Fiscal Note 2023 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	HB0629	**Title:**	Provide for job creation tax credits
Primary Sponsor:	Fern, Dave	**Status:**	As Amended in Senate Committee

☐Significant Local Gov Impact ☒Needs to be included in HB 2 ☒Technical Concerns

☐Included in the Executive Budget ☒Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	$0	$165,067	$105,974	$107,564
Revenue:				
General Fund	$0	($213,000)	($479,000)	($566,000)
Net Impact-General Fund Balance:	$0	($378,067)	($584,974)	($673,564)

Description of fiscal impact: HB 629 as amended in the Senate Taxation Committee, would create a nonrefundable income tax credit for employers who hire at least ten qualifying new employees. The Department of Labor & Industry (DLI) would be responsible for the administration of the tax credit, in conjunction with the Department of Revenue. The first amendments clarify that qualifying wages need to be Montana wages, and the qualifying job creation threshold is lower in counties with populations under 20,000 (five jobs the first year and seven jobs in subsequent years instead of 10 jobs and 15 jobs, respectively). The second amendment changed the economic activity sectors eligible for the credit and limited the credit to these sectors alone. The third set of amendments, moves the base year to CY 2021, the first tax applicability to TY 2022, extends the program one year (through TY 2028), and provides contingent language deferring applicability in order to address the American Rescue Plan Act.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. HB 629 creates an employer job incentive tax credit. This would be a non-refundable individual or corporate income tax credit that can be carried forward up to ten years and can be claimed by employers with qualifying net employee growth.
2. The amendments in the Senate Taxation Committee eliminates the retroactive applicability for TY 2021, extends the applicability one year (through TY 2028), provides that the $50,000 minimum qualifying wage

be adjusted for inflation each year, and adds American Rescue Plan Act (ARPA) contingent termination language that would delay the effective date of the bill, if necessary. The indexing of the wage threshold is unlikely to affect any of the qualifying jobs for several years given the range and distribution of wages in the qualifying sectors. Future sector wage growth will likely defer those effects even longer. The ARPA contingent language could defer implementation, subject to the conditions in new section 25 (see technical note #2).

3. Qualifying net employee growth is defined as having net job growth of at least ten new jobs during the first year the credit is claimed relative to the employer's full-time equivalent jobs in 2021. The employer must have net job growth of at least 15 in any subsequent year to continue claiming the credit, for up to seven years. The baseline for an employer's number of jobs to determine job growth is their employment in calendar year (CY) 2021. This bill (as first amended) includes a reduced employee growth threshold of five new jobs in the first year and seven in subsequent years for counties with a population of less than 20,000. This reduced threshold would currently apply to 46 of Montana's 56 counties. The lower threshold is expected to lead to moderately increase in credit claims in some industries.
4. The second amendment modified the list of sectors that qualify for the credit and removed language that allowed sectors outside of the list to apply for the credit. The sectors that qualify for the credit are now: construction, natural resources, mining, agriculture, forestry, manufacturing, transportation, utilities, and outdoor recreation. These limitations are expected to reduce the credit claims for some occupations.
5. A qualifying new employee is defined as an employee who is initially hired during the credit period and who is employed for at least six months during the year for which the credit is granted. A qualifying new employee must earn an average annual wage of $50,000, plus benefits. The bill as now amended raises the threshold commensurate with inflation.
6. The amount of the credit is equal to 50% of the taxpayer's federal tax liability for the qualified new employees under 26 U.S.C 3111 (a) and (b). The total employer tax liability under 26 U.S.C 3111 (a) and (b) is 7.65% of the paid wages.
7. The tax credit claimed under this bill would be 3.825% of the wages or salary for each qualifying new employee hired in the credit period.
8. It is assumed that the tax credit would be claimed for a portion of new jobs in each industry based on the distribution of salaries (25^{th} percentile, median, 75^{th} percentile) in that industry and the likelihood of an employer in that industry satisfying the requirements for qualifying net employee growth.
9. The number of qualifying new jobs was estimated using data from the Montana Employment and Labor Force Projections report (2018-2028) from the Department of Labor and Industry (DLI) and the Quarterly Census of Employment and Wages. These estimates are based on current job growth estimates and does not include any marginal job growth as a result of the incentives created by this bill.
10. These estimates, along with the estimated average salary for the qualifying new employees, the average tax credit amount for each qualifying new employee in the respective occupation, and the estimated total tax credits claimed for qualified employees hired in TY 2021, if the credit were effective then, are shown in the table below. These estimates exclude the number of (qualifying) new employees in each occupation account from the public-sector and non-profit organizations since they would not claim credits, as a result of having no tax liability.

Occupation	Estimated Number of Qualifying New Employees per Year	Estimated Salary of Qualifying New Employees	Mean Tax Credit Per Qualifying New Employee	Total Possible Tax Credit Tax Year 2021
Architecture and Engineering	45	$85,750	$3,280	$147,597
Business and Financial Operations	30	$73,900	$2,827	$84,800
Computer and Mathematical	30	$75,920	$2,904	$87,118
Construction and Extraction	90	$59,930	$2,292	$206,309
Installation, Maintenance, and Repair	45	$58,170	$2,225	$100,125

Legal	15	$79,220	$3,030	$45,452
Life, Physical, and Social Science	15	$67,720	$2,590	$38,854
Management	15	$108,650	$4,156	$62,338
Transportation and Material Moving	20	$60,830	$2,327	$46,535
Total	**305**			**$819,129**

11. This bill, as amended, would no longer apply retroactively, and would apply to tax years (TY) beginning after December 31, 2021. It is assumed that the tax credit would be claimed for all qualifying new employees hired starting with TY 2022. It is assumed that tax credits claimed for TY 2022 would impact tax revenues in FY 2023 due to the timing of most tax returns. The total possible credit amount for TY 2021 from the table above was grown by the Montana wage income growth rates in HJ 2(4.2% for 2022) to get the possible credit amounts for TY 2022, TY 2023 and TY 2024.
12. This bill would no longer apply retroactively to TY 2021. The bill now begins after December 31, 2021. It is assumed that the tax credit would be claimed for all qualifying new employees hired starting with TY 2022. It is assumed that tax credits claimed for TY 2022 would impact tax revenues in FY 2023 due to the timing of most tax return filings.
13. This credit would be non-refundable and able to be carried forward up to 10 years. Some businesses do not have a tax liability or have a tax liability of less than the credit amount they would be able to claim, and these enterprises would carry-over all or a portion of the credit to future tax years when they may have a tax liability. It is assumed that in TY 2022, 50% of the potential total credit amount due to qualified new employees hired in that tax year would be paid out and result in a decrease in general fund tax revenue. That percentage is assumed to increase to 60% in TY 2023, 70% in TY 2024, and 80% in TY 2025, because the credit can be carried forward.
14. Due to the requirement of qualifying new employees working at least six months in the tax year that the credit is granted, it is assumed that employees hired more than six months into a given tax year would not be claimed until the following tax year. This means the impact on tax revenues from credits in TY 2022 would be half of the estimated tax credits claimed for qualifying new employees hired in TY 2022. Therefore, the estimated decrease in tax revenue for FY 2023 would be approximately $213,000. The total tax credits for FY 2024 would be a combination of the credits claimed for hires in the second half of TY 2022 and hires in the first half of TY 2023. The above adjustments result in an estimated decrease in general fund tax revenue of $213,000 in FY 2023, $479,000 in FY 2024, and $587,000 in FY 2025.
15. This bill includes an appropriation from the general fund to the Department of Revenue for $353,000 in FY 2022 and $271,895 in FY 2023 to administer this bill. The department would have no significant additional costs implementing this bill (see Technical Note #1).
16. This bill has a termination date of December 31, 2028; however, credits could be carried forward for an additional 10 years.

The Department of Labor & Industry (DLI)

17. The Workforce Services Division (WSD) of DLI would be required to create, receive, and administer applications from employers applying for the tax credit in HB 629. WSD estimates 1.00 FTE would be required to administer this program. This FTE would be classified as an Economist 2, with an annual salary and benefits of $84,037. This employee would calculate, track, and produce data to comply with HB 629, as well as administer the program and audit employer applications after wage reports are collected by DLI.
18. In addition to salary and benefits, WSD would have increased annual operating costs of $20,371. This includes $7,353 for the DLI cost allocation plan calculated at 8.75% of personal services, $1,710 for rent, $2,904 in technology services costs calculated at $242 per month per FTE, and $8,404 for items such as telephone, copiers/scanners, utilities, minor equipment and supplies calculated at 10% of personal services costs.
19. This position would require one-time-only start-up operating costs of $2,800 that includes $1,600 for furniture and $1,200 for a computer.

20. There will be need for significant legal counsel during the first year to assist with program establishment, process development and rule creation. DLI assumes this will require approximately 100 hours of legal work during the first year. At DLI's current legal rate of $102/hour, this will cost the program $10,200 in the first year.
21. WSD will draft rules to implement this legislation for employers to apply for a tax credit. It is assumed there will be a 15-page rule notice and a five-page adoption notice. The Secretary of State's office charges $60 per page for printing and publication of rules for a cost of $900.
22. A rules hearing will be held for a maximum of two hours with a hearing officer and court reporter to record public comments and provide a transcript of the proceedings. Total estimated cost of the hearing is $759. This includes 2 hours of a hearing officer at $102+/hour, $55 for the court reporter and $500 for transcription costs at $5 per page for 100 pages over two hours.
23. WSD would provide notification to an estimated 46,000 employers across the state who may be eligible for this tax credit, regarding the rule notice and ability to provide written or oral comment to the proposed rules. A post card will be sent to all employers at a cost of $1 per post card (printing, labeling and postage) for a cost of $46,000.
24. DLI assumes general fund resources will be used to fund the expenditures of this program.

Fiscal Impact:	**FY 2022 Difference**	**FY 2023 Difference**	**FY 2024 Difference**	**FY 2025 Difference**
Department of Labor and Industry (DLI) & the Department of Revenue (DOR)				
FTE (DLI)	0.00	1.00	1.00	1.00
Expenditures:				
Personal Services (DLI)	$0	$84,037	$85,298	$86,577
Operating Expenses (DLI)	$0	$81,030	$20,677	$20,987
Transfers	$0	$0	$0	$0
TOTAL Expenditures	$0	$165,067	$105,974	$107,564
Funding of Expenditures:				
General Fund (01)	$0	$165,067	$105,974	$107,564
TOTAL Funding of Exp.	$0	$165,067	$105,974	$107,564
Revenues:				
General Fund (01)	$0	($213,000)	($479,000)	($587,000)
TOTAL Revenues	$0	($213,000)	($479,000)	($587,000)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	($378,067)	($584,974)	($694,564)

Long-Term Impacts:

Department of Revenue

1. The credit could be claimed through TY 2028 but with the 10-year carry-forward provision, revenues could be impacted through FY 2039.

Technical Notes:

Department of Revenue

1. This bill includes a general fund appropriation to the Department of Revenue, but the FTE and significant administrative costs would accrue to the Department of Labor and Industry. The appropriation should go directly to DLI.
2. The estimates in this fiscal note assume that this bill would not be impacted by Section 9901 of the American Recovery Plan Act (ARPA) which adds New Section 602 to 42 U.S.C. 801. If the ARPA contingent termination section were to take effect, the estimated impacts would be shifted to whatever year the bill went into effect.

The Department of Labor & Industry

3. DLI does not have a mechanism to collect "qualifying net employee growth" as defined in Section 1(9)(h). This information would have to be collected from the employer at the time of application. DLI would have to depend on the accuracy of submitted data to determine whether the employer met the definition of a "qualifying employer" under Section 1(9)(g).
4. HB 629 requires a significant amount of personally identifiable information (PII) to be passed back and forth between DLI and the Department of Revenue to administer this legislation.
5. WSD does not have an automated system to collect this information from employers, so without extensive costs to create a new system, this would be a manual application and collection process.
6. DLI is unable to estimate the number of employers that would likely be eligible for this tax credit as the information needed for this estimate is not currently captured in current data reporting structures.
7. Section 1(4), as well as the amount of money likely to be involved, will likely lead to appeals of denials to the Office of Administrative Hearings, and potentially district court. DLI is unable to predict costs associated with those appeals. Due to the likely amount of any tax credit under this legislation, the incentive to challenge a denial is increased.

NOT SIGNED BY SPONSOR

	4/22/21	KA	4-23-21
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*