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HOUSE BILL 388

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Rebecca Dow and Rod Montoya and Jonathan A. Henry
and Harlan Vincent

AN ACT

RELATING TO EDUCATION; ENACTING THE LOW-INCOME EDUCATION
OPPORTUNITY ACCOUNT ACT; PROVIDING POWERS AND DUTIES; PROVIDING
FOR LOW-INCOME EDUCATION OPPORTUNITY ACCOUNTS; PROVIDING INCOME
ELIGIBILITY REQUIREMENTS; PROVIDING ALLOWABLE USES; PROVIDING
PROCEDURES AND APPLICATION REQUIREMENTS FOR PARENTS AND
EDUCATION SERVICE PROVIDERS; CREATING A REVIEW COMMISSION;
MAKING APPROPRIATIONS.

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

SECTION 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Low-Income Education Opportunity Account Act"."

SECTION 2. A new section of the Public School Code is
enacted to read:

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1 "[NEW MATERIAL] DEFINITIONS.--As used in the Low-Income
2 Education Opportunity Account Act:

3 A. "curriculum" means a complete course of study
4 for a particular primary or secondary content area or grade
5 level;

6 B. "education" means a primary or secondary
7 education;

8 C. "education service provider" means a private
9 school located in New Mexico that is qualified to provide
10 educational goods and services to participating students and
11 that receives payments from low-income education opportunity
12 accounts; provided that "education service provider" does not
13 mean an online school;

14 D. "eligible student" means a school-age person:

15 (1) who is a resident of New Mexico;

16 (2) who has not received a high school diploma
17 or a high school equivalency credential;

18 (3) who is eligible for enrollment or re-
19 enrollment in a public school; and

20 (4) whose household income is less than two
21 hundred percent of the federal poverty level;

22 E. "low-income education opportunity account" means
23 the account into which money is deposited by the department to
24 pay for qualifying education expenses of a participating
25 student;

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1 F. "participating student" means a student who is
2 participating in the program; and

3 G. "program" means the low-income education
4 opportunity account program."

5 SECTION 3. A new section of the Public School Code is
6 enacted to read:

7 "[NEW MATERIAL] LOW-INCOME EDUCATION OPPORTUNITY ACCOUNT
8 PROGRAM--CREATED--FUNDING USES.--

9 A. The "low-income education opportunity account
10 program" is created in the department to allow the department,
11 in contract with parents of participating students, to pay for
12 private school and other eligible expenses through "low-income
13 education opportunity accounts". The department:

14 (1) shall establish low-income education
15 opportunity accounts for students who qualify for the program;

16 (2) shall determine the amount each
17 participating student is eligible to receive, which amount is
18 equal to the average amount spent by school districts and
19 charter schools on public school students in the same grade,
20 weighted by special education and at-risk program units, if
21 applicable; provided that a participating student shall not
22 receive more than the student's qualifying educational
23 expenses;

24 (3) shall make monthly deposits into each low-
25 income education opportunity account; and

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1 (4) may contract for financial management
2 services for low-income education opportunity accounts.

3 B. Money in a participating student's low-income
4 education opportunity account shall be used by the department,
5 in contract with parents of participating students, only in
6 accordance with the provisions of the Low-Income Education
7 Opportunity Account Act and only for the following qualifying
8 education expenses:

9 (1) tuition and fees at a private elementary
10 or secondary school that teaches, among other courses, reading,
11 language arts, mathematics, science and social studies
12 appropriate for the grade level of the participating student;

13 (2) tutoring services provided by a qualified
14 person;

15 (3) textbooks and other instructional
16 materials, including computer hardware and software, required
17 by the education service provider to deliver education to the
18 participating student;

19 (4) fees for nationally standardized
20 assessments, advanced placement examination fees and other
21 assessments required by the education service provider;

22 (5) tuition or fees for summer and after-
23 school elementary or secondary programs;

24 (6) public transportation to and from school;

25 and

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1 (7) other educational charges approved by the
2 department.

3 C. The department and the parent of a participating
4 student shall enter into an annual contract that specifies what
5 qualifying education expenses will be purchased each semester
6 or other term, the cost of the educational services to be
7 provided and by whom the educational services will be provided.
8 The department shall not deposit into a low-income education
9 opportunity account more than the combined cost of educational
10 services provided to the participating student in that year. A
11 parent shall not pay more for educational services than the
12 parent of a similarly situated school-age person pays. Money
13 in a low-income education opportunity account shall not be
14 refunded, rebated or shared with a parent or participating
15 student in any manner. A refund or rebate for educational
16 services purchased through a low-income education opportunity
17 account shall be credited directly to that account. A parent
18 may make payments for the cost of educational services not
19 covered by a low-income education opportunity account, but in
20 no case shall a parent deposit personal funds into a
21 participating student's account.

22 D. Money in a participating student's low-income
23 education opportunity account shall be issued at the direction
24 of the participating student's parent to an education service
25 provider, in the name of the student.

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1 E. If an education service provider requires
2 partial payment of tuition or fees prior to the start of the
3 academic year to reserve space for a participating student
4 admitted to the education service provider, such partial
5 payment may be paid by the department prior to the start of the
6 school year in which the low-income education opportunity
7 account is awarded and deducted in an equitable manner from
8 subsequent monthly account deposits to ensure that adequate
9 funds remain available throughout the school year; provided
10 that if the participating student does not attend the education
11 service provider to which partial payment was made, the partial
12 payment shall be returned to the department by the education
13 service provider for credit to the account.

14 F. Funds deposited in a low-income education
15 opportunity account shall not constitute taxable income for
16 state tax purposes of the parent or the participating student.

17 G. Except as provided in Subsection H of this
18 section, any unexpended or unencumbered balance in a low-income
19 education opportunity account may remain in the account until
20 one of the following occurs, at which time the department shall
21 close the account and the unexpended or unencumbered balance
22 shall revert to the general fund:

23 (1) the parent withdraws the participating
24 student from the program;

25 (2) the student graduates from high school; or

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1 (3) the account is closed by the department
2 because of misuse of funds as determined by the department.

3 H. The department shall revert unexpended or
4 unencumbered balances every two years unless it waives the
5 reversion of a specific low-income education opportunity
6 account for extenuating circumstances.

7 I. Nothing in the Low-Income Education Opportunity
8 Account Act shall be construed to require a participating
9 student to be enrolled only in a private school, but the
10 participating student shall be in compliance with the
11 Attendance for Success Act."

12 SECTION 4. A new section of the Public School Code is
13 enacted to read:

14 "[NEW MATERIAL] LOW-INCOME EDUCATION OPPORTUNITY
15 ACCOUNT--APPLICATION PROCESS--RENEWAL--SUSPENSION.--

16 A. A parent may apply to the department to
17 establish a low-income education opportunity account for an
18 eligible student.

19 B. The department shall accept and approve
20 applications year-round and shall establish procedures and
21 rules for approving applications in an expeditious manner.

22 C. The department shall create a standard form that
23 parents shall submit to establish a student's eligibility for
24 the program and shall ensure that the application is publicly
25 available and may be submitted through various sources,

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1 including the internet.

2 D. The department shall approve an application for
3 a low-income education opportunity account if:

4 (1) the parent submits an application for a
5 low-income education opportunity account in accordance with the
6 application procedures established by the department;

7 (2) the student, on whose behalf the parent is
8 applying, is an eligible student;

9 (3) funds are available for the program or the
10 low-income education opportunity account; and

11 (4) the parent signs a contract with the
12 department agreeing:

13 (a) to provide an education for the
14 participating student in at least the subjects of reading,
15 language arts, mathematics, science and social studies;

16 (b) not to enroll the student as a
17 full-time student in a public school while participating in the
18 program;

19 (c) to use the funds in the low-income
20 education opportunity account only for qualifying education
21 expenses to educate the student; and

22 (d) to comply with the rules and
23 requirements of the program.

24 E. The department shall annually renew a student's
25 low-income education opportunity account if funds are

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1 available.

2 F. Upon notice to the department, a participating
3 student may choose to stop receiving low-income education
4 opportunity account funding and enroll full time in a public
5 school. Enrolling as a full-time student in a public school
6 shall result in the immediate suspension of payment of
7 additional funds into the student's low-income education
8 opportunity account; provided that, for low-income education
9 opportunity accounts that have been open for at least one full
10 school year, the department may allow a low-income education
11 opportunity account to remain open and active for the parent to
12 pay qualifying education expenses to educate the student from
13 money remaining in the account. The department shall revert
14 unexpended or unencumbered balances in a student's low-income
15 education opportunity account and close the low-income
16 education opportunity account at the beginning of the next
17 school year if the student is enrolled in a public school.

18 G. If an eligible student decides to return to the
19 program, payments into the student's low-income education
20 opportunity account may resume if the low-income education
21 opportunity account is still open and active. A new low-income
22 education opportunity account may be established if the
23 student's low-income education opportunity account is closed.

24 H. The department may adopt rules to provide the
25 least disruptive process for a student who chooses to stop

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1 participating in the program and enroll full time in a public
2 school."

3 SECTION 5. A new section of the Public School Code is
4 enacted to read:

5 "[NEW MATERIAL] ADDITIONAL POWERS AND DUTIES--ALLOWABLE
6 USES OF FUNDS--EDUCATION SERVICE PROVIDERS.--

7 A. The department shall:

8 (1) maintain an updated list of qualified
9 education service providers and ensure that the list is
10 publicly available through various sources, including the
11 internet;

12 (2) provide parents with a written explanation
13 of the allowable uses of low-income education opportunity
14 account funds, the responsibilities of parents in ensuring the
15 education of their children, the duties of the department and
16 the role of any private financial management firms or other
17 private organizations that the department may contract with to
18 administer the program or any aspect of the program;

19 (3) ensure that parents of students with
20 disabilities receive notice that participation in the program
21 is a parental placement pursuant to the federal Individuals
22 with Disabilities Education Act, along with an explanation of
23 the rights that parentally placed students may possess under
24 federal law and any applicable state laws and rules;

25 (4) implement a commercially viable, cost-

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1 effective and user-friendly system for processing payments for
2 services from a low-income education opportunity account to an
3 education service provider by electronic or online funds
4 transfer; provided that the department:

5 (a) provides flexibility to parents by
6 facilitating direct payments to education service providers as
7 well as requests for preapproval of and reimbursements for
8 qualifying education expenses; and

9 (b) may contract with private
10 institutions to develop the payment system;

11 (5) implement, as soon as practicable, a
12 commercially viable, cost-effective and user-friendly system,
13 as part of the same system that facilitates the electronic or
14 online funds transfers, for parents to publicly rate, review
15 and share information about education service providers;

16 (6) continue making deposits into a student's
17 low-income education opportunity account until the:

18 (a) department has been notified or
19 determines that the student is no longer a participating
20 student;

21 (b) department determines that there was
22 misuse of the funds in the low-income education opportunity
23 account;

24 (c) student withdraws from the program;

25 (d) student enrolls full time in a

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1 public school; or

2 (e) student graduates from high school;

3 (7) audit individual low-income education
4 opportunity accounts;

5 (8) make a parent or participating student
6 ineligible for the program in the event of misuse of low-income
7 education opportunity account funds; provided that if a parent
8 is determined to be ineligible for the program and the
9 participating student is free from personal misconduct, that
10 student may be eligible for a low-income education opportunity
11 account if placed with a new guardian or other person with the
12 legal authority to act on behalf of the student;

13 (9) refer suspected cases of misuse of low-
14 income education opportunity account funds to law enforcement
15 if evidence of fraudulent use of low-income education
16 opportunity account funds exists;

17 (10) create procedures to ensure that a fair
18 process exists to determine whether a misuse of low-income
19 education opportunity account funds has occurred; and

20 (11) create procedures to ensure that a fair
21 process exists to determine whether an education service
22 provider may be barred from receiving payments from low-income
23 education opportunity accounts; provided that an education
24 service provider may appeal the department's decision to bar
25 the education service provider from receiving payments from

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1 low-income education opportunity accounts; and provided further
2 that if the department bars an education service provider from
3 receiving payments, the department shall notify parents of
4 participating students of the department's decision.

5 B. The department may:

6 (1) contract with private organizations to
7 administer the program or specific functions of the program,
8 including contracting with private financial management firms
9 to manage low-income education opportunity accounts;

10 (2) withhold from deposits or deduct from a
11 low-income education opportunity account an amount to cover the
12 costs of administering the program, in an amount up to a
13 maximum of five percent annually in the first two years of the
14 program and up to a maximum of three percent annually
15 thereafter;

16 (3) bar an education service provider from
17 accepting payments from low-income education opportunity
18 accounts if the department determines that the education
19 service provider has:

20 (a) substantially misrepresented
21 information or failed to refund any overpayments in a timely
22 manner; or

23 (b) failed to provide participating
24 students with sufficient educational goods or services;

25 (4) accept gifts, grants and donations from

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1 any source to cover administrative costs, to inform the public
2 about the program or to fund additional low-income education
3 opportunity accounts; and

4 (5) adopt rules in accordance with the State
5 Rules Act that are consistent with the Low-Income Education
6 Opportunity Account Act and necessary for the administration of
7 that act, including rules:

8 (a) establishing or contracting for the
9 establishment of an online anonymous fraud reporting service;

10 (b) establishing an anonymous telephone
11 hotline for fraud reporting;

12 (c) requiring a surety bond for
13 education service providers receiving more than one hundred
14 thousand dollars (\$100,000) in low-income education opportunity
15 account funds; or

16 (d) for refunding payments from
17 education service providers to low-income education opportunity
18 accounts."

19 SECTION 6. A new section of the Public School Code is
20 enacted to read:

21 "[NEW MATERIAL] EDUCATION SERVICE PROVIDERS--
22 APPLICATIONS--AUTONOMY--NOT ACTING FOR THE STATE.--

23 A. The department by rule shall provide the
24 application process and procedures for prospective education
25 service providers to apply for listing as an eligible education

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1 service provider. An application form signed by a prospective
2 education service provider warrants that the education service
3 provider:

4 (1) will not refund, rebate or share money
5 from low-income education opportunity accounts with parents or
6 participating students and shall return refunds to the
7 department; and

8 (2) will provide the educational services
9 contained in the agreement entered into with a parent.

10 B. An education service provider is not an agent of
11 the state or federal government, a local school board or school
12 district or governing authority or charter school. No action
13 of an education service provider shall be construed as an
14 action by the state or any of its departments, institutions or
15 political subdivisions.

16 C. An education service provider shall not be
17 required to alter its creed, practices, admissions policy or
18 curriculum to accept payments pursuant to the Low-Income
19 Education Opportunity Account Act except as provided in that
20 act."

21 SECTION 7. A new section of the Public School Code is
22 enacted to read:

23 "[NEW MATERIAL] STUDENT RECORDS.--Upon being notified that
24 a participating student is enrolled with an education service
25 provider, a public school that previously enrolled the

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1 participating student shall provide the education service
2 provider with the student's school records. The public school
3 and the education service provider shall comply with the
4 provisions of the federal Family Educational Rights and Privacy
5 Act of 1974 when sharing student records."

6 SECTION 8. A new section of the Public School Code is
7 enacted to read:

8 "[NEW MATERIAL] LOW-INCOME EDUCATION OPPORTUNITY REVIEW
9 COMMISSION.--

10 A. The department shall create the "low-income
11 education opportunity review commission" to assist the
12 department in determining what expenditures meet the
13 requirements to be considered qualifying education expenses to
14 educate a participating student and to provide recommendations
15 to the department on how to implement, administer and improve
16 the program.

17 B. The low-income education opportunity review
18 commission shall consist of nine voting members who shall be:

19 (1) five parents of participating students and
20 represent no fewer than four counties of the state; and

21 (2) four New Mexico licensed educators.

22 C. The voting members shall be appointed by the
23 secretary and shall serve at the pleasure of the secretary.

24 The secretary, or the secretary's designee, shall serve as the
25 nonvoting chair of the low-income education opportunity review

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1 commission.

2 D. The department may request that the low-income
3 education opportunity review commission meet, in person or
4 through a virtual or telephonic platform, to:

5 (1) determine whether an expenditure from a
6 low-income education opportunity account is or was a qualifying
7 expense; and

8 (2) review appeals of denials of an education
9 service provider and make a recommendation to the secretary.

10 E. When requested, the low-income education
11 opportunity review commission shall, by majority vote,
12 recommend to the department:

13 (1) if a particular use of funds constitutes a
14 qualifying expense; and

15 (2) if an education service provider should be
16 allowed to receive, or continue receiving, payments from low-
17 income education opportunity accounts."

18 SECTION 9. A new section of the Public School Code is
19 enacted to read:

20 "[NEW MATERIAL] REPORT TO LEGISLATURE AND GOVERNOR.--The
21 department shall report to the legislature and the governor by
22 December 1 of each year on the program and its participants.
23 The report shall include the number, grades and ages of
24 participating students and where they attend school or receive
25 other educational services; the geographic distribution of

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1 participating students by county; other demographic and
2 economic data about participating students and parents; the
3 number and locations of education service providers, the
4 services they provide and the number of students they serve;
5 the total amount of deposits into low-income education
6 opportunity accounts and the cost of financial management
7 contracts; the total expenditures for education service
8 providers and the average cost of educational services being
9 provided to participating students, by type of service and
10 geographic region; and other information requested by the
11 legislature or governor and considered reportable by the
12 department."

13 SECTION 10. A new section of the Public School Code is
14 enacted to read:

15 "[NEW MATERIAL] LOW-INCOME EDUCATION OPPORTUNITY ACCOUNT
16 FUND--CREATED.--

17 A. The "low-income education opportunity account
18 fund" is created in the state treasury. The fund consists of
19 money appropriated by the legislature, federal money granted to
20 the state for the purposes of the fund, income from investment
21 of the fund and money otherwise accruing to the fund. Money in
22 the fund shall not revert to any other fund at the end of a
23 fiscal year. The department shall administer the fund, and
24 money in the fund is appropriated to the department to carry
25 out the purposes of the Low-Income Education Opportunity

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1 Account Act.

2 B. Money in the fund shall be disbursed on warrants
3 signed by the secretary pursuant to vouchers signed by the
4 secretary or the secretary's authorized representative."

5 SECTION 11. APPROPRIATIONS.--

6 A. The following amounts are appropriated from the
7 general fund to the low-income education opportunity account
8 fund for expenditure in fiscal year 2026 and subsequent fiscal
9 years for the following purposes:

10 (1) five hundred eighty thousand dollars
11 (\$580,000) for the public education department to administer
12 the low-income education opportunity account program; and

13 (2) one hundred million dollars (\$100,000,000)
14 to carry out the purposes of the Low-Income Education
15 Opportunity Account Act.

16 B. Any unexpended or unencumbered balance remaining
17 at the end of a fiscal year shall not revert to the general
18 fund.

19 SECTION 12. SEVERABILITY.--If any part or application of
20 the Low-Income Education Opportunity Account Act is held
21 invalid, the remainder or its application to other situations
22 or persons shall not be affected.

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25