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

		ORIGINAL DATE	02/15/11 03/11/11		
SPONSOR	Sandoval	**LAST UPDATED**	03/11/11	**HB**	382/aHTRC/HFl#1
SHORT TITLE	Photosynthetic Energy Tax Credit			**SB**	
				ANALYST	Kleats

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	$0.0	($37.5 – $500.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates Senate Bill 233

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals, and Natural Resources Department (EMNRD)
New Mexico Environment Department (NMED)
Renewable Energy Transmission Authority (RETA)
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)

SUMMARY

Synopsis of HFl Amendment #1

House Floor Amendment #1 adds "beginning in taxable year 2011 and ending in taxable year 2019."

Synopsis of HTRC Amendment:

The House Taxation and Revenue Committee Amendment strikes "DIRECTLY" on page 1, line 12 and inserts "EXTRACTED FROM OR", and strikes "directly" on page 2, line 3, and inserts "extracted from or". Single cell photosynthetic organism can be used in several ways to create alternative energy products. This change expands the products qualifying for the tax credit, but should have no change in the fiscal impact of the bill.

The amendment also strikes "that files a New Mexico corporate income tax return" from page 5, lines 17 and 18. The original bill proposed this language, but TRD had noted the language would have created a significant new administrative burden for investors and may have limited the use of the credit.

The amendment inserts the following on page 5, between lines 23 and 24: "SECTION 2. No application for approval of a tax credit pursuant to the expansion of the definitions in Section 1 may be filed prior to July 1, 2012." This change shifts general fund exposure to the tax credit out to later years resulting in no fiscal impact in FY2012.

Synopsis of Original Bill

House Bill 382 (HB 382) amends the definitions of the Alternative Energy Product Manufacturers (AEPM) Tax Credit Act to include products directly secreted by a single cell photosynthetic organism as an eligible alternative energy source. The AEPM Credit allows for a tax credit equal to 5.0% of a taxpayer's expenditures on qualified manufacturing equipment.

HB 382 also amends the definition of taxpayer limiting the credit to persons filing corporate income tax returns.

FISCAL IMPLICATIONS

The impacts of HB 382 originate both from operations existing prior to the legislation and operations created after or resulting from the bill's passage. The expanded tax credit could influence the behavior of firms by decreasing the effective cost of equipment. As a result, this tax credit incentivizes expansion of existing operations, relocation of out-of-state operations to New Mexico, and creation of new business.

Expanding the definition of an eligible alternative energy source affects only one existing operation in New Mexico. This pre-commercial algal biofuels operation is a joint project of the Energy, Minerals and Natural Resources Department (EMNRD), the City of Carlsbad and the Center for Excellence in Hazardous Materials Management. According to EMNRD, this operation may expand in future years resulting in estimated qualifying equipment purchases of

$750,000 in each taxable year 2011-2012 resulting in tax credit claims of $37,500 for FY12-13. EMNRD expects these claims to recur as the operation transitions to commercial production or expands to other photosynthetic fuel sources. This figure forms the bottom limit of the estimated decrease in revenue.

TRD gives the example of an Ohio company receiving a $24 million grant for a project that will produce biofuels in Hawaii last summer. The grant dedicated $10 million for equipment purchases. It is difficult to predict the upper bound of this bill's impact, but if a single large algae based biofuels facility would have located in New Mexico the proposed credit expansion could have a significant impact. Using $10 million as a baseline for equipment purchases from a large grant and applying the tax credit at 5% of that value, the upper limit of the estimated decrease in revenue is $500,000 for FY12-13.

SIGNIFICANT ISSUES

The upper limit of the estimated fiscal impact represents the maximum feasible exposure from HB 382. TRD reiterates that it would not expect this limit to be reached every year. Rather, this limit might be reached in any given year but would likely not be recurring. The tax credit can be carried over for 5 years until the full amount of the credit is used.

TRD expects the alternative energy product manufacturers tax credit to be applied against a taxpayers liabilities primarily from the following taxes: Gross Receipts Tax (GRT), Compensating Tax, and Withholding Tax. TRD expects taxpayers in all cases to have withholding tax liabilities due to the jobs requirements for the AEPM tax credit, but they would not always have GRT and compensating tax liabilities. The revenue estimate assumes all credits are claimed against the withholding tax. If some were claimed against GRT or compensating tax liabilities some of the revenue impact would be shared with local governments.

TRD notes that the state's tax base may be eroded by tax exclusions like the ones in this bill to the extent that renewable energy generating facilities become a substitute for traditional power sources. Should this be the case, the combination of all renewable energy incentives may have significant negative implications for the state's budget in the coming years. A sunset date may be prudent according to TRD.

PERFORMANCE IMPLICATIONS

NMED states that its Air Quality Bureau operates with a legislative performance measure to reduce annual statewide greenhouse gas emissions to a target level. Expanded use of algal biofuels would help to meet this performance measure. HB 382 promotes the production of such fuels.

ADMINISTRATIVE IMPLICATIONS

TRD estimates minimal administrative impact requiring a FYI publication change to include the new alternative energy product and changes to form RPD-41330. This could be absorbed with existing resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 382 duplicates SB 233.

HB 165 amends the same section of statute.

TECHNICAL ISSUES

TRD recognizes that the credit expanded by this bill meets the criteria of an "economic development tax incentive" as defined in the economic development tax incentive guidelines in Section 9-15-56 NMSA 1978, but the credit does not meet all criteria of that section.

OTHER SUBSTANTIVE ISSUES

TRD reports the Energy Independence and Security Act of 2007 mandates the nation's refineries blend 36 billion gallons of renewable transportation fuels into the U.S. fuel supply per year by 2022, and only 15 billion of those gallons may come from corn starch derived ethanol. In addition to this mandate the American Recovery and Renewal Act plans to invest $800 million in new research on biofuels. For example, last summer an Ohio company received a $24 million grant for a project that will produce biofuels in Hawaii.

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