FISCAL IMPACT REPORT

		ORIGINAL DATE	2/2/15		
SPONSOR	Dodge	**LAST UPDATED**	2/17/15	**HB**	242
SHORT TITLE	Renewable Energy Tax Credit Changes			**SB**	
				ANALYST	Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	**FY16**	**FY17**	**FY18**	**FY19**		
0	($10,000.0)	($13,600.0)	($16,800.0)	($15,800.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Up to $60.0	$60.0	$60.0	$180.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 242

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Renewable Energy Transmission Authority (RETA)
Energy, Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 242 amends Section 7-2-18.18 NMSA 1978 of the Income Tax Act and Section 7-2A-19 of the Corporate Income and Franchise Tax Act and makes the following changes.

1. It increases the amount of electricity that may be produced by qualified energy generators that will be eligible for the Renewable Energy Production Tax Credit (REPTC) from a total of two million megawatt-hours (MWh) plus an additional 500 thousand MWh for solar energy to a total of three million megawatt-hours (MWh) plus an additional one million MWh for solar energy. It clarifies that solar projects may only qualify under the cap specific to solar energy, and that only wind-, geothermal-, or biomass-derived resources may qualify for the larger cap. Current regulations promulgated by the Energy, Minerals and Natural Resources Department (EMNRD) exclude solar-derived resources from the larger cap, so the new language provides clarification of existing policy rather than a change in policy.

2. It further extends the date that a qualified energy generator must first produce electricity to qualify for REPTC. The bill also limits the period for which a taxpayer may claim the credit. Carryover of excess credits is changed from five years to five consecutive years.

3. It decreases the amount of credit per kilowatt-hour (kWh) for certain taxable years for taxpayers receiving certificates of eligibility on or after January 1, 2015. It moves from a system of increasing and then decreasing credit levels that changes each of the 10 years the credit can be claimed to a new, two-tier system that implements a rate of one-and one-half cents per kWh for the first year and a rate of two cents per kWh for years two through 10. Taxpayers that received certificates of eligibility prior to January 1, 2015 are grandfathered into the current rate structure.

4. It provides for the addition of geothermal energy as a qualified energy source.

5. It extends the sunset of REPTC to January 1, 2032.

FISCAL IMPLICATIONS

The fiscal impact to revenues was estimated by the Taxation and Revenue Department (TRD), and the agency supplied the following information in its analysis.

> The fiscal impact above assumes that the technical issue identified below is fixed (see Technical Issues). This bill doubles the amount of the aggregate cap on this credit for the solar section and increases it by fifty percent for the wind, biomass, and geothermal section. Currently, the amount of accepted applications from generators on the wind, biomass and geothermal side is sufficient to effectively fill the newly raised cap, which equates to approximately $10 million in new credits at the constant rate of $0.01 per kilowatt hour – the majority of the impact. The analysis assumes that as the early projects in the queue begin to fall off the list, additional projects would take advantage of the additional space and become certified.
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> On the solar side, generators on the waiting list account for about 800 thousand MWh out of a newly available 500 thousand MWh. Because the credit rate changes annually for this portion of the credit, the cost on a constant level of megawatt hours changes yearly.

Additionally, EMNRD reports it will incur an operating budget impact to administer the credit, including the development of regulations and the review of eligibility for each potential renewable energy resource generator. EMNRD estimates an additional $60 thousand per fiscal year in the operating budget would be required for technical, legal, and administrative staff to support this program, and the agency reports it currently has limited staff resources to review and process applications and amend program rules.

SIGNIFICANT ISSUES

The bill would encourage development of additional renewable energy sources in the state by expanding the cap on the credit for the amount of electricity that may be produced by qualified energy generators. The bill also reduces the value of the credit over time for solar energy sources, which PRC reports is appropriate because the cost of new solar installations is declining.

The Renewable Energy Transmission Authority (RETA) reported the following information regarding proposed renewable energy projects that would be impacted by the bill.

> A number of significant transmission lines are being studied in New Mexico that, once built, will provide for more development of wind, solar and geothermal resources. If constructed, the Western Spirit Clean Line project will allow for an additional 1,500 MW of projects to be built, SunZia will allow for an additional 3,000 MW, the Lucky Corridor will allow for an additional 700 MW, the Centennial West Clean Line will allow for an additional 3,500 MW, and the Southline Transmission Project will allow for an additional 1,500 MW. The state is well poised to develop its natural resources and create a complimentary industry to the oil and gas resources. Similarly to those resources, the majority of the natural resources are likely to be sold out of state while New Mexico realizes the benefits of increased jobs and tax revenues. The extension of the tax credits contained in the bill will increase the development of the state's natural resources.

EMNRD reported the following information regarding REPTC and proposed renewable energy projects in its analysis.

> REPTC is currently fully subscribed for both wind/biomass and solar energies, at the two million MWh and 500 thousand MWh caps, respectively. In addition to certified projects that fill the REPTC energy production cap, there are applicants "pending approval," or on a waitlist. For wind/biomass applicants, there is an additional 1,410,573 MWh pending approval; for solar applicants, there is an additional 810,337 MWh pending approval. These pending applications have met the application criteria but have not been certified due to the unavailability of the current renewable energy production cap.
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> If the cap for wind, geothermal, and biomass were increased from two million to three million MWh, all projects currently on the wind/biomass waiting list would be eligible to complete their application process, as one wind project is completing its 10 years of eligibility in 2015.
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> If the bill increases the solar energy cap from 500 thousand MWh to 1 million MWh, there would be room for an additional 16 pending solar projects to complete their application processes, become certified, and begin claiming tax credits for the 2015 tax year. However, even with the increased cap, four projects would still be on the REPTC solar waiting list. In 2021, several solar projects complete their 10 years of REPTC eligibility, and this will allow one additional project to begin claiming the tax credit. Two more projects would be able to begin claiming credits in 2022. There are currently

six additional solar projects being reviewed by EMNRD (these total 159 MW). These six projects would not realize the full 10 years of the production tax credit, due to the existing waiting list and sunset provision of REPTC proposed by the bill.

The bill clarifies that the 10 consecutive years of tax credit start on the first taxable year the credit is claimed by the taxpayer. The current version of the law provides that the 10 year eligibility period began when the generator began producing electricity. Due to the backlog of eligible projects, some generators would begin producing electricity while they were waiting for the credit and thus lose years of eligibility.

DUPLICATION

This bill duplicates Senate Bill 242.

TECHNICAL ISSUES

On page 17, lines 7-8 of the bill, the term "on or after" should be "prior to" consistent with the language on page 4, lines 1-2 of the bill. Without this change, the bill provides conflicting values for the credit.

EMNRD notes the bill does not define geothermal energy nor does it prohibit existing geothermal facilities from claiming the credit; that is, a geothermal facility that is already producing could join the queue and begin claiming credits, which would not bring additional economic or other benefits to New Mexico and its electricity ratepayers.

TRD has the following technical recommendation with respect to language.

The permissive "may" should be changed to the mandatory "shall" in Subsections F and J. The credit will not be approved unless the taxpayer applies for and receives certification from EMNRD and submits the required documentation to TRD. Since TRD has a specific form for claiming this credit, Subsection J could also be amended to state "taxpayer shall apply for the credit on forms prescribed by the Department of Revenue and Taxation" and shall submit the required documentation as currently set forth in the proposed bill.

OTHER SUBSTANTIVE ISSUES

PRC reports two potential issues with renewable energy sources identified in the bill, stating that segregated solid waste is not consistent with the objectives of the Renewable Energy Act as the level of pollutants may increase over and above existing fossil fuel resources and may be inconsistent with the concept of clean energy. Fluidized bed technology may not be a proven clean renewable technology and should be investigated further prior to being permitted in the language as a renewable energy resource. New Mexico statute defines renewable energy to mean electric energy generated by use of low-or-zero emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources. Renewable resources are an attempt to improve the environmental impact of electric generation and to reduce fossil fuel emissions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently, the 10 years of tax credit eligibility begins upon first production, not the date the project is certified by EMNRD to receive the credit. EMNRD reports many projects are on the waiting list and begin production before they are certified, losing years of tax credit eligibility, and it is possible that some projects will use up their 10-year window before cap space becomes available. There is potential the state will face a legal liability from applicants who do not receive the full 10-year tax credit eligibility. In addition, though the existing statute requires production to begin before January 1, 2018, there is no final sunset of the credit, and EMNRD anticipates that administration of REPTC will continue significantly beyond the 2018 expiration, possibly beyond 2044.

JC/bb