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

SPONSOR Dow **ORIGINAL DATE** 1/30/18 **LAST UPDATED** **HB** 212

SHORT TITLE Family-Friendly Workplace Tax Credit **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	**FY19**	**FY20**	**FY21**	**FY22**		
--	(Up to $52.5 million)*	(Up to $52.5 million)*	(Up to $52.5 million)*	(Up to $52.5 million)*	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

*Note: See fiscal implications section for explanation of the estimate range.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 212 creates new sections of the Income Tax Act and the Corporate Income Tax Act for a credit titled "family-friendly workplace income tax credit." The taxpayer must have fifty or less full-time or permanent part-time employees in New Mexico and be considered a family-friendly business. The taxpayer can claim a credit in the amount of $1 thousand per full time employee and $500 per part time employee. This credit is not refundable and cannot be transferred, but it may be carried forward for five consecutive years.

To be recognized as a family friendly business, the bill states it should have "…received the highest level of recognition by a New Mexico statewide project developed to recognize companies that have adopted polices, including those concerning paid leave, health support, work schedules and economic support, considered family-friendly…"

This bill requires the taxpayer to claim the credit in a manner prescribed by the Taxation and Revenue Department (TRD). The credit can be claimed by owners based on the proportion of ownership interest. The bill also requires TRD to compile an annual report with information

necessary to evaluate the effectiveness of the credit and present that report on an annual basis to the specified legislative committees.
There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. The provisions of the bill apply to taxable years January 1, 2018 through December 31, 2027.

FISCAL IMPLICATIONS

This bill creates a new tax expenditure, paid on a per-employee basis for family-friendly small businesses. However, the basis of award is ambiguous. It is uncertain what constitutes "the highest level of recognition by a New Mexico statewide project developed to recognize companies that have adopted [family-friendly] policies," which makes it difficult to determine how many small businesses could qualify to claim the credit. While this provision would presumably narrow the number of taxpayers that could claim this credit, lack of sufficient information on such projects and types of recognition, the fiscal impact estimates must make an assumption about the percentage of taxpayers that could potentially qualify.

The fiscal estimates use TRD's analysis as a maximum range on the size of the credit. According to TRD, there are approximately 21,000 firms filing in the Corporate Income Tax (CIT) regime. If 1,050 small businesses (5 percent of CIT tax filers), each with 50 full time employees, were awarded this credit, the fiscal impact would be about $52.5 million. If only one percent of CIT tax filers (210 small businesses), each with 50 full time employees, were awarded this credit, the fiscal impact would be about $10.5 million. However, depending on what it means to "receive the highest level of recognition" the estimates could be much smaller.

SIGNIFICANT ISSUES

Because the bill does not specify or define what constitutes "the highest level of recognition by a New Mexico statewide project developed to recognize companies that have adopted [family-friendly] policies," there is potential for multiple statewide projects to provide such recognition and enable various taxpayers to claim this credit. If a statewide project only has one level of recognition for family-friendly policies, it would then be the highest level. Additionally, there is a potential negative incentive for taxpayers to create or lobby the creation of various projects for this purpose in order to claim the credit.

It is unclear what the bill considers a "family-friendly" business or policy, as there is no definitions section. The lack of clarity causes issues in determining what exactly qualifies a business to claim the credit. For example, the purpose statement in Section 1, part B, includes work schedules among family friendly policies but does not identify what type of work schedules qualify. Should the work schedules cover specific hours or meet certain criteria for flexibility, and who exactly makes this determination? The language is broad enough that one could presumably argue this to mean that simply having a consistent work schedule, as opposed to not having one, could be claimed to be family-friendly.

Pew Charitable Trusts recommends adding caps to new tax expenditures to prevent runaway costs. Pew also recommends providing clear and measurable goals when creating new tax expenditures in order to determine if the incentive is providing the desired economic outcomes. Well-designed tax incentives should protect the state budget from costs that increase quickly and unexpectedly.

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.

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.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement 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.

However, because the new tax expenditure created in this bill does not identify specific goals with measurable objectives, it would be difficult for TRD to evaluate its effectiveness as required in the bill.

TECHNICAL ISSUES

TRD points out that on page 1, line 25, there is no definition for the "New Mexico statewide project," which is the criteria that determines what businesses have received recognition, and the highest level of recognition, required to commence the process of claiming this credit. TRD suggest naming this entity.

ADMINISTRATIVE IMPLICATIONS

TRD states it is unclear which agency will certify the businesses as "family friendly." Clarification is needed for administration of this credit. Administrative impacts on the department are modest, including forms and systems modifications, training and taxpayer education. TRD states these could be managed with existing resources.

ALTERNATIVES

LFC recommends the creation of any new tax expenditures be vetted through interim legislative committees, such as LFC or the Revenue Stabilization and Tax Policy (RSTP) committee to review fiscal, legal, and general policy parameters.

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

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	This bill was not vetted through an interim hearing at RSTP or LFC.
Targeted		
Clearly stated purpose	✔	The bill states, "The purpose of the family-friendly workplace income tax credit is to promote the adoption among employers of policies, including those concerning paid leave, health support, work schedules and economic support, considered family-friendly."
Long-term goals	✘	None.
Measurable targets	✘	None.
Transparent	✔	The bill requires annual reporting by TRD to interim legislative committees.
Accountable		
Public analysis	?	Without goals and measurable objectives, it is unclear whether the required reporting for sufficient analysis on the effectiveness and efficiency of the credit.
Expiration date	✔	Expires December 31, 2027.
Effective		
Fulfills stated purpose	?	The bill does not define a "family-friendly" business and it is unclear whether the credit will incentivize "family-friendly" policies that would not otherwise exist without the credit.
Passes "but for" test	?	
Efficient	?	

Key: ✓ Met ✗ Not Met ? Unclear

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