change, clean air and water, regulation to protect scarce water resources and ensure orderly and safe exploitation of oil and natural gas and mineral resources. Increasingly, climate change mitigation seems to be taking on enhanced interest.
- Since civilization requires an appropriate level of public goods – in situations where private markets cannot or will not provide these goods and services (education is a prime example of this market failure), the debate is two-sided: what level of public goods

should be provided and how should the provider of the public goods generate the resources.

- The reality that provision of public goods and generating the required resources may be controversial. There are two general allocation principles for taxation: (1) benefits received and (2) ability to pay. The first principle requires governments to impose fees based on the value of public services received. There are numerous examples of the use of the benefits received principle, but the most important and popular is the gasoline tax, which is a surrogate for a tax based on the use of the roads, streets and highways of the state. In most cases, however, governments at all levels tend to tax one group of citizens to provide public goods to a different population. From colonial days, the property tax has been used to provide free public education. The wealthier citizens pay taxes to educate the less wealthy.
- The property tax is the oldest tax in the state (approximately 1882, with some debate) and, largely because it is the oldest tax, it is the most inflexible when it comes to adapting to modern necessities. Innovations such as yield control and the 3 percent assessment growth limitation for residential properties have periodically been enacted to moderate public criticism of the tax. In an agricultural economy, those citizens with the most property wealth have the greatest ability to pay the property taxes, but also receive benefits with taxes paid in ensuring public safety and orderly markets.
- In an industrial and service economy, property wealth may no longer be a good measure of benefits received, nor provide an equitable measure of ability to pay. A direct tax, such as an income tax or a gross receipts tax provides a far better measure of ability to pay than the property tax.
- A major innovation in the property tax scheme was the advent of the Industrial Revenue Bond Concept. (Laws 1965, Chapter 300 as amended for Municipal authority and Laws 1975, Chapter 286 as amended for County authority). This established a fiction that the IRB project's real property and installed tangible equipment was "owned" by the county (or municipality) for the duration of the bonds sold to finance the deal. The county would then lease the project back to the developer. The lease payments would be equal to the bond payments. Not infrequently in this history, the IRB scheme would not be used for financing purposes but to give the developer a mechanism to negotiate for tax abatements.
- The electric generation, transmission and distribution markets have undergone major restructuring attributed to two forces: (1) some deregulation of public utilities and increased competition for generation' and (2) major emphasis now being placed on closing coal-fired generating plants because of environmental pollution and carbon release concerns and creating a new reliance on greener, sustainable wind and solar, utility projects.
- By 2003, the County IRB law (Chapter 3-32 NMSA 1978) added a requirement that schools district officials be consulted (Laws 2003, ch. 221, § 3 on all IRBs. In 2020, a requirement was added for electric transmission and generation IRB projects to hold school districts harmless and ensure that they would receive at least as much as if the project were not sponsored by a county or municipalities.
- The unfortunate consequences of this hold-harmless provision for school districts have been the following:
    - Since the whole purpose of an IRB is to allow developers to negotiate appropriate amounts of property tax in-lieu payments, the requirement that the school districts be held harmless could easily mean that the required payments to the school districts would exceed the amount of the in-lieu payment actually paid to the spon-

soring government. This would force that county or municipality to dip into its budget to make up the difference. This eventually could right the imbalance because the property tax assessment would generally be subject to annual depreciation. In one case studied, the county would be out of pocket for the first eleven years of the IRB.

- For conventional IRB deals, the sponsoring jurisdiction expects that the project will provide construction-phase gross receipts taxes for the real property portions of the construction, would provide a boon for the developer from abatement of compensating or gross receipts taxes on equipment not considered construction, and that there would be substantial jobs available for local residents. Because the jurisdiction would receive in-lieu of property tax payments, any increase in student population that required more schools to be built could be paid for with a portion of the in-lieu funds. For wind farms and solar installations, some of this thinking is not appropriate. After the construction phase, relatively few permanent jobs are created. Therefore, few students are added to the local school population and few additional services are demanded from government entities. The property tax is purely assessed on an ability to pay basis. However, the amount of tax may upset the calculation of whether to move with the project.
- Additionally, amounts of the in-lieu payments transferred to the schools would not be allocated based on increased need. To the extent that, under the provisions of HB50, the in-lieu payments from renewable projects are something of a windfall and if distributed based on student enrollment or property tax net taxable value, would probably be transferred to the school districts with the most students rather than the districts with the greatest needs.
- Finally, the specific provisions of HB50 to hold the school districts harmless to the full value of the project, this may cause a county asked to approve an IRB for a remote, but costly renewable electric generating project, to refuse to sponsor the project IRB.
- In the guise of school district equity, the school district hold-harmless provisions of HB50 may mean fewer renewable projects are IRB approved. If this were to happen, then it would be more difficult for the state to achieve the goal of a 100 percent green energy future. In any event, the costs transferred to energy consumers in the state would be substantially higher than if the modifications proposed in this bill are accepted.

As noted, HB105 amends the municipal IRB statute (3-43-6 NMSA 1978) and the county IRB statute (3-32.6.2 NMSA 1978) to repeal the strict hold-harmless provisions for school districts for electrical generation and transmission IRB projects in favor of a formula to share negotiated amounts of in-lieu payments equitably between the sponsoring jurisdiction and the school districts. Because there is little correlation between the property tax location of the projects and the location of students, the bill proposes a "rough justice" approach so that each school district within boundaries within the sponsoring jurisdiction would receive an equal share of the in-lieu total allocated to all the school districts.

As mentioned in the FIR last year for HB50 and in HB6 of 2020, the counties and municipalizes have been granted a local option compensating tax, as of July 1, 2021. The IRB procedure establishes the premise that the facility or project is owned by the sponsoring government. Tangible property sold to a government entity is deductible from gross receipts and compensating taxes. Prior to HB6, the local government could create a state revenue loss of compensating tax for

equipment installed in an IRB project, as long as that equipment was not considered construction. It will require some considerable negotiation for RETA or Pattern or PNM to establish what portion of a particular transmission project would be considered construction and what portion would be considered as non-construction tangible personal property. Similar concerns apply to solar and wind projects with determining what portion of total costs could reasonably be considered equipment as opposed to construction. With the possibility of losing local option compensating tax in addition to property taxes, counties and municipalities might negotiate an increase in in-lieu of tax payments. If the jurisdictions did this as part of the IRB sponsorship agreement, the school districts would share the in-lieu payments, the state would get 5 percent to compensate for GO bond losses on electric transmission projects, but the state would experience a loss of compensating taxes (if any) because this bill does not require any sharing of that tax between the sponsoring jurisdiction and the state. Note, too, that the school districts would receive something of a windfall by sharing the compensating tax in-lieu payments. School districts do not have any compensating tax authority.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers claiming the exemption and other information to determine whether the exemption is meeting its purpose. This is a general criticism of all property tax issues, largely because the property tax valuation is administered by 33 county assessors using largely archaic technology. The state-level administration of the property tax is shared between the Property Tax Division of the Taxation and Revenue Department and the Local Government Division of the Department of Finance and Administration. In this case, the only reporting of the costs of the IRB projects would be contained in footnotes to the annual audited financial statements of the sponsoring governments.

ADMINISTRATIVE IMPLICATIONS

For the most part, there are no administrative consequences for any state agency or entity. The calculation of the amounts of in-lieu of property taxes for each of the school districts involved in a county with an IRB electric transmission project would be calculated by the accountants for the project or the financial staff of the sponsoring jurisdiction. TRD/PTD has assisted in the past in calculating the depreciable asset value to help the local sponsoring jurisdictions divide in-lieu payments accurately and appropriately.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicate of SB72.

OTHER SIGNIFICANT ISSUES

One of the state's premier municipal financial advisers provided documentation of some of the somewhat bizarre results associated with the hold-harmless provisions of HB50 for electric generation projects. The example shown in the FISCAL IMPLICATIONS are loosely adapted from the documentation provided. The concern with the difficulty of structuring IRB deals pursuant to the school district hold harmless provisions of HB50 (Section 4-59-4 NMSA 1978) can also be attributed to this financial advisor.

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