

1 SENATE BILL 561

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jacob R. Candelaria

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10 AN ACT

11 RELATING TO TAXATION; IMPOSING A CORPORATE LOW WAGE TAX ON
12 CERTAIN EMPLOYERS; CREATING A DISTRIBUTION OF THE CORPORATE LOW
13 WAGE TAX TO THE PRESCHOOL PROGRAM FUND; ENACTING THE PRESCHOOL
14 PROGRAM ACT; CREATING THE PRESCHOOL PROGRAM FUND TO FUND
15 PRESCHOOL DEVELOPMENT PROGRAMS; REPEALING SECTION 22-8-19.1
16 NMSA 1978 (BEING LAWS 1992, CHAPTER 83, SECTION 1, AS AMENDED);
17 IMPOSING A CIVIL PENALTY; MAKING AN APPROPRIATION.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. A new section of the Tax Administration Act is
21 enacted to read:

22 "[NEW MATERIAL] DISTRIBUTION--PRESCHOOL PROGRAM FUND--
23 CORPORATE LOW WAGE TAX.--A distribution pursuant to Section
24 7-1-6.1 NMSA 1978 shall be made to the preschool program fund
25 in an amount equal to the net receipts attributable to the

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1 corporate low wage tax."

2 SECTION 2. A new section of the Corporate Income and
3 Franchise Tax Act is enacted to read:

4 "[NEW MATERIAL] CORPORATE LOW WAGE TAX--IMPOSITION--
5 RATE.--

6 A. A tax to be known as the "corporate low wage
7 tax" is imposed in the amount specified in Subsection B of this
8 section on every employer corporation having a global gross
9 income of over one billion dollars (\$1,000,000,000) that is
10 employed or engaged in the transaction of business in, into or
11 from this state or deriving any income from any property or
12 employment within this state.

13 B. The amount of the corporate low wage tax shall
14 be one dollar (\$1.00) for every hour the employer corporation
15 pays an employee of the employer corporation a low wage in a
16 taxable year.

17 C. Notwithstanding any other law to the contrary,
18 any tax credit allowed pursuant to the Corporate Income and
19 Franchise Tax Act shall not be applied against the liabilities
20 imposed by the corporate low wage tax.

21 D. A corporate employer that is liable to pay the
22 corporate low wage tax shall, within six months of the end of
23 the taxable year in which the corporate employer becomes liable
24 to pay the tax, make a public disclosure that:

25 (1) the corporate employer is liable to pay

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1 the tax;

2 (2) the number of employees to whom the
3 corporate employer paid a low wage in that taxable year; and

4 (3) the number of hours worked in that taxable
5 year that the tax represents.

6 E. A person with good cause may bring a civil
7 action in a court of competent jurisdiction to challenge a
8 corporate employer for underpayment of the corporate low wage
9 tax and, upon prevailing, shall allow the department to recover
10 the balance of the taxes owed, including interest, an
11 additional amount equal to twice the taxes owed and any other
12 appropriate legal or equitable relief. An employee of a
13 corporate employer who has suffered discrimination in any
14 manner or had adverse action taken against that employee in
15 retaliation for challenging a corporate employer pursuant to
16 this section may bring a civil action in a court of competent
17 jurisdiction and, upon prevailing, shall recover actual damages
18 plus reinstatement in the case of discharge. If an employee
19 has been discharged in retaliation for challenging a corporate
20 employer pursuant to this section, the period of violation
21 extends from the day of discharge until the day the employee is
22 reinstated, the day the employee agrees to waive reinstatement
23 or, in the case of an employee who may not be rehired, from the
24 day of discharge until the day legal judgment is final. The
25 requirements of this section may also be enforced by the

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1 attorney general. A plaintiff prevailing in an action to
2 enforce this section shall be entitled to recover costs and
3 expenses of suit and reasonable attorney fees.

4 F. For purposes of this section:

5 (1) "benefits" means all remuneration for work
6 performed that is provided to an employee in whole or in part
7 by the employer corporation, other than wages, including
8 insurance programs; health care, medical, dental and vision
9 plans; life insurance; employer contributions to pensions, such
10 as a 401(k); and employer-provided services, such as child
11 care, offered by an employer to the employee. "Benefits" does
12 not include the employer's share of payroll taxes, social
13 security or medicare contributions, federal or state
14 unemployment insurance contributions or workers' compensation;

15 (2) "employer corporation" means every person,
16 firm, partnership, association, corporation, receiver or other
17 officer of the court of this state, and any agent or officer of
18 any of the above-mentioned classes, employing any person in
19 this state, except employers of domestic labor in private homes
20 and employers of livestock and agricultural labor. "Employer
21 corporation" includes more than one individual or entity,
22 including in circumstances in which one individual or entity
23 controls, is controlled by, has the right to control or is
24 under common control with another employer, and circumstances
25 in which one individual or entity exerts control over or has

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1 the right to exert control over the operations of another
2 employer. A contract between two employers or an individual
3 and an employer does not, by itself, constitute evidence of the
4 lack of an employment relationship; and

5 (3) "low wage" means an hourly wage paid by an
6 employer corporation to an employee that, when multiplied by
7 two thousand eighty hours, results in an income level that is
8 less than two hundred percent of the federal poverty level for
9 a family of three. "Low wage" includes benefits and does not
10 include the employer corporation's share of payroll taxes."

11 SECTION 3. [NEW MATERIAL] SHORT TITLE.--Sections 3
12 through 8 of this act may be cited as the "Preschool Program
13 Act".

14 SECTION 4. [NEW MATERIAL] DEFINITIONS.--As used in the
15 Preschool Program Act:

16 A. "child" or "children" means a child or children
17 from zero to five years of age who are not three- or
18 four-year-old developmentally delayed or disabled children
19 funded through the public school funding formula or who are not
20 children funded through other statutory programs;

21 B. "department" means the children, youth and
22 families department;

23 C. "early childhood development staff" means one or
24 more adults who are trained in early childhood development and
25 who make up the staff responsible for working directly with

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1 children in providing preschool program services;

2 D. "eligible provider" means a person who is
3 licensed by the department to provide preschool programs or
4 preschool special education for children, or that is a public
5 school, private school, tribal program or head start program;
6 and

7 E. "preschool program" means a licensed program
8 that provides early childhood developmental readiness services
9 or preschool special education to children, but does not
10 include pre-kindergarten programs funded through the
11 Pre-Kindergarten Act."

12 SECTION 5. [NEW MATERIAL] PRESCHOOL PROGRAMS--
13 APPLICATIONS--LICENSURE--LICENSE FEE.--

14 A. The department may promulgate rules to carry out
15 the provisions of the Preschool Program Act.

16 B. The department is responsible for licensing and
17 funding preschool programs that meet the requirements of the
18 Preschool Program Act and the standards of the department. The
19 department shall distribute any money for this purpose upon its
20 approval of applications and proposals from eligible providers.
21 Early childhood service providers and early childhood programs
22 that are not seeking state funding are not required to be
23 licensed.

24 C. An eligible provider who operates a preschool
25 program for which state funding is being sought shall apply to

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1 the department for licensure. One license covers both the
2 eligible provider and the preschool program, unless the
3 eligible provider proposes to provide a preschool program that
4 is not covered by the initial license. An application for
5 licensure shall include the following:

6 (1) the qualifications of the eligible
7 provider and the eligible provider's early childhood
8 development staff, including copies of any other applicable
9 licenses pertinent to being an early childhood care provider or
10 early childhood care facility or evidence of accreditation by
11 the public education department, and degrees or licenses
12 required or obtained by the early childhood development staff;

13 (2) the way in which the preschool program
14 comprehensively addresses the total developmental needs of the
15 children served, including physical, cognitive, social and
16 emotional needs and including aspects of health care,
17 nutrition, safety, the needs of the family and multicultural
18 sensitivity, and the way in which the program coordinates with
19 other community and state resources for families;

20 (3) the way in which the preschool program
21 meets other rules and standards of the department;

22 (4) the number and ages of children to be
23 served by the preschool program;

24 (5) site and floor plans and a description of
25 the preschool facilities;

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1 (6) revenue sources and amounts other than
2 state funding available for the preschool program;

3 (7) the proposed budget for the ensuing year;

4 (8) the plan for communicating with and
5 involving parents in the preschool program;

6 (9) the way in which the preschool program
7 services meet the continuum of services to children;

8 (10) other relevant information requested by
9 the department; and

10 (11) a signed and sworn statement by the
11 eligible provider that the preschool program shall not include
12 any religious, sectarian or denominational purposes,
13 instruction or material.

14 D. The department by rule shall provide for
15 criminal background checks of all staff of a preschool program
16 who have access to children. Convictions of felonies or
17 misdemeanors contained in the federal bureau of investigation
18 record shall be used in accordance with the Criminal Offender
19 Employment Act. Other information contained in the federal
20 bureau of investigation record, if supported by independent
21 evidence, may form the basis for the denial, suspension or
22 revocation of a license or employment for good and just cause.
23 Records and related information shall be privileged and shall
24 not be disclosed to a person not directly involved in the
25 licensure or employment decisions affecting the specific

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1 individual. The department shall not pay for the cost of
2 obtaining the federal bureau of investigation record. A
3 potential employee with an eligible provider who has undergone
4 a background check within twenty-four months of applying for
5 employment with an eligible provider shall not be required to
6 submit to another background check if the department has copies
7 of the employee's federal bureau of investigation records on
8 file. An eligible provider who operates a preschool program
9 shall report to the department any known conviction of a felony
10 or misdemeanor involving moral turpitude that results in any
11 type of action against the employee.

12 E. The department by rule shall provide the length
13 of time for which a license is issued and renewal dates and
14 requirements. The department may allow for truncated license
15 renewal applications that indicate only material changes from
16 the initial application.

17 F. The department may charge a license fee not to
18 exceed two hundred dollars (\$200). The department may charge
19 different fees for different classes of preschool programs.
20 Public schools and other governmental eligible providers shall
21 not be charged a license fee. License fees shall be deposited
22 in the preschool program fund.

23 G. A preschool program shall collaborate, where
24 possible, with existing head start programs and other
25 appropriate early childhood developmental readiness programs in

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1 the community.

2 H. Each preschool program shall have a strong
3 parental involvement component, a staff development component
4 and a procedural process to enable the department to monitor
5 and evaluate the preschool program.

6 SECTION 6. [NEW MATERIAL] PRESCHOOL PROGRAMS--FUNDING
7 PROPOSALS--PER-CHILD REIMBURSEMENT--STAFF DEVELOPMENT.--

8 A. The department shall rank preschool program
9 funding applications pursuant to the requirements of Subsection
10 B of this section. Depending on the amount available in the
11 preschool program fund, funding allocations shall be based on a
12 per-child calculation determined by the department for approved
13 and ranked applications, taking into account the following:

14 (1) priority funding for preschool programs
15 specified in Subsection B of this section;

16 (2) each preschool program's costs associated
17 with overhead and training and professional development for
18 qualified early childhood development staff;

19 (3) the length of time, measured in hours,
20 days or weeks as determined by the department, the preschool
21 program will operate in the upcoming fiscal year;

22 (4) the amount of funding derived from
23 copayments, tuition, gifts, grants, donations and other revenue
24 sources; and

25 (5) separate awards for research-based quality

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1 initiatives to improve developmental outcomes.

2 B. For funding purposes, applications shall be
3 evaluated and priority given to preschool programs in
4 communities with public elementary schools that are designated
5 as Title 1 public schools and that have at least sixty-six
6 percent of the children served living within the attendance
7 zone of a Title 1 public elementary school. Additional funding
8 criteria include:

9 (1) the number of children proposed to be
10 served and the length of the preschool program's year;

11 (2) the adequacy and capacity of preschool
12 programs and facilities in the community;

13 (3) language and literacy services in the
14 community;

15 (4) the cultural, historic and linguistic
16 responsiveness of the preschool program to the community;

17 (5) parent education services available for
18 parents of children in the community;

19 (6) the qualifications of eligible providers
20 and early childhood development staff of the applicant and the
21 qualifications of eligible providers and early childhood
22 development staff in the community;

23 (7) staff professional development plans;

24 (8) the capacity of local organizations and
25 other persons interested in and involved in preschool programs

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1 and other services for children and the local organizations' or
2 other persons' commitment to work together to ensure that
3 children have the best preparation for school beginning at age
4 five;

5 (9) the extent of local support for preschool
6 programs in the community; and

7 (10) other relevant criteria specified by rule
8 of the department.

9 C. The department shall provide by rule for
10 quantifying priorities and application criteria to rank
11 preschool programs as provided in this section.

12 D. By April 1 of each year, the department shall
13 determine:

14 (1) the number and amount of funding proposals
15 for the ensuing fiscal year;

16 (2) the number of children enrolled in each
17 preschool program in the state that is requesting funding;

18 (3) the amount available for funding; and

19 (4) the per-child calculation.

20 E. By July 1, the department shall distribute
21 one-fourth of the per-child calculation to each eligible
22 provider. After two quarters of funding, the department shall
23 recalculate the per-child distribution to each preschool
24 program and may increase or decrease funding in the next two
25 quarters based on the recalculation.

1 SECTION 7. [NEW MATERIAL] PRESCHOOL PROGRAM FUND--

2 CREATED--PURPOSE--DISBURSEMENTS.--

3 A. The "preschool program fund" is created as a
4 nonreverting fund in the state treasury. The fund consists of
5 tax distributions, license fees, appropriations, gifts, grants,
6 donations and income from investment of the fund. The
7 department shall administer the fund, and money in the fund is
8 appropriated to the department only to carry out the purposes
9 of the Preschool Program Act. Disbursements from the fund
10 shall be by warrant of the secretary of finance and
11 administration upon vouchers signed by the secretary of
12 children, youth and families or the secretary's authorized
13 representative.

14 B. The fund shall be used to foster preschool
15 development as follows:

16 (1) increasing access to preschool programs by
17 increasing eligibility and funding outreach programs to
18 increase enrollment;

19 (2) increasing affordability by making parent
20 copayments for preschool programs no more than ten percent of
21 family annual adjusted income for families of fewer than five
22 earning less than two hundred percent of the federal poverty
23 level;

24 (3) funding quality initiatives that are
25 supported by data to improve developmental outcomes; and

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1 (4) sustaining New Mexico's preschool
2 infrastructure by providing adequate per-child funding.

3 SECTION 8. [NEW MATERIAL] CONTRACT PROVISIONS--
4 MONITORING--AUDITS.--

5 A. A contract or other agreement between the
6 department and an eligible provider shall specify and ensure
7 that state funds or any other funds of a preschool program that
8 is partially funded by state funds are not being used for any
9 religious, sectarian or denominational purposes, instruction or
10 material. The department shall monitor preschool programs to
11 ensure compliance with this subsection.

12 B. The department shall require every eligible
13 provider to have an independent audit each year as required by
14 the Audit Act.

15 C. The department shall monitor and evaluate the
16 effectiveness of every preschool program at least once every
17 license period. The department may require information about
18 any preschool program during the interim between license
19 periods. At any time the department judges a preschool program
20 to be programmatically or fiscally deficient, it may intervene
21 and require the eligible provider to:

- 22 (1) change staff or program elements;
23 (2) change financial accounting systems or
24 personnel; or
25 (3) make other changes as determined by the

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1 department.

2 D. The department may suspend, revoke or refuse to
3 renew a license for an eligible provider or preschool program.
4 After a hearing, the department shall state the reasons for the
5 suspension, revocation or refusal to renew a license in its
6 order, and the eligible provider may appeal the decision as
7 provided in Section 39-3-1.1 NMSA 1978.

8 SECTION 9. REPEAL.--Section 22-8-19.1 NMSA 1978 (being
9 Laws 1992, Chapter 83, Section 1, as amended) is repealed.

10 SECTION 10. APPLICABILITY.--The provisions of Sections 1
11 and 2 of this act apply to taxable years beginning on or after
12 January 1, 2015.

13 SECTION 11. EFFECTIVE DATE.--The effective date of the
14 provisions of Sections 3 through 9 of this act is January 1,
15 2016.