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FISCAL IMPACT REPORT

ORIGINAL DATE 3/7/09

SPONSOR HBIC LAST UPDATED _____ HB 784/HBICS

SHORT TITLE Biogas Fuel Production Facility Tax Credit SB _____

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
		(\$300.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy Minerals and Natural Resources (EMNRD)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HBIC Substitute

The House Business and Industry substitute for House Bill 784 creates the “biogas fuel production income tax credit” and the “biogas fuel production corporate income tax credit.” The credit can be claimed by taxpayers who have an interest in a qualified biogas fuel production facility in New Mexico. The credit is equal to \$2.92 per one million British thermal units (mmbtu) and can be carried forward five years. A taxpayer can only receive the credit on a facility for ten years. EMNRD will certify that the facility is eligible for the tax credit and TRD will determine the amount of the credit. The maximum amount of production available for credit for personal and corporate income tax is 1,750,000 mmbtu which is equivalent to a cap of \$5.1 million.

Married taxpayers filing separate returns can only claim half of the credit and taxpayers that are members of a partnership or who own a proportionate interest may claim the credit without regard to the share of ownership so long as the taxpayers receiving an allocation collectively own at least 5 percent of the entity.

Biogas is defined as gas that is derived by manure or other nonhazardous, cellulosic or organic agricultural or food industry byproduct and contains at least 50 percent methane. A qualified biogas fuel production facility is defined as a facility located in NM, that starts production on or

before January 1, 2013, uses anaerobic digesters, gasification or other biological, chemical or thermal process, and which markets the gas through a natural gas pipeline or can show that the quantity will offset 5,000 mmbtu of fuel derived from fossil fuels.

FISCAL IMPLICATIONS

As there are two plants near the dairy farms in eastern New Mexico that are planned, it seems that there will be at least one production facility on-line by summer of 2010. These plants were planned without the credit in place but have been put on hold due to the credit crisis effect on major financial backers.

A dairy with 6,000 cows could produce 200 to 400 mmbtu per day. This would generate \$300 thousand in tax credits. Assuming one facility is producing by July 2010, another comes on line one year later and a third in 2012, the fiscal impact would be \$300 thousand reduction in general fund for FY11 and \$330 thousand for FY12. The credit is adjusted assuming 50 percent of the qualified credit is claimed in the first year and then the remaining is carried forward.

SIGNIFICANT ISSUES

Biogas is a renewable resource consisting mainly of methane and carbon dioxide. It is produced during anaerobic micro bacterial degradation processes of organic material (e.g. manure from livestock or poultry farming, crop components or residues and waste material). For the production of biogas all microbiological degradable substrates can be used. Beside the agricultural sector the biogas production has been established for the stabilization of sludge from waste water cleaning and for the preparation of high charged waste water from the food industry. Agricultural biogas plants mainly use manure for the biogas production, because it is more economic to mix this substrate with organic residues from agriculture and food industry or energy crops, because these co substrates offer a much higher biogas yield than agricultural fertilizer like manure. (<http://www.bios-bioenergy.at/en/electricity-from-biomass/biogas.html>)

EMNRD:

The New Mexico dairy industry is in a dire economic circumstance caused by low milk prices, high feed costs, and environmental issues related to dairy waste. For biogas developers to invest in New Mexico, incentives such as HB 784 that provide tax credit for pipeline quality biogas from waste streams such as dairy manure are necessary.

This technology will be an asset to New Mexico, which is ranked seventh in the nation in milk production. The New Mexico Dairy Industry has an annual production of seven billion pounds of

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

milk and \$900 million in gross receipt tax. However, the state’s dairy industry is also a source of concern with 328,000 milk cows generating 1.2 millions tons of solid waste a year.

PERFORMANCE IMPLICATIONS

According to EMNRD, HB 784 will help New Mexico to meet the greenhouse gas emissions reductions as stipulated in Executive Order 2005-033. Since dairy manure is a significant source of the greenhouse gas methane, incentivizing the production of biogas from dairy manure feedstock will reduce the occurrence of methane released in the atmosphere.

ADMINISTRATIVE IMPLICATIONS

EMNRD reports that the credit cap is too low to justify the administrative burden of certifying eligible facilities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

554	H	Roberto "Bobby" J. Gonzales	SPECIAL FUEL FROM VEGETABLE OIL TAX DEDUCTION
237	S	Carlos R. Cisneros	RENEWABLE ENERGY TAX CREDIT
291	S	Dede Feldman	SUSTAINABLE BUILDING TAX CREDIT PROVISIONS
442	S	Carlos R. Cisneros	GEOHERMAL HEAT PUMP TAX CREDIT
455	S	Gerald Ortiz y Pino	SPECIAL FUEL FROM VEGETABLE OIL TAX DEDUCTION

TECHNICAL ISSUES

TRD:

The bill states that the taxpayer shall remain eligible for ten consecutive years, which implies that they do not have to do any recertification for 10 years. If the taxpayer does not have to recertify each year, then the Department would not know if they sold their interest and are no longer eligible for the credit.

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