

LFC Requester: _____

AGENCY BILL ANALYSIS

SECTION I: GENERAL INFORMATION

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 2/18/2025
Bill No: HB 435

Sponsor: Rep. Matthew McQueen &
 Sen. Liz Stefanics
Short Title: Renewable Energy Facility
 Siting Rules

Agency Name and Code EMNRD 521
Number: _____
Person Writing Samantha Kao
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB435 creates a new section of Chapter 62 NMSA 1978 tasking the public regulation commission (PRC) with issuing permits for new renewable energy generation, storage and intrastate transmission systems five megawatts (MW) and greater. The PRC would be required to engage the rulemaking process to specify this new authority including:

1. Provision for input to the permitting process from political subdivisions of the state;
2. Process for evaluating the local impact of permitted facilities on the health, safety and community welfare where facilities are proposed; and
3. Consideration of scenic, cultural, archaeological and environmental impacts of facilities when issuing permits.

FISCAL IMPLICATIONS

None for EMNRD

SIGNIFICANT ISSUES

HB 435 compels the PRC to create and administer a new permitting process beyond their existing authority to control siting generators with a capacity of 300 MW or more and transmission with a capacity of 230 kV or moreⁱ. The staff time and other resources needed to carefully review utility plans and additional reports on top of requiring a new rulemaking proceeding on a matter that is currently outside of the PRC's jurisdiction may impose an administrative strain on the commission.

As local jurisdictions have their own land use policies which dictate the process for making siting decisions, it is unclear how potential state rules on siting and permitting renewable energy facilities would benefit these local jurisdictions or conflict with existing land use laws.

A strong demand for energy storage and transmission is expected in New Mexico as investor-owned utilities ramp up to 80 percent renewable energy by 2040 as required by the Energy Transition Act. For reference, there are now in operation 49 solar projects, 31 wind projects, and 10 energy storage projectsⁱⁱ in New Mexico (within all three investor-owned utility territories) that would have had to engage the PRC siting process in addition to the siting processes already required county by county.

The NM Renewable Energy Transmission Authority already has the statutory authority to plan, license, finance, develop and acquire high-voltage transmission lines and storage projects, it is not clear how HB 435's requirements of the PRC here regarding storage or intrastate transmission "more than five megawatts" would align -- or possibly conflict with -- RETA's existing statute.

Finally, statewide permitting process would provide uniformity to developers, which would reduce time and costs of navigating unique local requirements, ultimately increasing the speed and volume of renewable development and lower costs to ratepayers. And state-level permitting can work well: the State of Massachusetts has a statewide "backstop," that first gives local entities up to twelve months to issue a permit, after which the state steps in and takes over.ⁱⁱⁱ

PERFORMANCE IMPLICATIONS

None for EMNRD

ADMINISTRATIVE IMPLICATIONS

None for EMNRD

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Rather than requiring the PRC to promulgate new rules, it would likely be administratively more efficient to amend the existing location control statute, Section 62-9-3 NMSA 1978, to include facilities capable of operation at a capacity of 5,000 kilowatts or more as follows:

“62-9-3. Location control; limitations.

“A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, facilities and transmission lines will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

“B. A person, including any municipality, shall not begin the construction of any plant designed for or capable of operation at a capacity of [~~three hundred~~] **five** thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required. [...]"

Additionally, if this bill intends to pre-empt local control of siting approval for renewable energy generating facilities, it likely should explicitly do so. The state high court’s analysis of preemption encompasses three questions: 1) is there a general law at issue? 2) does the general law expressly deny an exercise of municipal or county power or authority? And 3) is the municipal or county power or authority implicitly denied by the general law? (See: *State ex rel. Torrez v. Bd. of Cnty. Commissioners for Lea Cnty.*, No. S-1-SC-39742, 2025 WL 52496, at *8 (N.M. Jan. 9, 2025).) This legislation does not appear to satisfy that test.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PRC would continue issuing siting control permits for generators and transmission lines. Generators smaller than 300 MW would not be included in the PRC's siting control permitting process but would continue to be regulated as required by each county or authority having jurisdiction.

AMENDMENTS

ⁱ NM Stat § 62-9-3 (2024)

ⁱⁱ *EIA Form 860-M, December 2024, Monthly Inventory of Operating Generators*

ⁱⁱⁱ <https://www.nature.org/en-us/newsroom/massachusetts-bill-accelerates-renewable-energy/#:~:text=The%20new%20law%20expedites%20land,net%20zero%20emissions%20by%202050> and <https://www.mass.gov/info-details/energy-infrastructure-siting-and-permitting-reforms>.