FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
SPONSOR Sapien **LAST UPDATED** **HB**

SHORT TITLE NM Manufacturing Investment Tax Credit **SB** 251

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
$0.0	($18,000.0)	($45,000.0)	($45,000.0)	($45,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 251 allows a taxpayer whose principal business activity is manufacturing to elect to have their business income apportioned to New Mexico using a single weighted sales factor beginning in the taxable year following the year in which any of the following certain investments are made:

- the taxpayer has invested in New Mexico on or after January 1, 2013 but not after December 31, 2021 at least $1,000,000,000 in capital equipment and facility construction or renovation;
- the taxpayer has invested in New Mexico on or after January 1, 2013 but not after December 31, 2021 at least $500,000,000 in capital equipment an facility construction or renovation; or
- the taxpayer has invested in New Mexico on or after January 1, 2013 but not after December 31, 2021 at least $250,000,000 in capital equipment and facility construction or renovation.

A taxpayer who chooses to have their business income apportioned using a single weighted sales factor may continue that election for a period not to exceed:

- eight consecutive taxable years from the taxable year that an election is first claimed and approved;

- four consecutive taxable years from the taxable year that an election is first claimed and approved;
- two consecutive taxable years from the taxable year that an election is first claimed and approved.

This bill also prohibits a taxpayer who elects to have their business income apportioned to New Mexico using a single weighted sales factor from claiming in the same taxable year the investment tax credit for the same capital equipment.

Effective Date: July 1, 2013; applicable to taxable years beginning on or after January 1, 2013.

FISCAL IMPLICATIONS

To estimate the impact due to using the single weighted sales factor apportionment for certain corporations,TRD used the New Mexico corporate income tax (CIT) data for manufacturing industries (NAICS code 31 through 33) was used. There are approximately 1,750 corporations that file under the manufacturing NAICS code with a total gross New Mexico CIT of $75 million being paid to the state. Of these corporations, the top 10 corporations account for over 80 percent of the revenue. It is assumed that most of the large corporations would take advantage of this incentive in 2013 resulting in a revenue loss of about $45 million per year. Estimated payments are expected to lower the first fiscal year impact due to this election. However, it should be noted that the definition of “manufacturing” in this legislation is more expansive than that provided by the NAICS codes relied on for the analysis. It is not possible to know how significant the additional scope of the definition might impact the applicability of the tax credit, but there is a potential that additional eligible firms would increase the fiscal impact of the legislation.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

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 a 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.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> 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.

TECHNICAL ISSUES

Given current statutes' expansive definition of "manufacturing", the sponsor might want to consider enumerating what activities are covered under this bill rather than enumerating a list of excluded activities.

This bill does not contain a sunset date. The LFC recommends adding a sunset date.

TRD questions whether the investment amounts specified in Subsection C must be made in one calendar year. If a taxpayer invests $500,000,000 in tax year 2013 and elects to use the single weighted sales factor for 4 years, can it then invest another $250,000,000 in tax year 2017 (before its 4-year election ends) and continue to use the election for 2 more years, through 2019?

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