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FISCAL IMPACT REPORT

SPONSOR: Cisneros DATE TYPED: 02/20/01 HB _____
 SHORT TITLE: Electricity Sales Tax Act SB 111/aSFC
 ANALYST: Eaton

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ 0.0	\$ 0.0	Recurring	General Fund
	\$ 0.0	\$ 0.0	Recurring	Local Govt. GRT & Comp. Tax collections
	unknown/negative	unknown/negative	Recurring	Local Govt. Franchise Fees

(Parenthesis () Indicate Revenue Decreases)

Conflicts with/Relates to SB-266 delays the Electric Utility Restructuring Act for five or six years. This would simultaneously delay the effective date of this bill through the action of Section 18, Contingent Effective Date. TRD's TAA technical corrections bill, HB-252, amends section 7-1-8 NMSA 1978, as does this bill. SB-266 also amends Section 62-3A-18 NMSA 1978 to alter some dates and responsibilities. This bill amends Section 62-3A-18 NMSA in a relatively minor way.

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of SFC amendment

The amendments are technical in nature and straighten out problems that may arise for municipalities that impose a local gross receipts tax. In particular, revenue pledged from local option taxes to payment of bonds will continue to receive that distribution of electricity sales tax revenue impressed with and subject to the bonds.

The SFC amendment also gives the department authorization to release taxpayer information to district attorneys and grand juries investigating alleged criminal tax violations. TRD could also release to third parties (lawyers, presumably) when a proper subpoena of levy is issued and when the third party discloses the taxes, the tax laws and the nature of the proceeding to TRD.

Synopsis of Bill

This bill responds to concerns that electric utility restructuring might have negative impact on state and local gross receipts tax collections. The basic mechanism for addressing these concerns is to convert the taxation of electrical power in the state from a gross receipts tax imposed for business privilege to a sales tax imposed directly on consumers of electrical power.

Under the new formulation, the customers are liable for the tax, and the generating, marketing and distribution elements of the industry are reduced to agents for the collection of the new sales tax. A deduction from gross receipts is proposed, to prevent taxation under the gross receipts and compensating tax act in addition to the tax imposed by the new law.

The rate of electricity sales tax imposed at any meter location is made equivalent to the combined state, city and county gross receipts rate in effect at that location. This choice, by design, is intended to hold both the state and local governments harmless to the vast changes in the industry anticipated as deregulation and restructuring move forward.

The new act parallels virtually all the provisions of the Gross Receipts and Compensating Tax Act. An innovative feature of the bill is the optional bypass feature. Large energy users may remit tax directly to the Taxation and Revenue Department, instead of remitting the tax to the power company. Denial of a direct pay permit is protestable. To forestall manipulation or evasion, partial payments of electricity and tax will be apportioned into a prorata payment for electricity and a prorata payment of tax. In the distribution section of the bill, the cities receive their local option tax and a 1.225% share of state tax in virtually identical fashion to that of the Gross Receipts and Compensating Tax Acts. However the Taxation and Revenue Department cite some technical issues, (see TECHNICAL ISSUES below). The county and municipal government's concerns about loss of franchise tax revenue is addressed in Section 17 of the bill.

PERFORMANCE IMPLICATIONS

Neither The taxation and Revenue Department nor the Public Regulation Commission report performance impacts.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) report that this bill does not have an impact on state general fund or local government revenues from gross receipts and compensating tax collections but may have an impact on certain local governments franchise fees (see OTHER SUBSTANTIVE ISSUES below).

ADMINISTRATIVE IMPLICATIONS

The Public Regulation Commission report that the competitive licensing rule may need to be modified to reflect the changes proposed in this bill.

OTHER SUBSTANTIVE ISSUES

The Taxation and Revenue Department (TRD) conducted a study of the vulnerability of local government franchise fees to electrical energy restructuring. TRD concluded that about 2/3rd of these local government franchise fees are vulnerable. The overall effect of a loss of 2/3rd of franchise fees

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on electrical energy ranged from 0% of total current revenues for the dozen or so municipalities that do not impose any franchise fees to over 8% of current municipal general fund revenue in Las Vegas to almost 12% of current general fund revenue for Sunland Park. This study -- Impact of Electric Utility Restructuring on Municipal Franchise Fees, Taxation and Revenue Department Special Report, August 21, 1998 -- is available by request to the Taxation and Revenue Department.

The Taxation and Revenue Department report that the conversion of a portion of the gross receipts tax to a sales tax is reminiscent of the conversion for taxation of interstate telecommunications from the Gross Receipts and Compensating Tax Act to the Interstate Telecommunications Gross Receipts Tax Act. This was done in 1992. Part of the desirability of this practice from the point of view of a regulated industry is that sales taxes, imposed directly on customers, are not in the rate base for regulatory purposes. Any changes in tax rates or administrative provisions are automatically and immediately implemented without regulatory approval or review. This interaction between taxes and regulation will probably also be true of the electric industry during the transition from regulated to unregulated markets. After full deregulation, there is no apparent advantage or disadvantage of this provision.

JBE/ar