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## FISCAL IMPACT REPORT

**BILL NUMBER:** Senate Bill 170

**SHORT TITLE:** Child Care Facility Donation Tax Credit

**SPONSOR:** Berghmans

**LAST UPDATE:** 02/03/26      **ORIGINAL DATE:** 1/30/26      **ANALYST:** Graeser

### REVENUE\*

(dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
PIT/CIT	0	(\$10,000.0)	(\$10,000.0)	(\$10,000.0)	(\$10,000.0)	Recurring	General Fund

Parentheses indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
ECECD	Up to \$100.0	Up to \$100.0	Up to \$100.0	Up to \$300.0	Recurring	General Fund
TRD	Up to \$100.0	Up to \$100.0	Up to \$100.0	Up to \$300.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

### Agency or Agencies Providing Analysis

New Mexico Ethics Commission

Taxation and Revenue Department

Early Childhood and Care Department

## SUMMARY

### Synopsis of Senate Bill 170

Senate Bill 170 (SB170) creates the Child Care Facility Donation Personal Income Tax Credit and a companion Corporate Child Care Facility Donation Corporate Income Tax Credit. The credits equal 100 percent of eligible donations made to certified childcare facilities, with a per-taxpayer cap of \$500 thousand in donations and corresponding credits. The combined annual cap for personal and corporate income tax credits is \$10 million. Applications for the credits would be reviewed and approved by the Early Childhood Education and Care Department (ECECD). Credit amounts exceeding a taxpayer's liability would be refundable.

To qualify, donations must be monetary; made to a certified childcare facility or program that meets state subsidy enrollment requirements; used to promote childcare in New Mexico for children age twelve or younger; and certified by ECECD. Owners of childcare facilities are ineligible for the credit.

The bill does not specify an effective date and would therefore take effect 90 days after legislative adjournment, on May 20, 2026. The credits apply to taxable years beginning January 1, 2026, and sunset for taxable years after January 1, 2037.

## FISCAL IMPLICATIONS

This bill creates a new tax expenditure with potentially significant fiscal cost. LFC has longstanding concerns regarding the risks tax expenditures pose to state revenues, particularly when they erode the tax base and increase revenue volatility. Estimating the cost of this credit is especially challenging due to potential interactions with existing tax expenditures and ongoing budget proposals. LFC recommends the bill adhere to the committee's tax expenditure policy principles related to vetting, targeting, evaluation, and reporting, or action be deferred until the fiscal implications are more fully understood.

Three categories of taxpayers would be eligible to claim the credit:

1. Parents who pay for childcare services may be able to characterize those payments as donations and receive a refundable credit equal to the full amount paid. This issue is discussed further in the Technical Implications section and may hinge on regulatory interpretation of the term “otherwise affiliated” in Section 1, Subsection J.
2. Employers could contract with independent childcare providers to cover 100 percent of employee childcare costs as a fringe benefit, with those costs fully reimbursed through the credit.
3. Philanthropic individuals or nonprofit entities could donate up to the \$500 thousand per-taxpayer limit and receive full reimbursement through the refundable credit.

Because the credit reimburses 100 percent of eligible donations, demand for the credit is expected to be high. Eligible taxpayers would have a strong incentive to apply early to secure reimbursement before the \$10 million annual cap is reached. This expectation underlies the assumption that the full annual cap would be utilized, as reflected in the revenue table on page 1 of this review.

If enacted, the credit would interact fiscally with existing and proposed state childcare supports. First, if the enacted appropriations bill funds ECECD's request to implement universal childcare, this credit would increase total state costs beyond those proposed for that initiative. In effect, the credit would function as a transfer of general fund resources from all taxpayers to childcare providers through the tax code.

Second, the state already provides substantial support for childcare through existing tax expenditures, as documented in the Taxation and Revenue Department's 2025 Tax Expenditure Report:

- **Child Care Providers GRT Deduction** (Sections 7-9-77.2(A)-(B) NMSA 1978): Allows deductions for receipts from childcare assistance services provided under ECECD contracts or grants and for pre-kindergarten services. The estimated FY25 general fund cost is \$7.8 million, with an additional \$5.2 million impact on local governments, for a total annual cost of approximately \$13 million.
- **Child Care to Prevent Indigency Credit (PIT)** (Section 7-2-18.1 NMSA 1978): A refundable credit equal to 40 percent of childcare expenses for low-income taxpayers, capped at \$480 per child and \$1,200 per household. Estimated general fund cost in tax year 2024 is approximately \$200 thousand.
- **Child Income Tax Credit (PIT)** (Section 7-2-18.34 NMSA 1978): A refundable credit for qualifying children, significantly expanded in 2023. The estimated general fund cost in tax year 2024 is approximately \$134 million. The credit expires January 1, 2032.

In addition, publicly available data from the Winnie website indicate that annual childcare costs in New Mexico vary by age and type of care but can exceed \$10,000 per child for center-based toddler and preschool care. At that cost level, the \$10 million annual cap would fully subsidize childcare for approximately 1,000 children. Using a lower assumed average monthly cost of \$750 per child, the cap could fund full-year care for roughly 1,100 children or provide a 50 percent subsidy for approximately 2,200 children.

Below is a breakdown of the average monthly childcare cost in New Mexico by type of care and age group. These figures reflect typical statewide averages prior to the rollout of universal free childcare.

Age Group	Center-Based Care	Home-Based Care
Infant (0–12 months)	~\$1157	~\$965
Toddler (1–2 years)	~\$896	~\$738
Preschool (3–5 years)	~\$830	~\$676
School Age (6–12 years, after-school programs)	~\$500–\$650	~\$450–\$600

Childcare Costs in Major New Mexico Cities:

- Albuquerque -- Families in Albuquerque typically paid around \$1,000 per month for center-based infant care, with preschool programs costing slightly less.
- Las Cruces -- Infant care in Las Cruces averaged \$850–\$950 monthly, with preschool tuition often between \$650–\$750.
- Rio Rancho -- Rio Rancho costs were similar to Albuquerque but slightly lower, averaging \$900–\$1,000 for infants and \$700–\$850 for preschoolers.
- Santa Fe -- Santa Fe historically had higher childcare prices, averaging \$1,050 for infant care and around \$850 for preschool.
- Roswell, Hobbs, and Clovis -- These cities tended to be more affordable, with infant care ranging between \$750–\$900, and preschool tuition between \$550–\$700.

A tax credit that reimburses 100 percent of an activity effectively allows individual taxpayers to decide how public money is spent. Rather than the Legislature collectively determining funding priorities through the budget process, each taxpayer who claims the credit directs their tax dollars to a specific activity or organization of their choosing. This bypasses the normal democratic process in which elected representatives debate trade-offs and allocate resources on behalf of all

taxpayers and must use procurement and other transparency processes to determine highest and best use.

When these credits are refundable, the effect is amplified. A taxpayer may receive a payment from the state even if they owe little or no tax, requiring the general fund—and therefore other taxpayers—to finance their chosen activity or chosen organization. In this way, refundable 100-percent credits shift spending authority away from the Legislature and reduce transparency, accountability, and oversight in public budgeting.

This concern is materially different for tax credits that are less than one-for-one. Partial credits are designed to induce additional private investment by requiring taxpayers to bear a share of the cost themselves. In those cases, public funds are used as an incentive to leverage private activity rather than fully replacing it, and the Legislature retains greater control over the scale and fiscal exposure.

TRD takes a different approach, with a similar conclusion.

The ECECD provides a data dashboard that details child care enrollment and child care provider counts by month. In November 2025, 1,951 providers in New Mexico provided child care under the Child Care Assistance Program. Sections 1(J)(2), on page 5, and 2(H)(2) on pages 7 and 8, state that the qualifying child care facility must be licensed by ECECD. This bill requires the qualifying child care facility or program to meet the minimum enrollment requirements to receive subsidies. ECECD reports that 1,200 providers would be eligible under this requirement. Assuming if each of the 1,200 providers receives equal donations, at a \$10 million aggregate cap, each qualifying child care facility could receive up to \$8,333 per child care facility per year.

This credit allows a maximum refundable credit of \$500 thousand per taxpayer per year that can be applied against either PIT liability or CIT liability. As such, the Taxation and Revenue Department (TRD) has no straightforward way to determine how many individual taxpayers will claim this credit or the amount of the donation. The table below details the maximum number of taxpayers that could claim this credit under various individual credit amounts.

Individual Credit Amount	Max Number of Taxpayers at Aggregate Cap
\$500,000	20
\$250,000	40
\$100,000	100
\$50,000	200
\$10,000	1,000
\$1,000	10,000

Given the possible scenarios presented above based on donations for each child care facility and based on donations by number of taxpayers and that the credit is refundable, TRD assumes that the credit cap of \$10 million may be reached.

## SIGNIFICANT ISSUES

The State Ethics Commission notes concerns the proposed credit violates the state's

constitutional anti-donation provisions, and are reflected below:

Because the tax credits are refundable, they trigger scrutiny under the Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution. How the Anti-Donation Clause applies to a tax credit depends on the credit's specific attributes, including refundability. Both the Child Care Facility Donation Income Tax Credit and the Child Care Facility Donation Corporate Tax Credit are refundable but not transferable.

The Anti-Donation Clause constrains the Legislature's exercise of the tax power, and it applies to prevent the enactment of certain kinds of tax credits. How the Anti-Donation Clause applies to a tax credit, however, depends on the credit's specific attributes. Tax credits may be non-refundable, such that where a credit in excess of a taxpayer's *ex ante* tax liability is not refunded to the taxpayer, or refundable, where it is. Nevertheless, the New Mexico Supreme Court has held that even a non-refundable tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30 (holding a non-refundable tax credit was “an unconstitutional subsidy to the liquor industry” in violation of the Anti-Donation Clause).

If a refundable tax credit is sufficiently large, the calculation might produce a negative tax liability—i.e., an amount that the State will pay (or “refund”) to the person. Courts have held that where the State receives value in exchange for transferring public money, the transfer is not a “donation” implicating the Anti-Donation Clause.<sup>1</sup> This analysis sounds in contract law, where the receipt of consideration separates binding contracts from non-binding, donative promises. In limiting the reach of the term “donation,” the courts have focused on whether the public-entity donor (e.g., the State, the county, the municipality) receives some commitment or performance in exchange for the transfer. The focus is not whether the transfer is generally in the public interest, and the Courts have never held that simply because a transfer of public funds is in the public interest, it is therefore exempt from the Anti-Donation Clause. To the contrary, the New Mexico Supreme Court has explicitly stated “[t]he constitution makes no distinction as between ‘donations,’ whether they be for a good cause or a questionable one. It prohibits them

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<sup>1</sup> See *Pierce v. State*, 1996-NMSC-001, ¶ 29 n.12 (rejecting challenge to statutorily conferred pension benefits because pension benefits are not a gratuity but value exchanged for work received by the public employer); *City of Gallup v. N.M. State Park & Recreation Comm'n*, 1974-NMSC-084, ¶ 9 (rejecting an anti-donation claim because, under agreement, state would receive title to 640 acres in Red Rock State Park, \$1.5M for construction, and maintenance and operation of the park for the life of lease contract with Gallup); *White v. Board of Educ. of Silver City*, 1938-NMSC-009, ¶ 31 (rejecting challenge because board of education “will get value received for every dollar put into the enterprise” of a bond issue to build a school to join state and local schools); *Treloar v. County of Chaves*, 2001-NMCA-074, ¶ 32 (rejecting challenge to severance benefits because “severance pay is deemed to be in the nature of wages that have been earned”); *State ex rel. Office of State Eng'r, et al. v. Lewis, et al.*, 2007-NMCA-008, ¶ 51 (rejecting challenge to Pecos River rights settlement because, in exchange for funds, State received land and water rights, as well as settlement of claims in suit); cf. *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration.”).

all.” State ex rel. Sena v. Trujillo, 1942-NMSC-044, ¶ 22. In other words, a transfer is not exempt from the Anti-Donation Clause simply because the transfer does (or is said to) promote the public interest or welfare. The question of constitutional interpretation is whether the transfer is a “donation,” not whether it is in the public interest. And simply because a transfer is anticipated to create downstream

benefits that redound to the public (as in the case of subsidies for child care facilities), the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange. However, if a tax credit is sufficiently conditional, such that the taxpayer has to satisfy a set of conditions that the State demands, then the credit might be more analogous to a unilateral contract that the State offers as opposed to an unconditional subsidy.

Finally, any Anti-Donation Clause analysis must also consider the exceptions provided for in Subsections A through H. Those enumerated exceptions provide the categories of those subsidies that the people of New Mexico have deemed as sufficiently in the public’s interest to remove them from the Clause’s anti-subsidy scope. However, it is not clear that any of those exceptions would apply in this instance.

A separate argument that may be outside of what is intended in the proposal relates to the fact that any employer could contract with a childcare facility to provide complete or heavily subsidized childcare services for that employer’s employees. This would be a fringe benefit, and the employer’s costs would be completely reimbursed.

Early Childhood Education and Care Department (ECECD) apparently believes that this proposal could be a useful tool in solving the child care problem in the state.

SB 170 incentivizes businesses and individuals to make philanthropic investments in local child care facilities. These investments will improve the stability, supply, and quality of child care in New Mexico. With this additional revenue, child care facilities will be able to invest in growing capacity and quality improvements. SB 170 is a key component of ECECD’s commitment to building a universal system for children and families and strengthens the provider infrastructure needed to sustain and expand access to services statewide. SB 170 helps ensure providers have the capital necessary to meet demand, enhance quality, and maintain program sustainability. These efforts create a balanced public – private approach that supports families, providers, and New Mexico’s overall economic growth. Ultimately, SB 170 will increase philanthropic investment in local child care systems, which will generate lasting benefits for families, communities, and the economy.

## ADMINISTRATIVE IMPLICATIONS

ECECD is currently required to certify childcare facilities. The provisions of this bill would minimally increase workload. The bill also requires the Department to certify eligibility for each donor organization or individual up to the \$10,000,000 limit. The processing workload could be up to 1,000 applications annually.

TRD’s administrative burden would be dealt with in the annual updates of PIT and CIT

processing systems.

ECECD estimates that minimal additional employee time will be required to receive and process applications for certification of eligibility and to issue and track the certifications.

## TECHNICAL ISSUES

It is not clear if “affiliated” in Section 1, Subsection J defining “donation” would exclude a claimant whose child was enrolled in the services provided by the childcare facility:

(1) "donation" means a monetary donation to a licensed childcare facility, but does not include a donation made by a taxpayer:

- (a) that claims the childcare facility donation corporate income tax credit;
- (b) that is an owner of the licensed childcare facility;
- (c) whose spouse, sibling, parent, aunt, uncle, grandparent, child or grandchild is an owner of the licensed childcare facility;
- (d) that is an investor of the licensed childcare facility; or
- (e) that is otherwise affiliated with the licensed childcare facility.

Paragraphs (b) through (d) specify ownership relationships as an exclusion, and could be construed to imply that “otherwise affiliated” defines a relationship similar to those of (b) through (d) and not excluding a donation to a donor whose child is enrolled in the childcare facility. Because “affiliation” is not defined in statute, and because it will be difficult or impossible for either department to prove affiliation, fully reimbursable donations are at risk of violating the spirit of the law.

## 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
<b>Vetted:</b> 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.	✗	
<b>Targeted:</b> The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.		

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Clearly stated purpose	✗	
Long-term goals	✗	
Measurable targets	✗	
<b>Transparent:</b> The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	
<b>Accountable:</b> 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	✗	
<b>Effective:</b> 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.		
Fulfils stated purpose	✗	
Passes “but for” test	✗	No purpose stated
<b>Efficient:</b> The tax expenditure is the most cost-effective way to achieve the desired results.	?	There may be significant opportunities for abuse
Key: ✓ Met    ✗ Not Met    ? Unclear		

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