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FISCAL IMPACT REPORT

SPONSOR <u>HENRC</u>	LAST UPDATED <u>2/2/23</u>
	ORIGINAL DATE <u>1/30/23</u>
SHORT TITLE <u>Energy Facilities Bonds and Gross Receipts</u>	BILL NUMBER <u>CS/House Bill 67/HENRC</u>
	ANALYST <u>Graeser</u>

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	(2,000.0)	(2,000.0)	(2,000.0)	(2,000.0)	Recurring	General Fund
	Small negative	Small negative	Small negative	Small negative	Recurring	State GOBs
	Could be positive for the adopting jurisdiction and schools and negative for special districts.				Recurring	Local Jurisdictions

Parentheses () indicate revenue decreases.

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		TRD Operating

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Energy, Minerals and Natural Resources Department (EMNRD)

No Response Received

Department of Finance, Local Government Division (DFA/LGD)

SUMMARY

Synopsis of CS/House Bill 67/HENRC

House Energy, Environment And Natural Resources Committee Substitute for House Bill 67 adds “energy storage facilities” to the authority granted municipalities and counties to negotiate an industrial revenue bond (IRB). This parallels the authority granted these jurisdictions to negotiate an IRB for solar and wind production projects and for renewable energy transmission

facilities. The bill also provides a gross receipts tax deduction for sales to governments of energy storage equipment. In addition, it adds energy storage facilities to the school district hold-harmless provisions of Sections 3-32-6 and 4-59-4 NMSA 1978.

EMNRD points out two other changes in HB 67/cs: “changes the definition of “energy storage facility”, now defining it as ‘a facility that uses mechanical, chemical, thermal, kinetic or other processes to store energy from a zero-carbon emission source for release at a later time.’”

And:

“HB 67/s adds a sunset date for the GRT deductions in the bill – both this new deduction and the existing deductions for solar and wind equipment. The sunset date is July 1st, 2033.”

The effective date of this bill is July 1, 2023. The provisions of the bill sunset for installations completed after July 1st, 2033.

FISCAL IMPLICATIONS

Overall fiscal impacts of this proposal can only be illustrated and not calculated because the impacts are critically dependent on adoption by developers and counties/municipalities. Most new renewable projects to date that have been approved for IRB treatment have not involved energy storage facilities. The HENRC substitute treats energy storage systems identically with renewable generation and slightly differently than energy transmission projects. The similarity is that school districts in the sponsoring county share in the negotiated amount of payments-in-lieu-of-(property) taxes or PILT. The difference is that energy transmission projects are required to share PILT with the state (GOBs). Energy storage projects are not required to share the PILT with the state. Pursuant to the provisions of this bill, higher ed/community colleges and other special districts, such as Soil and Water conservation districts will not share the PILT.

Developers installing mixed facilities with wind generation and battery energy storage (BESS) or solar facilities and BESS probably do not need the authority granted in this bill. It is likely that the provisions of this bill are intended to incentivize retrofitting existing utility scale wind or solar projects with BESS capability.

The fiscal impact exhibited in the table is based on a hypothetical utility scale, standalone BESS project in Santa Fe County. This county was chosen because parts of four school districts are within the boundaries of the county and the provisions of this bill would impact these four school districts. Further, it is assumed that there will be 200 megawatt-hours of installation pursuant to the provisions of this bill in each year throughout the exhibit period.

Project	
200 MWH lithium solar battery	200,000,000
Cost per KWH	\$200
Capital Cost	\$40,000,000
35-year life	
Santa Fe Remainder GRT rate	2%
State GRT Rate	0.04875
Property Tax	
Valuation Ratio	0.33

PROPERTY LOCATION	Santa Fe County
	Remainder
CURRENT TAXABLE VALUE:	\$321,824,867
CATEGORY:	C OUT NR
Total State	1.36 mills
Total County	13.974 mills
School District average	9.788 mills
Santa Fe Comm.Col.(1)	3.335 mills
Santa Fe Col. Bldg.Levy (1)	0.65 mills
GRAND TOTAL	29.127 mills

Without the IRB approval, the first six years of the project would generate the following revenue for the entities:

	(\$ thousands)
Initial County GRT/Comp	\$800
Initial State GRT/Comp	\$1,950
Property NR Tax Obligation Total State	\$41
Property NR Tax Obligation Total County	\$425
Property NR Tax Obligation Total School District	\$298
Property NR Tax Obligation Santa Fe Comm.Col.(1)	\$121
All jurisdictions	\$3,635

With IRB approval and a payment-in-lieu-of-taxes (PILT) amount that holds the county only harmless (without adjustment for the time value of money) for the property tax for the first six years of the project , the following would be the first six years of revenue with the differences exhibited:

	First Six Year Revenue Totals		
	(\$ thousands)	(\$ thousands)	Difference (\$1,000)
Initial County GRT/Comp	\$800	\$0	(\$800)
Initial State GRT/Comp	\$1,950	\$0	(\$1,950)
County PILT	\$0	\$425	\$425
Property NR Tax Obligation Total State	\$41	0	(\$41)
Property NR Tax Obligation Total County	\$425	\$0	(\$425)
Property NR Tax Obligation Total School District	\$298	\$0	(\$298)
Property NR Tax Obligation Santa Fe Comm.Col.(1)	\$121	\$0	(\$121)
All jurisdictions	\$3,635	\$425	(\$3,210)

In the short run, all jurisdictions lose money, with the state losing the most. The exact amount of PILT negotiated is up to the sponsoring jurisdiction. Pursuant to the provisions of this bill, the provisions of Sections 3-32-6 or 4-59-2 NMSA 1978, would apply and any negotiated payment-in-lieu-of-taxes (PILT) would be automatically shared with school districts in the county. The bill provides a gross receipts tax and compensating tax deduction. Therefore, both the state and the sponsoring local government would forgo the initial construction phase GRT and compensating tax and the initial high level of property tax measured by accelerated depreciation of tangible personal property.

This bill 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. In this case, the state general fund has no input into a local decision to approve an industrial revenue bond for an electrical energy storage system.

SIGNIFICANT ISSUES

EMNRD has provided commentary on the policy and historical implications of the bill:

The bill is a continuation of the policy first enacted in 2002, when that year's HB143 added renewable energy projects to the industrial revenue bond statutes, and continued in 2020's HB50, which added electric transmission line projects to the eligible project types. Those two bills, as well as this current bill, all support the growth of renewable energy in New Mexico by enabling local governments to receive in-lieu-of-tax payments resulting from the development of renewable energy projects built in their jurisdictions.

This bill specifically concerns energy storage projects and makes them eligible for industrial revenue bonds. The main role of energy storage in today's electric grid is to capture surplus energy when it is available and store it until it is needed – i.e., when electricity generation may not be sufficient to meet demand or renewable sources, which are variable in availability, are not generating. Energy storage therefore increases the reliability and resilience of the electric grid and supports the deployment of solar and wind projects. As New Mexico's electric grid decarbonizes, becoming more reliant on wind and solar generation, energy storage facilities are increasingly important in ensuring the continued reliability and resilience of our state's electricity grid.

Energy storage projects are often co-located with renewable energy generation facilities. However, the current costs of energy storage equipment, particularly for longer-duration storage (equipment which can store more than four hours of energy), may be prohibitive for renewable generation developers if they must be borne by the developer outright. Industrial revenue bond eligibility for these projects will increase the likelihood that developers will choose to add storage to their construction plans, making it more likely that these reliability-increasing facilities will be built in New Mexico. Simultaneously, industrial revenue bond eligibility for energy storage will give financing tools to local governments which enable them to benefit their tax base directly from the development and deployment of an energy storage project.

EMNRD has provided supplemental discussion regarding some of the differences between the original and the committee substitute.

“HB 67/cs addresses EMNRD's primary concern with the original version of the bill: the definition of “energy storage project”. The original definition limited energy storage projects to those which stored energy produced by wind and solar. The new definition removes this technological limitation, while retaining the sponsor intent to incentivize the development of energy storage facilities which are co-located with zero-carbon electricity generation.”

“However, we do note again that it is technically impossible to limit grid-tied energy storage to electrons produced only by zero-carbon generation, as electrons on the grid

move freely without any limitations or any identification of where they came from. As drafted, this definition of “energy storage equipment” in HB 67/cs may still limit the applicability of the industrial revenue bond eligibility to non-grid-tied (isolated) energy storage projects.”

TRD has similar concerns as LFC staff regarding the expansion of a tax expenditure.

The legislation may be viewed as a modernization of the existing statute. Electric storage capacity at an industrial location is a relatively new development in the renewable energy industry.

The intent of the existing statute for the sale of wind and solar energy equipment deduction may be to incentivize the renewable energy industry. The expansion to include equipment related to the storage of energy from renewable energy facilities is in line with this intent.

One intent of IRBs may be to incentivize large scale projects. The expansion to include energy storage facilities is consistent with the existing electric generation and transmission facilities allowed for under IRBs. This, however, comes at the cost of foregone property taxes on the project for the period of the ownership of the property by the local government, and its concurrent lease of that property by the local government to the owner of the project.

While tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures and/or narrowing the tax base, with a negative impact on the general fund; and, (2) increases the burden of compliance on both taxpayers and TRD. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

This bill narrows the gross receipts tax (GRT) 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.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability may not be met. The fiscal impact is created by the sale of tangible personal property to government, deductible in current statute. TRD does not have direct information on the sale of tangible personal property sold to government (the local jurisdiction sponsoring the IRB) and, therefore, cannot include this information in the annual tax expenditure report. The gross receipts tax deduction specific to the sale of energy storage systems to government does not create additional fiscal impact and may not be reported by the developer. This comment is true regarding any IRB project, not just those created pursuant to the provisions of this bill.

ADMINISTRATIVE IMPLICATIONS

Neither TRD nor EMNRD report significant administrative impacts for the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TRD has noted the following: Similar to HB14 (2022 Regular Session), Similar HB262 (2021 Regular Session), SB301 (2021 Regular Session) and Similar to HB201 (2020 Regular Session)

TECHNICAL ISSUES

EMNRD noted a potential technical issue in its review of the bill:

“However, we do note again that it is technically impossible to limit grid-tied energy storage to electrons produced only by zero-carbon generation, as electrons on the grid move freely without any limitations or any identification of where they came from. As drafted, this definition of “energy storage equipment” in HB 67/cs may still limit the applicability of the industrial revenue bond eligibility to non-grid-tied (isolated) energy storage projects.”

POSSIBLE AMENDMENTS/ALTERNATIVES

LFC staff suggest that the state (GOBs) share in any negotiated IRB PILT. This can be done by adding “electric energy storage systems” to the appropriate place in Sections 3-32-6.2 and 4-59-4.2 NMSA 1978. However, this sharing for energy storage systems would differ with the treatment of utility scale solar or wind projects, where this sharing is not required.

POSSIBLE QUESTIONS

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	✓	Previous versions of this proposal have been debated.
Targeted		Although not explicitly stated, the intent is clearly to support the state’s decisions addressing climate change.
Clearly stated purpose	✓	
Long-term goals	✗	
Measurable targets	✗	
Transparent	✓	
Accountable		
Public analysis	✗	
Expiration date	✗	
Effective		
Fulfills stated purpose	✓	
Passes “but for” test	?	
Efficient	✗	Because general fund costs cannot be measured, determination whether this is an efficient means of reducing carbon emissions cannot be calculated.
Key: ✓ Met ✗ Not Met ? Unclear		

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