

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 01/30/23
Bill No: SB109

Sponsor: Brandt
Short Title: EDUCATION FREEDOM ACCOUNTS

Agency Name and Code
Number: PED - 924
Person Writing Gregory Frostad
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	\$580.0	Nonrecurring	General Fund
	\$100,000.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	N/A	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None

Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 109 (SB109) would create the Education Freedom Account Act in the Public School Code and the Education Freedom Account Fund as a non-reverting fund in the state treasury. The Education Freedom Account Act would create the "education freedom account program" in the Public Education Department (PED) to allow the department, in contract with parents of participating students, to pay for private school and other eligible expenses under the act through "education freedom accounts."

The bill does not contain an effective date. Bills without an effective date will become effective on June 16, 2023.

FISCAL IMPLICATIONS

SB109 would appropriate \$100.58 million from the general fund to the Education Freedom Account Fund for FY24 and subsequent years for the following purposes:

- \$580,000 for PED to administer the Education Freedom Account Program; and
- \$100 million to carry out the Education Freedom Account Act.

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

SIGNIFICANT ISSUES

The provisions of SB109 may violate the anti-donation clause of the New Mexico Constitution. Article 9, Section 14 of the constitution – the “anti-donation clause” – generally prohibits states, counties, school districts, and municipalities from making any donation or financial provision for any person or private enterprise, but provides for certain exceptions.

Article 4, Section 31 of the New Mexico Constitution also bars any appropriation for any charitable, *educational*, or other benevolent purpose to any person, corporation, association, institution or community, not under the absolute control of the state.

While the provisions of SB109 create an intermediary recipient, in the form of the Education Freedom Account Fund, the moneys held therein could still be disbursed to a private school not under the total control of the state, and thus would violate Article IV, Section 31.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

SB109 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, which amount 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; provided that a participating student shall not receive more than the student's qualifying educational expenses;
- make monthly deposits into each education freedom account; and
- may contract for financial management services for education freedom accounts.

Money in a participating student's education freedom account would be used by PED for the following qualifying education expenses:

- tuition and fees at a private elementary or secondary school that teaches, among other courses, reading, language arts, mathematics, science and social studies appropriate for the grade level of the participating student;
- tutoring services provided by a qualified person;
- textbooks and other instructional materials, including computer hardware and software, required by the education service provider to deliver education to the participating student;
- fees for nationally standardized assessments, advanced placement examination fees and other assessments required by the education service provider;
- tuition or fees for summer and after-school elementary or secondary programs;
- public transportation to and from school; and
- other educational charges approved by the department.

SB109 further provides that interested parents may apply to PED to establish an education freedom account for an eligible student and specifies the requirements for a successful application. PED would be required to create the application form and approve the applications.

SB190 would also require PED to, among other requirements:

- maintain an updated list of qualified education service providers and ensure that the list is publicly available;
- ensure that parents of students with disabilities receive notice that participation in the program is a parental placement pursuant to the federal Individuals with Disabilities Education Act, along with an explanation of the rights that parentally placed students may possess under federal law and any applicable state laws and rules;
- implement a commercially viable, cost-effective and user-friendly system for processing payments for services from an education freedom account to an education service provider by electronic or online funds transfer;
- implement, as soon as practicable, a commercially viable, cost-effective and user-friendly system as part of the same system that facilitates the electronic or online funds transfers, for parents to publicly rate, review and share information about education service providers;
- make a parent or participating student ineligible for the program in the event of misuse of education freedom account funds; provided that if a parent is determined to be ineligible for the program and the participating student is free from personal misconduct, that student may be eligible for an education freedom account if placed with a new guardian or other person with the legal authority to act on behalf of the student;
- refer suspected cases of misuse of education freedom account funds to law enforcement if evidence of fraudulent use of education freedom account funds exist;

- create procedures to ensure that a fair process exists to determine whether a misuse of education freedom account funds has occurred;
- create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payments from education freedom accounts;
- create the "education freedom review commission" of nine voting members to assist the department in determining what expenditures meet the requirements to be considered qualifying education expenses under the Act; the PED secretary or their designate would serve as the non-voting chair of the commission; and
- report to the Legislature and the Governor by December 1 each year on the program and its participants; the report shall include:
 - the number, grades and ages of participating students and where they attend school or receive other educational services;
 - the geographic distribution of participating students by county; other demographic and economic data about participating students and parents;
 - the number and locations of education service providers, the services they provide and the number of students they serve;
 - the total amount of deposits into education freedom accounts and the cost of financial management contracts;
 - the total expenditures for education service providers and the average cost of educational services being provided to participating students, by type of service and geographic region; and
 - other information requested by the legislature or governor and considered reportable by the department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Section 3 Subsection H of the bill specifies that PED “shall revert unexpended or unencumbered balances every two years unless it waives the reversion of a specific education freedom account for extenuating circumstances.” The fund to which the dollars revert is not specified, but presumably would be the Education Freedom Account Fund. Also, it is not clear that the unexpended or unencumbered balances are those of a student’s specific education freedom account.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A