F I S C A L I M P A C T R E P O R T

SPONSOR Soules **ORIGINAL DATE** 02/09/21 **LAST UPDATED** 02/23/21 **HB**

SHORT TITLE Ratepayer Relief Act **SB** 156/aSCONC

ANALYST Graeser/Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
		No fiscal impacts within budget period attributed to the abandonment of any natural gas or nuclear generating plants			Recurring	See FISCAL IMPACTS

Parenthesis ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$119.2	$476.7	$476.7	$1,072.6	Recurring	PRC operating – General Fund

Parenthesis ( ) indicate expenditure decreases.

PRC requests substantial additional resources in order to prepare to make decisions pursuant to the provisions of this bill as amended. PRC asserts it will need one Utility Accountant (range 80), one Utility Engineer (range EF), one Staff counsel (range LG), one Associate General Counsel (range LH) and one Hearing Examiner (range 90) at a mid-point estimate of $476,658 per year. LFC staff notes, however, that there may be no non-coal generating facility abandonments on the horizon.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Department of Environment (DOE)
Office of the Attorney General (OAG)
Economic Development Department (EDD)
Energy, Minerals and Natural Resources (EMNRD)

Responses Not Received From
Department of Workforce Solutions (WFS)

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 156 named "Ratepayer Relief Act" apply to non-coal generating facilities. SCONC also amends SB156 to strike the repeal of the Energy Transition Act (ETA) contained in the original bill.

SB156 as amended is functionally a different version of the ETA applicable to non-coal fired generation facilities scheduled for abandonment.

SB156 is broader than the ETA in the following ways:

- Its securitization language applies to all generating facilities which are not coal-fired, whereas the ETA's securitization language applies to coal-fired facilities only;
- It applies in general to rural electric cooperatives (coops), as well as investor-owned electric utilities (IOUs), whereas the ETA's language, aside from renewable energy generation standards, applies to IOUs only; and
- SB156 has no requirements or restrictions on the geographic placement of replacement generation capacity after the closure of a securitized facility, as opposed to the ETA's requirements and restrictions.

SB156 is narrower than the ETA in the following ways:

- It omits language in the ETA which is addressed to the needs of communities affected by coal plant closures (the energy transition Indian affairs fund, the energy transition economic development assistance fund, the energy transition displaced worker assistance fund; and the community advisory committee).

Synopsis of Original Bill

Senate Bill 156 repeals the Energy Transition Act (Laws 2019, Chapter 65 – Sections 62-18-1 through 62-18-23) and replaces it with the Ratepayer Relief Act (RRA). The RFA appears to restore decision-making authority to the Public Regulation Commission (PRC) and would apply to future retirements of utility generation facilities, such as the Four Corners Power Plant (coal fired) and possible investments in nuclear or natural gas facilities. It is possible the RRA could affect the application of the Energy Transition Act for the San Juan Generating Station (SJGS).

The Ratepayer Relief Act would allow the PRC to determine if any portion of the investment in a [non-coal] facility to be abandoned should be assigned to the company's investors/stockholders. Once determined, the PRC would be the approving authority for the issuance of securitization bonds. The ratepayers of the utility would be assessed a charge on their utility bill sufficient to retire the securitization bonds.

Unlike the ETA, this bill [as amended] does not require a transition to renewables on the part of the state's utilities. Also unlike the ETA, it does not require the utility to aid other governments or to provide jobs or facilities in the same area as the abandoned generating facility. This bill also repeals the ETA's emissions standard that would have prohibited the SJGS from generating coal-fired electricity.

By repealing the ETA, this bill would repeal the changes the ETA made to the state's renewable energy standards embedded in the Energy Transition Act. Additional other impacts are discussed in the section-by section analysis.
There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends (June 18, 2021).

FISCAL IMPLICATIONS

The fiscal impacts of this bill are largely unquantifiable. There are no planned abandonments of natural gas or nuclear generating facilities. It is unclear the extent to which the repeal of the ETA would interfere with the current abandonment process for SJGS, although this issue is discussed by the Office of the Attorney General in the TECHNICAL ISSUES section of this report. PRC issued a final order in April 2020 on the Public Service Company of New Mexico (PNM) request to abandon SJGS pursuant to the ETA. However, the ETA also required PNM to commit to replacement resources in the school district of the abandoned facility. PNM currently plans to file for approval of replacement resources in the first quarter of 2021. Such approvals may not be granted prior to the enactment of this bill. Since the filing would be in a manner consistent with the ETA's requirement, there is potential that the repeal of the ETA prior to receiving all necessary approvals could interfere with the process.

Since the closure of the Four Corner's Power Plant might not occur until 2030, which would be the next closure to invoke the ETA or this Ratepayer Relief Act (if passed), that closure/abandonment will not create any fiscal impacts in the budget periods through at least 2025. However, the repeal of the other features of the Energy Transition Act may create state and local impacts (*see discussion in Significant Issues*).

It is uncertain if the repeal of the ETA would cancel the requirement that replacement, renewal generation be located in the general area of the closures. Data obtained for analysis of the ETA included the following description of the losses from the SJGS and SJCC closures. By repealing the ETA, these losses would not be offset by the installation of generating capacity in the proximate area. This would create a revenue loss for the San Juan County but might result in positive revenue impacts to other areas that could host replacement renewable resources.

> **Local Impact of SJGS and SJCC Closures.** The closure of the power plant and coal mine would have a significant impact on the local communities and school districts. According to a 2019 study, closure of the San Juan mine and the SJGS would result a loss of about 450 jobs and create property tax losses for San Juan County ($3.2 million); Central Consolidated School District ($3.5 million); and San Juan Community College ($1.9 million).[1] The study indicates SJGS and the San Juan mine account for about 4.1 percent of San Juan County's property tax revenues, about 49 percent for the Central Consolidated School District, and about 11 percent for San Juan Community College.

The ETA did not specify what the SJGS coal plant, after abandonment, could be used for. It did place an air emissions limit of 1,100lbs of carbon dioxide per megawatt hour of electricity generated. This emission limit effectively ensured that the plant could not operate as a coal fired generation facility after 2023. Repealing the ETA could allow for various alternative uses for the

1 O'Donnell, K. January 2019. *Tax and Jobs Analysis of San Juan Generating Station Closure*. Retrievable from: https://www.nmvoices.org/wp-content/uploads/2019/01/San-Juan-Tax-Study-report.pdf

plant, which could potentially create state and local revenue from construction gross receipts taxes, ongoing taxes on operations and property taxes on the value of the reconstructed plant.

EDD notes the following fiscal issues:

> [This bill] eliminates the Energy Transition Act ("ETA") fund for the Department of Indian Affairs, the ETA fund for the Department of Workforce Solutions and the ETA fund for the Economic Development Department.

SIGNIFICANT ISSUES

See Attachment A for a complete rendering of PRC's analysis of the significant issues. See, too, Attachment B for a section-by-section analysis provided by the Office of the Attorney General.

A significant feature of this bill is the restoration of review and decision authority to the PRC. The ETA (Laws 2019, Chapter 65, SB489) session placed limitations on PRC's authority. Section 62-18-11.C of the ETA prevents PRC from requiring a utility to use securitization to finance abandonment costs. The PRC staff analysis of the ETA stated that because this mechanism is expected to carry a low interest rate resulting in savings to ratepayers, "the Commission's authority to issue a securitization financing order must be preserved." This bill implements this previous PRC recommendation.

PRC provides the following analysis of the significant trade-offs proposed in this bill [as amended]:

> SB156 [as amended] or the RRA seeks to provide an independent securitization financing mechanism which does not require any conditions unlike the "Energy Transition Act" or "ETA", Sections 62-18-1 through 62-19-23 NMSA 1978 (2019) which requires and links securitization financing to increases to the renewable portfolio standard and ultimately to a zero-carbon standard. Furthermore, unlike the ETA, the RRA does not link securitization financing to only abandonment of coal plants in New Mexico or to the types, amounts, locations of, or ownership of replacement power resources associated with the abandonment of a qualifying facility. Finally, by allowing Commission discretion over determination of the recovery amount to be securitized, the RRA does not predetermine the amount of undepreciated investment (aka "stranded costs") or other abandonment-related costs to be recovered by the utility from its ratepayers. However, the continued existence of Section 62-16-6 C would create a conflict with the goals of SB156 as amended because it prohibits the Commission from disallowing any recovery of undepreciated investments in a facility being replaced by one with less or zero carbon emissions.
>
> Since Commission authority and discretion is crucial, any securitization legislation must retain Commission authority to act in the public interest by balancing investor and ratepayer interests. Ratepayers would be obligated to repay these bonds for up to 25-30 years and the charges may be adjusted only for purposes of assuring repayment.

EMNRD adds significantly to the analysis:

> Adding SB156 as amended to the regulatory landscape for utilities, only two years after the ETA was signed into law, would cast doubt on the decisions made by utilities, independent power providers, investors, and ratepayers over the past two years. SB156 as amended lacks several important provisions contained within the ETA, including language on securitization,

rural electric cooperative authorities, and relief for displaced energy workers and their communities. This lack is likely to negatively impact planning and financial decisions currently being undertaken by utilities, such as PNM's 2020-2040 Integrated Resource Plan, filed at the PRC on January 29, 2021 – a plan which uses the targets enshrined in law by the ETA, and the methodologies for financial security and cost recovery authorized by the ETA, to achieve a completely carbon-free generation of electricity by 2040.[2]

Unlike the ETA, SB156 as amended does not limit securitization financing to coal-fired plant closures only, nor does it link securitization financing to any increase to the renewable portfolio standard or to a zero-carbon resource standard. Nor does SB156 as amended link securitization financing to the types, amounts, locations of, or ownership of replacement power resources in connection with the abandonment of a qualifying generating facility. Finally, SB156 as amended does not predetermine the amount of undepreciated investment (a.k.a. "stranded costs") or other abandonment-related costs to be recovered by the utility from its ratepayers. Combined, these provisions both broaden and weaken the authorities given in the ETA. Securitization could be requested for the closure of any generating facility – coal, gas, nuclear, renewable, etc. – in any location so long as it supplied power to a New Mexico utility. This provision would rule in securitization costs, which can be passed along to ratepayers, for facilities such as Palo Verde Nuclear Generating Station in Arizona. Securitization also would no longer be dependent on new generation being located in the communities where the closure occurred, damaging those communities' ability to retain a tax base; nor would it depend on the new generation being largely or entirely carbon neutral. Furthermore, securitization under SB156 as amended is not dependent on abandonment-related costs as is the ETA; instead, it is any amount that the PRC approves.

It is entirely possible that SB156 as amended would incentivize utilities to invest in natural gas-fired generating plants, knowing that such plants would likely become uneconomical within the next fifteen years, but assured that any stranded asset costs could be recouped via ratepayer expense. This incentivization is contrary to New Mexico's carbon-reduction goals for the electricity sector, as well as leaving consumers on the hook for short-term utility profits.

SB 156 as amended also places rural electric cooperatives under PRC jurisdiction for securitization, reading them into the Public Utility Act in a wider fashion than before.

Perhaps most significantly, SB 156 as amend does not, *contra* the ETA, provide any funding for frontline communities in the energy transition via securitization bonds; it does not center energy workers and their communities in the process of achieving a green energy economy.

LFC staff notes the primary issue here is the extent to which the ETA required 100 percent recovery of stranded costs, with little or no authority of the PRC to assign costs to the utility's shareholders. With 100 percent recovery of stranded costs, the principal utility in New Mexico agreed to a securitization procedure for that 100 percent recovery, with all the securitization bond costs to be borne by ratepayers. Other features of the ETA could increase ratepayer's costs, such as the requirement that replacement renewables be in proximate location to the abandon-

[2] https://www.pnmforwardtogether.com/assets/uploads/PNM-2020-IRP-EXECUTIVE-SUMMARY-NEW-COVER.pdf

ment. The $30 million transition fund would also have increased transition costs and would be borne by ratepayers.

SB156 [as amended] allows the PRC to disallow some of the stranded cost recovery for non-coal generating facility abandonments] but may require the utility to issue securitization bonds; PRC is granted authority to determine if the utility actions are prudent and the financing costs resulted in lowest overall costs. This would restore PRC's authority to balance the needs of ratepayers and utility company stockholders.

The following items that were included in the ETA are not included in the provisions of this bill and would thereby be repealed with the repeal of the ETA.

LFC reiterates four features included in the ETA that are not included in the provisions of the RRA.

(1) Changes to the Renewable Portfolio Standards. Prior to passage of the ETA, statute required renewable energy to supply 20 percent of New Mexico's electricity by 2020. The ETA increased the renewable energy requirement for all utilities and rural electric cooperatives to 40 percent by 2025 and 50 percent by 2030. For utilities, the ETA increased the renewable portfolio standards (RPS) to 80 percent by 2040 and required 100 percent zero carbon resources by 2045 after considering safety, reliability, and costs to customers. For rural electric cooperatives, the ETA required 100 percent zero carbon resources by 2050, composed of at least 80 percent renewable energy after considering safety, reliability, and costs to customers. This portion of the ETA repealed in this bill could be replaced by standalone legislation. If the ultimate costs are greater, there may have to be subsidized utility rates based on the ratepayer's ability to pay. Such a subsidy may or may not be within the authority of the PRC to grant.

(2) Although the ETA did not specify what the coal plant, after abandonment, may be used for, it places an air emissions limit of 1,100lbs of carbon dioxide per megawatt hour of electricity generated by 2023. This emission limit effectively ensured that the plant could not operate as a coal fired generation facility after 2023.

(3) The ETA provided assistance for displaced workers. DWS noted that workers displaced by an abandoned utility are eligible for unemployment insurance benefits, job search assistance, and job training through programs available through DWS. Any additional funding through the Energy Transition Displaced Worker Assistance Fund created by the ETA would increase availability of subsidies used to cover costs associated with career exploration, job readiness, job training for displaced workers in affected communities.

(4) The ETA established an apprenticeship program for the construction of new electric generation facility following a competitive solicitation issued after July 1, 2020. Subject to the availability of workers, projects that begin construction in 2020 to 2023 must employ apprentices equal to 10 percent of the workforce for this project. This increases to 17.5 percent for 2024 to 2025 and to 25 percent in 2026 and thereafter. The apprenticeship programs were required to have a diversity of participants.

The Department of Environment (NMED) describes the essential features of the act as follows:

Senate Bill 156 (SB156) creates the Rate Payer Relief Act: enabling a public utility to apply to the Public Regulation Commission (PRC) to abandon an electric generating facility

and at the same time, apply for a financing order to recover securitization costs. Under SB156, securitization costs are the undepreciated investment in the generating facility that are the financial obligation of the ratepayer, as well as other reasonable and prudent costs associated with the abandonment of the generating facility, including certain financing costs. Securitization costs do not include any monetary penalty, fine or forfeiture assessed against the utility by a government agency or court under a federal or state environmental statute, rule or regulation.

The PRC may require, on its own motion, the use of securitization bonds and thereby issue a financing order if 1) PRC determines that the abandonment should be granted; 2) the abandonment creates a stranded asset; and 3) the use of securitization bonds results in lower costs for the ratepayer, while allowing the utility to recover approved securitization costs.

Securitization bonds are corporate securities that are issued by a utility or assigned under a financial order; the proceeds of which are used to recover, finance or refinance PRC-approved securitization costs and financing costs.

The Energy, Minerals and Natural Resources Department (EMNRD), however, regards the provisions of this bill somewhat unwise:

SB 156 is broader than the Energy Transition Act (ETA) in the following ways:

- Its securitization language applies to all generating facilities, not just coal-fired facilities, whereas the ETA's securitization language applies to coal-fired facilities only;
- It applies in general to rural electric cooperatives (coops), as well as investor-owned electric utilities (IOUs), whereas the ETA's language, aside from renewable energy generation standards, applies to IOUs only; and
- It has no requirements on the geographic placement of replacement generation capacity after the closure of a securitized facility, in order to replace the tax base.

SB 156 is narrower than the ETA in the following ways:

- It omits language in the ETA which is addressed to the needs of communities affected by coal plant closures (the Energy Transition Indian Affairs Fund, the Energy Transition Economic Development Assistance Fund, the Energy Transition Displaced Worker Assistance Fund; and the Community Advisory Committee).

SB 156 repeals and replaces the Energy Transition Act with the Ratepayer Relief Act. EMNRD believes that such a repeal-and-replace is detrimental to New Mexico's utilities, ratepayers, environment, and frontline communities in the global energy transition. The ETA has, in the brief time since it was signed into law, been working as designed: utilities and rural electric coops are investing in clean energy generation, the state is providing important economic relief to communities impacted by current or future coal plant closures, and consumers are saving money on utility bills.

Repealing and replacing the ETA with SB 156, only two years after the ETA was signed into law, would cast doubt on the decisions made by utilities, independent power providers, investors, and ratepayers over the past two years. SB 156 lacks several important provisions contained within the ETA, including language on securitization, rural electric cooperative authorities, and relief for displaced energy workers and their communities. This lack is likely to negatively impact planning and financial decisions currently being undertaken by utilities, such as PNM's 2020-2040 Integrated Resource Plan, filed at the

PRC on January 29, 2021 – a plan which uses the targets enshrined in law by the ETA, and the methodologies for financial security and cost recovery authorized by the ETA, to achieve a completely carbon-free generation of electricity by 2040.[3]

Unlike the ETA, SB 156 does not limit securitization financing to coal-fired plant closures only, nor does it link securitization financing to any increase to the renewable portfolio standard or to a zero-carbon resource standard. Nor does SB156 link securitization financing to the types, amounts, locations of, or ownership of replacement power resources in connection with the abandonment of a qualifying generating facility. Finally, SB 156 does not predetermine the amount of undepreciated investment (a.k.a. "stranded costs") or other abandonment-related costs to be recovered by the utility from its ratepayers. Combined, these provisions both broaden and weaken the authorities given in the ETA. Securitization could be requested for the closure of any generating facility – coal, gas, nuclear, renewable, etc. – in any location so long as it supplied power to a New Mexico utility. This provision would rule in securitization costs, which can be passed along to ratepayers, for facilities such as Palo Verde Nuclear Generating Station in Arizona. Securitization also would no longer be dependent on new generation being located in the communities where the closure occurred, damaging those communities' ability to retain a tax base; nor would it depend on the new generation being largely or entirely carbon neutral. Furthermore, securitization under SB156 is not dependent on abandonment-related costs as it is the ETA; instead, it is any amount that the PRC approves.

SB156 also places rural electric cooperatives under PRC jurisdiction for securitization, reading them into the Public Utility Act in a wider fashion than before.

Perhaps most significantly, SB156's repeal of the ETA would remove funding for frontline communities to help weather the energy transition; defund and deauthorize the Energy Transition Indian Affairs Fund, the Energy Transition Economic Development Assistance Fund, the Energy Transition Displaced Worker Assistance Fund, and the Community Advisory Committee; and in general cease to center energy workers and their communities in the process of achieving a green energy economy.

Lastly, SB 156 does not contain the ETA's renewable portfolio standards or zero-carbon resource standards. These standards are the heart of what the ETA has accomplished in a short two years and form the core of utility and investor planning in the energy industry in New Mexico at present. Lacking them would produce profound regulatory and economic uncertainty.

PERFORMANCE IMPLICATIONS

LFC staff note that, if passed, SB156 could affect the ETA-based proceeding currently before the PRC. At present, the PRC is considering abandonment of PNM's share of the Four Corners Electric Generating Station. PNM owns approximately 200 megawatts (MW) of the 1,540 MW facility. The PRC has already approved PNM's abandonment and securitization of the remaining two units at the San Juan Generating Station (847 MW), but the securitization bonds have not yet been issued. It is unclear how repealing and replacing the ETA, which SB156 would do, would

[3] https://www.pnmforwardtogether.com/assets/uploads/PNM-2020-IRP-EXECUTIVE-SUMMARY-NEW-COVER.pdf

affect potential investors' perception of the riskiness of those future bond issuances. Therefore, SB156 could jeopardize the ability of PNM to issue bonds at a low rate. If that is the case, SB156 would have a negative impact on PNM customers.

PRC notes the following performance issues:

Since SB156 does not limit the use of securitization financing to coal plants located in New Mexico, the financing mechanism of the bill could be used in connection with the abandonment of other types or locations of generating facilities (i.e., gas fired units) that are owned or controlled by various utilities subject to PRC jurisdiction. Furthermore, SB156 would allow the Commission to condition the recovery by the utility of a certain amount of stranded and other abandonment-related costs on the utility's use of securitization financing in order to mitigate customer rate impacts.

NMED has provided the following perspective on performance aspects of SB156 relative to the department's mission:

NMED is responsible for Legislative Finance Committee performance measure 4.2 "Percent of days with good or moderate air quality index." Better air quality improves the health of all New Mexicans; especially those who are most vulnerable: children, the elderly, and those with respiratory system diseases such as asthma and bronchitis. Utility abandonment of aging fossil-fueled generation may impact that performance measure by causing air quality to improve by the elimination of emissions from the older facility.

NMED is also 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 greenhouse gas emissions by 45% by 2030. Utility abandonment of aging fossil-fueled generation may also reduce statewide greenhouse gas emissions.

Utilities that abandon assets are often able to recover undepreciated costs with a full return on that unrecovered investment. A forced securitization by the PRC, as is authorized by SB 156, deprives a utility of a full return on its investment and could discourage utilities from seeking early retirement of aging fossil-fueled generation. Perpetuating the operation of these facilities could adversely impact air quality.

ADMINISTRATIVE IMPLICATIONS

The following is quoted from the PRC analysis:

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.

SB156 allows the commission to hire financial advisors and bond counsel "with substantial experience representing regulatory bodies in securitized, investor-owned electric utility ratepayer-backed bond financing." Their fees and expenses would be included as financing costs and assigned solely to the financing transaction and would therefore not be incurred by the State of New Mexico. Section 6(E). This provision would give the commission the expertise it needs to fulfill its "comprehensive due diligence obligation". Section 6(C).

Section 7 of SB156 leaves parties' full appeal rights under current law (30 days per Section 62-11-1 NMSA 1978 but shortens the time for rehearing from thirty (30) to ten (10) days). *See* Section 62-10-16 NMSA 1978. This would impose stringent time limits on PRC Staff. Additionally, the reconciliation required by Section 5(B)(9) and the periodic adjustment required by Section 5(B)(6) to guarantee timely repayment of securitization bonds would also impose additional tasks on PRC Staff.

Commission proceedings that will occur to conduct a review and filing of applications for financing orders and related applications for abandonment and securitization or to issue certificates of convenience and necessity for replacement power would require, at a minimum, one utility accountant (range 80), one utility engineer (range EF), one staff counsel (range LG), one associate general counsel (range LH) and one hearing Examiner (range 90) at a mid-point estimate of $476,658 per year. This includes fixed costs from GSD & DoIT. PRC does not have a special revenue fund to cover these proposed expenditures.

CONFLICT, DUPLICATION< COMPANIONSHIP, RELATIONSHIP

SB155 presents an alternative to the original bill. SB-155 retains many of the ancillary features of the ETA, including the renewable standard and the transition assistance funding, but restores authority to the PRC as proposed in this bill.

TECHNICAL ISSUES

There is some concern that the amendments to SB156 may have changed the purpose of the bill. Article IV, Section 15 of the Constitution of New Mexico follows:

Sec. 15. [Laws to be passed by bill; alteration of bill; enacting clause; printing and reading of bill.]
No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose. The enacting clause of all bills shall be: "Be it enacted by the legislature of the state of New Mexico." Any bill may originate in either house. No bill, except bills to provide for the public peace, health and safety, and the codification or revision of the laws, shall become a law unless it has been printed, and read three different times in each house, not more than two of which readings shall be on the same day, and the third of which shall be in full.

There has little, if any, litigation to explicate this requirement. However, a 1978 Attorney General's opinion indicates that this concern may be moot.

Purpose of section is solely to prohibit amendments not germane to subject of legislation expressed in the title of the act purported to be amended. 1978 Op. Attorney Gen. No. 78-04.

To avoid criticism of this bill, the committee might consider a substitute bill.

The Office of Attorney General provides the following:
Section 12(A) includes a supremacy clause, however, it must be noted that the United States Constitution's Supremacy Clause would trump the Ratepayer Relief Act, to the extent any Federal securities laws conflict with it.

Section 18 of SB156 attempts to bind future legislatures from making changes to the law that would affect any actions taken pursuant to the Ratepayer Relief Act. Although *ex post facto* laws are unconstitutional, not every retroactive law is per se unconstitutional. It is likely impossible and/or unconstitutional to tie the hands of future lawmakers in the manner that Section 18 attempts. Just as the legislature may pass SB156, it may repeal it at a later date, and such actions may have retroactive effects.

HB137 "Clean Electrification Act" Section 2(A) and SB83 "Local Choice Energy Act" Section 12(A) contain new material making reference to the Energy Transition Act, which the Ratepayer Relief Act proposed by SB156 would repeal.

SB155 "Energy Transmission Authority Changes" amends the Energy Transition Act, which would be repealed in-full by the Ratepayer Relief Act proposed by SB156.

Section 3(A), page 5, lines 23 through 25 are redundant. It is not necessary to state that a qualifying utility can do what it is already legally permitted to do.

Both Section 3 and Section 5 state conditions under which the Commission may issue a financing order. These pre-requirements should be contained in the same section.

Sections 12, 13, and 17 contain redundancies with respects to their statements of supremacy over conflicting laws.

Section 16 is unnecessary in that it states that the Commission has the authority to do what it already has the authority to do.

Section 3(D) of SB156 would provide procedures to deal with a pending abandonment application on the effective date of the Ratepayer Relief Act. There are two pending abandonment applications before the Commission currently: Case No. 20-00194-UT and 21-00017-UT; the former being unrelated to issues of securitization, and the latter being comprised of a financing order application. If SB 156 passes, then the legal basis for abandonment and financing as applied for in Case No. 21-00017-UT would cease to exist. Section 3(D) would allow the Commission to "consolidate the *requirement* for a financing order with the pending application for abandonment." The word "requirement" as it is used is ambiguous and would likely cause confusion, delay, and/or disruption in 21-00017-UT. Additionally, Section 3(D) does not capture the particular circumstances of 21-00017-UT, given that the case has pending applications for a financing order as well as abandonment, and Section 3(D) only refers to cases of pending abandonment applications. The relevance of Case No. 21-00017-UT is important because it is the only matter that could be affected by Section 3(D), and Section 3(D) would otherwise be meaningless without the existence of that pending docket.

Section 4(A) would create a 120-day period, or 4 months, for the Commission to take final action on an application for financing order. The current law surrounding financing orders allows the Commission 6 months to issue a final order, and it may extend that period by an additional 3 months. Given the process of administrative litigation at the Commission, 120 days is brief and would put timing pressure on the interested parties to litigate a traditional case: conduct discovery, prepare testimony or comments, and engage in a public hearing. It would also put timing pressure on the Commission to conduct a traditional litigation, such

as assigning a hearing examiner to prepare a recommended decision. These timing pressures would be amplified if the utility were to simultaneously request abandonment permission, as is allowed by SB156.

Section 62-18-22 of the Energy Transition Act attempts to bind future legislatures from making changes to the law that would affect any actions taken pursuant to the Energy Transition Act. To the extent that the Ratepayer Relief Act proposed by SB156 attempts to affect any actions taken pursuant to the Energy Transition Act, there may be a legal impediment and/or legal challenge from interested parties. The current statute is quoted below:

62-18-22. Validity on actions if act held invalid.
Effective on the date that energy transition bonds are first issued under the Energy Transition Act, if any provision of that act is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any action allowed pursuant to that act that is taken by the commission, a qualifying utility, an assignee or any other person, a collection agent, a financing party, a bondholder or a party to an ancillary agreement and, to prevent the impairment of energy transition bonds issued or authorized in a financing order issued pursuant to the Energy Transition Act, any such action shall remain in full force and effect with respect to all energy transition bonds issued or authorized in a financing order pursuant to the Energy Transition Act before the date that such provision is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

LG/DI/sb/al