

LFC Requester:	Brendon Gray
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AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(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: February 3, 2026 Check all that apply:
Bill Number: HB 27 Original ☐ Correction ☐
Amendment ☐ Substitute ☒

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	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:

HCEDC Committee Substitute: The HCEDC Substitute Bill adds an additional definition for “data center.” Notably the bill adds a much more detailed process to section 7-9F-9 CLAIMING THE BASIC CREDIT. The taxpayer must apply to the department for a certification of eligibility in order to claim the tax credit. Once the certificate of eligibility for the appropriate year has been issued by the department, the taxpayer can transfer or sell the certificate of eligibility to another taxpayer to take advantage of the refund allowed by the certificate of eligibility. For basic credits allowed for taxable years 2026 through 2028, a certificate of eligibility may be sold, exchanged or otherwise transferred to another taxpayer; provided that certificates for basic credits and additional credits that exceed fifty million dollars (\$50,000,000) for a taxable year shall not be transferred. The transfer of a certificate of eligibility shall be allowed in the order that a claim for the basic credit is received. The parties to a transaction to sell, exchange or transfer an additional credit shall notify the department of the transaction within ten days of the sale, exchange or transfer. Finally, the substitute provides for an increase in the amount of time the refund can be claimed from three to seven years from the date of the original claim.

Original Bill: HB 27 amends the current Technology Jobs and Research and Development Tax Credit Act. The first substantial change occurs in section 7-9F-3, definitions. The definition under subsection H is amended to highlight that “qualified facility” does not mean “a facility in New Mexico designated as a national laboratory by and act of congress or a research facility in New Mexico that is owned by the state . . .”

The final substantial changes adds section 7-9F-9.2 which makes the tax credits provided under the Act transferable, so that they may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. It further requires the parties to the transfer to notify the Taxation and Revenue Department of the transaction within ten days.

This provisions of this amendment applies to taxable years beginning on or after January 1, 2026.

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

HCEDC Substitute Bill for HB 27 does not change the Anti-Donation Clause analysis as set forth below. Despite the additional requirements set forth to obtain a certificate of eligibility for a specific tax year, the tax credit is still refundable and transferable so the analysis is the same.

Original analysis for HB 27: The Technology Jobs and Research and Development Tax Credit Act NMSA 1978, Sections 7-9F-1 to -13 (2000, as amended through 2019) provides for the tax credit to be refundable. *See* §7-9F-9.1(C). This bill would add transferability of the tax credits. As the tax credits would be both refundable and transferable it would 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 likely depends on the credit’s refundability and transferability, among its other attributes.

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.¹ 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 technology-based

¹ *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.”).

industries that will add jobs and boost New Mexico’s economy), the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange.

A refundable and transferrable tax credit, as HB 27 would create, operates to create a kind of property right—whereby the recipient of the tax credit can sell it or otherwise transfer it to another taxpayer, who then holds the right to redeem it and receive money from the State.² As such, refundable, transferable tax credits create a market in which the State makes payments not only to persons who are incentivized to meet the conditions necessary to obtain a tax credit, but also to persons who did not perform the statutory conditions required to receive the credit but simply engage in rent-seeking—*i.e.*, purchasing the eligibility for refundable tax credits at a discount with the intention to redeem those credits for their full amount. Refundable and transferable tax credits, therefore, raise both Anti-Donation concerns regarding the transfer of public funds to private individuals outside of the operation of a contract and, moreover, additional concerns regarding the transfer of public funds in circumstances where the transferee is purely engaged in rent-seeking.

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.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The tax credit will remain as a refundable tax credit, rather than become a transferable, refundable tax credit.

Why Make the Technology Jobs and R&D Tax Credit Transferable?

The Technology Jobs and Research and Development Tax Credit is intentionally targeted at early-stage and small companies, specifically companies with fewer than fifty employees. However, these companies frequently operate at a loss during their early growth years and therefore have little or no New Mexico income tax liability.

² See, e.g., § 7-2-18.31(E) (new solar market development income tax credit).

As a result, even when a startup qualifies for the credit, the practical value of the credit may be limited. While the credit can be carried forward, delaying its use does not address the immediate cash-flow needs of early-stage companies, particularly those engaged in capital-intensive research and development activities.

Making the credit transferable allows an eligible company to monetize the credit by selling it to a taxpayer with existing New Mexico tax liability. This converts a deferred tax benefit into immediate working capital that can be used to support payroll, research activities, facility costs, or other operational expenses. In effect, transferability aligns the timing of the incentive with the stage of business development it is intended to support.

From the state's perspective, transferability does not increase the face value of the credit. Instead, it allows the private market to determine the value of the credit while accelerating the economic activity the credit is designed to encourage. The state forgoes the same amount of tax revenue it otherwise would have, but the benefit is realized earlier in the business lifecycle, when it may have a greater impact on job creation and innovation.

In short, transferability ensures that the tax credit functions as an effective incentive for startups that may not yet be profitable, rather than a benefit that only becomes usable after a company has already succeeded.

AMENDMENTS