

LFC Requester:

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### AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

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

**Date Prepared:** February 6, 2026

*Check all that apply:*

**Bill Number:** SB 96cs

Original  Correction   
Amendment  Substitute

**Sponsor:** Sens. Heather Berghmans,  
Linda M. Trujillo

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

**Short Title:** Registered Child Care Homes  
Provisions

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	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**

*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**

**COMMITTEE SUBSTITUTE SB 96cs**

Synopsis of Senate Tax, Business and Transportation Committee Substitute for SB 96 (SB 96cs): SB 96cs retains most of the provisions of SB 96 but makes some clarifications. The substitution adds definitions for “child care center” and “zoning authority,” clarifies the exemption of child care facilities from municipal business licensing and registration fees, and removes licensed child care centers from the list of entities regulated by the early childhood department. Other provisions, including zoning, homeowner association rules, and effective dates, remain unchanged. SB 96cs does not address the fee- or tax-prohibition for child care homes originally included in SB 96.

**Section 1 of SB 96cs** amends NMSA 1978, Section 3-21-1 (2019) of the Municipal Code.

The committee substitute makes no changes to **Subsections A through H.**

**Subsection I** adds a definition of “child care center” and “zoning authority.” Child care center is defined as a licensed, nonresidential facility that provides care and supervision to children for less than 24 hours per day. Zoning authority is defined as the county or municipal body responsible for planning, zoning, or land-use regulation. The original SB 96 does not define either of these terms, though both terms are used.

**Section 2 of SB 96cs** amends NMSA 1978, Section 3-2-11 (1965) of the Municipal Code. This section is textually and substantively identical to Section 2 of SB 96.

**Section 3 of SB 96cs** seeks to amend NMSA 1978, Section 3-38-4 (1993) of the Municipal Code. The committee substitute modifies this section of the Municipal Code by carving out child care facilities from municipal business licensing and registration fees and defining the scope of this exemption.

**Subsection A** adds an express exception for child care facilities. Practically, this means that child care facilities would be exempt from municipal business registration and license fees. All other businesses would remain subject to the same requirements.

No changes are made to **Subsection B.**

Gender-neutral drafting cleanup is made to **Subsection C.** “His” is edited to “the applicant’s.”

**Subsection D** includes a definition of “child care facility.” The definition includes licensed child care centers, registered child care homes, licensed family child care homes, licensed group child care homes, as defined in NMSA 1978, Section 9-29-2. Effectively, this addition clarifies which entities qualify for the exemption created in Subsection A.

**Section 4 of SB 96cs** amends NMSA 1978, Section 47-16-18 (2019) of the Homeowner Association Act. The original bill, SB 96 provides amendments in Section 3. These sections are textually and substantively identical.

**Section 5 of SB 96cs** adds two new subsections to NMSA 1978, Section 59A-52-18 (1984), just as SB 96 does.

**Subsection A** is identical and remains unchanged by the substitute.

**Subsection B(3)** removes “or licensed child care centers” from the list of entities that the department regulates. SB 96 explicitly included licensed child care centers in this subsection. SB 96cs limits it only to registered child care homes, licensed family child care homes, and licensed group child care homes. All other language remains unchanged in this Subsection.

**Subsections C through D** are unchanged by the substitute.

**Section 6 of SB 96cs** also notes the effective date of the provisions, identical to the original bill.

Finally, SB 96cs does not amend, repeal, or otherwise affect the “Fee or Tax on Child Care Home – Prohibited” provision added in SB 96. The committee substitute version focuses on zoning, licensing, and regulatory definitions for child care homes and child care centers, but it does not address the explicit prohibition against counties or municipalities assessing or collecting a business license, fee, or regulatory tax for the operation of a registered child care home, licensed family child care home, or licensed group child care home. Therefore, the standalone fee and tax language in Section 5 of SB 96 is unaddressed by SB 96cs.

### **ORIGINAL SB 96**

Synopsis of Original SB 96: SB 96 limits local zoning, regulatory, and fee authority over child care homes and centers. The bill requires child care homes to be treated as residential uses permitted by right and allows licensed child care centers by right in commercial, mixed-use, and multifamily zones. It prevents local governments from using stricter zoning rules to block child care and prohibits counties, municipalities, and homeowner associations from imposing special taxes, fees, or bans on child care homes. The changes also require state rules to avoid specific forms of regulatory treatment while preserving the Early Childhood Education and Care Department’s authority.

**Section 1** amends NMSA 1978, Section 3-21-1 (2019) of the Municipal Code.

The section’s title is amended to reflect the exceptions of registered child care homes, licensed family child care homes, licensed group child care homes, and licensed child care centers to a county and municipality’s zoning authority.

**Subsection A** removes the descriptor “county” and “municipality” prior to zoning authority. Because Subsection I adds a definition of “zoning authority” to include the zoning body of a county or municipality, this language is likely removed to prevent

redundancy.

**Subsection B** also removes the descriptors “county” and “municipality” prior to zoning authority. Because Subsection I adds a definition of “zoning authority” to include the zoning body of a county or municipality, this language is likely removed to prevent redundancy. “Buildings” is amended to singular “building.”

**Subsection F** removes language requiring home rule municipalities to accommodate multigenerational housing by allowing up to two kitchens within a single-family zoning district.

**Subsection G** is deleted and moved to Subsection I’s definitions section. This subsection defines “multigenerational” as any number of persons related by blood, common ancestry, marriage, guardianship, or adoption. The definition remains the same in Subsection I.

A new **Subsection G** is added, stating that child care homes shall be considered residential use of property for purposes of zoning and shall be permitted by right. This subsection also forbids local authorities from requiring or imposing additional regulations or requirements on child care homes, from assessing taxes or fees for operating child care homes, or imposing off-street parking regulations not applicable to other private residences within that zoning district.

**Subsection H** is added, permitting child care centers, by right, to be in any zoning district designated as commercial, mixed-use, or multifamily residential. This subsection forbids local authorities from assessing or collecting a tax or fee to operate the center, imposing a different or more restrictive building, safety, or nuisance ordinance, or off-street parking restrictions other than those applicable to other types of property within the same zoning district.

**Subsection I** is added, providing definitions for “child care home,” “local authority,” “multigenerational,” “permitted by right,” and “zoning authority.” The definition of “multigenerational,” previously located in Subsection G, is now moved to this subsection and is unchanged. The definition of “child care home” refers readers to NMSA 1978, Section 9-29-2 (2023) of the Early Childhood Education and Care Department Act.

**Section 2** amends NMSA 1978, Section 3-2-11 (1965) of the Municipal Code, to update its provision when two or more zoning-related laws apply to the same property. Ordinarily, the statute requires that the more restrictive zoning law govern (i.e., “the lower height of building or less number of stories”). Section 2 adds language to indicate that local authorities are prevented from claiming their ordinance is more restrictive, so it controls, which would otherwise prevent zoning that permits child care homes and licensed child care centers.

**Section 3** amends NMSA 1978, Section 47-16-18 (2019) of the Homeowner Association Act and adds new material. The title of the section is amended to add “Registered Child Care Homes – Licensed Family Child Care Homes – Licensed Group Child Care Homes – Conflicts. –”

**Subsection A** makes a technical change from “Homeowners” Association Act to “Homeowner” Association Act to correctly reflect the name of the Act.

**Subsection B** adds new material clarifying that an association shall not internally prohibit

the operation of a child care home, and will not assess or collect fees or taxes for the operation of a child care home. This subsection also requires an association to provide reasonable exceptions to the association’s community documents to allow any child care home to comply with registration or licensing requirements with the “department” in the event of a conflict.

**Subsection G** is added to define “child care home.” The definition encompasses three other types of homes and refers readers to NMSA 1978, Section 9-29-2 (2023) of the Early Childhood Education and Care Department Act.

The remaining subsections are substantively unchanged.

**Section 4** adds two new subsections to NMSA 1978, Section 59A-52-18 (1984).

**Subsection A** is amended to provide the exceptions as added in Section 4, Subsection B.

**Subsection B** adds language requiring that the rules adopted under the law avoid disparate zoning or regulatory barriers for child care providers. This subsection states that child cares homes (registered or licensed) cannot be regulated more strictly than other private residences. Licensed child care centers must be automatically allowed (“permitted by right”) in commercial, mixed-use, and multifamily residential zones. Finally, nothing in the rules can limit the authority of the Early Childhood Education and Care Department to set standards or regulate child care providers.

**Subsection D** is added to define “permitted by right.” Permitted by right is defined as a use permitted within a zoning district and does not require approval, special exceptions or permits, variances, or any discretionary approval by the zoning authority.

**Section 5** adds new material prohibiting counties and municipalities from taxing or charging fees to registered or licensed child care homes, unless another law specifically permits it.

**Section 6** provides the effective date of the provisions of SB 96.

#### **FISCAL IMPLICATIONS**

None.

#### **SIGNIFICANT ISSUES**

None.

#### **PERFORMANCE IMPLICATIONS**

None.

#### **ADMINISTRATIVE IMPLICATIONS**

None.

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

Relationship

The **HB 106** Home-Based Child Care Income Tax Credit provides an income tax credit for individual New Mexico taxpayers to certain parents or guardians who care for young children at home. This bill targets families providing home-based care for children under six. The credit goes to taxpayers, not to child care providers.

**TECHNICAL ISSUES**

None.

**OTHER SUBSTANTIVE ISSUES**

None.

**ALTERNATIVES**

N/A.

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

Status quo.

**AMENDMENTS**

None.