

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/18/2025

Check all that apply:

Bill Number: HB 435

Original x Correction
Amendment Substitute

Sponsor: Rep. Matthew McQueen, Sen. Elizabeth Stefanics

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: RENEWABLE ENERGY FACILITY SITING RULES

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill 435 (“HB435”) would require the Public Regulation Commission (the “PRC”) to promulgate and implement rules governing the permitting and siting of certain facilities.

Section 1 would charge the PRC with promulgating and implementing rules governing permitting and siting of renewable energy generation, storage, and intrastate transmission facilities of more than 5 megawatts capacity.

Section 1 would further require that the PRC’s rules provide for input from the political subdivisions of the state and the public; establish a process for evaluating the local impact of the facilities on health, safety, welfare of the community where site; and address the scenic, cultural, archeological, and environmental impacts of the decision to issue or deny a permit.

Section 2 would provide that the Act applies to renewable energy projects that have not received final approval on the date the rules promulgated under the Act take effect.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

It is possible that HB435 is intended to preempt local decisions regarding siting of applicable facilities, which may otherwise be within the purview of political subdivisions of the state. *See e.g. Spinoza v. City of Albuquerque*, 2019-NMCA-014, ¶ 14, 435 P.3d 1270, 1275 (“A municipality ... may exercise all legislative powers and perform all functions not expressly denied by general law or charter.” N.M. Const. art. X, § 6(D)). For the avoidance of doubt, the legislature may wish to consider clarifying its intent with respect to preemption. *See State ex rel. Torrez v. Bd. of Cnty. Commissioners for Lea Cnty.*, 2025 WL 52496, at *8 (N.M. Jan. 9, 2025) (“Because municipalities are ‘presumed to retain the power to exercise [their] normal authority over an activity,’ express preemption is found where the Legislature has clearly stated its intent to preempt local control. Alternatively, implied preemption is found where the ordinance presents a ‘conflict[] with a state statute or regulation, or if the statute demonstrates an intent to occupy the entire field.’”) (internal citations omitted).

Relatedly, it is not clear whether the plants and transmission lines subject to the rules contemplated by HB 435 are already subject to NMSA 1978, Section 62-9-3. Section 62-9-3(A) provides: “The legislature . . . declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.” Since “plants” and “transmission lines” as used in this section are not qualified by size, this statement of purpose would seem to apply to any generation facilities subject to HB 435’s provisions. If so, Section 62-9-3(A) may provide the indication of legislative intent to preempt local control discussed above. However, at least some provisions of Section 62-9-3 are applicable only to plants above 300,000 KW in capacity and thus would not apply to renewable plants between 5 and 300,000 KW that would be subject to HB 435.

The bill does not address whether and how the proposed citing of renewable energy facilities on tribal lands should be addressed in the PRC’s rules.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship:

House Bill 45: Relating to Taxation: Renewable Energy production tax act which imposes an excise tax on electricity generated from renewable energy resources.

House Bill 159: Relating to construction: requiring developers or owners of renewable energy or other projects to notify the chair of the Military Base Planning Commissions of a notice of proposed construction or alteration submitted to the Federal Aviation Administration to initiate the United State Department of Defense Military Aviation and instillation assurance siting clearinghouse’s approval process.

House Bill 452: Relating to utilities: amending the renewable energy act to clarify calculation of renewable portfolio standards.

TECHNICAL ISSUES

Section 2 reads:

“The provisions of this act apply to renewable energy projects that have not received final approval *on the date* the rules promulgated pursuant to Section 1 of this act take effect.”

Read literally, this could be construed to mean that projects approved before the date of rule promulgation are subject to the Act – i.e., only approvals that exactly coincide with the date of rule promulgation would be excluded. Although this would be an unreasonable reading, it may be clearer to provide that:

“The provisions of this act apply to renewable energy projects that have not received final approval *prior to* the date the rules promulgated pursuant to Section 1 of this act take effect.”

OTHER SUBSTANTIVE ISSUES

None noted

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A