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

SPONSOR Griego **ORIGINAL DATE** 09/19/11 **LAST UPDATED** **HB**

SHORT TITLE High-Wage Jobs Credit for Wages and Benefits **SB** 27

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
$0.0	($300.0 - $900.0)	($400.0 - $1,300.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Economic Development Department (EDD)
Department of Workforce Solutions (DWS)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 27 would amend the current statute to allow a lower wage threshold to qualify; however, the bill also closes some administrative loop holes that would eliminate some businesses and practices. These administrative changes include: 1. Applications must be filed within one year from the end of the qualifying period. 2. Jobs are not eligible if the job existed prior to the business merger, acquisition, association, affiliation, disposition or other change in organization; 3. An eligible employer is one that exported more than 50 percent of its goods and services produced in New Mexico or qualifies for JTIP. (See the fiscal implications section for more detail).

The high-wage jobs tax credit was originally authorized in FY04. The Senate Bill 27 amends Section 7-9G-1 NMSA 1978. The high wage jobs tax credit is equal to 10 percent of wages and benefits of new employees in “high wage jobs”. The total credit is limited to $12 thousand per eligible employee and credits can be claimed up to four years. An eligible high-wage economic-based job must:

- Be created on or after July 1, 2004 and prior to July 1, 2015;
- Be occupied for at least 48 weeks of the year prior to the claim for credit; and
- Pay wages and benefits of at least $40 thousand per year if located in a municipality with a population of at least 40,000 (urban) or $28 thousand per year if elsewhere (non-urban).

The tax credit can be deducted from the taxpayer's modified combined tax liability (gross receipts tax, compensating tax and withholding, excluding local GRT).

The bill specifies applications for high-wage jobs tax credits must be received by the Taxation and Revenue Department within one year from the end of the qualifying period. It provides administration requirements for filing for the tax credits. Beginning on August 1, 2011, applications must be received within one year following the end of the calendar year in which the qualifying period closes. Jobs created in the following categories are not eligible:

1. Those created within 180 days of a business merger, acquisition, association, affiliation, disposition or other change in organization;
2. Those performed by the person who performed the job prior to the business merger, acquisition, association, affiliation, disposition or other change in organization;
3. Another person replacing the individual who performed the job prior to the merger, acquisition, association, affiliation, disposition or other change in organization;
4. Jobs created as a result of entering into a contract with a government entity for functionally equivalent services.

The bill amended wages to include wages and benefits in the definition of a high-wage job and changes dates for filing. Wages and benefits will be used to determine whether a job is a high-wage job and defines wages and benefits as all remuneration in cash and the cash value of remuneration paid in any other form for services performed by an employee.

To qualify an eligible employer means an employer that exported more than 50 percent of its goods and services produced in New Mexico during the most recent 12 months of the employer's state tax liability. If they do not qualify under the 50 percent criteria then they must meet the eligibility criteria for the Job Training Incentive Program (JTIP).

The bill contains an emergency clause which is effective immediately upon signing by the Governor.

FISCAL IMPLICATIONS

The estimated revenue reduction of ($1,300,000) contained in this bill is a recurring expense to the general fund.

Since its authorization in 2004 about 140 NM businesses have taken advantage of the High-Wage Jobs Tax Credit. There is significant variation from year to year in the amount of credits paid. The credits approved during the last four years were as low as $4.7 million but as high as $15.3 million (data from TRD). The large increases in FY2009 – FY2011 are the result of 8 companies with claims over $900 thousand each. These high claims will continue for a few years. It is uncertain how many large claims will be made in the future years. Below is a table that shows the high-wage tax credits over $10,000 that were approved each year up thru FY11 and July - August of FY2012 and total $47.8 million for all years. Please note that these amounts may not match exactly with the date the credit was actually accrued. Data is not available on the number of jobs credited or years that each credit is for. The urban versus non-urban location of each company was determined based on where their headquarter is located in NM and may not be were the actual job was located.

High-Wage Tax Credits over $10,000 identifed by approval date ($ thousands):

Location	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012 (2 months)	Grand Total
Urban NM	$533	$1,215	$3,491	$12,426	$3,574	$7,015	$1,969	$30,222
Non-Urban NM	$199	$391	$1,212	$2,151	$1,129	$8,276	$4,228	$17,587
Grand Total	**$732**	**$1,605**	**$4,703**	**$14,577**	**$4,704**	**$15,291**	**$6,196**	**$47,809**

Note: * These amounts may not match exactly with the date the credit was actually accrued.
* The identification of urban vs. non-urban is an assumption based on location of headquarters.

On average, benefits are 11.8 percent of wages (from US Bureau of Labor Statistics). An assumption was made that because health benefits do not vary with the wage, the average benefits will not be below $5,000 per year. In urban areas the $40,000 threshold becomes $35,000, and in non-urban areas the $28,000 threshold becomes $23,000. According to the NM Department of Workforce Solutions, NM currently has about 778,000 jobs statewide; of those 421,000 (54.1 percent) pay over $28,000 per year. Furthermore, 270,000 jobs in New Mexico (34.8 percent of the total) pay more than $40,000 per year. If benefits were to be included in the calculations, then the numbers of workers in each threshold would likely increase substantially. In urban areas there are 182,222 jobs that pay more than $40,000 per year. In non-urban areas there are 117,237 jobs that pay more than $28,000 per year.

Since some of the credits approved in the previous years may have been for more than one year an assumption was made that on average the credits were for two years and the credits were adjusted accordingly. Based on TRD information, the average credit paid to date was $6,000. Given this information the average number of jobs was determined and the baseline was established. The tax credit is 10 percent of the wages and benefits therefore the average wage and benefits paid by the employer was at least $60,000. If the average benefit was $7,000, the average wage would be at least $53,000. Based on the data from TRD it is unknown how many of the jobs fell below or above this average. For FY12 and beyond employment growth based on the UNM-BBER employment forecasts was applied to this baseline and used to determine the number of new jobs that will be created above the existing baseline growth in the tax credit.

SIGNIFICANT ISSUES

According to EDD three employers sought help from the department after tax credits were lower than the companies had previously been receiving due to the new interpretation of the law that defined wages as wages without benefits. Due to confidentiality the employers cannot be identified. According to EDD, TRD substantively changed its interpretation of the definition of wages in October 2010. It is uncertain what the interpretation change was and how many credits were impacted.

When looking at this tax credit, keep in mind that there are over 100 tax exemptions in NM and the total impact of all tax exemptions has been estimated at over $900 million per year. The companies that qualify for the high-wage tax credit may also qualify for other tax credits including but not limited to: rural jobs credit, technology jobs credit, R&D small business credit, renewable energy production credit, solar market development credit, sustainable building credit, alternative energy manufacturer's credit, etc.

Limiting the application to one year after the qualifying period closes should reduce the total amount of the credit given to an employer. The employer can no longer request a credit going back up to four years. This should have a positive impact on revenues. Data is available on the total credit allowed but the not the number of years of service the credit was for. For analysis purposes, assumptions were made that on average the credits were for 2 years of service. Since eligible jobs can still be created up to July 1, 2015, applications for the latest possible qualifying period would need to be made by December 31, 2020.

The bill amends the statute to clarify that jobs do not qualify if they are created within 180 days of a business merger, acquisition, association, affiliation, disposition or other change in the organization. This change will prevent businesses from changing their organizational structure so they qualify for the tax credit. Businesses will no longer fire their employees, change the company name and rehire the same employees under the new business name in order to create "new" high-wage jobs.

Including benefits as well as wages for application approval will decrease the minimum wage that qualifies for the credit. This lower minimum wage means that more employees will qualify for the high-wage tax credit even though they are earning a wage that is not necessarily considered to be high-wage. Under the Supplemental Nutrition Assistance Program (SNAP) a person can qualify if their wages are within 165 percent of the federal poverty guidelines (FPG) regardless of where they live in the state. According to the NM Human Services Department 90 percent of households who apply and have a gross income of 165 percent FPG qualify for SNAP. At 165 FPG some employees that earn the wage that qualifies them for the tax credit can also qualify for SNAP benefits. In an urban area a person with a yearly wage of $36,384 and household size of four would qualify for both SNAP and the tax credit. In a non-urban area a person with a yearly wage of $24,048 and a household size of two would qualify for both SNAP and the tax credit.

Previously a qualifying employer was defined as one who made more than 50 percent of its sales to persons outside NM. The bill was amended to change 'made' to 'exported' and 'sales' to 'goods or services produced in NM'. This change means that an employer with a business in another state can no longer consider the sales from businesses outside of NM as part of its 50 percent calculation. However, many of the companies with large credits will still qualify for the 50 percent criteria.

ADMINISTRATIVE IMPLICATIONS

Because of the loopholes it is difficult for TRD to enforce the intent of the original bill. Per TRD the amount of resources needed to examine and process each credit claim will not change significantly. Even though the total number of qualifying jobs and therefore credit claims are expected to increase, the clarity added by this bill should increase agreement between taxpayers and the Department.

OTHER SUBSTANTIVE ISSUES

Per TRD the requirement that employers must claim the credit within, at the most, 3 years from the beginning of a qualifying period will improve the stability and predictability of this credit. It will not harm the ability of taxpayers incentivized by the credit to take full advantage of its benefits.

ALTERNATIVES

Because of the uncertainty in the amount of the credit that will be paid each year the legislators may consider that an overall cap of $20 million per year be added to the language of the bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will continue to be loopholes in the statute that have unintended consequences. According to EDD fewer positions will qualify for the credit, causing businesses to look elsewhere when considering locating, re-locating, or expanding their operations. Confusion will remain in the business community regarding which positions qualify for the credit.

POSSIBLE QUESTIONS

Does the bill meet the LFC tax policy principles?
Adequacy: Revenue should be adequate to fund needed government services.
Efficiency: Tax base should be as broad as possible and avoid excess reliance on one tax.
Equity: Different taxpayers should be treated fairly.
Simplicity: Collection should be simple and easily understood.
Accountability: Preferences should be easy to monitor and evaluate

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