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

ORIGINAL DATE 2/3/2020
SPONSOR Brown **LAST UPDATED** **HB** 104

SHORT TITLE County Road Fund Donation Tax Credit **SB**

ANALYST Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
Indeterminate	Indeterminate, likely more than ($10,000.0)	Indeterminate, likely more than ($10,000.0)	Indeterminate, likely more than ($10,000.0)	Indeterminate, likely more than ($10,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 276

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Attorney General (NMAG)
New Mexico Department of Transportation (NMDOT)

No Response Received
Taxation and Revenue Department (TRD)
New Mexico Association of Counties

SUMMARY

Synopsis of Bill

House Bill 104 (HB104) proposes to amend the Income Tax Act and Corporate Income and Franchise Tax Act to allow for a credit against tax liability in an amount equal to fifty percent of a donation made by the taxpayer to a county road fund. For both individual taxpayers and corporate taxpayers, the credit shall not exceed $1 million. The bill includes a sunset provision allowing the credit to be claimed only for taxable years from January 1, 2020 to January 1, 2025.

HB104 allows a taxpayer making the eligible donation to request a county to apply the donated amount to a specific road or bridge and a county may return the donation if it does not agree to the request. A taxpayer may claim the credit for the taxable year in which the taxpayer makes a donation. That portion of the credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall not be refundable. The department is required to compile an annual report on the credit that shall include the number of taxpayers approved to receive the credit, the aggregate amount of credits approved, and any other information necessary to evaluate the cost of the credit.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

This bill creates a tax expenditure with a cost that is impossible to determine but likely significant.
The fiscal impact from the creation of a tax credit for donating to a county road fund is unclear due to the unknown additional donations the bill will cause and the fiscal impact limited to the net tax liability of the donating taxpayer, which is also unknown. Yet, if only ten personal income tax payers and ten corporate tax payers donate $1 million each, the cost to the state would be $10 million.

LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

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.

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.

SIGNIFICANT ISSUES

The credit provided by this bill reduces state taxes for donations contributed by that taxpayer to a county road fund. In doing so, HB 104 is effectively a subsidy, by the state government, of the county road fund, at the discretion of the taxpayer.

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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB276 (County Road Fund Donation Tax Deductions), in that HB 276 is identical to HB104 except HB276 structures the tax advantage to the taxpayer as a deduction from taxable income rather than a tax credit.

TECHNICAL ISSUES

The bill does not specify that donations must be made to a county in New Mexico in order to receive the credit. Without that specification, taxpayers may be able to claim a credit against their New Mexico income tax liability for donations to county road funds in other states.

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

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	✘	Not heard by an interim committee.
Targeted		
Clearly stated purpose	?	Not stated, but presumably to increase county road funds.
Long-term goals	✘	None.
Measurable targets	✘	None.
Transparent	✓	TRD is required to report annually to LFC and the Revenue Stabilization and Tax Policy Committee.
Accountable		
Public analysis	?	It is unclear whether TRD reporting on the number of taxpayers receiving the credit and the aggregate amount of the credits will be sufficient to determine effectiveness and efficiency of the tax expenditure.
Expiration date	✓	The bill includes expiration dates.
Effective		
Fulfills stated purpose	?	There is no purpose statement or measurable goals and targets to determine if the exemption fulfills intended outcomes.
Passes "but for" test	?	
Efficient	?	A potentially more efficient method of increasing county road funds would be through making an appropriation, giving the legislature full authority on an annual basis of the amount of state funding to be distributed to county road funds.
Key: ✓ Met ✘ Not Met ? Unclear		

IT/sb