FISCAL IMPACT REPORT

SPONSOR Campos **ORIGINAL DATE** 02/11/10 **LAST UPDATED** **HB**

SHORT TITLE Equal Opportunity Scholarship Act **SB** 88

ANALYST Smith/Gudgel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	($5,000.0)	($5,000.0)	Recurring	General Fund
	Possible Reversion – See Fiscal Implications	Possible Reversion – See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		See Fiscal Implications	See Fiscal Implications	Nonrecurring	School District Budgets/State Equalization Guarantee Distribution - General Fund
	$240.0	$240.0	$480.0	Recurring	General Fund – PED Operating Budget
	$44.0	$40.0	$84.0	Recurring	General Fund – TRD Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

Similar to HB 65, Duplicates HB 166

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Education Department (PED)
Taxation and Revenue Department (TRD)

SUMMARY

<u>Synopsis of Bill</u>

Senate Bill 88 enacts the Equal Opportunity Scholarship Act that would grant education scholarships to economically disadvantaged children to attend a qualified school by creating a tax credit for contributions to tuition scholarship organizations that provide such scholarships. The bill 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 educational scholarships to economically disadvantaged students. The credit may be approved for 90 percent of a taxpayer's contributions but may not exceed 50 percent of the tax liability in any single year. Any credit amount in excess of the 50 percent 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.

The bill outlines the process for private nonprofit organization to seek certification to become a tuition scholarship organization from the Public Education Department. It also outlines the duties of both the tuition scholarship organization and the Public Education Department and the Taxation and Revenue Department in administering the Special Needs Scholarship Act.

Additionally, the bill limits the amount of scholarship award to an eligible student to 80 percent of the three-year rolling average of the state equalization guarantee (SEG) distribution for the eligible student as calculated for associated program units. PED will be required to calculate the associated program units for an eligible student deduct that student's program cost from the student's previous school district or charter school SEG distribution prior to distribution.

Effective Date: July 1, 2012 for scholarships, July 1, 2013 for tax credits; however tax credits can apply to taxable years starting January 1, 2012 but before January 1, 2017.

FISCAL IMPLICATIONS

This bill may be counter to the LFC tax policy principle of adequacy. According to the LFC staff General Fund Recurring Appropriation Outlook for FY14 and FY15, December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations.

It is assumed that the bill's $5 million maximum total in tax credits would be reached during calendar year 2013, thus reduce revenue to the general fund by that amount in FY14.

Potential general fund savings are uncertain as they are dependent on whether the activity would have occurred without current legislation – whether private donors would continue making educational scholarship donations for special education students and whether special education students would transfer from public schools to public or private schools with tuition and other costs. The number of students who will take advantage of the educational scholarship annually is also uncertain. The provisions of this bill will likely not result in decreased annual general fund appropriations to the state equalization guarantee. The potential savings are dependent on certain reductions to the general fund to offset the tax credits given to individuals and corporations for donations.

For students using a scholarship at the beginning of the school year, the bill requires PED to reduce a school district or charter schools SEG distribution by an amount equal to the "program cost" generated by the individual student. However, the program cost under the funding formula includes both the state and local funding responsibilities, including federal Impact Aid, Forest Reserve and local property taxes. The bill appears to require PED to capture these local and federal funds. Additionally there is no provision for PED to revert this funding to the general fund, and it is unclear whether these savings would result in the increase of the final unit value typically set in January of each year due to reduced units, or if PED would revert the funds after the close of FY13.

As noted above, any savings in SEG distributions that are reverted to the general fund are dependent on the program cost an individual student using a scholarship would generate under the state's funding formula. The bill would reduce payments to school districts and charter schools, but the savings to the general fund are less clear. Specifically, the bill could reduce SEG distribution payments to school districts and charter schools by an estimated $3.62 million using the following assumptions:

- PED estimates about 780 economically disadvantaged students would use the scholarships;
- Each student would generate about 1.29 units multiplied by the unit value (FY12 - $3,598.87). The type of funding formula units generated include those generated specifically by students and based on factors associated with participation in free and reduced lunch programs, including basic enrollment, at-risk, and bilingual program units. PED assumed the statewide average of 2 units/student, however this figure includes units generated by public schools that are unrelated to the bill's target population, including the training and experience index for teachers and staff, school and district size adjustments, and school staff generating ancillary special education FTE units.

Again, because the bill does not include language to require certain withheld funds to revert to the general fund, it is unclear whether these withholdings would result in any general fund savings.

If a student leaves a district or charter school during the middle of the year, the bill provides that PED would reduce the SEG distribution by the individual student's program cost and revert the savings to the General Fund.

As a result, under either scenario any savings that could revert to the general fund would not begin until after the close of FY13, and would instead impact FY14. Since PED would only remove students from the SEG calculation once, the savings would be nonrecurring.

PED notes, depending on the number of students involved per district, the amounts deducted from a school district's SEG may impact the amount of supplemental emergency funding requested by the district. House Bill 2 currently includes $8 million for emergency supplemental funding for school districts experiencing budgetary shortfalls. This bill could increase the amounts of emergency supplemental funding needed by school districts.

In addition to fiscal impacts of the scholarship tax credits and SEG deductions, both TRD and PED indicate the bill will have recurring fiscal impacts on the departments. TRD estimates that the department will need an additional FTE manage the requirements of the credit at a cost of $40,000. PED indicates, based on low participation and low administrative burdens that the department would need an additional $240 thousand annually.

SIGNIFICANT ISSUES

Of note, unlike a charitable donation made pursuant to the Internal Revenue Code, where the donor cannot receive any benefit from the donation for it to be deductible, this tax credit can be claimed by a parent whose child is attending a parochial or private school.

"Qualified schools" include public schools, allowing a student to leave a public school to attend another public school and receive a scholarship for a tuition grant or other grant of funds to cover all or part of the costs of that student at a qualified school, including transportation costs. This provision allows a student to move from a public school to another public school and receive an "educational scholarship". "Educational scholarship" is defined as a tuition grant or other grant of funds to an eligible student to cover all or part of the costs of that student at a qualified school, including transportation costs. Pursuant to the Constitution of New Mexico, a "uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained." This provision guarantees a free public education therefore there should be no need to grant an educational scholarship to a student to attend a public school.

The bill requires distribution of 90 percent of the donations received during a calendar year as educational scholarships. This provision may create a situation whereby a tuition scholarship organization collects more donations than they are able to award because of the student demand for scholarships.

School districts and charter schools are funded on the average enrollment reported on the second Wednesday in October, and December 1 of the prior year, adjusted for current year enrollment growth over 1 percent. School district and charter school SEG distributions do not reflect current year enrollment. The provision to decrease a school district's or charter school's SEG distribution in the current year for a student who has left the district or charter because they have received an educational scholarship attempts to eliminate the general fund impact of "double funding" of the student who is receiving the tuition scholarship; however, generally when that student moves from one school to the next it would not be captured during the year the student moves, but the succeeding year. This could have a negative impact on a school district and charter school's ability to properly budget for the current year.

Depending on the number of students involved per district, the amounts deducted from a school district's SEG may impact the amount of supplemental emergency funding requested by the district, according to PED.

ADMINISTRATIVE IMPLICATIONS

Both TRD and PED indicate administration and oversight of the new scholarship tax credit program would have an impact on their operating budgets.

<u>TRD</u>
Moderate impact. 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. The Department 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 annual aggregate is going to be cumbersome for the Department and for the contributor. The contributor will need to apply for the credit, then once approved may claim the credit. Reports will need to be generated manually as well. TRD will need one FTE to manage the requirements of the credit at a cost of $40,000.

<u>PED</u>
PED expects this bill would impact its budget negatively in that it would require new staff for fiscal and programmatic oversight as follows:

PED Administrative Services Department indicates Sections 4 and 5 (Page 7, line 2 through page. 11, line 15) would require PED fiscal oversight in terms of staffing as well as program oversight to address program implementation and reporting matters (Section 8, page. 22, line 4 through page. 23, line 22) related to this bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 65 and Senate Bill 31 are similar bills – create educational scholarship tax credits for scholarships given to special needs students. House Bill 166 is a duplicate.

TECHNICAL ISSUES

The bill does not contain a definition of “associated program units” to be calculated by PED for an eligible student receiving a scholarship. There are many units that are not units generated by a student that could potentially be included in the calculation of “associated program units” as the bill is drafted. The Legislature may wish to clarify that “associated program units” include base program units and units generated by students participating in free and reduced lunch programs, including basic enrollment, at-risk, and bilingual program units.

<u>TRD Analysis raises the following issues:</u>
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.

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.

<u>PED Analysis raises the following issues:</u>
It is not clear whether a school operated by an Indian Tribe, nation or pueblo could be considered an eligible school under the bill.

It is not clear as to what tax year the tax credit would become available (page 23, Section 9; page 24, Section 10 indicate differing effective dates)

On page 6, line 16, the reference to "generally accepted accounting procedures". This should be changed to "generally accepted accounting principles" is the standard applicable to audits for which the PED must determine if a tuition scholarship organization should be certified.

The requirement that the PED verify that certain "criminal background checks" have been performed on certain employees and board members of scholarship organizations is ambiguous as is language regarding "with the understanding" because it is not a standard and raises the question: "Whose understanding?" If what is meant here is a fingerprint-based background check conducted by the FBI, that is not clear in the bill. Also it is not clear is who pays for such background checks.

PED Analysis indicates it is not clear that undistributed funding pursuant to page 10 paragraph 3 and 4 will revert to the general fund.

The ability of the PED to deny, suspend or revoke a qualified organization's certification is not only based upon ambiguous standards and would impose unique administrative burdens upon the PED, but does not provide for any due process which would subject the PED to liability for "abuse of discretion".

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office provided an analysis on the scholarships awarded under the Special Needs Students Scholarship Act proposed in House Bill 65 (this bill is similar to HB65). The scholarship tax credit does 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.).

ALTERNATIVES

Perhaps a "sunset clause" should be added so that the legislature could evaluate the efficacy of the program.

SS:RG/svb