

**ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021**  
**COMMITTEE STATEMENT**  
**LB364**

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**Hearing Date:** Thursday January 28, 2021  
**Committee On:** Revenue  
**Introducer:** Linehan  
**One Liner:** Adopt the Opportunity Scholarships Act and provide tax credits

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

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**Vote Results:**

<b>Aye:</b>	5	Senators Albrecht, Briese, Flood, Lindstrom, Linehan
<b>Nay:</b>	2	Senators Bostar, Pahls
<b>Absent:</b>		
<b>Present Not Voting:</b>	1	Senator Friesen

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**Oral Testimony:**

**Proponents:**

Senator Lou Ann Linehan  
Clarice Jackson  
Suraya Wayne  
Jacob Idra  
Jayleesha Cooper  
Antonio Chavez  
Jessica Pearson  
Doug Kagan  
Dennis Schleis  
Angel Hill  
Rachel Terry  
Rick Bettger  
Father David Korth  
Richard Herink  
Britt Thedinger  
Kim Schroll  
Maria Benes  
Rachelle Engen  
Jeremy Ekeler

**Representing:**

Introducer  
Self  
Self  
Self  
Self  
Self  
Self  
Nebraska Taxpayers For Freedom  
Self  
Nebraska Federation for Children  
Self  
CUES  
CUES Schools System  
Self  
Self  
Self  
Self  
Institute for Justice  
Nebraska Catholic Conference

**Opponents:**

Renee Fry  
Jack Moles  
Shavonna Holman  
Sandy Wolfe  
Zach Black

**Representing:**

OpenSky Policy Institute  
NRCSA, NCSA, STANCE  
Omaha Public Schools  
Norfolk Public Schools  
Self

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Dave Welsch	Milford Public Schools, Self
Megan Stock	Self
Joey Adler	Holland Children's Movement
Connie Duncan	Lincoln Public Schools
Jared Wagenknecht	Self
Jess Parker	Self
Ann Hunter-Pirtle	Stand for Schools

**Neutral:**

**Representing:**

**Submitted Written Testimony:**

**Proponents:**

Karen Bowlins  
 Robert Ziegler  
 Adam Weinberg

**Representing:**

Nebraska Family Alliance  
 Nebraska District Lutheran Schools  
 Platte Institute

**Opponents:**

Barbara Hoppe  
 Cindy Ryman Yost  
 Rob McEntarffer  
 Anica Brown  
 Mike Pate  
 Jenni Benson  
 John Skretta

**Representing:**

Self  
 Self  
 Self  
 Self  
 Millard Public Schools  
 NSEA  
 STANCE

**Neutral:**

**Representing:**

**Summary of purpose and/or changes:**

LB364 would create the Opportunity Scholarships Act ("the Act").

It would allow a scholarship-granting organization to provide education scholarships to eligible students. The scholarships would be a grant-in-aid to be used to pay all or part of the tuition and fees for attending a qualified school and would include any tuition grants. Tuition is limited to the full cost of educating an eligible student at a qualified school.

Section 3 defines an eligible student as a resident of Nebraska who:

- Is a dependent member of a household that for the most recently completed calendar year has a gross income which 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, 2021; and
- Is receiving a scholarship for the first-time and is either entering kindergarten or 9th grade in a qualified school; or
- Transferring from a public school where they were enrolled for at least one semester immediately preceding the first semester for which they are receiving the scholarship; and
- Is entering any grade from kindergarten through grade 12;
- Has previously received a scholarship and is continuing education at a qualified school until they graduate from high school or reach 21 years of age, whichever comes first; or
- Is the sibling of a student who is receiving a scholarship and resides in the same household.

Section 3 defines a qualified school as:

- Any nongovernmental, privately operated elementary or secondary school located in this state that:
  - Is not operated for profit;
  - Complies with the antidiscrimination provisions of 42 U.S.C. 1981;
  - Complies with all health and life safety laws or codes that apply to privately operated schools; and
  - Fulfills the applicable accreditation or approval requirements established under Neb.Rev.Stat.Sect.79-318.

Section 4 of the Act requires an applicant to be certified as a scholarship-granting organization prior to providing any scholarships. The applicant must provide the Department of Revenue with sufficient information to show:

- That it is exempt under IRC Sect. 501(c)(3);
- That it will provide one or more scholarships to eligible students;
- That it will be able to comply with requirements of Section 10 of the Act;
- That it will not limit scholarships to only one qualified school;
- That it will give first priority to eligible students who received a scholarship during the previous school year and then to 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;
- That it will limit scholarship amounts to the cost of tuition and fees at the qualified school; and
- That it will limit scholarship amounts to no more than 75% of the statewide average general fund operating expenditures per formula student for the most recently available complete data year per Neb.Rev.Stat.Sect.79-1003.

The Department shall then certify the applicant as a scholarship-granting organization. Such certification may be revoked if the organization fails to fulfill the requirements of Section 10 of the Act.

To remain qualified as a scholarship-granting organization, Section 10 requires that:

- If the annual limit on tax credits under Section 9 is less than \$20 million then
  - 90% of an organizations revenues be allocated for scholarships and no more than 10% may be used for administrative costs. The 90% is measured as the monthly average over the most recent 24 month period.
- If the annual limit on tax credits is \$20 million or more then
  - 95% of an organizations revenues be allocated for scholarships and no more than 5% may be used for administrative costs.

Sections 5 - 9 describe the provisions of the credit. A tax credit is allowed for any individual, corporation, trust or estate that makes a contribution to a qualified scholarship-granting organization. The credit is limited to the lesser of the amount of contributions made during the tax year or 50% of the taxpayer's income tax liability. The credit is also limited to the portion of the contribution that was not claimed as a charitable contribution on the taxpayer's federal income tax return. Taxpayers who are married but filing separately are limited to one-half of the credit.

The credit is nonrefundable but may be carried forward for the five years immediately following the first year it is allowed. The credit may not be carried back. Taxpayers are not allowed to designate all or any part of the contribution for the benefit of a specifically identified student.

Prior to making a contribution, the taxpayer must notify the scholarship-granting organization of the intent to make a contribution and the amount intended to be claimed as a credit. The scholarship-granting organization must then notify the Department of the intended credit amount. If the amount exceeds the annual limit, the Department must notify the scholarship-granting organization within 30 days and the scholarship-granting organization must notify the taxpayer that the amount of the intended credit is not available. If a lesser amount is available, the same notification process is required except that the scholarship-granting organization must notify the taxpayer of the available amount within three business

days.

To be eligible for the credit, the taxpayer must make the contribution between 31 and 60 days after notifying the scholarship-granting organization of the intent to make the contribution.

The credit allowed under the Act is limited to \$10 million for calendar year 2022. For calendar year 2023 and forward, the credit shall be calculated by taking the annual limit from the prior calendar year and multiplying by:

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

Credits shall be considered by the Department in the order in which they are received. Once credits have reached the annual limit, no additional credits may be allowed for the calendar year. Credits are to be prorated among the notifications received on the day the annual limit is exceeded.

Each scholarship-granting organization shall submit annual audited financial reports to the Department no later than December 1 of each year. The Department is required to file a report with the Governor and the Legislature no later than December 31 of each year.

The bill contains a Severability Clause.

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**Explanation of amendments:**

The Committee voted to adopt AM497 to LB364. The amendment removes the annual increase in the amount of the credit and instead limits the total amount of the credit to \$5 million in any calendar year. The amendment removes additional language related to the annual increase in the amount of the credit.

Portions/provisions of LB531 were amended into LB364.

The Committee voted to amend LB531 as amended into LB364.

5 Yes - Linehan, Lindstrom, Albrecht, Briese, Flood

2 No - Bostar, Pahls

1 PNV - Friesen

LB531 was heard on February 4, 2021, at 9:30 AM in Room 1524

In-Person Testimony

Proponents:

- Senator Tom Briese, Introducer
- Elizabeth Everett, First Five Nebraska
- Dan Mauk, Nebraska City Economic Development, Nebraska Economic Developers Association
- Lisa Schoenberger, Self
- Diane Temme Stinton, TMCO, Nebraska Chamber, Lincoln Chamber of Commerce
- Chad Mares, Greater Omaha Chamber
- Jeremy Ekeler, Nebraska Catholic Conference

Opponents: -NONE-

Neutral: -NONE-

Written Submitted Testimony

-NONE-

## Summary for LB531:

The bill creates the Nebraska Child Care Contribution Tax Credit Act.

Any taxpayer who makes a qualifying contribution may apply for a nonrefundable income tax credit equal to either 50% or 75% of the contribution made during the taxable year. It could not exceed \$100,000 for a taxpayer for any single taxable year. The credit would be available for taxable years beginning or deemed to begin on or after January 1, 2022 and before January 1, 2027.

The contribution must be made to an eligible child care and early childhood education program. The 75% credit is available if:

- The eligible program that receives the contribution has a physical presence in an opportunity zone in this state as designated by Public Law 115-97; or
- The program has at least one child enrolled in the child care subsidy program under Neb.Rev.Stat.Sect.68-1202.

The credit is limited to 50% of the contribution if the above requirements are not applicable. The credit may be carried forward until fully utilized. The program is capped at \$15 million for each taxable year.

An eligible child care and early childhood education program means a program that:

1. Is enrolled to participate in the quality rating and improvement system developed under the Step Up to Quality Child Care Act;
2. Is licensed as a family child care home I, family child care home II, child care center, preschool, or school-age-only center; and
3. Operates as a for-profit child care business or is a nonprofit organization under the Internal Revenue Code of 1986.

A qualifying contribution may be used for, but is not limited to:

- The establishment or operation of an eligible child care and early childhood education program;
- The establishment of a registered grant or loan program for parents requiring financial assistance for an eligible child care and early childhood education program;
- An early childhood collaborative or another intermediary for the training, technical assistance, or mentorship of child care and education providers;
- The establishment or ongoing costs of an information dissemination program that assists parents with information and referral services for child care;
- A for-profit child care business, including family home providers. The for-profit child care business must use the proceeds of a qualifying contribution for the (i) acquisition or improvement of the child care facilities, (ii) equipment, (iii) services, or (iv) employee retention; and
- An intermediary for the establishment or operation of an eligible child care and early childhood education program or a program for parents requiring financial assistance for an eligible child care and early childhood education program.

The committee voted to adopt AM611 to LB531. The amendment clarifies that only the specified contributions constitute a qualifying contribution and that no other type of property or any services are qualifying contributions.

The amendment still allows a credit of either 50% or 75% of the qualifying contribution but reduces the overall limitation any credit from \$100,000 to \$25,000 or 50% of the taxpayer's income tax liability, whichever is less.

The amendment clarifies that credits may be carried forward for five taxable years but may not be carried back.

The amendment limits the use of qualifying contributions to a for-profit child care business to only the acquisition or improvement of the child care facilities or equipment.

The amendment reduces the total cap on credits from \$15 million to \$5 million.

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Lou Ann Linehan, Chairperson