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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Hamblen</u>	<b>LAST UPDATED</b> <u>2/14/2023</u>
<b>SHORT TITLE</b> <u>Public Choice Utilities</u>	<b>ORIGINAL DATE</b> <u>2/6/2023</u>
	<b>BILL NUMBER</b> <u>Senate Bill 165/aSCONC</u>
	<b>ANALYST</b> <u>Dick-Peddie/J. Torres</u>

### REVENUE\* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	Indeterminate but substantial	Indeterminate but substantial	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent version of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PRC operating Costs		\$400.0	\$400.0	\$800.0	Recurring	General Fund
<b>Total</b>		<b>\$400.0</b>	<b>\$400.0</b>	<b>\$800.0</b>		

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Public Regulation Commission (PRC)

New Mexico Environment Department (NMED)

## SUMMARY

### Synopsis of SCONC Amendments to Senate Bill 165

The Senate Conservation Committee amendments to Senate Bill 165 tighten up the original language of the proposed bill and incorporates some agency recommendations. The proposed amendment to Implementation Section 6(A)(2) now refers to a rate setting process: “that ensures that every rate made, demanded or received shall be just, fair and reasonable.” Proposed new material for Section (A)(5) states that the local choice implementation plan shall include: “a complaint process that provides a customer with an opportunity to make a written complaint

regarding the adoption of just, fair and reasonable rates, provide factual information to support the complaint and obtain a written response.” The proposed addition to Section 6(B)(3) provides that within 15 days of filing, the commission may “approve the implementation plan if the commission finds that the local choice energy provider has complied with the requirements in Subsection A of this section.” Modified Public Employees Section 12(D) now adds that the section does not apply to contracts for goods and services “including services for and relating to power.” Section 14(A) on Commission Rulemaking now adds that rules to implement the Local Choice Energy Act will be implemented within “one year” of its effective date, rather than the prior “one hundred and eighty days.” Finally, Section 15(3) adds that the local energy provider must adopt a procurement policy that provides for “the verification of appropriate professional licensure.”

### **Synopsis of Original Senate Bill 165**

Senate Bill 165 would allow municipalities, counties, Indian nations, pueblos, or tribes and any combination thereof, to develop “local energy programs,” defined as a combination of multiple end-use customers for the sale or purchase of electric energy, or the provision of other electric energy-related services. A local energy provider would then be able to purchase energy for retail sale from customers, such as those with rooftop solar and storage systems, for retail sale to all residential customers within its jurisdiction. Residents within the local energy provider’s jurisdiction would automatically become customers of the local energy provider unless they explicitly opt out.

The bill outlines a process for eligible entities to become local energy providers, requiring those that elect to implement a local energy program do so by municipal or county ordinance, and if passed, file an implementation plan with the Public Regulation Commission, detailing amongst other things, a rate-setting process and plans to procure adequate resources to meet the energy needs of its customers when the program begins. Prior to beginning operations, local energy providers would be required to adopt additional documents detailing operational planning, such as annual budgets and rates for different customer classes, including specific rates for customers who own or lease rooftop solar systems.

While local energy providers would be responsible for procuring energy, the bill requires that energy distribution and transmission services continue to be provided by public utilities and cooperatives at the same rates, terms and conditions as approved by the commission for the provision of services to the utility’s customers.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

### **FISCAL IMPLICATIONS**

The Public Regulation Commission (PRC) notes that the commission would be required to conduct a rulemaking hearing regarding the provisions of the bill within 180 days. Typically, the PRC conducts rulemaking over a full year in order to engage the public and other relevant entities including the New Mexico Attorney General, environmental advocate groups, and the New Mexico investor-owned electric utilities. The abbreviated timeline would require the time of several staff persons and one or two staff attorneys, as well as other personnel within the PRC.

Additionally, PRC would be required to conduct a rate proceeding for every electric utility and cooperative in the state to determine distribution rates as well as rates for metering, billing, collection, and customer services. The PRC notes that the “amount of time needed to expend on this process is immeasurable, as there are three investor owned electric utilities and 19 electric cooperatives in the state”. The additional operating impact table reflects a recurring cost of \$400 thousand for the PRC to execute the requirements of the legislation, to cover either 4 additional FTE or contract assistance.

The additional revenue operating impact table also reflects an indeterminate, but substantial impact on fees paid by utilities to the state. Auto-enrolling customers in local utility entities could significantly reduce fee revenue generated by public utilities. In FY22, approximately \$22 million in fee revenue was collected from public utilities.

Though not reflected in the fiscal impact tables, it is worth noting that if existing electric utilities that are asked to provide metering, billing, collection, and customer service for local utilities, rates for the remaining customers will almost certainly increase. New Mexico electric rates, at their core, are set based on the cost of providing the service; to set the appropriate rate for transmission, distribution, and the other services requires identifying the cost of providing each of these services.

## **SIGNIFICANT ISSUES**

According to the PRC, the 180-day limit for completing the rulemaking established in the bill would not be possible, given that the public utilities would have significant issues with the use of their transmission and distribution systems. The agency notes that New Mexico’s electric service has not been recently restructured as some other state electric systems have, and the electric rates currently paid by customers bundle generation supply, transmission, and distribution costs. A proceeding to unbundle these costs would need to be held for each utility in the state.

The New Mexico Attorney General notes that public utilities are regulated monopolies, which have been granted the exclusive right to serve customers in their respective service territories with their electricity needs and they are obligated to serve their customers’ needs. In return, public utilities are subject to the regulatory oversight of the state’s Public Regulation Commission. The PRC’s oversight extends to the approval the rates which, when applied to all of the public utility’s customers, provide it with the opportunity to recover the reasonable cost of providing service. The Local Choice Energy Act would allow customers to switch their electricity provider, resulting in a loss of revenue for the utility, which in turn would almost certainly cause rates to increase for remaining utility/cooperative’s customers. NMAG notes that other versions of similar legislation, such as Senate Bill 83 of the 2021 Regular Session contained exit fees to help mitigate this cost. Senate Bill 165 does authorize such exit fees.

The bill would allow customers to purchase electricity from a Provider rather than the existing utility. The aggregation of demand would allow the Provider to purchase electricity in bulk from a supplier with the goal of providing cheaper rates. To do so, the Provider would have to purchase electricity from a third-party supplier and use the utility’s delivery system. The PRC notes that currently, there is not an active market within New Mexico to buy and sell electricity. Existing transactions occur among the existing utilities and possibly coops or purchased from outside the state. As a result, it would be difficult for Providers to access third-party supply to serve end-use customers. There is no evidence that this will result in cheaper rates if the Provider

has to pay the existing utility for use of the transmission and distribution system as well as the cost of the Provider's generation.

The bill suggests the Provider may develop generating facilities or acquire generating facilities from third parties, including public utilities and cooperatives. The Provider would need to develop generating facilities and ancillary services. The PRC believes that "there is no incentive for public utilities and cooperatives to do this unless forced to do so. If so forced, they must be compensated for such services. The bill lacks a mechanism for determining how to compensate a public utility for its generation and transmission capital expenditures as well as services. The bill does not mandate the public utility to enter into an agreement with a Provider for transmission and distribution and therefore the public utility simply will not do so without compensation."

## TECHNICAL ISSUES

The bill requires customers within the Provider's jurisdiction to opt-out of being supplied energy by the Provider. An opt-in program should be considered rather than opt-out. The customer will need to be educated in order to make an informed choice as to whether to opt-out – the bill lacks instruction as to educating customers.

The bill allows for third-party power suppliers that to sell to the new utility providers. These entities would need to be vetted in order to ensure that they are able to deliver electricity as promised. In the event that they do not, someone will need to be designated as the provider of last resort, and compensated accordingly. PRC notes that should these new utilities fail, it is unclear who is responsible for "keeping the lights on".

PRC believes that the proposed legislation conflicts with large portions of the Public Utilities Act (PUA):

The bill does not exclude Providers from Commission jurisdiction. A Provider may likely fall under the definition of "public utility" contained in the PUA, and therefore be subject to all the provisions of the PUA and Chapter 62. The bill could bring municipalities, counties, and tribes and Indian nations under the purview of the Commission whereas they were not previously. Chapter 62 requirements would impose substantial burden on Providers. If the Provider incorporates, then the PUA could give it the right of eminent domain, rights-of-way, and entry to private property. Section 13 gives the Provider equal opportunity to take actions that require Commission approval. This is further evidence that Providers are public utilities for purposes of Chapter 62.

Section 6, Implementation, contains Commission duties that provides more justification for 2 FTEs. In particular, the requirement of the 15-day deadline for NMPRC review of an Implementation Plan. The bill is unclear regarding the extent of the jurisdiction of NMPRC over the Providers' implementation plans.

Section 6, Subsection D gives the Provider the right to establish rates but there is no requirement that rates be just and reasonable, unless requirements for public utilities under the PUA are incorporated, but this relates to the issue of whether or not the PUA would apply to Providers/Programs. Section 14 would give the Provider "authority over rates," conflicting with the Commission's authority over rates.

## ALTERNATIVES

The PRC notes that the bill requires customers within the Provider's jurisdiction to opt-out of being supplied energy by the Provider. Without in-depth knowledge about utilities, customers may not be well equipped to make a decision best for their home. The PRC suggests an opt-in program, rather than opt-out.

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