

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number	<u>SB48</u>	Sponsor	<u>Ortiz y Pino</u>
Tracking Number	<u>.226868.2</u>	Committee Referrals	<u>SCC/SEC/STBTC/SFC</u>
Short Title	<u>Tuition Scholarships & Tax Credits</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>1/29/2024</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 48 (SB48) would create an education scholarship income and corporate income tax credit for claim by taxpayers who contribute to a certified tuition scholarship organization that awards education scholarships to eligible students attending certain private schools.

The bill would apply to taxable years beginning on or after January 1, 2024.

FISCAL IMPACT

The bill does not contain an appropriation.

SB48 would limit the total distribution of tax credits to \$1 million, which could be fully generated upon the contribution of the first \$1.25 million to certified tuition scholarship organizations. Based on this maximum distribution of tax credits, LESC staff estimates at least 139 students could receive a tuition scholarship if they were to each receive the maximum allowed amount of \$9 thousand. However, SB48 limits the number of recipients to 400 per school year.

Section 2 of SB48 allows a taxpayer to claim a credit against their income tax liability in an amount equal to 80 percent of their contribution to a tuition scholarship organization. Section 3 allows a taxpayer to claim a credit against their corporate income tax liability equal to 80 percent of their contribution to a tuition scholarship organization. For both types of taxpayers, SB48 allows for any portions of the tax credit exceeding the contributor's tax liability to be carried forward for three consecutive years.

Assessment of SB48's fiscal impact may benefit from clarity on whether the educational scholarships would be considered taxable income to the student or their legal guardian. If the education scholarship would be considered taxable income, the modest revenue generated may offset a portion of the bill's cost.

Please see the Possible Questions section of this analysis for more potential considerations on the fiscal impact of SB48.

SUBSTANTIVE ISSUES

The following bullet points indicate a section-by-section analysis of the bill:

Section 1. This section allows the Public Education Department (PED) to authorize tuition scholarship organizations to award education scholarships to qualified private schools, and specifies a tuition scholarship organization must be certified as such by PED and must be exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986. Scholarships from a tuition scholarship organization must be funded from contributions that the tuition scholarship organization receives in or prior to the current calendar year. Of the contributions that are recognized with a contribution receipt, a minimum of 90 percent must be leveraged by the tuition scholarship organization to award educational scholarships. Additionally, all funds that are generated by the tuition scholarship organization from investments or interest must be used to award educational scholarships.

This section contains definitions for reference throughout the bill, including:

- Contribution receipt: meaning a document that is issued to a contributor as a receipt for their contributions to a tuition scholarship organization;
- Education scholarship: meaning a grant for use by an eligible student in paying all or parts of their expenses at a qualified school;
- Eligible student: meaning a school-age person who is enrolled in a state-licensed foster care program, or is a member of a household for which the total annual income does not exceed the amount used to qualify for a reduced-price lunch through the federal school lunch program. An eligible student must also be a resident of New Mexico for the entire period in which they receive a scholarship from a tuition scholarship organization;
- Tuition scholarship organization: meaning an organization that provides educational scholarships to eligible students attending a qualified school of their parent's choice; and
- Qualified school: meaning a private elementary, middle or secondary school located in New Mexico to which a parent has chosen to send an eligible student.

If an eligible student receives an educational scholarship, they may use that scholarship at any qualified school that chooses to enroll the student. The scholarship is also considered portable and may be used at more than one school, provided that the scholarship be prorated based on the number of days an eligible student was enrolled at each school.

Any organization that is certified as a tuition scholarship organization must complete background checks on each of its employees and board members, maintain systems that provide for financial accountability, and file a surety bond payable to the state in an amount equal to \$50 thousand or the aggregate amount of contributions expected to be received during the school year.

This section also requires a tuition scholarship organization provide a list of recipient students to PED prior to the start of each school year, along with a statement indicating the student's previous school district or charter school affiliation. Participating schools must also verify to their contributing tuition scholarship organizations that they meet the following criteria:

- Is in compliance with all health and safety laws or rules that apply to schools;

- Holds a valid occupancy permit as required by applicable laws;
- Does not discriminate in admissions on the basis of race, color or national origin;
- 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;
- Ensures that every school employee with unsupervised access to students has undergone a background check as described in Subsection D of Section 22-10A-5 NMSA 1978;
- 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;
- Gives enrollment preference to eligible 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
- Is a qualified school and, if the school has more applications for education 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.

A tuition scholarship organization would also be required to:

- Provide a contribution receipt to each contributor of funds dedicated for education scholarships;
- Maintain a record of the contribution receipts issued for the last three years;
- Account for all copies of contribution receipts damaged, destroyed, lost or otherwise unusable; and
- Provide an annual report to PED, the Legislative Finance Committee (LFC), and the LESC, by June 1 of each year, on how many scholarships were provided by the tuition scholarship organization and the aggregate amount of scholarships they disbursed.

This section also specifies the percentage of students that may receive an educational scholarship, depending on the total enrollment of their local school district. Those limits are:

- No more than nine-tenths percent in school districts with a total student enrollment of less than 1,000 students;
- No more than eight-tenths percent in school districts with a total student enrollment between 1,000 and 4,999 students;
- No more than six-tenths percent in school districts with a total student enrollment between 5,000 and 14,999 students;
- No more than four-tenths percent in school districts with a total student enrollment between 15,000 and 24,999 students;
- No more than three-tenths percent for school districts with a total student enrollment between 25,000 and 49,999 students; and
- No more than two-tenths percent for school districts with a total student enrollment over 50 thousand students.

Section 2. This section creates the education scholarship income tax credit and specifies a taxpayer may claim a credit against their income tax liability in an amount equal to 80 percent of the contribution they made to a tuition scholarship organization. If the amount of the credit exceeds a taxpayer's tax liability, the excess amount may be carried forward for three consecutive taxable years.

PED would be required to issue certifications of eligibility for the tax credit. The department would also be required to compile an annual report on the credit for submission to the interim Revenue Stabilization and Tax Policy Committee and LFC with an analysis of the aggregate cost of the tax credit.

Section 3. This section creates the education scholarship corporate income tax credit and allows a taxpayer to claim a credit against their corporate income tax liability for a contribution made to a tuition scholarship organization. If the amount of the credit exceeds a taxpayer’s tax liability, the excess amount may be carried forward for three consecutive taxable years.

The PED would be required to issue certifications of eligibility for the tax credit.

The department would also be required to compile an annual report on the credit for submission to interim revenue stabilization and tax policy committee and LFC with an analysis of the aggregate cost of the tax credit.

Section 4. This section specifies the provisions of the bill are repealed effective January 1, 2029.

Section 5. This section specifies the provisions of section 2 and 3 apply to taxable years beginning on or after January 1, 2024.

ADMINISTRATIVE IMPLICATIONS

SB48 may be a considerable administrative burden on PED as it places several requirements onto PED, including:

- Soliciting, compiling, and reviewing all relevant information needed to render judgement on whether an organization satisfies the criteria for receiving certification as a tuition scholarship organization; and
- Ensuring the number of students receiving an education scholarship does not exceed the permitted total, as measured by the percentage of each school district’s student enrollment.

POSSIBLE QUESTIONS

- Would the receipt of an educational scholarship be considered taxable income to either the student or their legal guardian?
- If the education scholarship is considered taxable income, what impact would that have on the eligible student’s eligibility for public assistance programs, such as Medicaid, the supplemental nutrition assistance program, and other programs?

SOURCES OF INFORMATION

- LESC Files
- Education Trust Board (ETB)

DE/mca/js