F I S C A L I M P A C T R E P O R T

SPONSOR Maestas **ORIGINAL DATE** 02/20/11 **LAST UPDATED** **HB** 427

SHORT TITLE Equal Opportunity Scholarship Act **SB**

ANALYST Golebiewski

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	($575.0)	($4,418.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB 433

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 427 creates the Equal Opportunity Scholarship Act. The Act defines the rules on certification and duties of tuition scholarship organizations; it also defines the intended beneficiaries of the scholarships: low-income students attending qualifying schools. The bill provides credits against the Personal Income Tax and Corporate Income Tax for contributions to tuition scholarship organizations (for the period beginning January 1, 2012 and December 31, 2015.) The credit is for ninety percent of the total contributions with a cap of fifty percent of the taxpayer's tax liability for the tax year. Section 5 of HB 427 provides for the decrease in distribution to the appropriate school districts for students who receive the scholarships to attend other non-public schools.

HB 427 gives the Public Education Department responsibility for administering the Equal Opportunity Scholarship Act. These duties include certifying tuition scholarship organizations, providing the necessary information to the Taxation and Revenue Department, and producing analysis on the credit to determine whether the credit is accomplishing its intended effects – this report is to be compiled annually for the Revenue Stabilization and Tax Policy Committee.

FISCAL IMPLICATIONS

TRD:

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2011	**FY2012**	**FY2013**	**FY2014**	**FY2015**		
0	(575)	(4,418)	(4,550)	(4,687)	R[#]	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Nonrecurring (NR).

\# Credit expires January 1, 2016.

The revenue impact related to the personal income tax was based on the experiences of two states that analyzed similar tax credits, Ohio[1] and Arizona.[2] The 2002 revenue losses estimated in Ohio and Arizona were $14.0 and $14.2 million, respectively. Adjusting by population, the revenue loss for New Mexico would be $2.6 million according to the Ohio experience, and $4.4 if based on the Arizona experience. For the purposes of this estimate, a simple average of $3.5 million in 2002 was used.

The revenue impact related to the corporate income tax was calculated using the amount of corporate giving in 2000 ($10.9 billion)[3] in the entire United States, of which 4.5% ($490.5 million) was donated to schools. Adjusting this number to New Mexico using a population ratio of 0.65 yields an estimate of $31.8 million, of which 5% flows to scholarships for low-income students. Hence, the estimate for New Mexico in 2000 is $1.6 million.

These revenue impacts were multiplied by 0.9 to account for the credit to be in the amount of ninety percent of the total contributions made and were adjusted 30% downward to account for the fact that the credit may not exceed fifty percent of the taxpayer's tax liability for the taxable year.

The individual and corporate income tax credit amounts (for 2002 and 2000, respectively) were assumed to grow at a 3% annual growth rate.

SIGNIFICANT ISSUES

House Bill 427 effectively subsidizes the cost of low-income students to attend schools that would have been prohibitively costly in the absence of the scholarships, which are the basis of the proposed tax credit. This would expand the choice set of schools for students' parents and introduce more competition into the New Mexico education system, which in theory, would improve all schools.

However, credits like those proposed in House Bill 427 shrink the tax base and introduce more complexity into the New Mexico tax system. These characteristics run contrary to the tax policy principles of efficiency and simplicity.

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[1] http://www.lbo.state.oh.us/fiscal/fiscalnotes/124ga/HB0202IN.htm#_ftn1

[2] http://www.azleg.state.az.us/legtext/45leg/1r/fiscal/hb2146.htm

[3] Matthew Sinclair. The Non-profit Times – June 1, 2001.

ADMINISTRATIVE IMPLICATIONS

There will be moderate impacts in terms of additional administration and reporting responsibilities related to the requirements of House Bill 427 for both TRD and PED.

TECHNICAL ISSUES

TRD:

Section 6, Subsection C permits the Department to impose a fee for each numbered "contribution receipt" issued by the Department to a tuition scholarship organization. The bill makes no provision for the distribution of this fee. Thus, it is unclear how the fee should be used or deposited.

Since the bill imposes a fee, it is recommended that a reference to the provision of the fee be included in the title of the bill.

Section 6, Subsection L suggests the Department may be required to disclose the amount of the tax credit claimed by a taxpayer. To the extent that such information is information contained in a taxpayer return, Section 7-1-8.8 should be amended to permit the Department to release such information without violating confidentiality provisions in Section 7-1-8.

It is unclear what constitutes "acceptance of" the equal opportunity scholarship credit in order to provide authorization to the Department to disclose the amount of the tax credit claimed. As currently written, mere application for the credit would not permit such disclosure. Further, as currently written, the bill only permits disclosure of the amount of the tax credit *claimed* by the taxpayer, not necessarily the amount of the tax credit *allowed* for that taxpayer. Pursuant to Subsection J, only aggregate amounts approved could be disclosed to the Revenue Stabilization and Tax Policy Committee, without identifying the taxpayer.

PED:

Although categorized as an "Equal Opportunity Scholarship Credit", the Credit does not prohibit schools from discriminating on the basis of religion. (See, e.g. pg 7 lines 16-17).

OTHER SUBSTANTIVE ISSUES

TRD:

Arguments challenging the constitutionality of the Arizona credits have arisen on the grounds that credits essentially provide public funding for private schools. Similar arguments could be made with respect to the proposed equal opportunity scholarship tax credit in New Mexico. The credit may also violate the Anti-Donation Clause of the New Mexico Constitution.

Sections 6 and 7 provide for tax credits for contributions to tuition scholarship organizations that provide scholarships to students attending qualified schools, including public or nonpublic elementary, middle or secondary schools. It is unclear to what extent students would qualify for scholarships to public schools for which tuition is not required. The definition of "educational scholarship" suggests that they may qualify for scholarships for transportation costs not covered by a qualified public school.

The definition of "educational scholarship" does not specify whether an "educational scholarship" is for costs paid by the student for attendance at a qualified school. As currently drafted, "educational scholarship" includes "costs of the student" at a qualified school. If it is the intention to provide scholarships for costs to be paid by a student, the definition of "educational scholarship" may require additional clarification.

Section 6, Subsection J requires the Department to determine every three years beginning in 2013 whether the special needs student scholarship income tax credit is performing the purpose for which it is created. If the Department makes such a determination on January 1, 2013, it is required to make its next determination on January 1, 2016. However, the tax credits created by HB-427 are applicable only to tax years that begin *before* January 1, 2016. Thus, by the time the Department is required to make its last determination, the tax credits no longer apply. It is recommended that the reporting dates be adjusted to provide greater consistency with the dates during which the credits are applicable.

JAG/svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc