

LFC Requester:**Julisa Rodriguez**

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: January 30, 2024**Bill No:** HB 273

Sponsor: Linda Serrato
Doreen Y. Gallegos

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

Short Title: CHILDCARE
FACILITIES IN ECON.
DEVELOPMENT ACT

Person Writing AAG Lawrence Marcus
Analysis: _____

Phone: 505-537-7676**Email:** legisfir@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	\$0	Non-recurring*	general
0	0		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0					

(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

House Bill (“HB”) 273 would amend the definition section of the Local Development Act, N.M.S.A. § 5-10-3, to add childcare facilities to the list of business types that qualify for support through the Act. The Local Economic Development Act, N.M.S.A. §§ 5-10-1 to -17, was passed as a means of implementing the 1994 Amendment to Art. IX, § 14 of the New Mexico Constitution. This Amendment created an exception to the anti-donation clause, stating that

D. Nothing in this section prohibits the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

- (1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and
- (2) each specific state project providing assistance pursuant to this subsection shall be approved by law.

Art. IX, § 14(D)

The Local Economic Development Act serves as the implementing legislation, which allows for certain “qualifying entities” to receive assistance from county and municipal governments in obtaining land, buildings, or infrastructure. These “qualifying entities” are defined in N.M.S.A. § 5-10-3(L), and range from manufacturing industries to Indian nations to cultural facilities. Moreover, the State Economic Development Department may also provide technical assistance for these projects upon request, and, pursuant to N.M.S.A. § 5-10-15, may participate with local and regional departments in certain types of projects, most notably those that provide “new full-time economic base jobs.” N.M.S.A. § 5-10-15(A)(2)(a). The term “full

time economic base jobs” is defined in N.M.S.A. § 5-10-3(I)

FISCAL IMPLICATIONS

None for NMDOJ.

SIGNIFICANT ISSUES

The bill would likely have the effect of increasing state and local expenditures, given that it creates a new category of entities that could seek assistance through the Local Economic Development Act. However, the fiscal effect may be minimal, as it the Act creates no obligations that any one entity will receive support, and money expended for childcare facilities may very well simply be taken from other sources. All projects are required to be approved by local ordinance. N.M.S.A. § 5-10-9(a). Similarly, there is no obligation for the state to actively participate in projects under N.M.S.A. § 5-10-15(a), as the permissive “may” language is used in that subsection. If more projects are funded, it may also slightly increase administrative expenditures by the Economic Development Department, for both technical assistance and active participation.

On the other hand, the bill could decrease the cost of childcare, allowing more parents to obtain cost-effective employment. This could increase the income tax base for the state of New Mexico.

There is a slight concern regarding the anti-donation clause of the New Mexico Constitution. While the Local Economic Development Act was created to implement an exception to the anti-donation clause, the amendment may go beyond the scope of the exception. While the exception concerns the purchase and improvement of real estate, the list of “qualifying entities” is to be amended to include “child care facilities, *both family home based* and center based programs.” (emphasis added). Presumably, a family home based child care program would not need new infrastructure, so it would be outside of the scope of the exception to the clause, so the bill, if passed as is, may result in the Local Economic Development Act being interpreted in an unconstitutional manner. However, these concerns are minor, given that the statute, read as a whole, still has the clear purpose of implementing the exceptions in N.M. Const. Art. IX, § 14(D), and will not likely be read as providing anything other than the infrastructure assistance allowed by that amendment. In any event, the problem could be eliminated by removing the phrase “both family home based.”

PERFORMANCE IMPLICATIONS

None likely.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See the above discussion regarding the anti-donation clause issues.

TECHNICAL ISSUES

ALTERNATIVES

There are no real alternatives to this bill, other than the status quo. If the state wishes to allow itself, or local governments, to provide this assistance to child care facilities, it would need to utilize this particular statute, which implements the amendments to N.M. Const., art. IX, § 14.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo would remain. Child-care facilities would remain ineligible for assistance through the Local Economic Development Act.

AMENDMENTS