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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/28/09  
 SPONSOR SCORC LAST UPDATED 3/15/09 HB \_\_\_\_\_  
 SHORT TITLE Sustainable Building Tax Credit Provisions SB 291/SCORCS/aSFC  
 ANALYST Francis

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
		(\$63.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Energy Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee amended the Senate Corporations and Transportation committee substitute for Senate Bill 291 making technical corrections. First, the amendment removes references to nonprofits and changing references to “building owner” to “person that is a business owner.” Second the amendment excludes state, local government, public school districts and tribal agencies. Finally, the amendment clarifies that the document granting the credit can be submitted with the taxpayer’s tax return, *if applicable*.

#### Synopsis of SCORC Substitute

The Senate Corporations and Transportation Committee substitute for Senate Bill 291 amends the Sustainable Building Tax Credit by allowing the credit to be used for permanently installed manufactured housing, changes the certification required and allowing the credit to be used by a subsequent building owner if the owner at the time of construction or renovation did not claim a credit.

Manufactured housing is defined as a multisectioned home that is a manufactured home or modular home, a single-family dwelling with at least 864 square feet of heated space,

constructed according to federal standards and code for manufactured housing, and installed consistent with the Manufactured Housing Act.

SB291 also defines “nonprofit organization” but does not appear to be subsequently referenced. See technical issues for more discussion on this. [The SFC amendment corrected this].

There is no effective date so presumably construction or renovation after June 19, 2009, would be eligible for the credit in tax year 2009.

## **FISCAL IMPLICATIONS**

TRD scored the fiscal impact on the original bill assuming that the change to “building owner” allows nonprofit organizations to claim and transfer the credit to taxpayers:

The revenue impact stems from credits awarded to nonprofit organizations. EMNRD expects that at least two nonprofit organizations will make use of the tax credit in the coming years. It is assumed that a credit (in the amount of \$100 thousand) associated with a commercial building will be sold or transferred to a corporation, which will claim and utilize the full available credit amount in tax years 2010-2013. It is further assumed that credits in the amount of \$150 thousand in tax years 2010-2012 (associated with approximately 150 homes constructed by nonprofits) will be sold or transferred to the subsequent homeowners, who will then claim and fully utilize the available credit in tax years 2010-2015.

The SCORC substitute may have a slightly higher impact due to the expansion of the Build Green NM certification should allow more residential units including multifamily to qualify for some level of credit.

The SFC amendment does not change the fiscal impact.

## **SIGNIFICANT ISSUES**

The SCORC substitute changes the certification levels adopting new levels of “Build Green NM” ratings. Current law only allows Build Green Gold but the substitute expands the definitions for residential housing to include Build Green Silver and Emerald. Gold level corresponds to LEED-H Gold, Silver corresponds to LEED-H Silver and Emerald corresponds to LEED-H Platinum. The Build Green NM rating system refers to certification standards adopted by the Homebuilders Association of Central NM.

<b>Rating System/Level</b> \$/SqFt	<b>SB291/SCORCS</b>	
	<b>First 2,000 sqFt</b>	<b>Next 1,000 SqFt</b>
LEED-H Silver/Build Green NM Silver	\$ 5.00	\$2.50
LEED-H Gold/Build Green NM Gold	6.85	3.40
LEED-H Platinum/Build Green NM Emerald	9.00	4.45
EPA Energy Star Mfg Housing (up to 3000 sqft)	3.00	

The Home Builders Association of Central NM has a complete description of green building in NM and the certification process: <http://www.buildgreennm.com>.

EMNRD:

The Sustainable Building Tax Credit is beginning to shift the building industry to adopting more energy efficient and green building practices. In today's economic situation, green building is faring better than construction in general. Green jobs are being created and suppliers and manufacturers of green products are coming to New Mexico. It is crucial to continue this important program and SB 291 is necessary to address issues that arose in the initial implementation.

Modular homes are built in factories, as are manufactured homes. Often they are built in the same factory. The difference is that modular homes are built to New Mexico's building codes, whereas manufactured homes are built to codes set by Housing and Urban Development. The Environmental Protection Agency certifies factories to build both manufactured housing and modular homes to the ENERGY STAR standards. The modification in SB 291 SCORC Sub is necessary to assure that modular homes have the same eligibility for tax credits as manufactured homes.

SB 291 SCORC Sub makes the tax credit amounts for Build Green NM equal to those for LEED for Homes. The Build Green NM rating system was adopted by the Home Builders Association of Central New Mexico (HBACNM) from standards developed by the National Association of Home Builders (NAHB). When the tax credit was initiated in 2007, Build Green NM was not as stringent as the LEED for Homes rating system developed by the U.S. Green Building Council. Over the past two years, NAHB went through an American National Standards Institute's (ANSI) process to redefine their standards and increase the stringency of the rating system. HBACNM has adopted this stricter standard which includes third-party verification of many elements that previously were unverified. Although LEED for Homes and the new ANSI standard are very different and cannot be easily compared, a committee evaluated several projects and determined that they achieve the same levels in each system. It is therefore appropriate to award the same tax credit amounts for the similar rating levels.

Under current law, there is \$5 million available for credit for sustainable commercial buildings, \$5 million available for sustainable residential buildings. Since multifamily dwellings are both commercial and residential in character, the SCORC substitute for SB291 allows EMNRD to

***The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:***

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

***More information about the LFC tax policy principles will soon be available on the LFC website at [www.nmlegis.gov/lcs/lfc](http://www.nmlegis.gov/lcs/lfc)***

award credits for multifamily housing from the commercial housing allotment provided that there is sufficient credit available after accounting for all applications.

### **ADMINISTRATIVE ISSUES**

According to EMNRD, the modifications in SB 291 SCORC Sub will make it easier for Energy, Minerals and Natural Resources Department (EMNRD) to administer the SBTC. SB 291 SCORC Sub corrects language so the EMNRD can process tax credit applications for a given year in the first month or two of the subsequent year. As the statute now stands, all SBTC applications must be approved by both EMNRD and the Taxation and Revenue Department (TRD) by December 31 of a given year for the tax credit to be claimed for that taxable year. This puts a high administrative burden on both departments. SB 291 SCORC Sub will allow EMNRD to grant a grace period after December 31, during which EMNRD may accept applications and still have time to approve them and forward them to TRD before the April 15 tax filing deadline.

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