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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
57th Legislature, 1st Session, 2025

Bill Number	<u>HB387</u>	Sponsor	<u>Dow/Terrazas/Mason/Montoya</u>
Tracking Number	<u>.229415.2</u>	Committee Referrals	<u>HEC/HJC/HAFC</u>
Short Title	<u>Education Opportunity Account Act</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>2/18/2025</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 387 (HB387) would enact the Education Opportunity Account Act, which would create the education opportunity account program within the Public Education Department (PED). The program would establish contracts between parents and PED to pay for private school and other eligible expenses by creating “education opportunity accounts.” HB387 would also create an education opportunity account fund as a nonreverting fund in the state treasury to operate the proposed program. HB387 establishes criteria for the accounts, establishes allowable uses of funds, creates administrative requirements for PED to operate the program and education opportunity accounts, and requires the development of an Education Opportunity Review Commission.

HB387 does not contain an effective date. If enacted, the bill would be effective June 20, 2025.

FISCAL IMPACT

HB387 appropriates \$100 million from the general fund to the proposed education opportunity account fund to carry out the provisions of the Education Opportunity Account Act. HB387 appropriates \$580 thousand from the general fund to PED to administer the education opportunity account program. Both amounts would be for expenditure in FY25 and subsequent fiscal years. Any unexpended or unencumbered balances remaining shall not revert to the general fund.

LESL staff estimate the funds included in HB387 would not be sufficient to cover the cost of education opportunity accounts for all private school students, as the cost of the program may range between \$156.2 million and \$514.3 million, assuming every student currently enrolled in a private school participated in the program.

HB387 would require PED to determine the amount each participating student is eligible to receive and for this amount to be equal to the average amount spent by school districts and charter schools on public school students in the same grade, weighted by special education and at-risk program units, if applicable. The bill prohibits a participating student from receiving more than the student’s qualifying educational expenses, a term the bill defines (See **Substantive Issues**).

Under the provisions of the bill, the costs a student may generate could range between \$7,050 and \$23.2 thousand. If all 22 thousand students currently enrolled in a private school were to participate in the program, the costs of the program may range between \$156.2 million to \$514.3 million, depending on the grade level, income, and identified disabilities of the student.

Administrative Costs. HB387 would require administrative responsibilities for PED, which could require additional FTE at an estimated cost of \$75 thousand in addition to the cost of benefits.

SUBSTANTIVE ISSUES

Use of Accounts. The Education Opportunity Account program would be created in PED and would allow PED, via signed contracts with parents of participating students, to pay for private school and other eligible expenses through “education opportunity accounts.” Funds would be transferred from the accounts to qualified educational providers, as defined in HB387. Parents could make payments for the cost of education services not covered by an education Opportunity account but would not be allowed to deposit personal funds into the accounts.

Per HB387, qualifying educational expenses include:

- Tuition and fees at a private elementary or secondary school;
- Tutoring services provided by a qualified person;
- Textbooks and other instructional materials, including hardware and software;
- Fees for nationally standardized assessments, advanced placement (AP) exam fees, and other assessments required by the education service provider;
- Tuition or fees for summer and after-school elementary or secondary programs;
- Public transportation to and from school; and
- Other educational charges approved by PED.

Per HB387, PED would approve an application for an education opportunity account if:

- The parent applies in accordance with procedures established by the department;
- The student is deemed eligible;
- Funds are available for the program or the education opportunity account; and
- The parent signs a contract with the department that agrees to various obligations including:
 - 1) Providing an education in reading, language arts, mathematics, science, and social studies;
 - 2) Not enrolling the student as a full-time student in a public school while participating in the program;
 - 3) Using the funds only for qualifying education expenses;
 - and 4) Complying with the rules and requirements of the program.

State Equalization Guarantee Funding. The state equalization guarantee, the public school funding formula, is designed to equitably distribute state resources for operations of public school districts and charter schools. The number of units allocated for each student varies by grade, reflecting class size limits and program requirements.

ADMINISTRATIVE IMPLICATIONS

HB387 would require PED to:

- Establish education opportunity accounts for students who qualify for the program;
- Determine the amount each participating student is eligible to receive;

- Make monthly deposits into each education opportunity account; and
- Consider contracting for financial management services.

HB387 also includes other administrative requirements for PED, including maintaining a public list of qualified education service providers, ensuring compliance with special education requirements, certifying funds are being used appropriately, and creating a commission to assist PED in determining whether certain expenditures should be considered eligible.

HB387 would also require PED to submit a report to the Legislature and the governor by December 1 each year on the program and its participants, including the number and demographics of students, the amount of expenditures of the program, and other information requested by the Legislature or governor and considered reportable by the department.

Overall, HB387 would place considerable administrative responsibilities onto PED that may require additional FTE to implement in ways that are aligned with the bill's intent.

OTHER SIGNIFICANT ISSUES

HB387 may potentially conflict with provisions of the state constitution, including Article XII, Section 3, which states, “no...funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school.” The bill may also conflict with Article IV, Section 31, which prohibits appropriating money, “for... educational... purposes to any person, corporation, association, institution or community, not under the absolute control of the state.”

TECHNICAL ISSUES

HB387 specifies the appropriation included in the bill is for expenditure in FY25 and subsequent fiscal years. The sponsor may consider amending the bill to specify the expenditure is for FY26 and subsequent fiscal years.

RELATED BILLS

Relates to HB388, Low-Income Education Opportunity Account Act, which would establish low-income education opportunity accounts.

Relates to SB286, Education Freedom Account Act, which would establish education freedom accounts

Relates to HJR11, Change Anti-Donation Clause, CA, that proposes to amend the anti-donation clause of the New Mexico Constitution.

Relates to HJR16, Funding for Home or Private School, CA, that proposes to amend the New Mexico Constitution to allow for the state to provide state funding to private nonsectarian, nondenominational schools.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)

