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FISCAL IMPACT REPORT

SPONSOR <u>Hochman-Vigil</u>	LAST UPDATED <u>02/03/2023</u>
	ORIGINAL DATE <u>01/26/2023</u>
SHORT TITLE <u>Meteorological Tower Paint and Markings</u>	BILL NUMBER <u>House Bill 77/aHCEDC</u>
	ANALYST <u>Torres, J</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate but minimal	Indeterminate but minimal			

Parenteses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

State Land Office (SLO)
Homeland Security and Emergency Management Department (HSEMD)
New Mexico Department of Transportation (DOT)

SUMMARY

Synopsis of HCEDC amendment to House Bill 77

The House Commerce and Economic Development Committee amended Section 1(E)(c) of the new material as follows:

As used in this section, ‘meteorological evaluation tower’: (1) means a structure that: (a) stands more than fifty feet above the ground and less than two hundred feet above the ground; (b) has a base that is not more than six feet in diameter; and (c) carries meteorological measuring instruments such as thermometers and instruments to measure wind speed and may be associated with the development or study of wind-powered electric generation, commonly known as a ‘MET tower.’

This amendment clarifies that “meteorological evaluation tower” means a structure that includes: “meteorological measuring instruments such as thermometers and instruments to measure wind speed and may be associated with the development of wind powered electric generation, commonly known as a ‘MET tower.’” The amendment adds an important description to the function and purpose of the “Met tower.”

Synopsis of Original House Bill 77

This Bill establishes Department of Transportation (DOT) aviation standards for the painting and marking of meteorological evaluation towers (MET). Said towers are to be painted immediately upon installation with an odd number of equal/alternating orange and white bands. Orange will be painted at the top of each tower. Repainting is required when faded or deteriorated. If applicable, these towers will: display two 20 inch aviation orange spherical markers on each outer guy wire; display two high-visibility sleeves on each outer guy wire; and comply with county and municipal standards. The DOT aviation division will adopt rules to create a mandatory registry for all who own, operate, or erect said towers within the state. Failure to comply with this section is a misdemeanor. Towers constructed prior to July 1, 2023, will achieve compliance as of January 1, 2024.

A MET: stands at least 50 and less than 200 feet above ground; is no more than six feet wide; and is associated with the development or study of wind-powered electric generation. It does not include structures located in a residential curtilage (enclosure) or adjacent to a building, barn or electric utility substation.

The effective date of this bill is January 1, 2024.

FISCAL IMPLICATIONS

There is no appropriation for the implementation of House Bill 77a. DOT reports that the bill will have a “minimal fiscal impact” on that agency. No fiscal implications are indicated by either SLO or HSEMD.

SIGNIFICANT ISSUES

The New Mexico State Land Office (SLO) cites the following requirement as raising a significant issue: “Ownership, operation, or installation of a tower in violation of these requirements subjects the operator to a misdemeanor criminal penalty.” SLO states that: “Over the last four years, the agency has increased renewable energy revenue by 1,400 percent, more than tripled the number of active leases and grown the megawatts under lease by about 250 percent. There are currently 39 active long-term leases (27 wind, 12 solar) and 33 lease applications under review at the State Land Office.”

SLO is the landowner of wind energy leases, where MET tower improvements are considered the lessees’ non-movable personal property. By law, the Commissioner has a first lien on improvements in the event of default. SLO therefore recommends clarification that the landowner is not subject to criminal liability under the proposed bill.

PERFORMANCE IMPLICATIONS

DOT states that it will be required to promulgate rules as of the January 1, 2024 effective date. It will require administrative staff to create and oversee the MET registry. It has no enforcement authority regarding the misdemeanor criminal penalty and questions how it will be enforced.

ADMINISTRATIVE IMPLICATIONS

DOT states that its Aviation Division will need to allocate staff time for rulemaking and for creating and maintaining the MET registry.

TECHNICAL ISSUES

SLO raises the following technical issue: “On the one hand, the bill directs that newly installed towers (“upon installation”) are subject to the new requirements. On the other hand, the bill indicates that existing towers have until January 1, 2024 to come into compliance with the statute. Because the bill does not state that existing towers need to be painted or outfitted with the other safety features, the bill creates an unintended ambiguity about what steps would be required to bring an existing tower into compliance.”

DOT anticipates that it will be charged with the rulemaking responsibility prior to the bill’s January 1, 2024 effective date and with the MET registry creation and maintenance thereafter.

JT/rl/ne/al