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FISCAL IMPACT REPORT

SPONSOR	SCORC	ORIGINAL DATE	03/02/09	HB
		LAST UPDATED	03/03/09	
SHORT TITLE	Renewable Energy Tax Credit	SB	CS/237/SCORCS	
		ANALYST	Francis	

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
		(\$5,000.0)	Recurring	General Fund
	Indeterminate	Indeterminate	Recurring	Air Quality Permit Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB405

SOURCES OF INFORMATION

LFC Files
National Renewable Energy Laboratories (NREL)
PNM Resources

Responses Received From

New Mexico Environment Department (NMED)
Energy, Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SCORC Substitute

The Senate Corporations and Transportation Committee substitute for the Senate Conservation Committee substitute for Senate Bill 237 adds new sections to the Income Tax Act and the Corporate Income and Franchise Tax Act to provide an advanced energy tax credit. The credit can be claimed for six percent of the costs of building a qualified generating facility up to \$60 million per facility. The Department of Environment (NMED) will certify the credit and the Taxation and Revenue Department (TRD) will verify and approve the credit. The credit is nonrefundable but can be carried forward for ten years and can claimed against combined reporting taxes (gross receipts, compensating and withholding) as well.

In certifying a credit, NMED shall determine that the facility is qualified and issue a certificate within 180 days of receiving all information necessary to make the determination. NMED is

allowed to require fees for the process, none of which can exceed \$150,000, which are distributed to the air quality permit fund. NMED is required to report annually to the appropriate interim legislative committee on the effectiveness of the credit program including which facilities qualified, what type of generating power is being used, the amount of emissions reduced or removed and whether any certificates were denied because of program limits.

For taxpayers who hold an interest in a qualified facility, they can receive an allocation of the credit *without regard to their ownership interest* so long as total allocation does not exceed 100 percent of the credit, all taxpayers receiving an allocation *collectively* own at least five percent of the facility and TRD receives written notice of the allocation on prescribed funds.

The credit is similar to the credit against gross receipts, compensating and withholding taxes and cannot be claimed if claimed under those programs but can be claimed against those taxes if the income tax liability is exhausted. A qualified generating facility is defined as a new solar electric generating facility, including those with thermal storage, a new geothermal facility, or a new or repowered coal-based electric generating facility subject to certain emission requirements. A solar facility can be either a solar thermal or a solar photovoltaic facility that has a capacity of at least 1 megawatt (MW). Geothermal facilities also must have a “nameplate” capacity of 1 MW. A facility that provides solar or geothermal energy to a pre-existing electric generating facility is also eligible.

SB237/SCOCS/SCORCS also amends the credit that is claimed against gross receipts, compensating and withholding taxes conforming definitions to the new income tax credits, clarifying that the credit is only claimed against gross receipts due to the state, adds a definition for proportionate ownership and provides a way of apportioning the credit among the various taxes. The name of the credit in Section 9G NMSA 1978 is changed to advanced energy combined reporting tax credit.

SCONCS 237 amends the Advanced Energy Tax Credit in the following ways:

- Clarifies that a qualified generating facility must be located in New Mexico
- Defines “entity” broadly
- Defines “geothermic electric generating facility”
- Defines “interest in a qualified generating facility”
- Defines “name plate capacity” as the maximum rated output of the facility
- Amends the definition of qualified generating facility to include new geothermic electric generating facilities.
- Defines “solar electric generating facility” as a solar thermal or solar photovoltaic electric generating facility with a capacity of at least one megawatt (MW) and includes facilities that augment existing electric generating facilities.
- Allows the credit to be carried forward for ten years instead of five.

There is no effective date so the provision will apply after June 19, 2009.

FISCAL IMPLICATIONS

To date, there have been no applications for the credit and there are no facilities that qualify. However, there are at least three proposed facilities in the works for solar electricity and potentially another geothermal facility. PNM Resources had significant response to its request

for proposal for a large scale concentrating solar power plant. The change in the law means investors in a facility would also be able to take advantage of the credit and apply it against personal income tax liability.

LFC is concerned that the impact could be significant. In 2007, the Advanced Energy Tax Credit was enacted and at the time the fiscal impact assumed that there would be one recycled energy facility and one 25 MW plant for a total fiscal impact of \$800 thousand, 60 percent of which is general fund impact. As stated, no credits have been claimed. The fiscal impact below assumes that one facility will be built in the next two years and that 25 percent of the credit would be allowed under current law and so the fiscal impact of *this bill* is 75 percent of the credit due to the expanded scope and inclusion of income tax liability.

Fiscal Impact of SB237

\$ Millions						
Calendar Year	2010	2011	2012	2013	2014	2015
100MW plant	150	300				
6% credit		27				
Tax Year Credit *	0	8.1	5.4	5.4	5.4	2.7
	FY10	FY11	FY12	FY13	FY14	FY15
Fiscal Year Cost			6.75	5.40	5.40	4.05
Already included in revenue estimate (CRS)**			1.69	1.35	1.35	1.01
Net Impact on General Fund			5.06	4.05	4.05	3.04

* Assumes 30% of credit will be claimed in year 1, 20% in year 2, 3, and 4 and the balance in year 5.

** Assumes that 25 % of the credit is under current law.

A single facility, according to a recent National Renewable Energy Laboratories study, with thermal storage would cost approximately \$450 million and takes two years to complete.¹ This means that there is an exposure to as much as \$8 million in FY11 (assuming a plant begins construction January 2010). In a response to House Bill 405, a bill relating to the renewable production tax credit, EMNRD believes that there will be facilities that can take advantage of that credit, a credit for production of renewable electricity, by FY12.

Assuming this information, the expanded scope of the credit will cost \$5 million in FY12, the first year that a party with an interest in a qualified electric generating facility would be able to take the credit. There is however a strong likelihood that more than one facility will be built over the next few years. A geothermal facility has been discussed but is likely several years away from operation but expanding the scope to include photovoltaic facilities may increase the demand for the credit significantly. Photovoltaic facilities can be operational much more quickly since they do not require as much infrastructure.

¹ <http://www.nrel.gov/csp/troughnet/pdfs/39291.pdf> outlines capital costs of a 100MW concentrating solar power facility. PNM’s RFP requires that a facility take no more than two years to build (<http://www.pnm.com/rfp/solar/home.htm>).

The fiscal impact assumes that the primary targets of the credit are solar and geothermal but including a coal plant will dramatically increase the fiscal impact. However, the timing of a coal power plant that can both meet the standards in the bill and receive certification is subject to incredible uncertainty.

There will also be a positive fiscal impact to the air quality permit fund that is indeterminate due to NMED's ability to establish a schedule of fees, none of which can exceed \$150,000.

SIGNIFICANT ISSUES

To qualify as an eligible facility, a new or re-powered coal-based electric generating unit including coal gasification facility if any must emit the lesser of what is achievable with the best available control technology or 35 thousandths pound per million British thermal units (mmbtu) of sulfur dioxide, 25 thousandths pound per mmbtu of oxides of nitrogen, and one hundredth pound per mmbtu of total particulates in the flue gas. Also the plant must remove the greater of what is achievable with the best available technology or 90 percent of mercury from input fuel and the plant must be able to sequester or capture carbon dioxide emissions so that by January 1, 2017 or 18 months after the commercial operation date of the facility no more than 1,100 pounds per MWh of carbon dioxide is emitted into the atmosphere. The credit is not available for plants larger than 700 MW.

According to NMED, there have been no applications to date for the credit under current law:

The original tax credit is underutilized. The Department has not received any applications for the certification of an advanced energy project since the statute was passed in 2007 and the rules were adopted in 2008. That could be due to the nature of the developer's expenditures and business operations. While renewable energy developers have enormous upfront project development costs, the vendors pay the gross receipt and compensating taxes, not the developers to whom the credit is supposed to apply. Even with a five year carry-forward provision, a renewable energy developer maybe able to utilize only a fraction of the entire credit. Thus, the original intent of the statute is not realized. Adding personal income tax and corporate income tax to the types of taxes that can be offset by the credit and extending the carry-forward provision to 10 years should enhance the usability of the credit.

SB 237/SCONCS/SCORCS may be addressing this by expanding the type of ownership allowed, the flexibility of the credit to be used against multiple tax liabilities, and the type of facility. Under current law, only taxpayers that hold title to a facility can apply for the credit and SB237 opens it up to any entity that holds title or is part of a partnership that holds title or a leaseholder that holds title. This would allow a much larger company with an ownership interest in a qualified facility to claim the tax credit where the actual facility may not have the tax liability to do so. The SCORC substitute made a further enhancement by allowing the credit to be allocated without regard to ownership share as long as the collective taxpayers receiving an allocation own at least five percent of the facility.

Another way SB237/SCONCS/SCORCS makes the credit more attractive is by allowing it for solar facilities that provides energy to an existing plant that uses another type of fuel. One of the main criticisms of solar power is that, without costly thermal storage, the power is intermittent and may not be available when the need arises. One "stepping stone" to a higher usage of renewable power is to add solar facilities to existing natural gas facilities: this allows the facility

to run continuously but not always with a fossil fuel. This would probably not be as effective with coal powered facilities because they are “base load” facilities and the ramping up and down that would be required to accommodate solar (or wind which is not included here) power input would be inefficient.

According to EMNRD, adding personal income tax and corporate income tax to the types of taxes that can be offset by the credit and extending the carry-forward provision to 10 years should enhance the usability of the credit.

ADMINISTRATIVE IMPLICATIONS

NMED:

The Department will require additional funding to certify additional qualified generating facilities. Current statutory language provides NMED with an opportunity to establish a schedule of fees not to exceed \$150,000 to administer the certification provisions. In the near term, it is likely that the Department will only certify one or two qualified generating facilities. The amount of funds to be generated for solar photo voltaic and geothermal will be determined in new rulemaking. The current Department rules require the applicant to pay \$1,000 for processing a solar thermal application for certification and \$5,000 for recycled energy projects.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB405 which increases the available production credit for solar and geothermal electricity.

OTHER SUBSTANTIVE ISSUES

New Mexico has ideal solar resource and now has a growing solar manufacturing industry to support investment in renewable electricity generating facilities. SB237/SCONCS/SCORCS expands the scope of the advanced energy credit and should be a valuable incentive to move projects that have been in the planning stage forward in the next few years. The credit is well designed with a sunset date (facility construction must be begun by December 31, 2015, to qualify) and a cap of \$60 million for any single facility.

NF/svb:mc

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