

LFC Requester:

Torres

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

***(Analysis must be uploaded as a PDF)***

**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 2/22/2025

*Check all that apply:*

**Bill Number:** HB 542

Original  Correction

Amendment  Substitute

**Sponsor:**

Representatives Block, Mejia,  
and Dow

**Agency Name**

**and Code**

State Ethics Commission - 410

**Number:**

**Short**

Childbirth Income Tax Credit

**Person Writing**

Connor G. Woods

**Title:**

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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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: HB 542 would create a refundable tax credit of \$7,000.00 a taxpayer who give birth to a child, redeemable once in a taxable year.

#### **FISCAL IMPLICATIONS**

#### **SIGNIFICANT ISSUES**

HB 542 potentially implicates Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause) by, in effect, creating circumstances where the state may directly pay public funds to families when a child is born.

Whether the proposed tax credit is constitutional under the Anti-Donation Clause requires a relatively straight-forward test derived by the courts: First, has the State made a donation or pledged its credit in aid of any person, association or corporation? Second, if “yes”, does an enumerated exception apply? Insofar as HB 542 is concerned, the answers will likely be “yes” and “no,” respectively.

First, generally, refundable tax credits raise concerns under the Anti-Donation Clause because a refundable tax credit can cause the State to make a payment to a private individual or corporation, potentially resulting in an unconstitutional subsidy. *See Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30 (finding a tax credit given to the liquor industry an unconstitutional subsidy). Since the proposed tax credit here operates as a kind of gift to a taxpayer, as there is no clear action under the terms of the bill under which the credit could be viewed as an offer in exchange for the credit (if the State receives something of value in exchange for the transfer of funds, it is not a donation), the proposed tax credit likely constitutes a donation, satisfying the first part of the above test.

As to the second question, under the terms of HB 542, it is not clear that any of the enumerated exceptions to the Anti-Donation Clause would apply. The Anti-Donation Clause does contain an exception for the care and maintenance of sick or indigent individuals, *see* N.M. Const. art. IX, § 14(A), however, while the tax refund may result in a donation going to indigent residents or sick residents, HB 542 is not drafted in a manner so as to specifically provide for the care and maintenance of such individuals. As such, the proposed credit would likely run afoul of the Anti-Donation Clause because it creates a donation on behalf of the State and there are no applicable exceptions to the clause.

#### **PERFORMANCE IMPLICATIONS**

#### **ADMINISTRATIVE IMPLICATIONS**

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

As written, the baby born does not have to be in New Mexico, only that the taxpayer giving birth is a New Mexico resident.

## **OTHER SUBSTANTIVE ISSUES**

Outside from any Anti-Donation Clause implications, the tax credit is only applicable once per year. This means that if an individual gives birth to twins, triplets, etc., or more than one child in a year they would still only receive a tax credit calculated for one child.

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**