

1 HOUSE BILL 105

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

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5 Jared A. Hembree and Candy Spence Ezzell
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10 AN ACT

11 RELATING TO PRIVATE EDUCATION; PROVIDING FOR THE AUTHORIZATION
12 OF SCHOOL TUITION ORGANIZATIONS TO AWARD EDUCATIONAL
13 SCHOLARSHIPS TO CERTAIN LOW-INCOME STUDENTS TO ATTEND PRIVATE
14 SCHOOLS; CREATING THE EDUCATIONAL SCHOLARSHIP INCOME TAX CREDIT
15 AND THE EDUCATIONAL SCHOLARSHIP CORPORATE INCOME TAX CREDIT.
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SCHOOL TUITION ORGANIZATIONS--
19 AUTHORIZATION TO AWARD EDUCATIONAL SCHOLARSHIPS TO PRIVATE
20 SCHOOLS.--

21 A. The department may authorize a school tuition
22 organization to award educational scholarships to eligible
23 students to attend a private school in New Mexico of the
24 students' parents' choice pursuant to this section.

25 B. A school tuition organization shall apply for

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1 authorization on forms and in a manner prescribed by the
2 department. To be eligible as a school tuition organization,
3 the organization shall:

4 (1) allocate at least ninety percent of the
5 organization's annual revenue received from contributions for
6 educational scholarships to eligible students to attend private
7 schools in New Mexico;

8 (2) not limit the availability of educational
9 scholarships to students of only one private school;

10 (3) not allow donors to designate student
11 beneficiaries as a condition of any contribution to the
12 organization or facilitate, encourage or knowingly allow the
13 exchange of beneficiary student designations;

14 (4) include on the organization's website, if
15 one exists, the percentage and total dollar amount of
16 educational scholarships awarded during the previous fiscal
17 year;

18 (5) award educational scholarships only to
19 eligible students; and

20 (6) not award educational scholarships to
21 attend a public, tribal or federal bureau of Indian education
22 school.

23 C. If an individual educational scholarship exceeds
24 the tuition of the private school that an eligible student
25 attends, the amount in excess shall be returned to the school

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1 tuition organization that made the award. The school tuition
2 organization may allocate the returned amount:

- 3 (1) as a multi-year award for that student; or
4 (2) for educational scholarships for other
5 eligible students.

6 D. On or before September 30 of each year, each
7 school tuition organization shall report electronically to the
8 department, in a form prescribed by the department, the
9 following information:

10 (1) the name, address and contact person of
11 the school tuition organization;

12 (2) the names, job titles and annual salaries
13 of the three employees who receive the highest annual salaries
14 from the school tuition organization;

15 (3) the total number of contributions received
16 during the previous fiscal year;

17 (4) the total dollar amount of contributions
18 received during the previous fiscal year;

19 (5) the total number of eligible students
20 awarded educational scholarships during the previous fiscal
21 year;

22 (6) the total dollar amount of educational
23 scholarships awarded during the previous fiscal year;

24 (7) the total dollar amount of money being
25 held for eligible students' scholarships in future years,

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1 including the amount allocated as a multi-year award pursuant
2 to Paragraph (1) of Subsection C of this section, with each
3 eligible student identified;

4 (8) for each private school to which
5 educational scholarships were awarded:

6 (a) the name and address of the private
7 school;

8 (b) the number of educational
9 scholarships awarded during the previous fiscal year; and

10 (c) the total dollar amount of
11 educational scholarships awarded during the previous fiscal
12 year; and

13 (9) the cost of an audit or financial review
14 required pursuant to Subsections F and G of this section paid
15 during the fiscal year.

16 E. The department shall post on its website a
17 report of the information it receives pursuant to Subsection D
18 of this section on or before January 1 of the calendar year
19 following the year in which the information is received.

20 F. On or before September 30 of each year, a school
21 tuition organization that received five hundred thousand
22 dollars (\$500,000) or more in contributions in the previous
23 fiscal year shall provide for a financial audit of the
24 organization. The audit shall be conducted in accordance with
25 generally accepted auditing standards and shall evaluate the

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1 organization's compliance with Paragraph (1) of Subsection B of
2 this section. The audit shall be conducted by an independent
3 certified public accountant licensed pursuant to the 1999
4 Public Accountancy Act. The certified public accountant and
5 the firm the certified public accountant is affiliated with
6 shall be independent with respect to the organization, its
7 officers and directors, services performed and all other
8 independent relationships prescribed by generally accepted
9 auditing standards.

10 G. On or before September 30 of each year, a school
11 tuition organization that received less than five hundred
12 thousand dollars (\$500,000) in total donations in the previous
13 fiscal year shall provide for a financial review of the
14 organization. The review shall be conducted in accordance with
15 standards for accounting and review services and shall evaluate
16 the organization's compliance with the fiscal requirements of
17 this section. The review shall be conducted by an independent
18 certified public accountant licensed pursuant to the 1999
19 Public Accountancy Act. The certified public accountant and
20 the firm the certified public accountant is affiliated with
21 shall be independent with respect to the organization, its
22 officers and directors, services performed and all other
23 independent relationships prescribed by generally accepted
24 auditing standards.

25 H. Within five days after receiving an audit or

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1 financial review, the school tuition organization shall file a
2 signed copy of the audit or financial review with the
3 department. The school tuition organization shall pay the fees
4 and costs of the audit or financial review from the
5 organization's operating budget. The fees and costs shall be
6 excluded from the calculation of revenues spent on educational
7 scholarships.

8 I. The department shall:

9 (1) maintain a public registry of authorized
10 school tuition organizations;

11 (2) make the registry available to the public
12 on request; and

13 (3) post the registry on the department's
14 website.

15 J. As used in this section:

16 (1) "department" means the public education
17 department;

18 (2) "eligible student" means a qualified
19 student, as defined in the Public School Finance Act, who
20 resides in New Mexico and is member of a household for which
21 the total annual income does not exceed an amount used to
22 qualify for a reduced-price lunch through the federal school
23 lunch programs established pursuant to 42 USCA Sections 1751
24 through 1769, as amended; provided that once a student becomes
25 an eligible student, receives an educational scholarship and

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1 continuously attends the private school, the student shall
2 remain an eligible student regardless of household income until
3 the student graduates from high school or reaches twenty-one
4 years of age, and:

5 (a) attended a public school in New
6 Mexico as a full-time student for at least one full semester
7 immediately prior to receiving an educational scholarship and
8 enrolling in and transferring to a private school; or

9 (b) attended, as a full-time student, a
10 home school in New Mexico that meets the requirements of the
11 Public School Code for at least one full semester immediately
12 prior to receiving an educational scholarship and enrolling in
13 and transferring to a private school;

14 (3) "nonprofit organization" means an
15 organization that has been granted exemption from the federal
16 income tax by the United States commissioner of internal
17 revenue as organizations described in Section 501(c)(3) of the
18 United States Internal Revenue Code of 1986, as amended or
19 renumbered; and

20 (4) "school tuition organization" means a
21 nonprofit organization with a principal place of business in
22 New Mexico that provides education scholarships to eligible
23 students attending private schools in New Mexico of their
24 parents' choice."

25 SECTION 2. A new section of the Income Tax Act is enacted

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1 to read:

2 "[NEW MATERIAL] EDUCATIONAL SCHOLARSHIP INCOME TAX
3 CREDIT.--

4 A. A taxpayer who is not a dependent of another
5 individual and who makes a contribution to a school tuition
6 organization pursuant to Section 1 of this 2024 act may apply
7 for, and the department may allow, a credit against the
8 taxpayer's tax liability imposed pursuant to the Income Tax
9 Act. The tax credit provided by this section may be referred
10 to as the "educational scholarship income tax credit".

11 B. The amount of the tax credit allowed by this
12 section shall be in an amount equal to the amount contributed
13 to a school tuition organization in a taxable year, not to
14 exceed seven hundred dollars (\$700) for single individuals and
15 married individuals filing separate returns and one thousand
16 four hundred dollars (\$1,400) for heads of household, surviving
17 spouses and married individuals filing joint returns; provided
18 that for the taxable year beginning January 1, 2025 and each
19 taxable year thereafter, the amount of credit shall be adjusted
20 to account for inflation. The department shall allow a tax
21 credit only for a contribution certified pursuant to Subsection
22 C of this section.

23 C. A taxpayer shall apply for certification of
24 eligibility for the tax credit allowed by this section from the
25 public education department on forms and in the manner

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1 prescribed by that department. The application shall include
2 evidence of a contribution to a school tuition organization
3 made pursuant to Section 1 of this 2024 act.

4 D. A taxpayer may claim the tax credit allowed by
5 this section for the taxable year in which the taxpayer makes a
6 contribution to a school tuition organization. To receive the
7 tax credit, a taxpayer shall apply to the department on forms
8 and in the manner prescribed by the department within twelve
9 months following the calendar year in which the contribution is
10 made. The application shall include a certification made
11 pursuant to Subsection C of this section.

12 E. That portion of the credit that exceeds a
13 taxpayer's tax liability in the taxable year in which the
14 credit is claimed shall not be refunded to the taxpayer but may
15 be carried forward for the following three consecutive taxable
16 years until the amount of the tax credit is exhausted.

17 F. A taxpayer allowed a tax credit pursuant to this
18 section shall report the amount of the tax credit to the
19 department in a manner required by that department.

20 G. The department shall compile an annual report on
21 the tax credit that shall include the number of taxpayers
22 approved by the department to receive the tax credit, the
23 aggregate amount of tax credits approved and any other
24 information necessary to evaluate the tax credit. The
25 department shall present the report to the revenue

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1 stabilization and tax policy committee and the legislative
2 finance committee with an analysis of the cost of the tax
3 credit."

4 SECTION 3. A new section of the Corporate Income and
5 Franchise Tax Act is enacted to read:

6 "[NEW MATERIAL] EDUCATIONAL SCHOLARSHIP CORPORATE INCOME
7 TAX CREDIT.--

8 A. A taxpayer that makes a contribution to a school
9 tuition organization pursuant to Section 1 of this 2024 act may
10 apply for, and the department may allow, a credit against the
11 taxpayer's tax liability imposed pursuant to the Corporate
12 Income and Franchise Tax Act. The tax credit provided by this
13 section may be referred to as the "educational scholarship
14 corporate income tax credit".

15 B. The amount of the tax credit allowed by this
16 section shall be in an amount equal to the amount contributed
17 to a school tuition organization in a taxable year, not to
18 exceed one thousand four hundred dollars (\$1,400); provided
19 that for the taxable year beginning January 1, 2025 and each
20 taxable year thereafter, the amount of credit shall be adjusted
21 to account for inflation. The department shall allow a tax
22 credit only for a contribution certified pursuant to Subsection
23 C of this section.

24 C. A taxpayer shall apply for certification of
25 eligibility for the tax credit allowed by this section from the

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1 public education department on forms and in the manner
2 prescribed by that department. The application shall include
3 evidence of a contribution to a school tuition organization
4 made pursuant to Section 1 of this 2024 act.

5 D. A taxpayer may claim the tax credit allowed by
6 this section for the taxable year in which the taxpayer makes a
7 contribution to a school tuition organization. To receive the
8 tax credit, a taxpayer shall apply to the department on forms
9 and in the manner prescribed by the department within twelve
10 months following the calendar year in which the contribution is
11 made. The application shall include a certification made
12 pursuant to Subsection C of this section.

13 E. That portion of the credit that exceeds a
14 taxpayer's tax liability in the taxable year in which the
15 credit is claimed shall not be refunded to the taxpayer but may
16 be carried forward for the following three consecutive taxable
17 years until the amount of the tax credit is exhausted.

18 F. A taxpayer allowed a tax credit pursuant to this
19 section shall report the amount of the tax credit to the
20 department in a manner required by that department.

21 G. The department shall compile an annual report on
22 the tax credit that shall include the number of taxpayers
23 approved by the department to receive the tax credit, the
24 aggregate amount of tax credits approved and any other
25 information necessary to evaluate the tax credit. The

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1 department shall present the report to the revenue
2 stabilization and tax policy committee and the legislative
3 finance committee with an analysis of the cost of the tax
4 credit."

5 SECTION 4. APPLICABILITY.--The provisions of Sections 2
6 and 3 of this act apply to taxable years beginning on or after
7 January 1, 2024.

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