FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Hernandez	**ORIGINAL DATE**	2/2/24
SHORT TITLE	High-Wage Jobs Credit Determinations	**BILL NUMBER**	House Bill 275
		ANALYST	Torres, Ismael

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
High Wage Jobs Credit				($6,600.0)	($6,800.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
New Mexico Attorney General (NMAG)
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 275

House Bill 275 (HB275) amends current language pertaining to the High-Wage Jobs Tax Credit, reducing the amount of time the Taxation and Revenue Department has to make a determination on an application for a High-Wage Jobs Tax Credit to be in line with other tax credits; clarifies willful submission of a certification for the credit and amends definitions applicable to the credit.

HB275 removes the time period of within 180 days of the date of which an application was filed for the Taxation and Revenue Department to make a determination of eligibility for the credit. The bill also removes an "incorrect" submission of a certification from penalty, with only "false" or "fraudulent" certifications subject to penalty.

HB275 removes the definitions of "domicile" and "resident" and amends the definition of "eligible employee" to an individual who is employed in New Mexico by an eligible employer and who is a resident as defined in the Income Tax Act for 44 weeks of a qualifying period. The bill also amends the definition of an "eligible employer" as an employer that, during the applicable qualifying period, the employer also be eligible for the development training program assistance under the policies in effect for the fiscal year of the qualifying period that closed during the calendar year for which the application is made or the policies in effect that define development training program eligibility.

The bill extends the time period for a newly created high-wage job from July 1, 2026, to July 1, 2030. HB275 also amends the definition of a "new job" that is occupied by an employee who has not been employed in New Mexico by an eligible employer, from three years prior to the date of hire, to 12 months prior to the date of hire.

The bill amends the definition of "threshold job" removing the language that the job is occupied for a least forty-four weeks of a calendar year and replaced with is occupied for a least 44 weeks of the first 52 weeks of employment by an employee; provided that the 52 week period begins on the day the eligible employee occupies the job.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

This bill may expand a tax expenditure. 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.

The proposed changes to the definitions under Section 7-9G-1 NMSA 1978 present some technical concerns as outlined below under "Technical Issues." The fiscal impact is based solely on the extension of the eligibility date from prior to July 1, 2026 to prior to July 1, 2030. There is potential for increased fiscal impact given changes that loosen requirements on hiring gaps to qualify for the credit from three years to one year, among other changes. The average aggregate amount applied in the last four fiscal year years is $6 million and was grown using the University of New Mexico's Bureau of Business and Economic Research (BBER) January 2024 forecast. The Taxation and Revenue Department (TRD) indexed the data to fiscal year 2027 and then grew the estimate annually by BBER's New Mexico's wage and salary growth.

SIGNIFICANT ISSUES

The definition of "eligible employer", delegates to the industrial training board the authority to decide which manufacturers and which services companies may claim the credit. This violates the nondelegation doctrine and removes public accountability because the board does not answer to the public. The board can devise the policies, but the Legislature and governor should approve the policies. In this case, for example, the board could expand who qualifies as an 'eligible employer.' The amount of the credits issued could increase materially without legislative or governor's approval.

TRD notes:

The deletion of "resident" and "domicile" would mean that non-domiciled employees who are not currently 'eligible employees' could be eligible for the credit. Most HWJTC applications include numerous non-residents, and the financial impact could be substantial. By defining resident per the Income Tax Act or by withholding for a certain amount of time rather than domicile, the credit is now incentivizing the hiring of employees who work in New Mexico and owe tax on income earned here, but is not restricted to employees who live in New Mexico. Employees who live in New Mexico are more likely to generate secondary tax revenue through gross receipts tax and other excise taxes on items purchased in New Mexico. This change would therefore reduce the indirect positive revenue impact of new hiring.

While tax incentives can support specific industries or promote desired social and economic behaviors, the growing number of such incentives complicates the tax code. Introducing more tax incentives has two main consequences: (1) it creates special treatment and exceptions within the code, leading to increased tax expenditures and a narrower tax base, which negatively impacts the General Fund; and (2) it imposes a heavier compliance burden on both taxpayers and TRD. Increasing complexity and exceptions in the tax code is generally not in line with sound tax policy.

The purpose of the high-wage jobs tax credit is to provide an incentive for businesses to create and fill new high-wage jobs in New Mexico. By reducing the time from three years to one year in the definition of 'new job' – meaning that to be a "new job", the job must be occupied by an employee who has not worked for the employer for the past year, rather than the past three years -- it may incentivize a lay-off rehire cycle and may not incentivize a business in New Mexico to create truly "new" high wage jobs.

PERFORMANCE IMPLICATIONS

The potential application of the credit to non-residents would negatively affect the outcomes of the credit in attempting to create jobs in New Mexico.

TECHNICAL ISSUES

The New Mexico Attorney General states:

The changes to the definition of "eligible employee" might not conform with the intent of the bill. The changes would define the term in part as "an individual who . . . has wages withheld pursuant to the Withholding Tax Act for forty-four weeks of a qualifying period[.]" As written, that text would refer only to an individual who has wages withheld for exactly forty-four weeks, or 308 days, of a qualifying period—and no more than that. Perhaps the intent was to say that wages are withheld for *at least* forty-four weeks of that period.

Depending on the intent of the change to the definition of "eligible employee," "at least" should be inserted after "for" on page 9, line 9.\

The Taxation and Revenue Department adds:

> On pages 9 and 10, the new language proposed in the definition of "eligible employer" -- "policies in effect for the fiscal years" -- is unworkable if the policies change during the year. For taxpayers to be able to predict the impact of their applications on their own operations and budget, the policy at the time of the application should control. TRD suggests "…policy in effect at the time the application for the credit is filed with the department that defined development training program eligibility developed by the industrial training board in accordance with Section 21-19-7 NMSA 1978."
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> On page 12, lines 15 through 20, the amended definition of "threshold job" would be difficult to administer. The application review and approval are based on qualifications within a calendar year in which the qualifying periods claimed ends. The "threshold job" definition is used to calculate an increase for each eligible employee claimed on the application based on all employees employed by the company claiming the credit. Because most businesses who claim the HWJTC have more than 1,000 employees this would require an excessive amount of documentation to be provided by the taxpayer which would be burdensome to the taxpayer. The burden also extends to TRD, by changing 44 weeks of a calendar year to the first 52 weeks of employment, TRD would need to review complete payroll documentation for every employee for the calendar year after the qualifying periods claimed ended in addition to the payroll reports for the employees being claimed. Documentation for the following calendar year is typically not available until after the application is due causing issues with the review timeline and receiving complete applications.
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> [Further, for administrative purposes the Taxation and Revenue Department notes it] is recommended that a July 1, 2024, effective date be included in the bill.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	**Met?**	**Comments**
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.	✗	
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	?	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	
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. Public analysis Expiration date	 ✓ ✓	
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. Fulfills stated purpose Passes "but for" test	 ✗ ✗	Allowing the hiring of out-state-workers is both an ineffective and inefficient way to create jobs in New Mexico.
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	✗	
Key: ✓ Met ✗ Not Met ? Unclear		

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