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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/25/16  
**LAST UPDATED** 2/16/16      **HB** \_\_\_\_\_

**SPONSOR** Sanchez, C.

**SHORT TITLE** Renewable Energy Tax Credit Eligibility      **SB** 104

**ANALYST** Clark

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
		(\$1,000.0)	(\$2,000.0)	(\$2,000.0)	Recurring*	General Fund

Parenthesis ( ) indicate revenue decreases

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Up to \$116.0	\$110.0	\$110.0	\$336.0	Recurring	General Fund

Parenthesis ( ) indicate expenditure decreases

\*There may be significant costs in fiscal years beyond 2020 (see Fiscal Implications)

Duplicates HB 175

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 104 amends to renewable energy production tax credit (REPTC) to expand the eligibility to include geothermal energy along with wind, solar, and biomass and extends the deadline for initial electricity production to qualify for the credit from January 1, 2018 to January 1, 2022. The Energy, Minerals and Natural Resources Department (EMNRD) provided the following summary of the bill's significant actions.

The primary revisions to the REPTC are:

- 1) increasing the wind and solar program caps and phasing in the solar cap over 5 years;
- 2) lowering the rate of the wind credit for projects certified after January 1, 2018;
- 3) lowering the rate of the solar credit for projects certified after January 1, 2015;
- 4) adding geothermal energy as a qualified energy resource at the wind and biomass credit rate;
- 5) clarifying that 10 consecutive years of the credit can be claimed based on the date of project certification for wind, biomass, and geothermal projects;
- 6) extending the expiration date of the credit; and
- 7) creating a final sunset provision for the credit, prohibiting credits to be claimed for any electricity produced after a final date of January 1, 2032.

For wind, biomass, and geothermal projects, the bill increases the cap of total annual energy production that can claim the credit from 2 million megawatt-hours (MWh) to 2.5 million MWh on January 1, 2020. The bill subdivides the tax credit rates for wind, biomass, and geothermal projects into three time periods:

- 1) the current rate of \$10 per MWh for projects first producing power prior to January 1, 2018,
- 2) \$5 per MWh for projects first producing power prior to January 1, 2020, and
- 3) \$3 per MWh for projects first producing power prior to January 1, 2022.

For wind, biomass, and geothermal projects, the bill provides that a taxpayer may claim the credit for 10 consecutive years, starting on the date that EMNRD issues a certificate of eligibility. EMNRD may only issue a certificate if the total electricity produced by all qualified generators does not exceed the caps in the bill. However, for solar projects, the 10-year period of eligibility for the credit begins on the date electricity production begins regardless of whether a certificate is issued.

For solar projects, the bill increases the annual cap from 500 thousand MWh to 1 million MWh as follows:

<b>Tax Year</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>MWh</b>	600,000	700,000	800,000	900,000	1,000,000

For solar projects, the bill does not change the tax credit for projects that first produced power prior to January 1, 2015. The current REPTC rate for qualified solar energy resources gradually increases from \$15 per MWh in the first year of production to \$40 per MWh in the sixth year of production and then gradually phases down again until the tenth year of production, for an average of \$27.50 per MWh over the 10-year period. The bill subdivides the tax credits into three more time periods as follows:

- 1) the rate is \$13.75 per MWh for projects first producing power prior to January 1, 2017,
- 2) the rate is \$10 per MWh for projects first producing power prior to January 1, 2019, and
- 3) the rate is \$5 per MWh for projects first producing power prior to January 1, 2022.

## FISCAL IMPLICATIONS

\*In addition to the impacts shown in the revenue chart above, there are additional costs in FY21 – FY32. The costs could vary dramatically using different assumptions, and would vary from year to year, but would likely range between \$1 million and \$4.5 million annually for FY21 – FY27 and up to \$11 million annually for FY28 – FY32.

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. The Taxation and Revenue Department (TRD) provided the following input on this issue.

Originally enacted in 2007, the degree to which the production credit is necessary to stimulate industry growth is unknown to TRD and requires input from EMNRD and industry. The phased-down credit amounts may indicate that a degree of industry maturity and cost-effectiveness has already been achieved. As such, and per the discussion in the Technical Issues section, consideration should be given to the exclusivity of this credit as well as its extension.

TRD also provided the following methodology used to estimate the fiscal impact shown in the revenue chart on the first page.

TRD used a list of certified renewable energy projects provided by EMNRD, as well as the list of projects currently awaiting credit availability. TRD applied the appropriate credit rates based on the production and certification dates, as well as increased the solar and wind aggregate caps as outlined in the bill.

TRD anticipates that the costs of this credit will increase beyond the five-year window, as the solar aggregate cap becomes fully phased-in beyond fiscal year 2020 and new energy projects become certified.

EMNRD reports the REPTC is currently fully subscribed at the current caps of 2 million MWh for wind and biomass and 500 thousand MWh for solar. In addition to certified projects that fill the REPTC energy production cap, there are applicants pending certification by EMNRD. For wind/biomass applicants, there is an additional 2,215,400 MWh pending certification; for solar applicants, there is an additional 1,751,330 MWh pending certification. These pending applications have met the application criteria but have not been certified due to the unavailability of the current renewable energy production cap.

Because of this backlog in applications for the credit, the fiscal impact analysis assumes the increased caps would become fully subscribed immediately upon implementation.

LFC staff analysis indicates EMNRD would likely incur a small operating budget impact to administer the program with higher caps for the credit and a prolonged period of time before the ineligibility period begins. The cost for the additional technical, legal, and administrative staff time is estimated at \$60 thousand annually. TRD estimates a similar impact of \$50 thousand annually, resulting in the \$110 thousand total operating budget impact shown in the chart on the first page. Additionally, TRD estimates an initial cost of \$6,000 to revise forms and instructions.

## **SIGNIFICANT ISSUES**

The bill could 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 and by extending the date on which energy must first be produced. However, the bill also reduces the value of the credit for projects first producing power on or after January 1, 2015, and this could have a slightly suppressive effect on the number of new renewable energy projects built in the state. EMNRD provided the following additional information related to the project caps and availability of the credit.

If the cap for wind, geothermal, and biomass were increased from 2.0 million to 2.5 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.

If the bill increases the solar energy cap from 0.5 million MWh to 1.0 million MWh, there would be room for all current projects on the waiting list to receive at least one year of REPTC. Approximately seven projects on the current waiting list would be eligible for 10 consecutive years of credit with the remaining to receive limited REPTC.

The bill clarifies that the 10 consecutive years of tax credit starts on the date of first production for solar projects; however, for wind projects the 10 consecutive years begin upon certification for projects not yet certified. The current version of the law provides that the 10-year eligibility period began when the generator began producing electricity for both the solar and wind projects.

## **PERFORMANCE IMPLICATIONS**

The LFC tax policy of accountability is not met since TRD is not 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.

## **ADMINISTRATIVE IMPLICATIONS**

As noted in Fiscal Implications, LFC staff analysis estimates there will be a small administrative burden to EMNRD and TRD.

## **DUPLICATION**

This bill duplicates HB 175.

## **TECHNICAL ISSUES**

TRD provided the following discussion of technical issues.

First, as there are several credits, deductions, and incentives available to renewable energy technologies, there is some potential for unintended overlap. TRD recommends consideration of an exclusivity clause that would preclude taxpayers that claim this credit

from claiming any other credit or deduction that is triggered by investment in, or the volume of, electricity produced by a qualified energy generator. Specific provisions that could be specifically named include: the Investment Credit [Chapter 7, Article 9A NMSA 1978], the Advanced Energy Combined Reporting Tax Credit [Section 7-9G-2 NMSA 1978], the Advanced Energy Deduction (gross receipts tax) [Section 7-9-114 NMSA 1978], and the biomass-related equipment and materials deduction (compensating tax) [Section 7-9-98 NMSA 1978]. Consideration should also be given to deductions that arise from the qualified energy generator being part of an industrial revenue bond project.

Second, TRD also recommends the annual credit certified each year by EMNRD be approved and allocated to taxpayers on a taxable year basis. In this manner, this income tax credit will be administered on a taxable year basis, rather than a consecutive year basis. If administered on a consecutive year basis, EMNRD should produce different eligibility letters for the years when they may claim their full credit, and others for when they may claim for a partial year credit based on the consecutive year measure.

Third, on page 10, line 10 and on page 26, line 3, clarification of the word “receives” is needed. The word may reference the date when the letter was mailed or when the letter was received by the applicant.

The use of the term “geothermal” is undefined. TRD reports the word is sometimes used as a misnomer to describe what is merely a ground-source heat-exchange heat pump and recommends a definition should be used, such as the definition contained in Section 19-13-2 NMSA 1978, clarifying that “geothermal” means, in effect, heat from a hot spring or vent. Additionally, EMNRD notes the bill does not prohibit existing geothermal facilities from claiming the credit; that is, a geothermal facility that is already producing could join the queue, but credit would not be available for geothermal projects until 2025.

In some sections of the bill, the credit is measured in dollars per megawatt-hour, while in other sections it is measured in cents per kilowatt-hour. This does not pose a conflict, but it makes it more difficult for members of the public not familiar with these energy measurements to compare the credit across sections of the bill.

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