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

SPONSOR Powdrell-Culbert/ Adkins **ORIGINAL DATE** 02/02/16 **LAST UPDATED** **HB** 207

SHORT TITLE Equal Educational Access Scholarship Act **SB**

ANALYST Alejandro

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
($0)	($5,000.0)	($5,000.0)	($5,000.0)	($5,000.0)	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY16	FY17	FY18	3-Year Total	Recurring or Nonrecurring	Fund Affected
$260.0	$210.0	$210.0	$680.0	Recurring	TRD Budget

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 207 establishes the Equal Educational Access Scholarship Act that will provide a tuition grant or other grant of funds to qualified economically disadvantaged students to attend a nonpublic elementary, middle, or secondary school by creating a tax credit for personal and corporate contributions to tuition scholarship organizations that provide qualifying scholarships.

The bill provides for a maximum annual aggregate of both individual and corporate income tax credits up to $5 million for taxable years beginning January 1, 2017. The credit may not exceed the lesser of $10 thousand or 50 percent of the taxpayer’s liability in any single year and any credit amount in excess of 50 percent of the taxpayer’s liability can be carried forward for three consecutive taxable years. Because the tax credit is capped at $5 million, a taxpayer is not guaranteed to be able to claim the tax credit in the year the donation is made. In the case of more than $5 million in donations are made to qualifying nonprofit tuition scholarship organizations, applications for tax credits will be considered in the order TRD receives them and taxpayers that are unable to claim their donations because of the $5 million cap will be placed at the front of the queue the next year.

The bill outlines the process for private nonprofit organizations to seek certification to become a tuition scholarship organization from the Public Education Department. It also outlines the duties of the tuition scholarship organization, PED and TRD in administering the Equal Educational Access Scholarship Act and related personal and corporate tax credits.

The effective date of this bill is July 1, 2016.

FISCAL IMPLICATIONS

This bill creates incentives for taxpayers to invest in private elementary/secondary school education. Personal income tax taxpayers can maximize their benefit by contributing $12,500 to a qualified tuition scholarship organization, and in return the taxpayer receives a tax credit worth $10,000. The taxpayer can carry-forward the unused portion of the credit for three years. Corporate income tax taxpayers maximize their benefit by contributing $25,000, which results in credits worth $20,000 with a three-year carry-forward period. In either case, the taxpayer cannot reduce their tax obligation by more than 50 percent, though they are buying a tax credit at a significant discount. The taxpayer recoups 80 percent of their contribution, and thus, they are incentivized to convert tax liabilities to charitable donations. For this reason, TRD assumes that the credit will be fully utilized in every year of eligibility.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

According to TRD, tax credits to corporations and individuals to encourage private school attendance may conflict with the State's obligation to establish and finance a public education system (ACLU Michigan v. Highland Park School System, November, 2014).

This legislation gives tax credits to individuals and corporations that donate funds to benefit low income families so students can attend private schools. Students must first attend a public school for a full school year or start school in New Mexico for the first time and be eligible for free or reduced lunch to receive scholarships. A qualified school eligible to accept scholarship money must be a nonpublic elementary, middle or secondary school.

"Educational scholarship" means a tuition grant or other grant of fund to an eligible student to cover all or part of the costs of that student at a nonpublic elementary, middle or secondary school. It is unclear what costs could be funded by this provision. For example, could costs to participate in extracurricular sports or programs be funded?

Provisions allowing a student who is starting school in New Mexico for the first time may have the unintended consequences of incentivizing out of state parents to move to New Mexico to enroll their child in a private school.

The bill requires distribution of 90 percent of the donations received during a calendar year as educational scholarships. This provision may create a situation whereby a tuition scholarship organization collects more donations than they are able to award because of the student demand for scholarships.

ADMINISTRATIVE IMPLICATIONS

TRD indicates that the bill would necessitate three additional FTE to capture, record, and manage the certificates and reports for this program. The bill does not impact the financial distribution process, but the credit may be subject to the financial disclosure requirements per Government Accounting Standards Board (GASB) Statement No.77. GASB 77 disclosure statements are effective for financial statements for periods beginning after December 15, 2015. An assessment of the credit against the tax abatement criteria specified in GASB 77 will need to be performed by TRD. If the credit meets the criteria, then the disclosure is required in TRD's financial statements.

TECHNICAL ISSUES

According to TRD, rules, regulations, policies, and procedures will be needed. TRD and the Public Education Department (PED) would need to coordinate to divide the responsibilities that are necessary to comply with the bill. The bill creates significant coordination issues to ensure a limited number of certificates are issued each year, that pre-qualified tuition scholarship organizations exist, and that only qualified tuition scholarship organizations receive contributions to award tax credits.

Page 11, Sections 6 and 7. The term "Department" is not defined; therefore, it is not clear which department is responsible for which activity. It could be TRD based on the definition of department pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act.

Page 12, Subsection C. This subsection conflicts. The credit cannot exceed 50 percent of the taxpayer's liabilities but if it does exceed 50 percent the excess may be carried forward. The bill does not address carry forward of credit after January 1, 2021.

The maximum credit should be managed by PED so that contributors do not later find out that they do not qualify.

Page 11, Sections 6 and 7 do not address what TRD should do if the tuition scholarship organization loses its certification.

An explanation should be provided to contributors for all of the possible conditions that could occur that would lead to them not being eligible for the credit.

Page 13, Subsection F. The contribution receipt provided by the contributor would not be sufficient to contain all the information needed to determine if a credit may be allowed because some of the information is not readily available to the contributor.

Page 9, line16 reads "(4) engage an auditor to conduct a financial…" TRD suggests that "auditor" be changed to "independent public auditor." This would remove the option of hiring an employee to be the auditor, thereby eliminating any appearance of bias in the annual audit results.

LA/jo/jle