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SENATE BILL 198

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE EQUAL OPPORTUNITY
SCHOLARSHIP TAX CREDIT FOR CONTRIBUTIONS MADE TO CERTAIN
ORGANIZATIONS FOR SCHOLARSHIPS FOR LOW-INCOME STUDENTS IN
NONPUBLIC SCHOOLS; MAKING APPROPRIATIONS.

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

Section 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP TAX
CREDIT.--

A. A taxpayer who files an individual New Mexico
income tax return and is not a dependent of another taxpayer
may claim a credit for a contribution made to a scholarship
granting organization for educational scholarships for eligible
students at a qualified school. The credit may be claimed in

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1 an amount equal to the total contributions made during the
2 taxable year for which the credit is claimed, but shall not
3 exceed five hundred dollars (\$500) in a taxable year for an
4 individual or one thousand dollars (\$1,000) for a married
5 couple filing jointly. The credit provided by this section
6 shall be known as the "equal opportunity scholarship tax
7 credit".

8 B. A taxpayer may receive a credit pursuant to this
9 section only if the taxpayer has a receipt from the scholarship
10 granting organization certifying that the taxpayer's
11 contribution will be used for educational scholarships for
12 eligible students at a qualified school and that the taxpayer
13 has not designated an individual student as the intended
14 beneficiary of the contribution.

15 C. A husband and wife who file separate returns for
16 a taxable year in which they could have filed a joint return
17 may each claim only one-half of the equal opportunity
18 scholarship tax credit that would have been allowed on a joint
19 return.

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

24 E. The equal opportunity scholarship tax credit
25 provided in this section may only be deducted from the

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1 taxpayer's New Mexico income tax liability for the taxable year
2 in which the contribution is made.

3 F. A scholarship granting organization shall:

4 (1) notify the department of its intent to
5 provide educational scholarships to eligible students attending
6 qualified schools;

7 (2) demonstrate to the department that it has
8 been granted an exemption from the federal income tax pursuant
9 to Section 501(c)(3) of the Internal Revenue Code;

10 (3) provide a department-approved receipt to
11 taxpayers for contributions made to the organization;

12 (4) ensure that at least ninety percent of its
13 revenue from contributions is spent on educational
14 scholarships, and that all revenue from interest or investments
15 is spent on educational scholarships;

16 (5) cooperate with the public education
17 department to conduct criminal background checks on all of its
18 employees and board members and exclude from employment or
19 governance any individual who might reasonably pose a risk to
20 the appropriate use of contributed funds;

21 (6) ensure that educational scholarships are
22 portable during the school year and can be used at any
23 qualified school that accepts an eligible student according to
24 a parent's wishes. If an eligible student moves to a new
25 qualified school during a school year, the educational

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1 scholarship amount may be prorated;

2 (7) demonstrate its financial accountability
3 by submitting a financial information report for the
4 organization that complies with uniform financial accounting
5 standards established by the department;

6 (8) ensure that a qualified school that
7 accepts its educational scholarships will:

8 (a) comply with all health and safety
9 laws or codes that apply to nonpublic schools;

10 (b) hold a valid occupancy permit if
11 required by its municipality;

12 (c) certify that it will not
13 discriminate in admissions on the basis of race, national
14 origin or ethnicity; and

15 (d) provide academic accountability to
16 parents of the students in the program by regularly reporting
17 to the parents on the student's progress;

18 (9) not provide educational scholarships for
19 qualified students to attend any school with paid staff or
20 board members, or relatives thereof, in common with the
21 scholarship granting organization;

22 (10) publicly report to the department by June
23 1 of each year the following information regarding its
24 educational scholarships for the previous calendar year:

25 (a) the name and address of the

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1 scholarship granting organization;

2 (b) the total number and total dollar
3 amount of contributions received during the previous calendar
4 year; and

5 (c) the total number and total dollar
6 amount of educational scholarships awarded during the previous
7 calendar year;

8 (11) provide educational scholarships to more
9 than one qualified school; and

10 (12) provide academic accountability to
11 parents and taxpayers by ensuring that participating schools
12 that accept its scholarships shall:

13 (a) annually administer either the state
14 achievement tests or nationally recognized norm-referenced
15 tests that measure learning gains in mathematics and language
16 arts to all participating students in grades that require
17 testing under the state's accountability testing laws for
18 public schools;

19 (b) allow the costs of the testing
20 requirements to be covered by the scholarships distributed by
21 the scholarship granting organizations;

22 (c) provide the parents of each student
23 who was tested with a copy of the test results on an annual
24 basis, beginning with the first year of testing;

25 (d) provide the test results to the

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1 department or an organization chosen by the state on an annual
2 basis, beginning with the first year of testing;

3 (e) report student information that
4 would allow the state to aggregate data by grade level, gender,
5 family income level and race; and

6 (f) provide graduation rates of
7 participating students to the department or an organization
8 chosen by the state in a manner consistent with nationally
9 recognized standards.

10 G. The department shall:

11 (1) adopt rules as necessary to implement
12 equal opportunity scholarship tax credits;

13 (2) provide a standardized format for a
14 receipt to be issued by a scholarship granting organization to
15 a taxpayer to indicate the value of a contribution received.
16 The department may require a taxpayer to provide a copy of this
17 receipt when claiming an equal opportunity scholarship tax
18 credit;

19 (3) provide a standardized format for
20 scholarship granting organizations to report the information
21 required pursuant to Paragraph (10) of Subsection F of this
22 section;

23 (4) have the authority to conduct either a
24 financial review or audit of a scholarship granting
25 organization if possessing evidence of fraud;

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1 (5) bar a scholarship granting organization
2 from participating in the program if the department establishes
3 that the scholarship granting organization has intentionally
4 and substantially failed to comply with the requirements set
5 forth in Subsection F of this section. If the department
6 decides to bar a scholarship granting organization from the
7 program, it shall notify affected scholarship students and
8 their parents of this decision as quickly as possible;

9 (6) ensure compliance with all student privacy
10 laws;

11 (7) collect all test results;

12 (8) provide the test results and associated
13 learning gains to the public via a state web site after the
14 third year of test and test-related data collection. The
15 findings shall be aggregated by the students' grade level,
16 gender, family income level, number of years of participation
17 in the scholarship program and race; and

18 (9) develop a mechanism that limits the total
19 amount of equal opportunity scholarship tax credits granted in
20 the Income Tax Act and the Corporate Income and Franchise Tax
21 Act to ten million dollars (\$10,000,000) annually. The
22 mechanism will use a first-come, first-served basis for
23 determining which donations will qualify for a tax credit.

24 H. All qualified schools shall:

25 (1) operate in New Mexico;

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1 (2) comply with all state laws that apply to
2 nonpublic schools regarding criminal background checks for
3 employees and exclude from employment any person not permitted
4 by state law to work in a nonpublic school; and

5 (3) fill available spaces by a random
6 selection process, except that a qualified school may give
7 preference to siblings of enrolled students and previously
8 enrolled scholarship students, if a qualified school has more
9 eligible students applying than spaces available.

10 I. As used in this section:

11 (1) "educational scholarships" means grants to
12 eligible students to cover all or part of the tuition and fees
13 at a qualified school;

14 (2) "eligible student" means a student who:

15 (a) is a member of a household whose
16 total annual income does not exceed an amount used to qualify
17 for a reduced-price lunch through the federal school lunch
18 programs established pursuant to 42 USCA Sections 1751 through
19 1770, as amended. Once a student receives a scholarship
20 pursuant to the program, the student shall remain eligible
21 regardless of household income until the student graduates from
22 high school or reaches twenty-one years of age;

23 (b) attended a New Mexico public school
24 in the preceding semester or is starting school in New Mexico
25 for the first time; and

1 (c) resides in New Mexico while
2 receiving a scholarship from a scholarship granting
3 organization;

4 (3) "qualified school" means an accredited
5 nonpublic elementary or secondary school in New Mexico that:

6 (a) does not discriminate in admissions
7 or treatment of students on the basis of a student's race,
8 national origin or ethnicity;

9 (b) demonstrates to the department that
10 it has been granted exemption from the federal income tax as an
11 organization qualified pursuant to Section 501(c)(3) of the
12 Internal Revenue Code;

13 (c) requires students to take an annual
14 academic test with individual scores provided to the parents of
15 students; and

16 (d) satisfies the requirements set forth
17 in Subsection H of this section; and

18 (4) "scholarship granting organization" means
19 an organization that:

20 (a) demonstrates to the department that
21 it has been granted exemption from the federal income tax as an
22 organization qualified pursuant to Section 501(c)(3) of the
23 Internal Revenue Code;

24 (b) provides financial assistance for
25 the education of children in the form of educational

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1 scholarships to eligible students allowing them to attend any
2 qualified school of their parents' choice;

3 (c) expends at least ninety percent of
4 its equal opportunity scholarship tax credit qualifying
5 contributions for educational scholarships for children
6 enrolled in qualified schools;

7 (d) provides one hundred percent of its
8 educational scholarships to children who at the time of initial
9 application for the scholarship qualify for free or reduced-
10 price lunches through the federal school lunch programs
11 established pursuant to 42 USCA Sections 1751 through 1770, as
12 amended; and

13 (e) satisfies the requirements set forth
14 in Subsection F of this section."

15 Section 2. A new section of the Corporate Income and
16 Franchise Tax Act is enacted to read:

17 "[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP TAX
18 CREDIT.--

19 A. A taxpayer that files a New Mexico corporate
20 income tax return may claim a credit for a contribution made to
21 a scholarship granting organization for educational
22 scholarships for eligible students at qualified schools. The
23 credit may be claimed in an amount equal to the total
24 contributions made during the taxable year for which the credit
25 is claimed, but shall not exceed fifty thousand dollars

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1 (\$50,000) in a taxable year. The credit provided by this
2 section shall be known as the "equal opportunity scholarship
3 tax credit".

4 B. A taxpayer may receive a credit pursuant to this
5 section only if the taxpayer has a receipt from the scholarship
6 granting organization certifying that the taxpayer's
7 contribution will be used for educational scholarships for
8 eligible students at qualified schools and that the taxpayer
9 has not designated an individual student as the intended
10 beneficiary of the contribution.

11 C. The equal opportunity scholarship tax credit
12 shall not be allowed for a contribution that is included in a
13 claim for a deduction or credit pursuant to the Internal
14 Revenue Code.

15 D. The equal opportunity scholarship tax credit
16 provided in this section may only be deducted from the
17 taxpayer's New Mexico corporate income tax liability for the
18 taxable year in which the contribution is made.

19 E. A scholarship granting organization shall:

20 (1) notify the department of its intent to
21 provide educational scholarships to eligible students attending
22 qualified schools;

23 (2) demonstrate to the department that it has
24 been granted an exemption from the federal income tax pursuant
25 to Section 501(c)(3) of the Internal Revenue Code;

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1 (3) provide a department-approved receipt to
2 taxpayers for contributions made to the organization;

3 (4) ensure that at least ninety percent of its
4 revenue from contributions is spent on educational scholarships,
5 and that all revenue from interest or investments is spent on
6 educational scholarships;

7 (5) cooperate with the public education
8 department to conduct criminal background checks on all of its
9 employees and board members and exclude from employment or
10 governance any individual who might reasonably pose a risk to
11 the appropriate use of contributed funds;

12 (6) ensure that educational scholarships are
13 portable during the school year and can be used at any
14 qualified school that accepts an eligible student according to
15 a parent's wishes. If an eligible student moves to a new
16 qualified school during a school year, the educational
17 scholarship amount may be prorated;

18 (7) demonstrate its financial accountability
19 by submitting a financial information report for the
20 organization that complies with uniform financial accounting
21 standards established by the department;

22 (8) ensure that a qualified school that
23 accepts its educational scholarships will:

24 (a) comply with all health and safety
25 laws or codes that apply to nonpublic schools;

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1 (b) hold a valid occupancy permit if
2 required by its municipality;

3 (c) certify that it will not
4 discriminate in admissions on the basis of race, national
5 origin or ethnicity; and

6 (d) provide academic accountability to
7 parents of the students in the program by regularly reporting
8 to the parents on the student's progress;

9 (9) not provide educational scholarships for
10 qualified students to attend any school with paid staff or
11 board members, or relatives thereof, in common with the
12 scholarship granting organization;

13 (10) publicly report to the department by June
14 1 of each year the following information regarding its
15 educational scholarships for the previous calendar year:

16 (a) the name and address of the
17 scholarship granting organization;

18 (b) the total number and total dollar
19 amount of contributions received during the previous calendar
20 year; and

21 (c) the total number and total dollar
22 amount of educational scholarships awarded during the previous
23 calendar year;

24 (11) provide educational scholarships to more
25 than one qualified school; and

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1 (12) provide academic accountability to
2 parents and taxpayers by ensuring that participating schools
3 that accept its scholarships shall:

4 (a) annually administer either the state
5 achievement tests or nationally recognized norm-referenced
6 tests that measure learning gains in mathematics and language
7 arts to all participating students in grades that require
8 testing under the state's accountability testing laws for
9 public schools;

10 (b) allow the costs of the testing
11 requirements to be covered by the scholarships distributed by
12 the scholarship granting organizations;

13 (c) provide the parents of each student
14 who was tested with a copy of the test results on an annual
15 basis, beginning with the first year of testing;

16 (d) provide the test results to the
17 department or an organization chosen by the state on an annual
18 basis, beginning with the first year of testing;

19 (e) report student information that
20 would allow the state to aggregate data by grade level, gender,
21 family income level and race; and

22 (f) provide graduation rates of
23 participating students to the department or an organization
24 chosen by the state in a manner consistent with nationally
25 recognized standards.

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F. The department shall:

(1) adopt rules as necessary to implement equal opportunity scholarship tax credits;

(2) provide a standardized format for a receipt to be issued by a scholarship granting organization to a taxpayer to indicate the value of a contribution received. The department may require a taxpayer to provide a copy of this receipt when claiming an equal opportunity scholarship tax credit;

(3) provide a standardized format for scholarship granting organizations to report the information required pursuant to Paragraph (10) of Subsection E of this section;

(4) have the authority to conduct either a financial review or audit of a scholarship granting organization if possessing evidence of fraud; and

(5) bar a scholarship granting organization from participating in the program if the department establishes that the scholarship granting organization has intentionally and substantially failed to comply with the requirements set forth in Subsection E of this section. If the department decides to bar a scholarship granting organization from the program, it shall notify affected scholarship students and their parents of this decision as quickly as possible.

G. All qualified schools shall:

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- 1 (1) operate in New Mexico;
- 2 (2) comply with all state laws that apply to
- 3 nonpublic schools regarding criminal background checks for
- 4 employees and exclude from employment any person not permitted
- 5 by state law to work in a nonpublic school;
- 6 (3) fill available spaces by a random
- 7 selection process, except that a qualified school may give
- 8 preference to siblings of enrolled students and previously
- 9 enrolled scholarship students, if a qualified school has more
- 10 eligible students applying than spaces available;
- 11 (4) ensure compliance with all student privacy
- 12 laws;
- 13 (5) collect all test results;
- 14 (6) provide the test results and associated
- 15 learning gains to the public via a state web site after the
- 16 third year of test and test-related data collection. The
- 17 findings shall be aggregated by the students' grade level,
- 18 gender, family income level, number of years of participation
- 19 in the scholarship program and race; and
- 20 (7) develop a mechanism that limits the total
- 21 amount of equal opportunity scholarship tax credits granted in
- 22 the Income Tax Act and the Corporate Income and Franchise Tax
- 23 Act to ten million dollars (\$10,000,000) annually. The
- 24 mechanism will use a first-come, first-served basis for
- 25 determining which donations will qualify for a tax credit.

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1 H. As used in this section:

2 (1) "educational scholarships" means grants to
3 eligible students to cover all or part of the tuition and fees
4 at a qualified school;

5 (2) "eligible student" means a student who:

6 (a) is a member of a household whose
7 total annual income does not exceed an amount used to qualify
8 for a reduced-price lunch through the federal school lunch
9 programs established pursuant to 42 USCA Sections 1751 through
10 1770, as amended. Once a student receives a scholarship
11 pursuant to the program, the student will remain eligible
12 regardless of household income until the student graduates from
13 high school or reaches twenty-one years of age;

14 (b) attended a New Mexico public school
15 in the preceding semester or is starting school in New Mexico
16 for the first time; and

17 (c) resides in New Mexico while receiving
18 a scholarship from a scholarship granting organization;

19 (3) "qualified school" means an accredited
20 nonpublic elementary or secondary school in New Mexico that:

21 (a) does not discriminate in admissions
22 or treatment of students on the basis of a student's race,
23 national origin or ethnicity;

24 (b) demonstrates to the department that
25 it has been granted exemption from the federal income tax as an

1 organization qualified pursuant to Section 501(c)(3) of the
2 Internal Revenue Code;

3 (c) requires students to take an annual
4 academic test with individual scores provided to the parents of
5 students; and

6 (d) satisfies the requirements set forth
7 in Subsection G of this section; and

8 (4) "scholarship granting organization" means
9 an organization that:

10 (a) demonstrates to the department that
11 it has been granted exemption from the federal income tax as an
12 organization qualified pursuant to Section 501(c)(3) of the
13 Internal Revenue Code;

14 (b) provides financial assistance for
15 the education of children in the form of educational
16 scholarships or tuition grants to eligible students allowing
17 them to attend any qualified school of their parents' choice;

18 (c) expends at least ninety percent of
19 its equal opportunity scholarship tax credit qualifying
20 contributions for educational scholarships or tuition grants
21 for children enrolled in a qualified school;

22 (d) provides one hundred percent of its
23 educational scholarships to children who at the time of initial
24 application for the scholarship qualify for free or reduced-
25 price lunches through the federal school lunch programs

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1 established pursuant to 42 USCA Sections 1751 through 1770, as
2 amended; and

3 (e) satisfies the requirements set forth
4 in Subsection E of this section."

5 Section 3. APPROPRIATION.--One million two hundred
6 thousand dollars (\$1,200,000) is appropriated from the general
7 fund to the public education department for expenditure in
8 fiscal year 2011 to make annual grants on a competitive basis
9 for innovative efforts by educational providers to reduce the
10 dropout rate for minority students. Any unexpended or
11 unencumbered balance remaining at the end of fiscal year 2011
12 shall revert to the general fund.

13 Section 4. APPROPRIATION.--Five million dollars
14 (\$5,000,000) is appropriated from the general fund to the
15 public education department for expenditure in fiscal year 2011
16 to aid public schools to reflect the savings achieved through
17 the equal opportunity scholarship tax credit program. Any
18 unexpended or unencumbered balance remaining at the end of
19 fiscal year 2011 shall revert to the general fund.

20 Section 5. APPLICABILITY.--The provisions of this act
21 apply to taxable years beginning on or after January 1, 2011
22 but before January 1, 2015.