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

SPONSOR Keller | **ORIGINAL DATE** 01/29/10 | **LAST UPDATED** 02/09/10 | **HB**

SHORT TITLE Economic Development Tax Incentive Changes | **SB** 47/aSFC

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Senate Finance Committee Amendment

Senate Finance Committee Amendment to Senate Bill 47 adds a new subsection to the bill providing that “noting in the section shall be construed to conflict with current confidentiality rules or statutes.”

Synopsis of Original Bill

This bill establishes guidelines for new economic development tax incentives. New incentives shall include in the enabling statute the following minimum provisions:

1) a statement of purpose;

2) the designation of a responsible agency to establish measurable policy goals, track state expenditures quantify the state's return on investment and report regularly to the interim Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee;
3) a requirement that the Economic Development Department (EDD) track job creation;
4) specific standards for the taxpayer to qualify for the incentive;
5) reporting requirements for the taxpayer;
6) a description of financial obligation of the taxpayer if the specific standards are not met; and
7) a mandatory review of the incentive no more than every seven years.

The bill also requires that the EDD publish an aggregate list of the economic development tax incentives used by each taxpayer annually.

An "economic development tax incentive" means a credit, deduction, rebate, exemption or other tax benefit for the primary purpose of promoting economic development or offering an advantage to a particular industry or type of business to do business in New Mexico.

FISCAL IMPLICATIONS

According to EDD, the department would have to create an an information technology (IT) data base to capture and report the data required by this bill at this time. The department would also have to devote staff time to collect and report the information.

SIGNIFICANT ISSUES

The bill identifies economic development tax incentives as an exemption, credit, deduction, rebate or any other tax benefit for the primary purpose of promoting economic development or offering an advantage to a particular industry or type of business to do business in New Mexico.

Tax incentives give preferential treatment to a specific group to encourage certain types of economic activity. From a tax policy standpoint, these mechanisms by which the revenue base is eroded or granted to certain businesses or industries should be evaluated as rigorously as appropriations.

The periodic review of tax incentives adds transparency, fiscal discipline, and political accountability to the budget process. A report of who is using tax incentives may help the state's policymakers decide how to efficiently review and approve new incentives and appropriations to better achieve job growth, reduce unemployment rates, and improve the standard of living for the citizens of the state.

The bill could help improve the design and evaluation of economic development tax incentives. However, the bill does not provide guidance on such requirements as "specific standards for the taxpayer to qualify for the incentive", nor does it provide any resources to agencies to carry out evaluations or help EDD develop the annual list of incentives.

The Economic Development Department (EDD) notes that the bill would require information about private companies to be made a matter of public record and, in turn available to competitors. The tax incentives are used for the purposes of retaining, expanding and recruiting companies. The provisions contained in the bill could inhibit the ability to provide incentives and create jobs. However, the SFC amendment addresses the confidentiality issue.

Currently, the cost of New Mexico's economic development incentives are only estimated when they are first enacted in Fiscal Impact Reports (FIR). However, the costs are rarely revisited to assess whether they cost more or less than expected, whether costs are growing as anticipated, or whether they are effective.

Like most states, New Mexico's tax code contains hundreds of tax expenditures. The gross receipts and compensating tax code (Chapter 7, Article 9 NMSA 1978) includes about 100 exemptions, deductions, and credits. The personal and corporate income tax codes (Chapter 7, Articles 2 and 2A NMSA 1978) also include dozens of tax expenditures. While many of New Mexico's tax expenditures have very small costs, they cumulatively represent a significant erosion of the state's revenue base.

Although TRD prepared, published, and reported a multi-year, comprehensive review and analysis of tax expenditures including business incentive credits, the report was not as comprehensive as would be required under this bill. TRD's reports and others can be found on the Departments website at http://tax.state.nm.us/pubs/taxpolicy.htm.

PERFORMANCE IMPLICATIONS

It is unclear whether the provisions contained in the bill would help or deter job creation in the state. However, the periodic review of tax expenditures adds transparency, fiscal discipline, and political accountability to the budget process. By uncovering the cost of New Mexico's economic development incentives will allow the state's policymakers to tailor tax incentives and appropriations to better achieve the state's goals.

ADMINISTRATIVE IMPLICATIONS

Passage of this legislation may result in a minimal additional administrative impact, as EDD does not currently have the infrastructure to track some of the data required in this bill.

RELATIONSHIP

Relates to SB23 "Taxation and Revenue Department Tax Expenditure Budget"
Relates to HB82 "Develop Tax Expenditure Budget"
Relates to SB50 "Create Tax Expenditure Study Commission"
Relates to SB125 "Review Tax Exemptions and Credits Every Five Years"

TECHNICAL ISSUES

The Economic Development Department does not have all information necessary to publish an aggregate list of the economic development tax incentives used by each taxpayer, as mandated by this bill. The Taxation and Revenue Department does not have all such information either, and cannot legally provide much of the information that it does have to EDD.

The bill does not require other State and local agencies to provide information to EDD that would be necessary to complete the report. The bill provides no sanction to an agency that does not comply. Conversely, the bill is silent on how an agency that is bound by confidentiality or other non-disclosure statutes is supposed to reconcile those restrictions with the provisions of the bill. However, the SFC amendment addresses the confidentiality issue.

OTHER SUBSTANTIVE ISSUES

New reporting requirements directly to the EDD may be added into future economic development tax incentives; however, the only source for a list of all incentives used by each taxpayer would, in most cases, be voluntary reporting directly from taxpayers. Unless a taxpayer has been audited the Taxation and Revenue Department does not have information on most deductions or exemptions. Even where the Department does have information on specific taxpayer's deductions, exemptions, rebates, or credits the State's confidentiality laws largely prevent the Department from releasing that information or confirming a taxpayer's independent reporting. In addition, the Department does not administer all taxes imposed in the State, and so would never have information on incentives in those taxes.

According to a 2006 report by the American Federation of State, County and Municipal Employees (AFSCME), 30 states regularly prepare a tax expenditure budget. The nonprofit organization Good Jobs First reports that 35 states currently publish a tax expenditure budget. According to recent tax expenditure budgets, the amount of state tax revenue forgone due to tax expenditures is 53 percent in Michigan, 22 percent in Illinois, and 20 percent in Louisiana.

Uncovering the degree of erosion in a state's tax base is important for several reasons. Without knowing the amount of revenue forgone due to tax expenditures, policymakers and the public cannot know how much tax relief is being granted and to whom the benefits are accruing. Also, a narrower tax base requires that a higher tax rate be charged on everything that remains taxable to provide enough revenue to meet the state's spending needs. Finally, a narrower tax base leads to increased revenue volatility, which makes fiscal planning more difficult.

ALTERNATIVES

The Taxation and Revenue Department (TRD) could provide aggregate information about the economic development incentives including the total amount claimed and the total number of companies that utilize incentives.

The bill could require one-tenth of one percent, or some other amount, of each economic development appropriation be allocated to EDD to pay for the additional administrative costs contained in the bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Policymakers will continue to be unable to decide whether the benefits of economic development incentives are great enough to justify their costs.

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