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

SPONSOR Griego **ORIGINAL DATE** 02/06/13 **LAST UPDATED** **HB**

SHORT TITLE High-Wage Jobs Tax Credit Definitions **SB** 211

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
$28,030.0	$27,946.0	$28,281.0	($5,071.0)	($5,172.0)	Recurring	General Fund
$8,803.0	$8,777.0	$8,882.0	($1,593.0)	($1,624.0)	Recurring	Local Government
$36,833.0	$36,723.0	$37,164.0	($6,663.0)	($6,796.0)	Recurring	Total

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 211 tightens a host of high wage tax credit definitions found in Section 7-9g-1, NMSA 1978. The two most important changes to the law are:

- Limiting the application period to one year. Currently there is no limitation.
- Limiting eligible employers to those certified by the Economic Development Department to be eligible for job training program assistance, commonly known as "JTIP". Currently, employers are eligible if they export more than 50 percent of their sales.

The bill also clarifies that eligible jobs cannot be recycled through mergers or acquisitions and that wages are calculated inclusive of benefits.

Effective Date: TRD notes that the effective date is retroactive to January 1, 2013. Since the law limits certain employers from being able to obtain this credit, the emergency clause would introduce uncertainty as to the applicable law to process pending claims filed before the effective date (i.e., January 1, 2013) but not approved as of the date the bill is signed (implementing the emergency clause).

FISCAL IMPLICATIONS

The negative entries in the revenue table for the FY16-FY17 are a result of extending the sunset date.

The current consensus revenue estimate assumes credits of $25 million. In light of current claims of $120 million, this estimate will have to be revised.

TRD's analysis was performed based on the recent historical data of the High-Wage Jobs Tax Credit (HWJTC), and calculating an expected utilization of the tax expenditure by Job Training Incentives Program (JTIP) qualified firms only (i.e., implementing the proposed new restrictions to the HWJTC).

According to Taxation and Revenue Department (TRD) data, the 17 companies filing the greatest number of HWJTC applications received approval of those claims in recent years (i.e., FY11 & FY12 (partial)). These companies account for about 75% of all credits by dollar amount during the period analyzed.

Growth in new qualified jobs was estimated using BBER FOR-UNM forecast employment growth for the applicable sectors (i.e., FY13 at -0.3%, FY14 at 1.2%, FY15 at 1.6%, FY16 at 2.0 %) The total claims in a FY were escalated by the employment growth in the prior FY (i.e., FY14 claims based on employment change in FY13).

In FY12 — and even more so in FY13 (year-to-date) — applications for the HWJTC surged (apparently) due to a "mining" of potential claims by several consulting accounting firms, and due to an increasing awareness of the potential claims under the existing HWJTC statutes. At present, there are approximately $110 million in pending HWJTC claims subject to evaluation by TRD.

In order to estimate a reasonable fiscal impact, TRD had to adjust the claims to a "normal" level of claims, as many of the current surge in claims reflect a wide spread anticipation of the proposed amendments contained in the subject bill. The surge in claims that are currently pending cannot be a proper basis for this evaluation, but there is no precise way to determine the normal level of claims that the amendments would limit.

Based on TRDs analysis of the claim's data over the last four years, TRD estimates the "normal" applications per year under the current law to be approximately $65 million, with an approval amount of $43.3 million per year (i.e., a one-third application rejection rate). Further, the analysis of these historic claims suggests that approximately 30% of the applications are from JTIP qualified entities (i.e., 70% of the claims are from entities qualified under the "50% of sales 'out-of-state'" criterion). And finally, of the 30% of JTIP qualified applications, only 60% of those jobs are "new" jobs as defined by the proposed legislation. These assumptions support a generalized assertion that approved credits from the "normal" level of applications would be reduced by 85% under the proposed statutory criteria for HWJTC qualification. That is, of applications submitted pursuant to the existing regulations, only 15% of those applications would be qualified and approved under the statutory provisions contained in this legislation.

These assumptions apply specifically to the applications evaluated after April 1, 2013, (assuming current law would apply until that date), and are directly reflected in this FIRs FY14 through FY17 analysis. Note that the proposed legislation also extends the sunset of the HWJTC from July 1, 2015, to July 1, 2020, so the full value of the approved HWJCs is reflected as a reduction in revenues in FY16 and FY17.

TRD also must consider the impacts on the actual applications submitted and pending department review at the time this legislation would become effective (i.e., April 1, 2013). For these purposes, we assume that $120 million in HWJTC applications are pending and reviewed in the last half of FY13. The proposed legislation would only be applicable to applications evaluated after April 1, 2013.

The bill as drafted would impose a limit on new qualifying jobs immediately (i.e., assuming an emergency clause implementation of the amendment on April 1, 2013). It is estimated this limitation on new qualifications would reduce the pending applications analyzed after the April 1st effective date by about 15% in FY13. Thus, at that point in time only $60 million in HWJTC would be pending and subject to evaluation under the emergency clause provision.

For FY13 TRD assumes $60 million in pending applications will be analyzed pursuant to the more restrictive provisions of the legislation, result in a reduction from a one-third rejection rate (i.e., approval of $40 million) to approval of only $9 million of the assumed $60 million applications pending at April 1st (i.e., a $39 million FY13 impact).

Extension of the definition of urban jobs to within ten miles of a municipality with a population of 60,000, or in Los Alamos County would have a minimum impact. This is because the wage limit of a qualified job in Los Alamos County and ten miles of its external boundaries would be $40,000 under the proposed law, which would potentially reduce the number of qualified jobs. However, the wage limit of a qualified job in other municipalities, for example Roswell (population: 48,366) and Farmington (population: 45,877) would be reduced from $40,000 to $28,000, causing a potential increase in the number of qualified jobs.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The Economic Development Department has noted their support of this bill.

Three categories of business are eligible for JTIP:

- Companies that manufacture or produce a product in New Mexico.
- Non-retail service companies that export a substantial percentage of services out of state. (50 percent or more of revenues and/or customer base). Customer support centers and product testing laboratories are two examples of businesses that have qualified in this category.
- Certain green industries.

Jobs eligible for funding through JTIP must be:

- Full time (minimum of 32 hours per week)
- Year-round
- Directly related to the creation of the product or service (One in 10 positions applied for may be outside product/service creation). Typical examples include marketing, sales and general administration.
- Trainees must be guaranteed full-time employment upon successful completion of the training program.

To be eligible for funding under JTIP, trainees must:

- Be new hires to the company
- Have been residents of the state of New Mexico for at least one year at any time prior to employment in an eligible position
- Not have left high school in the three months prior to employment, unless they have graduated or completed a GED
- Reimbursable Training Costs
- JTIP funds three types of training:
- Custom classroom training at a public educational institution
- Structured on-the-job training (OJT)
- A combination of classroom training and OJT

The following are eligible for reimbursement:

- A portion of trainee wages(40-75 percent) for up to six months
- Cost of custom classroom training at public educational institution

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD reports that transition rules and procedures will need to be developed. Revisions will be needed to forms, instructions, publications at a cost of $4,000. Taxpayer and department personnel education will be necessary.

TECHNICAL ISSUES

TRD reports the following technical issues:

- Page 2, line 10, insertion of the word “calendar” could be interpreted to mean that the first year the credit is claimed, the taxpayer may only get credit for work performed in the first calendar year. Subsequent years are claimed based on qualifying periods, and it is not clear how to interpret the “calendar” reference (i.e., if job is created November 1st, is the max credit claim for that job 38 months?).
- Subsection C, page 2, line 7, uses the term “per year”. This term should be changed to “per qualifying period” which is the term used throughout the bill.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

SS/bm