

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: February 11, 2025

Check all that apply:

Bill Number: HB 324

Original x Correction
Amendment Substitute

Sponsor: Rep. Rod Montoya
Rep. Jonathan A. Henry
Rep. Mark Duncan

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: EDUCATIONAL
SCHOLARSHIPS & TAX
CREDIT

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: HB 324 relates to private education to allow authorized school tuition organizations to award educational scholarships to certain low-income students to attend private schools. Additionally, HB 324 creates an educational scholarship income tax credit and an educational scholarship corporate income tax credit.

Section 1(A): Provides that the Public Education Department may authorize a school tuition organization to award educational scholarships to eligible students to attend a private school in New Mexico of the students’ parents’ choice.

Section 1(B): lists the criteria to be eligible as a school tuition organization. For example, Section 1(B) provides that to be eligible as a school tuition organization, the organization shall allocate at least 90 percent of its annual revenue received from contributions for educational scholarships to eligible students to attend private schools in New Mexico. Additionally, Section 1(B) provides that school tuition organizations are not permitted to limit the availability of educational scholarships to one private school, nor shall an organization allow donors to designate student beneficiaries as a condition of any contribution to the organization.

Section 1(C): specifies what happens if the educational scholarship exceeds the tuition of the private school that an eligible student attends. If the scholarship exceeds the tuition, then the amount in excess shall be returned to the awarding school tuition organization. The school tuition organization may either allocate the returned amount to (1) as a multi-year award for that student or (2) for educational scholarships for other eligible students.

Section 1(D): requires the school tuition organization to report electronically on September 30 or earlier of each year to the Public Education Department. Section 1(D) provides a detailed list of the facts that school tuition organizations are required to report.

Section 1(E): requires the Department to post on its website a report of the information it receives from the school tuition organization pursuant to Section 1(D) on or before January 1 of the calendar year following the year in which the information is received.

Section 1(F): requires that on or before September 30 of each year, a school tuition

organization that received five hundred thousand dollars (\$500,000) or more in contributions in the previous fiscal year provide for a financial audit of the organization. Thereafter, this Subsection describes certain requirements that must be met for the audit.

Section 1(G): requires that on or before September 30 of each year, a school tuition organization that received less than five hundred thousand dollars (\$500,000) in total donations in the previous fiscal year shall provide for a financial review of the organization. Thereafter, this Subsection describes certain requirements that must be met for the financial review.

Section 1(H): requires that within five days of receiving the audit or financial review, the school tuition organization must file a copy of the audit or financial review with the Public Education Department. This Subsection further provides that the school tuition organization must cover the cost of the audit or financial review from the organization's operating budget.

Section 1(I): imposes disclosure requirements on the Public Education Department. The Department must (1) maintain a public registry of authorized school tuition organizations; (2) make the registry available to the public on request; and (3) post the registry on the department's website.

Section 1(J): defines four terms used in Section 1: "department," "eligible student," "nonprofit organization," and "school tuition organization."

Section 2: Section 2 of the Act would add a new section to the Income Tax Act to create the educational scholarship income tax credit.

Section 2(A) provides that a taxpayer who is not a dependent of another individual and who makes a contribution to a school tuition organization pursuant to Section 1 of this Act may apply for a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided for in Section 2(A) is referred to as the "educational scholarship income tax credit."

Section 2(B) provides that the amount of the tax credit allowed shall be in an amount equal to the amount contributed to a school tuition organization in a taxable year. The amount shall not exceed \$700 for single individuals and married individuals filing separate tax returns. The amount of the tax credit shall not exceed \$1,400 for heads of household, surviving spouses, and married individuals filing jointly. Additionally, for the taxable year beginning January 1, 2026 (and each taxable year thereafter), the amount of credit "shall be adjusted to account for inflation." Section 2(B) further provides that the department shall allow a tax credit only for a contribution certified pursuant to Section 2(C).

Section 2(C) provides that a taxpayer shall apply for certification of eligibility for the tax credit allowed by Section 2 from the Public Education Department "on forms and in the manner prescribed by that department." The application shall include evidence of a contribution to a school tuition organization made pursuant to Section 1 of the Act.

Section 2(D) provides that a taxpayer may claim the tax credit allowed by Section 2 for the taxable year in which the taxpayer makes a contribution to the school tuition organization.

Section 2(E) provides that the portion of the credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall not be refunded to the taxpayer but may

be carried forward for the following three consecutive taxable years until the amount of the tax credit is exhausted.

Section 2(F) requires a taxpayer granted a tax credit pursuant to Section 2 to report the amount of the tax credit to the department in the manner required by the department.

Section 2(G) provides that the credit provided in Section 2 of the Act shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, which would include the total annual aggregate cost of the tax credit.

Section 3 would of the Act would add a new section to the Corporate Income and Franchise Tax Act.

Section 3(A) would allow a taxpayer that makes a contribution to a school tuition organization pursuant to Section 1 of the Act to apply for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act.

Section 3(B) provides that the amount of the tax credit allowed by Section 3 shall be equal to the amount contributed to a school tuition organization in a taxable year, not to exceed \$1,400; provided that for the taxable year beginning January 1, 2026 (and each taxable year thereafter) the amount of credit shall be adjusted to account for inflation. Section 3(B) also mandates that the department shall only allow a tax credit for a contribution certified pursuant to Section 3(C).

Section 3(C) provides that a taxpayer shall apply for certification of eligibility for the tax credit from the public education department on forms and in the manner prescribed by that department. The application must include evidence of a contribution to a school tuition organization.

Section 3(D) allows a taxpayer to claim the tax credit allowed by Section 3 for the taxable year in which the taxpayer makes a contribution to a school tuition organization. To receive the tax credit, "a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months [.]"

Section 3(E) provides that if a portion of the tax credit exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed, the credit must not refunded to the taxpayer but may be carried forward for the following three taxable years until the amount of the tax credit is exhausted.

Section 3(F) provides that a taxpayer who receives a tax credit pursuant to Section 3 must report the amount of the tax credit to the department.

Section 3(G) would require that the credit provided by Section 3 to be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the total annual aggregate cost of the credit.

Section 4 addresses when the provisions of the Act would become effective.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

- Section 1(B) provides that a school tuition organization “shall apply for authorization on forms and in a manner prescribed by the department.” It is not clear whether the phrase “in a manner prescribed” is directing the Public Education Department to engage in rulemaking pursuant to the New Mexico Administrative Code (Title 6), or if the phrase is referring to the Department’s discretionary authority under the Public School Code, or both. *See* NMSA 1978, § 22-2-1(B) (2004).
- Section 1(A) and Section 1(J)(4) utilize the word “parents.” A plain language statutory analysis of the word “parents” could be narrowly construed in a manner that could exclude otherwise qualified students because “parents” does not inherently encompass a situation where a guardian has been appointed by a court. Under New Mexico law, a guardian appointed for a child pursuant to the Kinship Guardian Act “has the legal rights and duties of a parent[.]” *See* NMSA 1978, § 40-10B-13 (2001).

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A