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FISCAL IMPACT REPORT

SPONSOR Brandt/Townsend/Sharer/Scott/Lanier **LAST UPDATED** _____
ORIGINAL DATE 2/17/25
SHORT TITLE Education Freedom Account Act **BILL NUMBER** Senate Bill 286
ANALYST Liu/Mabe

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$100,580.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$115,721.9	\$115,721.9	\$231,443.9	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 387, House Bill 388

Sources of Information

LFC Files
 Legislative Education Study Committee (LESC) Files
 National Conference of State Legislatures (NCSL)
 Economic Policy Institute (EPI)

Agency Analysis Received From
 New Mexico Attorney General (NMAG)
 Office of State Auditor (OSA)
 Education Trust Board (ETB)
 School for the Blind and Visually Impaired (NMSBVI)

Agency Analysis was Solicited but Not Received From
 Public Education Department (PED)
 Regional Education Cooperative (REC)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 286

Senate Bill 286 (SB286) appropriates \$100 million from the general fund for an education freedom account program and further appropriates \$580 thousand from the general fund to the Public Education Department (PED) to administer the program.

The education freedom account program will provide state funding for private school and other qualifying expenses for eligible students. This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The appropriation of \$100.6 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of the fiscal year shall not revert to the general fund.

Provisions of the bill authorize PED to determine how much each eligible student can receive, which is 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. On average, each public school student generates about 1.8 program units for basic membership, at-risk status, and special education, which could make the cap for education freedom accounts effectively \$11.8 thousand based on the current unit value.

In FY25, approximately 23.8 thousand students attended a nonpublic New Mexico school accredited by a PED-recognized agency. According to Private School Review, an online directory of private schools, the average private school tuition in New Mexico in FY25 was \$8,961 per year, ranging from \$2,690 at Grace Baptist Academy to \$28.1 thousand at Albuquerque Academy. LFC staff estimate the costs to provide education freedom accounts for all nonpublic students (accounting for a cap of \$11.8 thousand and average costs) could be as high as \$215.7 million.

PED may realize some cost savings from variations in tuition rates across private schools; however, these savings could potentially be lost if private schools increase tuition rates to match the maximum state rate. It is likely the demand for education freedom accounts will exceed the available funds appropriated within this bill, which may force PED to reduce allocations for each account.

SIGNIFICANT ISSUES

The bill creates a new section of the Public School Code titled the Education Freedom Account Act, which includes the following provisions:

Student Eligibility: A student qualifies for an education freedom account if they:

- Are a school-age resident of New Mexico,
- Have not received a high school diploma or equivalent,
- Are eligible for enrollment in a public school,

- Have a family income at or below 200 percent of the federal poverty level.

Public Education Department Duties and Authority: As the program administrator, PED must:

- Approve applications year-round,
- Establish an accessible application process,
- Determine per-student funding based on school spending data,
- Make monthly deposits into student accounts and renew annually if funds are available,
- Maintain a list of approved education service providers with ratings by parents,
- Provide program rules, guidance, and an annual contract for families,
- Audit accounts, investigate misuse, and report fraud,
- Create a payment system,
- Prepare an annual report on the program for the governor, and
- Create an Education Freedom Review Commission to assess qualifying expenses and appeals.

PED has the authority to:

- Contract with private entities to administer the Education Freedom Account program,
- Withhold as much as 5 percent for the first two years and 3 percent after to cover administrative costs,
- Bar noncompliant education service providers,
- Accept donations to cover administrative costs and fund additional student accounts, and
- Establish rules for fraud reporting and provider accountability.

Parental Responsibilities: Parents must:

- Apply for an Education Freedom Account,
- Not enroll their child in public school,
- Ensure instruction in core subjects,
- Pay additional costs beyond what the state provides,
- Not receive refunds from the account,
- Not make payments to the account.

Education Service Provider Requirements: Providers must:

- Comply with New Mexico's Attendance for Success Act,
- Be physically located in New Mexico,
- Not be an online school,
- Not refund, rebate, or share money with parents or students,
- Provide the agreed-upon education services.

Education Freedom Account and Fund Details

Education Freedom Accounts:

- Accounts cannot exceed the total cost of a student's education for that year.
- Balances revert every two years, except in special cases.
- Accounts close when a student graduates, enrolls in public school, or misuses funds.
- Remaining balances return to the general fund.

Education Freedom Account Fund:

- Created in the state treasury.
- Funded through legislative appropriations, federal grants, and investment income.

- Does not revert to other funds at the end of the fiscal year.

Qualifying educational expenses include:

- Tuition and fees at eligible private schools
- Textbooks, instructional materials, and technology.
- Fees for standardized testing and AP exams.
- Summer and after-school programs
- Public transportation to and from school.

According to the National Conference of State Legislatures (NCSL), 32 states as well as Washington D.C. and Puerto Rico had some form of school choice legislation in 2023. Thirteen of those states offer education savings accounts (ESA) like the ones proposed in Senate Bill 286. Before 2021, most ESA programs were for low-income students or students with disabilities, but many are now open to all students. The amount given to families through an ESA program is usually tied to state per-student funding and ranges from 27 to 100 percent of the state's per-student spending.

Interest in school choice increased during the Covid-19 pandemic and has grown since. On January 29, 2025, President Trump signed an executive order directing the U.S. Education Department to issue guidance on how states can expand school choice initiatives with federal formula and grant funds. The same day, U.S. Senate Republicans reintroduced a bill to expand school choice with \$10 billion annually for tax credits.

A report by the Economic Policy Institute (EPI) examines the fiscal impact of funding leaving public schools through school choice programs. It highlights an issue New Mexico schools are already facing—costs do not necessarily drop at the same rate as enrollment.

NMAG notes SB286 potentially conflicts with both the New Mexico Constitution and the U.S. Constitution in the following instances:

- New Mexico Constitution (Article XII, Section 3): The provision prohibits public funds from supporting private schools. SB286 may conflict by directly funding private institutions.
- *Moses v. Ruszkowski* (2019): The New Mexico Supreme Court changed its interpretation of Article XII, Section 3, and allowed public funds for secular textbooks but did not set a precedent for direct tuition payments.
- Article IV, Section 31: This provision prohibits state appropriations for education outside state control. SB286 may violate this by transferring funds to private schools.
- Anti-Donation Clause (Article IX, Section 14): The clause forbids state donations to private entities. The question here is whether the bill's direct payments could be seen as donations.
- Article XII, Section 12: This section requires a "uniform system" of public schools. Diverting funds to private schools could challenge this mandate.
- Establishment Clause (federal and state): Direct funding of religious schools may raise constitutional concerns under the U.S. Supreme Court's precedents.

ADMINISTRATIVE IMPLICATIONS

Provisions of the bill require PED to create a new grant process and determine awards for eligible students that participate in the program. For new initiatives, PED staff have a short timeline after legislative sessions to create grant program requirements, ready application documents, and eventually review applications and make awards. Provisions of this bill allow PED to contract with an organization to operate the education freedom accounts, which the department will likely leverage given limited capacity within the agency.

The bill requires PED or a contracted organization to administer the program, create and oversee a commission, send an annual evaluation to the governor, and audit accounts, among other things.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB286 relates to House Bill 387, which establishes universal education opportunity accounts, and House Bill 388, which establishes low-income education opportunity at 200 percent the federal poverty level.

TECHNICAL ISSUES

SB286 says that appropriations will not revert to the general fund at the end of the fiscal year. However, in Section 3, subsection G, it states that any balances in an education freedom account shall revert to the general fund when closed.

RM/sl/hg/sgs