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

SPONSOR Lujan, B.
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HB 116/aHTRC/aHFI

SHORT TITLE Electric Conversion Facility Gross Receipts
SB

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**	**FY15**	**FY16**		
	($0.0)	($0.0)	($0.0)	($0.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Taxation and Revenue Department

SUMMARY

Synopsis of House Floor Amendment

The House amendment to House Bill 166 also defines "ancillary services" as suggested by HTRC. This amendment does not change the fiscal impact.

Synopsis of HTRC Amendment

The Senate Taxation and Revenue Committee amendment to House Bill 116 strikes the purpose of the deduction from Section 2 and Section 3. "Ancillary services" is defined for both deductions. This amendment does not change the fiscal impact.

Synopsis of Original Bill

House Bill 116 amends Section 7-9-38 NMSA 1978. This law provides an exemption from the compensating tax for electricity used in the production and transmission of electricity and expands it to include transmission using voltage source conversion technology. It also expands the deduction to the gross receipts tax (GRT) for receipts 1) from the transmission of electricity where voltage source conversion technology is employed to provide such services and from ancillary services and 2) from operating a market or exchange for the sale or trading of electricity, rights to electricity and derivative products and from providing ancillary services.

The purpose of the first deduction is to encourage development of electrical transmission capacity and the second is to provide an incentive for an electricity exchange to be located in New Mexico and to encourage ancillary services and related businesses that are necessary to support that exchange.

The effective date is July 1, 2012. There is no sunset date. The LFC recommends adding a sunset date.

FISCAL IMPLICATIONS

Although no fiscal impact has been estimated this exemption does represent a future loss of revenue to the state. Based on a company whose sales are $500 million, and using a nominal GRT rate of 5.8% the potential foregone revenue could be over $29 million per year.

The impact of this bill can be estimated by considering the separate impacts of its three principal components from Sections 1, 2 and 3. None of those sections would impact revenues.

Section 1: This section can be considered a technical change to the existing statute. It merely clarifies that transmission using voltage source conversion technology is still, in fact, transmission of electricity. As such, there is no fiscal impact from this change.

Section 2: There are two possible business models that could be used by a company employing voltage source conversion technology. The first is to provide the service of converting and transmitting electricity. The second is to purchase electricity from one party, transform it using the voltage source conversion technology, and sell it to another party. The first model would be subject to gross receipts tax, but the second would not. Because avoiding the gross receipts tax would be as simple as changing business models, this analysis assumes that any rational company would choose the second model unless the deduction provided by this section of the bill existed. For this reason, this analysis concludes there would be zero fiscal impact from enacting this deduction.

Section 3: This analysis assumes that the site of an electricity exchange need not be located within close proximity to the conversion and transmission facilities. It is reasonable to assume, then, that without the deduction provided by this section, an electricity exchange would not be created in NM. As such, this analysis estimates zero fiscal impact from enacting this deduction.

Estimated Revenue Impact – Detailed Discussion: The two proposed business models have unique considerations concerning their underlying tax liabilities. Under the first business model, gross receipts tax could be collected in a straightforward manner once the pricing of the service provided were understood. The second model still falls under the gross receipts tax, but it is much more complex involving the purchase and sale of electricity.

The structure of the tax liability under the second model depends primarily upon the location of the recipient of electricity sold by the transmission company. If the purchaser were an out-of-state entity, the export deduction to gross receipts would apply and result in zero taxable gross receipts from the transaction. If the purchaser were an in-state entity, the transaction would likely be classified as sale for resale which also results in no taxable gross receipts through a Type 2 Non Taxable Transaction Certificate. In either case, these transactions would generate no gross receipts tax.

The creation of an electricity exchange within the state and an expanded market for energy producers would likely result in additional jobs and economic activity. Although not incorporated in the analysis, a full feedback model would accord some revenue collections from second round economic activity (indirect and induced jobs and revenue).

Policy Issues: The deduction is not entirely efficient as it is for one industry and not available to all industries. On the other hand, this tax credit may serve as an incubator for the energy transmission industry and promote a new market by way of an electricity exchange. Growth in those sectors could have positive repercussions for the energy industry in the state especially for renewable energy production.

PERFORMANCE IMPLICATIONS

The department shall report annually to the interim revenue stabilization and tax policy committee on use of the deduction. This fulfills the LFC tax policy principle of accountability.

ADMINISTRATIVE IMPLICATIONS

There is a minimal overall impact. The Taxation and Revenue Department will have to modify forms and instructions and provide education to its employees and customers. This can be done with existing resources.

If deduction tracking were required to complete the reports to the Revenue Stabilization and Tax Policy Committee, the costs will be more extensive. A code could be added to the CRS to track the gross receipts deductions, but this method historically does not provide the Department with an accurate determination of the deduction amount taken; taxpayers tend to combine all deductions under the same tax rate code, or otherwise report the deductions incorrectly. To prevent this, additional taxpayer education may be needed through added administrative hours and/or mail-out costs.

TECHNICAL ISSUES

On Page 2, lines 7 & 22, “ancillary services” is too broad without further definition. On Page 2, lines 11-15 and page 3, lines 3-5, if there were only one company taking advantage of this deduction, the Taxation and Revenue Department would have a confidentiality problem complying with these provisions.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

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