

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2023-24		FY 2024-25	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$248,031		\$42,442	(\$25,000,000)
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$248,031		\$42,442	(\$25,000,000)

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 364 adopts the Opportunity Scholarships Act, which creates a nonrefundable tax credit for qualifying taxpayers who make contributions to certain organizations for education scholarships.

A scholarship-granting organization must be certified by the Department of Revenue (DOR) prior to providing education scholarships to eligible students under the Act. Organizations must be charitable organizations, exempt from federal income tax under the Internal Revenue Code (IRC) section 501(c)(3). An organization meets certification requirements if it: offers one or more education scholarships to eligible students; meets revenue allocation requirements regarding how much revenue is used for scholarships and for administrative costs; does not limit scholarship availability to only one qualified school; gives scholarship priority based on the created 5-tier system; limits maximum scholarship to any student to the cost of tuition and fees at the qualified school such student attends; and limits scholarship amounts awarded to students in a manner that assures the average of scholarship amounts awarded per student does not exceed 75% of statewide average general fund operating expenditures per formula student for the most recently available year as defined in Neb. Rev. Stat. sec. 79-1003.

“Eligible student” means a resident of Nebraska who is:

- A dependent member of a household that qualified for reduced price meals under the National School Lunch Program as of January 1, 2023;
- Receives an education scholarship for the first time and is (a) entering kindergarten or ninth grade in a qualified school or (b) transferring from a public school at which the student was enrolled for at least one semester immediately preceding the first semester for which the student receives an education scholarship to a qualified school and is entering any of grades K-12;
- Has previously received a scholarship and is continuing at a qualified school until graduation from high school or reaching age 21, whichever is first; or
- Is the sibling of a student receiving a scholarship and resides in the same household.

A taxpayer who makes a cash contribution to a certified organization is eligible for a nonrefundable income tax credit equal to the lesser of: (1) the total amount of the contributions made during the tax year; or (2) 50% of the income tax liability of the taxpayer for the tax year. A taxpayer can only claim a credit for the portion of the contribution not claimed as a charitable contribution under the IRC. Any unused credit can be carried forward and applied against tax liability for 5 years immediately following the tax year the credit is first allowed, but cannot be carried back.

The credit is available to individual taxpayers, partnerships, limited liability companies, S corporations, trusts, estates, and corporate taxpayers. Married filing separate taxpayers that could have filed a joint return can only claim one-half of the tax credit each. Prior to claiming the credit, the taxpayer must notify the organization of the intent to make a contribution and amount to be claimed as a credit. The organization must notify DOR of the intended tax credit amount. If the amount exceeds the limit specified in the Act, DOR will notify the organization within 30 days. The organization is to then promptly notify the taxpayer that the credit is unavailable. If the amount of available tax credits is less than the amount hoping to be claimed by the taxpayer, the organization shall notify the taxpayer of the available amount within three business days. The taxpayer must make the contribution within 31 to 60 days after notifying the organization of the intent to contribute and will receive a receipt of payment.

The DOR must consider notifications in the order they are received to determine whether the credits are within the annual limit under the Act. The annual limit on total tax credits would be \$25 million in calendar year 2024, and would increase by 125% in each following calendar year if the amount granted exceeded 90% of the annual limit in the prior year. If less than 90% was granted, the credit would remain the same for the following year. Credits are to be prorated among the notifications received on the day the limit is exceeded.

Organizations must submit audited financial information to DOR annually, which must be forwarded to the Governor and the Legislature by December 31 each year. The DOR can adopt and promulgate rules and regulations to carry out the Opportunity Scholarships Act.

The bill contains the severability clause and is operative for all tax years beginning or deemed to begin on or after January 1, 2024.

Revenue:

The DOR estimates the program will be fully subscribed, meaning the credit limit would increase by 125% each year. Revenue impact to the General Fund is estimated by the DOR as follows:

- FY 23-24: \$0
- FY 24-25: (\$25,000,000)
- FY 25-26: (\$31,250,000)
- FY 26-27: (\$39,062,500)

There is no basis to disagree with these estimates.

We do not anticipate any significant reduction in General Fund expenditures related to state aid to schools pursuant to the Tax Equity and Educational Opportunities Support Act (TEEOSA). Many students impacted by LB 753 could be transfer students from public schools to private schools. However, in order for there to be TEEOSA savings due to LB 753, there would not only need to be a reduction in the number of students in the public school system, but also the reduction would need to be concentrated at the building or even classroom level to reduce expenditures.

Expenditures:

The DOR estimates the following administrative costs:

- A one-time charge of \$202,591 to the Office of the Chief Information Officer (OCIO) for adding a line to forms, changes to the mainframe, and developing a new tracking system; and
- Expenditures for 0.5 FTE Tax Specialist to monitor and maintain the tracking system.

There is no basis to disagree with these estimates.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 753	AM:	AGENCY/POLT. SUB: Department of Education
REVIEWED BY: Neil Sullivan	DATE: 1/31/2023	PHONE: (402) 471-4179
COMMENTS: The Department of Education did not identify a fiscal impact from LB 753, there is no basis to disagree.		

State Agency Estimate

State Agency Name: Department of Revenue			Date Due LFO:			
Approved by: Glen White			Date Prepared: 01/31/2023			
			Phone: 471-5896			
	FY 2023-2024		FY 2024-2025		FY 2025-2026	
	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>
General Funds	\$248,031	\$ 0	\$42,442	(\$25,000,000)	\$43,505	(\$31,250,000)
Cash Funds						
Federal Funds						
Other Funds						
Total Funds	\$248,031	\$ 0	\$42,442	(\$25,000,000)	\$43,505	(\$31,250,000)

LB 753 adopts the Opportunity Scholarships Act (Act). The Act provides nonrefundable tax credits to certain taxpayers against the income tax due under the Nebraska Revenue Act of 1967 for cash contributions made to scholarship-granting organizations during a taxable year.

The Act provides legislative findings for adopting the Act and defines several terms. Scholarship-granting organization (Organization) means a charitable organization in this State that is (a) exempt from federal income taxation under IRC § 501(c)(3), and (b) is certified under this Act to provide tax-credit-supported education scholarships that assist eligible students in attending qualified schools. Organizations become certified by submitting an application to the Department of Revenue (DOR). Among the many requirements, the Organization must provide sufficient documentation that it will give priority to students for awarding education scholarships based on their tier system provided under the Act. The Organization must receive certification before providing education scholarships to eligible students under the Act. Such certification is subject to revocation, if the Organization fails to fulfill the requirements of the Act.

Education scholarship means a financial grant-in-aid used to pay all or part of the tuition and fees for attending a qualified school, including any tuition grants. Tuition means any amount charged by a qualified school for enrollment in its instructional program. Tuition must not exceed the full cost of educating an eligible student at such qualified school.

Qualified school means any nongovernmental. Privately operated elementary or secondary school located in Nebraska that (a) is operated not for profit, (b) complies with the antidiscrimination provisions in 42 U.S.C. § 1981, as it existed on January 1, 2023; (c) complies with all health and life safety laws or codes that apply to privately operated schools; and (3) fulfills the applicable accreditation or approval requirements established by the State Board of Education under Neb. Rev. Stat. § 79-318.

Eligible student means a Nebraska resident who (a) is a dependent member of a household that, for the most recently concluded calendar year before the student receives an education scholarship under the Act, has a gross

Major Objects of Expenditure

<u>Class Code</u>	<u>Classification Title</u>	<u>23-24</u>	<u>24-25</u>	<u>25-26</u>	<u>23-24</u>	<u>24-25</u>	<u>25-26</u>
		<u>FTE</u>	<u>FTE</u>	<u>FTE</u>	<u>Expenditures</u>	<u>Expenditures</u>	<u>Expenditures</u>
A29621	Revenue Tax Specialist	0.5	0.5	0.5	\$30,400	\$31,900	\$32,700
	Benefits.....				\$10,040	\$10,542	\$10,805
	Operating Costs.....				\$202,591		
	Travel.....						
	Capital Outlay.....				\$5,000	\$0	\$0
	Capital Improvements.....						
	Total.....				\$248,031	\$42,442	\$43,505

income that does not exceed the income indicated in the income eligibility guidelines for reduced price meals under the National School Lunch Program in 7 C.F.R. part 210, as such part existed on January 1, 2023; and (b)(i) is receiving an education scholarship for the first time and (A) entering kindergarten or ninth grade in a qualified school or (B) entering any grade between kindergarten through grade 12 and transferring from a public school where the student was enrolled for at least one semester immediately preceding the first semester for which the student receives an education scholarship to a qualified school; (ii) has previously received an education scholarship and is continuing education at a qualified school until such student graduates from high school or reaches age 21, whichever comes first; or (iii) be the sibling of a student who is receiving an education scholarship and resides in the same household as such student.

Except as otherwise provided under the Act, the credit to an individual equals the lesser of (a) the total amount of contributions made to Organizations during the tax year or (b) 50% of the income tax liability of the taxpayer for such year. A taxpayer may only claim a credit provided it was not claimed as a charitable contribution under the IRC. Married filing separate taxpayers that could have filed a joint return may each claim one-half of a credit.

Any partnership, limited liability company (LLC), or subchapter S corporation that is carrying on rental activity or carrying on any trade or business for which deductions would be allowed under IRC § 162; estate or trust; or corporate taxpayer as defined in Neb. Rev. Stat. § 77-2734.03 that makes one or more contributions to Organizations during the taxable year may be eligible for the nonrefundable income tax credit for the portion of the contribution not claimed as a charitable contribution under the IRC. Except as otherwise provided under the Act, the credit will equal the lesser of (a) the total amount of contributions made during the tax year or (b) 50% of the income tax liability of the taxpayer for such year.

The credit must be attributed to each partner, member, or shareholder in the same proportion used to report the entity's income or loss for income tax purposes. For estates or trusts, any credit not used by the estate or trust may be attributed to each beneficiary in the same proportion used to report the beneficiary's income from the estate or trust for income tax purposes.

Taxpayers may carry forward and apply any unused amounts against the income tax liability for the next five years immediately following the tax year in which the credit is first allowed. The credit cannot be carried back. Taxpayers may not designate all or any part of a contribution to an Organization as benefitting a specifically identified eligible student by the taxpayer.

DOR must consider notifications of intended credits in the order received when determining whether the intended tax credit amounts are within the annual limit. For calendar year 2024, the annual limit for tax credits is \$25 million. For calendar year 2025 and each calendar year thereafter, the annual limit shall be calculated by taking the annual limit from the prior calendar year and multiplying such amount by:

- (a) 125% if the intended tax credit amounts in the prior calendar year exceeded 90% of the annual limit for that calendar year; or
- (b) 100% if the intended tax credit amounts in the prior calendar year did not exceed 90% of the annual year for that calendar year.

If the annual limit increases, the State Department of Education and DOR must publish the annual limit information on their websites. No credits will be allowed beyond the annual limit. Credits will be prorated among the notifications received on the day the annual limit is exceeded.

The Act places restrictions on how Organizations allocate revenue for education scholarships and administrative costs. The Organization must allocate its revenue as follows to remain certified:

(a) If the annual limit on credits is less than \$35 million, the Organization must allocate at least 90% of its revenue must allocate for education scholarships and no more than 10% be used or reserved for administrative costs; or

(b) If the annual limit on credits is \$35 million or more, the Organization must allocate at least 95% of its revenue must allocate for education scholarships and no more than 5% be used or reserved for administrative costs.

DOR estimates the following reduction in General Fund revenue:

FY 2023-24	\$	0
FY 2024-25	\$	25,000,000
FY 2025-26	\$	31,250,000
FY 2026-27	\$	39,062,500

LB 753 will require a one-time programming charge of \$202,591 paid to the OCIO for the following: adding a line to forms 1065N, 1041N, and NebFile for individuals, changes to the mainframe, and developing a new tracking system. Additionally, LB 753 will require the hiring of one Tax Specialist at .5 FTE to monitor and maintain the tracking system.

LB 753 becomes operative for tax years beginning on or after January 1, 2024.

Please complete ALL (5) blanks in the first three lines.

2023

LB⁽¹⁾ 753

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ NE Dept of Education

Prepared by: ⁽³⁾ Bryce Wilson/Kevin Lyons Date Prepared: ⁽⁴⁾ 1/20/2023 Phone: ⁽⁵⁾ 402-471-4320

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB 753 creates a scholarship program for students wanting to attend private schools in the State of Nebraska. Students may qualify if; their families have gross income which does not exceed the reduced price meals threshold set under the National School Lunch Program, is receiving an education scholarship for the first time after transferring from a public school, has previously received an education scholarship, or is a sibling of a student receiving an education scholarship.

This bill also creates an income tax credit for individuals, corporations, estates, etc. that contribute to qualifying organizations that grant scholarships for private schools.

This bill will result in reduced income tax for the state up to twenty five million dollars for the calendar year 2024. The maximum amount of credits can grow every year thereafter by 125% of the prior year amount if more than 90% of the credit is used. 100% if the prior calendar year did not exceed 90%.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____