BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 28, 2025

Bill: HB-295 **Sponsor:** Representative Nathan P. Small

Short Title: Tax on Property Owned by NM RETA

Description: This bill amends Section 7-36-4 NMSA 1978 to exempt from property tax improvements on land owned by the New Mexico Renewable Energy Authority (NM RETA).

Effective Date: Not specified; 90 days following adjournment (June 20, 2025). Applicable to 2026 and subsequent property tax years.

Taxation and Revenue Department Analyst: Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
	No Revenue Impact (see narrative)					

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: TRD did not calculate a fiscal impact due to issues raised below. Furthermore, HB295 would amend state law to maintain the status quo, which would result in no net change in revenue from impacted projects.

Policy Issues:

Tax & Rev has concerns that the exemption proposed by the bill may be unconstitutional. This is Tax & Rev's analysis, and is not determinative of the meaning of the New Mexico constitution, nor of the relevant section of law, Section 7-36-4 NSMA 1978. Tax & Rev is also aware that other agencies, including the New Mexico Department of Justice, have reached different conclusions regarding this legal issue.

Article VIII, Section 3 of the New Mexico Constitution exempts from property taxation the property of "the state … [and] all property used for educational or charitable purposes," among other property. It is well established that the exemption cannot be expanded beyond what is provided for in the Constitution. See, e.g., *Sims v. Vosberg*, 1939-NMSC-026, 43 N.M. 255; *Dillard v. NM Tax Comm*., 1948-NMSC-069, 53 N.M. 12; *Sisters of Charity v. Bernalillo Co*., 1979-NMSC-044, 93 N.M. 42. There is no dispute that the property of RETA is property of the state, and therefore exempt from property taxation.

HB295 seeks to extend the exemption to fractional interests of owners of otherwise exempt property, including to lessee's interest in improvements owned by RETA, but leased to non-exempt entities. Section 7-36-4(A)(1) defines a "fractional interest" in property as "a tangible interest in real property, except for mineral property … that is less than the total of interests existing in the property…" That section further exempts fractional interests from property taxation, but the exemption does not apply to "improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity." Section 7-36-4(B)(1). The leasehold interest of the lessee in an improvement constructed by RETA on land it owns is a fractional interest under Section 7-36-4(A)(1) that would not be exempt under Section 7-36-4(B)(1), in its current form. Because the tax is not being

imposed on the real property of the exempt entity, but rather on the non-exempt entity's leasehold property interest, Tax & Rev is of the opinion that the tax is not being imposed on the property of the state. *See, e.g.*, *Cutter Flying Service, Inc. v. Property Tax Dept.*, 1977-NMCA-105, 91 N.M. 215, {18}, ("[G]enerally the leasehold interest of a nonexempt lessee in property leased from an exempt owner is taxable."), *citing Trimble v. Seattle,* 231 U.S. 683, 34 S.Ct. 218, 58 L.Ed. 435 (1914) ("When an interest in land, whether freehold or for years, is severed from the public domain and put into private hands, the natural implication is that it goes there with the ordinary incidents of private property, and therefore is subject to being taxed.") Tax & Rev's previous FIR cited case law indicating that the "charitable purpose" exception to that section did not apply, as economic development is not a charitable purpose. But it is also the opinion of Tax & Rev that the lessee's interest in the improvements is no longer "property of the state" once the private leasehold is created, *Cutter Flying Service, Inc., supra.*

However, Tax & Rev notes that there was a special concurrence in *Cutter Flying Service* by Judge Sutin, who opined that the lessee of real property was not the "owner" of the fractional interest in the property, because ownership required that title be vested in the person claiming ownership. *Id.* at {53-54}, (treating the lessee as an owner for property tax purposes "would permit all lessees as well as deed holders to be taxed on the same property. That is neither the intent of the legislature nor the Property Tax Department. No explicit provision in the Code imposes the tax liability on the 'owner', but the obvious underlying assumption throughout the Code does, indeed, burden the 'owner' not the lessee. Property taxes are assessed against the real owner of the property, not one who is in possession thereof," and therefore the lessee's interest was exempt from property taxation.) *And see*, Section 7-38-47 NMSA 1978, ("Property taxes imposed are the personal obligation of the person *owning the property…*") (emphasis supplied); Section 7-35-2(H) NMSA 1978, (defining "owner" as "the person in whom is vested any title to property.") So, despite the authorities holding that private leasehold interests in real property of exempt entities may be taxed, there is a colorable argument that the tax obligation is imposed only on owners of real property, and therefore may not be imposed on a lessee when the owner of the property is exempt.

However, Tax & Rev notes that under its analysis, the entire exemption granted to other fractional interests by Section 7-36-4 might also be considered unconstitutional, but that those exemptions have never been challenged. Other fractional interests, such as a lessee's interests in the land itself (rather than improvements to the land), or the interests of a holder of rights of way or an easement, do appear to be covered by the exemption, even though these would not be considered "state property" either under Tax & Rev's analysis. Tax & Rev does not see a legal difference, for property tax analysis under Art. VIII, Sec. 3, between a lessee's interest in its leasehold interest in land versus a lessee's leasehold interest in improvements to the land. If a property tax exemption is legal for the former type of interest, it should also be legal for the latter type of interest. Furthermore, to call into question the constitutionality of the existing exemption for other types of fractional interests would be very disruptive to many existing lease arrangements between non-exempt entities and exempt property owners. The agency's analysis also potentially calls into question the property tax exemption for property leased by non-exempt entities that is granted by Section 7-36-3(A) under industrial revenue bond and similar acts. Tax & Rev is conscious of the fact that its analysis, if adopted, may have far-reaching implications.

Technical Issues: See Policy Issues.

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev's Property Tax Division's (PTD), State Assessed Bureau would need to be notified of any projects for tracking purposes. For projects that meet this qualification, the State Assessed Bureau would issue a Notice of Value with a zero tax due. If the project is no longer owned by the NM RETA, PTD would assess and send out a notice of value.

Related Bills: Conflicts with SB-112