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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/13

SPONSOR Sapien LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Efficient Commercial Building Tax Credits SB 566

ANALYST Smith

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
\$0.0	\$0.0	(\$330.0)	(\$340.0)	(\$360.0)	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 566 adds new Sections to the Income Tax Act and Corporate Income and Franchise Tax Act to create the Efficient Commercial Building Income Tax Credit. This credit may be taken by a taxpayer who constructs an efficient commercial building in New Mexico or renovated a commercial building in New Mexico to make it efficient. This must be done on or after July 1, 2014 and before July 1, 2019, to be eligible to the credit of one dollar eighty cents per square foot of qualified building floor area. The credit is not refundable or transferable, but any credit in excess of the taxpayer's liability for the taxable year may be carried forward for five consecutive years.

"Efficient commercial building" means a building:

- (1) for which efficiency measures are implemented as part of a plan designed to reduce by 50 percent or more, compared with a reference building that meets the minimum requirements of ASHRAE Standard 90.1-2004, the total annual energy and power costs of the interior lighting systems, heating, cooling, ventilation and hot water systems of the entire building; provided that reductions from other energy uses, such as receptacles, process loads, refrigeration, cooking and elevators, do not count toward the reduction measure;

- (2) for which efficiency measures are implemented in the: (a) interior lighting systems; (b) heating, cooling, ventilation and hot water systems; or (c) building envelope; and
- (3) that is certified by a professional engineer and EMNRD.

**Effective Date:** Not specified

### **FISCAL IMPLICATIONS**

The Taxation and Revenue Department (TRD) used data from the Energy, Minerals and Natural Resources (EMNRD). There were about \$1 million of Sustainable Building Tax Credit (SBTC) were granted for 655 thousand square feet of commercial buildings in total in last 5 years. On average, 131 thousand square feet were qualified each year. However, there were only 64 thousand and 45 thousand square feet were qualified for SBTC in 2008 and 2012 respectively. The average qualified square feet of commercial buildings were about 182 thousand each year from 2009 to 2011.

This bill proposes a tax credit with a structure and purpose similar to the SBTC for commercial building but with the new definition of “efficient commercial building” (Please see Description - Detailed Discussion). Thus, this analysis assumes 182 thousand square feet of commercial building are eligible for the efficient commercial building income tax credit in FY2015. The average growth rate of SBTC from 2009 to 2011 was very low and according to the current housing market, a growth rate of 5 percent was used to estimate the fiscal impact.

This bill may be counter to the Legislative Finance Committee (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 not met since the 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.

### **TECHNICAL ISSUES**

The TRD notes that on Page 3, Subsection F, and Page 6, Subsection D, state that “A credit shall not exceed five million dollars (\$5,000,000) in any taxable year”. \$5,000,000 credit amount implies approximately 2.8 million square feet for one credit claimed. Should \$5 million be an aggregate amount of all credits granted in any taxable year?

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

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/svb