LFC Requester:	Brendon Gray

AGENCY BILL ANALYSIS - 2025 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 12, 2025

Bill Number: HB 326

Check all that apply:

Original x   Correction ____

Amendment ____   Substitute ____

Sponsor: Rep. Anita Gonzales, Rep. Joseph Sanchez, Rep. Angelita Mejia, Rep. Harlan Vincent, Rep. Susan K. Herrera

Short Title: Small Business Disaster Relief Tax Credit

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

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

Synopsis: HB 326 would add a new section to the Income Tax Act to create the "small business disaster relief income tax credit."

Section 1(A) provides that the tax credit created by HB 326 would be referred to as the "small business disaster relief income tax credit." Section 1(A) explains that a taxpayer who owns a small business located in an area declared as a disaster area by the governor may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The small business owner described in Section 1(A) is a taxpayer who is not a dependent of another individual.

Section 1(B) provides that the amount of the tax credit shall be in an amount equal to $5,000.

Section 1(C) establishes the four criteria the taxpayer must meet to be eligible for the small business disaster relief income tax credit. Section 1(C)(1) establishes that the business must be located "in an area declared by the governor as a disaster" in the taxable year for which the tax credit is claimed. Section 1(C)(2) requires that the business have been in operation for at least two consecutive taxable years, including the taxable year for which the credit is claimed. Section 1(C)(3) requires the business owner to demonstrate that the business sustained a 30% decline in gross revenue due to the disaster. Section 1(C)(4) provides that a business is only eligible for the tax credit if it had an annual gross revenue of less than two million dollars in the taxable year for which the credit is claimed.

Section 1(D) requires the taxpayer to apply for certification of eligibility for the tax credit from the economic development department. Section 1(D) provides that, except as permitted by Section 1(F) and 1(G), only one tax credit shall be certified per taxpayer per taxable year. Pursuant to this section, if the economic development department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. Section 1(D) requires the economic development department to provide the taxation and revenue department "with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed upon intervals."

Section 1(E) requires a taxpayer permitted to claim the tax credit to claim that credit "in a manner required by the department." Section 1(E) further provides that the credit shall be claimed within one year of receiving certification from the economic development department. The taxpayer is required to claim the amount certified and approved against the taxpayer's income tax liability. Notably, any amount of the tax credit in excess of the taxpayer's income tax liability is refunded to the taxpayer.

Section 1(F) provides that married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the credit that would have been claimed on a joint return.

Section 1(G) explains how the tax credit is apportioned pursuant to a taxpayer's ownership interest in the small business. Section 1(G) provides that a taxpayer may be allocated the right to claim the credit in a proportion to the taxpayer's ownership interest in the business if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or a limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company cannot exceed the allowable credit pursuant to this section.

Section 1(H) provides that the credit allowed by Section 1 shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the credit.

Section 2 provides that the provisions of HB 326 apply to taxable years beginning on or after January 1, 2025.

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

Section 1(A) contains the language "an area declared as a disaster area by the governor[.]" This would appear to exclude states of "emergency" under NMSA 1978, Section 12-10-17.

The tax credit is set at $5,000, or $2,500 for married filers. A filer could receive more money from the credit than was lost in revenue due to a disaster. For example, a very small business could have suffered a 30% drop in revenue amounting to $2,000. Under the terms of the credit, such a filer could receive the full $5,000 credit, resulting in a $3,000 windfall. It is unclear if this result is intended.

Section 1(C)(1) provides that "to be eligible for the credit, the taxpayer shall be an owner of a business that: (1) is located in an area declared by the governor as a disaster[.]" Utilizing the word "located" does not necessarily encompass a commonly used phrase in business law: "principal place of business." By utilizing the word "located," Section 1(C)(1) does not address a scenario where an LLC's registered office address is physically located in a disaster zone, but the business operations are not impacted by the disaster. However, Section 1(C)(3) partially addresses this by requiring an eligible business owner to demonstrate a 30 percent decline in gross revenue.

Section 1(C)(3) requires a business owner to "demonstrate that it has sustained a thirty percent decline in gross revenue due to the disaster[.]" This section does not provide parameters or establish what documentation a small business should utilize to prove the thirty percent decline of gross revenue. The language "demonstrate" does not provide uniform metrics that can be routinely referenced by the individuals charged with assessing the requests for the tax credit.

Section 1(G), as currently written, only applies to "a business entity that is taxed for federal income tax purposes as a partnership or limited liability company[.]" Partnerships and LLCs do not pay entity-level tax; rather, the business income passes through to the owners and is reported on the owner's individual tax returns. Notably S-Corporations can elect to be taxed like partnerships. Section 1(G) did not include business entities structured under Subchapter S of the Internal Revenue Code (even though they can be taxed like the partnership entity referenced in Section 1(G)). Accordingly, the effect of Section 1(G) is unclear.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB 134, SB 31.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

Change "an area declared as a disaster area by the governor" to "an area in which the governor has proclaimed that a state of disaster or state of emergency exists."