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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 240

SHORT TITLE: Education Opportunity Account Act

SPONSOR: Montoya/Armstrong/Cortez/Block/Jones

LAST ORIGINAL
UPDATE: _____ **DATE:** 2/10/26 **ANALYST:** Francis

APPROPRIATION* (dollars in thousands)

FY26	FY27	Recurring or Nonrecurring	Fund Affected
	580.0	Recurring	General Fund
	100,000.0	Recurring	General Fund

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 193

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

NM Education Trust Board
Public Education Department

Agency or Agencies That Were Asked for Analysis but did not Respond

Taxation and Revenue Department

SUMMARY

Synopsis of House Bill 240

House Bill 240 (HB240) enacts a new section of the Public School Code called the Education Opportunity Account Act and appropriates \$100 million from the general fund to a newly created education opportunity account fund and \$580 thousand to Public Education Department (PED) for the purpose of carrying out the purposes of the Education Opportunity Account Act.

HB240 creates a nonreverting fund called the education opportunity account (EOA) fund to be used by PED to provide financial assistance for:

- Tuition/fees at a private elementary or secondary school and summer or afterschool programs
- Tutoring services

- Textbooks and other instructional materials, including computer hardware and software
- Fees for tests
- Public transportation to and from school
- Other expenses approved by PED

The assistance will be subject to a contract between the parent and PED enumerating qualifying expenses, cost of education services, and who will provide services. The assistance will be direct payments into an EOA and these payments will not be subject to New Mexico taxes. Payments from the accounts shall be issued at the direction of parent to an education service provider and unexpended funds remain in the account until the parent withdraws from the program, the participant graduates from high school, or PED closes the account for misuse. After two years, PED will revert any unexpended balances to the EOA fund unless a waiver exists.

The contract the parent signs with PED is an agreement to provide an education for the child in at least the subjects of reading, language arts, mathematics, science and social studies, that the student will not be enrolled full-time at a public school, that funds will only be used for qualifying expenses, and the parent will comply with PED rules and requirements.

An education service provider applies to be on a qualified provider list with PED and warrants they will not refund, rebate or share funds with parents, will provide contracted education services, and is a private entity and not an agent of any government or school board/district or charter school. Education service providers will not be required to alter “creed, practices, admissions policy or curriculum” to be eligible. Education service providers receiving more than \$100 thousand will be required to be bonded.

If a participant was enrolled at a public school, the school shall provide the education service provider with student records subject to federal student privacy laws.

An education opportunity review commission consisting of 9 members, 5 of whom are parents of participants and 4 are NM licensed educators, appointed by the secretary of PED and can be removed by the secretary. The commission may be asked by PED to review expenditures and appeals of denials.

Annually, PED will prepare a report on the program including relevant statistics on participants, providers, services provided, and financial status.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026. HB240 contains a severability clause in the event any part is held invalid allowing remaining parts to stand.

FISCAL IMPLICATIONS

The appropriations contained in this bill are a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of the fiscal year shall not revert to the general fund. Appropriations cannot be transferred to other programs or used for indirect costs, overhead or any purpose other than the administration of the EOA program.

PED provides data to put the appropriation in context:

Data from the [National Center for Education Statistics](#) shows that in the 2022 school year (the most recent data available), New Mexico had 164 private schools enrolling 22,156 students. The lowest student cost with the lowest at-risk allocation in New Mexico would be \$5,972.69, while the highest student cost with the highest at-risk allocation would be \$20,188.46. Therefore, the lower estimates of the total cost for the program would be \$132.3 million, while the high end estimates of the total cost would be \$447.3 million for the 22,156 students enrolled in private school. Private schools vary in the degree of transparency and accountability since they are under no obligation to participate in state assessments, and fewer performance reporting make it difficult for families to make informed decisions for their child’s education.

This bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because it reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

HB240 diverts \$100 million from the general fund to set up unique accounts for parents that want to take their children out of public school and place them in private settings. A parent could qualify for direct payments up to the average amount spent on pupils in public and charter schools to pay for private and parochial education.

PED cites a study on education savings accounts, which set the guidelines for eligible expenditures for EOAs, and on the lack of research linking vouchers with results:

The [National Education Policy Center](#) notes that ESAs are already the least regulated approach in the highly deregulated world of vouchers, and there are numerous cases where fiscal scandals have prompted calls for greater accountability in the existing choice system.

...

[The NEPC study] notes the dearth of studies examining the link between voucher programs and student achievement. Across locations and student types, empirical research has consistently found voucher programs linked to negative effects on student achievement, sometimes notably large effects, particularly in mathematics.

NM Education Trust Board notes that these new accounts may reduce the number of 529 education accounts or the funds contributed to those funds. However, the impact on 529 plans could be positive if account owners no longer have to use the accounts for primary and secondary education expenses.

PERFORMANCE IMPLICATIONS

HB240 creates a complex new program where accountability and transparency will be key.

PED provides a summary of programs in other states (Arizona, Mississippi, New Hampshire, and Texas):

Looking at individual state programs, Arizona offers [Empowerment Scholarship Accounts](#), which, while similar to the EOAs proposed in HB240, was originally more narrowly focused but expanded to universal eligibility (originally, the accounts were open

to special needs, low-income, foster care children, and other less-typical student groups). Funds equal up to 90 percent of per-pupil funding but have broad use cases including for curriculum, private school tuition, therapy, technology, and online programs. The recent expansion ESA program [cost nearly \\$700 million](#) for approximately 71,520 students for SY24 and 75 percent of participants were awarded under universal eligibility. This cost is 892 percent higher than had been initially projected by the Arizona Joint Legislative Budget Committee in 2022.

Alternatively, Mississippi created an [ESA program in 2015](#) (with [updated legislation in 2024](#)), however it is only available to students with special needs. While still focused on school choice, Mississippi's ESA is designed to give those parents with special needs children the option of withdrawing their child from the public school system and receiving a designated amount of funds to help defray the cost of private school tuition or other specific allowable activities to educate their child. Like HB240 however, the administration of the program is performed by the Mississippi Department of Education. Previous estimates list the costs of the program for 2025 school year as being capped at \$7,829 per student.

New Hampshire, through [Senate Bill 295](#), expanded access to the state's Education Freedom Accounts program by adopting universal eligibility with an initial enrollment cap of 10,000. However, as the program hit the 10,000 cap this year, the cap will be increased to 12,500 in the next school year. This new cap, with similar distributions of children from lower income households, special education needs and English as a second language students, would have projected costs of \$61.4 million while \$47 million is budgeted for FY27 (\$14.4 million over budget). The total cost of the EFA program for the biennium would project to be \$113 million, or \$26.7 million over budget for the biennium, per [local reporting](#).

In Texas, Governor Greg Abbott [made school choice his priority for 2025](#), and Texas lawmakers responded by adopting the state's first private school choice program and the largest day one ESA in the country through the passage of [Senate Bill 2](#). This bill appropriated \$1 billion for the program, making Texas one of 17 states to provide universal student eligibility for private school choice. Under the new law, families can use ESA funds to cover a wide range of educational expenses including private school tuition, instructional materials, transportation and other approved educational expenses. Estimates from the state's [Legislative Budget Board](#) show that the program could cost \$2 billion annually by 2028. At the same time, Texas Education agency officials believe roughly 42,000 additional students could leave public schools for private ones by that same year.

As is the case with many of the states that have adopted ESA-type programs, the vast majority of students are not attending public schools but instead attend religious and other private schools or are homeschooled when they join the program, continuing the trend of increasing amounts of public dollars being pulled from distribution to public schools to defray costs associated with greater parental "school choice".. In [New Hampshire](#), this includes 80 percent of those students participating in the Education Freedom Accounts. Overall, for many of the families whose children attend religious and private schools or homeschools, they receive what is essentially a state tax paid subsidy for participation in these ESA programs.

Additionally, PED highlights the [Scholarship for Opportunity and Results \(SOAR\) Act](#), an act of Congress to provide tuition vouchers to low-income parents in the District of Columbia.

The legislation revised the 2004 Opportunity Scholarship Program (OSP) by prioritizing students leaving low-performing public schools and providing them with scholarships of about \$8 thousand for K-8 and \$12 thousand for grades 9-12. The reauthorization required an evaluation of the 2004 legislation two years after eligible families applies to the program. The OSP had statistically significant negative impact on mathematics achievement after two years, compared with students who applied but were not selected for the scholarship. Reading scores were also lower, but the differences were not statistically significant.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill 193 which would permit the withholding of tax credits to transfer their value to payments for students to attend private schools.

TECHNICAL ISSUES

PED is concerned that the timeline for approving applications should be clarified. The agency also suggests tightening the language on “extenuating circumstances” that would be required to waive the reversion of funds from the EOA.

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