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

SPONSOR SCORC **ORIGINAL DATE** 03/02/15 **LAST UPDATED** **HB**

SHORT TITLE Renewable Energy Tax Credit Changes **SB** 242/SCORCS

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	**FY16**	**FY17**	**FY18**	**FY19**		
0	($9,600.0)	($9,300.0)	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Up to $60.0	$60.0	$60.0	$180.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 242

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of Bill

The Senate Corporations and Transportation Committee Substitute for Senate Bill 242 amends Section 7-2-18.18 NMSA 1978 of the Income Tax Act and Section 7-2A-19 of the Corporate Income and Franchise Tax Act and makes the following changes.

1. It increases the amount of electricity that may be produced by qualified energy generators that will be eligible for the Renewable Energy Production Tax Credit (REPTC) from a total of two million megawatt-hours (MWh) plus an additional 500 thousand MWh for solar energy to a total of 3.15 million megawatt-hours (MWh) plus an additional 1.3 million MWh for solar energy. It clarifies that solar projects may only qualify under the cap specific to solar energy, and that only wind-, geothermal-, or biomass-derived resources may qualify for the larger cap. Current regulations promulgated by the Energy, Minerals and Natural Resources Department (EMNRD) exclude solar-derived resources from the larger cap, so the new language provides clarification of existing policy rather than a change in policy.

2. It further extends the date that a qualified energy generator must first produce electricity to qualify for REPTC. The bill also limits the period for which a taxpayer may claim the credit to 10 consecutive years of tax credit, starting the first taxable year the credit is claimed by the taxpayer. It specifies the certification date of qualified energy generators as the start of the 10-year eligibility period.

3. It decreases the amount of credit per kilowatt-hour (kWh) for solar energy generation for taxpayers receiving certificates of eligibility on or after January 1, 2015. It moves from a system of increasing and then decreasing credit levels that changes each of the 10 years the credit can be claimed to a new, flat rate of $13.75 per MWh. Taxpayers that received certificates of eligibility prior to January 1, 2015 are grandfathered into the current rate structure, although the rates are converted from kWh to MWh measurements for consistency. The new rate of $13.75 per MWh is less than the rate for any of the 10 years under the existing and grandfathered rate structure.

4. It decreases the amount of credit per kilowatt-hour (kWh) for energy generated from wind and biomass sources for taxpayers receiving certificates of eligibility on or after January 1, 2015 from $10 per MWh to $5 per MWh. Taxpayers that received certificates of eligibility prior to January 1, 2015 are grandfathered into the current rate structure, although the rates are converted from kWh to MWh measurements for consistency.

5. It provides for the addition of geothermal energy as a qualified energy source, defines "geothermal" using the definition from the Geothermal Resources Conservation Act, and places geothermal energy in the same rate structure as wind and biomass. It also adds algal waste as an eligible biomass energy resource.

6. It extends the sunset of REPTC to January 1, 2032.

FISCAL IMPLICATIONS

The fiscal impact was estimated by EMNRD and represents a reasonable scenario assuming every project currently on the waiting lists becomes certified and claims the credit up to the newly raised caps. The solar cap would be reached almost immediately with multiple projects still on the waiting list, and every project currently on the wind/biomass waiting list would be able to be certified. It is impossible know how quickly projects would move off the waiting list to claim the credit and how quickly additional projects would join the queue, but given historical trends, this scenario is a reasonable possibility, particularly because of the current backlog of eligible projects noted by EMNRD (see Significant Issues).

Additionally, EMNRD reports it will incur an operating budget impact to administer the credit, including the development of regulations and the review of eligibility for each potential renewable energy resource generator. EMNRD estimates an additional $60 thousand per fiscal year in the operating budget would be required for technical, legal, and administrative staff to support this program, and the agency reports it currently has limited staff resources to review and process applications and amend program rules.

SIGNIFICANT ISSUES

The bill could encourage development of additional renewable energy sources in the state by expanding the cap on the credit for the amount of electricity that may be produced by qualified energy generators. However, the bill also reduces the value of the credit for projects certified on or after January 1, 2015, and this could have a suppressive effect on the number of new renewable energy projects built in the state.

The bill clarifies that the 10 consecutive years of tax credit start on the first taxable year the credit is claimed by the taxpayer. The current version of the law provides that the 10 year eligibility period began when the generator began producing electricity. Due to the backlog of eligible projects, some generators would begin producing electricity while they were waiting for the credit and thus lose years of eligibility.

The Renewable Energy Transmission Authority (RETA) reported the following information regarding proposed renewable energy projects that would be impacted by the bill.

> A number of significant transmission lines are being studied in New Mexico that, once built, will provide for more development of wind, solar and geothermal resources. If constructed, the Western Spirit Clean Line project will allow for an additional 1,500 MW of projects to be built, SunZia will allow for an additional 3,000 MW, the Lucky Corridor will allow for an additional 700 MW, the Centennial West Clean Line will allow for an additional 3,500 MW, and the Southline Transmission Project will allow for an additional 1,500 MW. The state is well poised to develop its natural resources and create a complimentary industry to the oil and gas resources. Similarly to those resources, the majority of the natural resources are likely to be sold out of state while New Mexico realizes the benefits of increased jobs and tax revenues. The extension of the tax credits contained in the bill will increase the development of the state's natural resources.

EMNRD reported the following information regarding REPTC and proposed renewable energy projects in its analysis.

> REPTC is currently fully subscribed for both wind/biomass and solar energies, at the 2.0 million MWh and 0.5 million MWh caps, respectively. In addition to certified projects that fill the REPTC energy production cap, there are applicants "pending approval," or on a waitlist. For wind/biomass applicants, there is an additional 1,410,573 MWh pending approval; for solar applicants there is an additional 1,211,890 MWh pending approval. These pending applications have met the application criteria but have not been certified due to the unavailability of the current solar production cap.

If the cap for wind, geothermal, and biomass were increased from 2.0 million to 3.15 million MWh, all projects currently on the wind/biomass waiting list would be eligible to complete their application process.

If the bill increases the solar energy cap from 0.5 million MWh to 1.3 million MWh, there would be room for an additional 19 pending solar projects to complete their application processes, become certified, and begin claiming tax credits for the 2015 tax year. However, even with the increased cap, seven projects would still be on the REPTC solar waiting list. In 2021, several solar projects complete their 10 years of REPTC eligibility, and this will allow additional projects to begin claiming the tax credit. There are currently four additional solar projects being reviewed by EMNRD (these total 40 MW) that would realize only nine years of tax credit eligibility.

CONFLICT

This bill conflicts with House Bill 242, which also changes the tax credit rates and caps but by different amounts.

OTHER SUBSTANTIVE ISSUES

PRC reports two potential issues with renewable energy sources identified in the bill, stating that segregated solid waste is not consistent with the objectives of the Renewable Energy Act as the level of pollutants may increase over and above existing fossil fuel resources and may be inconsistent with the concept of clean energy. Fluidized bed technology may not be a proven clean renewable technology and should be investigated further prior to being permitted in the language as a renewable energy resource. New Mexico statute defines renewable energy to mean electric energy generated by use of low-or-zero emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources. Renewable resources are an attempt to improve the environmental impact of electric generation and to reduce fossil fuel emissions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently, the 10 years of tax credit eligibility begins upon first production, not the date the project is certified by EMNRD to receive the credit. EMNRD reports many projects are on the waiting list and begin production before they are certified, losing years of tax credit eligibility, and it is possible that some projects will use up their 10-year window before cap space becomes available. There is potential the state will face a legal liability from applicants who do not receive the full 10-year tax credit eligibility. In addition, though the existing statute requires production to begin before January 1, 2018, there is no final sunset of the credit, and EMNRD anticipates that administration of REPTC will continue significantly beyond the 2018 expiration, possibly beyond 2044.

JC/je