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

SPONSOR Cisneros
ORIGINAL DATE 01/24/12
LAST UPDATED
HB

SHORT TITLE Hydrogen Fuel Production Tax Credit
SB 17

ANALYST Smith

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2012	FY2013	FY2014	FY2015	FY2016		
0.0	0.0	(140.0)	(4,140.0)	(8,000.0)	Recurring	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$44.0	$40.0	$84.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 17 would add a new section to the Corporate Income and Franchise Tax Act to

provide a credit for the production and sale of hydrogen fuel using renewably powered technologies. The bill provides for a per-taxpayer cap on the credit and limits the credit to five years after initial hydrogen production. The bill also provides reporting requirements. Significant details are as follows.

> Section 1, Subsection C provides that the credit may not be claimed in addition to the renewable energy production tax credit.
>
> Section 1, Subsection D sets the amount of the credit equal to the cost of generating the hydrogen but not to exceed one dollar ($1.00) per kilogram of the first four million kilograms produced and sold in the taxable year.
>
> Section 1, Subsection E provides that a taxpayer eligible for this credit will be eligible for the credit for five consecutive years beginning on the date qualified hydrogen production begins. This subsection also allows for any unused credit (in excess of CIT liability) to be carried forward for five consecutive years.
>
> Section 1, Subsections F through I provide for a report that is to be compiled by the Taxation and Revenue Department each year for the Revenue Stabilization and Tax Policy Committee in regard to the credit.
>
> Section 1, Subsection J defines "qualified hydrogen fuel generator or hydrogen resource generator" and provides for Taxation and Revenue Department certification of such generators pursuant to information from the Energy, Minerals and Natural Resources Department.

For a "qualified hydrogen fuel or hydrogen resource generator" the credit would be applicable to taxable years beginning on or after January 1, 2012.

FISCAL IMPLICATIONS

The impact on the state's general fund as a result of the proposed tax credit is forecast to be a revenue loss of $8 million through fiscal year 2016. Qualified producers are not expected to claim the credit until fiscal year 2013.

The TRD forecasts a high impact on their operating budget. Additional administrative hours equivalent to 1.0 FTE are required for certification, tracking and monitoring at a cost of at least $40,000 per year. TRD estimates the cost of creating forms, instructions and making changes to publications at $4,000.

SIGNIFICANT ISSUES

The TRD analysis assumes no production would occur before the first half of FY2014 as qualifying hydrogen production facilities are constructed. This projection illustrates growth in the industry by introducing a second qualified hydrogen producer into the state in FY2015. The analysis also assumes that both producers could produce at least 4 million kilograms of hydrogen each. Assuming the cost of qualified hydrogen production to be $5-6 per kilogram (so the $1 per kg credit would apply, not the cost of producing the hydrogen), the taxpayers would claim the maximum $4 million credit each. Fiscal impact is phased in from FY2014 to reflect how

companies generally account for their tax liabilities within their first year of operation.

Any estimate of fiscal impact might overstate the exposure to the General Fund from this incentive because the credit requires the sale of any hydrogen produced when qualifying for this tax credit. Gross receipts tax from the sale of this hydrogen may offset some the money spent on the credit. However, Section 7-9-65 NMSA 1978 would apply to sales of hydrogen sold to an oil refinery for use as a reagent. Thus, there would be no gross receipts tax collected from these sales to offset the credit. Sales of hydrogen for other purposes would be gross receipts taxable. A full feedback model would accord some revenue collections from second round economic activity (indirect and induced jobs and revenue).

Hydrogen is required for many oil refining processes and products. Currently, oil refineries create their own hydrogen using processes with high capital costs and emitting large amounts of greenhouse gases. Hydrogen produced by qualified hydrogen resource generators could provide cost savings to the oil industry.

ADMINISTRATIVE IMPLICATIONS

TRD is concerned (page 3, lines 6-14) there is no current way to capture the number of jobs created or the number of people employed. Page 2, Subsection D, lines 9-13, it is not clear what expenses would be considered in determining the cost of generating the hydrogen. Page 4, Subsection J requires the Taxation and Revenue Department to certify the qualified hydrogen fuel or hydrogen resource generator. This would necessitate extensive cross-department training by the Energy, Minerals and Natural Resources Department (EMNRD). Given these considerations, EMNRD might be more suited to conduct any such certification.

TECHNICAL ISSUES

TRD advises that since this credit is applicable under only the Corporate Income and Franchise Tax Act, pass-through entities such as limited liability corporations and S-corporations will be unable to claim it. This limits exposure to the General Fund but also reduces the incentive among those business structures to participate in this industry. This legislation meets the definition of an “economic development tax incentive” as defined in Section 9-15-56 NMSA 1978 and satisfies the provisions set forth therein. Additional guidelines, definitions, and provisions against abuse of the credit might be warranted.

They further recommend a program-wide cap to the credit in addition to the individual cap to limit possible future exposure to the General Fund.

OTHER SUBSTANTIVE ISSUES

This legislation meets the definition of an “economic development tax incentive” as defined in Section 9-15-56 NMSA 1978. An economic development tax incentive must include certain minimum provisions within its enabling statute. All relevant sections of 9-15-56 NMSA 1978 have been attached below.

The bill does not provide adequate guidelines on what constitutes “costs.” What portion of the cost of the equipment should be amortized each year in determining costs?

The bill should also provide some safeguards against abuse of the five-year limit on generating credits. A corporate reorganization, using equipment that has generated the maximum amount of credit should not restart the credit window.

POSSIBLE QUESTIONS

Does the bill meet the LFC tax policy principles?
Adequacy: Revenue should be adequate to fund needed government services.
Efficiency: Tax base should be as broad as possible and avoid excess reliance on one tax.
Equity: Different taxpayers should be treated fairly.
Simplicity: Collection should be simple and easily understood.
Accountability: Preferences should be easy to monitor and evaluate

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