

LFC Requester:

Ismael Torres

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: 2/21/2025

Check all that apply:

Bill Number: HB568

Original Correction
Amendment Substitute

Sponsor: Rep. Cynthia Borrego and
Rep. Joseph L. Sanchez

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

Person Writing

Short Title: Home Fire Recovery Tax
Credit

Analysis: AAG Lisa Brown

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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:

Section 1 of House Bill 568 (“HB 568”) creates a new section of the Income Tax Act called “Home Fire Recovery Income Tax Credit,” which provides a tax credit for taxpayers whose homes were destroyed by wildfire in the calendar years 2021 through 2023. The credit would equal the actual costs the taxpayer paid for reconstruction. Taxpayers would apply for certification of the tax credit to the construction industries division (“CID”), which would promulgate rules regarding eligibility. HB 568 provides requirements to be included in an application.

A taxpayer to whom the CID issues a certificate of eligibility would be required to claim the tax credit within 12 months of its issue, and that portion which exceeds the taxpayer’s tax liability could be carried forward for up to three consecutive taxable years. The CID would be required to present an annual report with an analysis of the cost of the tax credit to the tax policy committee and the legislative finance committee.

Section 2 sets a delayed repeal of this act, effective January 1, 2032.

Section 3 provides that the act will 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.

None for NMDOJ.

SIGNIFICANT ISSUES

This bill may be subject to Anti-Donation Clause challenges. The Anti-Donation Clause provides, in pertinent part, that “[n]either the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or

pledge its credit or make any donation to or in aid of any person, association or public or private corporation[.]” N.M. Const. art. IX, § 14. A “donation,” for purposes of Article IX, Section 14, is “a gift, an allocation or appropriation of something of value, without consideration.” *Vill. of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 62 N.M. 18. The Anti-Donation Clause is implicated in cases where, “by reason of its nature and the circumstances surrounding it,” government funding or aid takes on the “character [of] a donation in substance and effect.” *Id.* ¶ 37. Tax credits have been deemed to violate the Anti-Donation Clause. *See, e.g., Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30, 100 N.M. 342.

There are exceptions identified in N.M. Const. art IX, § 14, but they may not sufficiently address the tax credits in this bill. The exceptions are: (A) care and maintenance of sick and indigent persons; (B) & (G) veterans’ scholarship programs for specified veterans; (C) loan programs for students of the healing arts; (D) new job opportunities in specified instances; (E)-(F) affordable housing; and (H) essential services, meaning infrastructure that allows for internet, energy, water, wastewater, or other similar services as provided by law. Although there may be instances in which a taxpayer seeking to take advantage of the tax credit identified in the bill satisfies certain of these exceptions—e.g., a recipient of a tax credit may be indigent or affordable housing may be implicated—the exceptions may not be broad enough to cover the intended tax credits as a whole.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

HB 568 in its current form does not cap reconstruction costs aside from the taxpayer’s tax liability and the extent to which the credit could be carried forward for three consecutive taxable years.

It is unclear how Subsections (A), (C)(1)-(2), (H), and (J)(1)-(2) are intended to work together. As the bill is drafted, taxpayer homeowners who primarily resided in their home during the referenced wildfires are eligible for the credit. If a homeowner did not *primarily* reside in an impacted home because, for example, the home was the homeowner’s second home, the home was rented out to someone else who primarily resided there, or the homeowner’s children lived in the home, but the taxpayer homeowner still incurred expenditures for the construction of a site-built home on the same property as the prior wildfire-destroyed home, such taxpayer homeowner would nonetheless not be eligible for the credit.

Subsection (H), however, appears to provide credits to business entities and may reference the Corporate Income Tax Act. As written, Subsection (H) would allow for a taxpayer to be *allocated* the right to claim the credit from a *partnership or LLC* owned, at least in part, by the taxpayer. In order for this Subsection to have any effect under the bill as otherwise drafted, it

would need to be the case both that the taxpayer owns an interest in a partnership or LLC that owned a home destroyed by the referenced wildfires, and that the taxpayer lived in that home. This limited set of circumstances may have been intended, but the current iteration of the bill will likely raise questions regarding the applicability of the Corporate Income Tax Act.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A