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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/22

SPONSOR Munoz LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Additional Energy Acts Definitions SB 194

ANALYST Wan

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

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	No fiscal impact			N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

Energy, Minerals and Natural Resources Department (EMNRD)

Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 194 amends the Rural Electric Cooperative Act and the Renewable Energy Act to add three definitions and change one existing definition in both laws. The new definitions are:

- Clean hydrogen electric generation facility: an electric power generation facility in New Mexico that (1) uses 100 percent hydrogen to generate electricity, (2) has electrical output that can be controlled to aid in balancing supply and demand, (3) emits no more than 375 pounds of carbon dioxide (CO<sub>2</sub>) equivalent per megawatt hour, (4) provides for the permanent sequestration of carbon dioxide created during the production of hydrogen fuel, and (5) certifies that the methane gas produced or purchased for hydrogen generation is responsibly sourced gas.
- Permanent sequestration of carbon dioxide: injection of carbon dioxide in accordance with a monitoring and verification plan approved pursuant to the U.S. Environmental Protection Agency's (EPA) regulations on the geologic sequestration of CO<sub>2</sub> (Code of Federal Regulations [CFR] Title 40, Chapter 1, Subchapter C, Part 98, Subpart RR), excluding, after December 31, 2029, any well serving as a carbon dioxide injection well.

- Responsibly sourced gas: gas used or purchased to produce hydrogen that either (a) meets the standard for methane gas allowed to be used in hydrogen hub projects under Title 8 of the federal Energy Policy Act of 2005 or (b) in the absence of a federal standard, is certified as a responsibly sourced gas by an independent organization approved by the New Mexico Environment Department (NMED).

SB194 also amends the definition of “zero carbon resource” to include clean hydrogen electric generation facilities, thus including these facilities in the state’s Renewable Portfolio System (RPS).

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

NMED estimates it will need an additional 1.5 FTE at an annual cost of \$125 thousand to review and approve the independent organizations conducting the bill’s required analysis of responsibly sourced gas and the certification provided by the independent organization. House Bill 2 includes a budget increase of \$650 thousand and 7 FTE for a Climate Change Bureau at NMED, which would cover the projected personnel need.

### **SIGNIFICANT ISSUES**

The Energy, Minerals and Natural Resources Department (EMNRD) expressed concerns that SB194 does not set minimum standards in statute for the definition of responsibly sourced gas and instead relies on certification from “an independent organization with nationally recognized expertise.” EMNRD states that, to their knowledge, no such organization currently exists. Another concern of the agency’s is that SB194, in its definition of permanent sequestration of carbon dioxide, omits reference to EPA’s Underground Injection Control (UIC) Class VI rules (CFR Title 40, chapter I, Subchapter D, Part 146, Subpart H), which govern wells used for geologic sequestration of CO<sub>2</sub>. EMNRD believes this reference is important because any sequestration wells would need to be developed and constructed consistent with those requirements.

Additionally, EMNRD points out that successful deployment of facilities that require carbon capture and sequestration may require the state to address specific policy issues in the near future. One such issue is pore space ownership (i.e., who owns the underground geographic features where CO<sub>2</sub> might be stored, particularly in a split estate location) and rules surrounding pore space development. Another is the long-term and short-term ownership of sequestered CO<sub>2</sub> and associated financial assurance requirements.

To meet the definition of a zero carbon source, SB194 requires hydrogen generation facilities to emit CO<sub>2</sub> at a rate of, at most, 375 pounds per megawatt hour. According to NMED, this rate of CO<sub>2</sub> emissions is about a third of that coming from a newer natural gas electric generating unit. EMNRD points out, however, that this definition “would allow a source expressly authorized to [emit] CO<sub>2</sub> to be considered a zero carbon resource in perpetuity,” which conflicts with the first criterion for a zero carbon resource as defined in statute – an electricity generation resource that emits no CO<sub>2</sub> (Section 62-16-3(K) NMSA 1978).

One way EMNRD suggests this issue could be resolved is for SB194 to refine its amended definition of zero carbon resource to “provide a step-down bridge for hydrogen electric generating facilities that reduces CO<sub>2</sub> emissions over time, as opposed to the current approach which fixes CO<sub>2</sub> emissions at a level for the life of the plant.”

### ADMINISTRATIVE IMPLICATIONS

EMNRD notes that increased hydrogen development projects, particularly those involving carbon sequestration, would likely result in increased interest in the Oil Conservation Division (OCD) obtaining primacy for UIC Class VI wells from the EPA. With primacy, OCD would take over responsibility for UIC Class VI permit issuance from the EPA, which EMNRD says is generally preferred by industry because state processing is perceived as being faster and more responsive than federal permitting. Obtaining primacy is a multi-year process involving state-level rulemaking and a comprehensive application review by the EPA. EMNRD states this process would require both FTE and contractual services to apply for program primacy and to administer the program.

The Public Regulation Commission (PRC) states it will need to develop the expertise associated with clean hydrogen electric generation facilities that would qualify as zero carbon resources under SB194’s new and amended definitions, which in turn may allow utilities to comply with the zero carbon standard applicable to electric utilities under the PRC’s jurisdiction when it becomes effective in 2045. The PRC would also need to develop rules to ensure compliance with these definitions over the lifetime of clean hydrogen electric generation facilities.

### AMENDMENTS

EMNRD proposes the following amendment to establish statutory standards for what can be considered responsibly sourced gas:

"responsibly sourced gas" means gas used or purchased to produce hydrogen that either:

- (1) meets the standard for methane gas allowed to be used in hydrogen hub projects as promulgated by the federal government pursuant to Title 8 of the federal Energy Policy Act of 2005; or
- (2) in the absence of a federal standard, is certified as a responsibly sourced gas by an independent organization with the nationally recognized expertise to provide such certification, so long as such certification ensures the production and transportation of such gas achieves at least ninety-nine percent gas capture and meets applicable air quality control rules and requirements ~~and such independent organization and certification are approved by the department of environment;~~

EMNRD also recommends an amendment to include reference to the EPA’s regulations on Class VI injection wells, which any carbon sequestration wells in New Mexico would be subject to. The agency proposes replacing the bill’s definition of permanent sequestration of carbon dioxide with:

“carbon dioxide injected using wells approved under Code of Federal Regulations Title 40, Chapter 1, Subchapter D, Part 146, Subpart H, or equivalent state program, and

subject pursuant to a monitoring and verification plan approved pursuant to the Code of Federal Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart RR for any source category defined in the Code of Federal Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440, Paragraphs (a) and (b), excluding any well or group of wells where a carbon dioxide stream is being injected in subsurface geologic formations to enhance the recovery of oil or natural gas.”

CW/acv