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

SPONSOR: Adair DATE TYPED: 02/27/01 HB

SHORT TITLE: Tax Deduction on Construction Material & Sale SB 739

ANALYST: Eaton

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	**FY02**			
	(Millions)	(Millions)	Recurring	General Fund
	(Millions)	(Millions)	Recurring	Local Govt.

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill "sweetens" the pot for an investor owned utility, working in concert with a sponsoring government entity, that builds and operates an electrical generating plant in Lea, Eddy or Chavez Counties financed with industrial revenue bonds. The tax incentives included in the bill include:

- Any electrical generating plant built will be considered a manufacturing plant for the purpose of double-weighted sales factor for corporate income tax.
- Specifically exempts from gross receipts tax the tangible personal property, including that required for construction of the plant, incorporated in an electricity generating facility financed by industrial revenue bonds.
- A technical extension of the use of NTTCs for construction tangibles, since the tangible property is not subsequently taxable; and this project is eligible for the manufacturer's investment credit of 5 percent of the non-construction tangible personal property included in the plant.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) report that a 1,000 MW facility built would cost in the neighborhood of $300 million. The gross receipts tax deduction on construction tangible would be about $5 million (mostly state cost), and the investment credit would be about $5 million (all state cost). These tax incentives would be worth about 3% of the cost of the plant. The property tax exemption - the plant would be "owned" for the purpose of property tax by the county - might be worth on the order of $1.5 million a year.

The precedential impact of this bill, however, is much more substantial. The first obvious extension is to all power plants. A less apparent but potentially larger impact will come from the reaction of the federal government. New Mexico has been successful in defending the imposition of its gross receipts tax on government contractors because it treats those contractors no differently than other contractors. Enactment of this bill will mean that government construction contractors are being treated less favorably than other contractors.

It is not unlikely that federal courts would find an impermissible discrimination and bar New Mexico from taxing any federal construction contract. On an annual basis, that is something like $9 million in state and local gross receipts tax.

There are additional exposures, assuming that any portion of the bill were held to violate the Constitution. For example, the Four Corners Power Plant and San Juan Generating Stations which sell substantial amounts of power outside the state might attempt to claim the benefits of double-weighted sales for corporate income tax purposes.

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department (TRD) report that since bill is designed to be effective for one and only one company and plant, virtually all the regulatory and processing issues could be handled manually, with minimal expenditure of resource. The true cost, however, would be defending against the lawsuit sure to be brought against the state seeking to extend the benefits of this bill to a large number of other projects and circumstances. Litigation expenses incurred in defending these cases could easily exceed $1 million.

TECHNICAL ISSUES

The Taxation and Revenue Department (TRD) report that a Suit could be brought on equal protection grounds and on the prohibition expressed in Article IV, Section 24 of the New Mexico Constitution, "the legislature shall not pass local or special laws … [relating to] the assessment or collection of taxes; … [or] exempting property from taxation. In every other case where a general law can be made applicable, no special law shall be enacted."

OTHER SUBSTANTIVE ISSUES

Class B counties with 1990 population of over 47,000 and less than 60,000, and with 1999 property tax valuation of over $550,000,000 include Chaves county, Eddy county and Lea county.

JBE/njw:ar