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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 2nd Session, 2018**

<b>Bill Number</b>	<u>HB241</u>	<b>Sponsor</b>	<u>Trujillo, CA/Roch/Dow</u>
<b>Tracking Number</b>	<u>.209700.2</u>	<b>Committee Referrals</b>	<u>HEC/HTRC</u>
<b>Short Title</b>	<u>Conform Education Trust Act to Federal Change</u>		
<b>Analyst</b>	<u>Simon</u>	<b>Original Date</b>	<u>2/2/18</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

HB (SB241) amends the Education Trust Act to expand institutions eligible to receive payments from education trust funds. The bill conforms to amendments to the Internal Revenue Code made as part of Public Law 115-97, also known as the Tax Cuts and Job Act, which expanded the definition of “qualified higher education expense” to include expenses for tuition at public or private elementary or secondary schools.

HB241 does not carry an effective date and would be effective 90 days after the end of the legislative session.

**FISCAL IMPACT**

The Legislative Finance Committee (LFC) indicates the bill may have an unintentional \$10.4 million negative impact on the general fund due to how definitions in the Education Trust Act interact with provisions of the Income Tax Act related income tax deductions for a college savings plan (see technical issues).

HB241 does not contain an appropriation. Because HB241 would allow families with college savings plans to use funds in those plans for tuition fees at private schools, HB241 could decrease the number of students in public schools. However, even if HB241 is not passed, some New Mexico families could use college savings plans for private school tuition because federal law allows college savings plans governed by Section 529 of the Internal Revenue Code (“529 plans”) to pay private school tuition. A New Mexico resident could open a 529 plan in another state that allows has changed its laws to align with federal definitions.

If the changes to federal and state law caused student enrollment to decrease, some school districts or charter schools could generate less funding under the public school funding formula; however, the impact SB210 would have on public school enrollment is unknown. Most of New Mexico’s 529 plan beneficiaries are not New Mexico residents.

Failure to align New Mexico’s 529 plans with federal law could lead to a reduction in the number of 529 accounts managed by the New Mexico Education Trust Board (ETB). As of September 2017, ETB managed 129,667 individual accounts. According to the Higher Education Department (HED), about 22 thousand New Mexicans have 529 plans administered by the ETB. HED states that many out-of-state investors are attracted to New Mexico plans because of low fees. HED suggests that fees for participants could increase if the ETB were not able to market 529 plans nationally. HED cites Idaho as a current example of a small-state plan that does not attract national investors. Idaho’s fees are roughly three times higher than New Mexico’s.

## **SUBSTANTIVE ISSUES**

HB241 changes the institutions eligible to receive payment from an education trust fund from postsecondary educational institutions eligible to participate in federal student aid programs to any institution eligible to receive payments for “qualified higher education expenses” under Section 529 of the Internal Revenue Code. In December 2017, Section 529 of the Internal Revenue Code was amended to include the following:

*“the term ‘qualified higher education expense’ shall include a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school.”*

HB241 would allow EBT-administered plans to cover the costs of tuition at elementary and secondary schools.

In the last year, private school choice initiatives have been promoted at the federal level. The president’s FY18 budget for the U.S. Department of Education included \$250 million in grants for states to offer scholarships to students from low-income families to attend private schools. In December, an amendment to the Tax Cuts and Jobs Act allowed families with 529 college savings accounts to use those contributions to pay for private school tuition. HB241 would align state law with this federal policy choice.

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. 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.

## **TECHNICAL ISSUES**

LFC indicates the bill may have an unintentional \$10.4 million negative impact on the general fund because the changes to the definitions in the Education Trust Act, as currently drafted, would likely allow a taxpayer to claim an income tax deduction for 529 plan contributions intended for private school tuition. According to LFC:

*“This bill strikes the definition of “institution of higher education” from the Education Trust Act and inserts two new definitions that include the phrasing “higher education” that explicitly conform to the federal code for the 529 program, which now includes K-12 private school education as part of that definition. With the existing definition (specifying a higher education*

*institution exclusively refers to post-secondary schools) stricken by this bill, existing statute for the state tax deduction can reasonably be interpreted to mean K-12 institutions and expenses would qualify for the deduction just as they would qualify for the 529 program itself through this bill.*

*As a result, this bill (seemingly unintentionally) aligns state tax law with the updated federal code by establishing the ability of New Mexico taxpayers to deduct from income up to \$10 thousand per year contributed to a 529 account for tuition at a K-12 educational institution. This may have been an unintentional impact of this bill, but given the changes to definitions, the Education Trust Board and the Taxation and Revenue Department would likely be unable to prevent someone from claiming the deduction for contributions intended for K-12 tuition.”*

### **CONSEQUENCES OF NOT ENACTING THIS BILL**

HED indicates that if New Mexico does not make changes to its 529 plans, ETB will likely sell fewer plans to non-New Mexico residents. As a result, fees for other participants will increase. In addition, the current 529 fund manager could seek to end its contract with ETB and HED states it is unlikely the board could find another fund manager capable of managing a national program. HED projects increased costs for New Mexico residents if the program did not operate nationally.

### **RELATED BILLS**

SB210 is a duplicate of HB241, Conform Education Trust Act to Federal Change, and is a companion bill to SB209, Conform 529 Programs to IRS Code, and HB240, Conform Income Tax Act to Federal Changes, which amends other sections of statutes related to 529 programs.

### **SOURCES OF INFORMATION**

- LESC Files
- Legislative Finance Committee
- Higher Education Department

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