F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 2/3/18
SPONSOR Munoz **LAST UPDATED** 2/9/18 **HB**

SHORT TITLE Foster Youth Employment Tax Credits **SB** 231

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20	FY21	FY22		
--	(Up to $170.0)	(Up to $170.0)	(Up to $170.0)	(Up to $170.0)	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Children, Youth and Families Department (CYFD)
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

Senate Bill 231 amends the Income Tax Act and the Corporate Income and Franchise Tax Act to create a new non-refundable tax credit against a taxpayer's tax liability in an amount up to $1,000 of the gross wages paid to each qualified foster youth that is employed for a full taxable year. For each qualified foster youth employed for less than the full taxable year, the credit allowed is up to $1,000 multiplied by the fraction of the full year for which the qualified youth was employed. This credit can only be claimed one time per employed foster youth.

The stated purpose of the new credit is to encourage the employment of foster youth. The requires the Taxation and Revenue Department (TRD) to adopt rules for administering the credit and to compile an annual report for presentation to interim legislative committees including the number of taxpayers claiming the credit, the aggregate amount of the credits approved, and any other information necessary to evaluate the effectiveness of the credit.

The bill defines "qualified foster youth" as an individual who is at least 14 years of age; is working at least 20 hours per week; and was in the legal custody of the Children, Youth and Families Department (CYFD), a New Mexico Indian nation, tribe or pueblo, or the U.S. Department of the Interior Bureau of Indian Affairs (BIA) within the last seven years. The qualified foster youth must not have been previously employed by the taxpayer prior to the taxable year for which the credit is claimed.

The provisions of the bill apply to taxable years beginning on or after January 1, 2018.

FISCAL IMPLICATIONS

Based on data from the Kids Count Data Center project by the Annie E. Casey Foundation, New Mexico had 408 youth in foster care aged 11 to 15 years old, 150 youth in foster care aged 16 to 20, and 50 youth that aged out of foster care that year. According to ChildrensRights.org, a multi-state study found that 47 percent of former foster children are unemployed.[1] Based on this information, assuming the full value of the credit were claimed for each qualifying foster youth, LFC staff estimate this credit could cost up to $170 thousand annually.

This bill creates a new tax expenditure. Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

SIGNIFICANT ISSUES

This bill creates a tax incentive for employing qualified foster youth from ages 14 to 25, which has potential to help current and former foster youth obtain employment. However, the bill defines a qualified foster youth as one "who was not previously employed by the taxpayer prior to the taxable year for which the foster youth employment income tax credit is claimed." Thus, the credit could encourage new employment of foster youth but not the maintenance of that employment. For example, it is possible for a taxpayer to hire a different foster youth for the same position every year in order to continue claiming the credit.

In order to claim the credit, an employer must know the employee is a current or former foster youth. It is unclear exactly how this information will be disclosed to employers. If the intent is to encourage hiring foster youth, potential employees could provide this information to the employer unsolicited. However, if the candidate does not mention in the interview they are a current or former foster youth, the employer would not know (therefore it could not inform the employment decision) or the employer would need to ask the candidate directly (which could raise concerns over confidentiality). It is possible, after the hiring decision is already made, the employer could learn the employee is a current or former foster youth and claim the tax credit, but this would provide a one-time benefit for an action that had occurred anyway (the given individual had already been hired). This calls to question how effectively the tax credit itself could provide an incentive to employers to hire foster youth.

TRD points out that, pursuant to the children's code, foster care status and CYFD abuse and neglect proceedings are confidential. Thus, TRD states requiring youth to disclose their status is

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[1] http://www.childrensrights.org/unemployment-rampant-among-former-foster-youth/

problematic. Further, TRD does not have the knowledge or resources to administer a program predicated upon the status of a "qualified foster youth." The administration of awarding a credit should reside with the agency with the appropriate expertise and jurisdiction. TRD suggests the taxpayer make application for a credit with the appropriate agency – CYFD, BIA, etc. –, and that agency can award a credit. The taxpayer can redeem their credit by filing their adjudicated claim with TRD. This is the process for business credits that require an approval from a vested agency.

Additionally, TRD states the Fair Labor Standards Act (FLSA) limits the availability of teens under the age of eighteen. The rules vary depending upon the particular age of the minor and the particular job involved. Establishing the requirement of "...at least twenty hours per week…" may be in conflict with the FLSA and create a disincentive to hire youth who, by law, are not available to work the requirement.

PERFORMANCE IMPLICATIONS

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

This bill requires that the TRD work with CYFD and others to establish certification procedures that show an employee is a qualified foster youth. CYFD states that if the certification procedure is simple this work can be absorbed by current staff. CYFD also iterates confidentiality of qualified foster youth will need to be considered and addressed when determining the certification procedure. For instance, as with the FAFSA documentation process, a release of information by the current or former foster youth will likely be necessary prior to any confirmation of current or former foster care status.

TECHNICAL ISSUES

TRD states, "Youth applying for employment may not wish to reveal their status and should not be required to do so. The legislature might wish to consider adding language to make it unlawful to terminate other employees so that the employer could take advantage of the tax break. Likewise, it might want add language to protect people from being fired after a year when the tax break ends. TRD will have to promulgate extensive regulation to administer this program. It may be difficult to have all these regulations in place by the 2018 tax year."

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date to new tax expenditures.

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

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

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	This bill was not heard by interim legislative committees.
Targeted		
Clearly stated purpose	✓	The bill provides a specific purpose statement.
Long-term goals	✘	Not included in the bill.
Measurable targets	✘	Not included in the bill.
Transparent	✓	The bill requires annual reporting by TRD to interim legislative committees.
Accountable		
Public analysis	✓	The bill requires annual reporting by TRD to interim legislative committees.
Expiration date	✘	The bill does not include a delayed repeal date.
Effective		Because it would be difficult for employers to know if job candidates are qualified foster youth (particularly regarding confidentiality concerns), the credit may not impact hiring decisions, calling to question whether the credit could fulfill the bill's stated purpose of encouraging the employment of current and former foster youth.
Fulfills stated purpose	?	
Passes "but for" test	?	
Efficient	?	
Key: ✓ Met ✘ Not Met ? Unclear		

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