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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/13

SPONSOR Wirth LAST UPDATED _____ HB _____

SHORT TITLE Energy Conservation Bonds SB 101

ANALYST van Moorsel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$1.0		\$1.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The American Recovery and Reinvestment Act of 2009 created qualified energy conservation bonds (“QECBs”) under Section 54D of the Internal Revenue Code (IRC). These bonds may be issued by each state and “large local government” to finance a wide range of clean energy projects and activities, including energy efficiency, renewable energy, clean fuels, efficient transportation, and public outreach. The national bond cap volume is set at \$3.2 billion, of which New Mexico is allocated \$20.6 million.

Senate Bill 101 requires the State Board of Finance (BOF) to determine the amount under the federal act to be allocated to each large local government. The bill defines “large local government,” in accordance with the federal provision, as a municipality or county with a population greater than 100,000 or an Indian tribal government. The bill would also establish mechanisms for the BOF to distribute the state's remaining allocation to qualified bond issuers desiring to designate bonds as qualified energy conservation bonds. Clean energy projects may include energy efficiency, renewable energy, clean fuels, efficient transportation, and public outreach.

FISCAL IMPLICATIONS

The qualified energy construction bonds are issued as tax credit bonds (TCBs), which allow the bondholder to claim a federal tax credit equal to a percentage of the bond's par value for a limited number of years. For QECBs, the tax credit percentage is set to 70 percent of the current yield on taxable corporate bonds. The state and other issuers pay no interest to bondholders. In essence, the federal government pays the interest through the tax credit. As such, there are no identifiable costs to the state to issue bonds other than rulemaking and administrative costs incurred by agencies (see Administrative Implications)

SIGNIFICANT ISSUES

Senate Bill 101 requires that QECBs meet all federal requirements and be used for qualified conservation purposes. Qualified conservation purposes include certain clean and renewable energy capital expenditures, research projects, mass commuting facilities, demonstration projects designed to promote the commercialization of clean energy technologies, or public education campaigns

Bond issuance is allocated to the state and large local governments according to population. Section 54D provides that county allocations should be determined with the exclusion of the population of any municipality that is a large local government. In this case, the Albuquerque population is excluded from the Bernalillo County population for the determination of the county allocation.

According to the provisions of Section 54D a maximum of 30 percent of the QECB allocations may be used for private activity purposes. DFA notes that private activity in this sense describes a federal categorization of bonds indicating that the uses of the bond's proceeds support endeavors that involve the private sector and are not entirely public. This descriptor should not to be confused with the ongoing Qualified Private Activity Bond capacity allocation program currently administered by BOF, which traces its authority back to the federal Revenue and Expenditure Control Act of 1968 that granted special status in the federal tax code for specific "qualified" private activities.

DFA notes that a rule would need to be established to determine which projects receive bond funding. Since this process is expected to be a one-time event, directing BOF to issue a rule may create unnecessary delay and administrative expense. BOF would need to determine whether the criteria for approval should be conservation-related, meaning the project with the largest conservation impact, or bond-related, meaning the project that is the most ready/financially sound. DFA adds that the BOF may not be the most appropriate state entity to review project applications for bond issuance. EMNRD would likely have more expertise to assess the impact on energy conservation of proposed projects, while BOF has more expertise on the evaluation of bond terms and financing structures.

ADMINISTRATIVE IMPLICATIONS

DFA notes that a rule would need to be established to determine which projects receive bond funding, which would entail moderate administrative costs and a small fiscal impact of about \$1,000. Since this process is expected to be a one-time event, directing BOF to issue a rule may create unnecessary delay and administrative expense. BOF would need to determine whether the

criteria for approval should be conservation-related, meaning the project with the largest conservation impact, or bond-related, meaning the project that is the most ready/financially sound. The DFA notes the BOF may not be the most appropriate state entity to review project applications for bond issuance. EMNRD would likely have more expertise to assess the impact on energy conservation of proposed projects, while BOF has more expertise on the evaluation of bond terms and financing structures.

ALTERNATIVES

The DFA suggests several amendments, including establishing a deadline for applications and concrete determination (based on the federal earmark formula) of the allocations available to each municipality, county or Indian tribal government that meets the definition of a "large local government" at the statutory level rather than relying on rule and a deliberative body. Doing so may avoid the need for a rulemaking, and could increase access to funding.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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