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FISCAL IMPACT REPORT

SPONSOR Sanchez ORIGINAL DATE 2/09/2020
LAST UPDATED 2/10/2020 HB _____

SHORT TITLE Income Tax "Manufacturing" Definition SB 256

ANALYST Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
See Fiscal Implications					Recurring	General Fund (CIT)

(Parenthesis () Indicate Revenue Decreases)

Conflicts with HB326.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
Economic Development Department (EDD)
Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 256 (SB256) amends the Uniform Division of Income for Tax Purposes Act to clarify the definition of "manufacturer" by excluding electric power generating entities that are not subject to the Public Utility Act. Other electric power generation would continue to be allowed to take the manufacturing election.

The effective date of this bill is not specified and assumed to be 90 days following adjournment. The changes are applicable to taxable years beginning January 1, 2020.

FISCAL IMPLICATIONS

In 2019, Section 21 of HB6 (Laws 2019, Chapter 270) removed the authority for nonutility independent power producers (IPPs) to take the manufacturers election. This election is typically

used to lower tax liability by allowing taxpayers to only use a sales-only apportionment factor in calculating tax liability. Under this bill, IPPs would again be allowed to take the manufacturers election, therefore the effect on general fund revenue through corporate income tax revenue is negative tested against the changes in last year’s HB6.

Reductions of corporate income tax revenue from the inclusion of wholesale power generators as single sales factor will be about \$3 million to \$5 million. However, because the CIT provisions of HB6 had no official estimate, the December 2019 consensus revenue estimate for CIT was not increased by this \$3 to \$5 million. Therefore, LFC staff believe it appropriate not to score this against the current CIT estimate. The reductions in corporate income tax revenue from the renewable energy production tax credit (7-2A-9 NMSA 1978) suggests many wind farms were unable to utilize all of the earned credits, particularly in the early days of the credit. Actual amounts of the renewable energy production tax credit totaled \$15.1 million for tax year 2016. This direct credit is worth more than the benefit created by the sales-only apportionment factor. The base corporate income tax estimate (December 2019 consensus) is below.

Revenue Source	FY19	FY20	FY21	FY22	FY23	FY24
	Actual	Est.	Est.	Est.	Est.	Est.
<i>Gross Corporate Income Tax</i>	172.8	134.4	134.0	133.3	132.6	132.6
<i>CIT Refundable Credits</i>	(50.0)	(78.8)	(116.9)	(145.0)	(165.0)	(155.0)
NET Corporate Income Tax	122.8	55.6	17.1	(11.7)	(32.4)	(22.4)

This bill expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

SIGNIFICANT ISSUES

SB256 will be a benefit to wholesale power generators that have at least 80 percent of their total property and payroll within the state, whereby they will qualify for sales-only apportionment factor for corporate income tax liability. This will have an immediate fiscal impact for the existing solar and wind farms, as well as a growing impact as more renewable facilities come on line and transmission lines are built to distribute the generated electricity.

The bill builds a bright line by describing the entities allowed to take advantage of the sales-only apportionment factor as entities requiring both siting “approval and a certificate of convenience and necessity from” the PRC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Attorney General notes the following:

Conflicts with House Bill 326, which proposes to amend Section 7-4-10 and revert its exception to the word “manufacturing” for *power* generation to that which appeared prior to 2019. *See* § 7-4-10 (1993, amended 2015). Whereas House Bill 326 seeks to restore the previous statutory language in its entirety, Senate Bill 256 proposes only to restore its

effect applicable to *electric* power generation, thus proposing a more narrow exception to the word “manufacturing.”

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