



LFC Requester: Francis

**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2026 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: February 2 2026

Bill No: HM28

Committee Referrals: HEC

Sponsor: Dow / Armstrong / Chavez /
Jones / Martinez

Agency Name and Code: PED - 924

PED Lead Analyst: Paige Pearcy

Short Title: ADVANCE ELECTION FOR
ED. FREEDOM TAX
PROGRAM

Phone: (505) 231-6615 Email: paige.pearcy@ped.nm.gov

PED Policy Senior Manager: denise terrazas

Phone: (505) 470-5303 Email: denise.terrazas@ped.nm.gov

SECTION II: FISCAL IMPACT

(Parenthesis () Indicate Expenditure Decreases)

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY27 | FY28 | | |
| None | None | N/A | NFA |

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY27 | FY28 | FY29 | | |
| None | None | None | N/A | NFA |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY27 | FY28 | FY29 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|-------------------|---------------------------|---------------|
| Total | None | None | None | N/A | N/A | NFA |

Duplicates/Relates to Appropriation in the General Appropriation Act:
None as of 2/3/26.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Memorial 28 (HM28) requests that the Governor submit an advance election to participate in the federal [Education Freedom Tax Credit Program \(EFTCP\)](#) in 2027.

The EFTCP was established in 2025 as part of the One Big Beautiful Bill Act, which authorized a federal income tax credit for qualified contributions to eligible scholarship-granting organizations (SGOs) providing K–12 educational assistance. The credit is administered through EFTCP and is currently capped at \$1,700 per taxpayer annually.

A spokesperson for the Governor indicated that [New Mexico would not opt in to the program](#) in August 2025, citing concerns regarding the lack of accountability measures in the legislation, the potential loss of funding for public schools, and inconsistent educational quality at private schools receiving voucher funding.

FISCAL IMPLICATIONS

This memorial does not contain an appropriation.

Official estimates from the Joint Committee on Taxation indicate that the EFTCP would decrease federal tax revenues by [\\$3 billion to \\$4 billion annually](#); however, there is no cap on how much the federal government will spend on the program. Because there is no cap, the National Education Association estimates that the EFTCP could cost the federal government [\\$25 billion annually](#) by granting dollar-for-dollar tax credits to individuals that donate to SGOs. The dollar-for-dollar tax credit makes the tax incentive to donate to SGOs much higher than other forms of charitable giving: the ITEP estimates donors to children’s hospitals or other charities would receive no more than [35 cents](#) in tax savings for each dollar donated.

The impacts of expanding SGOs and private school scholarships is likely to decrease public school enrollment, and public funds will be diverted from public schools to private schools.

Many of the costs to educate students in public schools are fixed and do not change with student enrollment. These indirect fiscal effects of declining public school enrollment are difficult to quantify but could have long-term implications for state and local education finance. The [IRS still has not drafted the rules for the program](#), further obfuscating the potential impacts of opting in.

A [calculator from the Economic Policy Institute](#) estimates that a 3 percent decline in public school enrollment due to voucher programs would lead to the following per-pupil externalities, subject to some assumptions regarding districts' ability to decrease costs upon enrollment shifts:

| School District | Per-Pupil Net Fiscal Externality | | |
|-------------------------------|----------------------------------|-----------------------------------|--------|
| | | JEMEZ VALLEY PUBLIC SCHOOLS | -\$442 |
| | | LAKE ARTHUR MUNICIPAL SCHOOLS | -\$484 |
| ALBUQUERQUE PUBLIC SCHOOLS | -\$252 | LAS CRUCES PUBLIC SCHOOLS | -\$207 |
| ANIMAS PUBLIC SCHOOLS | -\$379 | LAS VEGAS CITY PUBLIC SCHOOLS | -\$381 |
| ARTESIA PUBLIC SCHOOLS | -\$274 | WEST LAS VEGAS PUBLIC SCHOOLS | -\$378 |
| AZTEC MUNICIPAL SCHOOLS | -\$235 | LOGAN MUNICIPAL SCHOOLS | -\$288 |
| BELEN CONSOLIDATED SCHOOLS | -\$228 | LORDBURG MUNICIPAL SCHOOLS | -\$307 |
| BERNALILLO PUBLIC SCHOOLS | -\$273 | LOS ALAMOS PUBLIC SCHOOLS | -\$228 |
| BLOOMFIELD SCHOOLS | -\$233 | LOS LUNAS PUBLIC SCHOOLS | -\$208 |
| CAPITAN MUNICIPAL SCHOOLS | -\$259 | LOVING MUNICIPAL SCHOOLS | -\$404 |
| CARLSBAD MUNICIPAL SCHOOLS | -\$312 | LOVINGTON MUNICIPAL SCHOOLS | -\$243 |
| CARRIZOZO MUNICIPAL SCHOOLS | -\$378 | MAGDALENA MUNICIPAL SCHOOLS | -\$527 |
| CENTRAL CONSOLIDATED SCHOOLS | -\$421 | MAXWELL MUNICIPAL SCHOOLS | -\$433 |
| CHAMA VALLEY INDEP. SCHOOLS | -\$344 | MELROSE PUBLIC SCHOOLS | -\$285 |
| CIMARRON MUNICIPAL SCHOOLS | -\$634 | MORA INDEPENDENT SCHOOLS | -\$479 |
| CLAYTON MUNICIPAL SCHOOLS | -\$321 | MORIARTY-EDGEWOOD SCHOOL DISTRICT | -\$255 |
| CLOUDCROFT MUNICIPAL SCHOOLS | -\$435 | MOUNTAINAIR PUBLIC SCHOOLS | -\$384 |
| CLOVIS MUNICIPAL SCHOOLS | -\$220 | MESA VISTA CONSOLIDATED SCHOOLS | -\$411 |
| COBRE CONSOLIDATED SCHOOLS | -\$312 | PECOS INDEPENDENT SCHOOLS | -\$309 |
| CUBA INDEPENDENT SCHOOLS | -\$565 | PENASCO INDEPENDENT SCHOOLS | -\$344 |
| DEMING PUBLIC SCHOOLS | -\$234 | POJOAQUE VALLEY PUBLIC SCHOOLS | -\$217 |
| DEXTER CONSOLIDATED SCHOOLS | -\$305 | PORTALES MUNICIPAL SCHOOLS | -\$243 |
| DORA MUNICIPAL SCHOOLS | -\$340 | QUEMADO INDEPENDENT SCHOOLS | -\$476 |
| DULCE INDEPENDENT SCHOOLS | -\$521 | QUESTA INDEPENDENT SCHOOLS | -\$349 |
| ELIDA MUNICIPAL SCHOOLS | -\$360 | RATON PUBLIC SCHOOLS | -\$217 |
| ESPANOLA PUBLIC SCHOOLS | -\$280 | RESERVE PUBLIC SCHOOLS | -\$454 |
| ESTANCIA MUNICIPAL SCHOOLS | -\$383 | ROSWELL INDEPENDENT SCHOOLS | -\$232 |
| EUNICE MUNICIPAL SCHOOLS | -\$887 | RUIDOSO MUNICIPAL SCHOOLS | -\$250 |
| FARMINGTON MUNICIPAL SCHOOLS | -\$193 | SAN JON MUNICIPAL SCHOOLS | -\$391 |
| FLOYD MUNICIPAL SCHOOLS | -\$239 | SANTA FE PUBLIC SCHOOLS | -\$307 |
| FORT SUMNER MUNICIPAL SCHOOLS | -\$352 | SANTA ROSA CONSOLIDATED SCHOOLS | -\$296 |
| GADSDEN INDEPENDENT SCHOOLS | -\$242 | SILVER CONSOLIDATED SCHOOLS | -\$242 |
| GALLUP-MCKINLEY CTY SCHOOLS | -\$278 | SOCORRO CONSOLIDATED SCHOOLS | -\$294 |
| GRADY MUNICIPAL SCHOOLS | -\$340 | SPRINGER MUNICIPAL SCHOOLS | -\$518 |
| GRANTS-CIBOLA COUNTY SCHOOLS | -\$293 | TAOS MUNICIPAL SCHOOLS | -\$285 |
| HAGERMAN MUNICIPAL SCHOOLS | -\$274 | TATUM MUNICIPAL SCHOOLS | -\$300 |
| HATCH VALLEY PUBLIC SCHOOLS | -\$302 | TEXICO MUNICIPAL SCHOOLS | -\$260 |
| HOBBS MUNICIPAL SCHOOLS | -\$297 | T OR C MUNICIPAL SCHOOLS | -\$241 |
| HONDO VALLEY PUBLIC SCHOOLS | -\$496 | TUCUMCARI PUBLIC SCHOOLS | -\$240 |
| JAL PUBLIC SCHOOLS | -\$771 | TULAROSA MUNICIPAL SCHOOLS | -\$318 |
| JEMEZ MOUNTAIN PUBLIC SCHOOLS | -\$550 | ZUNI PUBLIC SCHOOLS | -\$451 |

SIGNIFICANT ISSUES

Benefits from participation in the EFTCP will likely be concentrated among higher-income families in urban areas with more private school options. Although there are income restrictions for scholarship recipients, they are minimal: students whose families' income does not exceed [300%](#) of their area's median gross income are eligible to receive scholarship funds from SGOs, implying most families in New Mexico would be eligible for the program. This [cutoff](#) would be the lowest in McKinley County, where households making less \$138,000 annually could participate; the highest threshold would be in Los Alamos County at \$537,000. In Bernalillo County, the most populous county in the state, the household income cutoff would be \$272,200.

The EFTCP would also [grant scholarships](#) to cover the cost of curricular materials, tutoring, books, fees for nationally standardized testing, special needs services, online educational materials, and homeschooling expenses, in addition to private school tuition. While the EFTCP potentially allows scholarship funds to be directed to students at public schools, beneficiaries of similar state-level tax credit scholarships tend to be [higher-income families with significant investment assets and private school access](#). Private school tuition and related costs commonly exceed voucher amounts, requiring families to cover substantial out-of-pocket expenses and making programs inaccessible to low-income families.

Equity concerns extend to admissions and instruction because [students in private schools often are not subject to the same protections](#) they would have in public schools, such as those in Title IX of the Education Amendments of 1972, the Individuals with Disabilities Education Act, Title II of the Americans with Disabilities Act, and the Every Student Succeeds Act. Private school students lose the legal protections they have in public schools, as private institutions may deny admission or discriminate based on race, religion, disability, sexual orientation, and gender identity, with little recourse for families. Schools that accept EFTCP scholarships are not subject to any federal academic accountability or nondiscrimination requirements.

Students who accept private school scholarships would not necessarily receive the services outlined in IEPs at their public schools, and [private schools frequently deny admission to students with disabilities or to students based on other factors like disciplinary history](#), which disproportionately affects students with disabilities. Adding nondiscrimination provisions to voucher programs is insufficient, as religious private schools are often exempt from nondiscrimination laws under religious freedom. If New Mexico opts in to the EFTCP, more students may be subject to discriminatory admissions, discipline, and instructional practices without the legal safeguards guaranteed in public schools.

While the memorial states that the majority of voters wish for their Governors to opt in to the program, ballot initiatives for private school vouchers and tax credits [have consistently failed](#). In 2024, voters in [Kentucky and Nebraska firmly rejected legislation](#) to expand tax credit and voucher programs for private. HM28 does not cite the source of its survey information, and many of the [available surveys](#) regarding SGO donation tax credits were national, online opt-in polls conducted by school choice advocacy organizations, such as the [American Federation for Children](#) or the [Friedman Foundation for Educational Choice](#). Opt-in samples have [higher margins of error](#), and much of the error in opt-in samples appears to be from respondents who say “yes” regardless of the question.

PERFORMANCE IMPLICATIONS

A [2019 study of Indiana’s Choice Scholarship program](#) found that upper elementary and middle school students who transfer from a public school to private school using the program do worse, on average, on math tests in their new private school than they did in their prior public school. [A study of Louisiana’s lottery-based private school scholarship program for low-income students](#) found a dramatic reduction in academic achievement among participants, especially at lower grade levels. [Other studies find no impact](#) on student performance.

ADMINISTRATIVE IMPLICATIONS

Although the EFTCP is administered through the U.S. Department of the Treasury and the Internal Revenue Service (IRS), state participation creates new administrative and oversight responsibilities for those states. Under EFTCP, states that opt in are responsible for identifying and certifying eligible SGOs and submitting an annual list of approved SGOs to the IRS. While EFTCP statute limits direct governmental control over SGOs’ internal operations, states that opt in are responsible for vetting SGOs for statutory compliance and coordinating with federal agencies for reporting, auditing, and enforcement. This would likely require the Public Education Department (PED) to establish and expand administrative processes for SGO review and compliance monitoring.

Experience from state-level voucher and tax credit scholarship programs suggests that [fraud, misreporting, and weak internal controls](#) have occurred in the absence of robust oversight. In 2011, Florida’s Department of Education substantiated [allegations of fraud](#) in 25 cases at schools that collectively received nearly \$50 million in state-funded vouchers. [An analysis of North Carolina’s Opportunity Scholarship](#) from 2023 found [42 instances](#) where private schools appeared to have more Opportunity Scholarship recipients than enrolled students. If New Mexico opts in to the EFTCP, PED may face increased administrative responsibility for SGO certification, compliance oversight, coordination with federal agencies, and the investigation of and response to potential misuse of scholarship funds. The scope and cost of these activities would be indeterminate but significant.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates:

- [SJM4](#), Advance Election for Educational Freedom Tax Program.

Relates to:

- [HB106](#), Home-Based Child Care Income Tax Credit, creates a income tax credit of up to \$1,000 per month per eligible child for taxpayers who care for young children at home rather than enrolling them in state-funded or private child care or pre-K programs.
- [HB193](#), Scholarships for Private Education and Tax Credits, would authorize PED to certify SGOs to award private school scholarships and create state income tax credits for contributions to those organizations, capped at \$700 for single filers and married individuals filing separately and \$1,400 for heads of household, surviving spouses, and married couples filing jointly.
- [HB240](#), Education Opportunity Account Act, which proposes such accounts to pay expenses related to private school attendance by eligible students.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.