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FISCAL IMPACT REPORT



SPONSOR: Lujan DATE TYPED: 02/04/02 HB 373

SHORT TITLE: Tax Incentives for Power Plants SB _____

ANALYST: Neel

REVENUE

| Estimated Revenue | | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected |
|-------------------|-----------|-------------------------|----------------------|-------------------|
| FY02 | FY03 | | | |
| (\$110.0) | (\$220.0) | (220.0) | Recurring | General Fund |
| | (\$0.1) | (\$0.1) | Recurring | Local Governments |
| | | | | |

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 233, HB 143 SB 187, SB 46

SOURCES OF INFORMATION

LFC files
Taxation and Revenue Department (TRD).

SUMMARY

Synopsis of Bill

House Bill 373 amends the County Industrial Revenue Bond Act to allow electric generation facilities in any class b counties with a population between 10,000 and 12,000 based on 1990 census with an assessed valuation of less than \$100.0 million to qualify for Industrial Revenue Bonds. HB 373 also amends statute to allow investment credits and double-weighted sales income tax apportionment for electric generation facilities under the same criteria.

Significant Issues

HB 373 modifies language passed by the 2001 Legislature for the construction and operation of electric power generating facilities. Power plants constructed in Lea, Eddy, Chaves, Luna, Roosevelt, Curry, Hidalgo or Rio Arriba Counties are eligible for the following: (1) county industrial

revenue bond financing; and (2) investment credit of 5% of the value of qualified investments. HB 373 would expand these provisions to include power plants in Quay county.

Additionally TRD states that last year's statute also included eligibility for the double-weighted sales election for apportioning corporate income tax. However, because another bill amended the same section of statute and was signed, the double-weighted sales provision was not compiled into the statutes.

FISCAL IMPLICATIONS

The double-weighted sales provisions drive the effect on the general fund. TRD's key assumptions in the revenue estimate:

- (1) One medium size facility (100 MWe) per year is constructed in one of the counties newly eligible for the double-weighted sales incentive under the bill.
- (2) Construction costs are \$60 million per facility.
- (3) Investment in the power plants generates a 15% before-tax rate of return on investment for their corporate owners.
- (4) 100% of the power generated at the facility will be exported out of state. Under this assumption, the double-weighted sales election reduces the share of tax apportioned to New Mexico by 16%, as illustrated in Table 1 attached to this analysis.
- (5) These facilities would be built even if the proposed incentives are not approved.

TRD assumes that electric generation facilities would be built regardless of the provisions included in HB 373. This assumption maybe somewhat simplistic as to the motives of business community.

TECHNICAL ISSUES

TRD attached to following table:

Table 1
Illustration of Double-weighted Sales Election
for Apportioning Corporate Income Tax

| | <u>In state share</u> | <u>Weight</u> | <u>Share of Corporate Tax Apportioned to New Mexico</u> |
|-------------------------------|-----------------------|---------------|---|
| <u>Single-weighted sales:</u> | | | |
| Property | 100 % | 0.33 | 33 % |
| Payroll | 100 % | 0.33 | 33 % |
| Sales | 0 % | 0.33 | 0 % 66 % |
| <u>Double-weighted sales:</u> | | | |
| | <u>In state share</u> | <u>Weight</u> | <u>Share of Corporate Tax Apportioned to New Mexico</u> |
| Property | 100 % | 0.25 | 25 % |
| Payroll | 100 % | 0.25 | 25 % |
| Sales | 0 % | 0.25 | 0 % |
| Sales | 0 % | 0.25 | 0 % 50 % |
| Difference | | | -16 % |

Notes:
This illustration assumes that all property and payroll are in New Mexico, and all sales are out of state. The in-state share for each factor is the ratio of the amount of that factor in the state to the total amount of the factor for the taxpayer.

OTHER SUBSTANTIVE ISSUES

TRD notes that the legislation passed last year (Laws 2001, chapter 284) included eligibility for the double-weighted sales election for apportioning corporate income tax. But, because another bill amended the same section of statute and was signed after Senate Bill 739, the double-weighted sales provision was not compiled into the statutes. However according to a November 1, 2000 Attorney General Opinion (Opinion No. 00-05) “unless two laws covering the same subject matter are incompatible, the rules of statutory construction require that they be harmonized and construed together if possible.”

SN/prr