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

ORIGINAL DATE 2/01/19
SPONSOR Wirth **LAST UPDATED** **HB**

SHORT TITLE Agricultural Biomass Tax Credits **SB** 268

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
	($320.0)	($390.0)	($470.0)	($500.0)	Recurring	General Fund (PIT & CIT)

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	TRD Operating
		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	EMNRD Operating*

Parenthesis ( ) indicate expenditure decreases

* To date, only three taxpayers have received certificates for approved credits. Each taxpayer has received two certificates.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

Senate Bill 268 extends the January 1, 2020 sunset on the Agricultural Biomass Income Tax Credit until January 1, 2030 and increases the credit amount from five dollars per wet ton of agricultural biomass to ten dollars per wet ton of agricultural biomass transported from a dairy/feedlot to a facility that uses agricultural biomass to generate electricity or gaseous fuel for commercial use. The bill also requires TRD to compile and present an annual report on the Agricultural Biomass Income Tax Credit. These credits are granted in the income tax act and in the corporate income tax act.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends (June 14, 2019). The changes are applicable for taxable years beginning on or after January 1, 2019. Credits earned before January 1, 2019 will be claimed on 2018 returns filed by June, 2019. Enhanced credit amounts earned after January 1, 2019 will be claimed on 2019 returns filed by June 2020 and successive years.

FISCAL IMPLICATIONS

Although TRD asserts that no credits have been applied to liabilities during FY18, industry sources have provided evidence that a total of $418,450 in credits for CY 2016 and CY 2017 were approved by EMNRD in February 2018. LFC staff expect there to be little growth in the per taxpayer credits, but does expect additional taxpayers to participate in the program. The fiscal impacts shown could be as large as the $5 million statutory cap of the program, but it unlikely.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but could be significant because of the statutory $5 million cap and the fact that these earned credits are transferrable to other taxpayers. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base.

SIGNIFICANT ISSUES

The approved credits that will be claimed on tax returns for the 2018 taxable year represent the delivery and conversion of almost 84,000 tons of manure.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose. Because both TRD and EMNRD have information on different aspects of this credit, an amendment on page 4 of the bill (Section J, reporting requirements) requiring both agencies to cooperate in preparing the report might be in order.

ADMINISTRATIVE IMPLICATIONS

TRD might have some difficulty properly administering credits transferred from the farmer earning the credits to a presumably wealthy taxpayer buying the credits at a discount and applying the purchased credits to that taxpayers liabilities.

OTHER SUBSTANTIVE ISSUES

The only other NM tax credit that is transferrable is the Conservation Restriction Credit of 7-2-18.10 and 7-2A-8.9 NMSA 1978. From FY2011 through FY2015, 64,146 acres were entailed at a general fund cost of $8,400,000 or about $130 per acre. TRD calls this program a success. This agricultural biomass credit will result in a substantial amount of manure not entering the environment at a cost to the general fund of $10 per ton of wet manure.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

This credit, even with an increase in the credit amount per wet ton, serves to price a positive externality.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

This bill closely conforms to the LFC tax expenditure policy principles, with the exception that the industry has not published annual goals for the amount of manure transformed into useful energy.

LG/sb