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## FISCAL IMPACT REPORT

**BILL NUMBER:** Senate Joint Memorial 4

**SHORT TITLE:** Advance Election For Federal Tax Program

**SPONSOR:** Townsend/Scott/Wilson/Block

**LAST ORIGINAL**  
**UPDATE:** \_\_\_\_\_ **DATE:** 02/12/26 **ANALYST:** Graeser

### REVENUE\* (dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
			See Fiscal Implications			Recurring	

Parentheses indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 193

### Sources of Information

LFC Files

Agency or Agencies Providing Analysis

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

Taxation and Revenue Department, Public Education Department

## SUMMARY

### Synopsis of Senate Joint Memorial 4

Senate Joint Memorial 4 (SJM4) expresses a request for the governor to opt into the federal education freedom tax credit. This federal tax credit was one provision of the One Big Beautiful Bill. The federal tax credit requires the governor of each state to opt into participation in the federal program.

The federal program would allow low- and middle-income students (defined as students with family income up to 300 percent of the area median gross income) to attend private or parochial schools of their choice without violating state anti-donation, establishment-of-religion or other state constitutional or statutory provisions restricting or prohibiting using state money to support the alternative educational opportunities.

SJM4 explains the necessity and opportunity for the state to opt into the federal program as follows:

1. If the state opts into the federal program, the scholarships would be provided through grants by private scholarships organizations (PSOs) which, in turn, would receive

- donations from private individuals;
2. Starting in 2027, taxpayers can claim up to \$1,700 in dollar-for-dollar tax credits for donations to nonprofit scholarship granting organizations that award scholarships to kindergarten through twelfth grade students, with a focus on supporting low-income families. The memorial states that priority would be offered to students with special needs, but that is not a requirement of the federal education freedom tax credit;
  3. The federal education freedom tax credit provides for the flexible use of scholarships covering expenses for tuition, fees, academic tutoring, special needs services in the case of a special needs beneficiary, books, supplies and other equipment that are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school student at a public, private or religious school at no cost to state budgets;
  4. Scholarship granting organizations can only receive donations in states that formally opt into the federal education freedom tax credit program, and if states do not elect to participate in the program, donors who wish to claim the federal tax credit may direct their charitable contributions to scholarship granting organizations in other participating states instead;
  5. If the state does not opt into the federal program, students and families in nonparticipating states, particularly those from underserved communities, may miss out on new educational opportunities funded by private donations; and
  6. The decision to participate in the federal education freedom tax credit program rests entirely with the governor of each state, requiring no legislative action and offering a straightforward path to enhanced support for vulnerable families.

The joint memorial would become effective on passage by both houses.

## FISCAL IMPLICATIONS

SJM4 requests the governor to opt New Mexico into participation in the federal education freedom tax credit. These federal tax credits would be dollar-for-dollar amounts for donations to nonprofit scholarship granting organizations. Federal credits would be limited to \$1,700 per taxpayer.

Of note is that 90 percent to 93 percent of New Mexico's households/families have household/family income equal to or less than 300 percent of the state's median income. From the American Community Survey, the state's median household income is about \$65 thousand, which makes 300 percent of that median an annual income of about \$200 thousand. The federal education freedom tax credit would cover almost all of the state's students. The limitation of the federal cost would be slots at private and parochial schools, not the household income of eligible students.

There are two possible fiscal effects if the governor opts New Mexico into this program:

- 1) Each student who newly enrolls in a private or parochial school with a scholarship provided by a nonprofit scholarship organization is one less student that would be counted for the purposes of the public school funding formula. The preliminary unit value for the 2025-2026 (FY26) school year in New Mexico is \$6,801.35. HB193, the companion bill proposing a state voucher program, estimates approximately 2,000 students would elect the state tuition scholarship program. Although one student, particularly special needs students, is counted for more than one program unit, at

minimum there would be a reduction of at least \$7 million in funding formula support for these 2,000 students. This amount of money would be reallocated in the course of the year as an increase in unit value;

- 2) There would be an interaction between the federal education freedom tax credit and HB193, if it were passed. The federal tax credit of \$1,700 per taxpayer, would be reduced dollar-for-dollar for any allowed state qualified PSO donation of \$700 for single taxpayers or \$1,400 for married joint filers.

The fiscal consequences for the federal treasury are far more complicated. Private scholarship organizations are 501(c)(3) nonprofits whose income and activities are tax exempt and allow a donor exemption for 100 percent of donations contributed to the organization. Any donation qualifying for this federal education freedom tax credit must be subtracted from the amounts of regular donation claimed.

## **SIGNIFICANT ISSUES**

This approach to providing school vouchers may be constitutionally permissible and permissible pursuant to the terms of the enabling act. No state funds are devoted to the support of these vouchers.

This bill is related to a similar PSO donation contained in HB193. There are continuing objections, both constitutionally and practically, to using state funds to provide vouchers (see particularly the Public Education Department's analysis of HB193).

The WHEREAS in SJM4 text says there will be a focus on supporting special needs students which thus implies they would be favored for federal education freedom scholarships. That may be true in terms of individual private scholarship organizations, but that is not required by the terms of 26 USC 25F.

That provision of the federal tax code only requires the following:

- (1) Eligible student means an individual who is a member of a household with an income which, for the calendar year prior to the date of the application for a scholarship, is not greater than 300 percent of the area median gross income and is eligible to enroll in a public elementary or secondary school.

The WHEREAS in SJM4 also point out that PSOs are not allowed to provide scholarships in states that have not opted into the federal education freedom tax credit programs. The argument is then that if the Governor fails to opt the state into the federal program, eligible New Mexico low and moderate income students would not be eligible to enroll in private or parochial schools on scholarships provided by PSOs because none would have standing in the state.

## **PERFORMANCE IMPLICATIONS**

This is not considered a tax expenditure since there are no state funds involved. It is not even a passive tax expenditure since the state personal and corporate income tax acts do not automatically adopt federal tax credits.

## **ADMINISTRATIVE IMPLICATIONS**

PED would track the number of students granted scholarships by PSOs. However, it would take subsequent legislation to require this disclosure.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB193 proposes a state tax credit of up to \$700 for single taxpayers and up to \$1,400 for married joint filers. Any amounts claimed pursuant to the state program would be deducted from the donations allowed as itemized deductions, usually claimed by wealthier taxpayers. Taxpayers who itemize deductions would not be motivated to donate to PSOs because of this federal credit. Their deductions would be same depending on amount and not beneficiary.

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