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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**SPONSOR** McCamley **LAST UPDATED** 2/6/15 **HJR** 3

**SHORT TITLE** Economic Development Tax Incentives, CA **SB** \_\_\_\_\_

**ANALYST** van Moorsel

### REVENUE (dollars in thousands)

Estimated Revenue (by Beneficiary)					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
NFI	NFI	NFI	NFI	NFI	Recurring	General Fund
No fiscal impact in forecast period. See "Fiscal Implications," below.						

(Parenthesis ( ) indicate revenue decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$0.0	\$15.2	\$15.2	Nonrecurring	General Fund

(Parenthesis ( ) indicate expenditure decreases)

Relates to HB 18 – Separate Deductions and Exemptions

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Economic Development Department (EDD)

### SUMMARY

#### Synopsis of Bill

House Joint Resolution 3 proposes to amend Article 8 the Constitution of New Mexico by adding a new section that requires an economic development tax incentive that becomes effective after January 1, 2017 may not be in effect for more than ten years after its effective date without subsequent legislative action. The new section would define an economic development tax incentive as a credit, deduction, rebate, exemption or other tax benefit for the primary

purpose of promoting economic development or offering an advantage to a particular industry or type of business to do business in New Mexico.

The amendment proposed by this resolution would be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose

### **FISCAL IMPLICATIONS**

The constitutional amendment would require 10-year sunsets on new economic development tax expenditures enacted after January 1, 2017. As such, the earliest such a tax incentive could sunset would be January 1, 2027, well beyond the 5-year forecast period depicted in the revenue table on page 1 of this FIR. If this constitutional amendment were to pass and if the Legislature were to elect not to extend an economic development tax expenditure, this amendment could have a positive revenue impact as early as FY27 due to the expiration of tax expenditures. However, this is strictly hypothetical, as it is unclear whether such a hypothetical tax incentive would be continued even without the required sunset.

### **SIGNIFICANT ISSUES**

Requiring an automatic sunset would force reevaluation of new tax credits, and could improve policymakers' understanding of their costs and benefits. The LFC recommends sunsets on all new tax incentives, and this constitutional amendment would require them. Generally, a ten-year period should provide sufficient time to gather data on a tax incentive's cost and effectiveness.

EDD cautions that the constitutional amendment would require TRD to determine whether the primary purpose of new credits, deductions, rebates, and exemptions is economic development. EDD adds that the definition of "economic development tax incentive" is vague.

TRD also states the definition of "economic development tax incentive" may need to be more specific. Most incentives offer an advantage to a particular industry or business operating in NM, but the incentive may be developed by agencies other than the economic development department for purposes other than promoting economic development. For example, the solar market development credit, the sustainable building tax credit, and various other incentives developed by the energy, minerals and natural resources, which promote the use of clean energy, but also give an advantage to particular industries.

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**

EDD notes the sunset requirement could hurt the department's performance in recruiting economic investment in New Mexico. It appears the department's reasoning is that the potential expiration of a tax incentive could deter investment in New Mexico.

## ADMINISTRATIVE IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM constitution, the Secretary of State is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In 2014, the SOS estimated the cost per constitutional amendment to be \$15,217. However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

## TECHNICAL ISSUES

TRD states the constitutional amendment may have a potential issue with retroactivity. The resolution provides that all economic development tax incentives that become effective on or after January 1, 2017 will have a ten year sunset date. If the constitutional amendment is not presented to the citizens of New Mexico in a general or special election before January 1, 2017, then the constitutional amendment may not be effective by January 1, 2017 when economic development tax incentives are becoming effective. It is even more likely that the amendment will not be in effect when the legislative session immediately before January 1, 2017 occurs. As such, any tax expenditures enacted in that session that become effective January 1, 2017 that do not have a sunset could be in violation of the Constitution of New Mexico.

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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