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HOUSE BILL 240

**57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

INTRODUCED BY

Rod Montoya and Gail Armstrong and Elaine Sena Cortez  
and John Block and Jenifer Jones

AN ACT

RELATING TO EDUCATION; ENACTING THE EDUCATION OPPORTUNITY  
ACCOUNT ACT; PROVIDING POWERS AND DUTIES; PROVIDING FOR  
EDUCATION OPPORTUNITY ACCOUNTS; PROVIDING ALLOWABLE USES;  
PROVIDING PROCEDURES AND APPLICATION REQUIREMENTS FOR PARENTS  
AND EDUCATION SERVICE PROVIDERS; CREATING A REVIEW COMMISSION;  
MAKING APPROPRIATIONS.

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

SECTION 1. A new section of the Public School Code is  
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the  
"Education Opportunity Account Act".

SECTION 2. A new section of the Public School Code is  
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Education  
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1 Opportunity Account Act:

2 A. "curriculum" means a complete course of study  
3 for a particular elementary or secondary content area or grade  
4 level;

5 B. "education" means elementary or secondary  
6 education;

7 C. "education opportunity account" means the  
8 account into which money is deposited by the department to pay  
9 for qualifying education expenses of a participant in the  
10 program;

11 D. "education service provider" means a private  
12 school located in New Mexico that is qualified to provide  
13 educational goods and services to participants and that  
14 receives payments from education opportunity accounts; provided  
15 that "education service provider" does not mean an online  
16 school;

17 E. "eligible child" means a school-age person who  
18 is a resident of New Mexico, who has not received a high school  
19 diploma or a high school equivalency credential and who is  
20 eligible for enrollment or re-enrollment in a public school;

21 F. "participant" means a child who is participating  
22 in the program; and

23 G. "program" means the education opportunity  
24 account program."

25 SECTION 3. A new section of the Public School Code is  
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1 enacted to read:

2 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT FUND--  
3 CREATED.--

4 A. The "education opportunity account fund" is  
5 created as a nonreverting fund in the state treasury. The fund  
6 consists of money appropriated by the legislature, federal  
7 money granted to the state for the purposes of the fund, income  
8 from investment of the fund and money otherwise accruing to the  
9 fund. The department shall administer the fund, and money in  
10 the fund is appropriated to the department to carry out the  
11 purposes of the Education Opportunity Account Act.

12 B. Money in the fund shall be disbursed on warrants  
13 signed by the secretary of the department pursuant to vouchers  
14 signed by the secretary or the secretary's authorized  
15 representative."

16 SECTION 4. A new section of the Public School Code is  
17 enacted to read:

18 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT PROGRAM--  
19 CREATED--FUNDING USES.--

20 A. The "education opportunity account program" is  
21 created in the department to allow the department, in contract  
22 with a parent of a participant in the program, to pay for that  
23 participant's qualified education expenses as provided in  
24 Subsection B of this section through "education opportunity  
25 accounts". The department:

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1 (1) shall establish an education opportunity  
2 account for a participant of the program;

3 (2) shall determine the amount each  
4 participant is eligible to receive, which amount is equal to  
5 the average amount spent by school districts and charter  
6 schools on public school students in the same grade, weighted  
7 by special education and at-risk program units, if applicable;  
8 provided that a participant shall not receive more than that  
9 participant's qualifying education expenses;

10 (3) shall make monthly deposits into each  
11 education opportunity account; and

12 (4) may contract for financial management  
13 services for education opportunity accounts.

14 B. Money in a participant's education opportunity  
15 account shall be used by the department, in contract with a  
16 parent of the participant, only in accordance with the  
17 provisions of the Education Opportunity Account Act and only  
18 for the participant's following qualifying education expenses:

19 (1) tuition and fees at a private elementary  
20 or secondary school that teaches, among other courses, reading,  
21 language arts, mathematics, science and social studies  
22 appropriate for the grade level of the participant;

23 (2) tutoring services provided by a qualified  
24 person;

25 (3) textbooks and other instructional

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1 materials, including computer hardware and software, required  
2 by the education service provider to deliver education to the  
3 participant;

4 (4) fees for nationally standardized  
5 assessments, advanced placement examination fees and other  
6 assessments required by the education service provider;

7 (5) tuition or fees for summer and after-  
8 school elementary or secondary programs;

9 (6) public transportation to and from school;  
10 and

11 (7) other educational charges approved by the  
12 department.

13 C. The department and the parent of a participant  
14 shall enter into an annual contract that specifies what  
15 qualifying education expenses will be purchased each semester  
16 or other term, the cost of the educational services to be  
17 provided and by whom the educational services will be provided.  
18 The department shall not deposit into an education opportunity  
19 account more than the combined cost of educational services  
20 provided to the participant in that year. A parent shall not  
21 pay more for educational services than the parent of a  
22 similarly situated school-age person pays. Money in an  
23 education opportunity account shall not be refunded, rebated or  
24 shared with a parent or participant in any manner. A refund or  
25 rebate for educational services purchased through an education

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1 opportunity account shall be credited directly to that account.  
2 A parent may make payments for the cost of educational services  
3 not covered by an education opportunity account, but in no case  
4 shall a parent deposit personal funds into a participant's  
5 account.

6 D. Payments from a participant's education  
7 opportunity account shall be issued at the direction of the  
8 participant's parent to an education service provider, in the  
9 name and for the benefit of the participant.

10 E. If an education service provider requires  
11 partial payment of tuition or fees prior to the start of the  
12 academic year to reserve space for a participant admitted to  
13 the education service provider, such partial payment may be  
14 paid by the department prior to the start of the school year in  
15 which the education opportunity account is awarded and deducted  
16 in an equitable manner from subsequent monthly account deposits  
17 to ensure that adequate funds remain available throughout the  
18 school year; provided that if the participant does not attend  
19 the education service provider to which partial payment was  
20 made, the partial payment shall be returned in full to the  
21 department by the education service provider for credit to the  
22 account.

23 F. Funds deposited in an education opportunity  
24 account shall not constitute taxable income for state tax  
25 purposes of the parent or the participant.

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1           G. Except as provided in Subsection H of this  
2 section, any unexpended balance in an education opportunity  
3 account may remain in the account until one of the following  
4 occurs, at which time the department shall close the account  
5 and the unexpended balance shall revert to the general fund:

6                   (1) the parent withdraws the participant from  
7 the program;

8                   (2) the participant graduates from high  
9 school; or

10                  (3) the account is closed by the department  
11 because of misuse of funds as determined by the department.

12           H. The department shall revert unexpended balances  
13 every two years unless it waives the reversion of a specific  
14 education opportunity account for extenuating circumstances.

15           I. Nothing in the Education Opportunity Account Act  
16 shall be construed to require a participant to be enrolled only  
17 in a private school, but the participant must be in compliance  
18 with the Attendance for Success Act."

19           SECTION 5. A new section of the Public School Code is  
20 enacted to read:

21                   "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT--APPLICATION  
22 PROCESS--RENEWAL--SUSPENSION.--

23                   A. A parent may apply to the department to  
24 establish an education opportunity account for an eligible  
25 child.

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1           B. The department shall accept and approve  
2 applications year-round and shall establish procedures and  
3 rules for approving applications in an expeditious manner.

4           C. The department shall create a standard  
5 application for an education opportunity account and procedures  
6 for submission of the application. A completed application  
7 shall be submitted by a parent to establish a child's  
8 eligibility for participation in the program. The department  
9 shall ensure that the applications and procedures are publicly  
10 available and an application may be submitted through various  
11 sources, including the department's website.

12           D. The department shall approve an application for  
13 an education opportunity account submitted by a parent if:

14                   (1) the parent submits the application in  
15 accordance with the procedures established by the department;

16                   (2) the child, on whose behalf the parent is  
17 applying, is eligible to participate in the program;

18                   (3) funds are available for the program or the  
19 education opportunity account; and

20                   (4) the parent signs a contract with the  
21 department agreeing:

22                           (a) to provide an education for the  
23 child in at least the subjects of reading, language arts,  
24 mathematics, science and social studies;

25                           (b) not to enroll the child as a

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1 full-time student in a public school while participating in the  
2 program;

3 (c) to use the funds in the education  
4 opportunity account only for qualifying education expenses to  
5 educate the child; and

6 (d) to comply with the rules and  
7 requirements of the program.

8 E. The department shall annually renew a  
9 participant's education opportunity account if funds are  
10 available.

11 F. Upon notice to the department, a participant may  
12 choose to stop receiving education opportunity account funding  
13 and enroll as a full-time student in a public school. A  
14 participant's enrollment as a full-time student in a public  
15 school shall result in the immediate suspension of payment of  
16 additional funds into the participant's education opportunity  
17 account; provided that, for an education opportunity account  
18 that has been open for at least one full school year, the  
19 department may allow the account to remain open and active for  
20 the parent to pay qualifying education expenses to educate the  
21 participant from money remaining in the account. The  
22 department shall revert unexpended balances in a participant's  
23 education opportunity account and close the account at the  
24 beginning of the next school year if the participant is  
25 enrolled in a public school.

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1           G. If a former participant who is an eligible child  
2 decides to return to the program, payments into the child's  
3 education opportunity account may resume if the account is  
4 still open and active. If the child's previous education  
5 opportunity account is closed, a new account may be  
6 established.

7           H. The department shall adopt rules to provide the  
8 least disruptive process for a participant who chooses to stop  
9 participating in the program and enroll full time in a public  
10 school."

11           **SECTION 6.** A new section of the Public School Code is  
12 enacted to read:

13           "[NEW MATERIAL] EDUCATION SERVICE PROVIDERS--  
14 APPLICATIONS--AUTONOMY--NOT ACTING FOR THE STATE--DEPARTMENT  
15 POWERS AND DUTIES.--

16           A. The department by rule shall provide the  
17 application process and procedures for prospective education  
18 service providers to apply for listing as an eligible education  
19 service provider. An application form signed by a prospective  
20 education service provider warrants that the education service  
21 provider:

22                       (1) will not refund, rebate or share money  
23 from education opportunity accounts with parents or  
24 participants and shall return refunds to the department; and

25                       (2) will provide the education services

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1 contained in the agreement entered into with a parent.

2 B. An education service provider is not an agent of  
3 the state or federal government, a local school board or school  
4 district or governing authority or charter school. No action  
5 of an education service provider shall be construed as an  
6 action by the state or any of its departments, institutions or  
7 political subdivisions.

8 C. An education service provider shall not be  
9 required to alter its creed, practices, admissions policy or  
10 curriculum to accept payments pursuant to the Education  
11 Opportunity Account Act except as provided in that act.

12 D. The department may:

13 (1) contract with private organizations to  
14 administer the program or specific functions of the program,  
15 including contracting with private financial management firms  
16 to manage education opportunity accounts;

17 (2) withhold from deposits or deduct from an  
18 education opportunity account an amount to cover the costs of  
19 administering the program, in an amount up to a maximum of five  
20 percent annually in the first two years of the program and up  
21 to a maximum of three percent annually thereafter;

22 (3) bar an education service provider from  
23 accepting payments from education opportunity accounts if the  
24 department determines that the education service provider has:

25 (a) substantially misrepresented

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1 information or failed to refund any overpayments in a timely  
2 manner; or

3 (b) failed to provide participants with  
4 sufficient educational goods or services;

5 (4) accept gifts, grants and donations from  
6 any source to cover administrative costs, to inform the public  
7 about the program or to fund additional education opportunity  
8 accounts; and

9 (5) adopt rules in accordance with the State  
10 Rules Act that are consistent with the Education Opportunity  
11 Account Act and necessary for the administration of that act,  
12 including rules:

13 (a) establishing or contracting for the  
14 establishment of an online anonymous fraud reporting service;

15 (b) establishing an anonymous telephone  
16 hotline for fraud reporting;

17 (c) requiring a surety bond for  
18 education service providers receiving more than one hundred  
19 thousand dollars (\$100,000) in education opportunity account  
20 funds; or

21 (d) for refunding payments from  
22 education service providers to education opportunity accounts."

23 SECTION 7. A new section of the Public School Code is  
24 enacted to read:

25 "[NEW MATERIAL] DEPARTMENT ADDITIONAL POWERS AND DUTIES.--

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1 The department shall:

2 A. maintain an updated list of qualified education  
3 service providers and ensure that the list is publicly  
4 available through various sources, including the department's  
5 website;

6 B. provide parents with a written explanation of  
7 the allowable uses of education opportunity account funds, the  
8 responsibilities of parents in ensuring the education of their  
9 children, the duties of the department and the role of any  
10 private financial management firms or other private  
11 organizations that the department may contract with to  
12 administer the program or any aspect of the program;

13 C. ensure that parents of children with  
14 disabilities receive notice that participation in the program  
15 is a parental placement pursuant to the federal Individuals  
16 with Disabilities Education Act, along with an explanation of  
17 the rights that parentally placed children may possess under  
18 federal law and any applicable state laws and rules;

19 D. implement a commercially available, cost-  
20 effective and user-friendly payment system for processing  
21 payments for services from an education opportunity account to  
22 an education service provider by electronic or online funds  
23 transfer; provided that the department:

24 (1) provides flexibility to parents by  
25 facilitating direct payments to education service providers or

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1 requests for preapproval of and reimbursements for qualifying  
2 education expenses; and

3 (2) may contract with private institutions to  
4 develop the payment system;

5 E. implement, as soon as practicable, a  
6 commercially available, cost-effective and user-friendly system  
7 as part of the same payment system for parents to publicly  
8 rate, review and share information about education service  
9 providers;

10 F. continue making deposits into a participant's  
11 education opportunity account until the:

12 (1) department is notified or determines that  
13 the participant is no longer participating in the program;

14 (2) participant withdraws from the program;

15 (3) participant enrolls full time in a public  
16 school;

17 (4) participant graduates from high school; or

18 (5) department determines that there was  
19 misuse of the funds in the participant's education opportunity  
20 account;

21 G. audit individual education opportunity accounts;

22 H. determine a parent or participant ineligible for  
23 the program in the event of misuse of education opportunity  
24 account funds; provided that if a parent is determined to be  
25 ineligible for the program but the participant is free from

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1 personal misconduct, that participant may be eligible for an  
2 education opportunity account if placed with a new guardian or  
3 other person with the legal authority to act on behalf of the  
4 participant;

5 I. create a fair process to determine whether a  
6 misuse of education opportunity account funds has occurred;

7 J. refer cases of misuse of education opportunity  
8 account funds to law enforcement when evidence of fraudulent  
9 use of the account funds exists; and

10 K. create a fair process to determine whether an  
11 education service provider may be barred from receiving  
12 payments from education opportunity accounts; provided that:

13 (1) an education service provider may appeal  
14 the department's final decision to bar the education service  
15 provider from receiving payments from education opportunity  
16 accounts;

17 (2) an education service provider aggrieved by  
18 a final decision of the department may appeal the decision to  
19 the district court pursuant to the provisions of Section  
20 39-3-1.1 NMSA 1978; and

21 (3) if the department bars an education  
22 service provider from receiving payments, the department shall  
23 notify parents of participants of the department's decision."

24 SECTION 8. A new section of the Public School Code is  
25 enacted to read:

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1           "[NEW MATERIAL] PARTICIPANT RECORDS.--Upon being notified  
2           that a participant is enrolled with an education service  
3           provider, a public school that previously enrolled the  
4           participant as a student shall provide the education service  
5           provider with that previously enrolled student's school  
6           records. The public school and the education service provider  
7           shall comply with the provisions of the federal Family  
8           Educational Rights and Privacy Act of 1974 when sharing student  
9           records."

10           SECTION 9. A new section of the Public School Code is  
11           enacted to read:

12           "[NEW MATERIAL] EDUCATION OPPORTUNITY REVIEW COMMISSION.--

13                   A. The department shall create the "education  
14           opportunity review commission" to assist the department in  
15           determining what expenditures meet the requirements to be  
16           considered qualifying education expenses to educate a  
17           participant and to provide recommendations to the department on  
18           how to implement, administer and improve the program.

19                   B. The education opportunity review commission  
20           consists of nine voting members who shall be:

21                           (1) five parents of participants and represent  
22           no fewer than four counties of the state; and

23                           (2) four New-Mexico-licensed educators.

24                   C. The voting members shall be appointed by the  
25           secretary and shall serve at the pleasure of the secretary.

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1 The secretary, or the secretary's designee, shall serve as the  
2 nonvoting chair of the education opportunity review commission.

3 D. The department may request that the education  
4 opportunity review commission meet, in person or through a  
5 virtual or telephonic platform, to:

6 (1) determine whether an expenditure from an  
7 education opportunity account is or was a qualifying education  
8 expense; and

9 (2) review appeals of denials of an education  
10 service provider and make a recommendation to the secretary.

11 E. When requested, the education opportunity review  
12 commission shall, by majority vote, recommend to the  
13 department:

14 (1) if a particular use of funds constitutes a  
15 qualifying education expense; and

16 (2) if an education service provider should be  
17 allowed to receive, or continue receiving, payments from  
18 education opportunity accounts."

19 SECTION 10. A new section of the Public School Code is  
20 enacted to read:

21 "[NEW MATERIAL] REPORT TO LEGISLATURE AND GOVERNOR.--The  
22 department shall report to the legislature and the governor by  
23 December 1 of each year on the program and its participants.  
24 The report shall include the number, grades and ages of  
25 participants and where those participants attend school or

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1 receive other educational services; the geographic distribution  
2 of participants by county; other demographic and economic data  
3 about participants and parents; the number and locations of  
4 education service providers, the services they provide and the  
5 number of participants they serve; the total amount of deposits  
6 into education opportunity accounts and the cost of financial  
7 management contracts; the total expenditures for education  
8 service providers and the average cost of educational services  
9 being provided to participants, by type of service and  
10 geographic region; and other information requested by the  
11 legislature or governor and considered reportable by the  
12 department."

13 SECTION 11. APPROPRIATIONS.--

14 A. The following amounts are appropriated from the  
15 general fund to the education opportunity account fund for  
16 expenditure in fiscal year 2027 and subsequent fiscal years for  
17 the following purposes:

18 (1) five hundred eighty thousand dollars  
19 (\$580,000) for the public education department to administer  
20 the education opportunity account program; and  
21 (2) one hundred million dollars (\$100,000,000)  
22 to carry out the purposes of the Education Opportunity Account  
23 Act.

24 B. The public education department shall not  
25 retain, assess, charge or expend any portion of the dollars

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1 appropriated in Subsection A of this section for indirect  
2 costs, overhead or any purpose other than administration of the  
3 education opportunity account program, and the amounts  
4 appropriated shall not be transferred to any other program or  
5 fund.

6 C. Any unexpended balance remaining at the end of a  
7 fiscal year shall not revert to the general fund.

8 SECTION 12. SEVERABILITY.--If any part or application of  
9 the Education Opportunity Account Act is held invalid, the  
10 remainder or its application to other situations or persons  
11 shall not be affected.

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