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FISCAL IMPACT REPORT

ORIGINAL DATE 3/05/19
 LAST UPDATED 3/07/19 HB _____

SPONSOR SCORC

SHORT TITLE Energy Transition Act SB CS/489/aSCORC/aSF#1

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
\$0.0	\$0.0	\$0.0	See fiscal implications		Recurring and Nonrecurring	General Fund
\$0.0	\$0.0	\$0.0	See fiscal implications		Recurring and Nonrecurring	San Juan County and City of Farmington
\$0.0	\$0.0	\$0.0	See fiscal implications		Recurring and Nonrecurring	Central Consolidated School District, Farmington Municipal Schools, Aztec School District, Bloomfield Schools, and San Juan College
\$0.0	\$0.0	\$0.0	Up to \$6,187.5*	Possible Interest Income*	Nonrecurring	NEW Energy Transition Economic Development Assistance Fund
\$0.0	\$0.0	\$0.0	Up to \$12,562.5*	Possible Interest Income*	Nonrecurring	NEW Energy Transition Displaced Worker Assistance Fund
\$0.0	\$0.0	\$0.0	Up to \$1,875.0*	Possible Interest Income*	Nonrecurring	NEW Energy Transition Indian Affairs Fund

Parenthesis () indicate revenue decreases

Note: Closure of SJGS Units 1 and 4 scheduled for June 30, 2022.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$50.0	\$ 895.9	\$ 895.9	\$ 1,791.8	Recurring	PRC Operating

Parenthesis () indicate expenditure decreases

Relates to and conflicts in part with, HB15, HB283, HB498, HB604, SB275, and SB492.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission
Attorney General’s Office
Department of Environment
Department of Workforce Solutions
House Speaker’s Office
Energy, Minerals and Natural Resources Department

Responses Not Received From

Economic Development Department
Indian Affairs Department

SUMMARY

Synopsis of SFI Amendment

The Senate Floor Amendment #1 makes various corrections to the bill title.

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee (SCORC) amendment to the SCORC substitute for Senate Bill 489 makes the following changes:

- 1) Rewords Section 15 of the bill to allow the energy transition charge to be subject to local government’s franchise fees but exempt from supervision fees pursuant to the Public Utility Act. See attached section-by-section summary.
- 2) Strikes a provision from Section 29(B) of the bill requiring PRC to “ensure that compliance shall not conflict with the federal Public Utility Regulatory Policies act of 1978, as amended”, requiring instead that PRC “not jeopardize the operation of a sewage treatment facility that captures and combusts methane gas in the facility’s operations.”
- 3) Changes the provision in Section 29(C) of the bill to apply to political subdivisions of the state or educational institutions with 20 thousand students or more. The original bill applied to such entities with 24 thousand students or more.
- 4) Changes a provision in Section 29(D) to allow PRC, “upon a motion or application by any other person”, to open a docket to develop and provide incentives to public utilities to produce or acquire renewable energy that exceeds the bill’s RPS standards.

Synopsis of Original Bill

Senate Corporations and Transportation Committee substitute for Senate Bill 489 creates the Energy Transition Act (ETA). See the fiscal implications and significant issues sections below for a summary of the major features of this bill. A detailed summary by bill section is attached.

The bill establishes new renewable and zero carbon emission portfolio standards for both utilities and rural electric cooperatives and authorizes an alternative mechanism for financing the retirement of coal-fired power plants. The mechanism (referred to as “energy transition bonds” in

the bill, commonly known as “securitization”) provides investor-owned utilities with 100 percent recovery of stranded costs at potentially lower cost to customers as compared to conventional financing mechanisms. It has been designed to accommodate the retirement in 2022 of units 1 and 4 of the San Juan Generation Station (SJGS) and to anticipate the closure of the Four Corners Power Plant in 2031. The bill also amends the duties and powers of the Environmental Improvement Board (EIB), requiring the EIB to promulgate a rule limiting carbon dioxide emissions from coal fired generating plants to an emissions standard of 1,100 lbs-CO₂/MWh on or after January 1, 2023.

The ETA is also designed to mitigate some of the adverse economic effects on local communities. It allows for abandonment costs of a coal-fired plant to include mine reclamation costs and severance and job training costs for displaced workers. It requires the location of replacement power resources in the school district where the abandoned facilities are located, taking into consideration system reliability. The bill creates three new funds – managed by the Indian Affairs Department (IAD), Economic Development Department (EDD) and the Department of Workforce Solutions (DWS) and – to be used to assist communities affected by abandoned coal plants and displaced workers. If a utility issues energy transition bonds, the bill requires some of the bond proceeds to be transferred to these funds. The ETA also establishes the Apprenticeship Assistance Act to be administered by the Workforce Solutions Department requiring the employment of apprentices during the construction of electric facilities in increasing percentages over time.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. The bill indicates that the provisions of the act shall not apply to a qualifying utility that makes an initial application for a financing order more than 12 years after the effective date of this act.

FISCAL IMPLICATIONS

The fiscal impacts of this bill are largely unquantifiable. The Public Service Company of New Mexico’s (PNM) integrated resource plan for 2017-2036 calls for the closure of the SJGS by at the end of its current service agreement on June 30, 2022. Currently, SJGS is the sole customer of the San Juan mine.¹ Westmoreland had publicly indicated it expects to shut the mine when the SJGS closes. These closures would have significant impacts on the state general fund as well as the local communities and school districts through losses of jobs, personal income taxes, property taxes, gross receipts taxes (GRT), and severance taxes. This bill requires a replacement resource for an abandoned coal plant be located in the same school district as the abandoned facility. However, without information on the potential replacement resource, it is unknown the degree to which the replacement would offset various tax losses.

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).² The study indicates

¹ Westmoreland Coal Company purchased the San Juan mine from the San Juan Coal Company in 2016. Westmoreland filed for bankruptcy in October 2018.

² O’Donnell, K. January 2019. *Tax and Jobs Analysis of San Juan Generating Station Closure*. Retrieval from: <https://www.nmvoices.org/wp-content/uploads/2019/01/San-Juan-Tax-Study-report.pdf>

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.

Additional data below from Four Corners Economic Development estimates other tax revenue losses, assuming the SJGS would be permanently retired and not sold to another operator and that the San Juan coal mine would be shut down and not be able to find another buyer:

- Current employees at SJGS and the San Juan mine earn on average about \$85 thousand annually plus benefits.
- SJGS and the San Juan mine spend about \$31 million in purchases from San Juan County vendors.
- The state and local governments would lose GRT attributed to lost wages from laid-off workers and loss of local purchases of goods and services by PNM and the coal mine.

	Farmington	County	State
From Vendor Purchases	\$0	\$82,710	\$1,621,412
Employee Spending (50%)	\$224,625	\$303,904	\$1,083,486

- The State, other state funds and the Navajo Nation will lose severance tax revenue assuming that an alternative market for coal could not be developed.

Other Lost Taxes (\$ millions)	
Severance Tax (STBF)	\$3.23
Conservation Tax (Gen Fun and OSF)	\$.33
Resource Excise Tax (Gen Fund)	\$1.41
Gross Proceeds Tax (Navajo Nation)	\$1.55
Total	\$6.52

New Funds for Indian Affairs, Economic Development, and Displaced Worker Assistance.

The bill requires the calculated abandonment costs to include up to \$20 million for severance and job training for employees losing their jobs as a result of the abandonment. If the qualifying utility issues energy transition bonds, the bill requires the utility to transfer 0.5 percent of the energy transition bond to the new Energy Transition Indian Affairs Fund, 1.65 percent to the new Energy Transition Economic Development Assistance fund, and 3.35 percent to the new Energy Transition Displaced Worker Assistance Fund. The fiscal impact estimates for these funds are calculated based on the bill’s \$375 million cap on energy transition costs and assume energy transition bonds are issued in FY22. Closure of SJGS Units 1 and 4 scheduled for January 2023. Timelines are approximate because of required Public Regulation Commission (PRC) approvals, and the bill does not require the utility to use this funding mechanism. Therefore, the timing of the transfer to these may be sooner or later, or may not occur, depending on when or if the bonds are issued. Assuming bond proceeds are deposited into these funds, they may grow through interest earnings since the bill specifies the funds as non-reverting and credits earned income to those funds. The funds are presumed to be managed by the State Treasurer.

Costs to Rate Payers. This bill would allow PNM shareholders to receive 100 percent recovery of stranded costs for abandonment of SJGS, but no profit percentage. The estimated rate impact is \$27 million per year. This assumes \$320 million in stranded costs, AAA rated bonds, and a 3.5 percent bond rate. This option is less costly to customers than continued operation of the coal

plant or full recovery of stranded costs through conventional financing mechanisms, which both have an estimated rate impact of \$45 million per year. However, it is slightly more costly than a scenario in which PNM receives only 50 percent of stranded costs (similar treatment to the closure of SJGS units 2 and 3), which has an estimated rate impact of \$22.5 million per year.

SIGNIFICANT ISSUES

Renewable Portfolio Standards. Current law requires renewable energy to supply 20 percent of New Mexico’s electricity by 2020. The ETA would increase the renewable energy requirement for all utilities and rural electric cooperatives to 40 percent by 2025 and 50 percent by 2030. For utilities, the bill increases the renewable portfolio standards (RPS) to 80 percent by 2040 and requires 100 percent zero carbon resources by 2045 after considering safety, reliability, and costs to customers. For rural electric cooperatives, the bill requires 100 percent zero carbon resources by 2050, composed of at least 80 percent renewable energy after considering safety, reliability, and costs to customers.

According to the Energy, Minerals and Natural Resources Department (EMNRD), the ETA would place New Mexico as a leader in development of renewable energy and zero carbon policies. RPS policies across the United States are shown in Attachment C from the Database of State Incentives for Renewables & Efficiency.

Although the ETA does 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 stringent emission limit effectively ensures that the plant could not operate as a coal fired generation facility after 2023.

In administering the RPS requirements in Section 28 of the ETA, the Commission is required to consult with: 1) the energy, minerals and natural resources department to undertake programs that ensure the standards are achieved; 2) environment department to ensure there is no increase in greenhouse gas emissions from entities not subject to Commission oversight and regulation; and 3) issue a report to legislature each July 1 every four years.

Energy Transition Bond Financing. This bill creates a bond financing mechanism commonly known as “securitization” by which a utility may recover abandonment costs of the coal plant and related financing costs by issuing AAA-rated bonds. This bill is expected to impact the PNM’s SJGS units 1 and 4 and PNM’s interest in the Four Corners Power Plant, which would meet the definition of a qualifying generating facility as per Section 2.S of the bill.

To obtain a financing order for securitization, the qualifying utility must first file for abandonment pursuant to Section 62-9-5 of the Public Utility Act (“PUA”). Section 4.E of this bill permits the qualifying utility to file an application for a financing order and PRC may consolidate the abandonment proceeding with the financing order with approval of the applicant. Contents of the application for a financing order are outlined in Section 4.B of this bill.

The energy transition bonds issued pursuant to the mechanism in the bill are expected to be AAA-rated because, among other reasons, the repayments are secured by a non-bypassable charge on customer bills, financing orders are irrevocable by law, and the state states a pledge in the ETA to take no action that would impair repayment of the bonds (bill sections 7, 9 and 19).

Therefore, the bonds will carry a low interest rate, resulting in savings to ratepayers, for any amount of abandonment costs that the utility is authorized to recover.

Notably, Section 5(B) of this bill issues an automatic approval of a financing order if the PRC fails to act within the time prescribed by Section 5(A).

Limitations on PRC Authority. Section 11.C of this bill prevents PRC from requiring a utility to use securitization to finance abandonment costs. The PRC staff analysis of this bill states 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.”

The bill requires the commission to issue a financing order for the energy transition bonds if the application meets all requirements outlined in section 4 of the bill. According to the Attorney General’s Office (N MAG) analysis of this bill, this requirement “potentially [compromises] the commission’s constitutional responsibility of regulating public utilities by precluding it from reviewing the substance and appropriateness of the financing order and instead allows the utility to self-regulate.” For example, the bill requires a utility to submit a variety of items in its application for a financing order, including an estimate of the energy transition costs and the energy transition charges necessary to recover those costs. As long as those estimates are included in the application along with all the other required materials, the bill would require PRC to approve the financing order without giving PRC any discretion on whether the estimates provided are reasonable.

The PRC staff analysis of this bill notes the following:

“The ETA contains no mechanism for the Commission to conduct a post-issuance review of financing costs. The Commission must be granted the authority to conduct a post-issuance review of financing costs to determine whether the utility actions were prudent and the financing costs resulted in lowest overall costs. The bill also does not preserve Commission authority to review a financing application under the: 1) “public interest” standard; and 2) to ensure that the financing application results in just and reasonable rates. Finally, the Commission must have the authority to include additional terms and conditions in the financing order for the benefit of ratepayers.

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Funding for Bond Counsel. The bill allows the financing order to include a fee to cover the costs of PRC to contract with a nationally accredited contract bond counsel to assist PRC staff in reviewing an application for a financing order and the structure and marketing of the proposed energy transition bonds.

Assistance for Displaced Workers. DWS notes 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 would increase availability of subsidies used to cover costs associated with career exploration, job readiness, job training for displaced workers in affected communities.

The term “displaced worker” is defined as a New Mexico resident who, within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the anticipated abandonment of a qualifying generating facility or the abandonment of a facility that generates energy with an impact on forty workers. It is unclear whether workers employed by fuel and ancillary suppliers, or service establishments, would also be included in the definition as displaced by the anticipated impact of the qualifying generating facility and would also be eligible for benefits under the Energy Transition Displaced Worker Assistance Fund.

This bill also establishes 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 are to have a diversity of participants.

Applicability to Coal-Fired Plants. The provisions of this bill are effective for coal-fired plants that would shut down within twelve years of the effective date of the bill. This would apply to units 1 and 4 of SJGS and the Four Corners Power Station.

ADMINISTRATIVE IMPLICATIONS

According to PRC staff, the ETA would result in increased filings and reports to be prepared and/or reviewed by Utility Division Staff, in addition to hearings and other proceedings, requiring additional time and resources. To comply with the additional tasks generated by the bill, the Commission estimates it would need to hire nine (9) additional FTE’s (full time equivalents per year), whose cost would be generally funded. This includes one utility economist, three Certified Public Accountants, two Utility Engineers, one staff attorney in the legal division, one associate general counsel and one hearing examiner. The cost of hiring nine (9) additional FTE’s including salary, benefits, information technology, and general services department fixed costs \$895,894 per fiscal year on a recurring basis.

DWS would be responsible for administering the newly created Energy Transition Displaced Worker Assistance Fund and implementing plans to appropriately disburse the money. DWS states there would not be any additional administrative funding required as these are programs DWS already offers.

In sections 27 and 28, this bill amends the definition of “biomass resources” that qualify as renewable energy resources and requires EMNRD to certify “facilities” where biomass is obtained from. EMNRD must certify that facilities meet certain sustainable and zero carbon standards. EMNRD would need to develop rules or guidelines to implement this certification program.

Section 29 of this bill provides that the PRC, in consultation with EMNRD, will undertake programs to achieve the new renewable portfolio standards in the bill.

The New Mexico Environment Department's (NMED) Air Quality Bureau would be required to undergo rulemaking before the EIB to implement the proposed standards of performance. As far as it impacts NMED, the bill would require a rulemaking before the Environmental Improvement Board (EIB). The expected costs of going to hearing is approximately \$50 thousand for six months. This estimate does not include an estimate of the cost of legal services or hearing related costs such as notice and recording of a hearing.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 283 and Senate Bill 275 also amend the Renewable Portfolio Standards. House Bill 15 amends the renewable portfolio standard for rural electric cooperatives.

House Bill 498 addresses requirements for abandonment of a coal-fired generating facility and also establishes the Energy Transition Economic Development Fund and the Energy Transition Displaced Worker Assistance Fund, making a one-time general fund appropriation of \$7 million and \$3 million to those funds, respectively.

House Bill 604 and Senate Bill 492 also provide for securitization bond financing with some duplication and conflict with this bill.

TECHNICAL ISSUES

Section 5(B) may compromise PRC's constitutional responsibility of regulating public utilities by precluding it from reviewing the substance and appropriateness of the financing order.

The definition of "energy transition costs" in Section 2 includes up to \$20 million for severance and job training for workers affected by the abandonment of a coal-fired plant. The bill creates two funds specific to regional economic development and displaced worker assistance. However, the bill does not identify how any severance pay could be given to displaced workers, and it is unclear whether and how offering severance through this mechanism may violate the state's anti-donation clause.

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ATTACHMENT A

Section-by-Section Summary

This bill creates the Energy Transition Act and concerns a public utility's financing of costs for the abandonment of a coal-fired power plant, among other things. Abandonment entails the decommissioning of an electricity generation plant pursuant to Section 62-9-5.

Section 2 – Definitions.

The definition of “energy transition costs” includes:

- 1) financing costs;
- 2) abandonment costs capped at \$375M for San Juan Generating Station or 150 percent of the undepreciated investment in Four Corners, which per facility must include a) up to \$30M in decommissioning and mine reclamation costs, b) up to \$20M in costs for job training & severance, c) undepreciated investment in the plant, and d) other undepreciated investments in the plant incurred to comply with statute, court decision or rule;
- 3) any other costs required to comply with changes in law after January 1, 2019; and
- 4) payments required in the section on the economic development assistance fund.

“Energy transition charge” is defined as a non-bypassable customer charge to recover energy transition costs.

“Qualifying generating facility” is defined as a coal fired plant in New Mexico that, if operated by a qualifying utility prior to this bill's effective date, is to be abandoned prior to Jan. 1, 2023, or, if not operated by a qualifying utility prior to this bill's effective date, is to be abandoned prior to Jan. 1, 2032.

The definition for “financing costs” includes a fee on the qualifying utility for contract bond counsel to provide advice to the PRC on the financing order and bonds.

Section 3 – Location of Resource Development After Abandonment. Requires that, within one year of abandonment approval, the public utility shall apply for Public Regulation Commission (the “Commission”) approval of replacement energy generation that is competitively procured and ranked by cost, economic development opportunity, and ability to provide jobs to those who lost jobs due to abandonment.

- PRC must prefer replacement resources with the least environmental impact.
- Replacement resources may include energy storage and must be located in the school district where the abandoned facility is located.
- Utility shall notify prospective bidders that it promotes and encourages New Mexico labor.
- PRC must approve necessary replacement resources, or propose alternative replacement resources.
- The PRC cannot disallow recovery of reasonable costs to comply with siting of replacement resources.

Section 4 – Financing Order Application. Allows a qualifying utility to apply to the Commission for a financing order to recover all of its energy transition costs.

- Application for financing order may be filed as part of an application for abandonment.
- Contains all requirements to be included in an application for a financing order, including energy transition costs, and an estimate of energy transition charges, as well as a memorandum from a securities firm, whose experience is attested to by the Board of Finance, stating that the proposed bond issuance satisfies criteria for a AAA rating.
- Application may include requests for approvals of new resources necessary.
- Utility or commission may defer needed approvals for new resources.
- If an application for abandonment is pending before the commission on the effective date of the ETA, the utility may file a separate application for a financing order, and the commission may join/consolidate the two with the consent of the applicant. On such joinder, the times in the ETA shall control.
- Allows the qualifying utility to recover energy transition costs pursuant to other provisions of the Public Utility Act if the utility does not recover those costs pursuant to the ETA.

Section 5 – Financing Order Issuance. Allows for a formal hearing on the application if a protest is filed within 30 days of the filing. The Commission shall issue an order granting or denying the application within six months from the date of application. The Commission may extend the time for up to three months, for good cause. Failure to issue an order approving the application or advising of noncompliance with the application requirements within the timeline is deemed approval. The Commission shall issue a financing order if the application complies with the requirements of this bill, and if not, it shall identify the issues and allow the utility to amend the application. The financing order allows the utility to issue bonds and recover costs, it describes the property used to pay and secure payment of bonds, and approval of the ratemaking process to true-up the difference between energy transition costs financed by bonds and the actual costs incurred.

Other notable items include:

- PRC is required to issue a financing order approving application if commission finds the application complies with requirements in the application (Section 4) – *See significant issues and technical issues sections above.*
- These timeframes apply for approval of new resources, unless deferred to separate proceeding.
- Issuance of a financing order is identified as the only approval required for authority granted in the financing order.
- Financing order shall authorize the utility to issue one or more series of bonds for a scheduled maturity of a maximum of 25 years (though a rated final maturity may be longer than 25 years)
- PRC may require that a utility affiliate that issues bonds obtain unanimous consent prior to filing for bankruptcy.
- Financing order may require utility to file period report with commission showing receipt and disbursement of proceeds of bonds.
- Upon issuance of bonds, utility shall file an advice notice with commission that identifies actual charges to be included on customers' bills, effective 15 days from date advice notice is filed.

- Financing order may authorize PRC to review and audit books & records of utility and affiliate.
- The bill states this section shall not limit PRC’s authority to 1) investigate practices of or to audit books and records of utility, or 2) issue further orders as may be necessary to effectuate the ETA.
- Allows a financing order to authorize the commission to impose a fee on the qualifying utility to pay for PRC to acquire contract bond counsel to help with review of the application for a financing order and the structure of the bonds.

Section 6 – Adjustment Mechanism. Establishes an adjustment mechanism and allows a utility to charge all of its customers in a manner consistent with the production cost allocation methodology established in its most recent general rate case. The Commission shall periodically approve adjustments in the charge for true-ups to ensure the non-bypassable does not result in an under-collection or over-collection of revenues sufficient to pay the bonds and financing costs. The charging/adjustment mechanism shall be in effect until the bonds and all costs have been fully paid. The utility shall file the calculation to the adjustment semiannually with the Commission. The adjustment to the charge shall be deemed approved without hearing 30 days after filing, unless a mathematical or transcription error in its calculation is found within 20 days – in such case a limited hearing on the error will take place and the charge will be suspended for not more than 60 days after initial filing of the adjustment. The Commission may determine and correct the mathematical or transcription error, but if it does not act within 60 days of filing, then the new adjustment is deemed approved.

Section 7 – Irrevocability of Financing Order. Makes financing order irrevocable, and prevents the Commission from reducing, impairing, postponing, or terminating the charges, the property, or the recovery of revenues approved in the order. It allows the utility to request amendments to the financing order. The Commission shall grant or deny the proposed amendment within 30 days of the request. No change in credit rating of utility shall impair the irrevocability of a financing order.

Section 8 – Aggrieved Parties – Request for Rehearing – Judicial Review. Allows for aggrieved parties to motion for a rehearing within ten days after issuance of the financing order. The motion shall be deemed denied if not acted upon by the Commission within ten days after filing of the motion. Aggrieved parties may appeal to the Supreme Court within ten days after denial of a rehearing motion or ten days after issuance of the financing order.

Section 9 – Conditions That Keep Financing Orders In Effect and Energy Transition Charges Imposed. Allows the financing order to be in effect until the bonds and costs associated have been paid in full, and notwithstanding the bankruptcy, reorganization, or insolvency of the utility. The utility’s successors, assignees and collection agent shall collect the energy transition revenue through a non-bypassable charge until outstanding bonds and costs are paid in full. The charge shall be paid by all customers receiving service from the utility.

Section 10 – Qualifying Utility Duties. Requires a qualifying utility to use proceeds of energy transition bonds only for purposes related to providing utility services to customers and to pay financing costs. Energy transition revenues shall be applied solely to the repayment of bonds and financing costs. For a utility that receives a financing order, its energy generation and energy procurements longer than two years that are dedicated to its retail customers shall not emit on average more than 400 lbs. of CO₂ per MWh by Jan. 1, 2023, and not more than 200 lbs of CO₂

per MWh by Jan. 1, 2032. Compliance with this emission standard to be measured and verified every 3 years beginning on January 1, 2023.

Section 11 – Commission Treatment of Energy Transition Bonds. Mandates that if the Commission issues a financing order, it shall not treat bonds as debt of the utility, charges as revenue of the utility, or costs to be financed as costs of the utility. Nothing in this bill shall prevent the Commission from investigating compliance with the financing order, imposing sanctions for failure to comply with the order, or including the replacement resources in the utility’s cost of service. The commission shall not require the utility to issue bonds to finance abandonment.

Section 12 – Energy Transition Property – Energy Transition Revenues. Makes property created in a financing order a present property right. The property shall exist until all related financing costs are paid in full. Property created in a financing order may be transferred, sold, conveyed, or assigned to a non-utility affiliate that is wholly owned by the utility and created for the limited purpose of administering energy transition property or bonds. A non-utility affiliate creation does not require Commission approval and shall not be subject to the rules of the Commission for Class I and Class II transactions, except for records/books examination. Energy transition property, revenues, and interests are not subject to set-off, counterclaim, surcharge, or defense in connection with bankruptcy, reorganization, or other insolvency.

Section 13 – Security Interests – Priority Over Other Liens. Mandates that a security interest is created in energy transition property when the financing order is issued, a security agreement is executed and delivered, or value is received for the energy transition bonds. The security interest attaches without any physical delivery, it is continuously perfected, and has priority over any other lien that may subsequently attach. Priority is not affected by the commingling of revenues with other funds. No order amending the financing order shall affect the validity, perfection, or priority of the security interest.

Section 14 – Sale of Energy Transition Property – Absolute Transfer and True Sale Requirements. Affirms that any sale, assignment, or transfer of energy transition property to a financing entity that is wholly owned by the utility shall be an absolute transfer and true sale of seller’s right, title, and interest.

Section 15 – ~~Exemption From Fee Assessments.~~ Makes energy transition charges exempt from assessment of franchise fees imposed by a municipality, county, or other political subdivision of the state.

SCORC Amendment. This section now reads, “The energy transition charge stated as a separate line entry on a customer bill sent by a qualifying utility may be subject to an assessment of a franchise fee imposed by a municipality, county or other political subdivision of the state and inspection, pursuant to a utility franchise agreement. The imposition, collection and receipt of an energy transition charge is exempt from supervision fees assessed pursuant to the Public Utility Act.”

Section 16 – Indian Affairs Fund, Economic Development Assistance Fund, and Displaced Worker Assistance Fund.

- Creates the “energy transition Indian affairs fund” in the state treasury to be used by the Indian Affairs Department (IAD) to address the conditions and issues of tribes and native

peoples in the affected community. IAD shall develop an Indian affairs assistance plan to assist tribal and native people in the affected community, in consultation with Indian nations, tribes and pueblos in the affected community pursuant to the State-Tribal Collaboration Act.

- Creates the “energy transition economic development assistance fund” in the state treasury to be used by the state Economic Development Department (EDD) to assist in diversifying and promoting the affected community’s economy by fostering economic development opportunities unrelated to fossil fuel development or use. EDD shall develop an economic diversification and development plan to assist the affected community in consultation with the affected community’s community advisory committee and with Indian nations, tribes and pueblos in the affected area.
- Creates the “energy transition displaced worker assistance fund” in the state treasury to be used by the Workforce Solutions Department (DWS) to assist displaced workers in an affected community. DWS shall develop a displaced worker development plan to assist displaced workers in the affected community in consultation with the affected community’s community advisory committee and with Indian nations, tribes and pueblos in the affected area. The fund can be used: to assist employers of displaced workers to qualify for tax relief established under state or federal law, for DWS to provide assistance to displaced workers using any program established by the Department, for payment associated with enrolling in certified apprenticeship programs in NM, and to a municipality, county, Indian Nation, pueblo, tribe of land grant community in NM for job training and apprenticeship programs for displaced workers or for programs designed to promote economic development.
- Each Department shall engage in a public planning process that shall include at least three public meetings.
- Within 30 days of receipt of bond proceeds, 0.5 percent of the amount financed by the bonds shall be transferred to IAD for the Indian affairs fund, 1.65 percent to EDD for the economic development assistance fund, and 3.35 percent to DWS for the displaced worker assistance fund.
- Requires a community advisory committee to be created in each affected community and to provide timely recommendations to EDD and DWS on the use of the assistance funds created by this bill.

Section 17 – Energy Transition Bonds Not Public Debt. Energy transition bonds issued pursuant to the ETA shall not constitute a debt or pledge of the full faith and credit or taxing power of the state or any political subdivision of the state.

Section 18 – Energy Transition Bonds as Legal Investments. States that bonds shall be legal investments.

Section 19 – State Pledge Not to Impair. Creates a state pledge that it shall not take or permit any action that impairs the value of energy transition property or charges until the entire principal and interest are paid in full.

Section 20 – Choice of Law. A choice of law provision for New Mexico law to govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to security interests in energy transition property and charges, and the financing order.

Section 21 – Conflicts. States that this bill will pre-empt any other law that conflicts.

Section 22 – Validity on Actions if Act Held Invalid. Protects the validity of any action taken pursuant to this bill from any subsequent invalidation, repeal, or replacement of this bill.

Section 23 – Applicability. Creates a sunset provision that it shall not apply to applications made more than 12 years after its effective date. It does not preclude amendments beyond the 12 year period to timely initial applications filed prior to the 12 year expiration.

Section 24 – Requiring Hiring of Apprentices for the Construction of Facilities the Generate Electricity. Requires that energy developers employ a certain percentage of apprentices from an apprenticeship program for the construction of New Mexico facilities that generate electricity for New Mexico retail customers: 10 percent for projects between 2020-2024; 17.5 percent for projects between 2024-2026; and 25 percent for projects after 2026. Apprenticeship programs shall encourage diversity among participants.

Section 25 – Energy Storage in Approval of CNNs. Amends Section 62-9-1 regarding PRC approval for new plants and facilities. The amendment recognizes energy storage facilities as a type of facility that can require approval, and establishes guidelines for that approval. Those guidelines include cost effectiveness, reduced fossil fuel usage, enhanced reliability, energy source diversity and grid security and pollution reduction. The criteria recognize that the utility should be able to operate, maintain and control a storage system to ensure reliable service to their customers.

Section 26 – Renewable Portfolio Standards. Amends Section 62-15-34 regarding New Mexico’s renewable energy standard applicable to rural electric cooperatives by establishing new targets and requirements. The amendments remove the requirement that renewable resources be diversified, and requires that renewable energy comprise 40 percent of each coop’s load by 2025 and 50 percent by 2030. These requirements are the same as for investor-owned utilities (IOUs). A target of 100 percent zero emission energy by 2050, comprised of at least 80 percent renewable energy, is also established (5 years later than the IOUs). Achieving the zero-emission target is contingent on technical feasibility, reliability and affordability.

The bill amends the current law’s general renewable energy exemption based on cost, to a more specific \$60/MWh at the generator average cost limit. Reporting requirements to the PRC are also expanded.

The bill requires a rural electric cooperative to meet the RPS requirements and provides for verification of energy from renewable and zero carbon resources.

Section 27 – Renewable Energy in the Rural Electric Cooperative Act. Revises and adds definitions related to renewable energy for rural electric cooperatives.

- 1) Clarifies that renewable energy may be matched with energy storage and still qualify as renewable.
- 2) The definitions expand the availability of hydropower as a renewable resource to include pre-2007 facilities up to a cap equal to the coops entitlement in 2007.
- 3) The definition for renewable “biomass” is clarified to include timber up to 8 inch diameter, provided that the resources are sustainable, have zero life-cycle emissions, and address restoration, sustainability and soil nutrient principles.

- 4) A definition for a “zero-carbon resource” and standard is added to explain that “zero carbon” means no carbon dioxide emitted into the atmosphere from any generation or methane emitted into the atmosphere is equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere.

Section 28 – Amends Definitions in the Renewable Energy Act. Revises or adds the following:

- 1) A definition for “energy storage” is added.
- 2) The “reasonable cost threshold,” i.e. the cost above which renewable need not be procured, is redefined to be an average of \$60/MWh at the point of interconnection.
- 3) The definition for renewable “biomass” is clarified to include timber up to 8 inch diameter, provided that the resources are sustainable, have zero life-cycle emissions, and address restoration, sustainability and soil nutrient principles.
- 4) A definition for a “zero-carbon resource” and “standard” is added to explain that the “zero carbon standard” means no carbon dioxide emitted into the atmosphere from any generation or methane emitted into the atmosphere is equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere.

Section 29 – Renewable Portfolio Standard. Requires that renewable energy certificates must be retired for compliance, and that the associated energy must be assigned to New Mexico customers. This avoids the problem in the past of certificates from neighboring jurisdictions that have a weak RPS compromising New Mexico’s goals. The section expands the renewable energy standard to require 40 percent renewable energy by 2025, 50 percent by 2030 and 80 percent by 2040. There is also a requirement that utilities emit zero carbon dioxide into the atmosphere on and after 2045 (100 percent emission free). Zero emission resources on a utility system need not be displaced to achieve the 80 percent renewable energy standard prior to 2048, which is when the current Palo Verde licenses expire.

The section also instructs the commission to assure that, in administering the 2040 and 2045 renewable and carbon dioxide standards, reliability and affordability are maintained. The zero carbon standard is not to simply transfer emissions to other states. The section also provides consultation and reporting requirements for the commission to advance and evaluate the zero carbon standard as it progresses over time.

The specific cap on procurements for large customers is replaced with the overall \$60/MWh cap applicable to all customers. The exemption for renewable energy costs for government entities that develop their own renewables has been replaced with an exemption for easier-to-quantify fuel and purchased power costs – provided those customers self-develop renewable energy at a percentage equal or greater than the applicable utility renewable standard at the time.

The commission’s directive to provide incentives to utilities to exceed the law’s renewable requirements is expanded to include achieving the zero carbon requirement, and reducing coal-fired generation. Finally, the existing law’s reasonable cost threshold language is deleted in favor of the new, simpler definition in the ETA. The reporting requirements for utilities are modified to reflect the requirements of the ETA, and the procurement plans submitted to the commission must demonstrate that resources are to be competitively procured.

Section 30 – Renewable Energy Certificates (REC). Disallows the trading, selling, or transferring of renewable energy credits from rate-based public utility plant. This section

requires any contract for renewable energy after 2019 shall include conveyance of RECs and the entirety of the RECs shall be retired by the purchasing utility. This section disallows utilities from claiming that it is providing renewable energy from generation resources for which it has traded, sold, or transferred the RECs.

The section requires that all of the RECs from utility rate-based renewables, or purchased renewable energy, must be retired by the utility unless it is part of a voluntary program for customers to procure additional renewables. It also provides that utilities may only claim to have renewable energy if they have the associated REC, and must report on how their public claims square with their renewable energy certificate disposition.

Section 31 – Cost Recovery for Renewable Energy. PRC may not exclude reasonable costs of recovery and costs to comply with electric industry reliability standards that are incurred to deliver renewable energy to New Mexico. Removes the provision allowing the Commission to open a docket to encourage public utilities to acquire renewable energy supplies that exceed the RPS, likely because similar provisions were included in earlier sections. If a public utility has been granted a certificate of public convenience and necessity prior to July 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed as part of the utility's rate base, PRC may require a facility to discontinue serving customers in the state if the replacement has less or zero carbon dioxide emissions into the atmosphere, provided that no order issued by PRC disallows recovery of undepreciated investments or decommissioning costs.

Section 32 – Commission Powers and Duties – Voluntary Programs. Removes the RPS exemption for all-requirements contracts. It requires that all RECs associated with voluntary renewable energy purchase programs be retired on behalf of the customer and not used for the utility's RPS compliance.

This provides clarity for the rate treatment afforded to customers that voluntarily acquire renewable energy on their own behalf, beyond that provided by the utility. Those customers must retire the RECs associated with their usage, and those RECs are not to count towards the utility's RPS compliance. The KWh associated with that voluntary renewable energy, however, does not count towards the total retail sales for which the utility is to procure a percentage of renewables. The voluntary customer is excused from paying for the utility's RPS compliance renewable energy.

Section 33 – Amends Rural Electric Cooperative Voluntary Programs. Remove language made obsolete by this bill's proposed amendments.

Section 34 – Amends Existing Rules of the Commission. Requires PRC to promulgate rules to implement the Renewable Energy Act, instead of only the RPS.

Section 35 – Federal Requirements. Permits a utility to use renewable energy procured or generated to comply with a federal law, rule or regulation to be used to satisfy the procurement requirements of the Renewable Energy Act (REA), as opposed to only renewable energy procured or generated to meet federal RPS requirements used to meet the REA.

Section 36 – Duties and Powers of the Environmental Improvement Board (EIB). Requires the Environmental Improvement Board to promulgate rules for standards of performance that

limit carbon dioxide to no more than 1,100 lbs per MWh on and after Jan. 1, 2023 for electric generating facilities with an original installed capacity exceeding 300 megawatts and that uses coal as a fuel source.

ATTACHMENT B

Property Tax Revenues from the San Juan Generating Station and San Juan Mine

TABLE 1
2018 Mil Levies and Property Tax Revenue from SJGS and SJCM

	Mils*	Revenue
State Debt Service	1.36	\$509,473
County Operational	8	\$2,996,901
County Water Reserve Fund	0.5	\$187,306
Total County	8.5	\$3,184,207
Central Consolidated Schools (CCSD) Operational	0.5	\$187,306
CCSD Debt Service	6.816	\$2,553,360
CCSD Capital Improvement	2	\$749,225
Total School District	9.316	\$3,489,891
San Juan Community College	4.5	\$1,685,757
San Juan Community College Debt	0.6	\$224,768
Total San Juan Community College	5.1	\$1,910,524
GRAND TOTAL	24.276	\$9,094,096

*Dollars per thousand taxable value.

Source: 2018 San Juan County Property Tax Certificate and San Juan County Assessor

TABLE 2
Property Tax Revenue from San Juan Generating Station and Mine as a Percent of Annual Property Tax and Total Revenue by Jurisdiction

Jurisdiction	PT Revenue from SJGS & SJCM	Total PT Revenue	SJGS & SJM % of Total PT Revenue	Total Revenue (all sources)	SJGS & SJM % Total Revenue
San Juan County	\$3,184,207	\$78,265,875	4.1%	\$100,059,388	3.2%
Central Consolidated School District	\$3,489,891	\$7,193,326	49%	\$85,838,167	4.1%
San Juan Community College	\$1,910,524	\$16,672,146	11%	\$72,405,837	2.6%

Sources: 2018 San Juan County Property Tax Certificate and 2017 Comprehensive Annual Financial Reports for SFY 2017 filed with the New Mexico State Auditor by San Juan County, San Juan Community College, and the Central Consolidated School District, all retrieved from https://www.saonm.org/audit_reports/search

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

