LFC Requester:	Gray

AGENCY BILL ANALYSIS - 2026 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. 3, 2026 *Check all that apply:*
Bill Number: HB 77 Original __ Correction __
Amendment ___ Substitute X_

Sponsor: Rebecca Dow, Cindy Nava, Joshua N. Hernandez, Anita Gonzales
Short Title: Affordable Housing Revitalization Tax Credit

Agency Name and Code Number: State Ethics Commission (410)
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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:

The HCEDC Substitute for House Bill 77 maintains much of the language of the original bill but makes several key changes. First, the Substitute bill changes the requirements for an eligible taxpayer for the Affordable Housing Revitalization Corporate Income Tax Credit to include that the taxpayer must be "a qualifying grantee pursuant to the Affordable Housing Act." Second, the bill requires that to qualify for the credit, "at least eighty percent of the residential housing units developed are affordable housing" – up from "at least fifteen percent" in the original bill. Next, the bill allows that completed applications (which are reviewed in the order received) which are above the aggregate annual amount of certified credits shall not be approved in that calendar year, but will be considered in the following calendar year (a change from the original bill which simply provided that such applications would not be approved). The Substitute also makes slight changes to several of the definitions used in the section, including "abandoned building," "rehabilitation expenses," and "revitalization project."

Original Bill

House Bill 77 would create the Affordable Housing Revitalization Corporate Income Tax Credit which would permit a taxpayer incurring rehabilitation expenses for a revitalization project in New Mexico to claim a credit against the taxpayer's tax liability. The bill identifies certain criteria and the process of qualifying for the credit, including a pre-certification and certification of eligibility process, and identifies the amount of the credit based on certain considerations. House Bill 77 provides that a certificate of eligibility under the law may be sold, exchanged, or otherwise transferred to another taxpayer for the full value of the credit. The credit exceeding a taxpayer's income tax liability in the taxable year shall not be refunded, but may be carried forward for up to five consecutive taxable years.

FISCAL IMPLICATIONS

HB 77 poses no fiscal implications for the State Ethics Commission.

SIGNIFICANT ISSUES

HCEDC Substitute

The proposed tax credit included in HCEDC Substitute for House Bill 77 remains a transferable, nonrefundable tax credit. As such, the Commission's analysis for the original bill remains unchanged.

Original Bill

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 a taxpayer will have any liability. If, as has been long-established, the New Mexico 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 nonrefundable tax credit likely passes constitutional muster because it only applies in certain circumstances, is limited in the total reduction of tax liability, and only reduces the taxpayer'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