

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)). 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.

## FISCAL IMPACT REPORT

SPONSOR Padilla/ Trujillo, L. ORIGINAL DATE 1/27/2020 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Renewable Energy Production Tax SB 18

ANALYST Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
	\$5,300.0	\$11,500.0	\$13,700.0	\$16,300.0	Recurring	Early Childhood Program Fund (NEW)

Parenthesis ( ) indicate revenue decreases

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$2,100.0		\$2,100.0	Nonrecurring	TRD - Information Technology Division
	\$13.0		\$13.0	Nonrecurring	TRD - Revenue Processing Division

Parenthesis ( ) indicate expenditure decreases

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Dept. (TRD)  
 Energy, Minerals and Natural Resources (EMNRD)  
 Economic Development Department (EDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 18 creates the new “Renewable Energy Production Tax Act”. This act taxes renewable energy production from resources including solar, wind, hydropower, geothermal or biomass (agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass). This act imposes an excise tax at a rate of 2.5 percent of the taxable value of each mega-watt hour generated in New Mexico. The taxable value for electricity generated from renewable energy resources will be the wholesale value of the electricity established by the United States Energy Information Administration

(EIA) for the southwest regional wholesale market.

This bill also specifies certain exemptions from this excise tax. The list of exemptions includes renewable energy produced by the United States, New Mexico, or foreign nation agencies, Indian Nation, tribes, or pueblo, and any renewable energy that is produced for personal consumption of the producer, including any excess by that producer up to 500 kilowatt-hours in a 24-hour period.

The payment for this tax will be due on or before the 25<sup>th</sup> day of the month following the taxable event. A new section is added to the Tax Administration Act (TAA) to specify that revenues from this tax will be distributed to the early childhood program fund. Lastly, this bill adds a new section to create the early childhood program fund.

The effective date of the bill is January 1, 2021. The provisions of this act apply to the production of electricity from renewable energy resources beginning on and after January 1, 2021. There is no delayed repeal date but LFC recommends adding one. This is not a tax expenditure, but the need does not grow with the source. After a few years, this mismatch may become a problem, so that a scheduled review might be important.

## FISCAL IMPLICATIONS

TRD has provided the revenue estimate and describes the methodology as follows:

The American Wind Energy Association shows production capacity under construction<sup>1</sup> in the state equaling 63 percent of current capacity, with another 68 percent in planning stages. It is assumed that this 131 percent increase in capacity would be realized by the end of the forecast period, resulting in an 18.2 percent annualized growth rate. For this analysis, all wind production is assumed to be utility level, qualifying for the new tax. Solar energy is expected to grow at a 25.4 percent annualized rate<sup>2</sup> through the forecast period. The United States Energy Information Administration (EIA) statistics<sup>3</sup> for utility scale wind and solar productions were used and then grown at those rates. EIA statistics<sup>4</sup> for hydropower in the state were averaged over 10 years and other sources (biomass, geothermal, etc.) were averaged over 5 years and both assumed to remain flat. To all these production types an average 2019 southwestern region EIA wholesale cost was assumed, and then the 2.5 percent tax rate applied to that. The taxes are only assessed beginning half-way through FY2021, which halves the revenue in that year.

This bill creates a new fund -- early childhood program fund -- but money in the fund is subject to appropriation by the legislature. Although there is a modest amount of money transferred to the fund in FY 21, the earliest money could be appropriated from the fund for use by the Early Childhood Education and Care Department would be mid-April of 2022, after the 2022 session passes the General Appropriation Act and the bill is signed by the governor.

## SIGNIFICANT ISSUES

TRD has provided the following policy analysis:

While many states (including New Mexico) can effectively tax such energy production via property taxes, New Mexico also can tax renewable facilities via the gross receipts tax. However, use of industrial revenue bonds (IRBs) for most large scale facilities allows the avoidance of both these tax-

<sup>1</sup> <https://www.awea.org/Awea/media/Resources/StateFactSheets/New-Mexico.pdf>

<sup>2</sup> <https://www.seia.org/state-solar-policy/new-mexico-solar>

<sup>3</sup>

<https://www.eia.gov/electricity/data/browser/#/topic/0?agg=2,0,1&fuel=vtvv&geo=00000000001&sec=g&freq=A&start=2001&end=2018&ctype=linechart&ltype=pin&rtype=s&pin=&rse=0&maptype=0>

<sup>4</sup> *ibid*

es in New Mexico. Also, in most states, property tax valuation for such facilities is based on the depreciated capital costs, rather than the income produced by the facility. Because of the spectrum of various sales, property and income taxes and credits in different states, it is complicated to compare overall tax burdens. However, according to this source<sup>5</sup>, among 11 western states, New Mexico wind energy development currently has the lowest overall median levelized cost to development and sixth lowest tax burden per megawatt-hour, if IRBs are included. Adding 2.5 percent to these costs would give New Mexico the second lowest levelized cost to development and would remain the sixth lowest in tax burden per megawatt-hour among those western states.

Given that New Mexico has the eighth best overall wind potential<sup>6</sup>, and third best solar (on a per square mile basis) potential<sup>7</sup> in the country, the low overall costs means New Mexico would likely remain an attractive option for location of new renewable production facilities. However, this assumes that IRBs will continue to be available to be used in these developments.

Wyoming, South Dakota and Minnesota are the only other states known to directly tax renewable energy production without similarly taxing traditional fossil fueled electricity production. At current electricity prices, the rough estimate for the tax burden in these states is between 3 percent and 4.5 percent.

New Mexico faces an uncertain fiscal future due to its dependence on revenues attributable to oil and gas production. Use of renewable energy has been on a steady increase over the last several years as costs for wind and solar have decreased substantially. It can be assumed that this bill is an attempt to diversify and maintain revenues in light of that uncertain future.

From a broader economic policy perspective, one should consider the overall purpose of taxes and incentives. Fossil fueled power generation imposes a number of costs on the population as a whole, mostly via pollution. Economists call these externalized costs because they are not directly born by the producer, but effectively by the entire population. Another goal of the incentives could be to help grow the renewable industry as a whole. If incentives are to be essentially counteracted by adding specific taxes, one must consider whether the reasons for the incentives still exist.

EMNRD has also provided analysis and perspective to this concept:

Taxing renewable energy production will have a significant negative impact on the renewable energy industry in New Mexico. An illustrative case study is the fate of Wyoming's wind energy industry after the passage of HEA 18 in 2010 – a \$1 per megawatt hour excise tax on electricity produced by wind power. The chart below demonstrates that after the tax was implemented, net wind power generation remained flat in Wyoming, which indicates that new wind farms were not being developed. By contrast, during the same period, generation in New Mexico had a strong upward trend, with no excise tax imposed.

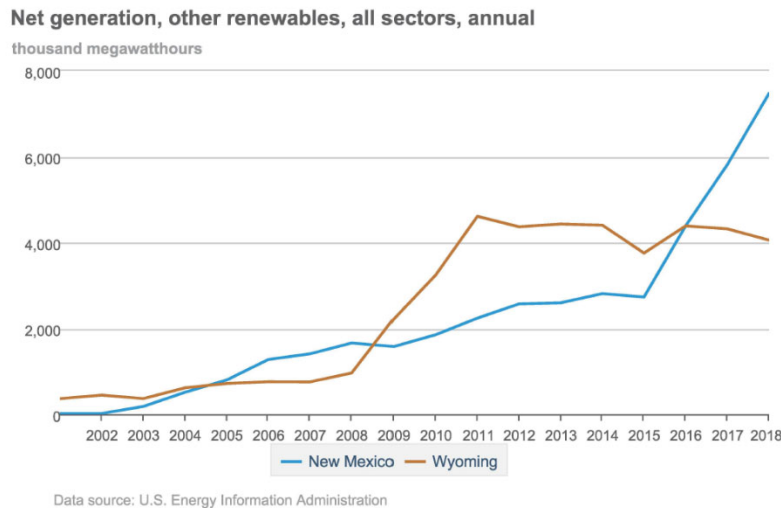
If an excise tax on all renewable electricity generation was implemented in New Mexico, a similar trend could occur, stagnating new production of renewable energy generating plants – not only wind, but also solar, battery storage, and new advanced technologies. This stagnation in turn would create a barrier to the successful implementation of the Energy Transition Act, which requires the buildout of new renewable generation facilities.

---

<sup>5</sup> [http://www.uwyo.edu/ser/\\_files/docs/research/wind-energy/estimatingtheimpactofstatetaxationpoliciesonthecostofwinddevelopmentinthewest-3-7-2019.pdf](http://www.uwyo.edu/ser/_files/docs/research/wind-energy/estimatingtheimpactofstatetaxationpoliciesonthecostofwinddevelopmentinthewest-3-7-2019.pdf)

<sup>6</sup> *ibid*

<sup>7</sup> <http://www.neo.ne.gov/programs/stats/inf/201.htm>



EMNRD continues this analysis:

*Issues with available data*

In order to implement this tax as written, data is required that is neither publicly available nor reported within the bill’s required timeframe. To calculate the proposed tax, it is necessary to have access to the average monthly price for the southwest regional wholesale energy market. This data is not currently publicly available. Thus, to accurately calculate this tax, the wholesale energy market would need to have transparent and timely reporting and publishing, and reporting requirements would have to be instituted for energy producers.

*Issues with tax structure*

Basing the tax off of a value that changes on a monthly basis will make the implementation of the tax complicated for the department of taxation and revenue, and difficult for energy producers to plan for.

EDD also has some concerns about a new tax on renewables:

It appears that any renewable energy that is generated by the state of New Mexico will be exempted from tax which would make any industrial revenue bond (IRB) project that produces renewable energy exempt from this tax due to the fact that the municipality or county will own the property for up to thirty years.

This tax will increase the difficulty for the Economic Development Department to recruit companies to the state of New Mexico. With one of our target sectors being renewables, a tax increase will make our state less competitive and subsequently less desirable for relocations or expansions in this field. However, the state of New Mexico historically relies on the oil and gas industry for a significant portion of its revenues, and with changes that have been discussed with the transition to renewable energy, the state must begin to find ways to generate revenue over the long term.

**PERFORMANCE IMPLICATIONS**

TRD asserts the following: “...the tax on renewable energy production will have a negative impact on the Governor’s goal to establish New Mexico as a national leader in the development of renewable energy resources and to meet the goals of the Energy Transition Act.”

Nominally, this is not a tax expenditure, hence, the LFC tax policy of accountability is not invoked. However, because this concept is somewhat unique, it might be useful to invoke the accountability provision of the policy and require TRD to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers paying the tax and other information to determine whether the

tax is meeting its purpose.

## **ADMINISTRATIVE IMPLICATIONS**

Implementing a new tax program has a high impact on TRD's Information Technology Division. There is an additional impact to the Revenue Processing Division for development of the forms, payments and imaging. The effective date of January 1, 2021 is feasible. Budget impact estimate is included in the table on page 1.

EMNRD has not provided an estimate of administrative impact, but has submitted the following statement:

Although not presented in the bill, a new state agency group to collect energy production data for the purposes of calculating the tax would be required for successful implementation. Funding for this effort is not defined or considered in this bill.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with SB3/HB83, which also create an early childhood program fund.

## **TECHNICAL ISSUES**

EMNRD has some concerns with the definitions:

The tax is broadly applied to electricity generated by any "facility" that uses solar, wind, hydro-power, geothermal or biomass used as an energy resource. Exempted from the tax is electricity that is for the personal consumption of the producer and any excess energy that does not exceed 500 kilowatt hours in a 24-hour period. The broad application and the exemption create certain ambiguities, as follows:

- What is personal consumption? Does it only apply to a household or can personal consumption apply to a business also?
- How about facilities that are shared by several end users?
- Is the 24-hour limit an average or will any exceedance trigger a tax?

## **ALTERNATIVES**

If the goal of this bill is to fund early childhood education through energy production, there is already a mechanism for this in place. The State Land Office already collects production taxes for energy systems on their land for funding schools. A portion of this tax could be held for early childhood education instead of creating a new tax.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

If the bill is not enacted, renewable energy development will continue as-is and would not be encumbered by a complicated tax that could create uncertainty for developers.

LG/sb