

LFC Requester:**Torres****AGENCY BILL ANALYSIS - 2025 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:** Feb. 22, 2025*Check all that apply:***Bill Number:** HB 538Original Correction Amendment Substitute **Sponsor:** Representatives Dixon, Small,
Duncan, and Sharer
Short Title: Industrial Decarbonization
Production Credits**Agency Name****and Code**State Ethics Commission – 410**Number:****Person Writing**Connor G. Woods**Phone:** (505) 623-1074**Email** connor.woods@sec.nm.gov**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

BILL SUMMARY

Synopsis: HB 538 proposes the creation of two new nonrefundable, transferrable tax credits for industrial facilities in New Mexico.

The first proposed tax credit would reduce an industrial facility's tax liability \$85.00 per metric ton of carbon dioxide reduced below a federally established benchmark, up to \$10,000,000.00, or \$15,000,000.00 if determined by the Department of Energy to be a facility that has a high likelihood to create jobs. Across the entire industry, the state may only authorize a total reduction in tax liability of \$30,000,000.00 in 2026, \$50,000,000.00 in 2027, and \$100,000,000.00 in 2028.

The second proposed tax credit would allow an industrial facility to reduce its tax liability "in an amount equal to the lesser of ten percent" of the cost of purchasing equipment that assists in reducing the facilities carbon emission, up to \$5,000,000.00, or \$7,500,000.00 if determined by the Department of Energy to be a facility that has a high likelihood to create jobs. Across the entire industry, the state may only authorize a total reduction in tax liability of \$30,000,000.00 in 2026, \$50,000,000.00 in 2027, and \$100,000,000.00 in 2028.

All tax credits proposed by this bill would be nonrefundable, but transferable.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

Nonrefundable tax credits typically do not pose an issue under the Anti-Donation Clause. The Legislature has plenary and inherent power to create tax exemptions. *See Asplund v. Alarid*, 1923-NMSC-079, ¶ 19 ("The power of taxation is inherent in the state, and may generally be exercised in the discretion of the Legislature, except in so far as limited by the Constitution, and the state likewise has the reciprocal power of exempting from taxation, except as limited by the Constitution..."). A tax exemption, if operating prospectively, is not an unconstitutional remission of tax liability because it occurs during the calculation of any liability before the liability accrues. A non-refundable tax credit functions similarly, just at a later stage in the calculation of the tax liability, being calculated when determining whether any a taxpaying will have any liability. If, as has been long-established, the N.M. Constitution permits complete exemptions of tax liability, it follows that the Legislature may also create tax credits which are also part of the calculation leading to a determination of tax liability.

That said, however, the New Mexico Supreme Court previously determined that a nonrefundable tax credit, if designed to provide a subsidy to a discrete and particular industry, *does* constitute a violation of the Anti-Donation Clause. *See Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081 ¶ 30 (holding a non-refundable tax credit, applicable to any income tax, gross receipts tax, compensating tax or withholding tax due to the state from a retailer or dispenser who owned a liquor license issued before the effective date of the Liquor Control Act was "unconstitutional

because the reduction in payments of gross receipts taxes in this case constitutes an unconstitutional subsidy to the liquor industry in violation of Article IX, Section 14”). Despite *Chronis*, the proposed tax credit likely passes constitutional muster because it only applies in certain circumstances, is limited in the total reduction of tax liability across the industry and only reduces the industrial facility’s tax liability imposed on it by the Corporate Income and Franchise Tax Act.

The transferability of the tax credit could possibly create a subindustry of finding ways to offset tax liability imposed by the Corporate Income and Franchise Tax Act, but that in and of itself does not necessarily pose an issue under the Anti-Donation Clause.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS