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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**56th Legislature, 1st Session, 2023**

<b>Bill Number</b>	<u>HB266</u>	<b>Sponsor</b>	<u>Johnson/Lundstrom</u>
<b>Tracking Number</b>	<u>.224574.1</u>	<b>Committee Referrals</b>	<u>HEC/HTRC</u>
<b>Short Title</b>	<u>Equal Education Opportunity Scholarship Act</u>		
<b>Analyst</b>	<u>Estupiñan</u>	<b>Original Date</b>	<u>2/7/2023</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

House Bill 266 (HB266) creates the Equal Education Opportunity Scholarship Act and provides for an equal education opportunity scholarship tax credit for claim by taxpayers who contribute to a certified tuition scholarship organization that awards educational scholarships for low-income students attending certain public and non-public schools.

**FISCAL IMPACT**

The bill does not contain an appropriation.

Based on Legislative Education Study Committee (LESC) staff analysis, the tax credit provisions of HB266 may have a \$5.9 million general fund revenue impact.

Section 5 of the proposed bill would allow a maximum of 1,471 students to receive an education scholarship from a tuition scholarship organization. This number was calculated by assessing the maximum number of students in each school district that would be allowed to receive an educational scholarship, as measured by the allowed percentage of a school district's student enrollment.

Section 2 of HB266 allows a tuition scholarship organization to grant an educational scholarship in an amount not to exceed \$5,000. In a scenario in which the maximum number of eligible students received the maximum educational scholarship permitted, LESC staff analysis indicates the cost of awarded scholarships would total approximately \$7.4 million.

Section 6 permits a taxpayer to claim a tax credit equal to 80 percent of their contribution, which LESC staff analysis finds would contribute to a minimum potential fiscal impact of \$5.9 million if the maximum number of students received the maximum educational scholarship award. This does not take into account what proportion of these tax credits would exceed half of a taxpayer's income tax liability and be carried forward over the subsequent three taxable years.

Assessment of HB266’s fiscal impact may benefit from clarity on whether an eligible student may receive multiple educational scholarships of \$5,000 from multiple tuition scholarship organizations. It is also unclear whether the educational scholarship would be considered taxable income to the student or their legal guardian. If the educational scholarship is considered taxable income, the modest revenue generated may offset a portion of the bill’s cost.

Finally, the LESC staff analysis indicating a potential revenue impact of \$5.9 million is based on a scenario where the maximum number of eligible students receives a maximum award of \$5,000. It does not take into account a wide range of other scenarios, including fluctuations in the number of taxpayers who claim the credit, the size of their contributions, the average income and related tax liability of those who contribute, and which students receive the scholarships.

Please see the ‘**Technical Issues**’ section of this analysis for more detail.

## **SUBSTANTIVE ISSUES**

The following bullet points indicate a section-by-section analysis of the proposed Equal Education Opportunity Scholarship Act.

**Section 1.** This section clarifies sections 1 through 5 are to be referred to as the “Equal Education Opportunity Scholarship Act.”

**Section 2.** This section contains relevant definitions for reference throughout the remainder of the bill. Several important definitions include:

- **Certification document:** a document issued by the Public Education Department (PED) to an organization that confirms it is a tuition scholarship organization and that relevant contributions to that organization may be claimed as an equal education opportunity scholarship tax credit;
- **Contribution receipt:** a document developed by the Taxation and Revenue Department (TRD) that is issued to an individual or corporate contributor as a receipt for their relevant contributions to a tuition scholarship organization;
- **Educational scholarship:** a tuition grant or other grant of funds for use by an eligible student in paying all or parts of their expenses at a qualified school;
- **Eligible student:** a student who is enrolled in a state-licensed foster care program, or is a member of a household for which the total annual income does not exceed the amount used to qualify for a reduced-price lunch through the federal school lunch program. An eligible student must also be a resident of New Mexico for the entire period in which they receive a scholarship from a tuition scholarship organization;
- **Tuition scholarship organization:** an organization that provides educational scholarships of up to \$5,000 to low-income students attending a qualified school of their parent’s choice.

**Section 3.** This section specifies a tuition scholarship organization must be certified as such by PED and be exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986. Scholarships from a tuition scholarship organization must be funded from contributions that the tuition scholarship organization receives in or prior to the current calendar year. Of the contributions that are recognized with a contribution receipt, a minimum of 90 percent must be leveraged by the tuition scholarship organization to award educational scholarships. Additionally, all funds that are generated by the tuition scholarship organization from investments or interest must be used to award educational scholarships.

If an eligible student receives an educational scholarship, they may use that scholarship at any qualified school that chooses to enroll the student. The scholarship is also considered portable and may be used at more than one school, provided that the scholarship be prorated based on the number of days an eligible student was enrolled at each school.

Any organization that is certified as a tuition scholarship organization must complete background checks on each of its employees and board members, maintain systems that provide for financial transparency, verify that it is likely to receive a minimum of \$50 thousand in contributions during the school year, and file 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.** This section requires that a tuition scholarship organization provide a list of recipient students to PED prior to the start of each school year, along with a statement indicating the student's previous school district or charter school affiliation. The tuition scholarship organization must also verify schools participating in their scholarship program meet the following criteria:

- Is in compliance with all health and safety laws or rules that apply to schools;
- Holds a valid occupancy permit as required by applicable laws;
- Does not discriminate in admissions on the basis of race, color or national origin;
- 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;
- Ensures that every school employee with unsupervised access to students has undergone a background check as described in Subsection A of Section 22-10A-5 NMSA 1978;
- 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;
- 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
- 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.

A tuition scholarship organization would also be required to:

- Provide to each individual and corporate contributor of funds dedicated for educational scholarships a contribution receipt that shall be completed according to TRD requirements;
- 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 TRD to allow the contributor to receive an equal education opportunity scholarship tax credit;
- Account for all copies of contribution receipts damaged, destroyed, lost or otherwise unusable; and
- Provide an annual report to the LESC and PED by June 1 of each year containing information on how many scholarships were provided by the tuition scholarship organization and the amount of each scholarship.

**Section 5.** This section specifies the percentage of students that may receive an educational scholarship, depending on the total student enrollment of their local school district. Those limits are:

- No more than nine-tenths percent in school districts with a total student enrollment of less than 1,000 students;
- No more than eight-tenths percent in school districts with a total student enrollment between 1,000 and 4,999 students;
- No more than six-tenths percent in school districts with a total student enrollment between 5,000 and 14,999 students;
- No more than four-tenths percent in school districts with a total student enrollment between 15,000 and 24,999 students;
- No more than three-tenths percent for school districts with a total student enrollment between 25,000 and 49,999 students; and
- No more than two-tenths percent for school districts with a total student enrollment over 50 thousand students.

PED would also be required to provide the name of a tuition scholarship organization to TRD within 30 days of certifying that organization. The department must also engage an auditor to conduct a financial and program audit of the entity, at the entities' expense, if the department finds evidence of fraud or failure to comply with the provisions of HB266.

HB266 allows for PED to deny, suspend, or revoke a certification of an organization as a tuition scholarship organization and requires PED to notify the TRD of such action within ten days.

**Section 6.** This section creates the Equal Education Opportunity Scholarship income tax credit and specifies a taxpayer may claim a credit against their income tax liability in an amount equal to 80 percent of the relevant contribution they made to a tuition scholarship organization. The credit may not, however, exceed 50 percent of the taxpayer's income tax liability for the taxable year.

PED would be required to create a contribution receipt that is provided to contributors with any information required by the department. That receipt must be included by a taxpayer submitting an application for an equal education opportunity scholarship income tax credit

**Section 7.** This section allows a taxpayer filing a corporate income tax return to claim a credit against their income tax liability for a relevant contribution made to a tuition scholarship organization. Similar to the credit for individual taxpayers, a corporate income tax return can claim a credit equivalent to 80 percent of their contribution, provided the credit does not exceed 50 percent of their corporate income tax liability.

To claim the credit, the tuition scholarship organization shall provide the taxpayer with a contribution receipt which the taxpayer must submit with their application for the credit. If the allowed credit exceeds 50 percent of the taxpayer's corporate income tax liability, they would be allowed to carry over the remaining credit for three consecutive taxable years.

The department would be required to compile an annual report on the credit for submission to interim Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee with an analysis of the cost of the tax credit.

Finally, this section specifies the equal education opportunity scholarship corporate income tax credit shall be applied to the taxpayer's tax liability before application of any other tax credit claimed for the taxable year by the taxpayer.

**Section 8.** This section specifies the provisions of sections 1 through 7 are repealed effective July 1, 2027.

**Section 9.** This section specifies the provisions of section 6 and 7 apply to taxable years beginning on or after January 1, 2023 but before January 1, 2027.

**Section 10.** This section specifies the effective date of sections 1 through 5 is July 1, 2023. The effective date of sections 6 and 7 is January 1, 2024.

### **ADMINISTRATIVE IMPLICATIONS**

HB266 may be a considerable administrative burden on PED as it places a large number of requirements onto the department, including:

- Soliciting, compiling, and reviewing all relevant information needed to render judgement on whether an organization satisfies the criteria for receiving certification as a tuition scholarship organization;
- Ensuring the number of students receiving an education scholarship does not exceed the permitted total, as measured by the percentage of their school district's student enrollment;
- Providing the names of certified tuition scholarship organizations to the Taxation and Revenue Department;
- Engaging an auditor if there is evidence of fraud or noncompliance with the provisions of SB113, which simultaneously implies the department is also responsible for overseeing the lawful implementation of the bill's provisions; and
- Developing a standardized contribution receipt that solicits all relevant information needed for approval of a tax credit.

These administrative requirements may require additional full-time employees to administer.

### **TECHNICAL ISSUES**

Below are several areas of inquiry in the bill that could benefit from clarification or revision:

- May an eligible student receive more than one maximum educational scholarship of \$5,000 from multiple different tuition scholarship organizations?
- Would the receipt of an educational scholarship be considered taxable income to either the student or their legal guardian?
- If the education scholarship is considered taxable income, what impact would that have on the eligible student's eligibility for public assistance programs, such as Medicaid, SNAP, and other programs?
- Is there a cap on the amount of funds a taxpayer filing an individual or corporate income tax return can contribute and subsequently partially claim as a credit?

### **RELATED BILLS**

HB266 mirrors much of the language in SB113, but it does not contain the cap of 400 students and a \$2 million cap on total tax credits issued that are included in the amended SB113.

**SOURCES OF INFORMATION**

- LESC Files

**DE/jkh/ctf/mb**