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FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/11

SPONSOR HTRC LAST UPDATED _____ HB 166/HTRCS

SHORT TITLE Availability of Certain Taxpayer Information SB _____

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		≈\$100.0	≈\$75.0	≈\$100.0	Recurring	TRD Operating

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department/Film Division (EDD/Film Division)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Taxation & Revenue Committee substitute for House Bill 166 mandates a limited program that will assist the legislature and the Governor in understanding the economic effect, costs and benefits of the numerous tax credits that have been enacted over the years – primarily affecting tax collections pursuant to the Gross Receipts and Compensating Tax Act, the Income Tax Act and the Corporate Income Tax Act. The substitute bill lists tax credits applicable to these acts. In all cases, the bill establishes the mandate that accepting the credit requires a taxpayer to report collateral information to TRD annually. Based on the taxpayer-reported information, TRD is expected and required to prepare and present a cost-benefit report to the Governor and the Legislature at six-year intervals. TRD is granted significant latitude in the information it requires annually from tax credit claimants. This information could include jobs created or retained, enhanced income for the companies claiming the tax expenditures, additional salaries or wages paid to employees because of the tax expenditure and other, similar elements. The annual report is due by June 30 of each year based on activity the previous calendar year. There is no penalty for failure to file this information report, nor is there any provision for these information reports to be audited. There is an implicit penalty for failure to file, and that is that if few information reports are submitted for a particular tax credit, yet there is significant revenue loss, the legislature might determine that the credit is no longer effective as an economic development tool and the tax credit is simply “going to the bottom line.” The information report is the means of communicating how important the tax credit is to job creation and retention.

7-1-8 NMSA 1978 is not changed pursuant to the provisions of this bill, so that the report may conflict with confidentiality provisions.

The first report on all tax credits would be prepared and presented in 2014 and at six-year intervals thereafter.

The following is a list, by category, of the tax credits affected by both the report requirement and the presentation of the compiled information to the legislature.

Income Tax Act Credits (report requirement general for all listed Income Tax Act credits with exception noted):

- Preservation of cultural properties (7-2-18.2);
- Tax credit; certain conveyances of real property – conservation restrictions (7-2-18.10)
- Job mentorship tax credit (7-2-18.11);
- Solar market development tax credit; residential and small business solar thermal and photovoltaic market development tax credit (7-2-18.14);
- Angel investment credit (7-2-18.17 -- repealed effective January 1, 2013.);
- Renewable energy production tax credit (7-2-18.18);
- Sustainable building tax credit (7-2-18.19);
- **Blended biodiesel fuel credit (7-2-18.21);**
- Rural health care practitioner tax credit (7-2-18.22);
- Geothermal ground-coupled heat pump tax credit (7-2-18.24);

Corporate Income Tax Act Credits (report requirement general for all listed Corporate Income Tax Act credits – June 30 reporting date):

- Preservation of cultural properties (7-2A-8.6);
- Tax credit; certain conveyances of real property – conservation restrictions (7-2A-8.9)
- Corporate-Supported Child Care (7-2A-14);
- Job mentorship tax credit (7-2A-17.1);
- Renewable energy production tax credit (7-2A-19);
- Sustainable building tax credit (7-2A-21);
- Blended biodiesel fuel credit (7-2A-23)
- Geothermal ground-coupled heat pump tax credit (7-2A-24);

Gross Receipts and Compensating Tax Act Credits (report requirement general for all listed GRT credits -- August 31 reporting date):

- Biodiesel blending facility tax credit (7-9-79.2);
- Receipts of Certain Hospitals GRT credit (7-9-96.1)
- Unpaid charges for services provided in a hospital GRT credit (7-9-96.2)

Other Tax Credits (report requirement specific in each listed section of the NMSA)

- Rural job tax credit (7-2E-1.1) – deletes previous report requirement in favor of this standardized report – June 30 report date;
- Film Production Tax Credit Act (7-2F-xx) –June 30 report date
- Investment Credit (7-9A-1 through 7-9A-11) –August 31 report date;
- Laboratory Partnership with Small Business Tax Credit (7-9E-1 through 7-9E-11) – August 31 report date;

- Technology Jobs Tax Credit (7-9F-1 through 7-9F-12) –August 31 report date;
- High-wage jobs tax credit (7-9G-1) –August 31 report date;
- Research and Development Small Business Tax Credit (7-9H-6) –August 31 report date;

Other Tax Credits with no reporting requirement in this bill:

- Advanced energy income tax credit (7-2-18.25, 7-2A-25);
- Agricultural biomass income tax credit (7-2-18.26, 7-2A-26)
- Qualified business facility rehabilitation credit (7-2-18.4, 7-2A-15);
- Advanced energy combined reporting tax credit (7-9G-2);
- Welfare-to-work tax credit. (7-2-18.5)
- ID card reader credit (7-2-18.8, 7-2A-18);
- Agricultural water conservation expenses tax credit (7-2-18.20, 7-2A-22 -- repealed effective January 1, 2013);

FISCAL IMPLICATIONS

An estimated 1,000 firms benefit from one or several of the 28 listed tax credits. The costs of processing these reports into information would be about equally data capture and report writing. Each of the listed tax credits would require assistance and cooperation between TRD and an executive agency – EDD, EMNRD or NMED. The somewhat higher cost for FY12 compared to FY13 et. Seq. is to develop (and test) the report forms and the data capture and processing software. The baseline cost assumes that one additional FTE in the Tax Policy Office would be required to compile and prepare a useful cost-benefit report.

SIGNIFICANT ISSUES

These information reports would, by their very nature, be somewhat “squishy.” That is, it would be very difficult to establish that a company would not have established a viable business without the credit, so the declaration has no “counter-factual” baseline.

TECHNICAL ISSUES/POSSIBLE AMENDMENTS:

- 1) 7-2-18.21 (Blended biodiesel fuel credit) should be included in the list on page 1 of the bill.
- 2) There may well be no exception to confidentiality 7-1-8 NMSA 1978 through 7-1-8.10 that would allow the Department to share the information generated by this bill with the legislature. In 2009, the legislature passed three versions of Section 7-1-8 NMSA 1978. These were signed in the order of 2009, ch. 241, § 1; 2009, ch. 242, § 2; 2009, ch. 243, § 2. The most comprehensive bill was signed last. Chapter 243 broke up the old 7-1-8 NMSA 1978 into eleven sections 7-1-8 through 7-1-8.10 NMSA, with each of the 8.xx sections devoted to a different class of allowed disclosure. However, the old subsection H, which provided a release from the confidentiality penalty for:

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

This subsection was not included in the Chapter 243 version of the confidentiality statute. In studying the new confidentiality sections, it is simply not clear that any of the exceptions would allow TRD employees to gather information from taxpayer reports, compile the data and prepare and present a report to the legislature.

Arguably, 7-1-8.3 NMSA 1978 might apply:

7-1-8.3. Information that may be revealed to public. (2009)

An employee of the department may reveal:

- A. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act [7-1-1 NMSA 1978] to the extent that revealing that information is not otherwise prohibited by law;

But each of the listed tax credits is applied against taxes clearly subject to administration of the Tax Administration Act. The remedy is simply to restore the old subsection H to 7-1-8.3 NMSA 1978.

- 3) It is unclear why most of the taxpayer reports are required by June 30, but reports for:

Investment Credit (7-9A-1 through 7-9A-11)

Laboratory Partnership with Small Business Tax Credit (7-9E-1 through 7-9E-11)

Technology Jobs Tax Credit (7-9F-1 through 7-9F-12)

High-wage jobs tax credit (7-9G-1)

Research and Development Small Business Tax Credit (7-9H-6)

are required by August 31. While these staggered report dates may somewhat smooth out processing workflow, taxpayers who claim more than one credit may become very confused.

- 4) It would aid in orderly process if the bill used the phrase, “at intervals no greater than six years” rather than phrase “beginning in 2014 and at six-year intervals following 2014.” This would allow TRD to begin with comprehensive and thoughtful analysis of four or five tax credits in 2013, four or five more in 2014 etc. There may well be some tax credits that should be reviewed every year and others that should be infrequently reported. Once the first reports were developed for a particular tax credit, they could be updated annually if useful and necessary. By 2020, when reporting for all the listed tax credits was stable, the reporting could be expanded from tax credits to some or all tax deductions and similar reports generated.

- 5) It is not clear why the following were not listed:

- Qualified business facility rehabilitation credit (7-2-18.4, 7-2A-15);
- Welfare-to-work tax credit. (7-2-18.5)
- ID card reader credit (7-2-18.8, 7-2A-18);
- Agricultural water conservation expenses tax credit (7-2-18.20, 7-2A-22 -- repealed effective January 1, 2013).
- Advanced energy income tax credit (7-2-18.25, 7-2A-25);
- Agricultural biomass income tax credit (7-2-18.26, 7-2A-26)
- Advanced energy combined reporting tax credit (7-9G-2);

It might be appropriate to include some of all of these tax credits with a delayed report to the legislature required.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 166, SB 47, SB 39, SB 409 and SB 170 propose various reports and data projects seeking to quantify various tax expenditures and to study costs and benefits of tax credits and deductions.

LG/bym:svb