

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

H1829BILL NUMBER: House Bill 1829 (Fourth Edition)

SHORT TITLE: Renewable Energy Incentives

SPONSOR(S): Representative Luebke

FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
REVENUES:	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
Section 1.(a)		No Impact – see assumptions and methodology			
Section 1.(b)	-\$.7	-1.3	-\$.7	\$0.0	\$0.0
Section 2	Insignificant impact based on information gathered from NCSEA and the Department of Revenue				
Section 3		No Impact – see assumptions and methodology			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC DOR					
EFFECTIVE DATE: Becomes effective when law except where otherwise specified.					

BILL SUMMARY:

Section 1: Section 1 extends the sunsets for the credit for constructing renewable fuel facilities and the credit for biodiesel producers from January 1, 2011 to January 1, 2013.

Section 2: Section 2 makes the following changes to the credit for investing in renewable energy property:

- Amends the definition of "cost" to follow the federal definition under the Internal Revenue Code. As currently defined, the cost of leased property is determined by multiplying the annual rent by eight. This is the same definition that is used under the Bill Lee Act and Article 3J. In some instances, a developer will structure a project in such a way as to elect for federal purposes to pass through the federal tax credit to an affiliated entity that is leasing the equipment. In these instances, the actual cost of the renewable energy property and installation can be greater than the amount derived by multiplying the annual rent by eight. This change to the definition would allow the person that elects to pass through the federal credit to use the actual cost of the property when calculating the tax credit.

- Creates a definition for the term "installation" that is consistent with the interpretation of the term by the Department of Revenue in private letter rulings. The tax credit is limited to \$2.5 million per nonresidential installation. The term "installation" is not defined, and investors routinely seek rulings from the Department of Revenue for clarification of this term and its application to particular projects. The Department has defined installation as "renewable energy property that standing alone or in combination with other machinery, equipment, or real property is able to produce usable renewable energy on its own."
- Adds combined heat and power equipment to the types of property that is eligible for the credit. Combined heat and power equipment produces heat and electricity simultaneously.
- Amends the definition of wind turbine to include equipment used in relaying the electricity produced by a wind turbine by cable to the power grid.
- Makes other technical and conforming changes to the statute.

This section is effective for taxable years beginning on or after January 1, 2010.

Source: Committee Counsel Bill Summary

Section 3: Section 3 reinstates and expands the credit for constructing a facility for renewable energy property and a major component subassembly for a solar array or a wind turbine. The credit is equal to 25% of the cost to the taxpayer of constructing and equipping the facility. Renewable energy property includes biomass equipment, combined heat and power equipment, hydroelectric generators, geothermal equipment, solar energy equipment, and wind equipment. The credit may be taken against the franchise tax or the income tax. The entire credit must be taken in five equal installments, beginning with the taxable year the facility is placed in service. If the facility is disposed of, or taken out of service, the taxpayer may not take any remaining installments. The credit is subject to the following limitations:

- The credit may not exceed 50% of the tax against which it is claimed for the taxable year.
- Any unused portion of the credit may be carried forward for five years.
- A taxpayer that claims any other credit with respect to the construction of a facility to manufacture renewable energy property may not take this credit with respect to the same facility.

The credit is effective for taxable years beginning on or after January 1, 2010 and would sunset for facilities placed in service on or after January 1, 2014.

Source: Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY:

Section 1.(a): This subsection extends the sunset for the credit for constructing renewable fuel facilities from January 1, 2011 to January 1, 2013. The Department of Revenue Tax Expenditure Report projects no significant impact for this credit in FY 2009-10. Fiscal Research is aware of an ethanol plant, which opened in 2010 and may qualify for the credit for constructing renewable fuel processing facilities; however, because the plant is being completed before the existing sunset, any fiscal impact would be realized under current law. As a result, the extension of the credit is expected to have no significant impact.

Section 1.(b): This subsection extends the sunset for the tax credit for biodiesel producers from January 1, 2011 to January 1, 2013. The credit is equal to the per gallon excise tax paid under Article 36C of Chapter 105. The credit does not apply to biodiesel blend. According to the Department of Revenue Tax Expenditure Report, there are 8 biodiesel producers in North Carolina and annual production is assumed to be 4 million gallons per year. Based on a projected motor fuels tax rate of 31.7 cents per gallon, the credit is estimated to cost \$1.3 million annually.

The bill would sunset the credit in January 2013. This would result in a partial year impact for FY 2012-13, and no impact for FY 2013-14.

Section 2: The change to the definition of cost will make the credit more generous for taxpayers that lease renewable energy property in the majority of cases, but it is estimated to have an insignificant fiscal impact because lessees of renewable energy property have already been following the federal rules under the Internal Revenue Code for determining the cost of leased property used to calculate the tax credit according to the North Carolina Sustainable Energy Association. This practice is consistent with the determination of cost as applied under the change made by House Bill 1829.

Adding a statutory definition of installation will not have an impact because House Bill 1829 codifies the definition as currently interpreted by the Department of Revenue in letter rulings. Additional statutory definitions provide clarity regarding the types of property that qualify and do not have a fiscal impact.

Section 3: The bill creates a tax credit for the construction of a facility used to manufacture renewable energy property. Since there are no known projects that would qualify for the credit, there is no fiscal impact estimated.

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Sustainable Energy Association

TECHNICAL CONSIDERATIONS: None

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