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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 186

SHORT TITLE: Tax Credit for Conveyance of Property

SPONSOR: Reps. Herrera and Dow/Sen. Gonzales

LAST UPDATE: 2/2/26 **ORIGINAL DATE:** 1/30/26 **ANALYST:** Graeser

REVENUE*
(dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
PIT & CIT		**($7,400.0 to $34,400.0)**	**($7,700.0 to $35,900)**	**($8,000.0 to $37,500.0)**	**($8,400.0 to $39,100.0)**	Recurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	$47.0	$47.0	$0	$47.0		**General Fund**
EMNRD		$75.0	$75.0	$150.0	Recurring	**General Fund**

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

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
Taxation and Revenue Department (TRD)
Energy, Minerals and Natural Resources (EMNRD)

Agency or Agencies That Were Asked for Analysis but did not Respond
Department of Finance/ Local Government Division

SUMMARY

Synopsis of House Bill 186

House Bill 186 (HB186) increases several elements of Section 7-2-18.10 ***Tax credit; certain conveyances of real property*** that have been in effect since 2007:

- Increases the amount of credit from 50 percent of the value of the donated property to 80 percent of the value;
- Increases the amount that may be claimed annually by an individual donor from $250,000 to $2,000,000;
- Retains the provision that the credits may be sold, exchanged or otherwise transferred,

but adds the provision that credits that exceed the taxpayer's liability in the year of donation shall be refunded;

- Clarifies that an individual with an ownership interest in a partnership or limited liability company may claim a fraction of the limited tax conservation tax credit equal to that taxpayer's ownership interest but the total credits claimed by all owners of the partnership may not exceed the limited total.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026. The provisions are applicable for taxable years beginning January 1, 2026. The bill does not include a sunset date.

FISCAL IMPLICATIONS

This bill expands a tax expenditure with an initial 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.

TRD has published an estimate, as follows:

FY26	FY27	FY28	FY29	FY30	Recurring or Non-Recurring	Fund(s) Affected
--	($7,400-$34,400)	($7,700-$35,900)	($8,000-$37,500)	($8,400-$39,100)	Recurring	General

This bill increases the percentage of the credit from 50 percent to 80 percent of the fair market value (FMV) of the conveyed land and increases the individual cap on the credit from $250 thousand to $2 million over the next several years.

The donated acreage and state expenditures associated with the conveyance of the land conservation tax credit varies.[1] TRD estimated the fiscal impact as a range. Using data provided by EMNRD, TRD averaged the annual total appraised value from 2008 to 2025, then applied the 80 percent tax credit to the appraised value for the lower end of the range. For the upper end, TRD calculated 80 percent of the maximum annual appraised value from 2023.[2]

The United States Department of Agriculture's National Agricultural Statistics Service publishes an annual report on land values. Using the publication's 2025 land value reported growth rates for New Mexico, TRD inflated the estimate by 4.3 percent, the average increase of farm and pastureland value from 2024 to 2025.[3]

This analysis assumes current land conveyance activity remains constant. TRD recognizes that a $2 million refundable tax credit may incentivize landowners to donate additional land. However, the administrative process necessary to claim this credit can be

[1] See the annual New Mexico Tax Expenditure Report (https://www.tax.newmexico.gov/forms-publications/)

[2] https://esmis.nal.usda.gov/sites/default/release-files/pn89d6567/2n49w148w/m039n441h/land0825.pdf

[3] https://esmis.nal.usda.gov/sites/default/release-files/pn89d6567/2n49w148w/m039n441h/land0825.pdf

cumbersome and includes substantial costs (see Policy Issues).

LFC notes that the EMNRD Forestry Division reviewed applications for the land conservation investment tax credit from FY2020 to FY2025 and found there was only one landowner who would have benefited from a $2 million tax credit limit. The data also showed that if the credit amount were $1 million, four landowners would have benefited. This testimony diverges from TRD's estimating methodology. This discrepancy should be clarified and resolved.

The "SIGNIFICANT ISSUES" section of this review shows the historical number of claims, acres conserved, and expenditures. These data are fairly stable, with the exception of TY2017, which had an unusually high expenditure per acre, and 2019, which had an unusually high expenditure per claim. LFC defers to TRD on this estimate because TRD had access to appraisal values. EMNRD notes that it receives approximately a dozen applications per fiscal year. This number may well increase with more generous terms.

These increases in the provisions of the credit make a major difference in the net cost to heirs of the disposal of estates. It should also be noted that the donation to a non-profit or government entity would allow federal and state itemized deductions for the appraised value of the property, less the 80 percent state tax credit. The Federal tax rate is as much as 37 percent[4] and the state tax rate is as much as 5.9 percent. Thus, the tax on this strategy is approximately 20 percent of 41 percent or 8 percent of the appraised value. Compare this strategy to selling the property at the appraised value. The federal capital gains deduction for high-income taxpayers is 20 percent. The state capital gains rate is up to 5.9 percent unless the property is a business, where the first $1 million of gain is deductible with a 0 percent rate. Consider a farmer who inherited a farm or ranch from his parents and took possession 40 years ago. The current appraisal would be very close to the long-term capital gain. For higher appraisals and considering the credit limits, LFC has prepared the following scenario comparing current law, HB186 proposal and the effect of selling the property at appraisal and paying federal and state long-term capital gains taxes.

Farm or Ranch Property					
HB186 Proposal				Current Law	
Estate transfer basis in	1986	$2,000,000			$2,000,000
Current Appraisal	2026	$10,000,000			$10,000,000
Donation Strategy					
Credit %	80%	$8,000,000		20%	$2,000,000
Limit	$2,000,000	$2,000,000	refundable	$250,000	$250,000
Fed itemized deduction	37%	($2,960,000)			($3,607,500)
State itemized deduction	5.90%	($472,000)			($575,250)
Net cost of donating a property	$10,000,000				
		$11,432,000			$13,932,750

Alternative		
Sale & Capital Gain		
Fed LTCG %	20%	
Fed Rate	37%	
State LTCGR	0%	
up to business property	$1,000,000	

[4] The top marginal income tax rate of 37 percent will hit taxpayers with taxable income above $640,600 for single filers and above $768,600 for married couples filing jointly.

Otherwise	5.90%	
Sale Price		$10,000,000
less: expenses of sale	5.00%	($500,000)
Basis		$2,000,000
Net LTGC		$7,500,000
Fed taxable		$1,500,000
Fed taxable		($555,000)
State gain		$7,500,000
Business property deduction		$1,000,000
Net taxable		$6,500,000
State tax		($383,500)
Net gain after taxes		$8,561,500

What should be noted is that the "transaction fees, including state and federal income taxes" on the donation would be reduced from almost $4 million over the value of the land to less than $1.5 million.

If the property appraisal is equal to the limit amount, this strategy is more favorable to the donation and could become a viable tax planning device for very wealthy farm and ranch properties where capital gains taxes can have a significant effect. (See Appendix)

SIGNIFICANT ISSUES

TRD is charged with administering this enhanced tax credit. Their comments follow:

> PIT represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 16 percent of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT. Like several states, New Mexico computes its income tax based on the federal definition of "adjusted gross income" (AGI) and ties to other statutes in the federal tax code. This is referred to as "conformity" to the federal tax code. PIT is an important tax policy tool that has the potential to further both horizontal equity by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay.
>
> CIT is a volatile source of revenue for many states. Providing additional corporate tax incentives increases volatility. For corporate tax filers, a tax credit can erode horizontal equity by basing this credit on a profession, thus corporate taxpayers in similar industries are no longer treated equally.
>
> Multiple states offer income tax credits for land conveyances. New Mexico, Colorado, Georgia, South Carolina, and Virginia offer transferrable tax credits resulting in immediate benefits for taxpayers and, correspondingly, an increased cost to the state for administering the transferred credits. Currently, Colorado offers a 90 percent credit but is reducing it to 80 percent of the fair market value for tax years 2027 to 2031. The aggregate cap for the Colorado land conservation tax credit is $50 million and that cap has been reached at 90 percent credit out as far as 2028. Because of this, it is possible that this proposed tax credit for New Mexico could see a large and unexpected fiscal impact. Other states including Arkansas, California, Connecticut, Delaware, Iowa,

Maryland, Massachusetts, Mississippi, New York, and North Carolina offer non-transferable income tax credits.

The administrative process to claim this credit can be burdensome for taxpayers and State agencies. Landowners produce warranty deeds, title searches, maps, photos, surveys, and other documentation. Typical costs can include operating and transactional costs associated with the conveyance and long-term costs of holding the conveyance, such as monitoring, enforcement and legal costs. Additionally, landowners often submit a Baseline Documentation Report (BDR). The BDR is an itemized list of the property and is used to monitor and compare changes in its use. It must include a description of the property, details of current improvements and uses, maps, and photographs that document the condition of the potential conveyance. If necessary, outside professionals may be needed depending on the complexity of the conveyance. If there are multiple landowners, the time to complete required documentation can increase. The landowner can apply for a New Mexico land conveyance tax credit at any point during this process and can be eligible for a federal tax deduction under noncash charitable contributions.[5]

The IRS has noted a trend in abusive transactions involving charitable contributions of land conveyances and has published the following:
"The IRS has seen abuses of this tax provision that compromise the policy Congress intended to promote. We have seen taxpayers, often encouraged by promoters and armed with questionable appraisals, take inappropriately large deductions for easements. In some cases, taxpayers claim deductions when they are not entitled to any deduction at all. Also, taxpayers have sometimes used or developed these properties in a manner inconsistent with section 501(c)(3). In other cases, the charity has allowed property owners to modify the easement or develop the land in a manner inconsistent with the easement's restrictions." [6]

Because of the $2 million refundable individual credit cap and the possibility of fraud, TRD suggests including an aggregate cap with this credit.

This bill does not have a sunset date. TRD supports sunset dates for policymakers to review the impact of a credit them. Given the expansion of the individual cap for this credit and the additional cost to the state, a sunset date would force an examination of the benefit of this credit versus the cost.

LFC staff have prepared a review of this conservation tax credit:
Section 7-2-18.10 NMSA 1978 was enacted in 2003 and amended in 2007. The initial annual per claim cap was set at $100,000. The 2007 amendment increased the cap to $250,000. A casual inspection of the all-urban consumer price index indicates that had the $250,000 cap been indexed, the 2026 cap would be increased to $400,000.

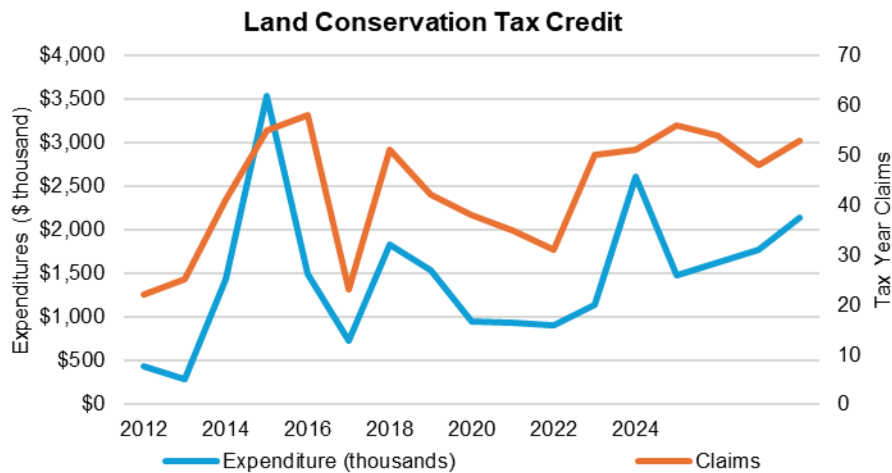
This land conservation tax credit was modeled after similar legislation in Colorado that has been quite successful in conserving worthy parcels of land. This was the first tax credit in New

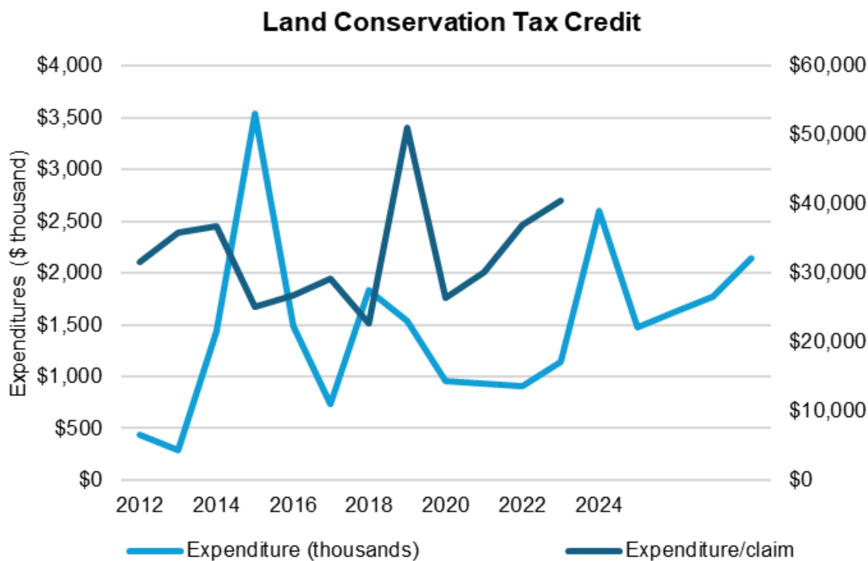
[5] https://nmlandconservancy.org/wp-content/uploads/2018/06/Conservation-easement-Process-for-website.pdf
[6] https://www.irs.gov/charities-non-profits/conservation-easements

Mexico's history to allow the tax credits to be sold, traded or exchanged. This feature created a new industry of brokers who frequently matched land-poor farmers with wealthy investors who could use the state tax credits without limitation based on each purchaser's state personal or corporate income tax liability. Since the tax credits were sold at a discount, the purchasers could achieve a tax savings. The transferability provision of this law was mirrored in the Agricultural Biomass Tax Credit of 7-2-18.26 NMSA 1978,

From the change in the cap in 2007, the program has conserved over 900 square miles of land at a cost of a modest $30.30 per acre. The largest single donation occurred in 2019.

Tax Year (Calendar)	Totals	Avg/Year
Claims	551	42
Acres Conserved	586,996	45,154
Expenditure (thousands)	$17,788.4	$1,368.3
Expenditure/acre	$30.3	$2.3
Expenditure/claim	$32,284	$2,483





Note the comments in TECHNICAL ISSUES concerning the advent in Santa Fe County of an innovative program entitled "Transfer of Development Rights." This may create some issues that

will have to be addressed in the future as some taxpayers may attempt to sell the development rights to a willing buyer via the TDR program, then donate the property to a non-profit organization and claim this tax credit and the federal itemized deduction charitable deduction.

The New Mexico program has largely mirrored the Colorado program. A study conducted in 2017 by Colorado State University [7]concluded:

> "each dollar invested by the state for these easements produced benefits of between $4 and $12 for Coloradans. Public benefits include clean water and air, scenic views, access to things produced by local farms and ranches products, and wildlife habitat: all things that contribute to a high quality of life in the state. Researchers said these data show that easements are conserving land that is important for wildlife, agriculture, tourism and outdoor recreation for Colorado's visitors and residents alike.

Colorado's Land Prior Tax Credit Amounts

For conservation easements donated from 2015-2020, tax credit certificates are issued for 75 percent of the first $100,000 of donated value and 50 percent of any remaining donated value up to a maximum of $5 million per donation. Credits in excess of $1.5 million are issued in increments of up to $1.5 million per year in future years.

Current Tax Credit Amounts

A donor of a conservation easement donated after January 1, 2021, through 2027, may qualify for a tax credit worth 90 percent of the appraised value of the donation. For example, a donated easement worth $1 million may qualify for a credit worth $900,000. The amount of tax credits DORA may issue each year is capped at $45 million, with a $15 million limit on the amount of tax credits that may be reserved against future year caps. A portion of the tax credit may be claimed as a refundable credit, up to $50,000 per year, if state revenue exceeds certain thresholds.

Beginning in 2025, Colorado's conservation easement law has been substantially amended.

EMNRD provided the following analysis:

> Section 1.F. allows the portion of the tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed to be refunded to the taxpayer. This is anticipated to substantially increase the volume of applications for the tax credit, as this change provides an incentive for property owners with lower incomes to benefit from a tax credit to conserve their land. Increased conservation has overall benefits to New Mexico such as more open space, biodiversity conservation, agricultural preservation, watershed protection, and historic preservation.
>
> The State Forest Action Plan 2020-2030 identified the need to increase access to land conservation programs regardless of the property owner's income. HB186 would contribute to the goal of providing more conservation opportunities for landowners who are property-rich and cash-poor, especially in areas with development pressure.

[7] https://source.colostate.edu/investments-conservation-easements-reap-benefits-colorado/

> An increase in applications may affect both EMNRD's Forestry Division and TRD. Currently, the Forestry Division issues a request for proposals for applications for the tax credit, and EMNRD processes the applications to verify the conservation value of the property. TRD receives the application, processes the appraisal review, and issues the tax credit based on EMNRD verification of conservation value. If the volume of applications increases, then appraisal reviews will likely take longer, which in turn will diminish the ability to process tax credits or refunds in the tax year in which they were submitted.
>
> Section 1.J. strikes "taxation and revenue" from line 11 and adds a numbering requirement on line 22. The number requirement will trigger a rule amendment to NMAC 30-13.20, which does not currently require numbering.
>
> Section 1.C. would increase the amount of credit that may be claimed by a taxpayer from $250 thousand to $2 million. This change is in response to the increased value of land, especially larger properties with water rights and development potential.
>
> This land conservation tax credit was the first tax credit that was transferable from the farmer or rancher to any other taxpayer. This bill retains the transferability but makes the tax credits refundable. On net, the brokers and purchasers of the tax credits will lose from the provisions here and the donors will win because the previous provisions had roll-over provisions if tax credits exceeded the donor's liabilities. Thus, selling the credits could frequently be financially advantageous.

State analysts have long been concerned that refundable tax credits might violate the spirit, if not the letter of the state's constitutional anti-donation clause.

In this session, the state ethics commission responded discussed this point in regards to another bill (SB170 proposing a 100 percent, refundable tax credit for donations made to a child care facility). This analysis seems to be applicable to concern over the provisions of this bill.

> Because the tax credits are refundable, they trigger scrutiny under the Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution. How the Anti-Donation Clause applies to a tax credit depends on the credit's specific attributes, including refundability. Both the Child Care Facility Donation Income Tax Credit and the Child Care Facility Donation Corporate Tax Credit are refundable but not transferable.
>
> The Anti-Donation Clause constrains the Legislature's exercise of the tax power, and it applies to prevent the enactment of certain kinds of tax credits. How the Anti-Donation Clause applies to a tax credit, however, depends on the credit's specific attributes. Tax credits may be non-refundable, such that where a credit in excess of a taxpayer's ex ante tax liability is not refunded to the taxpayer, or refundable, where it is. Nevertheless, the New Mexico Supreme Court has held that even a non-refundable tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. Chronis v. State ex rel. Rodriguez, 1983-NMSC-081, ¶ 30 (holding a non-refundable tax credit was "an unconstitutional subsidy to the liquor industry" in violation of the Anti-Donation Clause).

If a refundable tax credit is sufficiently large, the calculation might produce a negative tax liability—i.e., an amount that the State will pay (or "refund") to the person. Courts have held that where the State receives value in exchange for transferring public money, the transfer is not a "donation" implicating the Anti-Donation Clause.[8] This analysis sounds in contract law, where the receipt of consideration separates binding contracts from non-binding, donative promises. In limiting the reach of the term "donation," the courts have focused on whether the public-entity donor (e.g., the State, the county, the municipality) receives some commitment or performance in exchange for the transfer. The focus is not whether the transfer is generally in the public interest, and the Courts have never held that simply because a transfer of public funds is in the public interest, it is therefore exempt from the Anti-Donation Clause. To the contrary, the New Mexico Supreme Court has explicitly stated "[t]he constitution makes no distinction as between 'donations,' whether they be for a good cause or a questionable one. It prohibits them all." State ex rel. Sena v. Trujillo, 1942-NMSC-044, ¶ 22. In other words, a transfer is not exempt from the Anti-Donation Clause simply because the transfer does (or is said to) promote the public interest or welfare. The question of constitutional interpretation is whether the transfer is a "donation," not whether it is in the public interest. And simply because a transfer is anticipated to create downstream benefits that redound to the public (as in the case of subsidies for child care facilities), the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange. However, if a tax credit is sufficiently conditional, such that the taxpayer has to satisfy a set of conditions that the State demands, then the credit might be more analogous to a unilateral contract that the State offers as opposed to an unconditional subsidy.

Finally, any Anti-Donation Clause analysis must also consider the exceptions provided for in Subsections A through H. Those enumerated exceptions provide the categories of those subsidies that the people of New Mexico have deemed as sufficiently in the public's interest to remove them from the Clause's anti-subsidy scope. However, it is not clear that any of those exceptions would apply in this instance.

While the current version of the land conservation income tax credit has conserved significant

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[8] See Pierce v. State, 1996-NMSC-001, ¶ 29 n.12 (rejecting challenge to statutorily conferred pension benefits because pension benefits are not a gratuity but value exchanged for work received by the public employer); City of Gallup v. N.M. State Park & Recreation Comm'n, 1974-NMSC-084, ¶ 9 (rejecting an anti-donation claim because, under agreement, state would receive title to 640 acres in Red Rock State Park, $1.5M for construction, and maintenance and operation of the park for the life of lease contract with Gallup); White v. Board of Educ. of Silver City, 1938-NMSC-009, ¶ 31 (rejecting challenge because board of education "will get value received for every dollar put into the enterprise" of a bond issue to build a school to join state and local schools); Treloar v. County of Chaves, 2001-NMCA-074, ¶ 32 (rejecting challenge to severance benefits because "severance pay is deemed to be in the nature of wages that have been earned"); State ex rel. Office of State Eng'r, et al. v. Lewis, et al., 2007-NMCA-008, ¶ 51 (rejecting challenge to Pecos River rights settlement because, in exchange for funds, State received land and water rights, as well as settlement of claims in suit); cf. City of Raton v. Ark. River Power Auth., 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) ("The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause but merely check for adequate consideration.").

acreage at a moderate cost to the General Fund, a study of refundable tax credits in light of scrutiny of the anti-donation clause might be timely.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met by the bill's requirement to report annually to an interim legislative committee on data compiled from taxpayer reports and other information to determine whether the credit is meeting its purpose. TRD accomplishes this mandate by publishing the Tax Expenditure Report required by 7-1-84 NMSA 1978.

ADMINISTRATIVE IMPLICATIONS

TRD will update forms, instructions and publications and make information system changes. Staff training to administer the credit will take place. This implementation will be included in the annual tax year changes. For TRD's Information Technology Division (ITD), this bill will have a moderate impact on ITD, requiring approximately 680 hours or about 4 months for an estimated staff workload cost of $47,063.

Implementation of HB186 will require one new FTE in EMNRD's Forestry Division. Currently, the Division receives approximately a dozen applications per fiscal year, and these applications are processed by an FTE whose duties include managing three other land conservation programs. Because HB186 will result in an increase in the volume of applications, the Division will require one dedicated FTE to administer applications. LFC scores this determination at $75.0 thousand recurring.

TECHNICAL ISSUES

The law 7-2-18.10 (C) provides as follows: "Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act." For several years, Santa Fe County has experimented with a Transfer of Development Rights (TRD) program. Pursuant to this program, willing sellers – principally farmers (small, medium and large) can sell the development rights to their property to willing buyers – frequently real estate developers seeking more profitable densities -- for negotiated prices. The farmer retains the ability to protect water rights and can continue to farm or ranch in perpetuity but would not be permitted to sell the land to a developer. The purchaser of these TDRs can apply them to achieve higher density and relieve other code restrictions. While the Land Conservation Tax Credit encourages (or requires) that the property be transferred to an eligible non-profit entity – such as the Nature Conservancy or an Agricultural Land Trust, the TDRs are implemented with deed covenants. At this point, it is not clear if 7-2-18.10 NMSA 1978 and Santa Fe County's TDR program can be stacked or are mutually exclusive. If the law is modified to increase the per claim cap, it might be opportune to clarify whether the 7-2-18.10 (C) prohibition extends to TDRs.

TRD provided extensive recommendations:

> [Sections 1 and 2] Pages 5 and 11, Lines 10 and 7 – TRD recommends that the sentence that ends with "would be eligible." should delete the period and add 'and the taxable year the credit is granted.'

The bill increases the credit percentage and cap to $2 million for donations on or after July 1, 2026. Since income taxes are on a calendar year, this causes a mid-year split where half the year qualifies for the increased credit, but the full cap applies. Donors before July 1, 2026, lack same incentives, which is unfair and encourages delaying donations. It also complicates administration for EMNRD and TRD. To ensure consistent treatment and avoid disputes, TRD recommends applying the increased credit and cap to donations from January 1, 2026, onward, as specified in various sections and lines.

TRD recommends updating the application and transfer language to match the structure used in other recently enacted credits, such as the rural health care practitioner tax credit and the clean car income tax credit. Under that model, the certifying agency issues the certificate of eligibility and transmits it to TRD electronically at regular intervals, eliminating the need for a redundant taxpayer application to TRD and allowing TRD to process the credit directly.

The statute still requires taxpayers to submit a separate application to TRD after EMNRD has certified eligibility. This two-step process is inconsistent with the structure used in recent tax credits, where the certifying agency transmits eligibility information directly to TRD electronically. The current language also requires TRD issue a physical document granting the tax credit, which essentially is a redundant approval of the already EMNRD-certified credit.

TRD recommends Sections 1 and 2, subsection (I) include "The energy, minerals and natural resources department shall provide the department appropriate information for all certificates of eligibility in a secure electronic format on regular intervals agreed upon by both departments." A memorandum of understanding (MOU) is already established with EMNRD that allows for data sharing for this credit.

Similarly, the transfer provisions require a sworn notarized statement and manual notification to TRD and restrict transfers to increments of $10,000 or more. These requirements reflect the original 2003 design of this credit and do not align with modern electronic reporting or the transfer mechanisms used in newer credits.

The bill retains the 20-year carryforward provision from the original statute. Because the bill makes the credit refundable and retains transferability, the carryforward is no longer necessary. Refundability allows taxpayers to fully monetize the credit in the year it is claimed, whereas transferability allows taxpayers to sell the credit if they cannot use it to offset their own tax liability. Retaining the carryforward provision may confuse taxpayers and add unnecessary administrative complexity for Tax & Rev to track refundable, transferable, and carried-forward credits simultaneously. Tax & Rev recommends removing the 20-year carryforward provision or clarifying whether it applies to refundable or transferred credits.

As written, the credit is available to "landowners" and taxpayers. "Landowners" includes persons and entities that may have no New Mexico tax liability or filing requirement. As currently written, this allows, a individuals and entities with no New Mexico tax obligation to obtain and sell tax credits without reporting the proceeds as taxable income in New Mexico. The expansion of the credit under this bill, combined

with refundability and continued transferability, increases the risk that persons could receive refundable credits or sell credits without being subject to any New Mexico taxes, yet entitled to receive a refund for the credit amount. Furthermore, administration of a fully transferred or partially transferred credit is more difficult if there are multiple owners of the property, some of which do not have a New Mexico tax liability and the credit is prorated.

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.	?	**The original was passed in 2003 and has been successful. This specific expansion has not been debated.**
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	?	Purpose is implicit – to conserve undeveloped land for the future
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	
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. Public analysis Expiration date	 ? ✗	This program has been under the radar for years.
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. Fulfills stated purpose Passes "but for" test	 ? ?	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met ✘ Not Met ? Unclear		

LG/ct/dw/sgs/sd/dw/ct

Appendix

Farm or Ranch Property						
HB186 Proposal					Current Law	
Estate transfer basis in	1986	$500,000				$500,000
Current Appraisal	2026	$2,500,000				$2,500,000
Donation Strategy						
Credit %	80%	$2,000,000			20%	$500,000
Limit	$2,000,000	$2,000,000	refundable		$250,000	$250,000
Fed itemized deduction	37%	($185,000)				($832,500)
State itemized deduction	5.90%	($29,500)				($132,750)
Net cost of donating a	$2,500,000					
	property	$714,500				$3,215,250

Alternative		
Sale & Capital Gain		
Fed LTCG %	20%	
Fed Rate	37%	
State LTCGR	0%	
up to business property	$1,000,000	
otherwise	5.90%	
Sale Price		$2,500,000
less: expenses of sale	5.00%	($125,000)
Basis		$500,000
Net LTGC		$1,875,000
Fed taxable		$375,000
Fed taxable		($138,750)
State gain		$1,875,000
Business property deduction		$1,000,000
Net taxable		$875,000
State tax		($51,625)
Net gain after taxes		$2,184,625