LB 50
The Elementary and Secondary Educational Opportunity Act
A Means-Tested Scholarship Program Supported by Tax Credits

FREQUENTLY ASKED QUESTIONS

02/01/11

What is the Elementary and Secondary Educational Opportunity Act, LB 50, and what would it do?

It would establish and make available to individuals and businesses a state income-tax credit for a portion of donations made during the year to any state-certified, non-profit organization dedicated to providing tuition scholarships to help children from low- and moderate-income families to attend private schools.

What is the purpose of this tax credit?

Many Nebraska families want educational options for their children, but they cannot make these choices because they lack the financial means to pay tuition costs. Greater access to privately-funded scholarships would enable families to make educational choices otherwise beyond their means. The tax credit would be a modest investment by the state for the purpose of providing individuals and businesses with an additional incentive to financially support scholarship programs. It would be a tool for scholarship-granting organizations to use in obtaining these donations.

How much of a tax credit could an individual or business claim?

The available income-tax credit would be limited to 65 percent of total contributions made to certified Scholarship Granting Organizations during the tax year. Limiting the tax credit to 65 percent of the value of the actual contribution addresses the fact that such contributions are also typically eligible for deduction on the taxpayer's federal tax return.

How is a tax credit different from a deduction?

A tax deduction is part of determining taxable income; it lowers the amount of gross income against which the federal tax rate is applied. (It also starts the calculation of the Nebraska income tax.) A credit, on the other hand, reduces the amount of tax otherwise owed. Deductions are part of determining tax liability; credits reduce tax liability once determined.

Why does LB 50 propose a tax credit rather than a tax deduction?

A tax deduction for a charitable contribution only provides a relatively small marginal benefit to contributors when compared with a tax credit. Because the scholarship programs authorized by LB 50 are entirely privately funded, the incentives to contribute must be as meaningful and beneficial as reasonably possible or the program will not be able to raise revenue sufficient enough to make a real difference. Private-school enrollment reduces costs for state and local government, so providing strong incentives for scholarship contributions is in the best interests of taxpayers, as well as children who would receive scholarship.

What is a Scholarship-Granting Organization?

An "SGO" would be a special-purpose, nonprofit, charitable organization that would be required to have obtained tax-exempt status pursuant to the conditions of Section 501(c)(3) of the Internal Revenue Code. Each "SGO" would administer a scholarship program or programs by obtaining charitable contributions and awarding scholarships to eligible applicants.

Why not authorize a state agency, such as the Department of Education, to administer the scholarship programs, instead of having privately operated "SGOs" around the state?

These would be privately-funded scholarship programs, which would have to do their own fundraising. Government agencies do not administer private charities.

What would prevent an STO from raising a lot of money—thanks in part to the state tax credit—and then not using much of it to award scholarships? What controls administrative costs?

The policy established under LB 50 would require each SGO to distribute at least 95 percent of its annual revenue as scholarships for eligible students. Each SGO would be a low-overhead operation, but would have some administrative costs, largely due to the fact that they would have to solicit contributions and administer scholarship application and distribution processes. Thus, five percent of revenue could be set aside for paying administrative costs.

Since SGOs would be private programs, what would prevent them from discriminating in awarding scholarships?

Each SGO would be required to have obtained 501(c)(3) tax-exempt status from the Internal Revenue Services. Thus, all federal prohibitions against discrimination by such federally tax-exempt organizations would apply. If an SGO violated any of the rules governing tax-exempt status, it would lose that status and thereupon would no longer qualify to participate in the tax-credit scholarship program.

Who would qualify for a scholarship from an SGO program?

Each Scholarship Granting Organization would set its own overall eligibility standards, subject to requirements set forth in the legislation. The legislation would set a maximum cap on income eligibility; only students whose household income did not exceed three times the standard for free or reduced lunch would be eligible for K-8 scholarship assistance and only students whose household income did not exceed four times the standard for free or reduced lunch would be eligible for 9-12 scholarship assistance. Each SGO could set its own income limits under that cap. In addition, the legislation would limit first-time scholarship eligibility to children entering either kindergarten or ninth grade of a qualifying private school, and to any-grade transfers (K-12) from public schools to qualifying private schools.

What would be the monetary value of a scholarship awarded to an eligible student?

Each SGO would establish its own scholarship amounts based upon its revenue and its particular approach for helping families. The legislation would prohibit the size of any scholarship from exceeding the actual cost of educating the recipient student at the private school in which he or she is enrolled. Experience in other states shows that SGOs really focus on scholarships as a leg-up for families, not often full-ride support. Levels tend to be in the $1,500 to $3,000 range, well below total costs.

Where and how would families use these scholarships?

The general answer is that scholarships awarded through this program could be used to pay tuition costs of enrolling a child in any private school located in the state that is non-profit and subject to the non-discrimination requirements of Section 501(c)(3) of the Internal Revenue Code and is approved or accredited under regulations administered by the Nebraska Department of Education. More specifically, each SGO would determine the qualifying schools for which it would provide scholarships. The legislation would require that each SGO must award scholarships to at least two different schools.

Is this program a voucher? If not, how is it different?

LB 50 does not propose a voucher. LB 50 proposes a very different school choice program. Vouchers involve a direct appropriation or transfer of government funds to pay the costs of private education. The tax-credit-supported scholarship program would be funded by private donations, not public funds. The tax credit would be an important incentive for making such donations, but no public funds would be paid or provided to any student or parent/guardian or school. In addition, students would have to meet eligibility criteria and would have to apply for scholarship support, which they would not be assured of receiving depending on several factors.

What would be the fiscal impact of LB 50 on the State of Nebraska?

State government would forego the tax revenues claimed by the eligible credits, up to the ceiling established by the legislation, e.g., $10 million in the first year. Nevertheless, the lost revenue would be offset by the cost-savings of not having to pay the per-pupil state aid for children who use scholarships funded by tax-credit supported contributions to attend private schools. This program could result in a significant net cost savings annually, as evidenced by results from Florida, Pennsylvania and other states. Moreover, a recent fiscal study by the Foundation for Educational Choice calculated that LB 67, the predecessor tax-credit scholarship bill introduced in 2009, could have saved Nebraska millions of dollars in education expenditures over a 10-year period.

Won't this scholarship program take funding away from public schools?

Nothing in LB 50 would require the state to reduce funding to a particular public school district or on a statewide basis. To the extent that state aid is distributed on a per-pupil, cost-of-education support model, school districts would have some reduction in funding for children who enroll at a private school, but that would be the case with or without the LB 50 scholarship program. What's more, the loss of some state aid notwithstanding, local school districts would have an enhanced potential to do more per enrolled student with local resources. This program can be a win-win for all Nebraska students.

Doesn't this represent public support for religious institutions?

No. LB 50 proposes a student-based scholarship program that would be funded through voluntary, private, charitable contributions. The state tax credit would operate as an incentive for voluntary, private participation in a worthy public good, i.e., educational choice and opportunity. This is like allowing tax deductions for charitable contributions to churches and other private charities, which help meet the needs of the common good. Courts have considered the issues and have consistently upheld the legal basis for such programs.

Would this program impose more regulations or limit the autonomy of private schools?

No. For one thing, no private school would be required to participate in the program or accept scholarships. For schools that do participate, there might be some reporting requirements to the SGO—not to the state—and these requirements are not expected to be significant. In addition, a provision of LB 50 explicitly prohibits the Act from being construed as granting any expanded or additional authority to the State to control or influence the governance or policies of any participating private school.

Do these types of tax-credit scholarship programs exist in other states?

Yes. Seven states have similar tax-credit scholarship programs, which vary by the amount of credits, program caps, and eligibility criteria. For instance, Iowa's program raises $7.5 million per year and provides scholarships to more than 8,700 students. Iowa authorizes the 65 percent state tax credit similar to what is proposed by LB 50. Programs also exist in Arizona, Rhode Island, Florida, Pennsylvania, Georgia and Indiana. Oklahoma most recently passed an SGO program, which is still in the implementation stages.