

Revised to clarify aspect regarding TEEOSA funding

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

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

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

LB 753 AM338 seeks to adopt the Opportunity Scholarships Act (Act), which creates a nonrefundable tax credit for qualifying taxpayers who make contributions to scholarship-granting 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).

Organizations would need to provide education scholarships based on a 5-tier priority system. AM338 would change the 5<sup>th</sup> priority tier in the Act to include eligible students whose household income levels exceed 213% of the federal poverty level but do not exceed 300% of 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 whereas originally this tier included all other eligible students, regardless of household income levels.

Eligible student would mean a resident of Nebraska who:

- Is receiving 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.

An individual, partnership, limited liability company, S corporation, or corporation who makes a cash contribution to a certified organization is eligible for a nonrefundable income tax credit equal to the lesser of: (a) the total amount of the contributions made during the tax year; (b) 50% of the income tax liability of the taxpayer for the tax year; or (c) \$100,000. A taxpayer can only claim a credit for the portion of the contribution not claimed as a charitable contribution under the Internal Revenue Code. 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. Married filing separate taxpayers that could have filed a joint return can only claim one-half of the tax credit each.

An estate or trust that makes a cash contribution to a certified organization is eligible for a nonrefundable income tax credit equal to the lesser of: (a) the total amount of the contributions made during the tax year; (b) 50% of the income tax liability of the taxpayer for the tax year; or (c) \$1,000,000. A taxpayer can only claim a credit for the portion of the contribution not claimed as a charitable contribution under the Internal Revenue Code. 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.

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 would need to 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 years 2024, 2025, and 2026. The total annual limit on the total amount of tax credits for calendar year 2027 and each calendar year after would be calculated by taking the annual limit from the prior calendar year and then multiplying the 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 annual limit could be increased until it reaches \$100 million. Credits are to be prorated among the notifications received on the day the limit is exceeded.

Organizations would need to submit an audited financial information report and summary description to DOR annually, which would need to be forwarded to the Governor and the Legislature by December 31 each year.

The DOR could adopt and promulgate rules and regulations to carry out the Act.

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

**Revenue:**

The DOR estimates the following reduction to General Fund revenues as a result of this bill:

- FY 23-24: \$0
- FY 24-25: (\$25,000,000)
- FY 25-26: (\$25,000,000)
- FY 26-27: (\$25,000,000)
- FY 27-28: (\$31,250,000)

There is no basis to disagree with these estimates.

**Expenditures:**

The DOR estimates the following costs from this bill:

- 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.

A reduction in General Fund expenditures related to state aid to schools pursuant to the Tax Equity and Educational Opportunities Support Act (TEEOSA) is possible, but the exact amount is indeterminate, as described below.

Many students impacted by LB 753 AM338 could be transfer students from public schools to private schools. The estimated number of students who could utilize scholarships and transfer from the public school system to the private school system is 5,000 students.

We do not anticipate school district expenditures to decrease relative to the reduction in students. For expenditures relative to a school district to decrease, 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.

However, for schools with more than 900 students, the basic funding component of needs is based on the average adjusted General Fund Operating Expenditures per formula student times the number of formula students. Therefore, a reduction in the number of students impacts needs in the TEEOSA formula. A reduction in the number of students also impacts the calculation for net option funding, calculated based on the average cost per student, which will be higher with fewer students in public schools.

A change in the number of formula students can impact the overall needs of districts in varying amounts, depending upon which districts experience a change in the number of formula students. For example, if all of the estimated 5,000 students transfer from the 11 school districts with highest enrollment, prorated by proportion of enrollment for those 11 districts, some districts receive an increase in TEEOSA equalization aid and some districts receive a decrease in TEEOSA equalization aid, resulting in a net reduction in total TEEOSA aid of \$11.8 million. However, if the estimated 5,000 students transfer from the 46 school districts with enrollment of over 900 students, prorated by proportion of enrollment for those 46 districts, some districts receive an increase in TEEOSA equalization aid and some districts receive a decrease in TEEOSA equalization aid, resulting in a net increase in total TEEOSA aid of \$91,662.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE

LB: 753                      AM: 338                      AGENCY/POLT. SUB: Department of Revenue

REVIEWED BY: Neil Sullivan                      DATE: 3/21/2023                      PHONE: (402) 471-4179

COMMENTS: The Department of Revenue assessment of fiscal impact from LB 753 as amended by AM 338 appears reasonable.

**State Agency Estimate**

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

LB 753 AM 338 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.

Except as otherwise provided under the Act, the credit to an individual, 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; 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; or (c) \$100,000. 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.

LB 753 AM 338 amends the original bill to change the credit for estate or trusts to the following; 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; or (c) \$1,000,000.

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 years 2024, 2025 and 2026 the annual limit for tax

**Major Objects of Expenditure**

Class Code	Classification Title	23-24	24-25	25-26	23-24	24-25	25-26
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
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.....						
	<b>Total.....</b>				<b>\$248,031</b>	<b>\$42,442</b>	<b>\$43,505</b>

credits is \$25 million. For calendar year 2027 and each calendar year thereafter, the annual limit must 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 Nebraska 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	\$	25,000,000
FY 2026-27	\$	25,000,000
FY 2027-28	\$	31,250,000

LB 753 AM 338 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 AM 338 becomes operative for tax years beginning on or after January 1, 2024.

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

**2023**

**LB<sup>(1)</sup> 753 AM 338**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> NE Dept of Education

Prepared by: <sup>(3)</sup> Bryce Wilson/Kevin Lyons Date Prepared: <sup>(4)</sup> 2/17/23 Phone: <sup>(5)</sup> 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	_____	_____	_____	(\$25,000,000)
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
<b>TOTAL FUNDS</b>	<b>=====</b>	<b>=====</b>	<b>=====</b>	<b>(\$25,000,000)</b>

**Explanation of Estimate:**

LB 753 creates a scholarship program for students wanting to attend private schools in the State of Nebraska. Students may qualify based on their families gross income levels compared to the Federal poverty level with priority given to those under the Federal poverty level, has previously received an education scholarship, is a sibling of a student receiving an education scholarship, had their enrollment option application denied, has an individual education plan, is a student experiencing bullying, harassment, hazing, assault, battery, kidnapping, robbery, sexual offense, threat or intimidation, or fighting in school, a foster care student or has a parent actively serving in the armed forces. Scholarships are limited to 75% of the statewide average general fund operating expenditure per formula student.

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>EXPENDITURES</u>	<u>2024-25</u> <u>EXPENDITURES</u>
	<u>23-24</u>	<u>24-25</u>		
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____

Aid.....  
Capital improvements.....  
TOTAL.....

_____	_____
_____	_____
_____	_____
_____	_____