

Sierra Club Rio Grande Chapter
Legislative Priorities & 2006 Session Bills
March 1, 2006

HB 188 LAND, WILDLIFE & CLEAN ENERGY ACT, Martinez HBIC / HTRC / HAFC – HBIC – CS/H 188 DNP-CS/DP HTRC

SB 407 LAND, WILDLIFE & CLEAN ENERGY ACT , M. Sanchez SCC / SCONC / SFC – SCC germane – SCONC CS/S407 DNP-CS/w/o rec – SFC DP/a PASSED S (19-18) HTRC

Comments

The Senate bill narrowly passed the floor vote (19-18) with crossover votes in both directions and a tie-breaking vote by Senate President Dianne Denish. The House version stuck at the House Tax & Revenue Committee (HTRC) as did the Senate's SB407 (where they both died). Two major changes that effectively gutted the bill: (1) annual funding from the Oil & Gas Conservation Fund was stripped – meaning annual begging for funding at each legislative session without the ability to bond, and (2) annual reporting to an interim legislative committee was required. This session helped identify the arguments against and worries over this complex concept.

Synopsis of Original Bill

House Bill 188 enacts the Land, Wildlife and Clean Energy Act. The act: creates the Land, Wildlife and Clean Energy Board; establishes the Land, Wildlife and Clean Energy Fund; provides for distributions to the Land, Wildlife and Clean Energy Fund equal to ten/nineteenths of the net receipts attributable to the tax imposed by the Oil and Gas Conservation Tax Act; establishes the Conservation and Clean Energy Bonding Fund; and authorizes the New Mexico Finance Authority (NMFA) to issue and sell tax-exempt Conservation Bonds and Clean Energy Bonds.

The Land, Wildlife and Clean Energy Board is administratively attached to the Energy, Minerals and Natural Resources Department (EMNRD) and consists of nine members, including the Secretary of Energy, Minerals and Natural Resources; the Director of the New Mexico Department of Agriculture; the Director of the Department of Game and Fish; and six public members appointed by the governor, with the advice and consent of the senate, for staggered four-year terms.

The board may fund conservation and clean energy development projects; administer the Land, Wildlife and Clean Energy Fund and make grants and loans from the fund; acquire and manage whole or partial interests in land and water; request that the NMFA issue Conservation Bonds or Clean Energy Bonds to finance eligible projects; and pledge to the Conservation and Clean Energy Bonding Fund revenue from the oil and gas conservation tax distributed to the Land, Wildlife and Clean Energy Fund as necessary.

“Conservation project” is defined to include: acquisition of land, water and water rights, or interests in land, water and water rights to treat, preserve, restore or enhance wildlife habitat, natural areas, outdoor recreation areas and trails, forests or working farms and ranches; and wildlife management project.

“Clean energy project” is defined as a project that increases:

- 1) energy efficiency;
- 2) the conservation of energy; or
- 3) the production of energy using biomass, geothermal, hydrogen, solar or wind power.

The act's provisions describing projects that the board may fund emphasize protection of private ownership interests, including: support for the maintenance of private ownership of working farms and ranches; assistance for private landowners in conservation of land and wildlife; and a preference for leaving land and water in private ownership subject to easements that will ensure proper project management or public use while protecting private property rights.

The Land, Wildlife and Clean Energy Fund is created in the State Treasury and administered by the board. It shall consist of oil and gas conservation tax revenues distributed to the fund by law; appropriations made to the fund; gifts, grants and donations; other revenue credited to the fund; and income from investment of the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

Ten/nineteenths of the net receipts attributable to the tax imposed by the Oil and Gas Conservation Tax Act shall be distributed to the Land, Wildlife and Clean Energy Fund. The NMFA is authorized to issue and sell tax-exempt Conservation Bonds and Clean Energy Bonds, when the Land, Wildlife and Clean Energy Board has certified the need for the bonds, with the net proceeds appropriated to the board to finance conservation or clean energy development projects.

The Conservation and Clean Energy Bonding Fund is created as a special fund within the NMFA, with money in the fund appropriated to the NMFA for the purpose of paying debt service on Conservation Bonds and Clean Energy Bonds and the expenses incurred in their issuance and administration.

This bill covers two of the Chapter priorities – the Conservation Funding Initiative (open space acquisition, habitat protection and ag/ranchland preservation) and funding for Clean Energy Development Projects (increasing efficiency, conserving energy or producing energy using biomass, geothermal, hydrogen, solar or wind power).

Good things:

- Governor's bill with his strong support. Ned F and a consortium of enviro (incl. RGC) groups carried out the campaign at the Capitol.
- NM Oil & Gas Assoc. now supports the bill as do the Cattle Growers and PNM.

Bad things:

- Still too many committees on the House side
- Opposition from some oil & gas producers (Yates et al) – 'why should we pay for a competitive energy source?' These folks are being marginalized.

***HB 295 SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT, Gonzales
HBIC / HTRC – HBIC – DP – HTRC – DNP – CS/DP succeeding entries HB 82
NAVAJO NATION ELECTRIC GENERATION TAX CREDIT HTRC DNP –
CS/DP – fl/aa PASSED H (58-6) – SFC DP/a flaaaa PASSED S (34-7) h/fld cncr
s/fld recede – CC h/rpt adptd**

***SB 269 SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT, Feldman
SCC / SCONC / SFC – SCC – germane – SCONC – DP – SFC DP/a – PASSED S
(33-0) – HTRC DP - PASSED H (62-1) SIGNED BY GOVERNOR 2-21-06**

Comments

Because the House version was rolled into a large bill (HB 82), its fate is still unknown (in Conference Committee). Not so with the Senate version which passed both the House and the Senate. Unexpected allies: R Sen. Cararro and R Sen. Wilson Beffort. This is a great victory for New Mexicans and for self-generated renewable power.

Synopsis of Original Bill

House Bill 295 amends the Income Tax Act by adding a new credit against personal income tax liability for the purchase and installation of a solar thermal or photovoltaic system in a residence, business or agricultural enterprise. The credit is equal to 30 percent of the cost of the system less applicable federal tax credits up to a maximum of \$9,000 and can be carried forward for a maximum of 10 years. The bill also includes an emergency clause to make it effect immediately upon becoming law. Also included is a sunset date of 2015 on an eligible purchase. The total amount of credits available is \$5 million: \$2 million for solar thermal systems and \$3 million for photovoltaic systems.

These bills represent the Chapter priority 'Solar Tax Credits'. The language is well crafted to differentiate itself from the poorly conceived and crafted bill that disappointed the legislature in the mid-eighties. This 'once bitten' attitude from the legislature still represents a real obstacle to a conservatively crafted bill.

HB 437 SURFACE OWNERS PROTECTION ACT, Nuñez HAGC / HBIC – HAGC – DNP – CS HB 437/a DP – HBIC DP – PASSED H (59-1) – SCONC/SJC – SCONC w/drn - SJC

SB 631 SURFACE OWNERS PROTECTION ACT, McSorley SCC / SCONC / SJC – SCC germane SCONC – DNP CS/DP –SJC

Comments

Allies are unhappy with substitute bill language and both Rep. Nuñez and Sen. McSorley decided not to have the bills heard in Senate Judiciary Committee (SJC). NMOGA hired every lobbyist they could find to get this bill severely weakened from what would have been the strongest such law in the nation to a shadow of its former self. Early in the process, in the House Agriculture & Water Resources Committee (HAGC), Rep. Sandra Townsend proposed as amendments (and finally as a committee substitute) everything the New Mexico Oil & Gas Association (NMOGA) didn't get in last minute negotiations with the sponsor and stakeholders.

Synopsis of Original Bill

House Bill 437, Relating to the Production of Oil and Gas; Enacting the Surface Owners Protection Act; Stating Certain Duties Owed by Oil and Gas Operators to Surface Owners; Requiring Notice to the Surface Owners of Oil and Gas Operations; Requiring a Bond or Other Surety in Certain Circumstances; Providing a Cause of Action, seeks to enact the Surface Owners Protection Act (the Act), which addresses the following general factors:

- The Act requires oil and gas operators to compensate surface owners of real property for the use of the surface owner's property and to pay for any damages to the land resulting from oil and gas operations. In addition, the Bill requires oil and gas operators to restore the surface of lands disturbed by their operations to original condition, except to the extent otherwise agreed between an operator and the surface owner. Oil and gas operators

are required to give notice to the surface owner five business days prior to initially entering the property for non-surface disturbing activities. At least forty days prior to commencement of surface-disturbing operations, the operator would be required to give notice to the surface owner and to propose a detailed surface use and damage agreement.

- If the parties do not reach a mutually acceptable surface damage agreement within forty days after the surface owner's receipt of the operator's notice and initial proposal, the operator may commence operations upon filing of a bond or other security with the Oil Conservation Division (OCD) in the amount of the greater of \$25,000 or the operator's good faith estimate of probable surface damages.

If the operator does not exercise good faith in making the estimate, the surface owner, in a subsequent suit against the operator, can be awarded attorneys fees and punitive damages.

- If an operator commences operations without a surface use agreement, the surface owner may recover the damages in a civil action in district court, brought, at the election of the surface owner, in Santa Fe County, the county where operations occur, or the county where the surface owner resides. If the operator commences operations without giving the notice or without filing security, or if the operator fails to exercise good faith in estimating probable damages, the court may award the surface owner attorneys' fees and punitive damages.

There is no appropriation attached to this legislation, but it was on the Governor's call list. The Oil & Gas Accountability Project (OGAP) and the Environmental Law Center have taken the multi-session lead on this issue, with our lobbying support and teamwork.

HB 462 TAX INCREMENT FOR DEVELOPMENT ACT, B. Lujan HBIC / HTRC – HBIC DP/a – HTRC DNP – CS/DP – PASSED H (59-1) – SCORC/SFC SCORC DP/a – SFC DP/a PASSED S (32-2) h/cncrd

SB 495 TAX INCREMENT FOR DEVELOPMENT ACT, Papen SCC / SPAC / SFC – SCC germane – SPAC DP/a – SFC DNP – CS/DP – PASSED S (30-5) – HBIC/HTRC HBIC DP HTRC DP SIGNED BY GOVERNOR 3-1-06

Comments

This bill had a strong lobbying team and there was no organized opposition. While the development tool has been used more often in blighted neighborhoods to facilitate infill development, it was intensely lobbied by Forest City Covington, the developers of Mesa Del Sol. The concept (used successfully in forty-seven other states) was deeply debated and language changed to accommodate (primarily unfounded) concerns. Our support has been noted. Conservative Republican Senator Clinton Hardin was a strong (and unexpected) advocate both in committee and on the Senate floor.

Synopsis of Original Bill

House Bill 462 creates a mechanism for providing financing tools for public infrastructure to specific development areas. The “Tax Increment for Development Act” (TIDA) enables local development districts to reserve any incremental revenue from a base revenue that is derived from development projects. The incremental revenue can be spent on public infrastructure for the district. HB 462 establishes the rules and procedures for creating a “tax increment development district” (TIDD) and what authorities a TIDD has for making decisions and allocating resources.

HB 111 NM RENEWABLE ENERGY TRANSMISSION AUTHORITY, (Jose) Campos HBIC / HTRC / HAFC – HBIC DP/a – HTRC DP/a – HAFC w/drn – PASSED H (50-8) SFC

SB 317 NM RENEWABLE ENERGY TRANSMISSION AUTHORITY, Sanchez SCC / SJC / SFC – SCC – germane – SJC DP/a – SFC DP/a fl/aaa PASSED S (40-0) HTRC DP

Comments

These bills had a very good response for the first-time showing to the legislature. It is a bold proposal and each bill passed successfully through its own house. Unfortunately, this legislation needs to be passed soon because other western states are moving forward quickly with similar plans to build transmission lines and sell renewable power to California. If New Mexico's legislative response is as slow and clumsy next year, we may miss our best opportunity to promote and market one of our most abundant natural resources. This Chapter priority bill faced stiff opposition from legislators who want more oversight (Sen. William Payne) and those who are freaking out over eminent domain (Sen. Rod Adair, Rep. Tom Taylor et al).

- Gov. sent in troops to testify at both hearings (Joanna P & Craig O'Hare)
- PUC neutral, PNM in favor.

Synopsis of Original Bill

House Bill 111 creates a quasi-governmental agency, the New Mexico Renewable Energy Transmission Authority. The authority will be able to hire an executive director and other employees; enter agreements and contracts; finance or plan, acquire, maintain and operate electric transmission and storage facilities which, within one year after beginning operation, will generate at least 30 percent of their electricity from renewable sources; and issue renewable energy transmission bonds as necessary to finance projects. The renewable energy transmission bonds authorized in House Bill 111 will be repayable from the newly-created renewable energy transmission bonding fund. Proceeds from the bonds will be appropriated to the authority to finance or acquire electric transmission and storage facilities that will generate at least 30 percent of electricity from renewable sources, and money in the fund will be pledged for bond debt service. On the last day of January 31 and July 30 of each year, the authority will transfer the balance of the bonding fund, except for the amount needed for the next 12 months of debt service, to the newly-created renewable energy transmission authority operational fund. The authority is also authorized to refund existing bonds when such action is deemed beneficial. Bonds will be exempt from New Mexico taxes.

The authority will be required to submit a report of its activities to the governor and legislature no later than December 1 of each year.

The bill also creates the New Mexico renewable energy transmission oversight committee, a joint interim legislative committee. Members of the committee will be chosen by the legislative council, and the legislative council will staff the committee. The bill creates a new gross receipts tax deduction for receipts from selling equipment or providing services to the renewable energy transmission authority or an agent or lessee of

the authority for planning, construction, repair, maintenance or operation of a facility acquired by the authority.

The authority will have five voting members: three governor appointees approved by the senate, one member to be appointed by the speaker of the house, and one member to be appointed by the senate president pro tempore. One of the governor's appointees will need expertise in major electrical transmission financing. The other four members will need special knowledge of the public utility industry or renewable energy development. The secretary of EMNRD will also serve as a non-voting member. Authority members will receive per diem and mileage reimbursements.

The effective date of these provisions is July 1, 2006.