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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/28/12

**SPONSOR** Ortiz y Pino **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Special Needs Student Scholarship Act **SB** 31

**ANALYST** Smith

### REVENUE (dollars in thousands)

| Estimated Revenue |           |           | Recurring<br>or Non-<br>Recurring | Fund<br>Affected |
|-------------------|-----------|-----------|-----------------------------------|------------------|
| FY13              | FY14      | FY15      |                                   |                  |
| (\$80.0)          | (\$575.0) | (\$600.0) | Recurring                         | General Fund     |

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates HB 65

#### **SOURCES OF INFORMATION**

2010 LFC Files  
 Taxation and Revenue Department (TRD)  
 Attorney General's Office (AGO)  
 Albuquerque Public Schools (APS)

No Responses From:  
 Public Education Department (PED)

#### **SUMMARY**

##### Synopsis of Bill

This bill enacts the Special Needs Student Scholarship Act that would grant education scholarships to special needs students to attend a qualified school by creating a tax credit for contributions to tuition scholarship organizations that provide such scholarships. SB31 creates individual and corporate income tax credits that can be taken against the liability of a taxpayer for contributions made to a tuition scholarship organization that provides tuition awards to special needs students. The credit may be approved for 90% of a taxpayer's contributions but may not exceed 50% of the tax liability in any single year. Any credit amount in excess of the 50% maximum can be carried forward for three years.

The bill provides for a maximum annual aggregate of both individual and corporate income tax credits up to \$5,000,000. The Taxation and Revenue Department is also required to compile an annual report for the Revenue Stabilization and Tax Policy Committee on approved credits.

Effective Date: Sections 1 through 5 and 8 – July 1, 2012; Sections 6 and 7 – January 1, 2013; Sections 6 and 7 applicable to taxable years beginning on or after January 1, 2013 but before January 1, 2017.

**FISCAL IMPLICATIONS:**

TRD reports that the revenue impact related to the personal income tax was based on the experiences of two states that analyzed Equal Opportunity Scholarship tax credits, Ohio and Arizona. The 2002 revenue losses estimated in Ohio and Arizona were \$14.0 and \$14.2 million, respectively. Adjusting by population, the revenue loss for New Mexico would be \$2.6 million according to the Ohio experience, and \$4.4 if based on the Arizona experience. For the purposes of this estimate, a simple average of \$3.5 million in 2002 was used.

The revenue impact related to the corporate income tax was calculated using the amount of corporate giving in 2000 (\$10.9 billion) in the entire United States, of which 4.5% (\$490.5 million) was donated to schools. Adjusting this number to New Mexico using a population ratio of 0.65 yields an estimate of \$31.8 million, of which 5% flows to scholarships for low-income students. Hence, the estimate for New Mexico in 2000 is \$1.6 million.

These revenue impacts were multiplied by 0.9 to account for the credit to be in the amount of ninety percent of the total contributions made and were adjusted 30% downward to account for the fact that the credit may not exceed fifty percent of the taxpayer's tax liability for the taxable year. It is estimated that 12.5% of students qualify as special needs students. The revenue impacts were multiplied by this number to account for scholarship donations to special needs students.

The individual and corporate income tax credit amounts (for 2002 and 2000, respectively) were assumed to grow at a 3% annual growth rate.

Proponents of the bill have argued that it would produce a net savings to the general fund; the loss to in tax credits would be outweighed by the reduction in the State Equalization Guarantee (SGE). In the example provided, the special needs scholarships would be \$32 hundred less than the SGE per student.

Absent economies of scale, it is highly unlikely that a special needs student will be adequately educated for 25% less money than currently allocated. Under the, If a private school did not offer all the special education services that a student needed, then under the U.S. Individuals with Disabilities Education Act (IDEA), the school district would be required to provide the services to the student.

APS provides the following example:

- If a student was speech and language disabled, needed occupational therapy, psychology support, and the private school could only provide speech and language therapy, it would be up to the district to provide those services.

## **SIGNIFICANT ISSUES**

There is a plethora of legal opinions both pro and con arguing the constitutionality of this design. The AGO reports that the scholarships awarded under the Special Needs Students Scholarship Act do not appear to implicate Article IX, section 14, the anti-donation clause, or Article XII, Section 3 of the New Mexico Constitution, which proscribes the use of public money for the support of private schools, because the Act contemplates that the scholarships would be funded entirely by private donations. And, because the tax credits are available to all individuals and corporate entities, including those whose special needs children attend public schools and those whose children attend nonsectarian private schools or sectarian private schools, these may be permissible under the establishment clauses of the federal and state constitutions. See *Mueller v. Allen*, 463 U.S. 388 (1983) (state statute providing tax deduction for public and private school expenses held not violative of the establishment clause of the First Amendment).

## **TECHNICAL ISSUES**

The requirement in new Section 3 B(6) that “all pertinent findings” from the required criminal background checks on employees and board members be provided to the Department will make those findings subject to inspection under the Inspection of Public Records Act. The requirement in new Section 4 A that the “names of eligible students who received scholarships” and other personal information regarding students be provided to the Department will make that information subject to inspection under the Inspection of Public Records Act.

Section 6, Subsection C permits the Department to impose a fee for each numbered “contribution receipt” issued by the Department to a tuition scholarship organization. The bill makes no provision for the distribution of this fee. Thus, it is unclear how the fee should be used or deposited.

Since the bill imposes a fee, it is recommended that a reference to the provision of the fee be included in the title of the bill.

Section 6, Subsection L suggests the Department may be required to disclose the amount of the tax credit claimed by a taxpayer. To the extent that such information is information contained in a taxpayer return, Section 7-1-8.8 should be amended to permit the Department to release such information without violating confidentiality provisions in Section 7-1-8.

Section 4 states that a tuition scholarship organization shall ensure that a school participating in the tuition scholarship program is in compliance with all health and safety laws or rules that apply to schools. The school itself may be better suited to state whether or not it is compliant with such laws and rules. Thus, it is recommended that Section 4, Subsection B, Paragraph 1 be amended to require certification from the school of such compliance. Similar certification requirements could also be added to the requirements contained in Paragraphs 4, 6 and 7.

Sections 6 and 7 provide for tax credits for contributions to tuition scholarship organizations that provide scholarships to students attending qualified schools, including public or nonpublic elementary, middle or secondary schools. It is unclear to what extent students would qualify for scholarships to public schools for which tuition is not required. The definition of “educational scholarship” suggests that they may qualify for scholarships for transportation costs not covered by a qualified public school.

The definition of “educational scholarship” does not specify whether an “educational

scholarship” is for costs paid by the student for attendance at a qualified school. As currently drafted, “educational scholarship” includes “costs of the student” at a qualified school. If it is the intention to provide scholarships for costs to be paid by a student, the definition of “educational scholarship” may require additional clarification.

New Section 6 A limits the total amount of credit that can be approved to no more than “fifty percent of the taxpayer's income tax liability for the taxable year.” This does not appear to be the intent of this section and conflicts with Section 6 I which permits carryover of credit amounts that exceed the fifty percent limitation. The language should be modified to clarify that the fifty percent limitation limits the amount of a credit that can be claimed in a particular tax year. This change should also be made to new Section 7 A.

There is no guidance on how to deal with taxpayers whose contribution receipts become revoked, denied or canceled.

### **ADMINISTRATIVE IMPLICATIONS**

TRD reports moderate impact. They will need to develop contribution receipts that are sequentially numbered and a system of tracking those contribution receipts at an initial cost of \$4,000 and continued manual cost. The cost to develop the application and claim form will be another \$4,000, and will require FTE to approve and manage. There will need to be one additional line on the Schedule PIT-CR allowing the deduction and another on the PIT-ADJ that adjusts for any amount that has been included in itemized deductions. Coordination between PED and TRD will be required. TRD will need to develop a system of collecting and processing the charges for the certificates. The bill does not discuss where those charges should go. The tracking of the certificates and the carry forward of the credits will be manual, and will require additional FTE. The contributor will need to apply for the credit, then once approved may claim the credit. Reports will need to be generated manually. One FTE is needed to manage the requirements of the credit at a cost of \$40,000.

### **AMENDMENTS**

Legal semantics aside, this is undoubtedly a school voucher pilot project. Perhaps a “sunset clause” should be added so that the legislature could evaluate the efficacy of the program.

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