

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 3 February 2025

Check all that apply:

Bill Number: SB211

Original x Correction
Amendment Substitute

Sponsor: Sen. Michael Padilla, Sen.
William P. Soules, Rep.
Joshua N. Hernandez, Rep.
Meredith A. Dixon

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Analysis: AAG Jeff Dan Herrera

Short Title: Quantum Facility
Infrastructure Tax Credit

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Senate Bill 211 (“SB211” or the “Bill”) creates tax credits for expenditures made or incurred by taxpayers for the purpose of developing a “quantum facility.” Under the Bill, a quantum facility means a facility at which “research and development in quantum technology is conducted.” Quantum technology is technology that relies and utilizes the behavior of physical systems at an atomic or sub-atomic level. As defined in the Bill, it is “technology that relies on quantum superposition or quantum entanglement or innovations that enable those technologies.”

Section One

Section One of the Bill adds new material to the Income Tax Act, Chapter 7, Article 2 NMSA 1978. Section One creates an income tax credit for qualifying expenditures made in furtherance of developing quantum facilities. The Section requires that a taxpayer make, at minimum, \$3 million in qualifying expenditures. Above that amount, a taxpayer may claim an income tax credit in an amount equal to 30% of the qualifying expenditures, up to \$50 million per quantum facility. The Economic Development Department must certify expenditures in order for a taxpayer to receive the tax credit. A taxpayer must apply for preliminary certification prior to incurring such an expenditure and, within twelve months of completion of construction, apply for a final certification. The aggregate final certifications of both income tax credits and corporate income tax credits, *see* Section Two *infra*, may not exceed \$75 million; however, in years in which the state is awarded a national science foundation regional innovation engine award, the maximum aggregate shall increase to \$150 million. If the tax credit exceeds the taxpayer’s total income tax liability, that amount shall be refunded to the taxpayer. The Section contains additional provisions outlining tax credit liabilities with respect to married persons and proportional ownership of partnerships or limited liability companies.

Section Two

Section Two of the Bill adds new material to the Corporate Income and Franchise Tax Act, Chapter 7, Article 2A NMSA 1978. Section Two contains almost identical provisions as those in Section One, but to create a corporate income tax credit for expenditures made in developing quantum facilities. The same aggregate limits identified in Section One are found in Section Two. The only difference is that the provisions for married persons and proportional ownership of partnerships or limited liability companies are not present.

Section Three

Section Three of the Bill creates a delayed repeal provision, repealing both Sections One and Two effective January 1, 2036.

Section Four

Section Four of the Bill creates, in effect, a delayed implementation provision. Under Section Four, the terms of the Bill only apply to taxable years beginning on or after January 1, 2025.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

As drafted, the Bill does not identify to whom the aggregate limit created in Sections One and Two applies. Subsection B of both Sections One and Two states that there is a \$50 million limit of tax credit per facility. However, Subsection D of both Sections One and Two states, “The maximum aggregate amount of quantum technology infrastructure income tax credits and quantum facility infrastructure income tax credits that may be certified shall not exceed seventy-five million dollars [...]” It is not clear from the language of the Bill whether this is \$75 million across all taxpayers, \$75 million per taxpayer, or \$75 million per facility. A small addition to clarify might benefit the legislation.

It is unsettled law in New Mexico, however, a tax credit in this vein, potentially could be deemed to be a donation in violation of the anti-donation clause of the New Mexico Constitution. *See Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30, 100 N.M. 342, 670 P.2d 953 (holding a gross receipts tax reduction for liquor licensees during a period of “economic adjustment” to be an unconstitutional subsidy to the liquor industry).

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

RELATIONSHIP

The Bill relates to SB212. SB212 provides for gross receipts tax credits for funds received for quantum testing and evaluation services.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.