

HOUSE BILL 266

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

D. Wonda Johnson and Patricia A. Lundstrom

AN ACT

RELATING TO EDUCATION; ENACTING THE EQUAL EDUCATION OPPORTUNITY SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO LOW-INCOME STUDENTS TO ATTEND CERTAIN PUBLIC AND NONPUBLIC 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 PUBLIC OR PRIVATE 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 Education Opportunity Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Equal Education Opportunity 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 education
5 opportunity scholarships may be claimed as an equal education
6 opportunity scholarship tax credit;

7 B. "contribution receipt" means a document
8 developed by the taxation and revenue department pursuant to
9 the Equal Education Opportunity Scholarship Act and provided to
10 a 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 education opportunity
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 enrolled in a state-licensed foster
23 care program; or

24 (2) is a member of a household for which the
25 total annual income does not exceed an amount used to qualify

1 for a reduced-price lunch through the federal school lunch
2 programs established pursuant to 42 USCA Sections 1751 through
3 1769, as amended; provided that once a student receives a
4 scholarship pursuant to the Equal Education Opportunity
5 Scholarship Act, the student shall remain eligible regardless
6 of household income until the student graduates from high
7 school or reaches twenty-one years of age; and

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

10 F. "equal education opportunity scholarship tax
11 credit" means the equal education opportunity scholarship
12 income tax credit provided in the Income Tax Act and the equal
13 education opportunity scholarship corporate income tax credit
14 provided in the Corporate Income and Franchise Tax Act;

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

17 H. "qualified school" means a public or nonpublic
18 elementary, middle or secondary school located in New Mexico to
19 which a parent has chosen to send an eligible student;

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

22 J. "tuition grant" means a grant of funds for the
23 purpose of covering the costs of tuition for a qualified
24 school; and

25 K. "tuition scholarship organization" means an

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1 organization that provides educational scholarships of up to
2 five thousand dollars (\$5,000), but that do not exceed five
3 thousand dollars (\$5,000), to students attending qualified
4 schools of their parents' choice and that meets the criteria
5 established in the Equal Education Opportunity Scholarship Act.

6 SECTION 3. [NEW MATERIAL] TUITION SCHOLARSHIP
7 ORGANIZATION--CERTIFICATION.--

8 A. An organization may seek certification from the
9 department as a tuition scholarship organization by submitting
10 an application for certification to the department.

11 B. To be certified as a tuition scholarship
12 organization by the department, the organization shall provide
13 documentation as deemed appropriate by the department to verify
14 that:

15 (1) the organization has been granted an
16 exemption from federal income tax as an organization described
17 in Section 501(c)(3) of the Internal Revenue Code of 1986;

18 (2) the organization has awarded or intends to
19 award educational scholarships to eligible students who are
20 attending or plan to attend qualified schools;

21 (3) the scholarships are funded from
22 contributions that the organization has received in or prior to
23 the current calendar year, or anticipates receiving during the
24 remainder of the calendar year, and at least ninety percent of
25 the contributions received during a calendar year for which the

1 organization issues a contribution receipt to an individual or
2 corporate taxpayer for purposes of obtaining an equal education
3 opportunity scholarship tax credit is awarded by the
4 organization as educational scholarships and all revenue from
5 interest or investments is expended solely on educational
6 scholarships;

7 (4) the organization distributes periodic
8 scholarship payments as checks that are issued to an eligible
9 student's parent, that are mailed to the qualified school in
10 which the eligible student is enrolled and that require the
11 endorsement of the parent prior to deposit of the check;

12 (5) educational scholarships awarded by the
13 organization are portable during the school year and can be
14 used at any qualified school that accepts the eligible student
15 according to a parent's wishes; provided that the scholarship
16 shall be prorated between schools based on the number of days
17 attended at each school by the eligible student;

18 (6) criminal background checks on all of the
19 organization's employees and board members have been conducted
20 by the organization, with the understanding that individuals
21 who might reasonably pose a risk to the sound fiscal management
22 of the funds of the organization shall be excluded from
23 employment or governance, and all pertinent findings on
24 employees and board members have been provided to the
25 department for review and approval;

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1 (7) the organization has in place systems to
2 provide for financial accountability, including independent
3 annual audits that shall be submitted to the department in the
4 form of a financial information report that complies with
5 generally accepted accounting procedures as specified by the
6 department and is certified to be free of material
7 misstatements by the certified public accountant who performed
8 the audit; and

9 (8) the organization is financially viable and
10 receives or is likely to receive donations of fifty thousand
11 dollars (\$50,000) or more during a school year by filing with
12 the department prior to the start of the school year a surety
13 bond payable to the state in an amount equal to the aggregate
14 amount of contributions expected to be received during the
15 school year.

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

18 A. No later than thirty days prior to the start of
19 a new school year or the start of a new semester, a tuition
20 scholarship organization shall provide to the department the
21 names of eligible students who received educational
22 scholarships and the students' previous school district or
23 charter school affiliation. The tuition scholarship
24 organization shall provide verification that the eligible
25 students have been awarded an educational scholarship and have

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1 enrolled in a private school for the new school year or the new
2 semester.

3 B. A tuition scholarship organization shall ensure
4 that a school participating in the tuition scholarship
5 organization's scholarship program certifies that the school:

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

8 (2) holds a valid occupancy permit as required
9 by applicable laws;

10 (3) does not discriminate in admissions on the
11 basis of race, color or national origin;

12 (4) provides academic accountability to
13 parents of the students in the program by regularly reporting
14 to the parent on the student's academic and developmental
15 progress;

16 (5) ensures that every school employee with
17 unsupervised access to students has undergone a background
18 check as described in Subsection A of Section 22-10A-5 NMSA
19 1978;

20 (6) has no paid staff or board members who are
21 also staff or board members of the tuition scholarship
22 organization or who are relatives of the staff or board members
23 of the tuition scholarship organization;

24 (7) gives enrollment preference to eligible
25 students who were enrolled at the school in the prior year and

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1 to siblings of eligible students already admitted to or
2 attending the school; and

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

8 C. By June 1 of each year beginning in 2024, a
9 tuition scholarship organization shall report the following
10 information to the department and the taxation and revenue
11 department:

12 (1) the name and address of the tuition
13 scholarship organization;

14 (2) the total number and dollar amount of
15 contributions received for which contribution receipts were
16 issued during the calendar year ending on December 31 of the
17 prior year;

18 (3) the total number and dollar amount of all
19 educational scholarships awarded during the calendar year
20 ending on December 31 of the prior year; and

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

24 D. A tuition scholarship organization shall:

25 (1) provide to each individual and corporate

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1 contributor of funds dedicated for educational scholarships a
2 contribution receipt that shall be completed according to
3 taxation and revenue department requirements;

4 (2) maintain a list by the sequential number
5 on the contribution receipt identifying to whom each copy is
6 issued, the amount and date of the contribution and any other
7 information deemed necessary by the taxation and revenue
8 department to allow the contributor to receive an equal
9 education opportunity scholarship tax credit;

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

12 (4) provide an annual report to the interim
13 legislative education study committee and the public education
14 department by June 1 of each year containing information on how
15 many scholarships were provided by the tuition scholarship
16 organization and the amount of each scholarship.

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

18 A. The department shall administer the Equal
19 Education Opportunity Scholarship Act.

20 B. The department shall:

21 (1) ensure that:

22 (a) in school districts with a total
23 student enrollment of less than one thousand students, no more
24 than nine-tenths percent of a school district's student
25 enrollment may utilize a scholarship associated with a donation

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1 to a qualified scholarship organization from an individual or
2 business entity that claims the allowable tax credit;

3 (b) in school districts with a total
4 student enrollment between one thousand and four thousand nine
5 hundred ninety-nine students, no more than eight-tenths percent
6 of a school district's student enrollment may utilize a
7 scholarship associated with a donation to a qualified
8 scholarship organization from an individual or business entity
9 that claims the allowable tax credit;

10 (c) for school districts with a total
11 student enrollment between five thousand and fourteen thousand
12 nine hundred ninety-nine students, no more than six-tenths
13 percent of a school district's student enrollment may utilize a
14 scholarship associated with a donation to a qualified
15 scholarship organization from an individual or business entity
16 that claims the allowable tax credit;

17 (d) for school districts with a total
18 student enrollment between fifteen thousand and twenty-four
19 thousand nine hundred ninety-nine students, no more than four-
20 tenths percent of a school district's student enrollment may
21 utilize a scholarship associated with a donation to a qualified
22 scholarship organization from an individual or business entity
23 that claims the allowable tax credit;

24 (e) for school districts with a total
25 student enrollment between twenty-five thousand and forty-nine

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1 thousand nine hundred ninety-nine students, no more than three-
2 tenths percent of a school district's student enrollment may
3 utilize a scholarship associated with a donation to a qualified
4 scholarship organization from an individual or business entity
5 that claims the allowable tax credit; and

6 (f) for school districts with a total
7 student enrollment over fifty thousand students, no more than
8 two-tenths percent of a school district's student enrollment
9 may utilize a scholarship associated with a donation to a
10 qualified scholarship organization from an individual or
11 business entity that claims the allowable tax credit;

12 (2) provide the name of each certified tuition
13 scholarship organization to the taxation and revenue department
14 by no later than thirty days after issuing the certification
15 document to the tuition scholarship organization;

16 (3) engage an auditor to conduct a financial
17 and program audit of a tuition scholarship organization, at the
18 expense of the tuition scholarship organization, if there is
19 evidence of fraud or failure to comply with the Equal Education
20 Opportunity Scholarship Act;

21 (4) deny, suspend or revoke the certification
22 of a tuition scholarship organization for purposes of the equal
23 education opportunity scholarship tax credit if the department
24 determines that the organization has intentionally and
25 substantially failed to comply with the requirements of the

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1 Equal Education Opportunity Scholarship Act; and

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

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

8 "[NEW MATERIAL] EQUAL EDUCATION OPPORTUNITY SCHOLARSHIP
9 INCOME TAX CREDIT.--

10 A. A taxpayer who files a New Mexico income tax
11 return and is not a dependent of another taxpayer may claim a
12 credit against the income tax liability of the taxpayer for a
13 contribution made to a tuition scholarship organization. The
14 credit may be approved in an amount equal to eighty percent of
15 the total contributions made by the taxpayer to a tuition
16 scholarship organization for which contribution receipts have
17 been provided by that organization during the taxable year but
18 shall not exceed fifty percent of the taxpayer's income tax
19 liability for the taxable year. The credit provided in this
20 section may be referred to as the "equal education opportunity
21 scholarship income tax credit".

22 B. To ensure that the department receives the
23 information needed to allow an equal education opportunity
24 scholarship income tax credit, the department shall develop a
25 contribution receipt that requests all of the information

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1 needed by the department to determine if a credit is due. The
2 contribution receipts shall be sequentially numbered, and a
3 charge, not to exceed fifty cents (\$.50) per numbered copy, may
4 be charged by the department to the tuition scholarship
5 organization.

6 C. Upon receiving notice from the public education
7 department that an organization has been certified as a tuition
8 scholarship organization, the department shall provide
9 sequentially numbered copies of contribution receipts to the
10 tuition scholarship organization to be distributed by the
11 tuition scholarship organization to its contributors to
12 indicate the recipient, date and value of a contribution to the
13 tuition scholarship organization and other information required
14 by the department.

15 D. The department shall require a taxpayer claiming
16 the equal education opportunity scholarship income tax credit
17 to submit the numbered copy of the contribution receipt from
18 the tuition scholarship organization to which the taxpayer
19 contributed money with the taxpayer's application for the
20 credit provided by this section.

21 E. The equal education opportunity scholarship
22 income tax credit shall not be allowed for a contribution that
23 is included for the taxable year in the taxpayer's itemized
24 deductions, as defined in Section 63 of the Internal Revenue
25 Code.

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1 F. Married individuals who file separate returns
2 for a taxable year in which they could have filed a joint
3 return may each claim only one-half of the equal education
4 opportunity scholarship income tax credit that would have been
5 allowed on a joint return.

6 G. A taxpayer may be allocated the right to claim a
7 new equal education opportunity scholarship income tax credit
8 in proportion to the taxpayer's ownership interest if the
9 taxpayer owns an interest in a business entity that is taxed
10 for federal income tax purposes as a partnership or limited
11 liability company and that business entity has met all of the
12 requirements to be eligible for the credit. The total credit
13 claimed by all members of the partnership or limited liability
14 company shall not exceed the allowable credit pursuant to this
15 section.

16 H. Any amount of the equal education opportunity
17 scholarship income tax credit allowed by the department that
18 exceeds fifty percent of the income tax liability of the
19 taxpayer in the taxable year in which the credit is first
20 claimed may be carried forward for three consecutive taxable
21 years.

22 I. The department shall compile an annual report on
23 the credit allowed pursuant to this section that shall include
24 the number of taxpayers approved by the department to receive
25 the credit, the aggregate amount of credits approved and any

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1 other information necessary to evaluate the credit. The
2 department shall present the report to the interim revenue
3 stabilization and tax policy committee and the legislative
4 finance committee with an analysis of the cost of the tax
5 credit.

6 J. A taxpayer that claims an equal education
7 opportunity scholarship income tax credit pursuant to the
8 Income Tax Act shall not also claim an equal education
9 opportunity scholarship corporate income tax credit pursuant to
10 the Corporate Income and Franchise Tax Act or any other similar
11 tax credit for the same contribution to a tuition scholarship
12 organization. The equal education opportunity scholarship
13 income tax credit shall be applied to the taxpayer's tax
14 liability before application of any other tax credit claimed
15 for the taxable year by the taxpayer.

16 K. As used in this section:

17 (1) "contribution receipt" means the document
18 developed by the department and issued pursuant to the Equal
19 Education Opportunity Scholarship Act by a tuition scholarship
20 organization to a contributor;

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

23 (3) "tuition scholarship organization" means
24 an organization that provides educational scholarships to
25 students attending qualified schools of their parents' choice

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1 and that meets the requirements of the Equal Education
2 Opportunity Scholarship Act."

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

5 "[NEW MATERIAL] EQUAL EDUCATION OPPORTUNITY SCHOLARSHIP
6 CORPORATE INCOME TAX CREDIT.--

7 A. A taxpayer that files a New Mexico corporate
8 income tax return may claim a credit against the corporate
9 income tax liability of the taxpayer for a contribution made to
10 a tuition scholarship organization. The credit may be approved
11 in an amount equal to eighty percent of the total contributions
12 made by the taxpayer to a tuition scholarship organization for
13 which contribution receipts have been provided by that
14 organization during the taxable year but shall not exceed fifty
15 percent of the taxpayer's corporate income tax liability for
16 the taxable year. The credit provided in this section may be
17 referred to as the "equal education opportunity scholarship
18 corporate income tax credit".

19 B. To ensure that the department receives the
20 information needed to allow an equal education opportunity
21 scholarship corporate income tax credit, the department shall
22 develop a contribution receipt that requests all of the
23 information needed by the department to determine if a credit
24 is due. The contribution receipts shall be sequentially
25 numbered, and a charge, not to exceed fifty cents (\$.50) per

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1 numbered copy, may be charged by the department to the tuition
2 scholarship organization.

3 C. Upon receiving notice from the public education
4 department that an organization has been certified as a tuition
5 scholarship organization, the department shall provide
6 sequentially numbered copies of contribution receipts to a
7 tuition scholarship organization to be distributed by the
8 tuition scholarship organization to its contributors to
9 indicate the recipient, date and value of a contribution to the
10 tuition scholarship organization and other information required
11 by the department.

12 D. The department shall require a taxpayer claiming
13 the equal education opportunity scholarship corporate income
14 tax credit to submit the numbered copy of the certification
15 document from the tuition scholarship organization to which the
16 taxpayer contributed money with the taxpayer's application for
17 the credit provided by this section.

18 E. The equal education opportunity scholarship
19 corporate income tax credit shall not be allowed for a
20 contribution that is included for the taxable year in the
21 taxpayer's itemized deductions, as defined in Section 63 of the
22 Internal Revenue Code.

23 F. Any amount of the equal education opportunity
24 scholarship corporate income tax credit allowed by the
25 department that exceeds fifty percent of the corporate income

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1 tax liability of the taxpayer in the taxable year in which the
2 credit is first claimed may be carried forward for three
3 consecutive taxable years.

4 G. The department shall compile an annual report on
5 the credit allowed pursuant to this section that shall include
6 the number of taxpayers approved by the department to receive
7 the credit, the aggregate amount of credits approved and any
8 other information necessary to evaluate the credit. The
9 department shall present the report to the interim revenue
10 stabilization and tax policy committee and the legislative
11 finance committee with an analysis of the cost of the tax
12 credit.

13 H. A taxpayer that claims an equal education
14 opportunity scholarship corporate income tax credit pursuant to
15 the Corporate Income and Franchise Tax Act shall not also claim
16 an equal education opportunity scholarship income tax credit
17 pursuant to the Income Tax Act or any other similar tax credit
18 for the same contribution to a tuition scholarship
19 organization. The equal education opportunity scholarship
20 corporate income tax credit shall be applied to the taxpayer's
21 tax liability before application of any other tax credit
22 claimed for the taxable year by the taxpayer.

23 I. As used in this section:

24 (1) "contribution receipt" means the document
25 issued pursuant to the Equal Education Opportunity Scholarship

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underscoring material = new
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1 Act by a tuition scholarship organization to a contributor;

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

4 (3) "tuition scholarship organization" means
5 an organization that provides educational scholarships to
6 students attending qualified schools of their parents' choice
7 pursuant to the Equal Education Opportunity Scholarship Act."

8 SECTION 8. DELAYED REPEAL.--Sections 1 through 7 of this
9 act are repealed effective July 1, 2027.

10 SECTION 9. APPLICABILITY.--The provisions of Sections 6
11 and 7 of this act apply to taxable years beginning on or after
12 January 1, 2023 but before January 1, 2027.

13 SECTION 10. EFFECTIVE DATE.--

14 A. The effective date of the provisions of Sections
15 1 through 5 of this act is July 1, 2023.

16 B. The effective date of the provisions of Sections
17 6 and 7 of this act is January 1, 2024.