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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** Jan. 16, 2024  
**Bill No:** HB 83

**Sponsor:** Serrato, Gallegos  
**Short Title:** ANGEL INVESTMENT CREDIT ELIGIBILITY

**Agency Name and Code** State Ethics Commission (410)  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
		(\$1,000,000)	Recurring through 12/31/2030	General

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>			(\$1,000,000)		Recurring through 12/31/2030	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB 83 amends NMSA 1978, § 7-2-18.17 (2020), to allow a taxpayer to claim the angel investment credit for a qualified investment made after January 1, 2024 and before December 31, 2030—increasing the period for five years beyond the current expiration of December 31, 2025.

**FISCAL IMPLICATIONS**

Authorizes revenue decreases of up to \$2 million per calendar year.

Explanation of the above tables: Considering the credit claims currently are allowed through December 31, 2025, a five-year extension on claims seems to entail an authorized revenue decrease in FY26 (ending June 30, 2026) of approximately \$1 million, and then \$2 million thereafter.

**SIGNIFICANT ISSUES**

In the 2023 Regular Session, HB 69 (2023) proposed amending Subsection 7-2-18.17(J) to change the angel investment tax credit from *non-refundable* (but able to be carried forward for 5 consecutive years) to *refundable*. State Ethics Commission staff commented that this change would likely violate Article IX, Section 14 of the New Mexico Constitution, commonly known as the Anti-Donation Clause.

In contrast to HB 69 (2023), HB 83 (2024) maintains the current, *non-refundable* status of the angel investment tax credit. State Ethics Commission staff contend that, as is, the angel investment tax credit likely does not run afoul of the Anti-Donation Clause, because *non-refundable* tax credits do not necessarily violate the Anti-Donation Clause. This view is based on analogizing non-refundable tax credits to tax exemptions. The New Mexico Supreme Court has long held that a tax exemption, so long as it operates prospectively, is not an unconstitutional remission of tax liability because it occurs during the calculation of a tax liability, before the tax liability accrues. *See Asplund v. Alarid*, 1923-NMSC-079, ¶¶ 19-20. A *non-refundable* tax credit operates similarly to a tax exemption, just at a later stage in the calculation of the tax liability: once the *ex ante* tax liability is determined, a non-refundable tax credit is applied and the tax liability reduced thereby—perhaps all the way to zero. If, as has been long-established, the

Constitution does not prohibit a tax exemption (which is part of the calculation leading to a determination of tax liability), it is unlikely that the Constitution prohibits a *non-refundable* tax credit (which is also part of the calculation leading to a determination of tax liability, just occurring at a later stage of the calculation).

Nevertheless, the New Mexico Supreme Court has held that even a *non-refundable* tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30 (holding a non-refundable tax credit was “an unconstitutional subsidy to the liquor industry” in violation of the Anti-Donation Clause). But the holding in *Chronis* likely does not impugn the constitutionality of the angel investment credit. Under Section 7-2-18.17 (and HB 83), the State is obligated to make payments of up to \$312,500 per calendar year to an “accredited investor” under the Securities Act of 1933—*i.e.*, individual investors with a net worth over \$1 million, excluding a primary residence, and investment companies with assets above \$5 million—who invest private funds in up to five New Mexico businesses engaged in manufacturing and research. See “Accredited Investor,” U.S. Securities and Exchange Commission, <https://www.sec.gov/education/capitalraising/building-blocks/accredited-investor>. Unlike the non-refundable tax credit at issue in *Chronis*, which was directed at subsidizing particular liquor license holders, Section 7-2-18.17 (and HB 83) does not target its non-refundable tax credit to a discrete industry or a particular set of persons other than persons who invest in New Mexico businesses engaged in qualified research and manufacturing, broadly defined. See NMSA 1978, § 7-2-18.17(K)(5), (8) (defining “manufacturing” and “qualified research”). Accordingly, the angel investment credit is likely distinguishable from the non-refundable credit that the *Chronis* Court held unconstitutional. HB 83’s extension of the period by which taxpayers may apply for the angel investment credit does not alter this analysis and, therefore, likely does not implicate the Anti-Donation Clause.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**