

LFC Requester:

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 3/2/2025 *Check all that apply:*
Bill Number: HB 295 Original Correction
 Amendment Substitute

Sponsor: Representative Nathan P. Small **Agency Name and Code:** 39400 NM STO
Short Title: Tax on Property Owned by NM RETA **Number:** _____
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SECTION II: FISCAL IMPACT

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Indeterminate but negative overall because counties, school districts, special districts, hospitals, and the state will not receive property tax distributions nor PILT (Payment In Lieu of Taxes) payments for 30 years on each project.			Recurring negative revenue impact	Counties, school districts, hospitals, special districts, and the state

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
County Assessors	Additional staff training may be required to ensure accurate valuation of renewable energy improvements within the county and to track agreements to ensure all project developments with tax breaks have current valuations and are reported yearly to taxing entities within their counties as part of the GASB Statement 77 requirement.			Indeterminate	Recurring	Counties
Property Tax Division / State Assessed Bureau	Additional staff may be required to assess all transmission lines that cross county lines and to track agreements to ensure all project developments			Indeterminate	Recurring	State

	with property tax abatements have current valuations and are reported to taxing entities as part of the GASB Statement 77 requirement. The state's portion of the property tax is also abated which may require that the state's gross amount of tax abatements also be reported annually in the state's financial statements.			
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(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 112
Relates to HB 46

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 295 (HB 295) attempts to address what may be a contradiction in state statute between the New Mexico Renewable Energy Transmission Authority Act “RETA Act” that provides various tax benefits to Renewable Energy Transmission Authority’s “RETA” project partners and Section 7-36-4(A)(4) and (B)(1) that indicates that property with fractional interests with improvements on land owned by public entities and leased back to private entities are subject to property tax, assessed on the lessee. It also indicates that “improvements” include surface and subsurface structures, fixtures, transmission lines, pipelines, and other works. If enacted, HB 295 would exempt from property tax the improvements on property acquired by RETA under the RETA Act, such as transmission lines and interconnected storage facilities, for 30 years.

FISCAL IMPLICATIONS

If enacted, HB 295 would abate property taxes for 30 years, including the state’s debt service. This 30-year period mirrors a portion of the Industrial Revenue Bonds (IRB) Act which grants a 30-year property tax abatement; however, with an IRB, the project developer is required to negotiate with the county or municipality the amount of Payment in Lieu of Taxes (PILT) payments that will be paid to the county or municipality and to all school districts within the county.

Another difference between property tax abatement by HB 295 and property tax abatement through an IRB is that the IRB Act 3-32-6.2 Electric transmission projects; payments to the state requires that a person proposing an electric transmission facility project pursuant to Paragraph (2) of Subsection A of Section 3-32-5 NMSA 1978 shall pay the state annual payments equal to five percent of the total amount of in-lieu tax payments to be made in that calendar year by such person to counties, municipalities or other local entities authorized to levy taxes on property, including in-lieu tax payments made to school districts pursuant to Paragraph (2) of Subsection A of Section 3-32-6 NMSA 1978, and five percent of the value of any other consideration related to the project paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project. It continues to state that a copy of any agreement providing for such in-lieu tax payments shall be provided to the secretary of finance and administration within thirty days of written approval of such

agreement by all of the parties. Each annual payment to the state shall be made no later than the end of each fiscal year in which in-lieu tax payments are made to local taxing entities. Each payment shall be made to the department of finance and administration for deposit to the general fund. HB 295 does not require any payment to the state.

A project like this goes through multiple counties. A project developer stated that they entered into Community Benefit Agreements (CBA) with counties at \$20,000 per mile in-lieu of taxes. Payments are broken up across several years as the project is constructed until the full amount is paid. No further payments will be made to the counties. Currently, taxes are abated for school districts, too; however, the project developer has not stated that they offered CBAs to school districts.

For example, Torrance County's CBA stipulates that the county may only use funds for a list of what the project developer deems to be community benefits instead of allowing the governing body to determine the best use of the funds, like the governing body does with property tax payments and PILT payments. Also, the CBAs are not negotiable like the PILT payments, which is evidenced by the standard language of payment in the amount of \$20,000 per mile. Torrance County attempted to negotiate a higher amount and was told that if they did not accept the CBA as presented, they would get nothing because the project developer did not have to give them anything.

Pursuant to 3-32-6.2, due to the project developers' CBAs with counties, the project developer is required to provide copies of the CBAs to the secretary of finance and administration and to pay to the state five percent of the value of each CBA, since the CBA is a consideration related to the project paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project.

If this legislation is enacted, the project developer will have no incentive to execute CBAs with counties, and school districts if in fact they have CBAs with them, and the state could potentially also lose the five percent annual required payments into the general fund.

SIGNIFICANT ISSUES

The State Treasurer or designee is a statutorily required voting member on the RETA Board. The State Treasurer's Office voted against this piece of legislation when it came before the RETA Board.

The State Treasurer's Office (STO) is also concerned about the constitutionality of HB 295 for the reasons stated in other state agencies' analyses.

STO also has concerns that HB 295 does not align with all the committee-adopted tax policy principles:

1. **Adequacy:** Revenue should be adequate to fund needed government services.

STO's comment: Rural counties struggle with adequate funding to provide for basic public services such as Fire/EMS and public safety. If the property taxes are NOT abated, this revenue may help fund those and other county priorities and initiatives. School districts consistently advocate for additional funding to provide educational and student support services. If the property taxes are NOT abated, this revenue would also greatly benefit the

school districts. Since HB 295 does not require any type of payments to taxing entities that are adversely affected by the legislation, any payments made to these taxing entities by private project developers cannot be relied upon as recurring funds, making it difficult for governing bodies to plan for long-term, sustained continuity of services.

2. **Efficiency:** Tax base should be broad as possible and avoid excess reliance on one tax.

STO's comment: Currently, rural counties that receive PILT payments may rely on these payments to supplement their general fund to provide basic services to their residents. If more value is added to their property tax assessment, that will provide a more sustainable revenue source, not just for the counties, but also for the school districts.

3. **Equity:** Different taxpayers should be treated fairly.

STO's comment: Other renewable energy project developers, such as those that are developing wind farms or solar farms, or other types of economic developments such as Intel or Facebook, who obtained funding through the issuance of IRBs, must enter into negotiations for PILT payments. These types of developments also pay the state five percent of their PILT agreements. If HB 295 is enacted, it creates an inequity and economic advantage for those who enter into project partnership with RETA versus those who enter into project partnerships with counties or municipalities. RETA's public partners will not pay PILT payments nor the five percent of the PILT payment agreements to the state.

Other project developers or owners (taxpayers) who do not enter into agreements with RETA or who do not partner with counties or municipalities through the issuance of IRBs, must pay the full property taxes for their transmission lines, interconnected storage facilities and all related structures.

If IRBs are viewed by some as a mechanism that creates winners and losers as it relates to economic development projects in New Mexico, then HB 295, if enacted, will further broaden the distance between winners and losers.

4. **Simplicity:** Collection should be simple and easily understood.

STO's comment: Currently, there is no property tax collection for improvements on RETA owned projects. If HB 295 is enacted, it will clarify that no property taxes on these improvements will continue for 30 years, as long as RETA owns the project during that time.

5. **Accountability:** Preferences should be easy to monitor and evaluate.

STO's comment: If HB 295 is enacted, per GASB Statement 77, RETA will be required to provide their agreements to affected counties, school districts, and special districts whose property taxes are abated, as well as annually provide the gross amount of property taxes abated to each of these taxing entity, including the state, as it is required to be included in each taxing entity's financial statements as part of their annual audit. If any portion of this disclosure is confidential, then RETA shall cite the legal authority for the determination.

OTHER SUBSTANTIVE ISSUES

When the Legislature considers tax abatements, it generally considers the benefits to the state

in exchange for the abatement. The current major RETA project, SunZia, is for renewable energy development, specifically transmission lines and interconnected storage facilities. The business model for this project includes the export of 100% of the power generated to mainly California with a small portion to Arizona. New Mexico will not receive any of the power generated and transmitted by this project. The significant majority of workers on the SunZia project are from out of state, meaning that the majority of their salary is spent in another state, and their income tax on their earnings is paid to another state.

If HB 295 is enacted, RETA or the state will be subject to the requirements of the GASB Statement 77 which establishes financial reporting standards for tax abatement agreements entered into by state and local governments. RETA or the state will have to report or disclose the required information annually to all taxing entities affected by this legislation for the 30 years that property taxes are abated on the improvements on all RETA's current and future projects.

The disclosures required by this Statement encompass tax abatement resulting from both (a) agreements that are entered into by the reporting government and (b) agreements that are entered into by other governments and that reduce the reporting government's tax revenues.

Per GASB Statement 77, governments should disclose in the notes to financial statements the following information related to tax abatement agreements that they enter into:

- a. Brief descriptive information, including:
 - (1) Names, if applicable, and purposes of the tax abatement programs
 - (2) The specific taxes being abated
 - (3) The authority under which tax abatement agreements are entered into
 - (4) The criteria that make a recipient eligible to receive a tax abatement
 - (5) The mechanism by which the taxes are abated, including:
 - (a) How the tax abatement recipient's taxes are reduced, such as through a reduction of assessed value
 - (b) How the amount of the tax abatement is determined, such as a specific dollar amount or a specific percentage of taxes owed
 - (6) Provisions for recapturing abated taxes, if any, including the conditions under which abated taxes become eligible for recapture
 - (7) The types of commitments made by the recipients of the tax abatements.
- b. The gross dollar amount, on an accrual basis, by which the government's tax revenues were reduced during the reporting period as a result of tax abatement agreements.
- c. If amounts are received or are receivable from other governments in association with the forgone tax revenue:
 - (1) The names of the governments
 - (2) The authority under which the amounts were or will be paid
 - (3) The dollar amount received or receivable from other governments.
- d. If the government made commitments other than to reduce taxes as part of a tax abatement agreement, a description of:
 - (1) The types of commitments made
 - (2) The most significant individual commitments made. Information about a commitment other than to reduce taxes should be disclosed until the government has fulfilled the commitment.
- e. If tax abatement agreements are disclosed individually, a brief description of the quantitative threshold the government used to determine which agreements to disclose

individually.

f. If a government omits specific information required by this Statement because the information is legally prohibited from being disclosed, a description of the general nature of the tax abatement information omitted and the specific source of the legal prohibition.

Governments should disclose in the notes to financial statements the following information related to tax abatement agreements that are entered into by other governments and that reduce the reporting government's tax revenues:

- a. Brief descriptive information, including the names of the governments entering into the tax abatement agreement and the specific taxes being abated
- b. The gross dollar amount, on an accrual basis, by which the reporting government's tax revenues were reduced during the reporting period as a result of tax abatement agreements
- c. If amounts are received or are receivable from other governments in association with the forgone tax revenue:
 - (1) The names of the governments
 - (2) The authority under which the amounts were or will be paid
 - (3) The dollar amount received or receivable from other governments
- d. If tax abatement agreements are disclosed individually, a brief description of the quantitative threshold the reporting government used to determine which agreements to disclose individually
- e. If a government omits specific information required by this Statement because the information is legally prohibited from being disclosed, a description of the general nature of the tax abatement information omitted and the specific source of the legal prohibition.

Under RETA's longstanding interpretation of the state statute, that their projects, including improvements, are exempt from property taxes since RETA holds ownership of the project and as a state entity is not subject to taxation, the improvements on their projects would not be subject to the GASB Statement 77.

If HB 295 is enacted, the language makes it clear that the improvements on RETA owned property would have property taxes abated for 30 years. That would make these improvements subject to the GASB Statement 77. Since RETA or the state would be the government who is abating the property taxes, then RETA or the state would be required to disclose all the required information to the taxing entities that are affected which would include counties, school districts, special districts, hospitals, and the state.

The New Mexico State Auditor's Office 2024 Audit Rule states, "GASBS 77, tax abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination."

PTD assesses improvements that cross county lines, such as transmission lines. Currently,

PTD, State Assessed Bureau, issues a Notice of Value with a zero tax due for projects that meet the state-owned property tax exemption, which is the current practice for RETA's projects.

If HB 295 is enacted, PTD will be required to assess all RETA's project improvements that are leased to public entities and that cross county lines, because per GASB Statement 77, RETA or the state will be required to report the gross dollar amount, on an accrual basis, by which the reporting government's tax revenues were reduced during the reporting period as a result of tax abatement agreements. This report will be due annually to every taxing district that is affected including counties, school districts, special districts, hospitals, and the state.

If HB 295 is enacted, RETA or the state will be required to work closely with county assessors as the county assessors will be required to assess the other improvements on RETA's projects, such as interconnected storage facilities and all related structures, so that RETA or the state may report it to the affected taxing districts.

If HB 295 is enacted, the additional assessment and reporting requirements by PTD and county assessors may require additional staff in order to meet the September 15 reporting deadline annually.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently, RETA's project properties acquired under the RETA Act with fractional interests have been property tax exempt. If HB 295 is not enacted, current and future project properties acquired under the RETA Act, which created fractional interests, may require that improvements be subject to valuation for property taxation purposes in accordance with the provisions of NMSA 7-36-29 special method of valuation; property used for generation, transmission or distribution of electric power and energy. NMSA 7-36-2(C)(3)(h) makes the taxation and revenue department responsible and grants them the authority for the valuation of property subject to valuation for property taxation purposes when that property is (h) transmission line.

AMENDMENTS

Possible amendments for consideration:

1. Amend to include statutory requirement for the project developer to negotiate with counties for PILT payments to counties and school districts for the 30-year period to make it equitable with other developers' property tax abatements granted by state statute through the Industrial Revenue Bonds Act.
2. If HB 195 is found to be constitutional, then amend to include the property tax abatement will only be granted to projects that provide at least 50% of their renewable energy for use in New Mexico.