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

SPONSOR Lujan,B **DATE TYPED** 2/17/04 **HB** 527/aHTRC

SHORT TITLE Renewable Energy Tax Credit Transferability **SB**

ANALYST Neel

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
		(300.0)	Recurring	State General Fund
		(50.0)	Recurring	Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Energy Minerals and Natural Resources Department (EMNRD)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment modifies the method by which taxpayers apply for and TRD approves credit claims. The amendment also restores present treatment for credits for facilities placed in service before July 1, 2004. These credits are non-transferable and applicable against corporate income tax liability. For the credits attributable to facilities placed in service after July 1, 2004, they are transferable and can be applied against the modified combined liability.

The change in effective date to July 1, 2004 thereby negates an FY05 fiscal impact.

Synopsis of Original Bill

Senate Bill 303 amends statute (NMSA 1978, Section 7-2A-19) that currently provides a tax credit for the owner of a qualified "renewable energy generator" (*i.e.*, solar, wind, biomass). This bill would allow the sale or transfer of the renewable energy production tax credit to another entity. It directs the NM Taxation and Revenue Department (TRD) to issue a document for the credit, with that document being transferable and trackable. The holder of the document could apply all or part of the credit to their New Mexico corporate or personal income tax liability. The TRD could disclose to any person the balance of credit remaining on the document.

FISCAL IMPLICATIONS

The fiscal impact is based on one 200 MWH wind-generation facility at 40 percent capacity factor that would generate the maximum allowable 400 thousand MWH of electricity. This equates to $4 million. According to Public Service Company of New Mexico (PNM) only one facility would qualify for such a credit. Because of the significant capital required to build and implement such a generation facility, the credit is held at $4 million in FY05. In subsequent years, when an appropriate market for renewable energy credits is developed and other producers enter the market, the fiscal impact will increase significantly because it can be applied to personal income tax, corporate income tax, GRT or compensating tax liability. Therefore, anyone paying personal income tax could qualify to use the tax credit.

Local government impacts are attributable to two effects: (1) If credits are applied against the state's 5% gross receipts tax in a municipal area, 1.225% of the 5% is reduced municipal revenue sharing (Section 7-1-6.4 NMSA 1978); (2) If the credit is applied against compensating tax liability, 20% of the revenue effect will be taken against the distributions to the small cities and small counties assistance funds (Section 7-1-6.2 and 7-1-6.5). The share of credits applied against these revenue sources was modeled based on experience with the investment credit program.

HB 527 does not have an effective date. Therefore, provisions include a FY04 impact.

ADMINISTRATIVE IMPLICATIONS

TRD notes that transferability of credits imposes significant new complexity to this program. Any third party attempting to claim the tax credit under this section would have to prove somehow that the amount of the credit is in excess of the original taxpayer's corporate income tax liability for the year. There are two ways this could be done. One would require the Department to keep records of the tax returns of the original taxpayers and the balance of their unused credits. The Department would then require any third party attempting to claim the credits to prove that they had acquired them from a taxpayer who had excess credits available. The resulting administrative burden for the Department would eventually be significant, requiring an additional full-time employee after a period of a few years. The alternative mechanism would require that the original taxpayer share their tax return information with the taxpayer purchasing the credits. This is something they may be unwilling to do.

TECHNICAL ISSUES

The bill allows the use of renewable energy credits against "modified combined tax liability." This appears to be a reference to a definition in the Rural Jobs Tax Credit (Section 7-2E NMSA 1978) which includes gross receipts tax, compensating tax, withholding tax and other taxes collected through the combined revenue system. This bill should include a definition of this term within the same section as the Renewable Energy Credit itself to avoid confusion in the event of any changes in the definition.

OTHER SUBSTANTIVE ISSUES

The following is excerpted from EMNRD's New Mexico's Natural Resources 2003 Data and statistics for 2002:

> In July 2003 the first commercial-size wind power plant in New Mexico commenced operation. Known as the New Mexico Wind Energy Center, it is 204 megawatts in capacity, the third largest wind power plant in the world. It is located in eastern New Mexico, about 20 miles northeast of Fort Sumner, Quay and De Baca counties. The wind power plant is owned and operated by FPL Energy and all the electricity is purchased by PNM…..
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> The potential for electricity generation from wind is enormous in some areas of New Mexico, especially on the eastern plains. New Mexico ranks twelfth in wind electric potential and is among twelve states in the midsection of the country that, together have 90 percent of the total commercial wind electric potential in the contiguous United States. The annual wind energy potential of New Mexico has been estimated to be 435 billion kWh. New Mexico has the potential to produce many times its own electrical consumption, which puts it in a position to export wind electric power…
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> Several developers are actively working to develop projects in New Mexico. In August 2003 Excel Energy and Cielo Wind Power announced plans to develop an 80 MW wind power plant in New Mexico on the Caprock south of Tucumcari. The plans depend upon renewal of the Federal wind energy production tax credit.

According to TRD's analysis of similar legislation in 2003, the New Mexico Public Regulation Commission ("PRC") recently adopted a regulation that requires persons supplying power to New Mexico customers to procure and distribute renewable energy in an amount equal to at least 5% of their total energy supplies by 2006, and to at least 10% by 2011. According to the U.S. Energy Information Administration ("EIA"), renewable energy generation in New Mexico accounted for 236 megawatt-hours out of total generation of 32, 341 megawatt-hours in 1998, for a percentage of 0.7%. Thus, to meet the PRC's required percentage, generators will have to substantially increase their renewable power generation within the next few years.

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