

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

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates)				
	<b>FY 2021-22</b>		<b>FY 2022-23</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	\$283,100	\$0	\$87,000	(\$10,000,000)
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
<b>TOTAL FUNDS</b>	<b>\$283,100</b>	<b>\$0</b>	<b>\$87,000</b>	<b>(\$10,000,000)</b>

**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 non-refundable 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 I.R.C. section 501(c)(3). An organization meets certification requirements if it: offers education scholarship programs 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 first priority to eligible students who received a scholarship during the previous year and then to new applicants who meet certain requirements; 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 students for 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, 2021;
- Receives an education scholarship for the first time and is (a) entering kindergarten or ninth grade in a qualified school or (b) transferring from public school at which the student was enrolled for at least one semester immediately preceding the first semester for which the student receiving 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 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 non-refundable tax credit equal to the lesser of: (1) the total amount of the contribution; or (2) 50% of the income tax liability of the taxpayer. A taxpayer can only claim a credit for the portion of the contribution not claimed as a charitable contribution under the I.R.C. 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.

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 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.

DOR must consider notifications in the order they are received to ascertain whether the credits are within the annual limit under the act. The annual limit on total tax credits is \$10 million in calendar year 2022, and shall 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. For example, if more than \$9 million was granted in calendar year 2022, the credit limit would increase to \$12.5 million for the following year. Credits must 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. DOR can adopt and promulgate rules and regulations. LB 364 Page 11 provides the act must not be construed as granting any expanded or additional authority to the state to control or influence the governance or policies of any qualified school due to the fact that the school admits students who receive scholarships.

The bill contains the severability clause and is operative for all tax years beginning or deemed to begin on or after January 1, 2022.

**Revenue:**

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

- FY 21-22: \$ 0
- FY 22-23: (\$10,000,000)
- FY 23-24: (\$12,500,000)
- FY 24-25: (\$15,625,000)

The Legislative Fiscal Office agrees that it seems reasonable to estimate the annual limit will be reached each year based on the data available.

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 364 could be transfer students from public schools to private schools. However, in order for there to be TEEOSA savings related LB 364, 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:**

DOR estimates the following administrative costs:

- A one-time charge of \$183,200 to OCIO for mainframe and web development costs and for a contract programmer to develop a tracking system; and
- Expenditures for 0.5 FTE Fiscal Compliance Analyst, 0.5 FTE Revenue Operations Analyst II, and 0.5 FTE Revenue Tax Specialist, for a total cost of \$99,900 in FY 21-22 and \$87,000 in FY 22-23.

There is no basis to disagree with these estimates

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 364	AM:	AGENCY/POLT. SUB: Department of Education	
REVIEWED BY:	Lee Will	DATE: 01/25/2021	PHONE: (402) 471-4175
COMMENTS: Concur with the Department of Education's assessment of fiscal impact.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 364	AM:	AGENCY/POLT. SUB: Department of Revenue	
REVIEWED BY:	Lee Will	DATE: 01/25/2021	PHONE: (402) 471-4175
COMMENTS: Concur with the Department of Revenue's assessment of revenue loss related to income tax credits for Opportunity Scholarships. No basis to disagree with the operational costs necessary to administer the bill.			

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2021

LB<sup>(1)</sup> 364

FISCAL NOTE

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

Prepared by: (3) Bryce Wilson Date Prepared: (4) 1/15/21 Phone: (5) 402-471-4320

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2021-22		FY 2022-23	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB 364 creates a scholarship program for students wanting to attend private schools in the State of Nebraska. Students may qualify if; their families has 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 ten million dollars for 2022/23. 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.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2021-22 EXPENDITURES	2022-23 EXPENDITURES
	21-22	22-23		
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

**State Agency Estimate**

State Agency Name: Department of Revenue		Date Due LFO:				
Approved by: Tony Fulton		Phone: 471-5896				
Date Prepared: 1/25/2021						
FY 2021-2022		FY 2022-2023		FY 2023-2024		
Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue	
General Funds	\$283,100	\$0	\$87,000	(\$10,000,000)	\$88,800	(\$12,500,000)
Cash Funds						
Federal Funds						
Other Funds						
<b>Total Funds</b>	<b>\$283,100</b>	<b>\$0</b>	<b>\$87,000</b>	<b>(\$10,000,000)</b>	<b>\$88,800</b>	<b>(\$12,500,000)</b>

LB 364 adopts the Opportunity Scholarships Act (Act), which 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 as 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 (Department), and 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, 2021; (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 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, 2021; 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

**Major Objects of Expenditure**

Class Code	Classification Title	21-22	22-23	23-24	21-22	22-23	23-24
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
A29621	Revenue Tax Specialist	0.5	0.5	0.5	\$27,000	\$27,700	\$28,300
R29112	Revenue Operations Clerk II	0.5	0.5	0.5	\$16,200	\$16,600	\$17,000
A21211	Fiscal Compliance Analyst	0.5	0.5	0.5	\$20,600	\$21,100	\$21,500
	Benefits.....				\$21,100	\$21,600	\$22,000
	Operating Costs.....				\$183,200		
	Travel.....						
	Capital Outlay.....				\$15,000		
	Capital Improvements.....						
	<b>Total.....</b>				<b>\$283,100</b>	<b>\$87,000</b>	<b>\$88,800</b>

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 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. Married filing separate taxpayers that could have filed a joint return may each claim one-half of the credit.

Any individual taxpayer; 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 may be eligible for the nonrefundable income tax credit for the portion of the contribution not claimed as a charitable contribution under the IRC. 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.

Before making a contribution, taxpayers must notify the Organization of the intent to make a contribution and the amount to be claimed as a credit. On receiving this notification, the Organization must notify the Department of the intended tax credit amount. If the Department determines the credit sought exceeds the annual limit, then the Department must notify the Organization within 31 days of receiving the notification and the Organization must promptly notify the taxpayer of this determination. If an amount less than the credit sought in the notification is available, the Department must notify the Organization who must then notify the taxpayer within three business days.

To be allowed a credit, taxpayers must make the contribution between 31 and 60 days of notifying the Organization of the intended tax credit. If the contribution is not received within this time period, the Organization must notify the Department and it will not include this credit amount in calculating the annual limit for the calendar year under the Act. If the Organization timely receives the contribution, then it must provide the taxpayer with a receipt.

The Department must consider notifications of intended credits in the order received when determining whether the intended tax credit amounts exceed the annual limit. For calendar year 2022, the annual limit for tax credits is \$10 million. For calendar year 2023 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 the Department 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 \$20 million, at least 90% of its revenue must be allocated for education scholarships and no more than 10% shall be used or reserved for administrative costs; or

(b) If the annual limit on credits is \$20 million or more, at least 95% of its revenue must be allocated for education scholarships and no more than 5% may be used or reserved for administrative costs.

Revenue is allocated when it is expended or otherwise irrevocably encumbered for expenditure. The percentage of funds allocated for education scholarships 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 that the organization has been certified.

Each Organization must annually submit to the Department no later than December 1 of each year an audited financial information report for its most recent fiscal year certified by an independent public accountant. The organization must include with the report a summary of (a) its policies and procedures for awarding education scholarships, (b) the number of eligible students receiving education scholarships in the most recent fiscal year, (c) the total amount of contributions received for education scholarships in the most recent fiscal year, and (d) the total amount of education scholarships awarded in the most recent fiscal year. The Department must electronically forward the reports and summaries to the Governor and Legislature no later than December 31 of each year.

The Department may adopt and promulgate rules and regulations to carry out the Act. LB 364 contains a severability clause.

The Department expects this program to be fully subscribed. The Department estimates the total reduction to the General Fund revenues as follows:

FY 2021-2022	\$	0
FY 2022-2023	\$	10,000,000
FY 2023-2024	\$	12,500,000

LB 364 would require a one-time programming charge of \$183,200 paid to the OCIO for mainframe and web development changes and contract a programmer to develop a tracking system. LB 364 would also require 0.5 FTE Fiscal Compliance Analyst, 0.5 Revenue Operations Analyst II, and 0.5 Revenue Tax Specialist to implement this bill.