John Wiemer February 19, 2024 402-471-0051

LB 825

Revision: 00 FISCAL NOTE LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)							
	FY 202	4-25	FY 2025-26				
	EXPENDITURES REVENUE		EXPENDITURES	REVENUE			
GENERAL FUNDS	\$260,457						
CASH FUNDS							
FEDERAL FUNDS							
OTHER FUNDS							
TOTAL FUNDS	\$260,457			See Below			

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

LB 825 would establish the Nebraska Farmers of Color Opportunity Act.

Under the bill, a taxpayer who would make a cash contribution to a qualified granting 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 could only claim a credit for the portion of the contribution not claimed as a charitable contribution under the Internal Revenue Code. Any unused credit could be carried forward and applied against tax liability for 5 years immediately following the tax year the credit is first allowed, but could not be carried back. A qualified granting organization under the Act would be one that is a 501(c)(3) organization and would offer one or more grant programs for eligible farmers. Eligible farmers would be individuals who are black residents of Nebraska with a primary source of income of crop or livestock production in the state.

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 2025, 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. The Department of Agriculture and the DOR would publish on their website's information identifying the annual limit when it would be increased. Credits would be prorated among the notifications received on the day the limit is exceeded.

Organizations must submit audited financial information and summary descriptions to DOR by December 1 annually, which must 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 would be operative for all tax years beginning or deemed to begin on or after January 1, 2025.

The DOR estimates an unknown negative impact to General Fund revenues. The DOR notes that the impact is unknown due to a small number of black farmers, 22, in the state, which would benefit from the credit and the fact that there is an unknown dollar limit for the grants to eligible farmers under the bill. Thus, the impact is unknown but could be up to the possible limit for credits.

The DOR also estimates a one-time programming charge of \$260,457 to be paid to the Office of the Chief Information Officer (OCIO) as a result of this bill. There is no basis to disagree with this estimate.

The Department of Agriculture estimates no fiscal impact to it as a result of the bill. There is no basis to disagree with this estimate.

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

LB: 825	AM:	AGENCY/POLT. SUB: Department of Revenue		
REVIEWED BY:	Neil Sullivan	DATE: 2/16/2024	PHONE: (402) 471-4179	

COMMENTS: No basis to disagree with the Department of Revenue assessment of indeterminate revenue impact from LB 825.

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

LB: 825 AM:		AGENCY/POLT. SUB: Depa	AGENCY/POLT. SUB: Department of Agriculture		
REVIEWED BY	: Neil Sullivan	DATE: 2/16/2024	PHONE: (402) 471-4179		
COMMENTS: The Department of Agriculture assessment of no fiscal impact from LB 825 appears reasonable.					

State Agency Estimate							
State Agency Name: Department of	Date Due LFO:						
Approved by: James R. Kamm		Date Prepared:	02/15/2024		Phone: 471-5896		
FY 2024-2025		-2025	FY 2025-2026		FY 2026-2027		
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue	
General Funds	\$260,457	See Below	\$0	See Below	\$0	See Below	
Cash Funds							
Federal Funds							
Other Funds							
Total Funds	\$260,457	See Below	\$0	See Below	\$0	See Below	

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LB 825 creates the Nebraska Farmers of Color Opportunity Act (Act). The Act defines a qualified granting organization (qualified organization) as an organization certified under the Act by the Department of Revenue (DOR) to provide tax-credit-supported grants to eligible farmers. An eligible farmer is an individual who is a black resident of Nebraska whose primary source of income is crop or livestock production in Nebraska.

Nonrefundable Tax Credit:

The Act allows a nonrefundable income tax credit to any individual, partnership, limited liability company (LLC), S corporation, corporate taxpayer, and estate or trust who makes one or more cash contributions to one or more qualified organizations during a tax year. Except as otherwise provided under the Act, the amount of the tax credit will equal to lessor of:

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

Any unused credit may be carried forward and applied against the taxpayer's income tax liability for the next five years after the tax year in which the credit is first allowed. The credit cannot be carried back.

Taxpayers cannot designate all or any part of contribution to a qualified granting organization for the benefit of any eligible farmer specifically identified by the taxpayer. Taxpayers may only claim a credit for the portion of the contribution not claimed as a charitable contribution under the federal tax code.

In addition, taxpayers desiring to claim a tax credit under the Act must notify the qualified organization of their intended contribution and intended tax credit amount before making a contribution.

Upon receiving the notification, the qualified organization must notify DOR of the intended tax credit amount. If DOR determines the intended tax credit would exceed the annual limit, DOR must notify the qualified organization of its determination within 30 days of receiving the notification. The qualified organization must promptly notify the taxpayer of DOR's determination that the intended tax credit amount is not available. If an amount less than the intended tax amount is available, DOR must notify the qualified organization of the available

Major Objects of Expenditure								
Class Code	Classification Title	24-25 <u>FTE</u>	25-26 <u>FTE</u>	26-27 <u>FTE</u>	24-25 <u>Expenditures</u>	25-26 <u>Expenditures</u>	26-27 <u>Expenditures</u>	
Benefits								
Operating Costs		\$260,457						
Travel								
Capital Outlay								
Capital Improvements								
Total					\$260,457			

amount and the qualified organization must notify the taxpayer of the available amount within three business days.

To be allowed a credit under the Act, the taxpayer must make its contribution between 31 and 60 days of notifying the qualified organization of their intended tax credit. If the contribution is not timely received, the qualified organization must notify DOR and DOR must not include that amount when calculating whether the annual limit is exceeded.

DOR must consider notifications of intended tax credit amounts in the order received. The annual limit for tax credits for calendar year 2025 is \$25 million. For calendar year 2026 and after, the annual limit is 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 did not exceed 90% of the annual limit for that calendar year.

The Department of Agriculture and DOR must publish on their website information identifying when the annual limit is increased under the Act. Once credits have reached the designated annual limit for a calendar year, no additional credits shall be allowed for such calendar year. Credits must be prorated among the notifications received on the data the annual limit is exceeded.

Certification of Qualified Granting Organizations:

An eligible organization must apply to become certified with DOR before providing grants under the Act. Eligible organizations are required to allocate revenue as follows:

- (a) if the annual limit on tax credits is less than \$35 million, the organization must allocate at least 90% for grants and no more than 10% can be used or reserved for administrative costs; and
- (b) if the annual limit on tax credits is \$35 million or more, the organization must allocate at least 95% for grants and no more than 5% can be used or reserved for administrative costs.

Revenue is allocated when it is expended or otherwise irrevocably encumbered for expenditure. The percentage must be measured as a monthly average over the most recent 24-month period, or for an organization certified for less than 24 months, over the period of time the organization has been certified.

No later than December 1 each year, each organization must annually submit to DOR an audited financial information report that is certified by an independent public accountant. DOR must electronically forward the reports and summary descriptions to the Governor and Legislature no later than December 31 each year.

Fiscal Impact:

It is estimated that the Act will have an unknown negative impact to general fund revenues, up to \$25 million. DOR is unable to estimate the fiscal impact because we cannot estimate the uptake rate for this credit given a very small number of black farmers in the Nebraska. Based on the 2017 USDA data, there are only 22 black farmers in the Nebraska. In addition, the Act does not have specific dollars amount (XX dollars) limit on the grants for an eligible farmer.

LB 825 will require a one-time programming charge of \$260,457 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 tracking system.

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LB ⁽¹⁾ 825				FISCAL NOTE		
State Agency OR Pol	litical Subdivision Name: (2)	Nebraska Department of Agriculture				
Prepared by: ⁽³⁾ Ashley Dempsey		Date Prepared: ⁽⁴⁾ 1/4/2023		one: ⁽⁵⁾ 402-429-2487		
	ESTIMATE PROVI	DED BY STATE AGEN	CY OR POLITICAL SU	BDIVISION		
	<u>FY 9</u>	2024-25	F	<u>Y 2025-26</u>		
	EXPENDITURES	<u>REVENUE</u>	EXPENDITURES	<u>REVENUE</u>		
GENERAL FUNDS	S					
CASH FUNDS						
FEDERAL FUNDS						
OTHER FUNDS						
TOTAL FUNDS						
Explanation of Est	imate:					
No fiscal impact.						

<u>BREAKD</u>	<u>OWN BY MAJ</u>	<u>IOR OBJECTS O</u>	<u>F EXPENDITURE</u>		
Personal Services:					
	NUMBER OF POSITIONS		2024-25	2025-26	
POSITION TITLE	24-25	<u>25-26</u>	EXPENDITURES	EXPENDITURES	
	·				
Benefits	•				
Operating					
Travel					
Capital outlay					
Aid					
Capital improvements					
TOTAL					

2024