

LFC Requester:

Carlie Malone

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: 1/20/26 *Check all that apply:*
Bill Number: SB 96 Original X Correction
 Amendment Substitute

Sponsor: Berghmans **Agency Name**
Trujillo **and Code**
Short **Number:** ECECD 611
Title: **Person Writing**
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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
			Not Applicable

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
				Not Applicable

(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						Not Applicable

(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

Section 1:

This bill amends Section 3-21-1 NMSA 1978 to require zoning authorities to consider child care homes, including registered child care homes, licensed family child care homes, and licensed child care group homes, as a residential use of property for zoning purposes and to permit by right child care homes in residential use zones. “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.

Section 1 of the bill 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:

The bill 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:

The bill 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 4:

The bill 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 child care homes and centers.

Section 5:

The bill prohibits a county or municipality from 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.

FISCAL IMPLICATIONS

None. No operating budget impact; no fiscal implications.

SIGNIFICANT ISSUES

The bill 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.

This bill, 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 to this bill, 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

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, this bill streamlines the process for opening and operating child care homes and centers, which will lead to faster child care provider onboarding, reduced administrative burden, 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

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

If 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 access for families.

AMENDMENTS