HOUSE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 333

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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:

.201097.4
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 1751d.
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 a
full school year 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. "home school" means the operation by the parent
of a school-age person of a home study program of instruction
that provides a basic academic educational program, including
reading, language arts, mathematics, social studies and
science;

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

I. "qualified school" means a nonpublic
elementary, middle or secondary school located in New Mexico to
which a parent has chosen to send an eligible student. "Qualified school" does not include a home school;

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

K. "tuition grant" means a grant of funds for the purpose of covering the costs of tuition for a qualified school; and

L. "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 in the same calendar year; and

(b) a scholarship award to an eligible student shall not exceed eighty percent of the three-year rolling average of the final unit value multiplied by the quotient of the final membership units divided by the total membership used to determine the prior year final unit value;

(4) the tuition scholarship organization distributes scholarship payments each semester as checks that are mailed to the qualified school in which the eligible
student is enrolled and that require the endorsement of the
parent and the qualified school 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;
provided further that, if a student withdraws from a private
school during a school year for which that student was provided
a scholarship and returns to a public school, the prorated
amount of the scholarship shall be directed to the statewide
equalization guarantee distribution;
(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;

(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; and

(9) the tuition scholarship organization prioritizes scholarships for eligible students currently attending or living within the boundaries of a low-performing school as identified by the statewide school grading system.

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 nonpublic
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 sex, gender, religion, sexuality, ethnicity, 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;

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

(4) engage an auditor to conduct a financial
and program unit audit of a tuition scholarship organization,
at the expense of the tuition scholarship organization, on an
annual basis.

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 by multiplying the prior year final unit value by the quotient derived by dividing the final membership units by the total membership used to determine the prior year final unit value;

(3) if an eligible student receiving an educational scholarship withdraws prior to the start of a new school year, deduct the amount calculated pursuant to Paragraph (2) of Subsection B of this section 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 reduction equal to the amount calculated pursuant to Paragraph (2) of Subsection B of this section 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) 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

(6) 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 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 the lesser of ten thousand dollars ($10,000) or 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 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 a full school year 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 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 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 the lesser of twenty thousand dollars ($20,000) or 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 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 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 opportunity 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 opportunity 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 ($.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 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 a full school year 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.