

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number: SB 284a**

**51st Legislature, 1st Session, 2013**

**Tracking Number: .191730.1**

**Short Title: Valuation of Renewable Energy Equipment**

**Sponsor(s): Senators Carroll H. Leavell and Gay G. Kernan**

**Analyst: Ian Kleats**

**Date: February 26, 2013**

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**AS AMENDED**

The Senate Corporations and Transportation Committee amendment would calculate the value of renewable energy equipment as 20 percent of the amount of actual construction cost reduced by any federal investment tax credit associated with the purchase of the renewable energy equipment.

**Original Bill Summary:**

SB 284 would amend a section of the *Property Tax Code* to:

- define “renewable energy equipment” and related terms; and
- provide a special method of valuation for renewable energy equipment.

Under the bill’s provisions, renewable energy equipment would be valued as follows:

- determine the actual cost of construction of the equipment;
- reduce the cost by the amount of any federal investment tax credit claimed associated with the purchase of the equipment;
- reduce the adjusted cost, less reduction for federal credits, by depreciation using a 10-year useful life and any other justifiable factors; and
- set the value of the equipment at 20 percent of the resulting amount.

**Fiscal Impact:**

SB 284 does not contain an appropriation. The revenue impact, as estimated in the Taxation and Revenue Department (TRD) bill analysis, is illustrated in the table below.

<b>Estimated Revenue Impact*</b>				<b>R or NR**</b>	<b>Fund(s) Affected</b>
<b>FY 13</b>	<b>FY 14</b>	<b>FY 15</b>	<b>FY 16</b>		
0	(***)	(***)	(***)	R	Local School Districts
0	(1,240)	(1,186)	(1,132)	R	State GO Bonding Capacity
0	(***)	(***)	(***)	R	Other Property Tax Beneficiaries

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss.

\*\* Recurring (R) or Non-Recurring (NR).

SB 284 would reduce assessed value for renewable energy equipment. The Property Tax Division of TRD indicates currently there are approximately \$451,500,000 renewable energy investments in New Mexico. Thus, the \$372 million reduction of assessed value following the adoption of the bill would reduce total net taxable value by \$124 million.

State general obligation bonding capacity is determined as 1.0 percent of total net taxable value, thus reduced by 1.0 percent of this amount or \$1.2 million.

### **Fiscal Issues:**

Any changes to the property tax base by way of exemptions or alternative valuation methods have complex interactions with yield control provisions, which cap the growth in government revenue from property tax at a defined growth control factor. The growth control factor has a lower-bound of 100 percent, meaning that mill rates<sup>1</sup> below statutory caps can actually be raised in response to a reduction in the value of the property tax base. In plain terms, yield control can allow the government to pay for a property tax carve-out by taxing everyone else at a higher rate.

The TRD analysis alludes to this possibility by suggesting the decrease of assessed value would result in an increase of property tax levies, excluding voter approved mill rates and the mill rates already limited by caps, to compensate for the loss in the base, shifting property tax obligations to other taxpayers.

Mill levies imposed on behalf of a school district frequently fall into the classification of either being voter-approved or limited by statutory caps. Because this prohibits those levies from being increased to compensate for the loss in the base, school district revenues could be adversely impacted by SB 284. Mill levies for public schools include:

- any number of mills<sup>2</sup> necessary to cover the debt service on general obligation bonds issued by a school district for statutorily defined uses;
- a statutory rate of 0.5 mills for general operating purposes;
- up to 10 mills for the purposes of the *Public School Buildings Act*;
- up to 2.0 mills for the purposes of the *Public School Capital Improvement Act*;

As these mill levies vary by school district, and the presence of renewable energy equipment has heretofore not been separately accounted in the property tax record, it is unclear which school districts would be negatively impacted by SB 284, but any school district could be.

### **Substantive Issues:**

The Department of Finance and Administration (DFA) bill analysis explains that the federal Energy Investment Tax Credit provides a tax credit at 30 percent of the purchase price for fuel cells, and 10 percent of the purchase price for geothermal systems, microturbines, and combined heat and power (CHP) property. The DFA analysis suggests that it is not clear why this proposal is limited to solar and wind equipment only.

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<sup>1</sup> Mill rates refer to the amount of tax imposed on property for every \$1,000 of taxable value.

<sup>2</sup> Article IX, Section 11 of the state constitution limits the amount of a school district's indebtedness at six percent of the assessed valuation of the taxable property within the school district, which effectively limits the mills available for general obligation bond debt service.

According to the TRD analysis, the vast majority of wind generation equipment in the state, as defined in this bill, has been financed with Industrial Revenue Bonds (IRBs) and therefore, is not on the property tax rolls. TRD doesn't have the individual expirations of those bonds to calculate if this legislation will have an effect after June 30, 2028.

**Technical Issues, Amendments:**

Under current law, the taxable value of all electric plants accounts for depreciation. The Senate Corporations and Transportation Committee amendment effectively removes any adjustment for depreciation from the calculation of taxable value for renewable energy equipment. It is unclear whether this was an intended result.

**Original Technical Issues:**

SB 284 would amend the definition of electric plant to exclude renewable energy equipment. Although SB 284 provides for alternative valuation methods for renewable energy equipment through June 30, 2028, it appears that, beginning FY 29, no applicable provision of law would describe the valuation of such equipment because the section pertaining to electric plants would no longer apply to that equipment. It is unclear how this equipment would be valued and taxed after that date.

Additionally, the TRD analysis highlights several technical issues relating to the depreciable life used in the valuation of the equipment:

- the 10-year depreciation schedule is at odds with class life represented by industry, being the reciprocal of annual depreciation schedules, as well as conventional class life used on renewable electrical generation equipment by the IRS, which is typically 25 or 30 years;
- the Property Tax Division of TRD recognizes other justifiable factors used in determining obsolescence and class life, including the typical 20-year term of power purchase agreements; and
- the 10-year class life stipulation in this legislation is at odds with the 25 year sustainability opinion required for the federal production tax credits.

**Committee Referrals:**

SCONC/SCORC/SFC

**Related Bills:**

HB 330a *Renewable Energy Equipment Valuation* (Identical)