GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 388 (Third Edition)

SHORT TITLE: Modify renewable energy credit

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: January 1, 2009 and applies to renewable energy property placed into service on or after that date

BILL SUMMARY: Senate Bill 388 adds language to G.S. 105-129.16A (Credit for investing in renewable energy property) that removes federal grants made under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 from the definition of "public funds" in the statute, and thereby, allows property funded with these grants to qualify for the tax credit.

***Current Law*:** North Carolina allows a tax credit for investing in renewable energy property. The credit is equal to 35% of the cost of the property and may be taken against the franchise tax, income tax, or gross premiums tax. The renewable energy tax credit is not allowed to the extent the cost of the renewable energy property was provided by public funds.

***Bill Analysis*:** Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (ARRA) provides that taxpayers that develop renewable energy projects are eligible for a federal grant in lieu of a federal tax credit equal to up to 30% of the basis of property used to produce electricity from wind energy, closed-loop biomass, open-loop biomass, geothermal, landfill gas, trash combustion, incremental hydropower, marine and hydrokinetic energy, fuel cell property, solar property and small wind property. Grants of 10% are available for geothermal (property not

eligible for the 30% rate), qualified microturbines, combined heat and power property and geothermal heat pumps.

The grant program was enacted, in part, to respond to inefficiencies in the investment market for renewable energy projects. Developers of renewable energy projects often seek investors that are allocated 99% of the income, gains, losses, deductions and tax credits of the project. In the current economic environment, potential tax investors may not be paying federal income taxes and therefore may be reluctant to make these investments. The creation of a grant program removes this obstacle by permitting developers to obtain a federal subsidy by means of a government grant instead of a tax credit.[1]

Senate Bill 388 modifies the North Carolina credit for investing in renewable energy property in response to the federal grant program that was provided under ARRA in lieu of the federal tax credit. Consequently, under Senate Bill 388, renewable energy projects that would have qualified for the North Carolina credit prior to the enactment of ARRA will continue to qualify for tax credits subsequent to its enactment.

***Source*:** Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY: There is no fiscal impact because previous fiscal estimates for the renewable energy credit were made without consideration of some projects being disqualified as a result of the creation of the federal grant in lieu of the federal tax credit under ARRA.

Fiscal Research discussed the effect of ARRA on the renewable energy tax credit with Department of Revenue staff to confirm that taxpayers that elect to take the federal grant in lieu of the federal tax credit are precluded from claiming the North Carolina renewable energy tax credit because the grant is considered "public funds" under the Department's interpretation of the law. Under that scenario, revenue would increase because the number of projects that would qualify for the credit would be reduced. The change proposed by Senate Bill 388 means the number of projects that would have qualified for the credit prior to the federal change and after the federal change will be the same.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: The renewable energy tax credit cannot exceed "$2,500,000 per installation" for nonresidential property (G.S. 105-129.16A(c)(2). Fiscal Research discussed the interpretation of the cap on the amount of the credit with Department of Revenue staff in consideration of federal initiatives such as the grant program enacted under ARRA to promote renewable energy projects, and since the term "installation" is not defined by statute. The Department of Revenue has interpreted an "installation" as a system that is capable of operating independently. It is therefore possible to have numerous installations at one project site. This is noted as a technical consideration due to the potential increase in the fiscal impact of the renewable energy tax credit in the future based on more substantial investment being made in

[1] "CCH's American Recovery and Reinvestment Act of 2009: Law, Explanation and Analysis", page 200.

renewable energy projects as a result of federal policies such as the grant program enacted under ARRA.

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Jonathan Tart

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

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