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Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

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

ORIGINAL DATE 02/07/10
SPONSOR HENRC **LAST UPDATED** 02/14/10 **HB** 261 & 277/HENRCS/aHFl

SHORT TITLE Electric Generating Facility Gross Receipts **SB**

ANALYST Clifford

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
NFI	($3375.0) to ($11,385.0)	($3,375.0) to ($11,385.0)	Recurring	General Fund
NFI	($657.0) to ($2,216.0)	($657.0) to ($2,216.0)	Recurring	County Governments

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Environment Department (ED)
Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HFl Amendment

The amendment corrects a typographical error in the bill.

Synopsis of Bill

House Energy and Natural Resources Committee Substitute bill contains the provisions of original House Bill 277 with some amendments and also the provisions of original House Bill 261. Amendments to HB 277 include: the maximum combined tax benefit for one facility including the present law income tax, corporate income tax and GRT/Compensating tax credits plus the two new deductions would be no more than $60 million; new deductions would be reported separately to the Tax Department; new deductions would be available for a ten-year period; new deductions could not be claimed for the same expenditures for which the income tax or the corporate income tax credits are claimed. HB 261 provisions would expand the present law gross receipts tax (GRT) deduction for sale of wind generation equipment to include solar generation equipment. The deduction applies only if the sale is made to a government entity,

which means that it would apply to a privately-developed project of that project has received Industrial Revenue Bond financing. No deduction would be allowed for expenditures for which the advanced energy tax credit or the deduction provided in original HB 277 is allowed.

Provisions are effective July 1, 2010.

FISCAL IMPLICATIONS

Fiscal impacts are uncertain. Several solar thermal generating facilities are at various stages of planning in the state. Some are relatively small, so that fiscal impacts of the proposal would be modest, but others are quite large. A plan recently filed by the Public Service Company of New Mexico with the Public Regulation Commission calls for a total of 45 megawatts of utility-scale solar generating facilities to be built in the 2010-2011 timeframe. Assuming an average cost of $4 million per megawatt, the cost of these facilities would be on the order of $200 million. Assuming that 75 percent of these costs would be otherwise taxable under either the GRT or the Compensating Tax yields the lower bound of revenue effects shown in the table. The upper bound assumes that in addition to the PNM facilities a proposed 90+ MWe plant near Santa Theresa is able to utilize the deduction. If the plant is not viable without the credits, these amounts would not necessarily be part of the state's revenue baseline and the impacts would be lower than this.

Impacts may be smaller if developers would be able to use the Advanced Energy Credit under present law. This could be the case, for example if PNM owns the facilities that were mentioned in the previous paragraph and could therefore claim the credit against the GRT they owe on their retail electricity sales. However, taxpayers who do not have retail sales of electricity from their facilities may not be able to claim the tax credit. Developers of wholesale power facilities do not owe GRT on their sales of electricity and therefore may not have sufficient "tax appetite" to utilize the present law credits. Thus, the total fiscal impact on the state of the credit and the deduction is larger than would be the case under present law.

SIGNIFICANT ISSUES

The proposal would create a deduction for construction-related expenses. Construction is one of the larger sectors contributing to the GRT base, contributing annually between 10 and 15 percent of total collections. The state has historically resisted allowing construction deductions because once deductions are allowed to certain projects, others can legitimately claim they are being treated unfairly.

Expenditures eligible for the deduction in HB 261 would in general also be eligible for the deduction in HB 277, raising the question of why both deductions need to be incorporated in law. Substantive differences between the two deductions include: (1) the HB 277 deduction applies to a much broader set of expenditures because it includes services and it covers everything from plant development expenses (presumably including engineering and design) to fuel supply development which could presumably include pipelines or even potentially mining costs; (2) the HB 277 deduction applies only to facilities that begin construction by December 31, 2015, (3) the HB 277 deduction is available for only a ten-year period, (4) the HB 277 deduction would apply for certain coal-based facilities, geothermal facilities and recycled energy projects as well as solar-powered facilities, whereas the HB 261 deduction would apply only to solar facilities, and (5) the HB 261 deduction is available only if the plant is financed using Industrial Revenue

Bonds. In summary, the substitute bill would create a temporary deduction applying to virtually all of the construction-related costs of a variety of types of power plants plus a permanent deduction for tangible property incorporated into solar facilities developed with Industrial Revenue Bond financing.

OTHER SUBSTANTIVE ISSUES:

The proposed deductions will be added to a number of other state policies designed to subsidize the development of renewable energy in the state. In addition to several tax benefits, these policies include a renewable energy portfolio mandate for regulated utilities and a generous electricity rate rebate program for small-scale solar power installations. These proposals raise the question of what public benefits are associated with these facilities that justify the reduction of state revenues, often termed a "tax expenditure." Proponents of renewable energy point to environmental concerns such as reducing the potential for global warming. Very little information is available to quantify these potential benefits. At a minimum it would seem that some portion of the benefits would not accrue to the residents of New Mexico. Although these benefits are not unimportant to public policy, they may be more appropriately targeted by national rather than state-level policies. Meanwhile, to the extent that renewable energy generating facilities become a substitute for traditional power sources, the state's tax base is eroded by tax exclusions like the ones in this bill. Although proponents of renewable energy argue that these benefits are only temporary and that the industry will eventually be able to compete without the subsidies, the negative implications for the state's budget over the next several years could become significant. Given the wide variety of incentive and programs already in place, it may be appropriate for the state to undertake an independent study of the combined costs and potential benefits of all renewable energy subsidy programs to get a better sense of whether this and other tax expenditures are fully justified.

DUPLICATION

SFC substitute for SB 201 & 202 is a duplicate.

TC/mt:svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc