FISCAL IMPACT REPORT

SPONSOR SFC **ORIGINAL DATE** 01/30/13 **LAST UPDATED** 03/14/13 **HB**

SHORT TITLE Extend Sustainable Building Tax Credit **SB** CS/14/aSFl#1

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
		($5,000.0)	($5,000.0)	($5,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals & Natural Resources Department (EMNRD)

No Response From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SFl # Amendment

The Senate Floor #1 amendment to the Senate Finance Committee substitute for Senate Bill 14 does the following:

- states legislative intent;
- corrects references to various subsections in the bill; and
- requires an annual report to the legislature and a full analysis of the efficacy of the credit every five years.

Synopsis of Original Bill

The Senate Finance Committee substitute for Senate Bill 14 amends the Income Tax Act, Section 7-2-18.19 NMSA 1978, and the Corporate Income and Franchise Tax Act, Section 7-2A-21, to extend the Sustainable Building Tax Credit (SBTC) for another five years to December 31, 2018, and to make a number of changes to the tax credit program. The SFC substitute restricts the use of the SBTC to single family residential buildings by eliminating at the end of 2013 its use for commercial buildings and multifamily dwelling units. The SFC substitute eliminates the ability to transfer, sell or exchange the tax credit to another taxpayer. It gives the taxpayers seven years to use the tax credits when the credit exceeds the taxpayer's income tax liability for that taxable year.

Effective Date: January 1, 2014

FISCAL IMPLICATIONS

Fiscal impact is estimated at $5 million in revenue loss based on the current pattern of tax credits nearing the statutory caps combined with the elimination of half the program.

The Energy and Natural Resources Department (EMNRD) has approved $21.1 million in sustainable building credits.

Approved Tax Credit Amounts (Residential and Commercial)	
CY 08	1,068,616
CY 09	1,224,303
CY 10	3,231,428
CY 11	6,111,487
CY 12	9,452,684
TOTAL	21,088,517

PERFORMANCE IMPLICATIONS

The Legislative Finance Committee (LFC) tax policy of accountability is <u>not</u> met since the Taxation and Revenue Department (TRD) is <u>not</u> required in the bill to report annually to an interim legislative 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.

TECHNICAL ISSUES

Paragraph A refers to Section 7-2-18.8 which should be Section 7-2-18.18, the renewable energy production tax credit under the Income Tax Act.

The TRD suggests the following amendment:

"J. If the total approved amount of all sustainable building tax credits for a taxpayer represented by the documents issued pursuant to Subsection I of this section is:

(1) less than $100,000, a maximum of $25,000 shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or,

(2) $100,000 or more, in increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's income tax liability.

K. If the sum of all sustainable building tax credits that can be applied to a taxable year calculated according to Subsection J (1) or J (2) of this section for a taxpayer, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to a period of seven years."

For example, if the total amount of a sustainable building tax credit approved by the TRD is $79,000, a taxpayer can apply $25,000 each year for the first 3 taxable years, and $4,000 for the fourth taxable year; however, if the total amount of a sustainable building tax credit approved by the Department is $150,000, a taxpayer can apply $37,500 towards each year for a period of 4 years."

This bill does not contain a sunset date. The LFC recommends adding a sunset date.

OTHER SUBSTANTIVE ISSUES

Under the current law (Section 7-2-18.19 (J) & (K) and Section 7-2A-21(J) & (K), if the total amount of a sustainable building tax credit represented by the TRD approval is $25,000 or more, the credit must be applied against the holder's personal or corporate income tax liability for the tax year in which the credit is approved and for the next three subsequent tax years, in increments of 25 percent of the total credit amount in each of the four tax years. Therefore, when an approved credit is $25,000, a taxpayer can only claim $6,250 each year for 4 years. However, when approved credit is $24,999, a taxpayer can claim the total amount $24,999. This might not be consistent with good tax policy guidelines. Also, the $25 thousand limit is per credit and not for the sum of all credits issued to a taxpayer in that year. Making the $25 thousand limit applicable to the sum of the credits is another option to be considered. These could be modified as recommended in Other Issues – Detailed Discussion section.

The credit can be used for the construction/renovation of either commercial or residential buildings. The EMNRD can only issue an aggregate of $10 million in credits per calendar year, $5 million for commercial buildings and $5 million for residential buildings, provided that no more than $1,250,000 of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. Applications are considered in the order received. If for any taxable year, the EMNRD determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit above, the EMNRD may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to building owners of multifamily dwelling units that meet the requirements of the EMNRD and of the sustainable building tax credit; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

Eligible taxpayers would be awarded a document by the TRD showing the amount of credit earned. These documents could be sold, exchanged or otherwise transferred. Credits earned in one year would be applied against taxpayer's income tax liability over a four-year period, 25 percent per year, except in cases where the total credits are less than $25 thousand, in which case they can be taken in one year. If the credit exceeds liability for that taxable year in either case, the taxpayer can carry the credit forward for up to seven years.

The guidelines, referred to as LEED for "leadership in energy and environmental design", have different levels of compliance and the credit is scaled accordingly.

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

SS/blm:svb