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FISCAL IMPACT REPORT

BILL NUMBER: House Memorial 28

SHORT TITLE: Advance Election for Ed. Freedom Tax Program

SPONSOR: Dow/Armstrong/Chavez/Jones/Martinez

LAST ORIGINAL
UPDATE: _____ **DATE:** 2/3/26 **ANALYST:** Francis

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact		Choose an item.	Choose an item.
Total	No fiscal impact	No fiscal impact	No fiscal impact		Choose an item.	Choose an item.

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

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

Taxation and Revenue Department

Public Education Department

SUMMARY

Synopsis of House Memorial 28

House Memorial 28 (HM 28) requests the governor to submit an advance election to participate in the federal education freedom tax credit (EFTC) program as soon as possible. The EFTC is a tax credit up to \$1,700 per taxpayer for donations to nonprofit scholarship-granting organizations that award scholarships to kindergarten through 12th grade students. Scholarships can be used many expenditures beyond tuition and can go to students at private, religious, and public schools.

FISCAL IMPLICATIONS

Memorials do not contain appropriations and are not enforceable as state law.

Although there are no fiscal implications for the general or other funds, by “opting in” to the EFTC, state residents can contribute to a scholarship granting organization (SGO) and receive the federal tax credit. Taxpayers will be able to receive the credit for contributions made beginning January 1, 2027, applicable to the 2028 tax returns.

Federal tax credits, unlike deductions and exemptions, do not affect NM tax administration.

SIGNIFICANT ISSUES

Section 25F was added to the Internal Revenue Code by section 70411 of Public Law 119-21, 139 Stat. 72 (July 4, 2025) which provides the EFTC.

According to the U.S. Department of Education, there are four steps to implantation:¹

1. The state has to opt-in to the program and become a “covered state.”
2. The state has to provide a list of SGOs that meet the federal standards.
3. A taxpayer makes a contribution to one of the SGOs on the list.
4. Taxpayer applies for credit up to \$1,700.00 which is not refundable but can be carried forward for up to 5 years.

An SGO is a charity that uses 90 percent of its income for scholarships for students from families with income no greater than 3 times the median gross income (verified by the SGO). The median household income in NM is \$64,059, so eligible students could come from households with almost \$200 thousand income. Other requirements for an SGO are:²

- SGO must provide scholarships to at least 10 students who do not all attend the same school.
- SGO prioritizes students who have previously received a scholarship or the sibling of such a student.
- SGO does not set aside scholarships for any particular student.

Scholarships expenditures are anything covered by the definition for the Coverdell education savings account which allows expenditures “incurred in connection with the enrollment or attendance. These include tuition, fees, academic tutoring, special needs services, book, supplies, and other equipment of the designated beneficiary of the trust as an elementary or secondary school student at a public, private, or religious school.”³ Expenses also include room and board, uniforms, transportation, and any computer technology equipment, internet access to be used by the beneficiary and the beneficiary’s family (but not gaming software unless educational).

States should use Internal Revenue Service Form 15714 to opt in to the program.⁴ Currently, there’s no deadline for a state opting into the program and a few states have opted in already. Some states like Illinois are waiting until rules are promulgated detailing the specifics of the program. States have to provide list of SGOs by January 1 each year.

Scholarships are not considered income for federal tax purposes. As NM conforms to federal

¹ [Fact Sheet: Education Freedom Tax Credit](#)

² [Public Law 119 - 21, July 4, 2025](#), section 70411.

³ [26 USC 530: Coverdell education savings accounts](#)

⁴ [Form 15714 \(12-2025\)](#)

taxable income, the scholarships will not be considered NM income either.

PERFORMANCE IMPLICATIONS

The credit is a federal credit. It is unusual that the federal government is requiring states to opt in to the credit and there does not appear to be a deadline for opting in. However, if the state does not opt in before January 1, 2027, and does not provide a list of SGOs to the federal government on that date, state taxpayers may not receive the federal credit for contributions to NM SGOs.

States can set rules for the SGOs within their borders. New Mexico can establish criteria for SGOs such as prohibiting discrimination or requiring performance standards.⁵ However, while federal statute is silent on how states choose SGOs, the U.S. Treasury has not promulgated rules and the requirements for SGOs could be set at the federal level.⁶ Waiting for the Treasury to publish rules and guidance regarding SGO eligibility is a reason cited by some Governors for waiting to opt-in. However, most states have already opted in.⁷

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⁵ [Federal Scholarship Credit article: Brookings](#)

⁶ [Federal Scholarship Credit article: American Enterprise Institute - AEI](#)

⁷ [Federal Program Will Bring Private School Choice to At Least 4 New States](#)