# FISCAL IMPACT REPORT

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| **SPONSOR** | House Health & Human Services Committee | **LAST UPDATED** | |
| | | **ORIGINAL DATE** | 03/05/25 |
| **SHORT TITLE** | Foster Care Organization Tax Credit | **BILL NUMBER** | CS/House Bill 437/HHHCS |
| | | **ANALYST** | Graeser |

**REVENUE***
**(dollars in thousands)**

| Type | FY25 | FY26 | FY27 | FY28 | FY29 | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|---|
| PIT | $0 | Up to ($58,000.0) | Up to ($59,000.0) | Up to ($60,000.0) | Up to ($61,000.0) | Recurring | General Fund |

Parentheses ( ) indicate revenue decreases.
*Amounts reflect the most recent analysis of this legislation.

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

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **TRD** | **No fiscal impact** | **$19.9** | **No fiscal impact** | **$19.9** | Nonrecurring | **General Fund** |
| **TRD** | **No fiscal impact** | **$85.0** | **$85.0** | **$170.0** | Recurring | **General Fund** |
| **Total** | **No fiscal impact** | **$104.9** | **$85.0** | **$199.9** | | **General Fund** |

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect the most recent analysis of this legislation.

Relates to House Bills 225; Duplicates Senate Bill 304.

### Sources of Information
LFC Files

Agency Analysis Received From
Children, Youth and Families Department (CYFD) on Original HB437
Taxation & Revenue Department (TRD) on Original HB437

## SUMMARY

### Synopsis of HHHC Substitute for House Bill 437

The House Health and Human Services substitute for House Bill 437 (CS/HB437) creates the qualifying foster care organization income tax credit, which allows an income tax credit of 100 percent of a donation to a qualified foster care organization with a limit of $500 for a single or head of household taxpayer or $1,000 for a married taxpayer. This is a nonrefundable credit, but any tax credit in excess of the taxpayer's liability may be carried forward for five years.

The bill defines "qualifying foster care organization" as an organization that: (a) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code; and (b) each operating year, provides foster care services to at least 200 qualified individuals in New Mexico and spends at least 50 percent of its budget on foster care services to qualified individuals in New Mexico.

The bill defines "foster care services" to mean cash assistance, medical care, child care, behavioral health services, food, snacks at the qualifying foster care organization's foster youth events, clothing, shelter, character education programs, workforce development programs, secondary education student retention programs, housing or financial literacy services, activities to support, train, or retain foster parents licensed or certified by the Children, Youth and Families Department (CYFD) or a child placement agency to provide care for children in the custody of the department or agency in their role as a foster parent, and activities to support caregivers and guardians pursuant to the Kinship Guardianship Act or any other assistance that is reasonably necessary to meet basic needs or provide normalcy and that is provided and used in New Mexico.

A donation made by the 15th day of the fourth month of the tax year may be claimed as a donation for the tax year or the donation year. The bill provides that the donation be included in the annual tax expenditure report and the bill provides a sunset date. The bill prohibits stacking the state tax credit and the federal and state deduction claimed by itemizers.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The provisions of the bill are applicable to tax years beginning January 1, 2025. There is sunset date of tax years ending December 31, 2030.

## FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

In their analysis for the original bill, TRD identified that 516 thousand New Mexico taxpayers who donate to a church or charity on average each year, with only 500 of those donating to an eligible foster care organization. This analysis assumes 5 percent of the 516 thousand would understand the benefits of the donation and would donate the maximum credit amount and a further 5 percent would donate half the maximum; this would result in a general fund cost of $58 million.

## SIGNIFICANT ISSUES

The bill requires that a qualified foster care organization must demonstrate that it is planning to spend 50 percent of its budget on providing services to at least 200 foster children each year. Typical non-profit organizations spend over 85 percent on program costs and less than 15 percent on fund raising and administration costs.

The percentage of donations eligible for the proposed tax credit is specified as 100 percent. The more usual practice is a percentage in the range of 10 percent or 15 percent. Adopting a percentage tax credit would move this program into competition with other donations and provide a realistic assessment of public support for both the usual nature of the project and public support for foster kids and their foster families.

The bill does not contain a not-to-exceed aggregate cape.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met because TRD is required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose. This parallels the statutory requirement of 7-1-84 NMSA which requires TRD to prepare a comprehensive tax expenditure budget annually.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 225 Foster parent tax credit, which would create a $100 a week tax credit for foster families. The original was a duplicate of Senate Bill 304 and now the substitute is in conflict with SB304. This bill also relates to SB335, which provides a $500 per month tax credit for each foster family or guardian (with some limitations).

## TECHNICAL ISSUES

The bill does not provide an annual cap on the amount of approved credits.

Additionally, CYFD should be required to certify the organization and certify the amount of the donation. This should be a two-step process as with virtually all other tax credits.

## OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

| Tax Expenditure Policy Principle | Met? | Comments |
|---|---|---|
| **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters. | X | |
| **Targeted**: The tax expenditure has a clearly stated purpose, long-term | | |

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| goals, and measurable annual targets designed to mark progress toward the goals.<br>Clearly stated purpose<br>Long-term goals<br>Measurable targets | <br><br>X<br>X<br>X | |
| **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies | ✓ | Required in the bill; TR will analyze annually pursuant to 7-1-84 NMSA 1978. |
| **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.<br>Public analysis<br>Expiration date | <br><br><br><br><br>X<br>✓ | |
| **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.<br>Fulfills stated purpose<br>Passes “but for” test | <br><br><br><br><br>X<br>X | |
| **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results. | X | |
| Key: ✓ Met ✗ Not Met ? Unclear | | |

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