

1 HOUSE BILL 346

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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5 James R.J. Strickler  
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10 AN ACT

11 RELATING TO TAXATION; ENACTING THE EQUAL EDUCATIONAL ACCESS  
12 SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP  
13 ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO LOW-INCOME  
14 STUDENTS TO ATTEND NONPUBLIC SCHOOLS; CREATING INCOME TAX AND  
15 CORPORATE INCOME TAX CREDITS FOR CONTRIBUTIONS TO TUITION  
16 SCHOLARSHIP ORGANIZATIONS THAT PROVIDE EDUCATIONAL SCHOLARSHIPS  
17 FOR LOW-INCOME STUDENTS TO ATTEND NONPUBLIC SCHOOLS OF THE  
18 STUDENT'S PARENTS' CHOICE.  
19

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

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

24 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
25 Equal Educational Access Scholarship Act:

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1           A. "certification document" means the document  
2 issued by the department to an organization verifying that the  
3 organization is a tuition scholarship organization and  
4 contributions to that organization for equal educational access  
5 scholarships may be claimed as an equal educational access  
6 scholarship tax credit;

7           B. "contribution receipt" means a document  
8 developed by the taxation and revenue department pursuant to  
9 the Equal Educational Access Scholarship Act and provided to a  
10 tuition scholarship organization that in turn provides the  
11 document to an individual or corporate contributor that is a  
12 taxpayer that intends to claim an equal educational access  
13 scholarship tax credit as a receipt for a contribution to the  
14 tuition scholarship organization;

15           C. "department" means the public education  
16 department;

17           D. "educational scholarship" means a tuition grant  
18 or other grant of funds to an eligible student to cover all or  
19 part of the costs of that student at a qualified school,  
20 including transportation costs;

21           E. "eligible student" means a student who:

22                   (1) is a member of a household for which the  
23 total annual income does not exceed an amount used to qualify  
24 for a reduced-price lunch through the federal school lunch  
25 programs established pursuant to 42 USCA Sections 1751 through

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1 1769, as amended; provided that once a student receives a  
2 scholarship pursuant to the Equal Educational Access  
3 Scholarship Act, the student shall remain eligible regardless  
4 of household income until the student graduates from high  
5 school or reaches twenty-one years of age;

6 (2) attended a New Mexico public school for a  
7 full school year prior to first receiving an educational  
8 scholarship pursuant to the Equal Educational Access  
9 Scholarship Act or is starting school in New Mexico for the  
10 first time; and

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

13 F. "equal educational access scholarship tax  
14 credit" means the equal educational access scholarship income  
15 tax credit provided in the Income Tax Act and the equal  
16 educational access scholarship corporate income tax credit  
17 provided in the Corporate Income and Franchise Tax Act;

18 G. "home school" means the operation by the parent  
19 of a school-age person of a home study program of instruction  
20 that provides a basic academic educational program, including  
21 reading, language arts, mathematics, social studies and  
22 science;

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

25 I. "qualified school" means a nonpublic

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1 elementary, middle or secondary school located in New Mexico to  
2 which a parent has chosen to send an eligible student.

3 "Qualified school" does not include a home school;

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

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

9 L. "tuition scholarship organization" means an  
10 organization that provides educational scholarships to students  
11 attending qualified schools of their parents' choice and that  
12 meets the criteria established in the Equal Educational Access  
13 Scholarship Act.

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

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

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

23 (1) the tuition scholarship organization has  
24 been granted an exemption from federal income tax as an  
25 organization described in Section 501(c)(3) of the federal

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1 Internal Revenue Code of 1986, as that section may be amended  
2 or renumbered;

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

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

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

20 (b) the average annual scholarship award  
21 to eligible students shall not exceed eighty percent of the  
22 three-year rolling average of the final unit value multiplied  
23 by the quotient of the final membership units divided by the  
24 total membership used to determine the prior year final unit  
25 value;

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1 (4) the tuition scholarship organization  
2 distributes scholarship payments each semester as checks that  
3 are mailed to the qualified school in which the eligible  
4 student is enrolled and that require the endorsement of the  
5 parent and the qualified school prior to deposit of the check;

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

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

20 (7) the tuition scholarship organization has  
21 in place systems to provide for financial accountability,  
22 including independent annual audits that shall be submitted to  
23 the department in the form of a financial information report  
24 that complies with generally accepted accounting procedures as  
25 specified by the department and is certified to be free of

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1 material misstatements by the certified public accountant who  
2 performed the audit.

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

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

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

17 (1) is in compliance with all health and  
18 safety laws or rules that apply to schools;

19 (2) does not discriminate in admissions on the  
20 basis of race, color or national origin;

21 (3) ensures that every school employee with  
22 unsupervised access to students has undergone a background  
23 check as described in Subsection B of Section 22-10A-5 NMSA  
24 1978;

25 (4) has no paid staff or board members who are

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1 also staff or board members of the tuition scholarship  
2 organization or who are relatives of the staff or board members  
3 of the tuition scholarship organization;

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

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

13 C. By June 1 of each year beginning in 2021, a  
14 tuition scholarship organization shall report the following  
15 information to the department and the taxation and revenue  
16 department:

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

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

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

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

4 D. A tuition scholarship organization shall:

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

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

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

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

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

22 A. The department shall administer the Equal  
23 Educational Access Scholarship Act.

24 B. The department shall:

25 (1) provide the name of each certified tuition

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1 scholarship organization to the taxation and revenue department  
2 by no later than thirty days after issuing the certification  
3 document to the tuition scholarship organization;

4 (2) upon notification by the tuition  
5 scholarship organization, calculate the associated program  
6 units by multiplying the prior year final unit value by the  
7 quotient derived by dividing the final membership units by the  
8 total membership used to determine the prior year final unit  
9 value;

10 (3) if an eligible student receiving an  
11 educational scholarship withdraws prior to the start of a new  
12 school year, deduct the amount calculated pursuant to Paragraph  
13 (2) of this subsection from the student's previous school  
14 district or charter school state equalization guarantee  
15 distribution allocation prior to distribution;

16 (4) if an eligible student receiving an  
17 educational scholarship withdraws between semesters, make a  
18 reduction equal to the amount calculated pursuant to Paragraph  
19 (2) of this subsection in the school district's or charter  
20 school's distribution for the remainder of the school year and  
21 not distribute the funds attributed to the adjustments, which  
22 shall remain undistributed and shall revert to the general fund  
23 at the end of the fiscal year;

24 (5) deny, suspend or revoke the certification  
25 of a tuition scholarship organization for purposes of the equal

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1 educational access scholarship tax credit if the department  
2 determines that the organization has intentionally and  
3 substantially failed to comply with the requirements of the  
4 Equal Educational Access Scholarship Act; and

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

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

11 "[NEW MATERIAL] EQUAL EDUCATIONAL ACCESS SCHOLARSHIP  
12 INCOME TAX CREDIT.--

13 A. A taxpayer who files a New Mexico income tax  
14 return, is not a dependent of another taxpayer and makes a  
15 contribution to a tuition scholarship organization pursuant to  
16 this section may apply for, and the department may allow, a tax  
17 credit against the taxpayer's liabilities imposed pursuant to  
18 the Income Tax Act. The tax credit provided by this section  
19 may be referred to as the "equal educational access scholarship  
20 income tax credit".

21 B. The amount of an equal educational access  
22 scholarship income tax credit shall equal the total  
23 contributions made by a taxpayer to a tuition scholarship  
24 organization in a taxable year. If the total amount of equal  
25 educational access scholarship income tax credits exceeds the

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1 taxpayer's liabilities imposed pursuant to the Income Tax Act  
2 for the taxable year in which a contribution was made, the  
3 excess may be carried forward for three consecutive taxable  
4 years.

5 C. To receive an equal educational access  
6 scholarship income tax credit, a taxpayer shall apply to the  
7 department on forms and in the manner prescribed by the  
8 department. The application shall include a numbered copy of  
9 the contribution receipt provided by the tuition scholarship  
10 organization to the taxpayer pursuant to Subsection E of this  
11 section.

12 D. To ensure that the department receives the  
13 information needed to allow an equal educational access  
14 scholarship income tax credit, the department shall develop a  
15 contribution receipt that requests all of the information  
16 needed by the department to determine if a credit may be  
17 allowed. The contribution receipts shall be sequentially  
18 numbered.

19 E. Upon receiving notice from the public education  
20 department that an organization has been certified as a tuition  
21 scholarship organization, the taxation and revenue department  
22 shall provide sequentially numbered copies of contribution  
23 receipts to the tuition scholarship organization to be  
24 distributed by the tuition scholarship organization to its  
25 contributors to indicate the recipient, date and value of a

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1 contribution to the tuition scholarship organization and other  
2 information required by the taxation and revenue department.

3 F. The equal educational access scholarship income  
4 tax credit shall not be allowed for a contribution that is  
5 included for the taxable year in the taxpayer's itemized  
6 deductions, as defined in Section 63 of the Internal Revenue  
7 Code.

8 G. Married individuals who file separate returns  
9 for a taxable year in which they could have filed a joint  
10 return may each claim only one-half of the equal educational  
11 access scholarship income tax credit that would have been  
12 allowed on a joint return.

13 H. A taxpayer may be allocated the right to claim  
14 an equal educational access scholarship income tax credit in  
15 proportion to the taxpayer's ownership interest if the taxpayer  
16 owns an interest in a business entity that is taxed for federal  
17 income tax purposes as a partnership or limited liability  
18 company and that business entity has met all of the  
19 requirements to be eligible for the credit.

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

23 J. The department shall compile an annual report on  
24 the equal educational access scholarship income tax credit that  
25 shall include the number of taxpayers approved by the

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1 department to receive the credit, the aggregate amount of  
2 credits approved and any other information necessary to  
3 evaluate the credit. The department shall present the report  
4 to the revenue stabilization and tax policy committee and the  
5 legislative finance committee with an analysis of the credit.

6 K. As used in this section:

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

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

17 (b) attended a New Mexico public school  
18 for a full school year prior to first receiving an educational  
19 scholarship pursuant to the Equal Educational Access  
20 Scholarship Act or is starting school in New Mexico for the  
21 first time; and

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

25 (2) "parent" means a guardian, custodian or

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1 other person with authority to act on behalf of a child; and

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

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

9 "[NEW MATERIAL] EQUAL EDUCATIONAL ACCESS SCHOLARSHIP  
10 CORPORATE INCOME TAX CREDIT.--

11 A. A taxpayer that files a New Mexico corporate  
12 income tax return and makes a contribution to a tuition  
13 scholarship organization pursuant to this section may apply  
14 for, and the department may allow, a tax credit against the  
15 taxpayer's liabilities imposed pursuant to the Corporate Income  
16 and Franchise Tax Act. The tax credit provided by this section  
17 may be referred to as the "equal educational access scholarship  
18 corporate income tax credit".

19 B. The amount of an equal educational access  
20 scholarship corporate income tax credit shall equal the total  
21 contributions made by a taxpayer in a taxable year to a tuition  
22 scholarship organization in a taxable year. If the total  
23 amount of equal educational access scholarship corporate income  
24 tax credits exceeds the taxpayer's liabilities imposed pursuant  
25 to the Corporate Income and Franchise Tax Act for the taxable

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1 year in which a contribution was made, the excess may be  
2 carried forward for three consecutive taxable years.

3 C. To receive an equal educational access  
4 scholarship corporate income tax credit, a taxpayer shall apply  
5 to the department on forms and in the manner prescribed by the  
6 department. The application shall include a numbered copy of  
7 the contribution receipt provided by the tuition scholarship  
8 organization to the taxpayer pursuant to Subsection E of this  
9 section.

10 D. To ensure that the department receives the  
11 information needed to allow an equal educational access  
12 scholarship corporate income tax credit, the department shall  
13 develop a contribution receipt that requests all of the  
14 information needed by the department to determine if a credit  
15 may be allowed. The contribution receipts shall be  
16 sequentially numbered.

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

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1           F. The equal educational access scholarship  
2 corporate income tax credit shall not be allowed for a  
3 contribution that is included for the taxable year in the  
4 taxpayer's itemized deductions, as defined in Section 63 of the  
5 Internal Revenue Code.

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

9           H. The department shall compile an annual report on  
10 the equal educational access scholarship corporate income tax  
11 credit that shall include the number of taxpayers approved by  
12 the department to receive the credit, the aggregate amount of  
13 credits approved and any other information necessary to  
14 evaluate the credit. The department shall present the report  
15 to the revenue stabilization and tax policy committee and the  
16 legislative finance committee with an analysis of the credit.

17           I. As used in this section:

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

19                         (a) is a member of a household for which  
20 the total annual income does not exceed an amount used to  
21 qualify for a reduced-price lunch through the federal school  
22 lunch programs established pursuant to 42 USCA Sections 1751  
23 through 1769, as amended; provided that once a student receives  
24 a scholarship pursuant to the Equal Educational Access  
25 Scholarship Act, the student shall remain eligible regardless

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1 of household income until the student graduates from high  
2 school or reaches twenty-one years of age;

3 (b) attended a New Mexico public school  
4 for a full school year prior to first receiving an educational  
5 scholarship pursuant to the Equal Educational Access  
6 Scholarship Act or is starting school in New Mexico for the  
7 first time; and

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

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

13 (3) "tuition scholarship organization" means  
14 an organization that provides educational scholarships to  
15 students attending qualified schools of their parents' choice  
16 pursuant to the Equal Educational Access Scholarship Act."

17 **SECTION 8. APPLICABILITY.**--The provisions of Sections 6  
18 and 7 of this act apply to taxable years beginning on or after  
19 January 1, 2020.

20 **SECTION 9. EFFECTIVE DATE.**--The effective date of the  
21 provisions of this act is July 1, 2020.