FISCAL IMPACT REPORT

SPONSOR Cisneros **ORIGINAL DATE** 1/22/2010 **LAST UPDATED** **HB**

SHORT TITLE Renewable Energy Tax Credit Generators **SB** 38

ANALYST Clifford

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
		($1,200.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation & Revenue Department (TRD)
Energy, Minerals & Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

Senate Bill 38 would increase the cap on renewable energy production tax credits, raising the additional cap on production from solar facilities from 500,000 megawatt hours (MWh) to 1 million MWh. SB38 also changes the definitions of qualified energy resource. For solar and wind facilities, a qualified resource will be one to which the qualified generator “has the immediate right of access, procurement and use, pursuant to a binding lease, deed or other writing that gives the qualified generator the use and control of the land from which the solar light, solar heat or wind is harvested.” For biomass facilities a qualified resource is defined as “biomass that is available in sufficient quantities to supply a qualified energy generator for a minimum of three years from the date that the qualified energy generator begins producing electricity…”

The new provisions would be applied to tax years 2010 and subsequent.

FISCAL IMPLICATIONS

TRD estimates a reduction in general fund revenue of $1.2 million in FY12 and $3.0 million in FY13. EMNRD reported that it will take this much time before new solar facilities are brought on line and can take advantage of the credits.

However, the potential fiscal impacts of the proposal are significantly higher than these amounts. Under present law the credit rate for solar facilities ranges from 1.5 cents per kilowatthour to 4 cents per kilowatthour. Thus, if the full amount of the additional credit cap is ultimately claimed, it could reduce annual general fund revenue by $7.5 million to $20 million annually. This would be on top of the present law credit cap amounts of $27.5 million to $40 million annually. Thus, under the proposal, the state's potential exposure in renewal energy credits would be up to $60 million annually.

Maximum credit claims under proposal to increase solar cap by 500,000 MWh:

Present Law:

	Cap (MWh)	Cap (kWh)	Credit rate ($/kWh)	Credit Amount
All faciltiies	2,000,000	2,000,000,000	0.01	$20,000,000
Solar				
minimum	500,000	500,000,000	0.015	$7,500,000
maximum	500,000	500,000,000	0.04	$20,000,000
Total				
Minimum				**$27,500,000**
Maximum				**$40,000,000**

Proposed Law:

	Cap (MWh)	Cap (kWh)	Credit rate ($/kWh)	Credit Amount
All faciltiies	2,000,000	2,000,000,000	0.01	$20,000,000
Solar				
minimum	1,000,000	1,000,000,000	0.015	$15,000,000
maximum	1,000,000	1,000,000,000	0.04	$40,000,000
Total				
Minimum				**$35,000,000**
Maximum				**$60,000,000**

Difference:	
Minimum	**$7,500,000**
Maximum	**$20,000,000**

SIGNIFICANT ISSUES

The renewable energy production tax credit is an example of a "tax expenditure," i.e. use of public funds to subsidize private activity by reduced tax liabilities. A large number of new tax expenditures have been adopted in recent years, and their combined cost in foregone general fund revenue is now over $100 million per year. One concern with this use of public funds is that they are not subject to annual appropriation and oversight. With the state's finances in a state of severe distress, this becomes a serious concern. Although the renewable energy production tax credit has a cap, the estimated revenue impacts of the credit have been well below the capped amounts in the past. Thus, the state has been assuming that not all of the credits will be claimed. This assumption may have been warranted in the past because some project developers did not have significant income tax liabilities against which they could apply the tax. However, since October 2007, new facilities are now eligible for a refundable tax credit – i.e. the operator does not have to have any tax liability but receives a payment directly from the state. Thus fiscal impacts of the credit are likely to increase significantly in the future.

ALTERNATIVES

Due to the uncertain fiscal environment over the next two years and given that the likelihood that an electric generator will not be able to come on line prior to FY12, it may be prudent for the state to delay the effective date of the provisions. This would protect the state from an earlier than projected fiscal impact.

POSSIBLE QUESTIONS

What is the combined total amount of subsidy being provided to the renewable energy sector from all of the state's programs including the renewable energy portfolio standard?

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