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

ORIGINAL DATE 2/20/17
SPONSOR Dodge/Crowder **LAST UPDATED** 2/25/17 **HB** 440

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

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring **	Fund Affected
FY17	FY18	FY19	FY20	FY21		
	0.0	0.0	0.0	($700.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

See long-term fiscal impact in "Fiscal Implications Section

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC) on 2015 HB 242
Renewable Energy Transmission Authority (RETA) on 2015 HB 242
Energy, Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD) on 2015 HB 242

SUMMARY

Synopsis of Bill

House Bill 440 amends the Renewable Energy Production Tax Credit (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) to provide wind and solar projects with guaranteed, but delayed credits for projects that begin production before January 1, 2023. The most significant change is that producers will ultimately receive 10 years of credits beginning at the eligibility date.

In summary, HB-440:
1) expands the eligibility to include geothermal energy as a qualified energy resource;
2) increases the wind, geothermal, and biomass production capacity by 500,000 MWhr on or after January 1, 2021 from 2,000,000 MWhr to 2, 500,000 MWhr;
3) clarifies that eligibility is 10 consecutive years of tax credit beginning on the date of certification of eligibility for both the wind and solar credits;
4) lowers the rate of the wind/bio/geo tax credit from \$10/MWh to \$5/MWh for projects

producing on or after January 1, 2018 and then to \$3/MWh for projects after producing on or after January 1, 2020 through January 1, 2023;

5) increases the solar production capacity by 100,000 MWh/year over a five-year period beginning in 2018 until the cap is up to 1 million MWh;
6) lowers the rate of the solar credit for projects beginning production after January 1, 2015 and before January 1, 2017 to \$12/MWhr, \$8/MWhr for projects beginning production from January 1, 2017 to December 31, 2018, \$4/MWhr from projects beginning production after January 1, 2019 and on or before December 31, 2022. The credit expires for projects beginning production after January 1, 2023.
7) creates an "hard stop." Production after January 1, 2033 will not be eligible for any REPTC credit.

For more detail, provided by EMNRD, see the end of this review:

FISCAL IMPLICATIONS

Although the fiscal impact of the 2015 version of this bill was provided by the Taxation and Revenue Department (TRD), this year's version was estimated by LFC staff. TRD will submit a competitive model that comes to different conclusions in the long run.

	General Fund Impact		General Fund Impact
FY 17	0.0	FY 26	2,800.0
FY 18	0.0	FY 27	(5,500.0)
FY 19	0.0	FY 28	(16,000.0)
FY 20	0.0	FY 29	(14,500.0)
FY 21	(700.0)	FY 30	(12,600.0)
FY 22	(2,100.0)	FY 31	(8,300.0)
FY 23	(2,700.0)	FY 32	(5,200.0)
FY 24	(2,600.0)	FY 33	(2,200.0)
FY 25	(1,600.0)		

The table to the left exhibits the fiscal impact of the changes in the wind credit. Note that costs to the general fund are modest until FY 28.

The bulk of the fiscal impact of this bill is from the wind, geothermal and biomass credit. Industry sources point out the LFC model does not include significant savings to the general fund from a decrease, pursuant to the provisions of this bill, in the solar credit that might offset the increased amount of credit for wind producers.

The costs and savings for solar light and solar-heat related electrical energy production will parallel the wind energy estimate above, but will be substantially less in amount and may sunset sooner than the wind energy credit. However, the solar light and solar heat credits increase from the current 500,000 megawatt hours to 1,000,000 megawatt hours.

For both the wind credit and the solar credit, the wait list of projects that have been planned, but, perhaps, not yet completed, will be cleared by the delayed repeal production date of December 31, 2022. The provisions of this bill have been carefully calculated to allow currently planned projects full access to decreased credits per megawatt hour, but to remove any incentives for competitive projects to enter the market.

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 original Renewable Energy Production Tax credit was intended to encourage development of additional renewable energy sources in the state. However, the provisions of this bill will only encourage the developers of planned projects that have already applied to lock up a place in the waiting list to complete the project and bring on line the substantial amount of commercial scale renewable energy production. It is likely that the majority of the 1,022.7 megawatts of wind energy capacity in the queue would not be completed in the absence of passage of this bill. Although difficult to quantify in terms of construction jobs, or long-time permanent employment, this 1,022.7 megawatts of wind energy capacity comes at a cost to the general fund of $87 million in total over the next 20 years.

The Renewable Energy Transmission Authority (RETA) reported the following information in 2015's HB-242 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.

> The REPTC is currently fully subscribed for both wind/biomass and solar energies at the current caps of 2 million MWh and 0.5 million MWh respectively. In addition to certified projects that fill the REPTC energy production cap, there are applicants pending certification by EMNRD. For wind/biomass applicants there is an additional 2,373,460 MWh pending certification; for solar applicants there is an additional 2,368,990 MWh pending certification. These pending applications have met the application criteria but have not been certified due to the unavailability under the current renewable energy production cap.
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> If the cap for wind, geothermal, and biomass were increased from 2 million to 2.5 million MWh, all projects currently on the wind/biomass waiting list would be eligible to complete their certification process. All current projects on the waiting list could receive

at least seven years of REPTC. Approximately four projects on the current waiting list would be eligible for 10 consecutive years of credit with the remaining three to receive limited REPTC.

HB 440 would increase the solar energy cap from 0.5 million MWh to 1 million MWh. This would allow all current projects on the waiting list to receive at least one year of REPTC. Approximately 21 projects on the current waiting list would be eligible for 10 consecutive years of credit with the remaining 15 eligible to receive limited REPTC.

ADMINISTRATIVE ISSUES

EMNRD indicates that the agency would need no additional resources to administer this program:

> Administrative implications for EMNRD include updating existing rules to comply with changes. Since the tax credit is currently in place, EMNRD has an existing program to review applications and provide certifications.

TECHNICAL ISSUES

EMNRD notes that HB 440 does not define geothermal energy nor does it prohibit existing geothermal facilities from claiming the credit; that is, a geothermal facility that is already producing could join the queue but credit would not be available for geothermal projects until 2027. In this case, the credit would not bring additional economic or other benefits to New Mexico and its electricity ratepayers.

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.

DETAILED DESCRIPTION – Provided by EMNRD

For wind, biomass, and geothermal projects, HB 440 increases the cap of total annual energy production that can claim the credit from 2 million megawatt-hours (MWh) to 2.5 million MWh on January 1, 2021. HB 440 subdivides the tax credit rates for wind, biomass, and geothermal projects into time periods:

1) the current rate of $10 per MWh for projects first producing power prior to January 1, 2018,
2) $5 per MWh for projects first producing power after December 31, 2017 until prior to January 1, 2020,
3) $3 per MWh for projects first producing power after December 31, 2019 and prior

to January 1, 2023, and

4) no credit for projects producing power after January 1, 2023.

For solar projects certified on or after January 1, 2015, the tax credit is subdivided into three time periods as follows:

1) the rate is $12 per MWh for projects first producing power prior to January 1, 2017,
2) the rate is $8 per MWh for projects first producing power after December 31, 2016 and prior to January 1, 2019, and
3) the rate is $4 per MWh for projects first producing power after December 31, 2018 and prior to January 1, 2023.

HB 440 increases the solar annual cap from 0.5 million MWh to 1 million MWh as follows:

Tax Year	2017	2018	2019	2020	2021	2022
MWh	500,000	600,000	700,000	800,000	900,000	1,000,000

For solar projects, HB 440 does not change the tax credit for projects that first produced power prior to January 1, 2015. The current REPTC rate for qualified solar energy resources production gradually increases and then gradually phases down again for an average tax credit of $27.50 per MWh:

	KWh	MWh
1st year	$.015	$15.00
2nd year	$.02	$20.00
3rd year	$.025	$25.00
4th year	$.03	$30.00
5th year	$.035	$35.00
6th year	$.40	$40.00
7th year	$.035	$35.00
8th year	$.30	$30.00
9th year	$.035	$25.00
10th year	$.40	$20.00

EMNRD may only issue a certificate if the total electricity produced by all qualified generators does not exceed the caps in the bill.

In another change from current law, a qualified energy producer may claim credits for projects financed in part with a local industrial revenue bond (IRB), but not if the producer claims any other credit that is based on the investment in, or the volume of electricity produced by, the generator.

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