FISCAL IMPACT REPORT

SPONSOR Powdrell-Cubert/Serrato/Figueroa/Brown/Crowder

ORIGINAL DATE 02/01/22
LAST UPDATED

HB 161

SHORT TITLE Angel Investment Tax Credit Dates

SB

ANALYST Faubion

REVENUE (dollars in thousands)

Estimated Revenue				Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26		
up to ($3,000.0)	up to ($3,000.0)	up to ($3,000.0)	up to ($3,000.0)	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
--	$5.2	--	$5.2	Nonrecurring	TRD/ITD – Staff Workload

Parenthesis ( ) indicate expenditure decreases

Conflicts with HB80.

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Attorney General (NMAG)
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 161 (HB161) amends Section 7-2-18.17 NMSA 1978 to extends the date for an angel investor to make a qualified investment from December 31, 2025 to December 31, 2029. It also increases the maximum annual aggregate credits from $2 million to $5 million.

There is no effective date of this bill. It is assumed the effective date is 90 days after this session ends. The provisions of the bill are applicable to qualified investments made after January 1, 2022.

FISCAL IMPLICATIONS

The revenue impact table on page 1 shows a maximum loss of $3 million for all years, a reflection of the proposal to increase the aggregate annual cap from $2 million to $5 million. Over the past five years, the tax credits applied against personal income tax (PIT) liabilities have averaged $777 thousand.

Angel Investment Credit against PIT	Tax Year (Calendar)	2016	2017	2018	2019	2020
	Claims	98	126	145	133	65
	Expenditure (thousands)	$499	$798	$907	$954	$318
	Fiscal Year	2017	2018	2019	2020	2021
	Claims	88	104	143	139	145
	Expenditure (thousands)	$528	$618	$919	$904	$919

TRD notes that between 2017 and 2020, an average of $1.2 million in angel investment credits were approved each year and on average 60 percent of those were claimed on taxpayer tax returns. Given that this bill does not change the credit rate of 25 percent, make the credit refundable, or loosen business requirements for eligibility, it is reasonable to assume that this bill will have no actual fiscal impact if the credit remains undersubscribed and less than $2 million in credits are approved each year.

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. In general, estimating the cost of tax expenditures is difficult. However, the angel investment credit is separately reported so that no estimation is necessary.

SIGNIFICANT ISSUES

There is a critical need for early-stage venture capital. This may be particularly true in New Mexico, where the national laboratories generate technology spinoffs, but the developers are physically remote from the large venture capital firms. Larger venture capital firms are rarely interested in initial (first-round) funding but get more interested in second-round and subsequent financing.

EDD notes that the bill may result in additional economic development opportunity throughout the state by catalyzing angel investment which may support the expansion and location of new businesses, job creation, and innovation in research and development. The growth of businesses receiving angel investment may increase the tax base. Making the angel investment credit more robust may provide a valuable tool to investors and could make launching a startup and doing business in New Mexico more attractive.

A "qualified investor" must meet the criteria shown in the box to the right. Individual investors can claim up to $62.5 thousand in tax credits per project with a limit of five projects per year[1]. Thus, an investor could claim up to $312.5 thousand in credits per year. Very few New Mexico taxpayers would have liability sufficient to consume the full amount of the credit. In current statute, any excess of credits over liability could be carried forward for up to five years. If any credits are still unused after five years, they expire.

> **Criteria for qualified and accredited investors**
> In order to be classified as a qualified or accredited investor, you must meet one of two criteria:
> - You must have earned income exceeding $200,000, or $300,000 when combined with a spouse, during each of the previous two full calendar years, and a reasonable expectation of the same for the current year. The same method (single or joint) must be applied to the income test in all three years.
> - You must have a net worth greater than $1 million (either by yourself or combined with a spouse), excluding your primary residence.

PERFORMANCE IMPLICATIONS

LFC's tax policy of accountability is met with the bill's requirement to report annually to the revenue stabilization and tax policy committee and the Legislative Finance Committee regarding the data compiled from the reports from taxpayers utilizing the credit and other information to determine whether the credit is meeting its purpose. This reporting is done annually in TRD's *Tax Expenditure Report* as well.

ADMINISTRATIVE IMPLICATIONS

The Information and Technology Division (ITD) of TRD reports that implementation of the legislation will take approximately 1 month at a cost of $5,164 in FY23 from staff workload.

TECHNICAL ISSUES

TRD notes a technical issue that could require an amendment to the bill:

Page 2, line 23- This section is existing language added when the certification of this credit was transferred to TRD from Economic Development Department (EDD) in 2019. Taxpayer information cannot be shared with EDD for this tax credit because this credit is not indicated under Section 7-1-8.8. NMSA 1978(Q), which only permits TRD to share with EDD return information concerning the film production tax credit. It is recommended that this section be updated to include the angel investment credit so that information may be shared with EDD about this credit. Currently, the TRD application for this credit advises the taxpayer to submit a copy of their application to EDD. Compliance for this requirement cannot be confirmed to EDD by TRD due to statutory restriction. Page 2, line 23 does not direct TRD to share application information with EDD. If granted authority in this section, TRD can share application information with EDD without placing a burden on the taxpayer to submit duplicate applications. Application information sent by the taxpayer to EDD does not include TRD certification and amount awarded.

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date. The angel investment tax credit was initially enacted in 2007 with a delayed repeal date of

[1] https://www.fool.com/investing/2018/02/14/what-is-a-qualified-investor.aspx

January 1, 2013. TRD documents this history on page 48 of the 2021 edition of the *Tax Expenditure Report*.
The credit was amended in 2012, 2015, and 2020. The 2012 amendment eliminated the delayed repeal and extended the date before which an investment must be made to qualify for the credit. The 2015 amendment changed the qualified investment amount, relaxed the limits on the number of investments, increased the annual cap and extended the carry forward period. The 2020 amendment moved the review and approval of the credit from EDD to TRD and clarified the statute.

OTHER SUBSTANTIVE ISSUES

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.

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