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

SPONSOR McSorley **ORIGINAL DATE** 2/19/09 **LAST UPDATED** ____ **HB** ____

SHORT TITLE Employer Family Medical Leave Tax Credit **SB** 559

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	($670.0)	($710.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB570

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

Senate Bill 559 enacts new sections of the Income Tax Act and the Corporate Income and Franchise Tax Act to provide tax credits for employers that provide family medical leave to their employees and who have not offered to their employees family medical leave in any one of the four years prior to the taxable year for which the credit is claimed. The credit is equal to 25 percent of the amount paid by the taxpayer in a taxable year for the wage costs for up to three months of either leave for the employee taking family medical leave or the costs of replacement of the employee while the employee is on leave, whichever is greater.

The bill's definition of "family medical leave" means leave taken by an employee in connection with:

1) the birth or adoption of a child by the employee; or
2) the care of a child, spouse or parent of the employee who has a health condition that
    a. necessitates inpatient care in a hospice, hospital or residential health care facility; or
    b. requires continuing treatment or supervision by a health care provider.

The bill's provisions are applicable to taxable years beginning on or after January 1, 2009.

Because no effective date is provided in the bill, its provisions will become effective June 19, 2009, ninety (90) days after the 2009 legislative session adjourns.

FISCAL IMPLICATIONS

TRD:
The revenue impact consists of two components: the absence of withholding when employees take unpaid family medical leave and the credit claimed by employers. Companies with fewer than 50 employees are not federally required to offer family medical leave and are thus potentially affected by the bill. For this estimate it is assumed that 1 in 6 businesses decide to offer the family medical leave. Approximately 44,000 employees are therefore assumed to be offered family medical leave as a result of the bill (Census Bureau data). Employment numbers are projected to future years using employment projections obtained from the Bureau of Business and Economic Research (BBER). The Department of Labor estimates between 2 and 3.6 percent of individuals eligible for FMLA make use of the benefit each year, and the median length of leave is 10 days. Wage information obtained from the BBER was used to estimate the average New Mexico daily wages. The withholding impact was estimated by multiplying an average withholding rate of $2.50/hour. The revenue impact of credit claims is estimated as 25% of the product of the number of employees estimated to utilize family medical leave, the average daily wage, and the median length of family medical leave.

ADMINISTRATIVE IMPLICATIONS

TRD:
Create new forms, instructions, and publications related to the credit (approximately 40 hours). Change forms and instructions related to the CRS, PIT, CIT, PTE, and FID tax programs. The initial cost to implement can be absorbed with existing resources, although an additional 1/3 FTE would be needed to assist with approval and monitoring of credits. Develop audit procedures.

DUPLICATION

Duplicates SB570

TECHNICAL ISSUES

Sections 1A and 2A of this bill state that only an employer who has "not offered to employee's family medical leave in any one of the four years prior to the taxable year for which the credit is claimed may claim a credit". Sections 1C and 2B of this bill state that a "credit may be claimed by a taxpayer for a total of eight taxable years, regardless of whether the years are consecutive". These sections appear to conflict with each other unless the intention of the bill is to only offer the credit to an employer once every five years.

TRD:
The bill allows an out-of-state entity with New Mexico filing requirements to be eligible for the credit. The bill does not address FMLA for the employee's own sickness. The bill also does not specify what documentation may be needed to support the credit.

BLG/mt:mc

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc