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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/12  
 LAST UPDATED 02/07/12    **HB** \_\_\_\_\_

SPONSOR Griego, P.

SHORT TITLE Expedite Energy Transmission Line Siting    **SB** 199

ANALYST Lucero

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Economic Development Department (EDD)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 199 amends Section 62-9-3 NMSA 1978, of the Public Utility Act, to allow an electric transmission company, not otherwise under the jurisdiction of the Public Regulation Commission (PRC), to apply to the PRC for an expedited siting certificate to develop transmission facilities.

The bill specifies that a person that files an application for approval of a transmission line of 230 kilovolts or more, which has been approved by a regional transmission organization (RTO) or other transmission planning coordinator, shall have a final order from the PRC regarding the application within 180 days of filing. A failure by the PRC to act on the application within the specified timeframe would deem the application approved.

The PRC can approve the application even if the applicant may have received disapproval from a county, municipal agency, board, or commission. The judgment of the PRC shall be conclusive on all questions of siting, land use, aesthetics, and any other state or local requirements affecting the siting.

### FISCAL IMPLICATIONS

See administrative implications below.

## **SIGNIFICANT ISSUES**

This bill would allow transmission line construction to be expedited. The expedited process applies to electric transmission companies not under PRC jurisdiction and PRC-regulated utilities. Most likely, the bill would apply to projects that would construct multi-state interstate transmission lines.

This bill will allow transmission projects to override local zoning and other local rules, once PRC approval has been received. This may accelerate some transmission projects, but may also potentially upset local residents.

In addition to potentially overriding local zoning and other rules, electric utilities regulated by the PRC have eminent domain authority pursuant to Section 62-1-4 NMSA 1978, and that statute includes a reference to Section 62-9-3 NMSA 1978, which this bill amends. This bill may act to extend eminent domain authority to non-PRC regulated electric transmission companies.

The bill requires that the transmission line be approved by a Regional Transmission Organization (RTO) or other transmission planning coordinator in order to qualify for the expedited process.

The bill specifies that should the PRC fail to issue an order within 180 days the application warrants approval.

## **PERFORMANCE IMPLICATIONS**

The New Mexico Environment Department (NMED) can take credit for pollutants averted through renewable energy production in state implementation plans required pursuant to the Clean Air Act. To the extent that increased renewable energy production and energy efficiency programs decrease the need for energy production from fossil fuels, resulting in reduced greenhouse gas and ozone precursor (nitrogen oxide and volatile organic compound) emissions. This could result in fewer requirements for other sources of these emissions in potential nonattainment areas.

The PRC notes that the accelerated pace for approval of these applications could delay action on other matters pending before the Commission. Inasmuch as transmission planning is a lengthy process, some form of pre-filing review would be extremely helpful to meet these short deadlines.

## **ADMINISTRATIVE IMPLICATIONS**

To the extent that bill requires an expedited process; there is no provision for additional funding to support increased administrative costs at the PRC. It is expected that there may not be a significant number of applications for expedited transmission line siting. It is expected that there may not be a significant number of applications for expedited transmission line siting; on the other hand, some of these projects may be quite large, expensive and complicated, with no clear standards for evaluation. Litigation could ensue.

## **TECHNICAL ISSUES**

According to an article “The Trojan Horse of Electric Power Transmission Line Siting Authority” published by the Lewis and Clark Law School’s online Environmental Law journal,

“(e)ven where nonutilities can submit an application to build a transmission line, many states do not extend the power of eminent domain to nonutilities. For example, in Colorado only utilities are expressly granted the ability to exercise condemnation rights; New Mexico similarly permits only public utilities to exercise eminent domain powers; and in Wyoming only utilities that have obtained a certificate of convenience and necessity, or "CPCN," may use condemnation”

[http://www.elawreview.org/elaw/394/the\\_trojan\\_horse\\_of\\_electric\\_p.html](http://www.elawreview.org/elaw/394/the_trojan_horse_of_electric_p.html)

The bill may be problematic because it potentially grants private non-PRC regulated electric transmission companies the benefit of using eminent domain to obtain an expedited transmission line without the typical regulation, oversight, established process, and public input. Typically in order to exercise eminent domain, a utility must demonstrate a public need or purpose, “a benefit for the greater good,” and consideration of environmental impacts a transmission line may have.

### **OTHER SUBSTANTIVE ISSUES**

In 2004, the Legislature passed the Renewable Energy Act, which requires a certain percentage of a utility’s power to come from renewable energy sources. New Mexico's renewable portfolio standard (RPS) started in 2005 when public utilities were required to derive 5 percent of total retail sales from renewable energy. The target increases gradually to 20 percent by 2020.

In addition to RPS targets, beginning in 2011, each public utility’s renewable energy mix must be fully diversified. At the RPS targeted level, utilities must diversify the portfolio so that at least 20 percent comes from wind resources, 20 percent comes from solar resources, 10 percent comes from other resources, and 1.5 percent from distributed generation resources (increasing to 3 percent by 2015).

However, in addition to increasing the use of renewable energy within the state to offset traditional non-renewable/fossil fuel sources, the state is also uniquely poised to be a leader in exportable renewable energy. Historically, New Mexico’s transmission system was developed to transmit electricity short distances, from generating plants to consumers. In-state utility companies focused on meeting in-state load (customer demand for electricity) in a cost-effective manner, as opposed to developing “merchant” renewable energy projects for exporting power out-of-state.

Renewable energy is generally transported great distances from solar collecting fields and wind farms to consumers residing elsewhere. New Mexico doesn’t currently have the transmission grid to interconnect all proposed renewable energy projects in the state.

However, the need to modernize the approach to transmission line development must be balanced with local community concerns, zoning, and authority.

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