

1 SENATE BILL 48

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

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO EDUCATION SCHOLARSHIPS; AUTHORIZING TUITION
12 SCHOLARSHIP ORGANIZATIONS TO AWARD EDUCATION SCHOLARSHIPS TO
13 CERTAIN PRIVATE SCHOOLS; CREATING THE EDUCATION SCHOLARSHIP
14 INCOME TAX CREDIT AND THE EDUCATION SCHOLARSHIP CORPORATE
15 INCOME TAX CREDIT; PROVIDING A DELAYED REPEAL.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] TUITION SCHOLARSHIP
19 ORGANIZATIONS--CERTIFICATION--AUTHORIZATION TO AWARD EDUCATION
20 SCHOLARSHIPS TO QUALIFIED SCHOOLS.--

21 A. The department may authorize a tuition
22 scholarship organization to award education scholarships to
23 qualified schools pursuant to this section; provided that:

24 (1) no more than the following percentages of
25 a school district's student enrollment may be awarded an

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1 education scholarship:

2 (a) in school districts with a total
3 student enrollment of less than one thousand students, nine-
4 tenths percent of a school district's student enrollment;

5 (b) in school districts with a total
6 student enrollment between one thousand and four thousand nine
7 hundred ninety-nine students, eight-tenths percent;

8 (c) for school districts with a total
9 student enrollment between five thousand and fourteen thousand
10 nine hundred ninety-nine students, six-tenths percent;

11 (d) for school districts with a total
12 student enrollment between fifteen thousand and twenty-four
13 thousand nine hundred ninety-nine students, four-tenths
14 percent;

15 (e) for school districts with a total
16 student enrollment between twenty-five thousand and forty-nine
17 thousand nine hundred ninety-nine students, three-tenths
18 percent; and

19 (f) for school districts with a total
20 student enrollment over fifty thousand students, two-tenths
21 percent;

22 (2) no more than four hundred eligible
23 students per school year may receive education scholarships;
24 and

25 (3) the amount of an education scholarship

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1 that may be used by an eligible student shall not exceed nine
2 thousand dollars (\$9,000) for each school year.

3 B. An organization that seeks to be a tuition
4 scholarship organization to provide education scholarships
5 shall apply to the department on forms and in the manner
6 prescribed by the department. Applications shall include
7 documentation verifying that:

8 (1) the organization has been granted an
9 exemption from federal income tax as an organization described
10 in Section 501(c)(3) of the Internal Revenue Code of 1986;

11 (2) the organization has awarded or intends to
12 award education scholarships to eligible students who are
13 attending or plan to attend qualified schools;

14 (3) the scholarships are funded from
15 contributions that the organization has received in or prior to
16 the current calendar year or anticipates receiving during the
17 remainder of the calendar year;

18 (4) at least ninety percent of contributions
19 received during a calendar year for which the organization
20 issues a contribution receipt is awarded by the organization as
21 education scholarships, and all revenue from interest or
22 investments is expended solely on education scholarships;

23 (5) the organization distributes periodic
24 scholarship payments as checks that are issued to an eligible
25 student's parent, that are mailed to the qualified school in

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1 which the eligible student is enrolled and that require the
2 endorsement of the parent prior to deposit of the check;

3 (6) an education scholarship awarded by the
4 organization is portable during the school year and can be used
5 at a qualified school that accepts the eligible student
6 according to a parent's wishes; provided that the scholarship
7 shall be prorated between schools based on the number of days
8 attended at each school by the eligible student;

9 (7) criminal background checks on all of the
10 organization's employees and board members have been conducted
11 by the organization, with the understanding that individuals
12 who might reasonably pose a risk to the sound fiscal management
13 of the funds of the organization shall be excluded from
14 employment or governance, and all pertinent findings on
15 employees and board members have been provided to the
16 department for review and approval;

17 (8) the organization has in place systems to
18 provide for financial accountability, including independent
19 annual audits that shall be submitted to the department in the
20 form of a financial information report that complies with
21 generally accepted accounting principles as specified by the
22 department and is certified to be free of material
23 misstatements by the certified public accountant who performed
24 the audit; and

25 (9) prior to the start of a school year, the

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1 organization filed with the department a surety bond, payable
2 to the state, in an amount equal to the greater of fifty
3 thousand dollars (\$50,000) or the aggregate amount of
4 contributions expected to be received or is likely to be
5 received during the school year.

6 C. No later than thirty days prior to the start of
7 a school year or the start of a semester, a tuition scholarship
8 organization shall provide to the department the names of
9 eligible students who received education scholarships and the
10 students' previous school district or charter school
11 affiliations. The tuition scholarship organization shall
12 provide verification that the eligible students have been
13 awarded education scholarships and have enrolled in qualified
14 schools for the school year or the semester.

15 D. A qualified school participating in a tuition
16 scholarship organization's scholarship program shall certify to
17 the organization that the school:

18 (1) is in compliance with the health and
19 safety laws or rules that apply to schools;

20 (2) holds a valid occupancy permit as required
21 by applicable laws;

22 (3) does not discriminate in admissions on the
23 basis of race, color or national origin;

24 (4) provides academic accountability to
25 parents of students in the scholarship program by regularly

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1 reporting to the parent on the student's academic and
2 developmental progress;

3 (5) ensures that every school employee with
4 unsupervised access to students has undergone a background
5 check as described in Subsection D of Section 22-10A-5 NMSA
6 1978;

7 (6) has no paid staff or board members who are
8 also staff or board members of the tuition scholarship
9 organization or who are relatives of the staff or board members
10 of the tuition scholarship organization;

11 (7) gives enrollment preference to eligible
12 students who were enrolled at the school in the prior year and
13 to siblings of eligible students already admitted to or
14 attending the school; and

15 (8) is a qualified school and, if the school
16 has more applications for education scholarships from eligible
17 students than positions available for students receiving
18 scholarships, the school fills the available scholarship
19 positions only by using a random selection process.

20 E. On or before June 1 of each year, a tuition
21 scholarship organization shall report the following information
22 to the department:

23 (1) the name and address of the tuition
24 scholarship organization;

25 (2) the total number and dollar amount of

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1 contributions received for which contribution receipts were
2 issued during the calendar year ending on December 31 of the
3 prior year;

4 (3) the total number and dollar amount of all
5 education scholarships awarded during the calendar year ending
6 on December 31 of the prior year; and

7 (4) the total number and dollar amount of
8 education scholarships awarded to eligible students during the
9 calendar year ending on December 31 of the prior year.

10 F. A tuition scholarship organization shall:

11 (1) provide to each person who makes a
12 contribution that is dedicated to education scholarships a
13 numbered and dated contribution receipt providing the amount
14 contributed by the person;

15 (2) maintain a record of the contribution
16 receipts issued for a least three years;

17 (3) account for all copies of contribution
18 receipts damaged, destroyed, lost or otherwise unusable; and

19 (4) on or before November 1 of each year,
20 provide an annual report to the interim legislative finance
21 committee, the legislative education study committee and the
22 department that shall include the number of education
23 scholarships provided by the tuition scholarship organization,
24 the names of each school attended by eligible students who
25 received education scholarships and the aggregate amount of

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1 amount of scholarships used at each school.

2 G. As used in this section:

3 (1) "contribution receipt" means a document
4 provided to a person who makes a contribution that is dedicated
5 to education scholarships;

6 (2) "department" means the public education
7 department;

8 (3) "education scholarship" means a grant of
9 funds to an eligible student to cover all or part of the costs
10 of that student at a qualified school;

11 (4) "eligible student" means a school-age
12 person, as that term is used in the Public School Code, who:

13 (a) is enrolled in a state-licensed
14 foster care program; or

15 (b) is a member of a household for which
16 the total annual income does not exceed an amount used to
17 qualify for a reduced-price lunch through the federal school
18 lunch programs established pursuant to 42 USCA Sections 1751
19 through 1769, as amended; provided that once a student receives
20 an education scholarship, the student shall remain eligible
21 regardless of household income until the student graduates from
22 high school or reaches twenty-one years of age;

23 (5) "parent" means a guardian, custodian or
24 other person with authority to act on behalf of an eligible
25 student;

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1 (6) "qualified school" means a private
2 elementary, middle, junior high or secondary school located in
3 New Mexico to which a parent has chosen to send an eligible
4 student;

5 (7) "relative" means a person related by
6 affinity or consanguinity to the third degree; and

7 (8) "tuition scholarship organization" means
8 an organization that provides education scholarships to
9 eligible students attending qualified schools of their parents'
10 choice.

11 SECTION 2. A new section of the Income Tax Act is enacted
12 to read:

13 "[NEW MATERIAL] EDUCATION SCHOLARSHIP INCOME TAX CREDIT.--

14 A. Prior to January 1, 2029, a taxpayer who is not
15 a dependent of another individual and who receives a
16 contribution receipt for making a contribution to a tuition
17 scholarship organization pursuant to Section 1 of this 2024 act
18 may apply for, and the department may allow, a credit against
19 the taxpayer's tax liability imposed pursuant to the Income Tax
20 Act. The tax credit provided by this section may be referred
21 to as the "education scholarship income tax credit".

22 B. The amount of the tax credit allowed by this
23 section shall be in an amount equal to eighty percent of the
24 amount contributed to a tuition scholarship organization in a
25 taxable year. The department shall allow a tax credit only for
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1 a contribution receipt certified pursuant to Subsection C of
2 this section.

3 C. A taxpayer shall apply for certification of
4 eligibility for the tax credit allowed by this section from the
5 public education department on forms and in the manner
6 prescribed by that department. The aggregate amount of
7 education scholarship income tax credits and education
8 scholarship corporate income tax credits that may be certified
9 as eligible in any calendar year is one million dollars
10 (\$1,000,000). Completed applications shall be considered in
11 the order received. Applications for certification received
12 after this limitation has been met in a calendar year shall not
13 be approved. The application shall include a copy of the
14 contribution receipt provided by the tuition scholarship
15 organization that received a contribution from the taxpayer.

16 D. A taxpayer may claim the tax credit allowed by
17 this section for the taxable year in which the taxpayer makes a
18 contribution to a tuition scholarship organization. To receive
19 the tax credit, a taxpayer shall apply to the department on
20 forms and in the manner prescribed by the department within
21 twelve months following the calendar year in which the
22 contribution is made. The application shall include a
23 certification made pursuant to Subsection C of this section.

24 E. That portion of tax credit that exceeds a
25 taxpayer's tax liability in the taxable year in which the tax

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1 credit is claimed may be carried forward for three consecutive
2 taxable years.

3 F. Married individuals filing separate returns for
4 a taxable year for which they could have filed a joint return
5 may each claim only one-half of the tax credit that would have
6 been claimed on a joint return.

7 G. A taxpayer may be allocated the right to claim a
8 tax credit in proportion to the taxpayer's ownership interest
9 if the taxpayer owns an interest in a business entity that is
10 taxed for federal income tax purposes as a partnership or
11 limited liability company and that business entity has met all
12 of the requirements to be eligible for the tax credit. The
13 total tax credit claimed by all members of the partnership or
14 limited liability company shall not exceed the allowable tax
15 credit pursuant to this section.

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

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

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1 finance committee with an analysis of the cost of the tax
2 credit."

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

5 "[NEW MATERIAL] EDUCATION SCHOLARSHIP CORPORATE INCOME TAX
6 CREDIT.--

7 A. Prior to January 1, 2029, a taxpayer that
8 receives a contribution receipt for making a contribution to a
9 tuition scholarship organization pursuant to Section 1 of this
10 2024 act may apply for, and the department may allow, a credit
11 against the taxpayer's tax liability imposed pursuant to the
12 Corporate Income and Franchise Tax Act. The tax credit
13 provided by this section may be referred to as the "education
14 scholarship corporate income tax credit".

15 B. The amount of the tax credit allowed by this
16 section shall be in an amount equal to eighty percent of the
17 amount contributed to a tuition scholarship organization in a
18 taxable year. The department shall allow a tax credit only for
19 a contribution receipt certified pursuant to Subsection C of
20 this section.

21 C. A taxpayer shall apply for certification of
22 eligibility for the tax credit allowed by this section from the
23 public education department on forms and in the manner
24 prescribed by that department. The aggregate amount of
25 education scholarship corporate income tax credits and

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1 education scholarship income tax credits that may be certified
2 as eligible in any calendar year is one million dollars
3 (\$1,000,000). Completed applications shall be considered in
4 the order received. Applications for certification received
5 after this limitation has been met in a calendar year shall not
6 be approved. The application shall include a copy of the
7 contribution receipt provided by the tuition scholarship
8 organization that received a contribution from the taxpayer.

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

17 E. That portion of tax credit that exceeds a
18 taxpayer's tax liability in the taxable year in which the tax
19 credit is claimed may be carried forward for three consecutive
20 taxable years.

21 F. A taxpayer allowed a tax credit pursuant to this
22 section shall report the amount of the tax credit to the
23 department in a manner required by that department.

24 G. The department shall compile an annual report on
25 the tax credit that shall include the number of taxpayers

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1 approved by the department to receive the tax credit, the
2 aggregate amount of tax credits approved and any other
3 information necessary to evaluate the tax credit. The
4 department shall present the report to the revenue
5 stabilization and tax policy committee and the legislative
6 finance committee with an analysis of the cost of the tax
7 credit."

8 SECTION 4. DELAYED REPEAL.--The provisions of this act
9 are repealed effective January 1, 2029.

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