

LFC Requester:**Rachel Mercer-Garcia****AGENCY BILL ANALYSIS - 2026 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****AgencyAnalysis.nmlegis.gov and email to 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: 2/12/2026 *Check all that apply:*
Bill Number: SB96 Original Correction
 Amendment Substitute

Sponsor: Heather Berghmans/Linda Trujillo/Linda Serrato **Agency Name and Code Number:** ECECD 61100
Regulated Child Care Zoning Requirements – **Person Writing Analysis:** Elizabeth Groginsky
Short Title: Senate Floor Amendment **Phone:** 505-231-2997 **Email:** Elizabeth.groginsky@ecd.nm.gov

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

Total						
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(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:

Amendment:

Senate Floor Amendment 1 to Senate Health and Public Affairs Committee Substitute for Senate Bill 96 (Amendment) strikes Section 4 and inserts a new Section 4. The Amendment clarifies that a Homeowner Association (HOA) may impose restrictions on lots within the association as long as they are uniformly applied to all lot owners and do not unreasonably limit the use of a lot as a child care home.

The Amendment clarifies that a HOA may not take an action to effectively prohibit, unreasonably restrict, or directly or indirectly limit the use of a lot as a child care home, but clarifies that a HOA may impose reasonable requirements that are uniformly applied to all lot owners within the association and are not directed at limiting the operation of a child care home. A HOA may also enforce restrictions related to parking and traffic, noise or nuisance, safety and security, architectural or exterior appearance standards, and common element use and scheduling as long as they are applied uniformly to all lot owners within the HOA. The Amendment also clarifies that a HOA may not require fees or taxes from a child care home that are not also required of all other lots within the HOA.

In addition, the Amendment clarifies that in the event of a conflict between HOA requirements and ECECD regulatory requirements for a child care home, ECECD regulatory requirements will take precedent to the extent necessary to allow the child care home to comply with ECECD requirements. The Amendment also requires an HOA to provide reasonable accommodations to HOA requirements for child care homes as long as the accommodations do not impair the HOA’s ability to protect health, safety, or property of other lot owners. The Amendment also clarifies that child care homes are not exempt from HOA rules that do not conflict with ECECD regulatory requirements.

Original:

Section 1:

The Senate Health and Publics Affairs Committee (SHPAC) Substitute for Senate Bill 96 (SB 96) proposes to amend Section 3-21-1 NMSA 1978 to require zoning authorities to consider child care homes as residential uses of property for zoning purposes and to permit by right child care homes in residential use zones. “Child care homes” includes “includes a registered child care home, licensed family child care home or licensed group child care home” and “permitted by right” is defined as “a use that is designated as an allowed use within a zoning district and does not require conditional use approval, special exceptions or permits, variances or any other discretionary approval by a local authority beyond compliance with the applicable standards of the zoning district.”

In the application of local ordinances or regulations to a child care home, a local authority, which is defined as “a county or municipality, zoning authority or board, or other body that has the authority to enact ordinances or adopt regulations,” is prohibited from:

- imposing additional rules, requirements, or other discretionary local government review or approval, including conditional or special use permits, that do not apply to other private residences within the same zoning district;
- assessing or collecting a fee or tax for the privilege of operating a child care home; or
- imposing off-street parking regulations that exceed the off-street parking regulations for a single-family residence within the same zoning district.

SHPAC Substitute for SB 96 also requires zoning authorities to permit by right licensed child care centers in any zoning district designated as commercial, mixed-use, or multifamily residential. In the application of local ordinances or regulations to a licensed child care center, local authorities are prohibited from:

- assessing or collecting a fee or tax for the privilege of operating a licensed child care center;
- imposing a different or more restrictive building, safety, or nuisance ordinance than the ordinances applied within the same zoning district; and
- imposing off-street parking restrictions or requirements, with an exception for designated on-site stacking spaces or a lane for the safe loading and unloading of children.

Section 2:

SHPAC Substitute for SB 96 provides an exception for the changes made in Section 1 by amending Section 3-21-11 NMSA 1978, which governs conflicts between state statutes and local zoning regulation.

Section 3: SHPAC Substitute for SB 96 proposes to amend Section 3-38-4 NMSA 1978 to exempt child care facilities from having to pay a business registration fee or business license fee to municipalities.

Section 4:

SHPAC Substitute for SB 96 amends Section 47-16-18 NMSA 1978 to prevent a homeowner association from prohibiting the operation of a child care home within its jurisdiction or from assessing or collecting a fee or tax for the operation of a child care home. In the event of a conflict between a homeowner association’s community documents and the registration or licensing requirements of the Early Childhood Education and Care Department (ECECD), the association shall provide reasonable exceptions to the association’s community documents to allow a child care home to comply with the applicable registration or licensing requirements of ECECD.

Section 5:

SHPAC Substitute for SB 96 amends Section 59A-52-18 NMSA 1978 of the State Fire Marshal Code to require that rules promulgated by the State Fire Marshal:

- do not impose regulations on certain child care homes that do not apply to other private residences;
- treat licensed child care centers as permitted by right use in all zones designated as commercial, mixed-use, or multifamily residential; and
- do not impair ECECD’s ability to determine standards and regulate registered child care

homes, licensed family child care homes or licensed group child care homes.

FISCAL IMPLICATIONS

Amendment: None. No operating budget impact; no fiscal implications.

Original: None. No operating budget impact; no fiscal implications.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Amendment: The Amendment provides clarity regarding potential conflicts between ECECD child care regulatory requirements and HOA rules. This clarification will make it easier and more predictable for licensed and registered child care homes located in neighborhoods with an HOA to open and operate. This Amendment will ensure that important health and safety standards are met for both children receiving child care at child care homes, and for lot owners governed by an HOA.

Original:

The Fiscal Impact Report (FIR) for the introduced version of SB 96 identified concerns from the State Fire Marshal that SB 96 could interfere with the State Fire Marshal's authority over licensed child care centers, which could counteract fire code requirements for non-residential child care centers and create a potential gap in fire and life safety requirements for licensed centers. The SHPAC Substitute for SB 96 addresses this concern by removing child care centers from the proposed amendment to the Fire Marshal Code. This preserves the State Fire Marshal's authority over licensed child care centers.

SHPAC Substitute for SB 96 supports child care providers by providing statewide consistency in land use and regulation of child care homes and centers, aiding expansion and growing child care supply.

In 2024, ECECD contracted with the Low-Income Investment Fund (LIIF), a community development financial institution with a focus on child care infrastructure, to study challenges among child care facilities in New Mexico. In a [survey](#) of 299 directors representing both child care centers and homes, LIIF found strong interest in expansion—almost 85% of directors had considered an expansion project in the last three years, but found that providers were discouraged from expanding due to cost barriers made worse by local government requirements. In focus groups exploring expansion challenges, child care directors indicated that confusing city zoning requirements often required multiple infrastructure modifications, which created unanticipated expenses and delays, and reported that some municipalities required rezoning before providers could expand their program. LIIF found that zoning was cited as a specific challenge to expansion by 33% of the respondents who had considered expanding and 20% of the respondents who had expanded.

Currently, ECECD requires that child care providers obtain zoning approval from their local

authority in order to become licensed or registered, and local authorities have broad discretion to regulate how land is used within their jurisdictions. However, most counties and municipalities in New Mexico either prohibit child care homes from operating in residential zones or require them to obtain a conditional use permit before being permitted to operate in a given zone. Conditional use permits dramatically slow the permitting process and often rely on vague and subjective evaluation standards costing providers time and expense, and making it very difficult to establish child care in neighborhoods and high-density areas where it is convenient for families. Furthermore, local authorities have the ability to impose fees on child care providers, which ECECD has found can reach hundreds of dollars, creating a significant cost barrier for small child care providers.

SHPAC Substitute for SB 96, which would limit the ability of counties and municipalities to impose these requirements, would still require child care facilities to maintain a license or registration with ECECD and follow the robust safety requirements set by the department. This would assist in ensuring a clear and consistent pathway for child care facilities across the state to get licensed so that more of New Mexico's children can be cared for in safe, quality environments.

ECECD also anticipates that this bill will support child care providers by aligning State Fire Marshal regulatory requirements with ECECD's regulatory requirements. For many years, state building codes required home-based child care providers to install an automatic sprinkler fire suppression system if the provider cared for more than five children. This made operating as a licensed, home-based child care provider financially unfeasible for many operators, as installing a sprinkler system can cost up to \$40,000. These requirements limited a home-based provider's ability to get licensed or grow their program, and inadvertently encouraged unlicensed child care facilities to operate. In 2024, ECECD collaborated with the New Mexico Construction Industries Division and the State Fire Marshal to adopt new rules that would remove the sprinkler system requirement for a child care home licensed by ECECD as long as the home had 2 or more egresses to an outside area. This bill codifies this change in statute by requiring licensed and registered child care homes to be considered residential use in the fire marshal code.

[California](#), [Colorado](#), [Montana](#), [Oregon](#), and [Washington](#) have passed similar legislation, requiring child care homes to be treated as residential use by right and restricting local authorities from imposing additional restrictions on child care homes. [Oregon](#) also passed legislation requiring child care centers to be treated as permitted use in commercial zones, and [California](#) passed legislation requiring child care centers to be treated as residential use when collocated with multi-family housing.

PERFORMANCE IMPLICATIONS

Amendment:

No additional performance implications.

Original:

SHPAC Substitute for SB 96 dramatically improves the efficiency, consistency, and capacity of New Mexico's child care system. By removing zoning barriers, HOA prohibitions, inconsistent fire code enforcement, and local fees, SHPAC Substitute for SB 96 streamlines the process for opening and operating child care facilities, which will lead to faster child care provider onboarding, reduced administrative burdens, and more predictable state rules, while keeping children safe. This, in turn, will support the expansion of child care supply more quickly, particularly in

underserved areas.

ADMINISTRATIVE IMPLICATIONS

Amendment: No additional administrative implications.

Original: SHPAC Substitute for SB 96 increases the need for guidance, technical assistance, and cross agency coordination during the transition, which will simplify long term oversight and reduce administrative burden.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Amendment: No additional consequences.

Original: If SHPAC Substitute for SB 96 is not enacted providers will continue facing inconsistent local rules, HOA prohibitions, costly permitting processes, and fire code conflicts—conditions that suppress supply, prolong child care deserts, and slow the state’s progress toward expanding child care access for families.

AMENDMENTS