

1 SENATE BILL 135

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Sue Wilson Beffort

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; PROVIDING STATE TAX CREDITS FOR PRIVATE
12 SECTOR EMPLOYERS QUALIFIED TO CLAIM FEDERAL WORK OPPORTUNITY
13 TAX CREDITS FOR EMPLOYING LONG-TERM FAMILY ASSISTANCE
14 RECIPIENTS LOCATED IN HIGH-UNEMPLOYMENT COUNTIES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 7-2-18.5 NMSA 1978 (being Laws 1998,
18 Chapter 97, Section 2) is amended to read:

19 "7-2-18.5. [~~WELFARE-TO-WORK~~] WORK OPPORTUNITY INCOME TAX
20 CREDIT.--

21 A. Any taxpayer who files an individual New Mexico
22 income tax return and is not a dependent of another taxpayer
23 and is entitled to claim the federal [~~welfare-to-work~~] work
24 opportunity tax credit provided by 26 U.S.C. Section [~~51A~~] 51
25 with respect to a state-qualified employee in a state-qualified

.183361.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 job may take a tax credit equal to fifty percent of the amount
2 of the [~~welfare-to-work~~] work opportunity tax credit claimed
3 and allowed under 26 U.S.C. Section [~~51A~~] 51 with respect to
4 that employee in that job. The tax credit provided in this
5 section may be referred to as the "work opportunity income tax
6 credit".

7 B. The purposes of the work opportunity income tax
8 credit provided in this section are to supplement federal work
9 opportunity tax credits claimed by employers in high-
10 unemployment counties of New Mexico and to encourage employment
11 of persons who are long-term family assistance recipients,
12 identified as qualified IV-A recipients in Title 26, Section
13 51(d)(1)(A) of the Internal Revenue Code.

14 [~~B-~~] C. To be eligible for the work opportunity
15 income tax credit [~~provided by this section~~], a taxpayer must
16 be in compliance with the following provisions:

17 (1) the hiring of any state-qualified employee
18 shall not result in the displacement of any currently employed
19 worker or position, including partial displacement such as a
20 reduction in the hours of non-overtime work, wages or
21 employment benefits, or in any infringement of the promotional
22 opportunities of any currently employed individual;

23 (2) the hiring of any state-qualified employee
24 shall not impair existing contracts for services or collective
25 bargaining agreements, and no employment under the terms of

.183361.1

underscored material = new
[bracketed material] = delete

1 this ~~[act]~~ section shall be inconsistent with the terms of a
2 collective bargaining agreement or involve the performance of
3 duties covered under a collective bargaining agreement unless
4 the employer and the labor organization concur in writing;

5 (3) a state-qualified employee may fill or
6 perform the duties of an employment position only in a manner
7 that is consistent with existing laws, personnel procedures and
8 collective bargaining contracts;

9 (4) no state-qualified employee shall be
10 employed or assigned:

11 (a) when any other individual is on
12 layoff from the same or any substantially equivalent job;

13 (b) if the employer has terminated the
14 employment of any regular employee or otherwise caused an
15 involuntary reduction of its work force with the effect of
16 filling the vacancy so created with a state-qualified employee;
17 or

18 (c) to any position at a particular work
19 site when there is an ongoing strike or lockout at that
20 particular work site;

21 (5) state-qualified employees shall be paid a
22 wage that is substantially like the wage paid for similar jobs
23 with the employer with appropriate adjustments for experience
24 and training but not less than the federal minimum hourly wage;
25 and

.183361.1

underscored material = new
[bracketed material] = delete

1 (6) employers shall:

2 (a) maintain health, safety and working
3 conditions not less than those of comparable jobs offered by
4 the employer; and

5 (b) maintain standard and customary
6 entry-level wages and benefits and apply historical and normal
7 increases in wages and benefits appropriate for experience and
8 training of the state-qualified employee.

9 [~~G. For the purposes of this section:~~

10 ~~(1) "high-unemployment county" means a county~~
11 ~~in which the unemployment rate as reported by the labor~~
12 ~~department exceeds ten percent in six or more months of the~~
13 ~~calendar year preceding the year for which the tax credit~~
14 ~~provided by this section is claimed;~~

15 ~~(2) "state-qualified employee" means a "long-~~
16 ~~term family assistance recipient", as that term is defined in~~
17 ~~26 U.S.C. Section 51A(c), who resides in a high-unemployment~~
18 ~~county during the period of employment for which the welfare-~~
19 ~~to-work credit provided by 26 U.S.C. Section 51A applies with~~
20 ~~respect to that employee; and~~

21 ~~(3) "state-qualified job" means a job~~
22 ~~established by the taxpayer that:~~

23 ~~(a) when first occupied by a state-~~
24 ~~qualified employee results in the total number of the~~
25 ~~taxpayer's employees exceeding the average number of the~~

.183361.1

underscored material = new
[bracketed material] = delete

1 ~~taxpayer's employees during the taxpayer's preceding tax year;~~
2 ~~or~~

3 ~~(b) was a position previously filled by~~
4 ~~a state-qualified employee and was vacant prior to the hiring~~
5 ~~of the new state-qualified employee in that position.]~~

6 D. The [~~labor~~] workforce solutions department shall
7 determine whether the employee is a state-qualified employee
8 and whether the job is a state-qualified job and, if the
9 employee is a state-qualified employee and the job is a state-
10 qualified job, certify that fact to the employer. The taxpayer
11 claiming the work opportunity income tax credit [~~provided by~~
12 ~~this section~~] shall provide a copy of the certification with
13 respect to each employee for which the tax credit is claimed.

14 E. By [~~July 1, 1998 and by~~] January 31 of each
15 [~~subsequent~~] year, the [~~labor~~] workforce solutions department
16 shall certify to the taxation and revenue department the high-
17 unemployment counties for the preceding calendar year.

18 F. A husband and wife who file separate returns for
19 a taxable year in which they could have filed a joint return
20 may each claim only one-half of the work opportunity income tax
21 credit [~~provided by this section~~] that would have been allowed
22 on a joint return.

23 G. A taxpayer who otherwise qualifies may claim
24 [~~his~~] the taxpayer's pro rata share of the work opportunity
25 income tax credit [~~provided by this section~~] with respect to

.183361.1

underscored material = new
[bracketed material] = delete

1 state-qualified employees employed by a partnership or other
2 business association of which the taxpayer is a member. The
3 total tax credit claimed by all members of the partnership or
4 association shall not exceed the amount of tax credit provided
5 pursuant to Subsection A of this section with respect to each
6 state-qualified employee for which the credit is allowed.

7 H. The tax credit provided by this section may only
8 be deducted from the taxpayer's income tax liability. Any
9 portion of the tax credit provided by this section that remains
10 unused at the end of the taxpayer's taxable year may be carried
11 forward for three consecutive taxable years.

12 I. The department shall compile an annual report
13 that includes the number of taxpayers approved to receive a
14 work opportunity income tax credit and the aggregate amount of
15 those credits approved by the department. The report shall be
16 submitted to the revenue stabilization and tax policy committee
17 no later than October 30 of each year beginning in 2012.

18 J. The revenue stabilization and tax policy
19 committee shall review the effectiveness of the work
20 opportunity income tax credit allowed pursuant to this section
21 every five years beginning in 2013.

22 K. Acceptance by a taxpayer of a work opportunity
23 income tax credit pursuant to this section is authorization by
24 the taxpayer receiving the credit for the department to reveal
25 to the legislature for reporting and analysis purposes the

.183361.1

underscored material = new
[bracketed material] = delete

1 information deemed necessary by the department to allow the
2 legislature to determine the effectiveness of the tax credit.

3 L. A taxpayer claiming a work opportunity income
4 tax credit pursuant to the Income Tax Act shall not also claim
5 a work opportunity corporate income tax credit pursuant to the
6 Corporate Income and Franchise Tax Act.

7 M. As used in this section:

8 (1) "high-unemployment county" means a county
9 in which the unemployment rate as reported by the workforce
10 solutions department exceeds ten percent in six or more months
11 of the calendar year preceding the year for which the tax
12 credit provided by this section is claimed;

13 (2) "state-qualified employee" means a
14 "qualified IV-A recipient", as that term is defined in 26
15 U.S.C. Section 51, who resides in a high-unemployment county
16 during the period of employment for which the work opportunity
17 tax credit provided by 26 U.S.C. Section 51 applies with
18 respect to that employee; and

19 (3) "state-qualified job" means a job
20 established by the taxpayer that:

21 (a) when first occupied by a state-
22 qualified employee results in the total number of the
23 taxpayer's employees exceeding the average number of the
24 taxpayer's employees during the taxpayer's preceding tax year;
25 or

.183361.1

underscored material = new
[bracketed material] = delete

1 (b) was a position previously filled by
2 a state-qualified employee and was vacant prior to the hiring
3 of the new state-qualified employee in that position."

4 SECTION 2. Section 7-2A-8.8 NMSA 1978 (being Laws 1998,
5 Chapter 97, Section 3) is amended to read:

6 "7-2A-8.8. [~~WELFARE-TO-WORK~~] WORK OPPORTUNITY CORPORATE
7 INCOME TAX CREDIT.--

8 A. Any taxpayer [~~who~~] that files a New Mexico
9 corporate income tax return and [~~who~~] that is entitled to claim
10 the federal [~~welfare-to-work~~] work opportunity tax credit
11 provided by 26 U.S.C. Section [~~51A~~] 51 with respect to a state-
12 qualified employee in a state-qualified job may take against
13 the taxpayer's corporate income tax liability a tax credit
14 equal to fifty percent of the amount of the [~~welfare-to-work~~]
15 work opportunity tax credit claimed and allowed under 26 U.S.C.
16 Section [~~51A~~] 51 with respect to that employee in that job.
17 The tax credit provided in this section may be referred to as
18 the "work opportunity corporate income tax credit".

19 B. The purposes of the work opportunity corporate
20 income tax credit provided in this section are to supplement
21 federal work opportunity tax credits claimed by employers in
22 high-unemployment counties of New Mexico and to encourage
23 employers to employ persons who are long-term family assistance
24 recipients, identified as qualified IV-A recipients in Title
25 26, Section 51(d)(1)(A) of the Internal Revenue Code.

underscored material = new
[bracketed material] = delete

1 ~~[B-]~~ C. To be eligible for the work opportunity
2 corporate income tax credit [~~provided by this section~~], a
3 taxpayer must be in compliance with the following provisions:

4 (1) the hiring of any state-qualified employee
5 shall not result in the displacement of any currently employed
6 worker or position, including partial displacement such as a
7 reduction in the hours of non-overtime work, wages or
8 employment benefits, or in any infringement of the promotional
9 opportunities of any currently employed individual;

10 (2) the hiring of any state-qualified employee
11 shall not impair existing contracts for services or collective
12 bargaining agreements, and no employment under the terms of
13 this ~~[act]~~ section shall be inconsistent with the terms of a
14 collective bargaining agreement or involve the performance of
15 duties covered under a collective bargaining agreement unless
16 the employer and the labor organization concur in writing;

17 (3) a state-qualified employee may fill or
18 perform the duties of an employment position only in a manner
19 that is consistent with existing laws, personnel procedures and
20 collective bargaining contracts;

21 (4) no state-qualified employee shall be
22 employed or assigned:

23 (a) when any other individual is on
24 layoff from the same or any substantially equivalent job;

25 (b) if the employer has terminated the

underscored material = new
[bracketed material] = delete

1 employment of any regular employee or otherwise caused an
2 involuntary reduction of its work force with the effect of
3 filling the vacancy so created with a state-qualified employee;
4 or

5 (c) to any position at a particular work
6 site when there is an ongoing strike or lockout at that
7 particular work site;

8 (5) state-qualified employees shall be paid a
9 wage that is substantially like the wage paid for similar jobs
10 with the employer with appropriate adjustments for experience
11 and training but not less than the federal minimum hourly wage;
12 and

13 (6) employers shall:

14 (a) maintain health, safety and working
15 conditions not less than those of comparable jobs offered by
16 the employer; and

17 (b) maintain standard and customary
18 entry-level wages and benefits and apply historical and normal
19 increases in wages and benefits appropriate for experience and
20 training of the state-qualified employee.

21 ~~[G. For the purposes of this section:~~

22 ~~(1) "high-unemployment county" means a county~~
23 ~~in which the unemployment rate as reported by the labor~~
24 ~~department exceeds ten percent in six or more months of the~~
25 ~~calendar year preceding the year for which the tax credit~~

.183361.1

underscored material = new
[bracketed material] = delete

1 provided by this section is claimed;

2 (2) ~~"state-qualified employee" means a "long-~~
3 ~~term family assistance recipient", as that term is defined in~~
4 ~~26 U.S.C. Section 51A(c), who resides in a high-unemployment~~
5 ~~county during the period of employment for which the welfare-~~
6 ~~to-work credit provided by 26 U.S.C. Section 51A applies with~~
7 ~~respect to that employee; and~~

8 (3) ~~"state-qualified job" means a job~~
9 ~~established by the taxpayer that:~~

10 (a) ~~when first occupied by a state-~~
11 ~~qualified employee results in the total number of the~~
12 ~~taxpayer's employees exceeding the average number of the~~
13 ~~taxpayer's employees during the taxpayer's preceding tax year;~~
14 ~~or~~

15 (b) ~~was a position previously filled by~~
16 ~~a state-qualified employee and was vacant prior to the hiring~~
17 ~~of the new state-qualified employee in that position.]~~

18 D. The [~~labor~~] workforce solutions department shall
19 determine whether the employee is a state-qualified employee
20 and whether the job is a state-qualified job and, if the
21 employee is a state-qualified employee and the job is a state-
22 qualified job, certify that fact to the employer. The taxpayer
23 claiming the work opportunity corporate income tax credit
24 [~~provided by this section~~] shall provide a copy of the
25 certification with respect to each employee for which the tax

.183361.1

underscored material = new
[bracketed material] = delete

1 credit is claimed.

2 E. By ~~[July 1, 1998 and by]~~ January 31 of each
3 ~~[subsequent]~~ year, the ~~[labor]~~ workforce solutions department
4 shall certify to the taxation and revenue department the high-
5 unemployment counties for the preceding calendar year.

6 F. The work opportunity corporate income tax credit
7 ~~[provided in this section]~~ may only be deducted from the
8 taxpayer's corporate income tax liability. Any portion of the
9 work opportunity corporate income tax credit ~~[provided by this~~
10 ~~section]~~ that remains unused at the end of the taxpayer's
11 taxable year may be carried forward for three consecutive
12 taxable years.

13 G. The department shall compile an annual report
14 that includes the number of taxpayers approved to receive a
15 work opportunity corporate income tax credit and the aggregate
16 amount of those credits approved by the department. The report
17 shall be submitted to the revenue stabilization and tax policy
18 committee no later than October 30 of each year beginning in
19 2012.

20 H. The revenue stabilization and tax policy
21 committee shall review the effectiveness of the work
22 opportunity corporate income tax credit allowed pursuant to
23 this section every five years beginning in 2013.

24 I. Acceptance by a taxpayer of a work opportunity
25 corporate income tax credit pursuant to this section is

.183361.1

underscored material = new
[bracketed material] = delete

1 authorization by the taxpayer receiving the credit for the
2 department to reveal to the legislature for reporting and
3 analysis purposes the information deemed necessary by the
4 department to allow the legislature to determine the
5 effectiveness of the work opportunity corporate income tax
6 credit.

7 J. A taxpayer claiming a work opportunity corporate
8 income tax credit pursuant to the Corporate Income and
9 Franchise Tax Act shall not also claim a work opportunity
10 income tax credit pursuant to the Income Tax Act.

11 K. As used in this section:

12 (1) "high-unemployment county" means a county
13 in which the unemployment rate as reported by the workforce
14 solutions department exceeds ten percent in six or more months
15 of the calendar year preceding the year for which the tax
16 credit provided by this section is claimed;

17 (2) "state-qualified employee" means a
18 "qualified IV-A recipient", as that term is defined in 26
19 U.S.C. Section 51, who resides in a high-unemployment county
20 during the period of employment for which the work opportunity
21 tax credit provided by 26 U.S.C. Section 51 applies with
22 respect to that employee; and

23 (3) "state-qualified job" means a job
24 established by the taxpayer that:

25 (a) when first occupied by a state-

underscoring material = new
[bracketed material] = delete

1 qualified employee results in the total number of the
2 taxpayer's employees exceeding the average number of the
3 taxpayer's employees during the taxpayer's preceding tax year;
4 or

5 (b) was a position previously filled by
6 a state-qualified employee and was vacant prior to the hiring
7 of the new state-qualified employee in that position."

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25