

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number	<u>HB105</u>	Sponsor	<u>Lane/Townsend/Vincent/Hembree/Ezzell</u>
Tracking Number	<u>.227199.3</u>	Committee Referrals	<u>HEC/HTRC</u>
Short Title	<u>Education Scholarship Tax Credit</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>1/29/2024</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 105 (HB105) would create the educational scholarship income tax credit and the educational scholarship corporate income tax credit for claim by those who contribute to a school tuition organization that awards educational scholarships for low-income students attending private schools.

The bill would apply to taxable years beginning on or after January 1, 2024.

FISCAL IMPACT

The bill does not contain an appropriation.

Section 2 of HB105 would permit a taxpayer to claim a credit against their personal income tax liability in an amount not to exceed \$700 for single individuals and \$1,400 for heads of households and those filing joint returns. This amount would be adjusted for inflation on an annual basis.

Section 3 permits a taxpayer to claim a credit against their corporate income tax liability in an amount not to exceed \$1,400, which would be adjusted for inflation on an annual basis.

While it is difficult to estimate the number of taxpayers who may contribute to a tuition scholarship organization as a result of HB105, the Taxation and Revenue Department (TRD) estimates the bill may have an initial fiscal impact of \$2.5 million in FY25. As the size of the available credit increases due to inflation, TRD estimates the recurring cost of HB105 would increase after FY25, with the recurring cost of the bill totaling approximately \$3 million in FY28.

Please see the Possible Questions section of this analysis for more potential considerations on the fiscal impact of HB105.

SUBSTANTIVE ISSUES

The following bullet points include an analysis of select sections of the proposed education scholarship tax credit:

Section 1. This section permits the Public Education Department (PED) to authorize school tuition organizations to distribute educational scholarships to eligible students attending a private school in New Mexico. The bill lists a wide range of criteria that a school tuition organization must meet to qualify for authorization by PED, including that those organizations:

- Allocate at least 90 percent of the organization's annual revenue received from contributions for educational scholarships to eligible students to attend private schools in New Mexico;
- Not limit the availability of educational scholarships to students of only one private school;
- Not allow donors to designate student beneficiaries as a condition of any contribution to the organization or facilitate, encourage, or knowingly allow the exchange of beneficiary student designations;
- Include on the organization's website, if one exists, the percentage and total dollar amount of educational scholarships awarded during the previous fiscal year;
- Award educational scholarships only to eligible students; and
- Not award educational scholarships to attend a public, tribal, or federal bureau of Indian education school.

Of note, the bill requires any amount exceeding the tuition of a private school be returned to the school tuition organization, thereby barring a student from utilizing the funds for the comprehensive costs of attending school, including instructional materials, housing, transportation, and any miscellaneous fees levied by the private school. An organization may, however, allow the returned amount to be used by the same student over several years, or that it be redistributed to other eligible students.

This section also contains relevant definitions, including:

- **Eligible student:** meaning a qualified student, as defined in the Public School Finance Act, who resides in New Mexico and is member of a household for which the total annual income does not exceed the amount used to qualify for a reduced-price lunch through the federal school lunch programs established pursuant to 42 USCA Sections 1751 through 1769, as amended; provided that once a student becomes an eligible student, receives an educational scholarship, and continuously attends the private school, the student shall remain an eligible student regardless of household income until the student graduates from high school or reaches twenty-one years of age, and:
 - attended a public school in New Mexico as a full-time student for at least one full semester immediately prior to receiving an educational scholarship and enrolling in and transferring to a private school; or
 - attended, as a full-time student, a home school in New Mexico that meets the requirements of the Public School Code for at least one full semester immediately prior to receiving an educational scholarship and enrolling in and transferring to a private school;
- **Nonprofit organization:** meaning an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations

described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered; and

- School tuition organization: meaning a nonprofit organization with a principal place of business in New Mexico that provides education scholarships to eligible students attending private schools in New Mexico of their parents' choice.

HB105 also places considerable reporting requirements on school tuition organizations, including annual disclosure of the total number of contributions they received in the current and prior fiscal year, the total dollar amount of those contributions, and the total number of eligible students that received educational scholarships. Any private schools serving students who receive educational scholarships must also disclose the number of educational scholarships they receive along with the total dollar amount of those scholarships. This information must be published on PED's website on or before January 1 of the calendar year following the year in which the information is received.

Of final note, HB105 would require that a school tuition organization receiving more than \$500 thousand in total donations be subject to a financial audit by an independent certified public accountant (CPA). If a school tuition organization receives less than \$500 thousand in total donations, they would be subject to a financial review by an independent CPA. The costs of completing the audits and financial reviews would be incurred by the school tuition organization and would be required to be submitted to PED.

Section 4. This section specifies the provisions of sections 2 and 3 apply to taxable years beginning on or after January 1, 2024.

ADMINISTRATIVE IMPLICATIONS

SB113 may be a moderate administrative burden on PED as it places a number of requirements onto PED, including:

- Maintaining a public registry of authorized school tuition organizations;
- Making the registry available to the public on request; and
- Posting the registry on the department's website.

HB105 may also be an administrative burden on TRD as it places several requirements onto the department, including manually reviewing certifications to assure compliance of credits. The department estimates this administrative burden may require the addition of one full-time employee, for a recurring annual cost of approximately \$83 thousand. An additional contractual cost of \$154 thousand may also be required for the department's information technology division.

TECHNICAL ISSUES

HB105 requires the size of the tax credit be adjusted for inflation but the bill does not define what methodology or metrics would be used in fulfilling that requirement. To eliminate that ambiguity, TRD recommends the bill state, "To determine the adjusted credit amount, the Secretary shall use the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1986, as amended."

POSSIBLE QUESTIONS

- Would the receipt of an education scholarship be considered taxable income to either the student or their legal guardian?
- If the education scholarship is considered taxable income, what impact would that have on the eligible student's eligibility for public assistance programs, such as Medicaid, the Supplemental Nutrition Assistance Program, and other programs?

SOURCES OF INFORMATION

- LESC Files
- Taxation and Revenue Department (TRD)
- Education Trust Board (ETB)

DE/mca/js