

LFC Requester:

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**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto: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:** 02/02/2026*Check all that apply:***Bill Number:** SB 150Original ☒ Correction ☐Amendment ☐ Substitute ☐**Agency Name****and Code**

State Ethics Commission (410)

**Number:****Sponsor:** Sen. Wirth**Short** Local News Printer Tax Credit**Person Writing**Caroline Chato**Title:****Phone:** 362-9617**Email** caroline.chato@sec.nm.gov**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
<b>Total</b>						

(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: Senate Bill 150 would enact a new section of the Income Tax Act creating the Local News Printer Income Tax Credit and a new section of the Corporate Income and Franchise Tax Act creating the Local News Printer Corporate Income Tax Credit. Both sections provide that, for taxable years prior to January 1, 2031, an owner of a local news printer that employs a qualified employee may claim a credit against the taxpayer's tax liability (under the Income Tax Act for the local news printer income tax credit and under the Corporate Income and Franchise Tax Act for the local news printer corporate income tax credit) in an amount equal to the wages paid to a qualified employee, not to exceed \$10,000 for a qualified employee working 20 hours or more per week or \$5,000 for a qualified employee working less, up to one hundred qualified employees (and only one credit allowed per employee). The total annual aggregate amount of local news printer income tax credits and local news printer corporate income tax credits that may be certified in a calendar year shall not exceed \$1,000,000. To qualify for either tax credit, the taxpayer must apply for a certification of eligibility and if the department determines the taxpayer meets the requirements for the applicable tax credit, the department shall issue a dated certificate of eligibility. Completed applications are to be considered in the order received. The bill provides that both tax credits will be refundable. Senate Bill 150 defines "local news organization," "local news printer," "qualified employees," and "wages" for each proposed new section. The bill provides that the provisions of the act shall apply 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**

Both tax credits created by Senate Bill 150 would be refundable tax credits, but not transferable tax credits. Because the tax credits are refundable, it triggers 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 depends on the credit's specific attributes, including refundability.

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.<sup>1</sup> 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 high-wage industries that will add high-wage jobs and boost New Mexico’s economy), the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange. However, if a tax credit is sufficiently conditional, such that the taxpayer has to satisfy a set of conditions that the State demands, then the credit might be more analogous to a unilateral contract that the State offers as opposed to an unconditional subsidy.

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 to either of the tax credits created by Senate Bill 150.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 120 would similarly create news sections of the Income Tax Act and Corporate Income and Franchise Tax Act for local news organizations employing journalists in an amount equal to thirty percent of wages paid to each journalist for a maximum of 75 journalists per taxable year. There is significant overlap between the definition of “local news organization” in the two new

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<sup>1</sup> 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.”).

sections proposed by Senate Bill 120 and “local news printer” contained in the two new sections proposed by Senate Bill 150.

#### **TECHNICAL ISSUES**

Although not precisely in conflict, the eligibility requirement of the two credits in Senate Bill 150 is for “an owner of a local news printer that employs a qualified employee” while “local news printer” is defined in part to mean an entity that “employs at least five qualified employees[.]”

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS**