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DRAFT FISCAL IMPACT REPORT

ORIGINAL DATE 03/15/09
SPONSOR SFC **LAST UPDATED** 03/16/09 **HB**

SHORT TITLE Renewable Energy Transmission Project Bonds **SB** CS/35/aSFl#1

ANALYST White

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate but Significant*	Indeterminate but Significant*		

(Parenthesis ( ) Indicate Revenue Decreases)

*See Narrative

Duplicates HB 563/SCORCS

SOURCES OF INFORMATION
LFC Files
Renewable Energy Transmission Authority (RETA)

Responses Received From (In Response to the Original Bill)
Renewable Energy Transmission Authority (RETA)
Energy, Minerals, and Natural Resources Department (EMNRD)
Environment Department (NMED)
State Investment Council (SIC)
Higher Education Department (NMHED)
New Mexico Finance Authority (NMFA)
State Treasurer's Office (STO)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Senate Floor Amendment #1

Senate Floor Amendment number one to SFC Substitute for Senate Bill 35 requires the State Board of Finance (BOF) to review any proposed bond issuances by the Renewable Energy Transmission Authority (RETA). As part of its review, BOF must determine if "any fee payable to a third party in connection with issuance of the bonds is reasonable and whether the income stream necessary to retire the bonds is adequate." Pursuant to the amendment RETA would no longer be able to issue bonds "without the express written authorization" of BOF.

Synopsis of SFC Substitute

Senate Finance Committee Substitute for Senate Bill 35 amends various sections of the New Mexico Finance Authority (NMFA) Act allowing NMFA to issue bonds on behalf of the New Mexico Renewable Energy Transmission Authority (RETA). NMFA would also be permitted to purchase RETA bonds through the Public Project Revolving Fund (PPRF).

The proposed legislation amends the New Mexico Renewable Energy Transmission Act allowing RETA bonds to be issued "above, below, or at par" increasing their marketability. RETA's bonds would also no longer be payable "solely" from the renewable energy transmission bonding fund, but could also be paid from "other sources as the authority may designate." The substitute allows RETA to move both its bond fund and operating fund from the State Treasurer's Office (STO) and maintain them internally in addition to creating specific authorization for the State Investment Council (SIC) and STO to purchase RETA bonds.

The substitute also would increase RETA board membership from seven to nine members by adding the Commissioner of Public Lands as a full board member, and re-classifying the Secretary of the Energy Mineral and Natural Resources Department (EMNRD) as a full voting member as opposed to an advisory member. RETA would also be required under the proposed legislation to "appear before state and federal regulatory commissions to advise against proposed action that could reduce renewable energy contracted by an eligible facility," and to "deem the development of renewable energy resources in New Mexico to be a priority."

FISCAL IMPLICATIONS

Allowing NMFA to issue bonds on RETA's behalf is a cost effective measure because it does not necessitate the need to recreate complex bond expertise, already present at NMFA, within RETA. The SFC substitute would also save money by allowing RETA to issue its bonds "above, below, or at par" which should increase their marketability and possibly decrease debt service costs. However, RETA was originally created to issue bonds for renewable energy transmission lines. If RETA is going to have NMFA issue bonds on its behalf, then it would seem redundant for RETA to remain a quasi-governmental agency outside of direct legislative budgetary oversight. NMFA would charge a one and a half percent fee on principle to issue bonds on RETA's behalf. Given RETA's current budget, which is funded through appropriations to the Energy Mineral and Natural Resources Department (EMNRD), it may be difficult for them to cover this fee.

The substitute allows for the Renewable Transmission Bonding Fund and the Renewable Energy Transmission Authority Operational Fund to be moved from the State Treasurer's Office (STO) to within RETA itself. This issue arises from difficulties experienced by RETA, STO, and the Department of Finance and Administration (DFA) due to the fact that RETA is not officially a state agency and therefore has no access to the SHARE system. However, if RETA were to issue bonds, significantly increasing the balance of its bonding fund, custodial fees charged by a private bank to hold these funds would have a significant impact on RETA's budget. RETA has not demonstrated any appreciation of how large these costs could be, or how they plan on budgeting for the increased costs. If this legislation were enacted, RETA would most likely need substantial appropriations throughout future budget cycles in order to meet these increased operating costs. Without a recurring revenue stream within RETA, similar to the GGRT revenues available to NMFA, these appropriations could end up becoming recurring costs to the general fund. RETA has already requested a $600,000 special appropriation be made in addition to its normal $250,000 appropriation to EMNRD for the purposes of funding operational expenses for FY10. Although this special appropriation is included in House Bill 2 which has already passed the house, LFC recommended against including it in the FY10 budget.

A more fiscally responsible alternative to this legislation could be for RETA to become part of EMNRD and then authorize EMNRD to issue these bonds through NMFA. EMNRD has already issued bonds in the past for state parks, and has a governmental gross receipts tax (GGRT) stream at its disposal. This revenue stream, in conjunction with the current purchase power agreement (PPA) between Arizona Public Service Company (APS) and the High Lonesome Wind Ranch, would most likely achieve a higher bond rating and thus lower interest costs to the state. If EMNRD were to issue these bonds through NMFA, the current problem with the State Treasurer's Office (STO) could also be avoided. RETA is currently having problems maintaining its own funds through STO because it is not technically a state agency and therefore cannot access the SHARE system. By allowing RETA to issue the bonds as an official part of EMNRD, they would be able to maintain the bonding fund through STO within the tax-exempt Bond Proceeds Investment Pool (BPIP) at a much lower cost than RETA would otherwise be able to obtain at a private custodial bank.

The SFC substitute also has a potential fiscal impact on the State Investment Council (SIC) and STO by specifically allowing them to purchase RETA bonds. The potential impact arises because of the unique nature of the bonds' underlying assets. Because the transmission projects, which will be the underlying assets, are of such a unique nature SIC and STO may be forced to seek additional advisors with the specialized knowledge necessary to value these projects. SIC expects the additional costs associated with these investments to be "approximately $70,000 per investment in due diligence related expenses to assess the viability of specific renewable energy bond projects." SIC and STO would have to incur these expenses whether or not they ultimately decide to invest in the bonds, as the costs are part of the due diligence review process.

SIGNIFICANT ISSUES

This legislation was originally intended to be a stepping stone for RETA to become a self-sustaining entity similar to NMFA. However even if RETA does plan to issue bonds on its own after a short market acclimation period issuing through NMFA, RETA will still not be able to become self-sustaining without some type of recurring revenue stream. If a recurring revenue stream cannot be found, RETA will need to be continuously funded through general fund appropriations to EMRND with very little if any budgetary oversight. If this scenario holds true and RETA necessitates continuous general fund financing, it would seem more fiscally responsible to reclassify RETA as a state agency or part of an existing state agency to ensure an appropriate amount of budgetary general fund oversight.

RETA's bonds are expected to be secured by a 30 year purchase power agreement (PPA) with Arizona Public Service Company (APS). The agreement stipulates that APS is obligated to purchase power generated from the High Lonesome Wind Ranch facility, south of Willard, NM, for the life of the agreement. PPAs are used to secure bond financing for utility projects all over the country, however given the current economic environment counterparty risk (the risk that a contractual counterparty will default) is a genuine concern. It is currently unknown what the cost to APS would be to terminate the PPA, however if they were to terminate the contract the bonds issued by RETA would most likely go into default. Also the PPA, as it was provided to the LFC, is an agreement between the Arizona Public Service Company (APS) and High Lonesome Wind Ranch LLC, not RETA. RETA has never issued any bonds before, and therefore would most likely receive a low rating from ratings agencies necessitating them to pay high interest payments. If the bonds were to be privately placed, with the SIC for example, RETA would still most likely be required to pay a market rate of interest also resulting in high interest payments. It is currently unknown whether or not the current PPA will provide a substantial enough revenue stream to support such high interest costs.

By allowing RETA bonds to be capitalized by the PPRF they would take away, although marginally at first, from existing PPRF capacity. The RETA bonds would then be indirectly secured by governmental gross receipts taxes (GGRT), which are currently the main revenue stream securing PPRF bonds. Increasing the amount of debt secured by this revenue stream has the potential to be looked upon negatively by bond rating companies and could result higher debt service costs to the PPRF. These costs would have to be at least in part passed through to local governments and municipalities who rely on PPRF loans for a variety of public infrastructure needs. To date, NMFA has issued 35 separate PPRF bonds totaling $1.4 billion in proceeds used for below market rate loans to various local governments and municipalities.

ADMINISTRATIVE IMPLICATIONS

The Senate Finance Committee substitute increases the number of RETA board members from seven to nine. The amendment makes the Secretary of EMNRD a full voting member of the board as opposed to their current position as an advisory member, and adds the State Commissioner of Public Lands as a full member. The Land Commissioner is added to the board due to the fact that many potential transmission projects would occur on state trust land.

TECHNICAL ISSUES

State Investment Council (SIC):

> "For the SIC, locally targeted Investments, which would seem to be an appropriate description for renewable energy bonds and the resulting projects of this nature, have always been limited to investment from only the Severance Tax Permanent Fund (i.e. Small Business Investment Corporation Investments, New Mexico Private Equity, New Mexico Film Investments, differential rate investments, etc.). SB 35 would potentially open the door to making renewable energy bond investments from any of its assets under management, including the Land Grant Permanent Fund, Tobacco and Water funds, and potentially, as drafted, the client investments the SIC manages for New Mexico cities, counties and political subdivisions."

Because of the potential precedent created by the existing language in the substitute, it may be prudent to amend the bill to only allow purchases of RETA bonds through the Severance Tax Permanent Fund (STPF). This would make the bill more consistent with current New Mexico statutes as well as SIC investment policies.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill were not enacted RETA would not be able to issue bonds through NMFA. Not enacting this bill would also prevent RETA from moving its funds from STO and holding them internally with a custodial bank and would prevent specific authorization for the SIC and STO to purchase RETA bonds from being enacted. All of the aforementioned consequences would ultimately result in RETA being unable to proceed with bond financing of renewable energy transmission lines for the foreseeable future, unless an alternative scenario can be enacted.

POSSIBLE QUESTIONS

Would it be more fiscally responsible to include RETA as a part of EMNRD, and then allow for EMNRD to issue bonds through NMFA?

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