F I S C A L   I M P A C T   R E P O R T

SPONSOR Dodge | **ORIGINAL DATE** 02/01/14 | **LAST UPDATED** 02/11/14 | **HB** 233

SHORT TITLE Renewable Energy Tax Credit Eligibility | **SB**

ANALYST Clark/van Moorsel

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**	**FY17**	**FY18**		
$0.0	($21,700.0)	($22,200.0)	($22,700.0)	($23,200.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB 191

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Energy, Minerals and Natural Resources Department (EMNRD)
Renewable Energy Transmission Authority (RETA)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 233 amends the Renewable Energy Production Tax Credit (REPTC) -- Section 7-2-18.18 and Section 7-2A-19 NMSA 1978 -- and makes three changes.

1. It extends by three years the eligibility period for initial electricity production -- from January 1, 2018 to January 1, 2021. Projects need to be in production by December 31, 2020 instead of December 31, 2017.

2. It specifies the 10-year eligibility period begins on the date on which the qualified energy generator is certified for eligibility by the Energy, Minerals and Natural Resources Department (EMNRD).

3. It doubles the cap for the renewable energy production tax credit for annual energy production from a total of two million megawatt-hours (MWh) plus an additional 500 thousand MWh for solar energy to a total of four million megawatt-hours (MWh) plus an additional one million MWh for solar energy.

EMNRD notes HB 233 does not change the individual project tax credit cap, which remains at 400 thousand MWh.

FISCAL IMPLICATIONS

This bill doubles the amount of the aggregate cap on this credit for the solar, wind and biomass sections. Currently, the amount of accepted applications from generators on the wind and biomass side is sufficient to effectively fill the newly raised cap, which equates to approximately $20 million in new credits at the constant rate of $0.01 per kilowatt hour – the majority of the impact.

On the solar side, generators on the waiting list account for about 80,000 megawatt hours out of a newly available 500,000 megawatt hours. Because the credit percentage changes annually for this portion of the credit, the cost on a constant level of megawatt hours changes yearly.

SIGNIFICANT ISSUES

TRD notes the date changes, from date of first generation to date of credit certification, have a significant policy impact. The current language of the statute specifies several milestones based on the date of first generation. Because the ten-year clock for receiving the credit is based on that date, it has proven difficult for generators to secure funding for construction on a generating plant when the queue is full; the clock would start on eligibility when the plant goes operational, and not when the credit is first received. The result of this is that some of the generators at the end of the waiting list would receive a credit for much less than ten years that does not appear to be the intent of the original legislation. By changing the date in this bill, that issue is addressed so that all of the qualified generators can receive the credit for the full 10 years.

EMNRD provides the following analysis in its submission.

REPTC is fully subscribed with both wind/biomass and solar applicants, at the two million MWh and 500 thousand MWh caps, respectively. These applicants are either certified and progressing through the 10-year period of tax credit eligibility; or have met the criteria of REPTC requirements, are under construction, and are soon to start an expected ten years of tax credit eligibility. In addition to these applicants fitting within the REPTC energy production cap, there are applicants "pending approval" that meet the criteria of the REPTC requirements, but at the time of application the REPTC caps were fully subscribed. For wind/biomass applicants, there is an additional 1.9 million MWh pending approval; for solar applicants there is an additional 80 thousand MWh pending approval.

At this time, due to no energy production being available under the respective caps and the many pending approval applications, a new wind/biomass or solar applicant added today to the list of pending approval applicants would be not be eligible for a tax credit until late 2021. Under the existing statute, such an applicant would need to be operating by January 1, 2018, but would not be eligible for a tax credit for its first three years of operation.

These utility-scale wind/biomass and solar projects competing for tax credits under the REPTC are developed for long-term operation, so financial planning typically covers a time span of 20 or more years. Because of this long term financial horizon, the pending approval applicants expect to receive a full 10 years of tax credit when it is available, even if not available until after 2018.

Due to the many pending approval applicants, the 2018-2028 period will see a tax credit liability to the state under the REPTC, as now expected. But tax credit liability may also continue in the following 2028-2038 period. Under existing statute, there may be an increase in activity in 2017 to meet the January 1, 2018 operating requirement, but this will lengthen even more the time of tax credit liability to the state, possibly into the 2038-2048 period.

Increasing the caps as proposed in this bill would enable all pending approval applicants to move forward to the next steps of certification and provide the opportunity to become eligible to receive tax credits. There would also be more flexibility to allow new applicants to request certification. Delaying the expiration date from 2018 to 2021 would also help to ease the logjam of applicants trying to meet the first energy production requirement between now and REPTC expiration.

Due to the flexibility of the increased caps and the delayed expiration date, the tax credit caps will enable REPTC projects to receive the tax credit earlier, thereby shortening the period of tax credit liability.

ADMINISTRATIVE IMPLICATIONS

EMNRD notes HB 233 would resolve many administrative issues and improve the certification process.

DUPLICATION

HB 233 duplicates SB 191.

OTHER SUBSTANTIVE ISSUES

EMNRD states in its analysis the current backlog of pending applications for eligibility pursuant to the renewable energy tax credit appears to be causing uncertainty from the industry's perspective about this tax credit program. Applicants in line now and other potential applicants have voiced concern over how much of a project's energy production will be counted toward tax credits. Because the statute states that tax credit eligibility lasts for 10 years, the state may be exposing itself to legal liability should applicants not receive a full 10 years of credits.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Additional renewable energy production will slow down, and EMNRD reports the state may face a legal liability from applicants who do not receive the full 10-year tax credit eligibility as stated in the existing statute.

JC/ds:svb