



LFC Requester: Liu

**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2025 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: 02/13 /25

Bill No: HB387

Agency Name and Code: PED - 924

Sponsor: Dow/Terrazas/Mason/Montoya

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Short Title: EDUCATION OPPORTUNITY ACCOUNT ACT

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SECTION II: FISCAL IMPACT

(Parenthesis () Indicate Expenditure Decreases)

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
\$100,580.00	None	Nonrecurring	GF

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None	Nonrecurring	NFA

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	None	N/A	NFA

Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 387 (HB387) would create the Education Opportunity Account Act. The bill requires the Public Education Department (PED) to administer the education opportunity account act fund and carry out the purposes of the act. HB387 would permit the PED, in annual contracts with parents of participating students, to pay for private school and other eligible expenses by establishing education opportunity accounts and maintaining monthly deposits for qualifying education expenses. The bill would also require the establishment of the Education Opportunity Review Commission.

The bill does not contain an effective date. Laws go into effect 90 days after the adjournment of the legislature enacting them, unless a later date is specified. If enacted, this bill would become effective June 20, 2025.

FISCAL IMPLICATIONS

HB387 appropriates approximately \$100 million from the general fund to the education opportunity account fund, to use public taxpayer dollars to defray the costs of individual private school education. \$580 thousand would be appropriated to the PED to administer the education opportunity account program. \$100 million would be appropriated to the PED to carry out the purposes of the low-income education opportunity account act. Any unexpended or unencumbered balance remaining at the end of FY26 would not revert to the general fund.

The bill requires any unexpended or unencumbered balance in an education opportunity account to remain in the account until one of the following occurs, at which time the department shall close the account, and any unexpended or unencumbered balance shall revert to the general fund:

- the parent withdraws the participating student from the program;
- the student graduates from high school; or
- the account is closed by the PED because of misuse of funds.

The PED shall also revert any unexpended or unencumbered balance every two years, unless the department waives a particular reversion due to extenuating circumstances.

Data from the National Center for Education Statistics shows in the 2021-22 school year (most recent data available), New Mexico had 164 private schools enrolling 22,156 students. The lowest student cost with the lowest at-risk allocation in New Mexico would be \$5,972.69, while the highest student cost with the highest at-risk allocation would be \$20,188.46. The total estimated costs on the low end would be \$132.3 million, and the total estimated cost on the high end would be \$447.3 million for the 22,156 students enrolled in private school. Private schools vary in the degree of transparency and accountability since they are under no obligation to participate in state assessments and fewer performance reporting make it difficult for families to make informed decisions for their child's education.

SIGNIFICANT ISSUES

Education opportunity accounts contain public funds that students can spend on a variety of education-related items and services. They are one of the most common programs governments

implement to help families pay for private schools, and have been largely restricted to certain student groups, including low and middle-income youth, children in foster care, students with disabilities, and students attending poor performing public schools. Support for or opposition to private school choice tends to follow a trend in funding programs that either offer parents more control over where and how their children will be educated or accountability measures like assessments and academic achievement. The recent expansion of the Arizona ESA program cost nearly [\\$700 million](#) for approximately 71,520 students for SY24 and 75 percent of participants were awarded under universal eligibility. The number of students receiving ESAs has expanded across [8 states](#), and with universal eligibility defining this trend, [wealthier families](#) are securing a higher share of these scholarships.

Essentially, HB387 proposes to use public moneys to pay for private schools, via diversion into an intermediary fund. Article 4, Section 31 of the New Mexico Constitution bars any appropriation for any charitable, educational, or other benevolent purpose to any person, corporation, association, institution or community, not under the absolute control of the state. Further, Article 12, Section 3 of the state constitution provides that, “[t]he schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.” While the provisions of HB387 create an intermediary recipient, in the form of the Education Freedom Account Fund, the money held therein could still be disbursed to a private school not under the total control of the state, and thus would violate Article 4, Section 31 and Article 12, Section 3 of the state constitution. In addition, using public funds for private schools could damage the public education system in New Mexico by competing with state-funded schools.

PERFORMANCE IMPLICATIONS

Recent [voucher research](#) indicates that ESAs are unlikely to result in higher test scores due to problems with accountability and access to performance metrics. Three states, Louisiana, Ohio, and Washington, DC saw a decrease in ELA and math for students leaving public schools for private schools.

The Scholarship for Opportunity and Results ([SOAR](#)) Act was reauthorized by Congress in 2011 to provide tuition vouchers to low-income parents in the District of Columbia (DC) who wanted their child to attend a private school. The legislation revised the 2004 Opportunity Scholarship Program by prioritizing students leaving low-performing public schools and providing them with scholarships of about \$8 thousand for K-8 and \$12 thousand for grades 9-12. The reauthorization required an evaluation of the 2004 legislation two years after eligible families applies to the program. The OSP had statistically significant negative impact on mathematics achievement after two years, compared with students who applied but were not selected for the scholarship. Reading scores were also lower, but the differences were not statistically significant.

ADMINISTRATIVE IMPLICATIONS

The bill requires the PED to establish procedures and rules for creating, accepting and approving a standard form application for education opportunity accounts year-round, and requires a report of the program and its participants by December 1 to the legislature and governor. HB387 would also require the PED to maintain an updated list of qualified service providers, determine

whether an education service provider is eligible from receiving payments, and report any suspected cases of misuse of funds to law enforcement.

Additional FTE's will be needed in order to administer this new program. PED currently does not have the capacity with current staffing levels.

SB286 would require a quick turnaround from the PED if it would be implemented in FY26. This would require additional staff and infrastructure to create, implement, and administer this program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB388, the Low-Income Education Opportunity Act, which creates education opportunity accounts for eligible low-income participants to pay for private school and other eligible expenses.

Substantially similar to SB286, which also proposes an Educational Opportunity Act.

Relates to HB-324, Educational Scholarships & Tax Credit, which proposes a voucher scheme to create tuition scholarship organizations to accept donations from persons who claim tax credits for the purpose of funding low-income students' attendance at private schools.

Relates to House Joint Resolution 11, Change Anti-Donation Clause, CA, which proposes to repeal and replace the current anti-donation clause in Article 9, Section 14 of the New Mexico Constitution to permit private donations if they are used to accomplish a public purpose.

Relates to House Joint Resolution 16, Funding for Home or Private School, CA, which proposes to amend Article 4, Section 31 of the New Mexico Constitution, the so-called "total control clause," to permit state funding go to parents of school-age persons who are home- or privately schooled.

TECHNICAL ISSUES

The bill requires PED to revert any unexpended or unencumbered balance in an education opportunity account every two years, unless the department waives a particular reversion due to "extenuating circumstances", but fails to define or otherwise delineate what constitutes "extenuating circumstances".

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

The sponsor may wish to consider adding a definition for or otherwise describing what constitutes “extenuating circumstances” when considering reversions of funds in individual educator opportunity accounts.