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

ORIGINAL DATE 01/30/12
SPONSOR Keller & Doyle **LAST UPDATED** **HB**

SHORT TITLE Capital Investments Tax Credit **SB** 15

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**		
	($2,730.0)	($3,010.0)	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 15 proposes to amend the Investment Credit Act (7-9A NMSA 1978) by including “capital investments” as a qualifying investment. Currently, only depreciable equipment involved in the manufacturing process is eligible for the credit. The draft would allow the credit for purchases of any fixed asset “that is essential to increase the volume of products or services produced by a business”.

The bill allows new firms (less than three years old), relocated businesses (less than five years in the state), and new (under 5 years) and legacy (older than 10 years) contractors to claim the credit which is increased to $2 million for “capital investments”.

This bill retains the current job requirements – one job for each $500,000 investment up to $30 million in total and one job for each $1,000,000 investment over $30 million in total.

The amount of the new capital investment credit is capped at $102,500 per project and would require at least four employees to qualify the investment for the maximum credit.

The bill provides a sunset after June 30, 2020, with maximum annual investment for “capital investments” limited to $2,000,000 and one job required for each $100,000 in investment. This would require the creation of 20 permanent jobs.

The bill also provides for recapturing the capital investment credit over a five-year period. There are no guarantee provisions in the draft in the case of bankruptcy or abandonment of the asset. However, the repayment requirement would be apparently the same as an established tax liability and subject to tax lien provisions.

Effective Date: July 1, 2012.

FISCAL IMPLICATIONS

This bill expands the angel investment credit. The historical angel investment credit claims were used to estimate the fiscal impacts. About 32 angel investment credits at a total $204,000 each year were claimed from FY2008 to FY2011. This bill adds corporate venture capitalists and non-profits, so it would be more effective. But it is also more costly, assumed approximately 10 times the costs of angel investment credit.

SIGNIFICANT ISSUES

- Double dipping would be allowed, so that someone can claim this credit and other tax credits on the same expenditures.
- This bill would allow interest-free, unsecured, non-recourse loans to taxpayers who enter into modest sized commercial real estate transactions. The draft would allow the credit for purchases of any fixed asset "that is essential to increase the volume of products or services produced by a business". However, a small commercial enterprise could use the credit to finance a building intended to house its new or expanded operation.
- Placing a tax lien on the taxpayer or project underlying the capital investment in order to secure the five-year payback might make conventional financing very difficult to obtain. However, the authority granted to the Department to assess, lien and levy (pursuant to Section 7-1-37 et seq. NMSA) would only follow a refusal on the part of the taxpayer to repay the capital investment tax credit timely. This would only happen in the case of non-credit-worthy project and the difficulty posed by the tax lien would not materially add to the business woes.

ADMINISTRATIVE IMPLICATIONS

TRD reports:

- Additional resources are required for approving applications, audit and tracking the credit, collections and reporting.

- This program will be manual. Two FTEs in the Revenue Processing Division for tracking, monitoring and processing the re-payments at a cost of $80,000 and one additional audit resource at a cost of $60,000 will be needed. In addition, taxpayer and department employee education will be needed.

- Revising and creating forms and publications will cost the Department $8,000. Purchasing a new Wausau client will cost $2,000. Department also needs to develop new notices and procedures for repayment communications, including postage needs.

- A tax credit module would greatly reduce these costs at a cost of $20 million. The bill increases

- the types and numbers of businesses that may claim the credit. A new computer system needs to be developed to manage and track the repayment of an approved capital investment at significant cost to the department.

TECHNICAL ISSUES

- Page 2, lines 6 through 10. The definition of capital investment is very broad and could include any fixed asset without further clarification. For example, a new light fixture could be perceived to directly generate revenue. Clients or workers must be able to see what they are doing.
- Page 8, line 23. The “purchase price” could use greater explanation. This bill needs to clarify whether the purchase price includes shipping and installation costs.

OTHER SUBSTANTIVE ISSUES

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

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

This bill may violate the LFC tax policy principle of adequacy. According to the LFC General Fund Recurring Appropriation Outlook for FY14 and FY15 the December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations. Since currently forecasted revenues in FY14 and FY15 may not be adequate to fund government services there is insufficient funds for additional tax cuts.

SS/svb