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

SPONSOR HBIC **DATE TYPED** 2/14/04 **HB** 413/HBICS

SHORT TITLE Energy Product Manufacturer Tax Credit Act **SB**

ANALYST Neel

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	**FY05**			
	(100.0)	Increasing	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Economic Development Department (EDD)
Energy Mineral and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee's Substitute for HB Bill 413 provides for a tax credits to a taxpayer who manufactures advanced energy technology and who has made qualified expenditures (*e.g.*, land, plant, equipment) for use within an advanced energy business. "Advanced energy business" is defined as a business that manufactures equipment, component parts, materials, electronic devices, hybrid electric vehicle component devices, and testing equipment and related systems solely related to advanced energy systems and alternative fuel vehicles.

The credit is an amount equal to five percent of the taxpayer's qualified expenditures in a taxable year. Credit claims are limited to taxpayers who have added at least $50 thousand in payroll for every $1 million in expenditures eligible for the credit.

The taxpayer may apply to the Taxation and Revenue Department for approval against the taxpayer's compensating tax, gross receipts tax or withholding tax, *providing* that the claim does not exceed the sum of the tax due.

FISCAL IMPLICATIONS

TRD notes the following fiscal impact assumptions:

54 businesses in New Mexico are identified as renewable energy businesses, with 21 identified as manufacturers, on the web site called "The Source for Renewable Energy." The fiscal impact estimate was derived assuming a base of 21 eligible companies, and average payroll and investment values from the 1997 Census of Manufacturers for New Mexico. This sector should grow in the future because rising costs of traditional energy sources will cause increasing interest in the targeted technologies

TRD notes the following technical issues and other impacts

TECHNICAL ISSUES:

The proposed credit is potentially discriminatory because it requires an eligible investment to be located in New Mexico. Taxpayers with similar investments in other states could challenge this provision as unconstitutional under the commerce clause of the U.S. Constitution.

OTHER IMPACTS AND ISSUES:

Double-dip potential:

The proposed credit would be tied to expenditures that might also be eligible for present law Investment Credits, Technology Jobs Tax Credits, Renewable Energy Production Tax Credit and/or industrial revenue bond financing. If a facility were eligible for all of these incentives, the state would already be subsidizing the investment to the extent of 13 percent in urban areas and 21 percent in rural areas. The proposed credits would increase that to 18 percent urban/26 percent rural. This rate of subsidy likely exceeds any potential revenue the state and local governments would be likely to receive from the potential investments. In addition, it would represent foregone revenue to the extent that investment would occur in the state without the incentives. If the intent is to prevent excessive subsidies or "double-dips", the proposal could limit the availability of the new credit to expenditures not eligible for other credits and incentives.

Tax credit carryforward:

The bill provides no limit on the period for which unused credits may be carried forward. This means that the credits are not directly tied to the profitability of the enterprise and they become more like a general transfer of funds, i.e. the tax relief is not well targeted. To avoid this problem, most credits have a limited carryforward period.

Credit claim period:

The proposal does not limit the period of time during which a taxpayer can make expenditures eligible for the credit. Thus, no matter how long the taxpayer is in business, their qualified expenditures would be eligible. If the policy argument for the proposal is that it is needed to attract new business to the state, or to help new, small businesses to grow, the credit period should be limited to the first few years of the entities operations in the state.

Credit amount caps:

There is not limit provided for the amount of credits that may be claimed by one taxpayer or by all taxpayers taken together. This exposes the state to the risk of foregoing significant amounts of revenue, and additionally, poses the possibility of subsidies to the enterprises that exceed what is intended or needed to motivate investment.

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