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FISCAL IMPACT REPORT

SPONSOR <u>Sen. Stefanics/Rep. McQueen</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/20/2025</u>
SHORT TITLE <u>Renewable Energy Facility Siting Rules</u>	BILL NUMBER <u>House Bill 435</u>
	ANALYST <u>Davidson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PRC	No fiscal impact	\$445.2	\$471.9	\$917.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Public Regulation Commission (PRC)

Energy, Minerals and Natural Resources Department (EMNRD)

Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 435

House Bill 435 would require the Public Regulation Commission (PRC) to promulgate and implement rules relating to the governing of permitting and siting of renewable energy facilities over 5 megawatts. The bill requires that these rules allow for input from the public and political subdivisions, establish the impact of a renewable energy generation, storage, or intrastate transmission facility on the health, safety, and welfare of the community, and address a facility's potential scenic, cultural, environmental, and archaeological impacts. This would apply to facilities which have not received final approval on the date the rules take effect.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

PRC notes implementation of House Bill 435 could have significant financial implications for the agency. PRC analysis estimates implementing the bill would require an additional hearing examiner, a 1/4 general council attorney, 1/2 legal attorney, a utilities analyst, 1/8 of a utilities

division engineer, and 1/8 of an economist. PRC estimates approximately \$445.2 thousand in FY26 and \$471.9 thousand in FY27 would be needed to accommodate the increased personnel.

SIGNIFICANT ISSUES

PRC notes:

This bill could result in an enormous volume of new cases coming to PRC given the low 5-megawatt threshold and whether the requirement applies to utility developed projects or projects developed by a private person or developer. It is unclear whether “intrastate transmission facilities” applies to transmission lines, a transmission level substation, or other transmission related hardware.

PRC further enumerates how the bill may increase the agency’s workload:

- For generation, PRC currently has location control authority over projects that equal or exceed 300-megawatts. This would lower the threshold for Commission review to 5-megawatts (a factor of 60). It is not currently known how many additional cases this would generate.
- For storage, PRC does not currently exercise location control authority over storage projects.
- For transmission, the Commission currently has location control authority over lines over 230-kilovolts or more. The intended threshold for transmission projects is unclear, as megawatts is not the unit of measurement for transmission projects.

Further PRC analysis notes in addition to the impact the 5-megawatt rule could place on the agency and entities, the bill’s requiring for PRC rules to:

Establish a process for evaluating the local impact of renewable energy generation, storage and intrastate transmission facilities on the health, safety and welfare of the community in which the renewable energy facility is to be located”

PRC notes that these new rules would have the potential to “create a significant regulatory burden on parties seeking to develop small renewable energy and transmission projects.” Further, according to PRC, the bill:

- Requires the new rule to evaluate “local impact” but is silent on how PRC [should] consider these impacts when weighed against the “public interest” of the entire statutory scheme.
- Requires PRC to address scenic, cultural, archaeological and environmental impacts. However, PRC is primarily an economic regulator assessing these issues infrequently and does not currently have staff experts on these topics.

Lastly, PRC states the bill would also apply to projects which are in process but have not received final approval, a reality which could create issues of due process for projects.

Analysis from the Energy, Minerals and Natural Resources Department (EMNRD) notes the bill would compel PRC to create and administer a permitting process currently beyond the commission’s existing authority to control siting generators with a capacity of 300 megawatts or more and transmission with capacity of 230 kilovolt. Due to the bill requiring the PRC to review and promulgate rules on additional entities currently outside its jurisdiction, EMNRD analysis notes concern the bill could create administrative issues with PRC.

EMNRD analysis further notes that, due to local jurisdictions having their own land use policies which dictate the process of siting decisions, it is unclear how the rules HB435 requires PRC to promulgate would benefit the local jurisdictions or conflict with existing state land use laws.

The state's Renewable Energy Transmission Authority (RETA) currently has statutory authority to plan, finance, develop, and acquire high-voltage transmission lines and storage projects. EMNRD analysis notes it is unclear how the bill's new requirements would align with RETA's existing statutory goals and obligations.

EMNRD analysis notes the bill also, as written, may not pass the state Supreme Court's analysis of preemption.

ALTERNATIVES

EMNRD asserts:

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 follow

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

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