

LFC Requester:	Liu
----------------	-----

**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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 01/26/23  
 Bill No: SB113

Sponsor: Ortiz y Pino  
 Short    EQUAL EDUCATION  
 Title:    OPPORTUNITY

Agency Name  
 and Code    PED - 924  
 Number:  
 Person Writing    Gregory Frostad  
 Phone: 505-470-5752    Email: gregory.frostad@ped.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(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
<b>Total</b>	None	None	None	N/A	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to [SB109, Education Freedom Accounts](#)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: Senate Bill 113 (SB113) would create the Equal Education Opportunity Scholarship Act to grant educational scholarships of up to \$5,000 to eligible low-income students to attend certain public and non-public schools. The bill defines “eligible student” as a student who:

- is enrolled in a state-licensed foster care program;
- qualifies for reduced-price lunch; and
- resides in New Mexico while receiving an Equal Education Opportunity Scholarship.

SB113 would create an income tax and corporate tax credit for contributions made to tuition scholarship organizations that provide educational scholarships.

#### **FISCAL IMPLICATIONS**

SB113 does not contain an appropriation.

#### **SIGNIFICANT ISSUES**

In New Mexico, the Children Youth and Families Department (CYFD) is the state child welfare agency.

A 2016 analysis from the New Mexico Tax and Revenue Department (TRD) of similar legislation noted that tax credits for individuals and corporations that encourage private school attendance may conflict with the state’s obligation to establish and finance a public education system.

It may not be in the state’s interest to fund a private school system that competes with the state-supported public school system. Additionally, the state has a responsibility to ensure children in foster care have a free and appropriate education in public schools, not in private schools.

This issue has been litigated before the U.S. Supreme Court (SCOTUS) on Establishment Clause grounds in the *Winn* series of cases. Plaintiffs brought suit alleging that programs that would permit tax credits for education be applied to parochial schools violated the Establishment Clause. However, SCOTUS found the plaintiffs lacked standing and therefore did not reach the merits of the case. *See Arizona Christian School Tuition Organization v. Winn*, (563 U.S. 125 (2011)). New Mexico courts are not bound by the same standing constraints and may therefore be called upon to address this issue.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

The Public Education Department (PED) would be required to certify organizations as “tuition scholarship organizations” (TSO’s) defined as organizations that provide educational scholarships of up to \$5,000, but that do not exceed five thousand dollars \$5,000, to students attending qualified schools of their parents' choice and that meet the provisions of the bill. The

reporting, verification, and regulatory requirements required by the bill would create additional responsibilities for PED and would require additional FTEs.

PED would have to create and implement additional criteria for the TSO's to meet the minimal standards of an appropriate education and may create a conflict between private schools as they seek to bolster the private school enrollment.

PED would need to notify TRD if the certification of an organization as a tuition scholarship organization is denied, suspended or revoked within ten days of the denial, suspension or revocation.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to [SB109, Education Freedom Accounts](#), which would create the "education freedom account program" in the 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."

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

Foster care means 24-hour substitute care for children who are placed away from their parents or guardians and who are in the custody of state and tribal child welfare agencies. Foster placements include, but are not limited to, foster family homes, foster homes of relatives, group homes, residential facilities, emergency shelters and pre-adoptive homes. A student is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state, tribal or a local agency for the care of the student, whether adoption subsidy payments are being made prior to the finalization of an adoption or whether there is federal matching of any payments that are made. As per changes to the McKinney-Vento act, children awaiting foster care placement are no longer defined as children experiencing homelessness.

The federal Every Student Succeeds Act requires that each school district appoint a foster care point of contact.

### **ALTERNATIVES**

N/A

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

N/A

### **AMENDMENTS**

N/A