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

Bill Number	<u>SB286</u>	Sponsor	<u>Brandt/Townsend/Sharer/Scott/Lanier</u>
Tracking Number	<u>.229271.2</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Education Freedom Account Act</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>2/17/2025</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 286 (SB286) would enact the Education Freedom Account Act, which would create the education freedom 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 freedom accounts.” SB286 would also create an education freedom account fund as a nonreverting fund in the state treasury to operate the proposed program. SB286 would establish criteria for the accounts, outline allowable uses of funds, create administrative requirements for PED to operate the program and education freedom accounts, and require the development of an Education Freedom Review Commission.

SB286 does not contain an effective date. If enacted, the bill would be effective June 20, 2025.

FISCAL IMPACT

SB286 appropriates \$100 million from the general fund to the proposed education freedom account fund to carry out the provisions of the Education Freedom Account Act. SB286 appropriates \$580 thousand from the general fund to PED to administer the education freedom account program. Both amounts would be for expenditure in FY26 and subsequent fiscal years. Any unexpended or unencumbered balances remaining shall not revert to the general fund.

LESC staff estimate the funds included in SB286 may not be sufficient to cover the cost of education freedom accounts for all private school students with a family income at or below 200 percent of the federal poverty level, as the cost of the program may range between \$93.7 million and \$308.6 million, assuming every eligible private school student participated in the program.

SB286 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, and the total costs of the program may range between \$93.7 million and \$308.6 million, depending on the grade level, income, and identified disabilities of the student.

This cost assumption is based on a total of 22,156 students who were enrolled in 164 private schools during the 2020-2021 school year, as reported by the National Center of Education Statistics, with approximately 60 percent of those students estimated to be below 225 percent of the federal poverty level, per statewide data gathered by the family income index (FII) pilot program. The FII does not use 200 percent of the federal poverty line to calculate student poverty rates in public schools, but the program does provide adequate information for the purposes of anticipating fiscal impact among private school students.

Administrative Costs. SB286 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 Freedom 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 freedom accounts.” Funds would be transferred from the accounts to qualified educational providers, as defined in SB286. Parents could make payments for the cost of education services not covered by an education freedom account but would not be allowed to deposit personal funds into the accounts.

Per SB286, 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 afterschool elementary or secondary programs;
- Public transportation to and from school; and
- Other educational charges approved by PED.

Per SB286, PED would approve an application for an education freedom 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 freedom 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

SB286 would require PED to:

- Establish education freedom accounts for students who qualify for the program;
- Determine the amount each participating student is eligible to receive;
- Make monthly deposits into each education freedom account; and
- Consider contracting for financial management services.

SB286 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.

SB286 would also require PED to submit by December 1 of each year a report to the Legislature and the governor 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.

SB286 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

The Department of Justice has noted in previous iterations of this proposal that the approach of SB286 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.”

RELATED BILLS

Relates to HB387 that establishes education opportunity accounts.

Relates to HB388 that establishes low-income education opportunity accounts.

Relates to HJR11 that proposes to amend the anti-donation clause of the New Mexico Constitution.

Relates to HJR16 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)

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