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SENATE BILL 101

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Tim Eichenberg

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CLARIFYING THAT THE HIGH-WAGE JOBS TAX CREDIT APPLIES TO WAGES AND BENEFITS; DEFINING "WAGES AND BENEFITS"; EXTENDING THE CLAIMS PERIOD FOR HIGH-WAGE JOBS TAX CREDITS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 7-9G-1 NMSA 1978 (being Laws 2004, Chapter 15, Section 1, as amended) is amended to read:

"7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING HIGH-WAGE JOBS.--

A. A taxpayer who is an eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each new high-wage economic-based job. The credit provided in this section may be referred to as the "high-wage jobs tax credit". Beginning on January 1, 2012, all

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1 applications for high-wage jobs tax credits received by the  
2 taxation and revenue department must be received within one  
3 year following the end of the calendar year in which the  
4 qualifying period closes.

5 B. The purpose of the high-wage jobs tax credit is  
6 to provide an incentive for urban and rural businesses to  
7 create and fill new high-wage, long-term jobs in New Mexico.

8 [~~B.~~] C. The high-wage jobs tax credit may be  
9 claimed and allowed in an amount equal to ten percent of the  
10 wages and benefits distributed to an eligible employee in a new  
11 high-wage economic-based job, but shall not exceed twelve  
12 thousand dollars (\$12,000).

13 [~~C.~~] D. The high-wage jobs tax credit may be  
14 claimed by an eligible employer for each new high-wage  
15 economic-based job performed for the year in which the new  
16 high-wage economic-based job is created and for the three  
17 following qualifying periods.

18 [~~D.~~] E. A new high-wage economic-based job shall  
19 not be eligible for a credit pursuant to this section unless  
20 the eligible employer's total number of employees with new  
21 high-wage economic-based jobs on the last day of the qualifying  
22 period at the location at which the job is performed or based  
23 is at least one more than the number on the day prior to the  
24 date the job was created.

25 F. For all applications for high-wage jobs tax

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1 credits received by the taxation and revenue department on or  
2 after January 1, 2012, a job shall not be eligible for a credit  
3 pursuant to this section if the job:

4 (1) was created within one hundred eighty days  
5 of a business merger, acquisition, association, affiliation,  
6 disposition or other change in organization or management  
7 affecting the eligible employer; and

8 (2) was performed by:

9 (a) the person who performed the job, or  
10 its functional equivalent, prior to the business merger,  
11 acquisition, association, affiliation, disposition or other  
12 change in organization or management; or

13 (b) another person replacing the person  
14 who performed the job, or its functional equivalent, prior to  
15 the business merger, acquisition, association, affiliation,  
16 disposition or other change in organization or management.

17 G. For all applications for high-wage jobs tax  
18 credits received by the taxation and revenue department on or  
19 after January 1, 2012, a job shall not be eligible for a credit  
20 pursuant to this section if the job is created due to an  
21 eligible employer entering into a contract or becoming a  
22 subcontractor to a contract with a governmental entity that  
23 replaces one or more entities performing functionally  
24 equivalent services for the governmental entity unless the job  
25 is a new high-wage economic-based job that was not being

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1 performed by an employee of the replaced entity.

2 [~~F-~~] H. For an application for a high-wage jobs tax  
3 credit filed with the taxation and revenue department after  
4 September 16, 2010, with respect to each new high-wage  
5 economic-based job for which an eligible employer seeks the  
6 high-wage jobs tax credit, the employer shall certify:

7 (1) the amount of wages and benefits paid to  
8 each eligible employee in a new high-wage economic-based job  
9 during each qualifying period;

10 (2) the number of weeks the position was  
11 occupied during the qualifying period;

12 (3) whether the new high-wage economic-based  
13 job was in a municipality with a population of forty thousand  
14 or more or with a population of less than forty thousand  
15 according to the most recent federal decennial census and  
16 whether the job was in the unincorporated area of a county; and

17 (4) the total number of employees employed by  
18 the employer at the job location on the day prior to the  
19 qualifying period and on the last day of the qualifying period.

20 [~~F-~~] I. To receive a high-wage jobs tax credit with  
21 respect to any qualifying period, an eligible employer shall  
22 apply to the taxation and revenue department on forms and in  
23 the manner prescribed by the department. The application shall  
24 include a certification made pursuant to Subsection [~~F~~] H of  
25 this section.

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1           ~~[G.]~~ J. The credit provided in this section may be  
2 deducted from the modified combined tax liability of a  
3 taxpayer. If the credit exceeds the modified combined tax  
4 liability of the taxpayer, the excess shall be refunded to the  
5 taxpayer.

6           ~~[H.]~~ K. The economic development department shall  
7 report to the appropriate interim legislative committee before  
8 November 1 of each year the cost of this tax credit to the  
9 state and its impact on company recruitment and job creation.

10           L. Acceptance by a taxpayer of a high-wage jobs tax  
11 credit pursuant to this section is authorization by the person  
12 receiving the credit for the taxation and revenue department or  
13 the economic development department to reveal information to  
14 the legislature necessary to analyze the effectiveness of the  
15 high-wage jobs tax credit.

16           ~~[I.]~~ M. As used in this section:

17                   ~~[(1) "benefits" means any employee benefit~~  
18 ~~plan as defined in Title 1, Section 3 of the federal Employee~~  
19 ~~Retirement Income Security Act of 1974, 29 U.S.C. 1002;~~

20                   ~~(2)]~~ (1) "eligible employee" means an  
21 individual who is employed by an eligible employer and who is a  
22 resident of New Mexico; "eligible employee" does not include an  
23 individual who:

24                           (a) bears any of the relationships  
25 described in Paragraphs (1) through (8) of 26 U.S.C. Section

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1 152(a) to the employer or, if the employer is a corporation, to  
2 an individual who owns, directly or indirectly, more than fifty  
3 percent in value of the outstanding stock of the corporation  
4 or, if the employer is an entity other than a corporation, to  
5 an individual who owns, directly or indirectly, more than fifty  
6 percent of the capital and profits interest in the entity;

7 (b) if the employer is an estate or  
8 trust, is a grantor, beneficiary or fiduciary of the estate or  
9 trust or is an individual who bears any of the relationships  
10 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
11 152(a) to a grantor, beneficiary or fiduciary of the estate or  
12 trust;

13 (c) is a dependent, as that term is  
14 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
15 if the taxpayer is a corporation, of an individual who owns,  
16 directly or indirectly, more than fifty percent in value of the  
17 outstanding stock of the corporation or, if the employer is an  
18 entity other than a corporation, of an individual who owns,  
19 directly or indirectly, more than fifty percent of the capital  
20 and profits interest in the entity or, if the employer is an  
21 estate or trust, of a grantor, beneficiary or fiduciary of the  
22 estate or trust; or

23 (d) is working or has worked as an  
24 employee or as an independent contractor for an entity that  
25 directly or indirectly owns stock in a corporation of the

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1 eligible employer or other interest of the eligible employer  
2 that represents fifty percent or more of the total voting power  
3 of that entity or has a value equal to fifty percent or more of  
4 the capital and profits interest in the entity;

5 [~~3~~] (2) "eligible employer" means an  
6 employer that:

7 (a) [~~made~~] exported more than fifty  
8 percent of its [~~sales~~] goods or services produced in New Mexico  
9 to persons outside New Mexico during the most recent twelve  
10 months of the employer's modified combined tax liability  
11 reporting periods ending prior to claiming a high-wage jobs tax  
12 credit; or

13 (b) is eligible for development training  
14 program assistance pursuant to Section 21-19-7 NMSA 1978;

15 [~~4~~] (3) "modified combined tax liability"  
16 means the total liability of the taxpayer for the reporting  
17 period for the gross receipts tax imposed [~~by~~] pursuant to  
18 Section 7-9-4 NMSA 1978, [~~together with any tax collected at~~  
19 ~~the same time and in the same manner as the gross receipts tax,~~  
20 ~~such as~~] the compensating tax imposed pursuant to Section 7-9-7  
21 NMSA 1978 and the withholding tax [~~the interstate~~  
22 ~~telecommunications gross receipts tax, the surcharges imposed~~  
23 ~~by Section 63-9D-5 NMSA 1978 and the surcharge imposed by~~  
24 ~~Section 63-9F-11 NMSA 1978, minus the amount of any credit~~  
25 ~~other than the high-wage jobs tax credit applied against any or~~

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1 ~~all of these taxes or surcharges~~ imposed on wages pursuant to  
2 Section 7-3-3 NMSA 1978, notwithstanding any distribution or  
3 transfer pursuant to the Tax Administration Act with respect to  
4 net receipts from those liabilities; but "modified combined tax  
5 liability" excludes ~~[all amounts collected with respect to]~~ any  
6 liability resulting from a local option gross receipts ~~[taxes]~~  
7 tax;

8 [~~5~~] (4) "new high-wage economic-based job"  
9 means a new job created by an eligible employer on or after  
10 July 1, 2004 and prior to July 1, ~~[2015]~~ 2020 that is occupied  
11 for at least forty-eight weeks of a qualifying period by an  
12 eligible employee who is paid wages and benefits calculated for  
13 the qualifying period to be at least:

14 (a) for a new high-wage economic-based  
15 job created prior to January 1, 2012: 1) forty thousand  
16 dollars (\$40,000) if the job is performed or based in a  
17 municipality with a population of forty thousand or more  
18 according to the most recent federal decennial census; and  
19 [~~b~~] 2) twenty-eight thousand dollars (\$28,000) if the job is  
20 performed or based in a municipality with a population of less  
21 than forty thousand according to the most recent federal  
22 decennial census or in the unincorporated area of a county; and

23 (b) for a new high-wage economic-based  
24 job created on or after January 1, 2012: 1) sixty-five  
25 thousand dollars (\$65,000) if the job is performed or based in

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1 a municipality with a population of sixty thousand or more  
2 according to the most recent federal decennial census; and 2)  
3 forty thousand dollars (\$40,000) if the job is performed or  
4 based in a municipality with a population of less than sixty  
5 thousand according to the most recent federal decennial census  
6 or in the unincorporated area of a county;

7 [~~(6)~~] (5) "qualifying period" means the period  
8 of twelve months beginning on the day an eligible employee  
9 begins working in a new high-wage economic-based job or the  
10 period of twelve months beginning on the anniversary of the day  
11 an eligible employee began working in a new high-wage economic-  
12 based job; and

13 [~~(7)~~] (6) "wages and benefits" means [~~wages~~  
14 ~~as defined in Paragraphs (1), (2) and (3) of 26 U.S.C.~~  
15 ~~Section 51(e)] all remuneration in cash and the cash value of  
16 remuneration paid in any other form for services performed by  
17 an employee for an employer."~~

18 SECTION 2. TEMPORARY PROVISION.--An employer who filed  
19 an application between September 16, 2010 and the effective  
20 date of this act for a high-wage jobs tax credit that was  
21 denied, in whole or in part, may file a new application for  
22 approval of the part of the high-wage jobs tax credit that  
23 was denied, which shall be evaluated pursuant to the amended  
24 provisions set forth in this act, notwithstanding any other  
25 provisions of law that would prevent the refiling of a new

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1 claim; provided that the new claim is filed not later than  
2 one year after the effective date of this act.

3 SECTION 3. EMERGENCY.--It is necessary for the public  
4 peace, health and safety that this act take effect  
5 immediately.