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| <b>LFC Requester:</b> | <b>Jon Clark</b> |
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**AGENCY BILL ANALYSIS  
2014 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

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

*Check all that apply:*

**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** February 17, 2014  
**Bill No:** HB296-305 Feb 17

**Sponsor:** Rep. Antonio "Moe" Maestas    **Reviewing**    Attorney General's Office  
**Short**    Economic Development Utility    **Person Writing**    P. Cholla Khoury  
**Title:**    Rates    **Phone:** 827-7484    **Email** ckhoury@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY14          | FY15 |                              |                  |
|               |      |                              |                  |
|               |      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY14              | FY15 | FY16 |                                 |                  |
|                   |      |      |                                 |                  |
|                   |      |      |                                 |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

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

|              | <b>FY14</b> | <b>FY15</b> | <b>FY16</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis: This Bill amends the current economic development utility rate. It requires the PRC to allow utility rates to certain customers, who qualify under the new language of this act, at contracted price that covers incremental costs. The Bill sets requirements for the type of customers that qualify for the reduced rates and creates a timeline by which the PRC must take action. In addition this Bill requires the department of Economic Development to issue certificates to certain, qualifying, customers so that they may apply to the PRC for the discounted rate. The department of economic development or the contracting utility can require the customer applying for the rate to post a bond to ensure that they will continue to meet the requirements for the rate. If those requirements are not met, the utility is permitted to recover the difference in the economic development rate and the otherwise applicable rate for the customer. The bill requires the PRC to allow the utilities to recover the cost difference of the negotiated rates from the rest of the utility customers. The Act would go into effect immediately.

Amendments to this bill reduce the minimum required energy demand to qualify for the rate and allow for anticipated out of state sales rather than just current out of state sales.

The floor amendment would also put a cap on the amount of recovery a utility can recover to no more than 5% annual gross revenue from New Mexico retail sales. It also requires any recovery from ratepayers to be listed as a separate line item on utility bills.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

None for the AG’s Office

**SIGNIFICANT LEGAL ISSUES**

Section 1(C) (p. 3, line 16) requires the Economic Development Rate to recover at least the “incremental cost” of providing service to the customer. That same section (p. 4, lines 3-8) define “incremental cost” as

“the fuel and purchased power costs and direct costs of transmission and distribution necessary to provide service to the customer but does not include system-wide or system expansion costs that provide additional transmission or distribution capacity, system reliability or other benefits to other customers.”

However, there is no guidance as to how to determine the direct costs of transmission and distribution to that specific customer. Since the Bill allows the utility to recover the cost difference of the economic development rate in a general rate case from the rest of the customers (see Section 1(H) p. 6, lines 16-20), it creates significant problem as to how to determine what

the direct cost of transmission and distribution is to the economic development rate customer.

### **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

The effect of this Bill would be to raise rates for the residential and small business customers of utilities. Basically, though the economic development rate reduces utility costs for large customers, it shifts the burden of paying for those utilities to the small customer—the residential and small business customers.

The floor amendment to the bill requires the Economic Development Department to report annually the contact demand, job creation or retention and investment requirements for the certificates issued pursuant to this bill.

### **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSIONS**

This bill appears to be a duplicate of HB 183

### **TECHNICAL ISSUES OR DRAFTING ERROR**

### **OTHER SUBSTANTIVE LEGAL ISSUES**

### **ALTERNATIVES TO ENACTING THIS BILL**

Rather than shifting the full burden of paying the difference of rates to the small customer, the Bill could allow a portion of the rate difference to be borne by residential and small business users. For example, rather than allowing the utility to recover the full rate difference in a general rate case, the utility could be allowed to recover 50% of the difference in a general rate case. As it currently reads, the bill places the full burden of this economic development on other customers who do not qualify for a lesser rate. It could be appropriate to split the burden of economic development between rate payers and the utilities. Utilities and general rate payers share the benefits of a stronger economy, utilities and general rate payers could share the burden of the development. By allowing the utility to recover only 50% of the difference through a general rate case (for example), the utility would be sharing the burden of the economic development.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Economic Development Rate is maintained as it is currently.

### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

This Bill could be improved by including a method by which to calculate the direct costs of transmission and distribution to the economic development rate customer. As well as protection from a large price increase for residential and small business customers.