AN ACT

RELATING TO TAXATION; ENACTING THE EQUAL OPPORTUNITY SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO LOW-INCOME STUDENTS TO ATTEND CERTAIN SCHOOLS; CREATING INCOME TAX AND CORPORATE INCOME TAX CREDITS FOR CONTRIBUTIONS TO TUITION SCHOLARSHIP ORGANIZATIONS THAT PROVIDE EDUCATIONAL SCHOLARSHIPS FOR LOW-INCOME STUDENTS TO ATTEND CERTAIN SCHOOLS OF THE STUDENT'S PARENTS' CHOICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Equal Opportunity Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Equal Opportunity Scholarship Act:
A. "certification document" means the document issued by the department to an organization verifying that the organization is a tuition scholarship organization and contributions to that organization for equal opportunity scholarships may be claimed as an equal opportunity scholarship tax credit;

B. "contribution receipt" means a document developed by the taxation and revenue department pursuant to the Equal Opportunity Scholarship Act and provided to a tuition scholarship organization that in turn provides the document to an individual or corporate contributor that is a taxpayer that intends to claim an equal opportunity scholarship tax credit as a receipt for a contribution to the tuition scholarship organization;

C. "department" means the public education department;

D. "educational scholarship" means 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;

E. "eligible student" means a student who:

(1) is a member of a household for which the total annual income does not exceed an amount used to qualify for a reduced-price lunch through the federal school lunch programs established pursuant to 42 USCA Sections 1751 through .198150.1
1769, as amended; provided that once a student receives a
scholarship pursuant to the Equal Opportunity Scholarship Act,
the student shall remain eligible regardless of household
income until the student graduates from high school or reaches
twenty-one years of age;

(2) attended a New Mexico public school for
the semester prior to first receiving an educational
scholarship pursuant to the Equal Opportunity Scholarship Act
or is starting school in New Mexico for the first time; and

(3) resides in New Mexico while receiving a
scholarship from a tuition scholarship organization;

F. "equal opportunity scholarship tax credit" means
the equal opportunity scholarship income tax credit provided in
the Income Tax Act and the equal opportunity scholarship
corporate income tax credit provided in the Corporate Income
and Franchise Tax Act;

G. "parent" means a guardian, custodian or other
person with authority to act on behalf of a child;

H. "qualified school" means a public or nonpublic
elementary, middle or secondary school located in New Mexico to
which a parent has chosen to send an eligible student;

I. "relative" means a person related by affinity or
consanguinity to the third degree;

J. "tuition grant" means a grant of funds for the
purpose of covering the costs of tuition for a qualified

.198150.1

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school; and

K. "tuition scholarship organization" means an organization that provides educational scholarships to students attending qualified schools of their parents' choice and that meets the criteria established in the Equal Opportunity Scholarship Act.

SECTION 3. [NEW MATERIAL] TUITION SCHOLARSHIP ORGANIZATION--CERTIFICATION.--

A. An organization may seek certification from the department as a tuition scholarship organization by submitting an application for certification to the department.

B. To be certified as a tuition scholarship organization by the department, the organization shall provide documentation as deemed appropriate by the department to verify that:

(1) the tuition scholarship organization has been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the federal Internal Revenue Code of 1986;

(2) the tuition scholarship organization has awarded or intends to award educational scholarships to eligible students who are attending or plan to attend qualified schools;

(3) the scholarships are funded from contributions that the tuition scholarship organization has...
received in or prior to the current calendar year or
anticipates receiving during the remainder of the calendar year
and:

(a) at least ninety percent of the
contributions received during a calendar year for which the
tuition scholarship organization issues a contribution receipt
to an individual or corporate taxpayer for purposes of
obtaining an equal opportunity scholarship tax credit is
awarded by the organization as educational scholarships and all
revenue from interest or investments is expended solely on
educational scholarships; and

(b) a scholarship award to an eligible
student shall not exceed eighty percent of the three-year
rolling average of the state equalization guarantee
distribution for the eligible student as calculated for the
associated program units;

(4) the tuition scholarship organization
distributes periodic scholarship payments as checks that are
issued to an eligible student's parent, that are mailed to the
qualified school in which the eligible student is enrolled and
that require the endorsement of the parent prior to deposit of
the check;

(5) educational scholarships awarded by the
tuition scholarship organization are portable during the school
year and can be used at any qualified school that accepts the
eligible student according to a parent's wishes; provided that the scholarship shall be prorated between schools based on the number of days attended at each school by the eligible student;

(6) criminal background checks on all of the tuition scholarship organization's employees and board members have been conducted by the organization, with the understanding that individuals who might reasonably pose a risk to the sound fiscal management of the funds of the organization shall be excluded from employment or governance, and all pertinent findings on employees and board members have been provided to the department for review and approval;

(7) the tuition scholarship organization has in place systems to provide for financial accountability, including independent annual audits that shall be submitted to the department in the form of a financial information report that complies with generally accepted accounting procedures as specified by the department and is certified to be free of material misstatements by the certified public accountant who performed the audit; and

(8) the tuition scholarship organization is financially viable and receives or is likely to receive donations of fifty thousand dollars ($50,000) or more during a school year by filing with the department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of contributions expected to be
received during the school year.

SECTION 4. [NEW MATERIAL] TUITION SCHOLARSHIP ORGANIZATION--DUTIES.--

A. No later than thirty days prior to the start of a new school year or the start of a new semester, a tuition scholarship organization shall provide to the department the names of eligible students who received scholarships and the students' previous school district or charter school affiliation. The tuition scholarship organization shall provide verification that the qualified students have been awarded a tuition scholarship and have enrolled in a public or nonpublic school for the new school year or the new semester.

B. A tuition scholarship organization shall ensure that a school participating in the tuition scholarship organization's scholarship program certifies that the school:

1. is in compliance with all health and safety laws or rules that apply to schools;
2. holds a valid occupancy permit as required by applicable laws;
3. does not discriminate in admissions on the basis of race, color or national origin;
4. provides academic accountability to parents of the students in the program by regularly reporting to the parent on the student's academic and developmental progress;
(5) ensures that every school employee with 
unsupervised access to students has undergone a background 
check as described in Subsection B of Section 22-10A-5 NMSA 
1978;

(6) has no paid staff or board members who are 
also staff or board members of the tuition scholarship 
organization or who are relatives of the staff or board members 
of the tuition scholarship organization;

(7) gives enrollment preference to eligible 
students who were enrolled at the school in the prior year and 
to siblings of eligible students already admitted to or 
attending the school; and

(8) is a qualified school and, if the school 
has more applications for educational scholarships from 
eligible students than positions available for students 
receiving scholarships, the school fills the available 
scholarship positions only by using a random selection process.

C. By June 1 of each year beginning in 2016, a 
tuition scholarship organization shall report the following 
information to the department and the taxation and revenue 
department:

(1) the name and address of the tuition 
scholarship organization;

(2) the total number and dollar amount of 
contributions received for which contribution receipts were
issued during the calendar year ending on December 31 of the prior year;

(3) the total number and dollar amount of all educational scholarships awarded during the calendar year ending on December 31 of the prior year; and

(4) the total number and dollar amount of educational scholarships awarded to eligible students during the calendar year ending on December 31 of the prior year.

D. A tuition scholarship organization shall:

(1) provide to each individual and corporate contributor of funds dedicated for educational scholarships a contribution receipt that shall be completed according to taxation and revenue department requirements;

(2) maintain a list by the sequential number on the contribution receipt identifying to whom each copy is issued, the amount and date of the contribution and any other information deemed necessary by the taxation and revenue department to allow the contributor to receive an equal opportunity scholarship tax credit; and

(3) account for all copies of contribution receipts damaged, destroyed, lost or otherwise unusable.

SECTION 5. [NEW MATERIAL] DEPARTMENT--DUTIES.--

A. The department shall administer the Equal Opportunity Scholarship Act.

B. The department shall:
(1) provide the name of each certified tuition scholarship organization to the taxation and revenue department by no later than thirty days after issuing the certification document to the tuition scholarship organization;

(2) upon notification by the tuition scholarship organization, calculate the associated program units for an eligible student receiving an educational scholarship that would have been generated under the funding formula using the current year unit value and determine the dollar amount of that student's program cost, if that student were to have enrolled in the student's previous school for the new school year or the new semester;

(3) if an eligible student receiving an educational scholarship withdraws prior to the start of a new school year, deduct that student's program cost from the student's previous school district or charter school state equalization guarantee distribution allocation prior to distribution;

(4) if an eligible student receiving an educational scholarship withdraws between semesters, make a prorated reduction in the school district's or charter school's distribution for the remainder of the school year and not distribute the funds attributed to the adjustments, which shall remain undistributed and shall revert to the general fund at the end of the fiscal year;
(5) engage an auditor to conduct a financial and program audit of a tuition scholarship organization, at the expense of the tuition scholarship organization, if there is evidence of fraud or failure to comply with the Equal Opportunity Scholarship Act;

(6) deny, suspend or revoke the certification of a tuition scholarship organization for purposes of the equal opportunity scholarship tax credit if the department determines that the organization has intentionally and substantially failed to comply with the requirements of the Equal Opportunity Scholarship Act; and

(7) notify the taxation and revenue department if the certification of an organization as a tuition scholarship organization is denied, suspended or revoked within ten days of the denial, suspension or revocation.

SECTION 6. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP INCOME TAX CREDIT.--

A. Prior to January 1, 2020, a taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer and makes a contribution to a tuition scholarship organization pursuant to this section may apply for, and the department may allow, a tax credit against the taxpayer's liabilities imposed pursuant to the Income Tax Act. The tax
credit provided by this section may be referred to as the "equal opportunity scholarship income tax credit".

B. The purpose of the equal opportunity scholarship income tax credit is to encourage individuals and businesses to contribute money to tuition scholarship organizations that provide scholarships for eligible students to attend public or nonpublic schools that are chosen by the students' parents.

C. The amount of an equal opportunity scholarship income tax credit shall equal ninety percent of the total contributions made by a taxpayer in a taxable year to a tuition scholarship organization but shall not exceed fifty percent of the taxpayer's liabilities imposed pursuant to the Income Tax Act for that taxable year. If the total amount of equal opportunity scholarship income tax credits, including amounts carried forward from previous years, exceeds fifty percent of the taxpayer's liabilities imposed pursuant to the Income Tax Act for the taxable year in which a contribution was made, the excess may be carried forward for three consecutive taxable years.

D. The department may allow a maximum annual aggregate of five million dollars ($5,000,000) for equal opportunity scholarship income tax credits and equal opportunity scholarship corporate income tax credits. Completed applications for the tax credits shall be considered in the order received by the department. A taxpayer who
submits an application for a tax credit but is unable to receive the tax credit due to the limitation in this subsection shall be placed for the subsequent year at the front of a queue of tax credit claimants submitting claims in the subsequent year in the order of the date on which the application was received.

E. To receive an equal opportunity scholarship income tax credit, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a numbered copy of the contribution receipt provided by the tuition scholarship organization to the taxpayer pursuant to Subsection G of this section.

F. To ensure that the department receives the information needed to allow an equal opportunity scholarship income tax credit, the department shall develop a contribution receipt that requests all of the information needed by the department to determine if a credit may be allowed. The contribution receipts shall be sequentially numbered, and a charge, not to exceed fifty cents ($0.50) per numbered copy, may be charged by the department to the tuition scholarship organization.

G. Upon receiving notice from the public education department that an organization has been certified as a tuition scholarship organization, the taxation and revenue department shall provide sequentially numbered copies of contribution receipts.
receipts to the tuition scholarship organization to be distributed by the tuition scholarship organization to its contributors to indicate the recipient, date and value of a contribution to the tuition scholarship organization and other information required by the taxation and revenue department.

H. The equal opportunity scholarship income tax credit shall not be allowed for a contribution that is included for the taxable year in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code.

I. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the equal opportunity scholarship income tax credit that would have been allowed on a joint return.

J. A taxpayer who otherwise qualifies for and claims an equal opportunity scholarship income tax credit for a contribution made to a tuition scholarship organization by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association in a taxable year with respect to a contribution made to a tuition scholarship organization, including equal opportunity scholarship corporate income tax credits claimed by a corporate member of the
partnership or business association, shall not exceed the
maximum credit that would have been allowable pursuant to this
section if claimed by a single taxpayer.

K. A taxpayer allowed a tax credit pursuant to this
section shall report the amount of the credit to the department
in a manner required by the department.

L. The department shall compile an annual report on
the equal opportunity scholarship income tax credit that shall
include the number of taxpayers approved by the department to
receive the credit, the aggregate amount of credits approved
and any other information necessary to evaluate the
effectiveness of the credit. Beginning in 2019 and every three
years thereafter that the credit is in effect, the department
shall compile and present the annual reports to the revenue
stabilization and tax policy committee and the legislative
finance committee with an analysis of the effectiveness and
cost of the tax credit and whether the tax credit is performing
the purpose for which it was created.

M. As used in this section:

(1) "eligible student" means a student who:

    (a) is a member of a household for which
the total annual income does not exceed an 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 receives
a scholarship pursuant to the Equal Opportunity Scholarship Act, the student shall remain eligible regardless of household income until the student graduates from high school or reaches twenty-one years of age;

(b) attended a New Mexico public school for the semester prior to first receiving an educational scholarship pursuant to the Equal Opportunity Scholarship Act or is starting school in New Mexico for the first time; and

(c) resides in New Mexico while receiving a scholarship from a tuition scholarship organization;

(2) "parent" means a guardian, custodian or other person with authority to act on behalf of a child; and

(3) "tuition scholarship organization" means an organization that provides educational scholarships to students attending qualified schools of their parents' choice and that meets the requirements of the Equal Opportunity Scholarship Act."

SECTION 7. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP CORPORATE INCOME TAX CREDIT.--

A. Prior to January 1, 2020, a taxpayer that files a New Mexico corporate income tax return and makes a contribution to a tuition scholarship organization pursuant to .198150.1
this section may apply for, and the department may allow, a tax
credit against the taxpayer's liabilities imposed pursuant to
the Corporate Income and Franchise Tax Act. The tax credit
provided by this section may be referred to as the "equal
opportunity scholarship corporate income tax credit".

B. The purpose of the equal opportunity scholarship
corporate income tax credit is to encourage corporations to
contribute money to tuition scholarship organizations that
provide scholarships for eligible students to attend public or
nonpublic schools that are chosen by the students' parents.

C. The amount of an equal opportunity scholarship
corporate income tax credit shall equal ninety percent of the
total contributions made by a taxpayer in a taxable year to a
tuition scholarship organization but shall not exceed fifty
percent of the taxpayer's liabilities imposed pursuant to the
Corporate Income and Franchise Tax Act for that taxable year.
If the total amount of equal opportunity scholarship corporate
income tax credits, including amounts carried forward from
previous years, exceeds fifty percent of the taxpayer's
liabilities imposed pursuant to the Corporate Income and
Franchise Tax Act for the taxable year in which a contribution
was made, the excess may be carried forward for three
consecutive taxable years.

D. The department may allow a maximum annual
aggregate of five million dollars ($5,000,000) for equal
opportunities scholarship income tax credits and equal

opportunities scholarship corporate income tax credits.

Completed applications for the tax credits shall be considered

in the order received by the department. A taxpayer that

submits an application for a tax credit but is unable to
receive the tax credit due to the limitation in this subsection
shall be placed for the subsequent year at the front of a queue
of tax credit claimants submitting claims in the subsequent
year in the order of the date on which the application was
received.

E. To receive an equal opportunities scholarship

corporate income tax credit, a taxpayer shall apply to the

department on forms and in the manner prescribed by the
department. The application shall include a numbered copy of
the contribution receipt provided by the tuition scholarship
organization to the taxpayer pursuant to Subsection G of this

section.

F. To ensure that the department receives the

information needed to allow an equal opportunities scholarship
corporate income tax credit, the department shall develop a

contribution receipt that requests all of the information
needed by the department to determine if a credit may be
allowed. The contribution receipts shall be sequentially
numbered, and a charge, not to exceed fifty cents ($0.50) per
numbered copy, may be charged by the department to the tuition

.198150.1
G. Upon receiving notice from the public education department that an organization has been certified as a tuition scholarship organization, the taxation and revenue department shall provide sequentially numbered copies of contribution receipts to a tuition scholarship organization to be distributed by the tuition scholarship organization to its contributors to indicate the recipient, date and value of a contribution to the tuition scholarship organization and other information required by the taxation and revenue department.

H. The equal opportunity scholarship corporate income tax credit shall not be allowed for a contribution that is included for the taxable year in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code.

I. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

J. The department shall compile an annual report on the equal opportunity scholarship corporate income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. Beginning in 2019 and every three years thereafter that the credit is in effect,
the department shall compile and present the annual reports to
the revenue stabilization and tax policy committee and the
legislative finance committee with an analysis of the
effectiveness and cost of the tax credit and whether the tax
credit is performing the purpose for which it was created.

K. As used in this section:

(1) "eligible student" means a student who:

(a) is a member of a household for which
the total annual income does not exceed an 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 receives
a scholarship pursuant to the Equal Opportunity Scholarship
Act, the student shall remain eligible regardless of household
income until the student graduates from high school or reaches
twenty-one years of age;

(b) attended a New Mexico public school
for the semester prior to first receiving an educational
scholarship pursuant to the Equal Opportunity Scholarship Act
or is starting school in New Mexico for the first time; and

(c) resides in New Mexico while
receiving a scholarship from a tuition scholarship
organization;

(2) "parent" means a guardian, custodian or
other person with authority to act on behalf of a child; and
(3) "tuition scholarship organization" means an organization that provides educational scholarships to students attending qualified schools of their parents' choice pursuant to the Equal Opportunity Scholarship Act."

SECTION 8. Section 22-8-12.1 NMSA 1978 (being Laws 1978, Chapter 128, Section 5, as amended) is amended to read:

"22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET REQUESTS.--

A. Each local school board or governing body of a state-chartered charter school shall submit annually, on or before October 15, to the department:

(1) an estimate for the succeeding fiscal year of:

   (a) the membership of qualified students to be enrolled in the basic program, adjusted for deductions due to student participation in the scholarship programs of the Equal Opportunity Scholarship Act;

   (b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and

   (c) the membership of students to be enrolled in approved special education programs, adjusted for deductions due to student participation in the scholarship programs of the Equal Opportunity Scholarship Act;

(2) all other information necessary to
calculate program costs; and

(3) any other information related to the financial needs of the school district or state-chartered charter school as may be requested by the department.

B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the department's rules and procedures.

C. The department shall:

(1) review the financial needs of each school district or state-chartered charter school for the succeeding fiscal year; and

(2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the department for:

   (a) amendments to the public school finance formula;

   (b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and

   (c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials."

SECTION 9. APPLICABILITY.--The provisions of Sections 6 and 7 of this act apply to taxable years beginning on or after
January 1, 2016.

SECTION 10. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 5 and 8 of this act is July 1, 2015.

B. The effective date of the provisions of Sections 6 and 7 of this act is January 1, 2016.

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