

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB670

Hearing Date: Thursday March 07, 2019
Committee On: Revenue
Introducer: Linehan
One Liner: Adopt the Opportunity Scholarships Act and provide tax credits

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Briese, Groene, Kolterman, Lindstrom, Linehan
Nay:	2	Senators Crawford, McCollister
Absent:		
Present Not Voting:	1	Senator Friesen

Oral Testimony:

Proponents:

Senator Lou Ann Linehan
Jacob Idra
Joe Murray
April Garcia
Alyson Tule Martinez
Sarah Schinstock
Patrick Wolf
Julie Trivitt
Michael Ashton
Trish Wilger
Adam Weinberg
Katie Linehan

Representing:

Introducer
Self
Self
Self
Self
Self
Self
Self
Archdiocese of Omaha Catholic Schools
Iowa Alliance for Choice in Education
Platte Institute
American Federation for Children

Opponents:

Ann Hunter - Pirtle
Maddie Fennell
Jason Alexander
Jack Moles

Don Mayhew

Marque Snow

Joseph Couch
Dave Welsch
Patricia Wonch Hill
Thomas Gray

Renee Fry

Representing:

Stand for Schools
Nebraska State Education Association
STANCE
Nebraska Rural Community Schools Association,
Nebraska Council of School Administrators
Lincoln Public Schools, Greater Nebraska Schools
Association
Omaha Public Schools, Nebraska Association of School
Boards
Nebraska Secular Democrats
Milford Public Schools
Self
Nebraska Secular Democrats, Omaha Metro Humanist
Association, Offutt Humanists
Open Sky Policy Institute

Neutral:

Representing:

Summary of purpose and/or changes:

LB670 proposes the Opportunity Scholarships Act (Act). A section-by-section summary of the Act is shown below.

Section 1 introduces the Act. Section 2 provides the intent language for the Act. Section 3 is the definitions section of the Act.

Section 4 provides the requirements for organization to become qualified as a scholarship granting organization. An organization must apply and be certified by the Department of Revenue (Department). The Department may revoke the certification if the scholarship granting organization fails to fulfill the requirements listed below or the requirements of section 10 of this Act.

Required information to become certified as a scholarship granting organization is:

- The applicant is exempt from federal tax under section 501(c)(3) of the Internal Revenue Code of 1986 as amended.
- The applicant will offer one or more education scholarship programs for eligible students.
- The applicant will be able to comply with the requirements of Section 10 of this Act.
- The applicant will provide education scholarships for eligible students without limiting education scholarship availability to only one qualified school.
- The applicant will give first priority to:
 - Eligible students who received an education scholarship from an eligible scholarship granting organization during the previous school year; and
 - New applicants whose household income levels do not exceed 185% of the federal poverty level or who are in foster care or out-of-home care.

Section 5 refers to the individual taxpayer making contributions to one or more scholarship granting organizations. An individual taxpayer who makes one or more cash contributions to one or more scholarship granting organizations shall be eligible for a nonrefundable tax credit. Taxpayers who are married by file separate returns may each claim one-half of the tax credit that would have been allowed for a joint return.

The tax credit is subject to section 9 of this Act. Unused credits may be carried forward for the next 5 years. The taxpayer may not designate all or any part of the contribution to be used for the benefit of any eligible student specifically identified by the taxpayer.

The amount of the credit will be the lesser of:

- The total amount of such contributions made during the tax year; or
- 50% of the income tax liability of such taxpayer for the tax year.

The taxpayer may only claim a credit for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code.

Section 6 refers to partnerships, LLC's or Subchapter S corporations. Any partnership, LLC, or Subchapter S corporation that carries on any trade or business for which deductions allowed under Section 162 of the IRC or is carrying on any rental activity and makes one or more cash contributions to one or more scholarship granting organizations shall be eligible for a nonrefundable tax credit.

The tax credit is subject to section 9 of this Act. Unused credits may be carried forward for the next 5 years. The

taxpayer may not designate all or any part of the contribution to be used for the benefit of any eligible student specifically identified by the taxpayer.

The amount of the credit will be the lesser of:

- The total amount of such contributions made during the tax year; or
- 50% of the income tax liability of such taxpayer for the tax year.

The taxpayer may only claim a credit for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code. The credit will be attributed to each partner, member, or shareholder in the same proportion used to report income or loss for income tax purposes.

Section 7 refers to estates and trusts. An estate or trust that makes one or more cash contributions to one or more scholarship granting organizations shall be eligible for a nonrefundable tax credit.

The tax credit is subject to section 9 of this Act. Unused credits may be carried forward for the next 5 years. The taxpayer may not designate all or any part of the contribution to be used for the benefit of any eligible student specifically identified by the taxpayer.

The amount of the credit will be the lesser of:

- The total amount of such contributions made during the tax year; or
- 50% of the income tax liability of such taxpayer for the tax year.

The taxpayer may only claim a credit for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code.

Section 8 refers to corporations. A corporate taxpayer that makes one or more cash contributions to one or more scholarship granting organizations shall be eligible for a nonrefundable tax credit.

The tax credit is subject to section 9 of this Act. Unused credits may be carried forward for the next 5 years. The taxpayer may not designate all or any part of the contribution to be used for the benefit of any eligible student specifically identified by the taxpayer.

The amount of the credit will be the lesser of:

- The total amount of such contributions made during the tax year; or
- 50% of the income tax liability of such taxpayer for the tax year.

The taxpayer may only claim a credit for the portion of the contribution that was not claimed as a charitable contribution under the Internal Revenue Code.

Section 9 provides details on the tax credit. A taxpayer wishing to claim a tax credit under the Act shall notify the scholarship-granting organization of the taxpayer's intent to make a contribution and the amount to be claimed as a tax credit. The scholarship-granting organization shall notify the Department of the intended tax credit amount.

The department shall notify the scholarship-granting organization of its determination within thirty days after receipt of the notification. Once credits have reached the designated annual limit for any calendar year, no additional credits shall be allowed for such calendar year.

If an amount less than the amount indicated in the notification is available for a tax credit, the department shall notify the scholarship-granting organization of the available amount. The scholarship-granting organization shall notify the taxpayer of the available amount within 3 business days. If the intended tax credit amount in the notification is not available, the scholarship-granting organization shall then promptly notify the taxpayer. The department shall consider notifications regarding intended tax credit amounts in the order in which they are received to ascertain whether the intended tax credit amounts are within the annual limit provided in this subsection.

To be allowed a tax credit as provided by the Act, the taxpayer shall make its contribution between 31 and 60 days after notifying the scholarship-granting organization of the taxpayer's intent to make a contribution. The taxpayer will be given a receipt showing the name and address of the scholarship-granting organization, the date the scholarship-granting organization was certified by the department in accordance with section 4 of this act, the name, address, and, if available, tax identification number of the taxpayer making the contribution, the amount of the contribution, and the date the contribution was received.

If the contribution is not received within the required time period, it shall notify the department. The department shall no longer include such amount when calculating whether the limit has been exceeded.

The amount of the tax credit is capped at \$10 million for calendar year 2020. The amount for calendar year 2021 and thereafter will be calculated by taking the annual limit from the prior calendar year and then multiplying such amount by:

- 125% if the intended tax credit amounts in the prior calendar year exceeded 90% of the annual limit applicable to that calendar year; or
- 100% if the intended tax credit amounts in the prior calendar year did not exceed 90% of the annual limit applicable to that calendar year.

The Department of Education and the Department of Revenue shall publish on their respective web sites information identifying the annual limit when it is increased pursuant to subsection (3) of this section.

Section 10 provides the requirements for a scholarship granting organization to remain certified. To remain certified as a scholarship granting organization, the organization is required to allocate its revenue as shown below. Revenue is allocated when it is expended or otherwise irrevocably encumbered for expenditure.

- If the annual limit on tax credits is less than \$20 million, at least 90% of its revenue will be for education scholarships and no more than 10% for administrative costs; or
- If the annual limit on tax credits is \$20 million or more, 95% of its revenue will be for education scholarships and no more than 10% for administrative costs.

The percentage of funds allocated for education scholarships will be measured as a monthly average for the most recent 24 month period. A scholarship granting organization certified for less than 24 months will use the period of time the organization has been certified.

Section 11 provides for an annual audit. Each scholarship granting organization is required to have an annual audit. The audit must be conducted by an independent public accountant. The audit is due no later than December 1 and is to be filed with the department. The department will electronically forward a copy of the audit to the Governor and Legislature no later than December 31 of each year.

The audit shall include a summary description of its policies and procedures for awarding education scholarships, the number of eligible students receiving education scholarships in the most recent fiscal year, the total amount of contributions received for education scholarships in the most recent fiscal year, and the total amount of education scholarships awarded in the most recent fiscal year.

Section 12 indicates the Act shall not be construed as granting any expanded or additional authority to the State of Nebraska to control or influence the governance or policies of any qualified school that admits and enrolls students who receive education scholarships. It does not expand or add additional authority to require any such qualified school to admit or, once admitted, to continue the enrollment of any student receiving an education scholarship.

Section 13 gives the department the authority to adopt and promulgate rules and regulations to carry out the Act.

Section 14, Section 15, and Section 16 adds the tax credit under the Act to the sections of statute on nonrefundable tax

credits.

Section 17 is the operative date of the Act. The Act becomes operative for all taxable years on or after January 1, 2020.

Section 18 is the Severability clause.

Section 19 is the repealer section.

Explanation of amendments:

The amendment adds two additional requirements to become certified as a scholarship granting organization. The new requirements are:

- That the organization will limit the maximum scholarship amount awarded to any student to the cost of tuition and fees at the qualified school of attendance; and
- That the average of the scholarship amount awarded per student does not exceed 75% of the statewide average expenditures per formula student as defined in section 79-1003.

Lou Ann Linehan, Chairperson