FISCAL IMPACT REPORT

SPONSOR	Tallman	**ORIGINAL DATE** / **LAST UPDATED**	02/04/22 / 02/14/22	**HB**	
SHORT TITLE	Job Creation Reporting Requirements			**SB**	69/aSFC
				ANALYST	Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Implementation/ Software Costs	N/A	$342.0	-	$342.0	Nonrecurring	General Fund
TRD Contractual Costs	N/A	$60.0	-	$60.0	Nonrecurring	General Fund
TRD FTE Costs	N/A	$89.6	$89.6	$169.2	Recurring	General Fund
EDD FTE Costs	N/A	Moderate	Moderate	Moderate	Recurring	General Fund
Total		$491.6	$89.6	$571.2		General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files
NCSL
Pew Charitable Trusts

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 69 removes the $342 thousand appropriation to the Taxation and Revenue Department for evaluating tax expenditures and other economic development incentives.

Synopsis of Bill

The bill adds new sections to the Local Economic Development Act to specify reporting requirements for entities receiving public support provided by a state, local, or regional government. Prior to April 1 each year for five years after receiving the support, the entities must report on the number of new full-time jobs created in the previous calendar year to the Taxation and Revenue Department (TRD). The report is to include information about wages, job titles, and any capital investments. TRD shall then compile these reports by August 1 each year to the legislature and Department of Finance and Administration.

The bill also adds new material to the Tax Administration Act to include tax expenditure budget assessment and analysis. No later than October 15 each year, the TRD secretary shall compile and present a tax expenditure budget to the governor, the revenue stabilization and tax policy committee and, the Legislative Finance Committee. The bill provides that this report be published to TRD's website. The report shall include for each tax deviation; identification of the deviation and its' statutory basis, the year of enactment, a description of the deviation, the intended purpose of the deviation, an estimate of the forgone revenue for three fiscal years preceding the current year as well as the current and subsequent fiscal year for those deviations that are also expenditures, the number of tax payers that claimed a tax expenditure, the data source and measures of reliability. The report may include other information as considered relevant.

Further, the bill provides that, if a tax expenditure is identified by the department as having a purpose of economic development and an estimated cost of more than $10 million per fiscal year, the department shall, at least every three years for each identified tax expenditure: perform an objective assessment of the effectiveness of the expenditure, an economic analysis of the expenditure and a complete assessment of the economic analysis. In lieu of an economic analysis, the department shall present current reporting requirements for the tax expenditure and recommendations as to how sufficient data may be collected to perform the economic analysis.

The bill gives TRD the authority to request information from agencies to complete the tax expenditure budget or assessment of a tax expenditure that is deemed to have a purpose of economic development. The bill requires compliance from any agency that is requested information. The effective date of this bill is July 1, 2022.

FISCAL IMPLICATIONS

As amended, the bill does not contain an appropriation. However, the provisions in SB69 will require funding to implement at both TRD and EDD. As such, the fiscal impact of the bill, specifically for implementation costs, is being estimated at $342 thousand, which should adequately cover the needed software to perform the analyses required in the bill as a one-time expenditure. However, both agencies also note a need for additional recurring funds to support SB69.

TRD and EDD note that the majority of the fiscal impact to the agencies will be realized through the increased need for administrative and contractual support. The administrative implications section below provides more detail, but overall TRD reports an estimated cost of $89.6 thousand per year for FTE costs, which is a recurring cost to the general fund, and $60 thousand in the first year for contractual service costs, which is nonrecurring. Since the bill no longer contains an appropriation, current funding in the TRD and EDD operating budgets will likely not be adequate to support long-term investments at the agencies for supporting the required economic impact analyses. Although EDD did not provide dollar estimates of what would be needed regarding additional staff, the agency estimates the fiscal impact to be at least "moderate" to the agency's operating budget. EDD notes that, without dedicated staff, resources to provide meaningful analysis may be insufficient.

A review of the 2021 TRD *Tax Expenditure Report* finds that 10 percent of the total FY21 tax expenditures were related to economic development, totaling $159.7 million. Further, the economic development incentives that exceed $10 million are the film production credit ($148 million in 2019), high wage jobs credit ($46 million in 2016), and manufacturer's single-weighted sales apportionment ($35 million in 2016). Other than those reported by TRD, the other largest incentives are most likely attributable to industrial revenue bonds (IRBs) issued by municipal and county governments, though reporting has been historically limited.

SIGNIFICANT ISSUES

A 2017 study done by Pew Charitable Trusts notes that New Mexico trails other states in its evaluation of tax incentives.[1] Further, the National Conference of State Legislatures has developed a state tax incentive evaluations database that contains reports from states from as far back as 2008.[2] For New Mexico, the database includes the *Tax Expenditure Report* published by TRD as well as copies of prior *New Mexico Film Production Tax Incentive Study* reports. However, the most recent reports for review from New Mexico are dated from 2016, though TRD has published new versions of the *Tax Expenditure Report* since then. Other states have reports as recent as 2021, such as Florida's *Economic Development Program Evaluations* report that contains industry analyses and job creation information.

EDD notes that modeling software and access to data are impediments to evaluating tax expenditures, which will require funding to support, as well as staffing. An estimated $342 thousand will be needed for software. The bill currently provides for access to data but does not provide recurring funding for authorized FTE for TRD or EDD. The department further notes that "many other states that perform this work on an annual basis either hire permanent staff to focus on this singular but monumental task or contract out the work."

EDD also notes that, because TRD is allowed to request tax information from state agencies under SB69, there will need to be a balance between providing public accountability and maintaining taxpayer confidentiality. EDD also notes evaluating one tax incentive at a time is challenging, even though overall it can be a useful tool, and states evaluating one incentive in isolation can be problematic because some are used in combination.

Further, because some tax credits already require an effectiveness and economic analysis, this bill may duplicate efforts by other agencies. For instance, the most comprehensive requirement, passed in the 2019 session (Chapter 87, SB2) pertains to the film tax credit, which requires EDD to perform an economic assessment of the credit along with support from LFC and TRD staff. Definitions of "economic development" related to the reporting requirements for tax expenditures of $10 million or more could be further clarified. Without this clarification, TRD

[1] Pew Charitable Trusts, "How States Are Improving Tax Incentives for Jobs and Growth", May 2017, https://www.pewtrusts.org/en/research-and-analysis/reports/2017/05/how-states-are-improving-tax-incentives-forjobs-and-growth

[2] National Conference of State Legislatures. "State Tax Incentives Evaluation Database." https://www.ncsl.org/research/fiscal-policy/state-tax-incentive-evaluations-database.aspx

notes the following:

> Assuming the film production tax credit is identified as having an "economic development purpose," current statutory language for the film production tax credit under 7-25-4 NMSA 1978 requires the Economic Development Department (EDD) to report on the effectiveness of the credit to meet the statutory goals. This bill potentially produces a duplication of effort for analyzing certain tax expenditures.

Previous version of this bill, such as Senate Bill 98 of 2021, provided for similar reporting on tax incentives but did not require other useful information such as information on job creation, something that is also generally reported on in other states like Florida. SB69 does address job creation and provides for additional clarity for reporting on economic development initiatives. However, previous bills only proposed to apply to Local Economic Development Act (LEDA) initiatives, whereas SB69 would apply to any tax expenditure over $10 million deemed to have an economic development purpose, which would expand the scope of reporting compared to prior versions of the bill.

PERFORMANCE IMPLICATIONS

New Mexico's current tax expenditure report is required by a 2012 executive order, rather than by statute. TRD notes that statutorily mandating a tax expenditure budget will bring New Mexico in line with the majority of states that have defined tax expenditure reporting requirements.

Further, TRD notes that the role of making an objective assessment of the effectiveness of a tax expenditure is often performed by an agency or branch of government separate from the agency charged with administering tax programs. TRD notes that the objectivity of its' assessment of its own administrative burdens may be biased and notes that in Colorado the Office of the State Auditor is the entity tasked with evaluating whether tax incentives are achieving intended outcomes. TRD is charged with administering the tax code, so to expand the Tax Administration Act to include an evaluation of the tax code may present a conflict of interest between taxpayers and the department.

ADMINISTRATIVE IMPLICATIONS

TRD notes the need for additional support staff as well as the need for an additional full-time economist, which will require $89.6 thousand per year to support. The agency notes the need for an additional 300 hours of contractual resources to create the additional reports required in SB69 and to complete the needed data gathering to complete the reports, which the agency estimates to cost $60 thousand in the first year. EDD notes the need for additional staff as well but did not provide estimates of cost.

TECHNICAL ISSUES

TRD notes the following potential amendment to SB69:

> Tax & Rev suggests that any tax expenditure's intended purpose be clearly written into law to assist Tax & Rev in assessing the effectiveness of each tax expenditure in meeting that purpose. A new proposed subsection to the bill could read as follows: "On and after January 1, 2022, any bill that creates a new tax expenditure or extends an expiring tax

expenditure shall include a legislative declaration stating the intended purpose of the tax expenditure." The suggested language is from Colorado's statute, C.R.S 39-21-304.

Further, the term "public support" is referred to on page 1, line 23, and page 2, lines 1 and 19. TRD suggests specifying in the language that this refers to public funds and suggests adding a definition for "baseline of a tax" (as listed on page 5, line 25). The agency suggests the definition to align with the 2021 TRD Tax Expenditure Report to say: "baseline tax system created by specific tax law provisions.'"

The requirement to report on all expenditures by October 15 of each year coincides with the requirement for TRD to complete an in-depth analysis of tax expenditures over $10 million. This leaves TRD with limited time to complete the analysis provided for in SB69 as they will not know what tax expenditures are over $10 million until it completes that initial report.

EDD also notes the need for additional staff to support the analyses and believes the agency will require its own appropriation to carry out the provisions in SB69.

OTHER SUBSTANTIVE ISSUES

As noted in previous fiscal impact reports on similar bills, tax expenditures often have unintended consequences. By narrowing the state's tax base, tax expenditures have contributed to rising tax rates in efforts to maintain revenue levels. Tax incentives are often used to address the problem of rising gross receipts tax rates by lowering the tax burden for specific industries. However, such incentives may ultimately end up worsening the pyramiding problem by reducing the tax base, which then puts upward pressure on tax rates.

Additionally, unlike other forms of spending, tax expenditures are often not reduced in lean times similar to other budgets. This results in a fiscal obligation that must be met regardless of the state's fiscal circumstances. The only way to control the outflow of revenue by way of tax expenditures is to amend the statutes, but the state typically lacks the information needed to craft the appropriate amendments. Also, it is often difficult to determine whether tax expenditures actually incentivize certain decisions or act as rewards for actions that would have occurred anyway. The economic analyses of certain high-costs economic development tax incentives required in this bill is a step in the direction of providing the Legislature and the public an opportunity to determine if these tax expenditures are fulfilling their intended purposes.

Further, Government Accounting Standards Board Statement 77 (GASB 77) was promulgated in August 2015 that requires certain information in state and local governmental financial statements. This Statement requires governments that enter into tax abatement agreements to disclose the following information about the agreements:

- Brief descriptive information, such as the tax being abated, the authority under which tax abatements are provided, eligibility criteria, the mechanism by which taxes are abated, provisions for recapturing abated taxes, and the types of commitments made by tax abatement recipients;
- The gross dollar amount of taxes abated during the period; and,
- Commitments made by a government, other than to abate taxes, as part of a tax abatement agreement. However, despite this requirement, the Legislature does not receive regular reporting on IRBs.

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WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without SB69, the state will continue to report on tax expenditures as required in the existing 2012 executive order rather than through statute.

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