F I S C A L   I M P A C T   R E P O R T

BILL NUMBER: House Bill 193

SHORT TITLE: Scholarships For Private Ed & Tax Credits

SPONSOR: Montoya

LAST UPDATE: 2/6/26 **ORIGINAL DATE:** 2/4/26 **ANALYST:** Graeser

REVENUE*
(dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
PIT/CIT	0	($2,900.0)	($3.100.0)	($3,300.0)	($3,500.0)	Recurring	General Fund

Parentheses indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD -- ASD		$5.4		$5.3	Non-Recurring	General Fund
TRD -- ITD		$47.0		$47.0	Non-Recurring	General Fund
PED					Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
Taxation and Revenue Department

Agency or Agencies That Were Asked for Analysis but did not Respond
Public Education Department

SUMMARY

Synopsis of House Bill 193

House Bill 193 (HB193) creates the educational scholarship income and corporate income tax credit for those who contribute to a school tuition organization that awards educational scholarships for low-income students attending private schools.

HB193 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.

The bill also allows 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.

Credits that exceed the donor's income tax or corporate income tax liability would be allowed a three-year roll-over period.

Numerous conditions are articulated in the bill to prevent abuse.

Effective Date Language: This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026. The tax credit provisions are applicable for tax years beginning January 1, 2026. There is no sunset date.

FISCAL IMPLICATIONS

This bill creates a tax expenditure with a cost that is difficult to determine but likely significant. Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. While versions of this bill have been introduced at least seven times since 2020, the fiscal consequences are not well understood.

It is difficult to estimate the number of taxpayers who may contribute to a tuition scholarship organization because of HB193. This is a very generous credit because the returns are dollar-for-a-dollar-contributed. Most tax incentives are phrased as a deduction of the full amount which results in the donation being multiplied by the appropriate income tax rate – in this case a maximum of 5.9 percent. Alternatively, the credit amount is expressed as a percentage of the expenditure. The primary motivation for making donations to non-profit organizations has always been one of civic consciousness or generosity. This generous credit somewhat alters motivations.

TRD notes difficulties estimating the fiscal impact of this proposal:

> The Taxation and Revenue Department (TRD) cannot anticipate how many taxpayers will contribute and how much they will contribute, since it depends on whether organizations can provide eligible educational scholarships and if the credit will incentivize contributions. TRD identified over 15 thousand organizations in New Mexico that have been granted an exemption from federal income tax as described in section 501(c)(3) of the Internal Revenue Code. However, it is unknown how many of these organizations will seek certification from the PED as a tuition scholarship organization, or how many new 501(c)(3) organizations may be created for that purpose.
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> [TRD] therefore estimated the impact using two sources of data on students at private schools, starting with the most recent data from the National Center for Education

Statistics' Private School Universe Survey. This survey tabulates the annual number of private school students by state. In the 2021-2022 academic year, the most recent year available, there were 16,909 private school students in New Mexico.

The nonprofit organization, EdChoice,[1] provides information on multiple state tax programs that reduce the cost of attending private schools, including tax credit tuition scholarship programs. Using a sample of 12 states that offer education scholarship tuition credits for scholarship granting organizations from 2020 to 2024, TRD assumes an annual increase in the number of students served of 6.6 percent from the sample analysis as a proxy for growth in private school students in New Mexico.

TRD used both sources to calculate a ratio between the number of low-income students attending private schools and receiving a tuition scholarship compared to the total number of private school students in the state to estimate the number of low-income private school students that may be eligible to receive scholarships in New Mexico. It is assumed these students and school tuition organizations are eligible and certified when applicable.

TRD assumes the taxpayers contributing to school tuition organizations will be higher income taxpayers or corporations. TRD also assumes the amount of donations needed to support a growth rate of 6.6 percent of low-income students attending private schools with a tuition scholarship. TRD assumed the maximum credit per taxpayer, ranging from $700 to $1,400 depending on filing status or applicable tax credit, will be used against the taxpayers' tax liability.

Eligible taxpayers are assumed to have PIT or CIT liabilities that will be able to claim the full credit amount ($700 or $1,400 depending on filing status) leaving a minimal amount to be carried over.

LFC staff note that a scholarship organization realizing $500 thousand in annual income may be

FPL Level by Family Size	
Household/ Family Size	185 percent
1	28,952.50
2	39,127.50
3	49,302.50
4	59,477.50
5	69,652.50
6	79,827.50
7	90,002.50
8	100,177.50
9	110,352.50
10	120,527.50
11	130,702.50
12	140,877.50
13	151,052.50
14	161,227.50

[1] www.edchoice.org

receiving donations from as many as 5,000 donors, with average donations being less than $100. Alternatively, the organization may receive only a few donations substantially more than $10,000. Because the tax credits are limited per donor, this makes it very difficult to determine the administrative or fiscal burden.

For reference, the following is a table of Federal Poverty Level by household family size for 185 percent of poverty.

SIGNIFICANT ISSUES

The Legislative Education Study Committee (LESC) has led analysis of similar voucher proposals in recent years. The following language is adapted from the 2025 analysis of HB 324, as the provisions of this year's HB 193 are substantially similar:

> [The] number of Private School Students in New Mexico. There are a total of 22.2 thousand students who were enrolled in 164 private schools in the state during the 2020-2021 school year, as reported by the National Center of Education Statistics. Approximately 52 percent of public school students are estimated to be below 185 percent of the federal poverty level, according to statewide data gathered by the family income index (FII) pilot program. This threshold is the same that is used by the federal government in determining eligibility for reduced price lunch, as included in the student eligibility section of HB324.
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> HB324 would permit 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 criteria that a school tuition organization must meet to qualify for authorization for the educational scholarship income and corporate income tax credit by PED, including:
>
> - 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.
>
> HB324 requires any amount exceeding the tuition of a private school to be returned to the school tuition organization, thereby barring a student from utilizing the funds for other 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.

> HB324 places reporting requirements onto school tuition organizations, including an annual disclosure of the total number of contributions they received in the prior fiscal year, the total dollar amount of those contributions, and the total number of eligible students that received educational scholarships. Any private school 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.
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> HB324 would also require a school tuition organization receiving more than $500 thousand in donations 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 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.

LFC staff note that the private schools do not have to be non-profit organizations. Thus, a profit-making school could enhance that profit by recruiting eligible students.

The New Mexico State Ethics Commission has expressed broader concerns regarding 100 percent and refundable tax credits. Although not directly addressing this bill, its analysis of SB150 offers discussion that may be informative when considering the nonrefundable tax credits proposed here:

> The Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution 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).
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> 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 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 [House Bill 193].

TRD has also provided its tax policy comments:

> PIT represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 16 percent of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT (New Hampshire and Washington do not tax wage and salary income). Like several states, New Mexico computes its income tax based on the federal definition of "adjusted gross income" (AGI) and ties to other statutes in the federal tax code. This is referred to as "conformity" to the federal tax code. The PIT is an important tax policy tool that has the potential to further both horizontal equity by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay.
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> CIT is a volatile source of revenue for many states. Providing additional corporate tax incentives increases volatility.
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> Investing in education through this credit may positively impact communities and improve lives. The bill may foster educational opportunities for lower-income children and youth with the option of attending private school. Nineteen states offer an education scholarship income tax credit. In most states, the number of low-income students served has steadily increased.
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> While the bill provides educational opportunities to lower-income students, the tax benefits will likely accrue solely to higher-income taxpayers and corporations, as lower-income taxpayers are less likely have disposable income to contribute or to have income tax liability against which to offset the credit.
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> The effect of this bill will be to reduce revenues from PIT and CIT, which fund public education and other critical government services. An alternative to fostering

educational opportunities for private schools would be to use income tax revenues to increase funding and investment to continue improving access to, and the quality of, public education in New Mexico.

Under the Internal Revenue Code (IRC), such charitable contributions are usually deductible for federal tax purposes. Credits are more valuable than deductions, because they are a dollar-for-dollar reduction in a taxpayer's tax liability, whereas deductions only reduce taxable income, and therefore result in only a percentage of the contribution reducing overall tax liability. Under the IRC, taxpayers will likely be able to deduct the amount of their contributions under this law from their federal taxable income, for taxpayers who itemize their federal deductions, as the "school tuition organizations" must be a nonprofit organization. Because New Mexico taxable income is based on federal taxable income, a taxpayer who itemizes their federal deductions and who donates to a school tuition organization will receive two tax benefits. The first tax benefit is the federal deduction allowed for contributions to a 501(c)(3) deduction which reduces a taxpayer's federal taxable income reduces a taxpayer's New Mexico taxable income. Second, after receiving the benefit of lower New Mexico taxable income, the taxpayer can claim a tax credit against New Mexico income for the same donation.

This credit does not have a sunset date. TRD recommends a sunset date for policymakers to review the impact of tax expenditures before extending them.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to include this tax expenditure in the annual Tax Expenditure Report required by 7-1-84 NMSA 1978 and to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD will update forms, instructions and publications and make information system changes. Staff training to administer the credit will take place. This implementation will be included in the annual tax year changes.

For TRD's Administrative Services Division (ASD), implementing this bill will require existing two FTEs, 40 hours split between pay-band eight and 10 positions for each tax program for a total of 80 hours. Pay band eight hours are estimated at time and ½ due to extra hours worked required for implementation.

For TRD's Information Technology Division (ITD), this bill will have a moderate impact, requiring approximately 680 hours or about 4 months for an estimated staff workload cost of $47,063.

HB193 places several requirements onto PED, including:

- P roviding the proper documentation to donor taxpayers;

- 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.

PED estimates it may require one additional full-time employee to administer provisions of the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Although there are no direct conflicts with the provisions of this bill, there have been at least seven introductions of similar or identical bills since 2020: HB346 (2020), SB325 (2020), HB266 (2023), SB113 (2023), HB105 (2024), SB48 (2024) and HB324 (2025).

The earliest reference seems to be SB433 introduced by Ramsay Gotham in 2001.

TECHNICAL ISSUES

The original issue with voucher bills was the church-state problem. Could vouchers be used to support kids in parochial schools? This bill seems to provide only that the credits could support kids at private schools.

The provisions of the bill would allow the scholarship organization to support kids at for-profit schools. As far as can be seen, there are no for-profit high schools in the state.

TRD has provided extensive suggestions on technical issues:

> [Section 1] Page 6, Line 22 - an eligible student is defined as a New Mexico resident whose household qualifies for a reduced-price lunch through the federal school lunch program established under 42 USCA Sections 1751 through 1769. New Mexico currently provides free lunches to all New Mexico public and charter school students regardless of income. For clarification, TRD recommends including “free or” before “reduced-price lunch” to ensure all low-income students are eligible for educational scholarships.
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> [Sections 2 and 3]: The bill should identify what inflation index is to be used to adjust the credit amount to avoid ambiguity. On page 8, line 20 and page 10, line 16, after the period, TRD recommends inserting the follow language: “For the 2025 taxable year and each subsequent taxable year, the amount of credit shall be adjusted to account for inflation. The department shall make the adjustment by multiplying the credit amount by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2025. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.” With this addition, “consumer price index” needs to be defined on pages 9 and 11, by inserting: “As used in this section, "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month

ending September 30"

On Page 9, lines 4-11, and Page 10, line 25 – Page 11, lines 1-7: In Subsection D, the first sentence requires that the credit be claimed for the taxable year in which the contribution is made. But the following sentence allows the taxpayer to apply to the department for the credit within 12 months following the calendar year the contribution was made. Example: the taxpayer contributes in 2025, which can be claimed on the taxpayer's 2025 return filed in April 2026. Applying the second sentence, the taxpayer has 12 months, until December 2026, to apply for the 2025 credit. It is unknown if the taxpayer must file an amended 2025 return or can claim the credit on the 2025 return filed in 2027. To address this, TRD suggests changing both Subsections D with the following language: "A taxpayer may claim the tax credit allowed by this section for in the taxable year in which the taxpayer makes a contribution to a school tuition organization. To receive the tax credit, a taxpayer shall claim the credit on forms and in the manner prescribed by the department within twelve months following the calendar year in which the contribution is made. The application shall include a certification made pursuant to Subsection C of this section."

The certification of a tax credit by another state agency generally includes information on the amount of the credit certified and the tax year for which the credit is eligible to be claimed. For constituency with other tax credit programs, TRD suggests adding the following to the end of Sections 1 and 2, Subsections C on page 9, line 3 and on page 10, line 24: "If the public education department determines that the taxpayer meets the requirements of this section, the department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed. The public education department shall provide the department with the certificates of eligibility issued pursuant to this subsection in a secure electronic format at regularly agreed-upon intervals."

A new section is recommended at the end of Section 2, page 9, line 24 and Section 3, page 11 line 20, to allow PED to have rule-making authority to clarify certification procedures, provide definitions, and School Tuition Organizations certifications. TRD suggests the following: "The public education department may promulgate rules to administer the certification process required by this section."

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	?	**The concept of vouchers has been debated for approximately 25 years.**
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.		The assumption is that private schools are better for kids than public schools.
Clearly stated purpose	✘	
Long-term goals	✘	
Measurable targets	✘	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	Numerous reports are required, and inclusion in the annual TER.
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.		
Public analysis	✓	
Expiration date	✘	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.		
Fulfills stated purpose	✘	
Passes "but for" test	✘	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	✘	No evidence of the assumption.
Key: ✓ Met ✘ Not Met ? Unclear		

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