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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number HB414 **Sponsor** Baldonado

Tracking Number .207071.1 **Committee Referrals** HEC/HTRC/HAFC

Short Title Equal Educational Access Scholarship Act

Original Date 3/9/17

Analyst Herz **Last Updated**

BILL SUMMARY

Synopsis of Bill

House Bill 414 (HB414) creates the Equal Educational Access Scholarship Act that would provide scholarships for low-income students to attend private elementary, middle, and high schools. The bill grants personal and corporate income tax credits for donations to tuition scholarship organizations (TSO) to fund scholarships, up to a state aggregate total of $5 million annually. Individual taxpayers can recoup 80 percent of donations to TSOs, up to a maximum of $10 thousand in tax credits or 50 percent of total tax liability annually. The tax credits in the bill end at the beginning of the 2022 tax year.

HB414 limits scholarships amounts to students for 80 percent of the three-year rolling average of the statewide per-MEM program cost. The bill also requires the Public Education Department (PED) to deduct the full statewide average per-MEM program cost from school districts and charter schools for each student who uses the scholarship to attend a private school.

HB414 outlines the process for a private nonprofit organization to seek certification to become a TSO from PED. It also outlines the duties of the TSO, PED, and the Tax and Revenue Department (TRD) in administering the Equal Educational Access Scholarship Act and related personal and corporate tax credits.

FISCAL IMPACT

HB414 could decrease general fund revenue by up to $5 million annually due to the tax credits granted to TSO donors. Though the tax credit is awarded for contributions to a TSO, the tax credit is independent from the scholarships awarded to students. Even if a TSO does not award any scholarships, the tax credits are still issued, pursuant to the bill. This could result in a $5 million impact to the general fund without a guarantee of TSOs awarding scholarships. Additionally, scholarship funds may outpace demand for scholarships. Any donations above the amount of scholarships awarded would result in tax credits being awarded without a matching SEG reduction.

Tax credits provided for in this bill appear to be available for income tax returns filed for the 2018, 2019, 2020, and 2021 calendar years, though provisions related to effective dates make it fairly unclear if the intent is to include taxable year 2017. The Legislature may want to clarify language throughout the bill and the effective dates to specify which taxable year the credit is available to be claimed. It is assumed that the bill's $5 million maximum total in tax credits would be reached during calendar year 2017, thus reducing revenue to the general fund by that amount in FY17.

Additionally, executive agencies would be required to administer the program. TRD notes that the bill would result in an additional recurring annual cost of $140 thousand. At the time this analysis was published, PED had not provided a cost estimate for administering the provisions of the bill. However, PED analysis of a bill from the 2012 legislative session that is nearly identical to HB414 indicated the bill would have cost $240 thousand to implement.

It is unclear if the state equalization guarantee (SEG) reductions made under HB414 would be redistributed through the SEG or result in general fund savings by being withheld and reverted to the general fund. If dollars are redistributed, there are not any savings to the general fund. If the intent is to revert these funds to the general fund, the bill should explicitly state this.

The bill would also affect SEG distributions for school districts and state-chartered charter schools. For students using a scholarship at the beginning of a new school year for the entire school year, the bill requires PED to reduce a school district's or charter school's SEG distribution by an amount equal to the prior year statewide average per-MEM program cost. For FY17, the average statewide per-MEM program cost totals $7,579. However, it is important to note that average per-MEM program cost varies greatly statewide, from a low of $5,717 per-MEM to a high of $28,373 per-MEM. For 48 school districts and charter schools, this provision would result in the reduction of more per-MEM funding than the school district or charter school received.

School districts and charter schools are funded on average student enrollment reported on the second Wednesday in October and December 1 of the prior school year, adjusted for current year enrollment growth over 1 percent. Excluding the enrollment growth calculation, school district and charter school SEG distributions are not made based on 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 school district or charter school 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 during the succeeding year. The provision allowing the withholding of SEG would have a negative impact on the ability of school districts and charter schools to properly budget for the current year. The bill would result in the reduction of a school district's or charter school's SEG distribution for the year in which they are not claiming that particular public school student for funding purposes.

SUBSTANTIVE ISSUES

Many states have enacted programs that subsidize public school students who want to attend private schools. Though HB414 does not create a school voucher system, the outcome of the bill is similar – public school students receive a subsidy to offset the cost of private school attendance. As of the 2014-2015 school year, fifteen states have authorized tax credit scholarships for private school attendance similar to the model presented in this bill.

Tax credit scholarship programs can theoretically produce two effects: improved student academic outcomes due to students attending higher-quality schools and improved academic outcomes in traditional public schools due to increased competition with private schools.

Overall, programs that subsidize private school cost have demonstrated mixed student outcomes. Studies in Florida have found modest academic improvements for students who attended private schools through the use of tax credit scholarships. However, researchers examining voucher programs in Indiana and Louisiana found that students who switched to private schools experienced significant losses in academic achievement, especially in math. Both programs served large numbers of low-income and minority students. The number of years a program has existed may be a key factor in these studies. Typically, newer programs produce worse results, which may indicate that schools improve student academic performance after adjusting to the changes introduced by the tax credit scholarships. However, many factors, including the design of the tax credit scholarship, interact with one another, preventing general statements about the impact of tax credit scholarship programs on individual student academic achievement.

Based on previous research on tax credit scholarship best practices, the bill would likely have a mixed impact on individual student academic achievement. While HB414 only allows low-income students to receive scholarships, the bill does not require that students currently attend low-performing public schools as tax credit scholarship programs in many other states do. Therefore, positive student academic effects found in other states may not translate to New Mexico if the bill is enacted. While low-income students are more likely to attend lower performing schools, the bill could be strengthened by specifying that low-income students attend low-performing schools. Additionally, the bill allows for tuition scholarships to be portable during the school year and prorated between schools based on the number of days in attendance at each school. This provision may lead to increased student mobility during the school year, which is often detrimental to student academic performance.

Numerous studies of tax credit scholarship programs highlight small but consistent positive effects on public schools geographically near private schools, likely due to increased competition. However, many of these studies were conducted in Florida and Wisconsin, which both require that students attend a low-performing school to be eligible for the scholarship. It is unclear whether this bill would produce similar competition.

Under this bill, the full extent of private school options would likely not be available to participating students. Many private schools cost more than the amount of the scholarship with the remaining cost falling to the family. For example, Albuquerque Academy's tuition costs almost $23 thousand per year, or almost four times the projected annual amount of the scholarship. According to Private School Review, New Mexico has 214 private schools serving 25,609 students. The average tuition is just over $6,000 for private elementary schools and just over $10 thousand for high schools, and 64 percent of private schools are religiously affiliated.

The use of tax credits to incentivize scholarship donations for students to attend private schools has been challenged legally. In 2011, the Supreme Court ruled in *Arizona Christian School Tuition Organization v. Wynn* that tax credits incentivizing gifts to TSOs do not constitute a government expenditure, and therefore do not violate prohibitions on using public tax dollars to aid religious organizations. However, the dissenting opinion asserted that tax credits accomplished the same ends as a cash grant and that the distinction between appropriations and tax credits has little basis in fact and Court precedent.

The New Mexico constitution's "Anti-Donation Clause" (Article 9, Section 14) states, "Neither the state nor any county, school district, or municipality … shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation." This clause is often interpreted as a prohibition against the public support of private interests. In 1999, the New Mexico Attorney General issued an opinion stating that the anti-donation clause appears to prohibit the use of vouchers to fund private school tuition. However, it is unclear if the tax credit proposed in HB414 constitutes a "pledge of credit" from the state.

Finally, 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 and receives a scholarship.

ADMINISTRATIVE IMPLICATIONS

In addition to the fiscal implications for TRD and PED mentioned above, the amount of capacity and coordination between agencies needed to administer the provisions of this bill would likely strain the resources of both PED and TRD, especially given the large budget cuts during the current and previous fiscal years. Additionally, TRD will be required to compile an annual report for the Revenue Stabilization and Tax Policy Committee on approved credits.

TECHNICAL ISSUES

The bill does not specify that a scholarship must be awarded for a tax credit to be given to a TSO donor. This could result in a decrease in general fund revenue without the offsetting SEG reduction.

School districts and charter schools are funded on average student enrollment reported on the second Wednesday in October and December 1 of the prior school year, adjusted for current year enrollment growth over 1 percent. Excluding the enrollment growth calculation, school district and charter school SEG distributions are not made based on 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 provision allowing the withholding of SEG will have a negative impact on the ability of school districts and charter schools to properly budget for the current year. The bill will result in the reduction of a school district's or charter school's state equalization guarantee distribution for a year in which they are not claiming that particular public school student for funding purposes.

Additionally there is no provision for PED to revert funds withheld from school districts or charter schools for students that withdraw prior to the beginning of a school year. PED calculates the preliminary unit value for the next fiscal year around March or April of the calendar year and sets each school district's and charter school's SEG allocation prior to the beginning of the fiscal year. The department generally holds back some of the SEG appropriation for final calculation of total program units and the final unit value the following January. The bill requires a deduction of the prior year per-MEM program cost but is does not explicitly state the funds are to revert. Because of the final unit value calculation in January, it is possible any withheld funds would be included in this calculation and distributed to school districts and charter schools. Therefore, it does not appear there are any SEG savings for students who are receiving a full year of a tuition scholarship – only savings for students that leave a public school between semesters.

Language on page 6, lines 3-4, directs banks to require the endorsement of both a parent of the student and the qualified school. The bill provides no mechanism to let banks know they need two endorsements to accept the check.

Page 10, paragraphs 3 and 4, refer to a student withdrawing; however, the bill does not specify where the student is withdrawing from. It would be clearer if the term "from a public school" were included after "withdraws."

Though the bill calls for an examination of the effectiveness of the tax credit, it does not mention whether the academic outcomes of scholarship recipients would be studied.

It is not clear whether a school operated by an Indian tribe, nation or pueblo could be considered an eligible school under the bill.

Federal reduced-price lunch eligibility is directly certified through SNAP/TANF eligibility and no longer requires school verification of income. Therefore, schools may not have access to household income amounts for students, which are used to determine if the student is eligible to receive a scholarship.

Program cost under the public education funding formula includes both the state and certain "local revenues" and "federal revenues," including federal Impact Aid, forest reserve funds, and local property taxes. The bill appears to require PED to capture these local and federal funds.

TRD points out numerous technical issues regarding the bill's lack of details on proposed regulation of TSOs, including:

- How often TSOs must apply for certification;
- The deadline for TSO audits and consequences related to audit findings;
- The procedure for denying, suspending, and revoking a TSO's certification; and
- The process for dealing with donations to a TSO that loses its certification.

POSSIBLE QUESTIONS

Are home schools considered public schools? The definition of "home school" on page 3, lines 18-22, does not specify how home schools are classified, which has implications on the funding mechanisms in the bill.

Would home-schooled students be able to qualify for a scholarship? If so, where would the SEG distribution offset for the tax credit come from?

Subsection B on page 7 identifies many responsibilities of a TSO, which the bill defines as a nonprofit organization. Would the TSO be able to fulfill all the responsibilities laid out in the bill?

SOURCES OF INFORMATION

- LESC Files
- LFC Files
- Harvard Kennedy School of Business

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