LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: CS/HB 24 **51st Legislature, 1st Session, 2013**

Tracking Number: .191933.1

Short Title: College Endowment Contribution Gross Receipts

Sponsor(s): Representative James E. Smith and Senator Timothy M. Keller

Analyst: Ian Kleats **Date: February 12, 2013**

Bill Summary:

CS/HB 24 would enact a new section of the *Gross Receipts and Compensating Tax Act* effective July 1, 2013. Among its provisions, the bill would:

- provide a gross receipts tax credit equal to 50 percent of distributions made by the taxpayer to qualified entities;
- cap a taxpayer's credit at $500,000 per year;
- cap total credits at a maximum amount of $2.0 million per year; and
- require reporting by qualified entities receiving those distributions of appropriate information to the legislature.

Qualified entities include:

- New Mexico four-year public postsecondary education institutions engaged in technology transfer and commercialization, or collaborative scientific research; and
- eligible endowment funds or organizations that promote the commercialization of licensed technology conceived in a New Mexico four-year public postsecondary education institution or federal laboratory.

CS/HB 24 contains an effective date of July 1, 2013, and applies to qualified distributions made on or after that date. The tax credit could be claimed on gross receipts tax returns filed on or after August 1, 2013.

Fiscal Impact:

CS/HB 24 does not contain an appropriation.

Estimated Revenue Impact*				R or NR**	Fund(s) Affected
FY 13	FY 14	FY 15	FY 16		
0	(1,200.0)	(1,200.0)	(1,200.0)	R	General Fund
0	(800.0)	(800.0)	(800.0)	R	Local Governments

* In thousands of dollars. Parentheses ( ) indicate a revenue loss.
** Recurring (R) or Nonrecurring (NR).

The Department of Finance and Administration (DFA) bill analysis notes that the University of New Mexico Foundation received approximately $7.5 million specifically pledged to research.

This implies that the $2.0 million annual aggregate cap could easily be reached each year without even considering donations to other qualified entities.

The Taxation and Revenue Department (TRD), in its analysis, has suggested a 60:40 split of gross receipts tax revenues between the General Fund and local governments.

<u>Fiscal Issues</u>:

According to the TRD estimate, the bill could reduce General Fund revenue by approximately $1.2 million per year.

Based on *General Appropriations Act* appropriations for the last five years, the Legislature has appropriated approximately 43.5 percent of General Fund revenue for public education. The reduction of revenue from the General Fund as proposed in this bill could result in decreased annual appropriations of at least $522,000 for public education in all future fiscal years.

Although CS/HB 24 contains provisions for the reporting of the efficacy of the tax credit to the Legislative Finance Committee (LFC), the bill does not provide for a sunset of the credit. This means that, regardless of whether the tax credit serves its stated goal, the provisions would not expire without a legislative repeal.

<u>Substantive Issues</u>:

The purpose of the tax credit provided by CS/HB 24 is to provide an incentive for the technology transfer and commercialization industry to locate and expand in New Mexico.

CS/HB 24 allows distributions to qualified entities including organizations that promote the commercialization of licensed technology conceived in a public university or federal laboratories. That definition is sufficiently broad to include investment in private companies meeting those characteristics. Distributions to public entities could be considered donations, without expectation of recompense. Distributions to private business, on the other hand, often carry an expectation of some sort of return on that investment. Subsidizing private investment in private firms might be considered an unintended consequence of this legislation.

New Mexico State University (NMSU), in its bill analysis, suggests that the bill could provide funding for existing technology development and commercialization efforts and initiatives. Furthermore, any additional donations to its endowment would be available to meet certain requirements of federal technology commercialization grants for which NMSU might lack the necessary matching funds. Income from the endowment could help fund existing programs plus provide access to initiatives which would be beneficial but are hereto for impractical to even apply for owing to matching requirements.

The University of New Mexico (UNM) notes in its bill analysis that UNM and the Council of University President's support the concept of proposed in CS/HB 24. The tax credit could provide an incentive for private businesses, which pay gross receipts tax, to support the UNM's endowments with less impact to the General Fund than a direct appropriation.

<u>Technical Issues</u>:

On Page 3, line 25, continuing onto Page 4, line 1, CS/HB 24 requires that entities receiving qualified distributions report to the LFC on the number of faculty recruited and retained. The definition of a qualified entity includes organizations, which need not be educational institutions that promote the commercialization of licensed technology. It could be considered broadening this information request to include researchers, who are not specifically faculty.

Background:

According to the DFA bill analysis, the UNM Foundation's *2010-2011 Report on Giving* reports that UNM received more than $75.0 million in private donation in FY 10. This amount was down from the previous peak of $90.0 million in FY 09.

The TRD bill analysis suggests that giving to educational institutions is highly variable and follows no clear trend. At UNM, for example, New Mexico's largest four year public university, published audit reports show that non-operating revenue from gifts decreased by nearly 42 percent in FY 12, after increasing by almost 77 percent in FY 11.

Committee Referrals:

HEC/HTRC/HAFC

Related Bills:

None as of February 12, 2013.