FISCAL IMPACT REPORT

		ORIGINAL DATE	01/31/16		
SPONSOR	Gentry/Stewart	**LAST UPDATED**	02/02/16	**HB**	282
SHORT TITLE	Gender Pay Equity Income Tax Credit			**SB**	
				ANALYST	Keyes

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**	**FY19**	**FY20**		
($125,000.0)	($128,750.0)	($132,612.0)	($136,590.0)	($140,688.0)	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
Total	($40.0)	($8.3)	($8.3)	($56.6)	Recurring	Taxation and Revenue
Total	(Moderate)	(Moderate)	(Moderate)	(Moderate)	Recurring	General Fund

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From:
Taxation and Revenue Department (TRD)
Workforce Solutions Department (WSD)
Economic Development Department (EDD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

HB 282 creates the Gender Pay Equity Income Tax Credit and the Gender Pay Equity Corporate Income Credit by enacting a new section to the Income Tax Act and a new section to the Corporate Income and Franchise Tax Act.

In Section 1, HB 282, provides for a new section of the Income Tax Act allowing a taxpayer who employs men and women with 100% gender pay equity to apply to the Taxation and Revenue Department (TRD) for a tax credit equal to five thousand dollars ($5,000). It specifies the procedures to secure a certificate of eligibility from the Human Rights Commission, limits the claim to one calendar year after certification, requires both the Human Rights Commission (HRC) and TRD to develop forms and procedures, allows a rollover up to three years, sets forth other details related to the claim and requires the TRD to compile and present an annual report.

In Section 2, HB 282 provides for a new section of the Corporate Income and Franchise Tax Act allowing a taxpayer who employs men and women with 100% gender pay equity to apply to TRD for a tax credit against tax liability pursuant to the Act, in an amount equal to five thousand dollars, ($5,000). It specifies the procedure to secure a certificate of eligibility from the Human Rights Commission, limits the claim to one calendar year after certification, requires both the commission and the TRD to develop forms and procedures, allows a rollover up to three years, requires the taxpayer to report the credit, and requires the TRD to compile and present an annual report.

There is no delayed repeal date. The LFC recommends adding one.

The effective date is not specified, 90 days following adjournment of the legislative session. Applicable to taxable years beginning on or after January 1, 2016.

FISCAL IMPLICATIONS

Reviewing a sample of businesses of five employees or greater, and assuming they employ men and women, this would permit approximately 25 thousand employers to qualify for the tax credit, an approximate amount of $125 million in tax credit. Applying a growth rate of 3 percent would increase the potential credit against tax revenue over the subsequent years.

Tax credit implementation programs have been known to inadvertently incur additional costs for governments. As this is a tax credit, reductions in the overall tax revenue collected is anticipated. The number of employers claiming the credit and the exact amount is indeterminate at this time.

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.

SIGNIFICANT ISSUES

The act would be an incentive for businesses that promote and provide pay equity for all employees. This is a credit for employers who ensure that women and men are paid equally and fairly for performing equal work.

The U.S. Census Bureau has stated the median income for full-time working women in the United States is 79 percent of the median income for men. The Gender Pay Equity Act would authorize a $5,000 tax credit for businesses and employers who provide 100 percent gender pay equity to their employees.

In 2013, Governor Susana Martinez signed into law the Fair Pay for Women Act (FPWA), prohibiting employers from engaging in gender-based wage discrimination. The FPWA provides it is discriminatory for employers with four or more employees to pay different wages to men and women who work in the same establishment, under similar working conditions, and who are performing work requiring equal skill, effort, and responsibility. The gender pay equity income tax credit provides a positive incentive to employers who fully implement equal work for equal pay.

From a tax policy perspective, TRD recognized that the bill meets the tax policy of vertical equity as it is available to all businesses, large or small, that meet the eligibility requirements and the credit will have a larger positive tax impact on smaller businesses with fewer employees. Consideration should be given to whether pay inequality presents itself more often in smaller, rather than larger businesses, to make sure the incentive is properly scoped to address the issue.

TRD recognizes risk associated with the tax credit. It is the lack of a standard that creates risk for a business enterprise. The downside risk to a firm that applies for this credit is a ruling from the HRC that they have not met the threshold of eligibility for the credit. This could potentially expose the firm to lawsuits from its employees. In short, the risk of failure to realize a $5,000 tax credit may outweigh the benefit of the tax credit. Even in the absence of any wrongdoing, a firm could foreseeably spend thousands of dollars to defend itself. Nonetheless, there are undoubtedly firms in New Mexico that would obtain a certificate of eligibility and utilize the credit. The most likely beneficiaries will be New Mexico small businesses.

TECHNICAL ISSUES

TRD has noted that there is a maximum credit of $5,000 annually that is not linked to the number of employees an employer may have. A business that employs two individuals and an employer of hundreds would both be entitled to the $5,000 credit. It is unclear what eligibility criteria the HRC will use to determine eligibility. The $5,000 tax credit may not be enough to incentivize large employers to treat women equally in pay by this legislation but it may be enough to incentivize small employers with fewer employees.

In regards to the language of the bill, it is unclear at this time if the employer would need to recertify each year to qualify for the tax credit.

Clarification is also needed as to whether a qualifying business or employer would need to employ at a minimum, one man and one woman. The bill needs to clearly lay out the qualifications and the process by which an employer may apply for certification.

HB 282 does not define the term “department,” although it is presumed that the term refers to the TRD and not the DWS or HRC. This distinction is important because HB 282 only makes HRC and WSD responsible for issuing certificates of eligibility, while HB 282 makes it TRD’s responsibility to allow the tax credit and compile annual reports on program efficacy for the Legislature.

As potentially there may be 25 thousand employers to apply for certification and evaluated by the commission for eligibility, the costs associated with administering this process could be larger than anticipated.

PERFORMANCE IMPLICATIONS

To qualify for the tax credit, certification must be attained from the HRC that the employer provided 100 percent pay equity during the previous year. The employer would be evaluated on job classifications, total number of hours worked by each employee and total compensation for each employee during the prior calendar year before issuing the certification.

The employer may claim up to $5,000 tax credit within one year of being certified. The portion of the credit that exceeds the taxpayer's tax liability in the taxable year, may carry the credit forward for a maximum of three years.

The LFC tax policy of accountability is met with the bill's requirement 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

TRD may incur minimal costs associated with processing a new tax credit. HRC may incur minimal costs associated with tracking, processing and certifying qualifying businesses.

WSD has noted that HB 282 would create increased workload for the HRC but would be unlikely to generate significant costs. No new personnel would need to be hired to perform the work involved in carrying out the Commission's duties under HB 282. Rather, the bill would create primarily additional administrative work related to receiving applications for the credit; providing copies of the application materials to the Commission; scheduling meetings; issuing certificates to eligible employers; and administering the certification program. Such costs include materials, mailing costs, and potentially a small increase in the quantity of Commission reimbursements for additional meetings. As each certificate of eligibility relates to an employer's gender pay equity compliance during the previous calendar year only, employers would need to re-certify annually to claim the credit, making the Commission's duties recurring in nature. Because HB 282 requires the taxpayer to apply for a certificate of eligibility from the human rights commission and on forms prescribed by them, the Commission would also have to develop procedures and forms related to the certification process.

WSD states a major assumption underlying the fiscal impact statement is that the evaluation of applications for certification would be achieved using an existing set of forms and spreadsheets, with minimal modifications, already in use by the City of Albuquerque's Office of Diversity and Human Rights (ODHR). This type of system has predefined data fields which enable employers to submit applications for certification along with relevant employee data online, thereby minimizing or eliminating the need for HRC staff to engage in extensive analysis when making determinations on certification eligibility. Such a system would also facilitate the compilation of the reporting data that TRD is required to present to the Legislature annually.

The Attorney General's office has noted that the application process is divided between the HRC and TRD. TRD would be in a better position to access administrative implications in the application process and the commission would be in a position to access needs of the certification process.

TRD may need to create additional forms or modify existing forms. On line information and applications would also be impacted. This may also require amendments to existing regulations or new regulation. Upgrades and configuration to IT systems and software is required. These costs are one-time expenses incurred after bill passage. Future changes will be handled as part of year-to-year transition. TRD has recognized that a 0.125 FTE will be needed to track and monitor the credits.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

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