PREPARED BY: Doug Gibbs
DATE PREPARED: February 23, 2016
PHONE: 402-471-0051

LB 1085

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES **(See narrative for political subdivision estimates)**

	FY 2016-17		FY 2017-18	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	$238,712	See Below	$51,492	See Below
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	$238,712	See Below	$51,492	See Below

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 1085 amends Nebraska Revised Statutes regarding the renewable energy tax credit.

Current statute provides for a nonrefundable tax credit for any producer of electricity generated by a renewable energy source that is located in Nebraska and is approved by the Department of Revenue as a community-based energy development project.

LB 1085 provides for a credit that is either (but not both) of the following:

A) For each kilowatt-hour (kwh)of electricity generated by a facility that begins commercial operation after the effective date of LB 1085, this credit may be earned for the first ten years of commercial operation as follows;
   - For the first two years (Years 1 & 2) of commercial operation a credit equal to 1.0 cents for each kwh generated;
   - For the next two years (Years 3 & 4) of commercial operation a credit equal to 0.9 cents for each kwh generated;
   - For the next two years (Years 5 & 6) of commercial operation a credit equal to 0.8 cents for each kwh generated;
   - For the next two years (Years 7 & 8) of commercial operation a credit equal to 0.7 cents for each kwh generated;
   - For the next two years (Years 9 & 10) of commercial operation a credit equal to 0.6 cents for each kwh generated; OR

B) A one-time credit equal to 30% of the total cost of construction of a renewable energy electric generation facility that begins commercial operation after the effective date of LB 1085, this credit shall not exceed $2 million.

The taxpayer must select which credit option they are going to use and notify the Department of Revenue of their selection prior to placing the facility into commercial operation.

The bill defines renewable electric generation facility to mean a renewable electricity generation facility located in a county with a population of less than 7,000 inhabitants and is approved by the Department of Revenue as a C-BED project.

If the facility has a nameplate capacity of 20 megawatts or less, the tax credit may be transferred, sold, pledged, or assigned multiple times either in whole or in part. All generating equipment within one mile of any other generating equipment is to be combined to determine the capacity. The Department of Revenue is to develop a tracking system regarding the sale, transfer, pledge or assignment of such credits and certify ownership.

The holder of the credit may carry it forward for a maximum of five years after the first year in which it is claimed.

The credit may be used against individual income tax, the corporate income tax, the fiduciary income tax (both the estate or trust and the beneficiaries, both resident and nonresident), the insurance premium tax, and the financial institutions franchise tax. In addition, use of the credit for the insurance premium tax constitutes tax paid for purposes of the credit against corporate income tax.

The credit has a current cap of $50,000 total for all taxpayers; that cap is removed.

The bill requires the Department of Revenue to provide an annual report to the Legislature on July 1, 2018 and each July 1 thereafter, detailing the number of facilities receiving credits, the amount of credits earned, the amount of credits claimed, and the amount of credits outstanding.

The credits may be claimed for tax years beginning on or after January 1, 2018.

The bill provides that the section of statute providing for the credit terminates on December 31, 2022, unless extended by the Legislature. It is unclear if this means no new credits or facilities will be approved or that no credits may be taken after that date.

The Department of Revenue estimates the following fiscal impact to the General Fund as a result of LB 1085:

FY2016-17:	$ 0
FY2017-18:	$ 0
FY2018-19:	($ 12,100,000)
FY2019-20:	($ 14,930,000)
FY2020-21:	($ 19,540,000)

The Department of Revenue estimates the cost required to implement LB 1085 to include a one-time programming charge of $22,921 paid to the Office of the CIO to add line to Form 1120NF and $160,506 to implement a tracking system. In addition, the Department will require 1.0 FTE Fiscal Compliance Analyst to administer the bill. PSL will be $37,808 for FY2016-17 and $38,716 for FY2017-18.

We have no basis to disagree with the Department of Revenue's estimate of fiscal impact or cost.

ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES		
LB: LB 1085	AM:	AGENCY/POLT. SUB: Dept. of Revenue
REVIEWED BY: Lyn Heaton	DATE: 2/23/2016	PHONE: 471-4181
COMMENTS: No basis upon which to disagree with the Department of Revenue's analysis regarding the General Fund revenue impact and the operational impact on the Department. In addition, any reduction of insurance premium tax revenue caused by the bill would increase the General Fund appropriation needed for the TEEOSA state aid formula.		

LB 1085 Fiscal Note 2016

State Agency Estimate

State Agency Name: Department of Revenue					Date Due LFA:	2/24/2016
Approved by: Tony Fulton		Date Prepared:	02/22/2016		Phone: 471-5896	

	FY 2016-2017		FY 2017-2018		FY 2018-2019	
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue
General Funds	$238,712	$0	$51,492	$0	$52,728	($12,100,000)
Cash Funds						
Federal Funds						
Other Funds						
Total Funds	$238,712	$0	$51,492	$0	$52,728	($12,100,000)

LB 1085 would amend Neb. Rev. Stat. § 77-27,235 to replace the existing renewable energy tax credit with a larger and more comprehensive tax credit. Currently, the renewable energy tax credit allows generators of electricity placed in service after January 1, 2013 to take a credit equal to 0.05 cent per kilowatt hour, which can be taken either on an income tax return or as a refund of sales tax paid.

Under LB 1085, a credit would be allowed for an electrical generating facility placed into commercial operation after the effective date of the bill located in a county with a population of less than 7,000 and qualified for the sales tax exemption available to a C-BED project. The credit may be used against the individual income tax, the fiduciary income tax (by both the estate or trust and the beneficiaries, both resident and nonresident), the corporate income tax, the insurance premium tax, and the financial institutions franchise tax. With regard to the insurance premium tax, use of the credit constitutes tax paid for purposes of the credit against the corporate income tax. The credit is not refundable, and may be claimed for tax years beginning on or after January 1, 2018. Unused credits can be carried over for five years, but subsection (16) terminates the entire section after 2022.

The credit is calculated in one of two ways selected by the operator before the facility is placed in operation. The operator must notify the Department of the credit calculation method selected. With the first method, the credit is 1 cent per kilowatt hours generated for two years; 0.9 cents for the next two years; 0.8 cents for the next two; 0.7 cents for the next two; and 0.6 cents for years 9 and 10. With the second method, the credit is 30% of the total cost of construction, not to exceed $2 million.

If the recipient of the credit is a pass-through entity, the credit may be distributed to the partners, members, or shareholders in the same proportions as income or as provided in the bylaws or other executed agreement of the pass-through entity. If the facility has a nameplate capacity of 20 megawatts or less, the credits can also be sold, transferred, or assigned one or more times. For purposes of this limitation, all generating equipment within one mile of any other generating equipment will be combined to determine the capacity. The Department is to develop a system to track the transfers of credits.

Major Objects of Expenditure

Class Code	Classification Title	16-17 FTE	17-18 FTE	18-19 FTE	16-17 Expenditures	17-18 Expenditures	18-19 Expenditures
A21211	Fiscal Compliance Analyst	1.0	1.0	1.0	$37,808	$38,716	$39,645
Benefits					$12,477	$12,776	$13,083
Operating Costs					$183,427		
Travel							
Capital Outlay					$5,000		
Aid							
Capital Improvements							
Total							

Operators of facilities are to report the amount of electricity produced by February 15 of each year and the Department is to submit an annual report to the Legislature beginning July 1, 2018.

The first three sections of the bill harmonize the individual, fiduciary, and corporate income tax sections. There are no similar sections for insurance premium taxes and financial institutions franchise taxes. There are no references to retaliatory taxes.

The Department estimates the reduction to the General Fund as follows:

FY 2016-2017	$0
FY 2017-2018	$0
FY 2018-2019	$12,100,000
FY 2019-2020	$14,930,000
FY 2020-2021	$19,540,000

The Department would require a one-time programming charge of $22,921 paid to the OCIO to add a line to Form 1120NF and $160,506 to implement a tracking system. The Department will require 1.0 FTE Fiscal Compliance Analyst to implement this bill.