

SENATE BILL 113

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Gerald Ortiz y Pino

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO EDUCATION; ENACTING THE EQUAL EDUCATION OPPORTUNITY SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO LOW-INCOME STUDENTS TO ATTEND CERTAIN PUBLIC AND NONPUBLIC SCHOOLS; CREATING INCOME TAX AND CORPORATE INCOME TAX CREDITS FOR CONTRIBUTIONS TO TUITION SCHOLARSHIP ORGANIZATIONS THAT PROVIDE EDUCATIONAL SCHOLARSHIPS FOR LOW-INCOME STUDENTS TO ATTEND PUBLIC OR PRIVATE SCHOOLS OF THE STUDENT'S PARENTS' CHOICE.

.223077.4AIC February 6, 2023 (12:57pm)

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Equal Education Opportunity Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Equal Education Opportunity Scholarship Act:

A. "certification document" means the document issued by the department to an organization verifying that the organization is a tuition scholarship organization and contributions to that organization for equal education opportunity scholarships may be claimed as an equal education opportunity scholarship tax credit;

B. "contribution receipt" means a document developed by the taxation and revenue department pursuant to the Equal Education Opportunity Scholarship Act and provided to a tuition scholarship organization that in turn provides the document to an individual or corporate contributor that is a taxpayer that intends to claim an equal education opportunity scholarship tax credit as a receipt for a contribution to the tuition scholarship organization;

C. "department" means the public education department;

D. "educational scholarship" means a tuition grant or other grant of funds to an eligible student to cover all or part of the costs of that student at a qualified school,

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including transportation costs;

E. "eligible student" means a student who:

(1) is enrolled in a state-licensed foster care program; or

(2) is a member of a household for which the total annual income does not exceed an amount used to qualify for a reduced-price lunch through the federal school lunch programs established pursuant to 42 USCA Sections 1751 through 1769, as amended; provided that once a student receives a scholarship pursuant to the Equal Education Opportunity Scholarship Act, the student shall remain eligible regardless of household income until the student graduates from high school or reaches twenty-one years of age; and

(3) resides in New Mexico while receiving a scholarship from a tuition scholarship organization;

F. "equal education opportunity scholarship tax credit" means the equal education opportunity scholarship income tax credit provided in the Income Tax Act and the equal education opportunity scholarship corporate income tax credit provided in the Corporate Income and Franchise Tax Act;

G. "parent" means a guardian, custodian or other person with authority to act on behalf of a child;

H. "qualified school" means a public or nonpublic elementary, middle or secondary school located in New Mexico to which a parent has chosen to send an eligible student;

I. "relative" means a person related by affinity or

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consanguinity to the third degree;

J. "tuition grant" means a grant of funds for the purpose of covering the costs of tuition for a qualified school; and

K. "tuition scholarship organization" means an organization that provides educational scholarships of up to five thousand dollars (\$5,000), but that do not exceed five thousand dollars (\$5,000), to students attending qualified schools of their parents' choice and that meets the criteria established in the Equal Education Opportunity Scholarship Act.

SECTION 3. [NEW MATERIAL] TUITION SCHOLARSHIP ORGANIZATION--CERTIFICATION.--

A. An organization may seek certification from the department as a tuition scholarship organization by submitting an application for certification to the department.

B. To be certified as a tuition scholarship organization by the department, the organization shall provide documentation as deemed appropriate by the department to verify that:

(1) the organization has been granted an exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;

(2) the organization has awarded or intends to award educational scholarships to eligible students who are attending or plan to attend qualified schools;

(3) the scholarships are funded from

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contributions that the organization has received in or prior to the current calendar year, or anticipates receiving during the remainder of the calendar year, and at least ninety percent of the contributions received during a calendar year for which the organization issues a contribution receipt to an individual or corporate taxpayer for purposes of obtaining an equal education opportunity scholarship tax credit is awarded by the organization as educational scholarships and all revenue from interest or investments is expended solely on educational scholarships;

(4) the organization distributes periodic scholarship payments as checks that are issued to an eligible student's parent, that are mailed to the qualified school in which the eligible student is enrolled and that require the endorsement of the parent prior to deposit of the check;

(5) educational scholarships awarded by the organization are portable during the school year and can be used at any qualified school that accepts the eligible student according to a parent's wishes; provided that the scholarship shall be prorated between schools based on the number of days attended at each school by the eligible student;

(6) criminal background checks on all of the organization's employees and board members have been conducted by the organization, with the understanding that individuals who might reasonably pose a risk to the sound fiscal management of the funds of the organization shall be excluded from

employment or governance, and all pertinent findings on employees and board members have been provided to the department for review and approval;

(7) the organization has in place systems to provide for financial accountability, including independent annual audits that shall be submitted to the department in the form of a financial information report that complies with generally accepted accounting procedures as specified by the department and is certified to be free of material misstatements by the certified public accountant who performed the audit; and

(8) the organization is financially viable and receives or is likely to receive donations of fifty thousand dollars (\$50,000) or more during a school year by filing with the department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of contributions expected to be received during the school year.

SECTION 4. [NEW MATERIAL] TUITION SCHOLARSHIP

ORGANIZATION--DUTIES.--

A. No later than thirty days prior to the start of a new school year or the start of a new semester, a tuition scholarship organization shall provide to the department the names of eligible students who received educational scholarships and the students' previous school district or charter school affiliation. The tuition scholarship

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organization shall provide verification that the eligible students have been awarded an educational scholarship and have enrolled in a private school for the new school year or the new semester.

B. A tuition scholarship organization shall ensure that a school participating in the tuition scholarship organization's scholarship program certifies that the school:

- (1) is in compliance with all health and safety laws or rules that apply to schools;
- (2) holds a valid occupancy permit as required by applicable laws;
- (3) does not discriminate in admissions on the basis of race, color or national origin;
- (4) provides academic accountability to parents of the students in the program by regularly reporting to the parent on the student's academic and developmental progress;
- (5) ensures that every school employee with unsupervised access to students has undergone a background check as described in Subsection A of Section 22-10A-5 NMSA 1978;
- (6) has no paid staff or board members who are also staff or board members of the tuition scholarship organization or who are relatives of the staff or board members of the tuition scholarship organization;
- (7) gives enrollment preference to eligible

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students who were enrolled at the school in the prior year and to siblings of eligible students already admitted to or attending the school; and

(8) is a qualified school and, if the school has more applications for educational scholarships from eligible students than positions available for students receiving scholarships, the school fills the available scholarship positions only by using a random selection process.

C. By June 1 of each year beginning in 2024, a tuition scholarship organization shall report the following information to the department and the taxation and revenue department:

(1) the name and address of the tuition scholarship organization;

(2) the total number and dollar amount of contributions received for which contribution receipts were issued during the calendar year ending on December 31 of the prior year;

(3) the total number and dollar amount of all educational scholarships awarded during the calendar year ending on December 31 of the prior year; and

(4) the total number and dollar amount of educational scholarships awarded to eligible students during the calendar year ending on December 31 of the prior year.

D. A tuition scholarship organization shall:

(1) provide to each individual and corporate

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contributor of funds dedicated for educational scholarships a contribution receipt that shall be completed according to taxation and revenue department requirements;

(2) maintain a list by the sequential number on the contribution receipt identifying to whom each copy is issued, the amount and date of the contribution and any other information deemed necessary by the taxation and revenue department to allow the contributor to receive an equal education opportunity scholarship tax credit;

(3) account for all copies of contribution receipts damaged, destroyed, lost or otherwise unusable; and

(4) provide an annual report to the interim legislative education study committee and the public education department by June 1 of each year containing information on how many scholarships were provided by the tuition scholarship organization and the amount of each scholarship.

SECTION 5. [NEW MATERIAL] DEPARTMENT--DUTIES.--

A. The department shall administer the Equal Education Opportunity Scholarship Act.

B. The department shall:

(1) ensure that:

(a) in school districts with a total student enrollment of less than one thousand students, no more than nine-tenths percent of a school district's student enrollment may utilize a scholarship associated with a donation to a qualified scholarship organization from an individual or

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business entity that claims the allowable tax credit;

(b) in school districts with a total student enrollment between one thousand and four thousand nine hundred ninety-nine students, no more than eight-tenths percent of a school district's student enrollment may utilize a scholarship associated with a donation to a qualified scholarship organization from an individual or business entity that claims the allowable tax credit;

(c) for school districts with a total student enrollment between five thousand and fourteen thousand nine hundred ninety-nine students, no more than six-tenths percent of a school district's student enrollment may utilize a scholarship associated with a donation to a qualified scholarship organization from an individual or business entity that claims the allowable tax credit;

(d) for school districts with a total student enrollment between fifteen thousand and twenty-four thousand nine hundred ninety-nine students, no more than four-tenths percent of a school district's student enrollment may utilize a scholarship associated with a donation to a qualified scholarship organization from an individual or business entity that claims the allowable tax credit;

(e) for school districts with a total student enrollment between twenty-five thousand and forty-nine thousand nine hundred ninety-nine students, no more than three-tenths percent of a school district's student enrollment may

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utilize a scholarship associated with a donation to a qualified scholarship organization from an individual or business entity that claims the allowable tax credit; and

(f) for school districts with a total student enrollment over fifty thousand students, no more than two-tenths percent of a school district's student enrollment may utilize a scholarship associated with a donation to a qualified scholarship organization from an individual or business entity that claims the allowable tax credit;

(2) provide the name of each certified tuition scholarship organization to the taxation and revenue department by no later than thirty days after issuing the certification document to the tuition scholarship organization;

(3) engage an auditor to conduct a financial and program audit of a tuition scholarship organization, at the expense of the tuition scholarship organization, if there is evidence of fraud or failure to comply with the Equal Education Opportunity Scholarship Act;

(4) deny, suspend or revoke the certification of a tuition scholarship organization for purposes of the equal education opportunity scholarship tax credit if the department determines that the organization has intentionally and substantially failed to comply with the requirements of the Equal Education Opportunity Scholarship Act; ~~SEC~~→and←~~SEC~~

(5) notify the taxation and revenue department if the certification of an organization as a tuition

scholarship organization is denied, suspended or revoked within ten days of the denial, suspension or revocation SEC→.←SEC
SEC→; and←SEC

SEC→(6) ensure that no more than four hundred students per school year receive educational scholarships pursuant to the provisions of the Equal Education Opportunity Scholarship Act.←SEC

SECTION 6. A new section of the Income Tax Act is enacted to read:

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

A. A taxpayer who files a New Mexico income tax return and is not a dependent of another taxpayer may claim a credit against the income tax liability of the taxpayer for a contribution made to a tuition scholarship organization. The credit may be approved in an amount equal to eighty percent of the total contributions made by the taxpayer to a tuition scholarship organization for which contribution receipts have been provided by that organization during the taxable year but shall not exceed fifty percent of the taxpayer's income tax liability for the taxable year. The credit provided in this section may be referred to as the "equal education opportunity scholarship income tax credit".

B. To ensure that the department receives the information needed to allow an equal education opportunity scholarship income tax credit, the department shall develop a

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contribution receipt that requests all of the information needed by the department to determine if a credit is due. The contribution receipts shall be sequentially numbered, and a charge, not to exceed fifty cents (\$.50) per numbered copy, may be charged by the department to the tuition scholarship organization.

C. Upon receiving notice from the public education department that an organization has been certified as a tuition scholarship organization, the department shall provide sequentially numbered copies of contribution receipts to the tuition scholarship organization to be distributed by the tuition scholarship organization to its contributors to indicate the recipient, date and value of a contribution to the tuition scholarship organization and other information required by the department.

D. The department shall require a taxpayer claiming the equal education opportunity scholarship income tax credit to submit the numbered copy of the contribution receipt from the tuition scholarship organization to which the taxpayer contributed money with the taxpayer's application for the credit provided by this section.

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

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F. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the equal education opportunity scholarship income tax credit that would have been allowed on a joint return.

G. A taxpayer may be allocated the right to claim a new equal education opportunity scholarship income tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

H. Any amount of the equal education opportunity scholarship income tax credit allowed by the department that exceeds fifty percent of the income tax liability of the taxpayer in the taxable year in which the credit is first claimed may be carried forward for three consecutive taxable years.

I. The department shall compile an annual report on the credit allowed pursuant to this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The

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department shall present the report to the interim revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

J. A taxpayer that claims an equal education opportunity scholarship income tax credit pursuant to the Income Tax Act shall not also claim an equal education opportunity scholarship corporate income tax credit pursuant to the Corporate Income and Franchise Tax Act or any other similar tax credit for the same contribution to a tuition scholarship organization. The equal education opportunity scholarship income tax credit shall be applied to the taxpayer's tax liability before application of any other tax credit claimed for the taxable year by the taxpayer.

K. As used in this section:

(1) "contribution receipt" means the document developed by the department and issued pursuant to the Equal Education Opportunity Scholarship Act by a tuition scholarship organization to a contributor;

(2) "parent" means a guardian, custodian or other person with authority to act on behalf of a child; and

(3) "tuition scholarship organization" means an organization that provides educational scholarships to students attending qualified schools of their parents' choice and that meets the requirements of the Equal Education Opportunity Scholarship Act. SEC→"←SEC

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SEC→L. The total credit amount claimed in this section shall not exceed one million dollars (\$1,000,000)."
←SEC

SECTION 7. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

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

A. A taxpayer that files a New Mexico corporate income tax return may claim a credit against the corporate income tax liability of the taxpayer for a contribution made to a tuition scholarship organization. The credit may be approved in an amount equal to eighty percent of the total contributions made by the taxpayer to a tuition scholarship organization for which contribution receipts have been provided by that organization during the taxable year but shall not exceed fifty percent of the taxpayer's corporate income tax liability for the taxable year. The credit provided in this section may be referred to as the "equal education opportunity scholarship corporate income tax credit".

B. To ensure that the department receives the information needed to allow an equal education opportunity scholarship corporate income tax credit, the department shall develop a contribution receipt that requests all of the information needed by the department to determine if a credit is due. The contribution receipts shall be sequentially numbered, and a charge, not to exceed fifty cents (\$.50) per numbered copy, may be charged by the department to the tuition

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scholarship organization.

C. Upon receiving notice from the public education department that an organization has been certified as a tuition scholarship organization, the department shall provide sequentially numbered copies of contribution receipts to a tuition scholarship organization to be distributed by the tuition scholarship organization to its contributors to indicate the recipient, date and value of a contribution to the tuition scholarship organization and other information required by the department.

D. The department shall require a taxpayer claiming the equal education opportunity scholarship corporate income tax credit to submit the numbered copy of the certification document from the tuition scholarship organization to which the taxpayer contributed money with the taxpayer's application for the credit provided by this section.

E. The equal education opportunity scholarship corporate income tax credit shall not be allowed for a contribution that is included for the taxable year in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code.

F. Any amount of the equal education opportunity scholarship corporate income tax credit allowed by the department that exceeds fifty percent of the corporate income tax liability of the taxpayer in the taxable year in which the credit is first claimed may be carried forward for three

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consecutive taxable years.

G. The department shall compile an annual report on the credit allowed pursuant to this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the interim revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

H. A taxpayer that claims an equal education opportunity scholarship corporate income tax credit pursuant to the Corporate Income and Franchise Tax Act shall not also claim an equal education opportunity scholarship income tax credit pursuant to the Income Tax Act or any other similar tax credit for the same contribution to a tuition scholarship organization. The equal education opportunity scholarship corporate income tax credit shall be applied to the taxpayer's tax liability before application of any other tax credit claimed for the taxable year by the taxpayer.

I. As used in this section:

(1) "contribution receipt" means the document issued pursuant to the Equal Education Opportunity Scholarship Act by a tuition scholarship organization to a contributor;

(2) "parent" means a guardian, custodian or other person with authority to act on behalf of a child; and

(3) "tuition scholarship organization" means an organization that provides educational scholarships to students attending qualified schools of their parents' choice pursuant to the Equal Education Opportunity Scholarship Act.

SEC→"←SEC

SEC→J. The total credit amount claimed in this section shall not exceed one million dollars (\$1,000,000)."
←SEC

SECTION 8. DELAYED REPEAL.--Sections 1 through 7 of this act are repealed effective July 1, 2027.

SECTION 9. APPLICABILITY.--The provisions of Sections 6 and 7 of this act apply to taxable years beginning on or after January 1, 2023 but before January 1, 2027.

SECTION 10. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 5 of this act is July 1, 2023.

B. The effective date of the provisions of Sections 6 and 7 of this act is January 1, 2024.

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