

LFC Requester:

Jennifer Faubion

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 01/19/2024

Bill No: SB 107

Sponsor: Sen. W. Sharer

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing Analysis: Tessa Ryan, ASG

Short Title: Increase Rural Job Tax
Credit

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Bill (“SB”) 107 proposes to increase the wage amounts on which a Rural Job Tax Credit is calculated, thereby potentially increasing the amount of that credit a taxpayer may claim. The credit is currently calculated based on a per-job wage amount of up to \$16,000. This bill doubles that amount, to \$32,000.

SB 107 would also change how the credit can be used and redeemed. At present, the credit is not refundable; instead, the credit may be carried forward for up to three years from its date of issuance and used against future tax liability—or transferred to another party for its use. Under this bill, the credit can no longer be transferred, but may only be refunded to the taxpayer that claimed it.

FISCAL IMPLICATIONS

None to the DOJ.

SIGNIFICANT ISSUES

SB 107 does not explicitly address the value, if any, of a Rural Job Tax Credit document transferred before the date this act would take effect, and from the credit claimant to another party. It is not clear whether the holder of such a document would be able to use it to offset its tax liability following the enactment of this bill. (Part of this confusion arises from a deletion and substitution of text in Subsection G: the change from “holder of the tax credit document” to “taxpayer.” It is not clear if “taxpayer” here refers to the “eligible employer” and “taxpayer” referred to in the immediately preceding Subsection F, or instead refers to any taxpayer, including one who holds a tax credit document.)

The bill also appears to arbitrarily give a slight advantage to a particular class of taxpayer: those with personal and corporate income tax liability, as opposed to those with modified combined tax liability. According to Section 2 of the act, those in the first class may start earning the credit six months sooner than those in the second class.

Chronis v. State ex rel. Rodriguez, 1983-NMSC-081 held that a non-refundable tax credit was an “unconstitutional subsidy” in violation of Article IX, Section 14 of the New Mexico Constitution (the “Anti-Donation Clause”). Although the current tax credit program

does not appear to have been the subject of a constitutional challenge, the risk of such a challenge is ever present based on this precedent when a law establishes or expands a tax credit program.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict: SB 105 seeks to repeal the Rural Job Tax Credit.

TECHNICAL ISSUES

The bill uses the terms “taxpayer,” “eligible employer” and “businesses” at times interchangeably. Consistency in the use of the terms would help avoid confusion.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

1. A temporary provision should be added to the bill to address considerations surrounding current holders of transferred Rural Job Tax Credit tax documents.
2. The applicability section should be revised to have the changes effected by this bill apply to qualified jobs created on or after July 1, 2024, regardless of the type of tax liability a credit claimant has.
3. The terms “taxpayer” and “businesses” should be replaced by “eligible employer” (or “employers”) throughout the bill, where appropriate.