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

**SPONSOR** Cisneros
**ORIGINAL DATE** 01/28/13
**LAST UPDATED** 02/27/13
**HB**

**SHORT TITLE** Hydrogen Fuel Production Tax Credit
**SB** 3/aSFC

**ANALYST** van Moorsel

## REVENUE (dollars in thousands)

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **FY13** | **FY14** | **FY15** | **FY16** | **FY17** | | |
| See Fiscal Implications | | | | | Recurring | General Fund |

(Parenthesis ( ) Indicate Revenue Decreases)

SB3 relates to HB 182 and SB 277, which both reduce the top corporate income tax (CIT) rate from 7.6 percent to 4.9 percent.

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
Environment Department (NMED)

**SUMMARY**

Synopsis of SFC Amendment

The Senate Finance Committee Amendment inserts a new subsection that caps the maximum amount of hydrogen fuel production corporate income tax credits that may be paid out at $4.0 million.

Synopsis of Original Bill

Senate Bill 3 enacts a new section of the Corporate Income and Franchise Tax Act to provide for a hydrogen fuel production corporate income tax credit. A corporate income taxpayer may claim the credit if the taxpayer holds title to a qualified hydrogen fuel or hydrogen resource generator that first produced and sold hydrogen on or before January 1, 2019.

The bill provides that the amount of the credit equal the cost of generating the hydrogen, not to exceed $1 per kilogram for the first 4 million kilograms of hydrogen fuel produced and sold in one year. The tax credit would be available for five consecutive years.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends (June 14, 2013). The provisions of SB3 would apply to tax years beginning on or after January1, 2013.

## FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) cites the Energy, Minerals and Natural Resources Department (EMNRD) in reporting that no qualifying commercial activities are currently operating in New Mexico. However, the tax credit may attract one or more facilities to start production in New Mexico at the earliest by the end of FY15.

DFA reports in its analysis that there is at least one potential producer of hydrogen in New Mexico. Depending on the production capacity of that producer, the total fiscal impact could potentially reach the maximum $4 million.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

## SIGNIFICANT ISSUES

SB 3 has been endorsed by the interim Science, Technology and Telecommunications Committee.

Hydrogen is required for many oil refining processes and products. Hydrogen produced by qualified hydrogen resource generators could provide cost savings to the oil industry.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill’s requirement to report annually to the interin Revenue Stabilization and Tax Policy committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

## ADMINISTATIVE IMPLICATIONS

The TRD reports it is upgrading its data systems relating to GenTax, requiring that the systems be “locked-down” to any modification until July 1, 2013. The department’s IT resources are fully engaged with contractors during this period to test and validate the systems’ upgrades, and pursuant to contractual agreements and best-practice standards may not undertake systems changes until system upgrade verifications are completed. TRD’s IT personnel are unavailable to begin to develop systems modifications (e.g., new deductions, data reporting, functionality, etc.) until after July 1st, and therefore no system changes can be implemented until October 1, 2013 to allow adequate time for development, testing and verification of any new system requirements.

As a result TRD will not be able to implement the GenTax modifications necessary to record and claim the tax credit until at least October 1, 2013, after the effective date of the legislation.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 182 and SB 277 both would reduce the top CIT rate from 7.6 percent to 4.9 percent.

## OTHER SUBSTANTIVE ISSUES

Tax expenditures, tax credits, deductions and exemptions that "cost" the state in foregone revenue, have been an important component of the state's budget for years, but the state only recently started to identify and report them and analyze their effects. Further legislative work may improve the effectiveness and limit the fiscal impact of several tax expenditures whose cost may have been initially understated. The provisions of SB3 would create an additional tax expenditure. An alternative to creating new tax expenditures could be to reduce tax rates and to broaden the corporate income tax base through reducing taxpayer eligibility for tax expenditures or by allowing the expenditures to sunset.

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

PvM/blm