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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/21

SPONSOR Small LAST UPDATED _____ HB 137

SHORT TITLE Clean Electrification Act SB _____

ANALYST Martinez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	\$10,000.0	\$14,000.0	Recurring	Air Quality Permit Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Energy Minerals and Natural Resources	\$63.0	\$415.0	\$250.0	\$728.0	Recurring	Air Quality Permit Fund
Public Regulation Commission		\$309.4	\$309.4	\$619.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

Energy Minerals and Natural Resources Department (EMNRD)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 137 (HB137) enacts a new section of the Public Utility Act (PUA), NMSA 1978, Chapter 62, Sections 1 through 8, referred to as the Clean Electrification Act (CEA). The bill requires electric investor-owned utilities (IOUs) and rural electric cooperatives (co-ops) to file

biennial plans for implementing beneficial and low-income electrification projects for which it rewards IOUs with a one-hundred basis point higher return-on-equity for investments in those projects. The bill inserts specific definitions in Section 2 of Chapter 62, such as base period emissions, beneficial and low-income electrification, dedicated generation, clean electricity credits, compliance period, market development, New Mexico load and purchased power emissions rate.

The bill also creates a carbon dioxide emissions reduction program for IOUs, co-ops and municipal electric utilities (MEUs) along with milestones, deadlines and compliance procedures. Additionally, the bill creates clean electricity credits and allowances along with an emissions banking and trading program, establishes carbon dioxide emissions fees, variances and penalties for noncompliance.

Finally, the bill amends the state air quality permit fund language in NMSA 1978, 74-2-15 to authorize a one-dollar per metric ton of base period carbon dioxide emissions fee to be collected and deposited in that fund to cover the program costs of regulating carbon dioxide air pollution that are incurred by the Environment Department.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

HB 137 does not contain an appropriation.

HB137 will have a substantial impact on the revenue and the operating budget of the New Mexico Environment Department (see below).

There is no fiscal impact on the Energy, Minerals and Natural Resources Department (EMNRD).

HB137 will have a substantial impact on the operating budget of the Public Regulation Commission (see below). The PRC is currently understaffed for the amount of statutory requirements of recent years, such as the Energy Transition Act, passed during the 2019 regular session. The PRC has also experienced hiring freezes mandated by the State Personnel Office during Covid-19, delaying critical hires that are needed for statutorily required mandates.

The Public Regulation Commission provided the following:

HB137 carries no appropriation for the Commission. However, as detailed in the “Significant Issues” section, the bill significantly increases the workload of the Commission. The increased Staff workload requires, at a minimum, one Utility Engineer (Engineer Professional I, Pay Band EF), one Staff Attorney (Attorney III, Pay band LH) and one Utility Economist (pay band 80). At a mid-point salary estimate, including fixed GSD and DoIT costs, the three (3) new positions would have annual recurring fiscal implication of \$309,351 for the Commission. The three (3) new Full Time Equivalent (FTEs) positions would have to be created by a general fund appropriation by the legislature since the Commission does not have a special revenue fund to cover these proposed expenditures.

The New Mexico Environment Department provided the following:

For implementation and ongoing administration of HB137, NMED would incur an annual administrative cost of \$250 thousand for one full-time economist and for contracting specialized technical assistance. Additionally, NMED would require nonrecurring staff and contractual resources to develop and promulgate the implementing regulations for the program: estimated as a half-time attorney for FY22 (\$65 thousand) plus the costs of outreach, hearing preparation, and rulemaking (\$100); for a total of \$165 thousand. NMED would incur the administrative expenses during Q4 of FY21, and the first three quarters of FY22, before any revenue will be available.

By FY23, HB137 would generate revenue sufficient to cover NMED's administrative expenses. In Q1 and Q2 of 2022, HB137 proposes that utilities pay a one-time fee to NMED to establish their base period emissions. Based on current emissions inventory of the utility sector NMED estimates that base period emissions will generate approximately \$10 million dollars in FY22.

Furthermore, pursuant to HB137, NMED would collect from each electric utility an annual fee measured by how clean their generation portfolio operates. NMED estimates that the CEC fees will generate about \$14 million dollars in revenue annually which is due by Q3 of the following year. The fees will increase annually, as clean energy turnover expands and electric utilities serve additional loads. However, the revenue would decrease slightly if cooperatives electrify at least 100 households per year, in which case their credit fee is waived.

SIGNIFICANT ISSUES

The Public Regulation Commission provided the following:

HB137 promulgates clean energy requirements for IOU's and MEUs by establishing an initial, 2022 carbon dioxide emissions cap of ninety-two percent of base period emissions, which is defined as the average annual emissions in metric tons from its dedicated generation for calendar years 2018 to 2020. Subsequently thereafter, each IOU or MEU is required to reduce carbon dioxide emissions annually by an additional four percent of its base period emissions until January 1, 2045. Each co-op is limited to its base period emissions in 2022 and ninety-six percent of the base period emissions in 2023. Subsequently thereafter, each co-op is required to reduce carbon dioxide emissions annually by an additional four percent per year of its base period emissions until January 1, 2039, following which each co-op will have to reduce carbon dioxide emissions annually by three percent of its base period emissions until January 1, 2050.

A program that regulates carbon dioxide emissions, including reduction targets, credit banking and trading, fees, variances and noncompliance penalties, is historically within the powers and jurisdiction of the Environmental Improvement Board ("EIB") or Local Board; therefore, the bill unsuitably enacts emissions program elements into the Public Utility Act, Chapter 62, NMSA 1978. Pursuant to Section 62-6-4.A NMSA 1978, the powers and jurisdiction of the Commission are generally defined as the regulation and supervision of utilities in respect to its rates and service regulations and in respect to its securities.

This is consistent with the declaration of policy set forth in Section 62-3-1.B NMSA 1978, that “ the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.”

Beyond the Commission’s historical lack of a mandate to regulate a carbon dioxide emissions reduction program, Commission Staff lacks the resources, including computer software, and the expertise to estimate, track, monitor and review emissions information and application submittals by utilities and co-ops and make compliance determinations on the subject.

Therefore, the program elements would be more appropriately enacted in Chapter 74, NMSA 1978 as they lie within the powers and jurisdiction of the EIB. Accordingly, Subsections A, C, H, I, L, M, N of Section 2, and Sections 3, 5, 6, 7 and 8 should be moved from Chapter 62 NMSA 1978 of the Public Utility Act and appropriately enacted in NMSA 1978 Section 74-2-5, Duties and Powers of the Environmental Improvement Board—Local Board.

Section 4.B requires the Commission to verify that projects qualifying for approval and rate recovery provide for improved utilization of electricity transmission and distribution or demonstrate carbon dioxide or methane emissions reductions to atmosphere during the project lifetime. Since Commission Staff does not have the resources, including computer software, or expertise to estimate, track and monitor project emissions of carbon dioxide or methane, or to evaluate carbon footprints during a projects’ lifetime, this will be difficult and overly burdensome for Staff.

Section 4.C allows IOU projects providing electricity to low-income and indigenous households without electricity an additional one hundred basis point (one percent) Return on Equity (“ROE”). While Staff recognizes that the bill seeks to incentivize low income and indigenous household electrification, this approach is not the best tool to achieve this since it has ramification for tradition utility ratemaking principles. In determining a fair, just and reasonable ROE for an IOU, Staff evaluates a comparable peer/proxy group of publicly traded utilities, running industry standard Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) using data derived from the peer/proxy group to arrive at an estimated ROE, which is one element (sometimes the most critical one) in determining the revenue requirement of an IOU. The revenue requirement is the amount of money an IOU must make to cover costs and make a reasonable profit. Having separate ROEs for individual assets within a utility rate base is contrary to traditional ratemaking and utility regulatory principles. It also presents logistical problems in determining the appropriate ROE for a utility.

Further, given the IOU’s obligation to serve every customer in its service territory, the Commission currently has sufficient authority to address the existence of “low-income and indigenous households without electricity service” located within each IOU’s service territory. The necessity to provide an incentive to IOUs to address this matter as provided for in Section 4.C is therefore unclear.

HB137 results in a significant increase in workload for the Commission. First, it requires the Commission to determine which IOUs or co-ops are in compliance with the CEA. Those in compliance are allowed to propose beneficial and low income electrification projects. Second, the Commission will have to conduct rulemaking that establishes criteria for projects that meet the various complex definitions in the bill, which in turn may have to be amended periodically to incorporate emerging technologies or techniques.

For example, the definitions of “dedicated generation” and “New Mexico load” in Sections 2.G and 2.L, respectively, require complex calculations which would be time consuming and could create costly and lengthy Commission proceedings. This is further complicated by the fact that pursuant to Section 4.B Commission has to verify that projects qualifying for approval and rate recovery must provide for improved utilization of electricity transmission and distribution or demonstrate carbon dioxide or methane emissions reductions whose review would require significant amount of Staff time, expertise and effort and would be unduly burdensome.

Third, the Commission will have to conduct reasonableness and prudence reviews of associated project costs to determine the amounts that can be recovered through base rates or a tariff rider and also to determine whether or not the IOU qualifies for an additional ROE of one percent. Towards this end, an ROE calculation for the IOU will have to be reviewed each time for each such proposed project. Staff is not sure whether it is even possible to calculate a project-specific ROE.

Finally, beginning July 1, 2022, the bill requires each IOU and cooperative to file: i) a plan to undertake beneficial and low-income electrification projects and ii) an application to develop projects pursuant to that plan. As New Mexico has three (3) IOUs and sixteen (16) co-ops, the Commission will receive approximately 19 application filings which will have to be reviewed, proposed projects evaluated and ranked, and testimony prepared by Staff as to the merits of each application. This involves significant time and effort by Staff and given current staffing levels will be overly burdensome. See Subsections A through D of Section 4.

The New Mexico Environment Department provided the following:

HB137 builds on the success of the ETA and prescribes reasonable and consistent progress in GHGe reductions. Under the ETA New Mexico’s utilities and rural electric cooperatives are required by law to serve their customers with CO2 emission free electricity by 2045 and 2050, respectively, and to make “reasonable and consistent progress” towards that requirement over time. How “reasonable and consistent progress” is achieved is not defined in the ETA. The Clean Electrification Act mandates specific emission reductions from these sources overtime such that there is a steady glide path to zero carbon electricity by 2045 and 2050. Achieving a steady decline in emissions rather than dramatic drop offs at the end of a compliance period may reduce overall emissions and lessen CO2 atmospheric loading.

NMED estimates GHGe reductions in the electricity sector alone of approximately 4 to 12 million MT between 2022 and 2050; this does not include reductions in other sectors as those fossil fuel emissions are replaced by cleaner and more renewable powered electricity.

Importantly, HB137 provides emission reductions not just from electricity generation, but also from the consumption of electricity by New Mexicans. A consumption-based approach controls emission from power plants outside New Mexico through the utilities and cooperatives responsible for those facilities. A consumption-based approach also provides a strong incentive for energy efficiency.

HB137 also incentivizes electric utilities to provide service in parts of New Mexico where service is currently lacking, including rural areas and other areas with significant numbers of low income and/or tribal households.

The Energy Minerals and Natural Resources Department provided the following:

Complements the Energy Transition Act (ETA)

NMSA 1978, §62-16-4 requires utilities and cooperatives to increase the percentage of retail sales from renewable and zero-carbon energy resources according to the following milestones:

Rural Electric Cooperatives
40% renewable portfolio by 2025 required
50% renewable portfolio by 2030 required
80% renewable portfolio target and target zero carbon by 2050

Public Utilities
40 % renewable portfolio by 2025 required
50% renewable portfolio by 2030 required
80% renewable portfolio by 2040 required
Zero carbon by 2045 required

At the same time, utilities and cooperatives were directed to make “reasonable and consistent progress” at reducing actual carbon dioxide emissions. HB137 attempts to define “reasonable and consistent” using a mass-based approach to emissions reductions. This approach would function simultaneous to the rate-based approach mandated by the ETA.

Avoided Emissions

HB137 could increase the rate of greenhouse gas emission reductions in New Mexico. Reducing greenhouse gas emissions is part of EMNRD’s mission to implement Governor Lujan Grisham’s Executive Order 2019-003, which requires New Mexico to reduce emissions by at least 45% below 2005 levels by 2030. There are three ways in which sections of HB137 could accelerate emissions mitigation:

Faster conversion to renewable resources.

Implementation of HB137 could result in utilities and co-operatives converting generation to renewable or zero-carbon sources more quickly. This is true to the extent that absent HB137’s linear reduction compliance requirements spelled out in HB137, Section 3.A, some utilities could continue operating more carbon-intensive generation up until compliance years. The credit, fee, and compliance structure proposed in HB137 would require utilities to shift to zero-carbon resources on a prescribed pathway.

Assurance that electric load growth, due to beneficial electrification or otherwise, would not increase electric sector emissions. HB137 uses a total mass of emissions, rather than a percentage of zero-carbon or renewable resources, to establish a trajectory for utilities to reduce electric sector emissions. This means that even if a utility’s total electric load grows, it must still meet the same carbon emissions reduction trajectory each year. In contrast, a renewable portfolio standard approach as taken in the existing ETA could result in utilities building new or extending use of existing fossil fuel generation to meet new load growth. Electrification of other sectors such as transportation is typical in states with climate goals similar to New Mexico; thus, while historical load growth has been minimal this could change as the work of New Mexico’s Climate Change Task Force to implement EO 2019-003 continues. The figures below illustrate the level of overall load and renewable energy growth in one scenario that a recent study estimates would ensure New Mexico meets the emissions targets set in EO 2019-003.¹

Incentives for beneficial electrification which will likely reduce overall greenhouse gas emissions relative to current emissions in other sectors. Section 4 of HB137 incentivizes electrification in several ways. It allows utilities to undertake programs and projects to incentivize electrification (Section 4.A), allows utilities to recover investments in beneficial and low-income electrification as defined in the bill (Section 4.B), specifies that electrification projects can earn credits for investor-owned utilities and waive credit fees for municipal and cooperative utilities meeting certain requirements (Section 4.C), and requires utilities and cooperatives to file plans for beneficial and low-income electrification projects as well as applications to develop projects in that plan. Per examples below, electrification can reduce overall greenhouse gas emissions even before electricity generation is 100 percent zero-carbon.

Interaction with other jurisdictions

There are two ways where HB137 could connect New Mexico electric sector emissions regulation with other jurisdictions. Section 5.C allows the Secretary of NMED to allow credits from other jurisdictions or sectors of the economy with similar emissions reduction requirements to be certified and used for compliance with HB137. This could lead to more flexibility and innovation in meeting compliance requirements while maintaining the desired emissions reduction trajectory. Section 7 specifies that if federal law or regulation requires a more ambitious emissions reduction schedule for New Mexico’s electric sector, HB137’s requirements would be updated to align with federal requirements.

Potential Impacts to Electric Consumers

HB137 allows for public utilities and cooperatives to recover fees associated with non-compliance (Section 6.G.) through a monthly tariff rider.

PERFORMANCE IMPLICATIONS

The New Mexico Environment Department provided the following:

¹ Sharad Bharadwaj et al., “New Mexico Greenhouse Gas (GHG) Emissions Inventory and Forecast” (Prepared for Center for the New Energy Economy at Colorado State University by Energy and Environmental Economics, Inc., October 27, 2020), <https://cnee.colostate.edu/repowering-western-economy/>.

NMED is responsible for administering and enforcing regulations promulgated by the Environmental Improvement Board (EIB) to improve air quality throughout New Mexico, as described in NMED’s “Performance Measure 4.2: Percent of days with good or moderate air quality index.” HB137 would predictably lower emissions from the generation of electricity, resulting in improved air quality and may increase the number of days with an air quality index of moderate or good. Better air quality improves the health of all New Mexicans; especially those who are most vulnerable including children, the elderly, and those with respiratory system diseases such as asthma and bronchitis.

NMED is one of the agencies responsible for implementing the Governor’s [Executive Order 2019-003 Addressing Climate Change and Energy Waste Prevention](#), which seeks to reduce statewide GHGe by 45 percent by 2030. In 2018, the electricity sector generated 11 percent of New Mexico’s emissions. By prescribing an emission reduction schedule, HB137 will help the state achieve its GHG emission reduction goal. New Mexico would also realize additional reductions in emission from HB 137 as homes, businesses and industry increase electrification and replace high carbon footprint energy sources with lower emission-generating electricity.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Environment Department provided the following:

To implement HB137, NMED would need to implement the following:

- develop and promulgate implementing regulations;
- develop the implementation methods and the market-mechanism;
- conduct workshops and meetings with regulated parties and stakeholders;
- respond to programmatic questions from regulated parties, stakeholders, and the public;
- set up and maintain a registration and reporting platform;
- provide annual reporting;
- approve compliance with the emission reduction schedule;
- validate and issue credits;
- validate alternative methods of compliance;
- collect and administer fees;
- develop and report on program metrics and progress;
- enforce non-compliance; and
- evolve regulatory and program needs.

The Public Regulation Commission provided the following:

This FIR reflects PRC’s technical staff’s analysis consistent with Commission policy, rules, and precedent, but does not reflect a position ratified by a vote of the full Commission.

TECHNICAL ISSUES

The Energy Minerals and Natural Resources Department provided the following:

The definitions section (Section 2.A, p. 2 lines 14-19) includes a note in the definition of base period emissions that dedicated generation “reduces methane emitted into the atmosphere in an amount equal to at least one-tenth of the metric tons of carbon dioxide that the generation emitted into the atmosphere shall be deemed to not emit any carbon dioxide.”

There is a very similar but not identical clause in Section 5.B.1 on p. 9 lines 16-20 which states, “dedicated generation shall be deemed to have zero emissions if its operation reduces metric tons of methane emitted into the atmosphere by an amount equal to no less than one-tenth of the metric tons of emissions from that generation.” These definitions appear duplicative.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Public Regulation Commission provided the following:

HB137 duplicates the goals of the Energy Transition Act (ETA), 2019 SB489, with an indirect and burdensome estimation, tracking, recordkeeping, monitoring, reporting and filing requirements for carbon dioxide emissions. A 100 percent carbon-free electricity requirement is more directly and effectively forced and achieved by the ETA.

The Energy Minerals and Natural Resources Department provided the following:

HB137 relates to SB67 in that both bills require utilities to transition to clean energy more aggressively than currently required by the renewable and clean energy portfolio standards in §62-16-4.

SB67 prescribes a technology-based approach for new and replacement generation whereas HB137 proposes requirements for consistent annual reductions in carbon dioxide emissions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico Environment Department provided the following:

If HB137 is not enacted, New Mexico would not benefit from fixed and predictable GHG emission reductions in the electricity sector. Utilities would not have additional incentive to invest in clean and renewable generation as more sectors of the State’s economy move towards electrification. Additionally, utilities would not be incented to provide service to tribal and low-income households, conserve electricity, and embrace electrification of homes, businesses, and industries.

The Energy Minerals and Natural Resources Department provided the following:

If HB137 is not passed, the ETA will remain the primary driver of emissions reductions in the electricity sector. Any concerns about utilities not making “reasonable and consistent progress” towards renewable and zero-carbon generation targets will remain the purview of the NMPRC. Utilities will not have additional incentive to pursue beneficial or low-income electrification.

The Public Regulation Commission provided the following:

Electric utilities and IOUs will continue to make reasonable progress and achieve the compliance deadlines and targets for Renewable Portfolio Standards (“RPS”) outlined the ETA and achieve the 100 percent carbon free generation in approximately 25 years. HB137 establishes a parallel and duplicate program, with complex emission estimation, tracking, monitoring, -recordkeeping, reporting requirements for IOUs, co-ops and Staff, when the ETA directly forces and achieves the same goal of a carbon free generation within approximately 30 years.

JM/rl/al/sb