

# FISCAL NOTE

## LEGISLATIVE FISCAL ANALYST ESTIMATE

### ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)

	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See Below	(\$25,000,000)	See Below	(\$25,000,000)
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below	(\$25,000,000)	See Below	(\$25,000,000)

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

LB 509 establishes 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 shall 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 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 shall 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 shall 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 2025, 2026, and 2027. The total annual limit on the total amount of tax credits for calendar year 2028 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.

The State Department of Education and the DOR shall publish on their respective website's information identifying the annual limit when it is increased.

Each organization shall annually submit to the DOR no later than December 1 of each year a financial report showing how tax credits were used for the most recently completed school year. The DOR shall electronically forward such reports to the Governor and the Legislature no later than December 31 of each year. By June 30, 2027, and by June 30 of each odd-numbered year thereafter the DOR shall electronically submit a report to the chairperson of the Appropriations Committee of the Legislature, the chairperson of the Education Committee of the Legislature, and the chairperson of the Revenue Committee of the Legislature.

The DOR may 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, 2025.

**Revenue:**

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

- FY26: (\$25,000,000)
- FY27: (\$25,000,000)
- FY28: (\$25,000,000)
- FY29: (\$31,250,000)

There is no basis to disagree with these estimates.

**Expenditures:**

The DOR estimates a one-time charge of \$45,000 to the Office of the Chief Information Officer (OCIO) and 0.5 FTE Revenue Operations Analyst II to implement the bill.

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 509 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 \$6.5 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 \$1.1 million. This is a total impact that includes changes to foundation aid because of fewer students.

## State Agency Estimate

State Agency Name: Department of Revenue				Date Due LFO:				
Approved by: James R. Kamm				Date Prepared: 02/04/2025		Phone: 471-5896		
	<u>FY 2025-2026</u>			<u>FY 2026-2027</u>			<u>FY 2027-2028</u>	
	<u>Expenditures</u>	<u>Revenue</u>		<u>Expenditures</u>	<u>Revenue</u>		<u>Expenditures</u>	<u>Revenue</u>
General Funds	\$75,900	(\$25,000,000)		\$26,700	(\$25,000,000)		\$26,700	(\$25,000,000)
Cash Funds								
Federal Funds								
Other Funds								
Total Funds	\$75,900	(\$25,000,000)		\$26,700	(\$25,000,000)		\$26,700	(\$25,000,000)

LB 509 adopts the Opportunity Scholarships Act (Act). The Act provides nonrefundable tax credits to certain taxpayers against the income tax due 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. Education scholarship means a financial grant-in-aid used to pay all or part of the cost to educate an eligible student attending a qualified school. Eligible students means a Nebraska resident who are: students entering the first grade level offered by the qualified school; students who are members of an active duty or reserve military family transferring to Nebraska and are entering any grade K through 12 in a qualified school; students who received a scholarship under the new Act, the original repealed Act, or under 79-1608 prior to being repealed; students who are currently enrolled in a qualified school and are members of a family whose household income is no more than 213% of the federal poverty level; students who are the sibling of a student who is receiving an education scholarship and resides in the same household as such student; students who transfer from an exempt school.

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 the 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. The Act adds scholarship granting priority requirements: that first priority includes eligible students who received a scholarship under the repealed Act, new Act, or under §79-1608; that second priority includes eligible students whose household income levels do not exceed 185% of federal poverty level or who have a special education plan outlining the eligible student's learning needs and how they will receive specialized instruction and support services; that third priority is given to eligible students whose household income levels exceed 185% but do not exceed 213% of the federal poverty level; that

## Major Objects of Expenditure

Class Code	Classification Title	25-26 FTE	26-27 FTE	27-28 FTE	25-26 Expenditures	26-27 Expenditures	27-28 Expenditures
S29112	Revenue Op Clerk II	0.5	0.5	0.5	\$19,500	\$20,100	\$20,100
Benefits.....					\$6,400	\$6,600	\$6,600
Operating Costs.....					\$45,000		
Travel.....							
Capital Outlay.....					\$5,000		
Capital Improvements.....							
<b>Total.....</b>					<b>\$75,900</b>	<b>\$26,700</b>	<b>\$26,700</b>

fourth priority is given to eligible students whose household income levels exceed 213% the federal poverty level but do not exceed 300% of the income indicated in the income eligibility guidelines for reduced price means under the National School Lunch Program in 7 C.F.R part 210. The Act requires the scholarship-granting organization to allocate at least 90% of its revenue for education scholarships and no more than 10% of its revenue shall be used or reserved for administrative costs.

Except as otherwise provided under the Act, the credit to an individual equals the lowest 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 Internal Revenue Code. Married filing separate taxpayers that could have filed a joint return may each claim one-half of the 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. § 77-2734.04; 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 lowest 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) \$100,000.

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.

Before making a contribution, taxpayers should notify the Organization of the intent to claim and the amount to be claimed as a credit. On receiving this notification, the Organization must notify DOR of the intended tax credit amount. If DOR determines the credit sought exceeds the annual limit, then DOR must notify the Organization within 30 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, DOR 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 after notifying the Organization of the intent to make a contribution. If the contribution is not received within this time period, the Organization must notify DOR 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 receipt must show the name and address of the Organization, the date the Organization was certified by DOR; the name and address and if available, tax identification number of the taxpayer making the contribution, the amount of the contribution, and the date the contribution was received.

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 2025, 2026, and 2027, the annual limit for tax credits is \$25 million. For calendar year 2028 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.

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 DOR 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. DOR must electronically forward the reports and summaries to the Governor and Legislature no later than December 31 of each year.

The Act does not grant any expanded or additional authority to the State of Nebraska to control or influence the governance or policies of any qualified school due to the fact that the qualified school admits or enrolls students who receive education scholarships or as requiring any such qualified school to admit or once admitted, to continue the enrollment of any student receiving an education scholarship.

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

It is estimated that this bill will have the following fiscal impacts on General Fund revenues:

	General Fund revenues
FY 25-26	(\$25,000,000)
FY 26-27	(\$25,000,000)
FY 27-28	(\$25,000,000)
FY 28-29	(\$31,250,000)

LB 509 will require a one-time programming charge of \$45,000 paid to the OCIO to add a new page to eDASH. The Department of Revenue will also need a 0.5 FTE Revenue Operations Analyst II to implement this bill.

The operative date of this bill is January 1, 2025.