Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Townsend/ Pettigrew/ Ezzell	**ORIGINAL DATE**	1/26/23
SHORT TITLE	Oil & Gas Dividends Tax Rebates	**BILL NUMBER**	House Bill 89
		ANALYST	Torres/Faubion/ Graeser

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
-	($3,170.28)	($1,860.37)	($1,086.75)	($451.95)	Recurring	Early Childhood Education & Care Fund
-	-	($31.95)	($104.09)	($200.05)	Recurring	ECE Program Fund
-	$3,170.28	$1,860.37	$1,086.75	$451.95	Recurring	Taxpayer Dividend Income Tax Rebate Fund

Parenthesis ( ) indicate revenue decreases
*Amounts reflect most recent version of this legislation.

Sources of Information
LFC Files

Responses Received From
State Investment Council (SIC)

No Response Received
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of House Bill 89

House Bill 89 (HB89) diverts excess emergency school tax and federal mineral leasing funds currently flowing to the early childhood education and care fund to a new fund—the taxpayer dividend income tax rebate fund (TDITRF).

HB89 also creates an annual income tax rebate for nondependent New Mexico taxpayers who file by May 31 each year. The rebate amount is based on the prior calendar year ending balance of the TDITRF and the total number of residents who filed an income tax return for the previous year.

The bill repeals 9-29A-3, the law governing current distributions to the early childhood education and care fund.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023,

(90 days after the Legislature adjourns) if signed. The applicability of rebates begins in tax year 2023.

FISCAL IMPLICATIONS

LFC estimated the fiscal impacts of this bill using the consensus revenues estimates (CREG) from December 2022. Because the effective date of the bill is in June and HB89 does not clarify the applicability of revenue flows by fiscal year, the bill is likely to intercept revenues relating to FY23 that are distributed in FY24. LFC assumes all revenue transfers are diverted from the early childhood education and care fund (ECTF) to the TDITRF beginning the effective date of the bill.

The reduction in revenues to the ECTF will reduce the balance of the ECTF and distributions to the program fund benefiting early childhood programming. The reduction in distributions from the ECTF will likely increase the burden on the general fund to pay for programs currently estimated to be covered by the ECTF.

LFC assumes a different impact on revenues to the fund than SIC due to a lack of clarity in the bill needed to determine when revenues should be diverted to the TDITRF. LFC estimates are shown in the tables above.

According to LFC estimates, rebate amounts are likely to be around $2,250 per taxpayer in 2024 (applying to tax year 2023), $1,350 per taxpayer in 2025 (tax year 2024), $750 per taxpayer in 2026 (tax year 2025), and $335 per taxpayer in 2027 (tax year 2026). As the distributions to the fund decline in future years, so would the rebate.

The following analysis is provided by SIC:

If passed, HB89 would divert inflows of what is projected over the next few years to be hundreds of millions of dollars from the early childhood education and care fund (ECECF) to the TDITRF for tax rebate payments.

The following projections developed by the Consensus Revenue Estimating Group (CREG) show the expected excess federal mineral leasing and emergency school tax contributions to the ECECF, starting with FY23:

Projected Excess FML & School Tax Contribution to Fund (dollars in millions)		
Fiscal Year	FML	OGAS School Tax
FY23	$ 1,917.1	$ 1,253.2
FY24	$ 1,113.5	$ 746.9
FY25	$ 612.9	$ 473.9
FY26	$ 220.9	$ 231.0

These inflows into the ECECF are invested into a strategic asset allocation developed and approved by the State Investment Council, with those earnings adding to the fund corpus, a portion of which is then distributed to the ECE Program Fund. The current statutory

distribution model is 5 percent of the three-year fund value as determined at the end of every calendar year.

Anticipated inflows to the ECECF are substantial for the years ahead, with the CREG projecting $3.86 billion and $2.70 billion to originate, respectfully, from the federal mineral leases and OGAS School Tax from FY23-FY26.

HB89 effectively zeroes out these new inflows to the ECECF, in favor or a tax rebate distribution. Through that diversion, there will be negative impact on ECECF distributions to the program fund beginning in FY25, as detailed below:

Projected Distribution to ECE Program Fund ($millions)				
Fiscal Year	**Distrib Date**	**HB 89 Projection**	Current Projection	Difference to ECE Program Fund
FY20	Jul-19	n/a		
FY21	Jul-20	n/a		
FY22	Jul-21	$ 20.0		
FY23	Jul-22	$ 30.0		
FY24	Jul-23	$ 68.0		
FY25	Jul-24	$ 122.8	$176.1	$ -53.3
FY26	Jul-25	$ 178.8	$318.8	$ -140.0
FY27	Jul-26	$ 182.8	$430.4	$ -247.6
		Total:	$925.3	$440.0

In the first three years under HB89, anticipated inflows of ~$6.5 billion to the ECECF would be redirected to tax rebates, having the immediate effect of lowering expected distributions from the ECECF to the ECE Program Fund. This amount would be $53.3 million the first year, and $440.9 million combined over the first three years, and with the subsequent negative impact on ECECF distributions increasing significantly every year thereafter.

Based on recent history, approximately 800 thousand tax rebate payments were made during the pandemic to individual taxpayers. Assuming that number holds steady, a fair estimate for pro-rata rebates to NM citizens would be approximately $3963 per taxpayer for tax year 2023, $2325 for tax year 2024, $1358 for tax year 2025, and $565 for tax year 2026. As expected O&G revenue tapers below the 5-year average, impact of diverting inflows to the rebate fund would diminish, as would the individual benefits to taxpayers.

Timing of how these funds are transferred as well as the divergence between fiscal years and tax years would potentially impact benefits and how they would be distributed over individual years.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and

equity.

SIGNIFICANT ISSUES

Because the formula for calculating the tax rebates is based on the prior number of tax filers, the money in the fund may be insufficient to cover the rebates in any given year. If the previous year's number of related filers is less than the number of qualified filers in the current year, there will be insufficient money in the TDITRF to provide for the statutorily required rebates.

The reduction of available funds for early childhood education may impact the programming and outcomes of early childhood services provided in New Mexico.

PERFORMANCE IMPLICATIONS

From SIC:

> One unintended consequence of making adjustments to the ECECF's anticipated inflows would likely result in the State Investment Council being unable to optimize the ECECF's asset allocation and returns. Currently the ECECF allocation is expected to produce a return of 5.7% compounded annually over a full market cycle. The Council will consider moving to a more aggressive growth allocation (similar to the Land Grant Permanent Fund's allocation which targets 7% returns), unless it appears that the fund's spending policy will change significantly, its inflow stream is to be disrupted or other external uncertainties that make it not prudent to invest aggressively into illiquid assets with a longer-term horizon.

TECHNICAL ISSUES

The bill does not specify when revenues should begin distribution to the TDITRF and should clarify fiscal year applicability. The lack of clarity could significantly impact estimated impacts based on the timing of distributions to the fund.

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 considered by interim committees.
Targeted	✘	
Clearly stated purpose	✘	No purpose statement included.
Long-term goals	✘	
Measurable targets	✘	
Transparent	✔	Will be reported by TRD.
Accountable		
Public analysis	✔	
Expiration date	✘	
Effective		
Fulfills stated purpose	?	
Passes "but for" test	?	
Efficient	?	Unclear purpose.
Key: ✔ Met ✘ Not Met ? Unclear		

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