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

		ORIGINAL DATE	02/07/10		
SPONSOR	M.H. Garcia	**LAST UPDATED**		**HB**	277
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)

SB 201 is a duplicate.

SOURCES OF INFORMATION

LFC Files

Responses Received From
Taxation and Revenue Department
Environment Department
Energy, Minerals and Natural Resources Department

SUMMARY

Synopsis of Bill

House Bill 277 would create a new gross receipts tax (GRT) deduction for sale of a variety of goods and services to the developer of certain types of power generating facilities. Receipts from the following would be deductible: development and construction of a facility including site characterization and assessment, engineering, design, carbon dioxide capture and sequestration, site and equipment acquisition and fuel supply development. Tangible property purchased by such an owner would also be deductible from the compensating tax. No deduction could be claimed if the owner is also claiming the Advanced Energy Tax Credit for the same expenses. Eligible facilities would include certain coal-fired generating plants if they meet environmental standards, solar thermal and photoelectric facilities, geothermal facilities and recycled energy projects. N.M. Environment Department would determine if a facility is eligible and would report to the legislature annually on the effectiveness of the deduction. The facility would have to begin construction before January 1, 2016.

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. However, there are good reasons to expect that some projects will claim the deduction that would not have been able to claim the tax credit. Developers of wholesale power facilities may not have sufficient tax liability to apply the credit against. These developers are much more likely to claim the deduction. 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.

ADMINISTRATIVE IMPLICATIONS

NMED notes:

> NMED will require additional funding to certify additional qualified generating facilities. SB 201 provides NMED with an opportunity to establish a schedule of fees not to exceed $150,000 to administer the certification process. NMED currently manages a certification process under the Advanced Energy Tax Credit with almost identical requirements as those in SB 201. Environment Department rules require the applicant to pay $5,000 for the processing of this type of application.

TECHNICAL ISSUES:

TRD notes:

> This proposal prevents taxpayers from claiming a the Advanced Energy Combined Reporting Tax Credit (Section 7-9G-2 NMSA 1978) for the same expenses where they take the proposed deduction; however, it does not create the same protection for the Advanced Energy Corporate Income Tax Credit (Section 7-2A-25 NMSA 1978) or the Advanced Energy Income Tax Credit (Section 7-2-18.12). Balances from the two credits still allowed can be claimed under the Advanced Energy Combined Reporting Tax Credit

circumventing any limitation. Taxpayers would also still be able to claim the Renewable Energy Production Tax Credit under Section 7-2-18.18 NMSA 1978.

RELATIONSHIP

SB 202 also creates a GRT deduction for certain construction expenses on solar generation facilities.

TC/mt

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