

# Initiative # 169



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

## INITIAL FISCAL IMPACT STATEMENT

**Date:** January 14, 2020

**Fiscal Analyst:** Anna Gerstle (303-866-4375)

**LCS TITLE:** STATE OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM

| Fiscal Impact Summary |              | FY 2020-21                  | FY 2021-22                   | FY 2029-30               |
|-----------------------|--------------|-----------------------------|------------------------------|--------------------------|
| <b>Revenue</b>        | General Fund | \$73.3 million              | \$101.7 million              | (\$121.7 million)        |
|                       | <b>Total</b> | <b>\$73.3 million</b>       | <b>\$101.7 million</b>       | <b>(\$121.7 million)</b> |
| <b>Expenditures</b>   | General Fund | up to \$73.3 million        | up to \$101.7 million        | not estimated            |
|                       | <b>Total</b> | <b>up to \$73.3 million</b> | <b>up to \$101.7 million</b> | <b>not estimated</b>     |

**Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.

### Summary of Measure

The measure creates the Colorado Out-of-School Learning Opportunities Agency (state agency) and the Colorado Out-of-School Learning Opportunities Program (program) in the Colorado Department of Education (CDE). The program establishes individual learning accounts, maintained by a third party administrator, that provide funding for parents and legal guardians to pay for out-of-school learning opportunities for their eligible children. The program is repealed January 1, 2036, unless continued by the General Assembly. The sections below discuss key concepts for understanding the measure.

**Out-of-school learning opportunities.** The measure defines out-of-school learning opportunities as any program, service, system, activity, or other pursuit or purchase that provides supplemental educational or developmental support to eligible students outside of normal school operations. It does not include in-school instruction or materials provided as part of a normal course of study in a public or private school.

**State agency.** The state agency is created as an independent entity within CDE to establish the program and arrange for its administration. The agency must be governed by a seven member board of directors. The measure specifies requirements for the board's selection, composition, and terms of service. Board members serve without compensation, but may be reimbursed for expenses.

No later than August 1, 2021, the agency must establish a process to select a nonprofit organization to administer the program, or create a new nonprofit corporation if no existing Colorado nonprofit entity satisfies the selection criteria. The agency is also required to create and develop criteria for use by the administering nonprofit related to:

- allowable uses of the funds distributed by the administering nonprofit;
- a waiver process for learning activities that fall outside of allowable uses;

- evaluation and certification of providers of out-of-school learning opportunities;
- ensuring student safety;
- establishing and managing parent-directed individual learning accounts;
- establishing and managing a competitive grant program for low-cost nonprofit providers to expand their offerings that does not exceed 15 percent of total funds available for distribution;
- creating multiple-year awards for low-income students or students with unique learning needs; and
- protocols for unused funds.

**Administering nonprofit.** Subject to criteria determined by the state agency, the administering nonprofit must develop and manage the program, including individual learning accounts. The administering nonprofit must be governed by a volunteer board of directors. Those board members may be reimbursed for expenses. Contributions received prior to January 1, 2022, may be retained for administrative and start-up purposes. After January 1, 2022, contributions are available for eligible students. The nonprofit may retain up to 10 percent of annual contributions for administrative expenses. This rate may be adjusted by the legislature if necessary.

**Individual learning accounts.** The administering nonprofit must provide funding for parent-directed individual learning accounts on a sliding scale, with the amount of funding being inversely related to the family income and financial means of the eligible student. Subject to rules adopted by the agency, the administering nonprofit will have control over when and how the funding is distributed to approved providers.

**Net operating loss.** Beginning January 1, 2021 and prior to January 1, 2036, the measure prohibits corporations from taking a net operating loss (NOL) deduction on their state income taxes. Under the measure, corporations may still carry forward net operating losses from prior tax years. The additional tax revenue attributable to prohibiting deductions for net operating losses must be deposited in the General Fund and is exempt from TABOR spending limits.

A business may claim an NOL when it generates a loss for tax purposes because deductions exceed taxable income. Generally, the NOL may offset income in tax periods other than the one in which it occurs, through carry-forwards. Under current law, the Colorado NOL deduction "piggy-backs" off the federal tax code and taxpayers are allowed to use a net operating loss from prior years to offset 80 percent of taxable income.

**Tax credit.** The measure creates a state income tax credit equal to monetary donations to the administering nonprofit, for tax years 2021 through 2035. The tax credit is nonrefundable and may be carried forward for up to three years. The tax credit is allowed for 100 percent of the contributions, up to a fiscal year cap. The Department of Revenue must track credits claimed against the cap and to disallow credits claimed after the cap has been reached.

The amount of the cap is initially set at \$50.0 million per fiscal year. If the amount of credits claimed equals or exceeds 90 percent of the cap, the cap is increased by \$50.0 million in the next fiscal year, up to a maximum of \$300.0 million. Donations to the administering nonprofit for which a credit is claimed cannot be directed or restricted for the benefit or exclusion of any individual or class of recipients or providers.

**State Revenue**

The measure increases state General Fund revenue by \$73.3 million in FY 2020-21 (half-year impact), a net \$101.7 million in FY 2021-22, and a net \$60.2 million in FY 2022-23. Beginning in FY 2024-25, the decrease in state revenue from the tax credit will exceed the increase in revenue from eliminating the NOL deduction, resulting in a net decrease in General Fund revenue. Table 2 shows the estimated change to General Fund revenue from the tax credit and changes to the NOL deduction. The changes are discussed below.

**Table 2  
Estimated Net Revenue Change Under Initiative 169**

| <b>Fiscal Year</b> | <b>Revenue Change from Tax Credit</b> | <b>Change in Corporate Tax Revenue</b> | <b>Net Change</b> |
|--------------------|---------------------------------------|--|-------------------|
| FY 2020-21*        | -                                     | \$73.3 million                         | \$73.3 million    |
| FY 2021-22         | (\$50.0 million)                      | \$151.7 million                        | \$101.7 million   |
| FY 2022-23         | (\$100.0 million)                     | \$160.2 million                        | \$60.2 million    |
| FY 2023-24         | (\$150.0 million)                     | \$166.1 million                        | \$16.1 million    |
| FY 2024-25         | (\$200.0 million)                     | \$170.3 million                        | (\$29.7 million)  |
| FY 2025-26         | (\$250.0 million)                     | \$173.2 million                        | (\$76.8 million)  |
| FY 2026-27         | (\$300.0 million)                     | \$175.2 million                        | (\$124.8 million) |
| FY 2027-28         | (\$300.0 million)                     | \$176.6 million                        | (\$123.4 million) |
| FY 2028-29         | (\$300.0 million)                     | \$177.6 million                        | (\$122.4 million) |
| FY 2029-30         | (\$300.0 million)                     | \$178.3 million                        | (\$121.7 million) |

\* FY 2020-21 represents a six-month impact assuming the NOL cap applies starting in tax year 2021.

**Tax credit.** The income tax credit is expected to reduce General Fund revenue by up to \$50.0 million in FY 2021-22, and \$100.0 million in FY 2022-23. This analysis assumes that the tax credit will not be utilized in FY 2020-21, as the administering nonprofit will not be established or able to accept donations until FY 2021-22. Income tax revenue is subject to TABOR. Assuming the amount of credits claimed equals or exceeds 90 percent of the cap, the revenue impact will increase by \$50.0 million annually until the fiscal year credit cap is \$300.0 million in FY 2026-27.

**Eliminating the NOL.** The measure eliminates the NOL generated during tax years 2021 through 2036, while allowing the NOL deduction from prior years to be used to offset income in that period. Based on available data from the Colorado Department of Revenue, taxpayers reported an average NOL deduction of \$6.282 billion annually between 2014 and 2018, and were only able to use \$3.887 billion to offset taxable income on average for the same period. Based on this five-year period, it is assumed that taxpayers will enter 2021 with \$2.395 billion in unused NOL deductions that can be carried forward into 2021 and future tax years.

State and federal data are unavailable measuring how long it takes for taxpayers to use NOL deductions generated in prior years. This fiscal impact statement assumes that taxpayers use 30.0 percent of the remaining NOL deduction each year. The actual NOL deductions taxpayers claim will depend on the size of the NOL available from prior years, individual business decisions by taxpayers, and the overall business cycle.

The revenue impact is calculated using the average NOL allowed for the five tax years between 2014 and 2018, the assumed amount used in each tax year, and Colorado's 4.63 percent tax rate. Based on these assumptions, the measure will increase corporate income tax revenue by \$73.3 million in FY 2020-21, \$151.7 million in FY 2021-22, and increasing amounts in future fiscal years as taxpayers exhaust their pre-2021 NOL carry-forward deductions.

**State Expenditures**

The measure increases state expenditures by up to \$73.3 million in FY 2020-21 and up to \$101.7 million in FY 2021-22. Costs continue through FY 2036-37. Expenditures are from the General Fund. Table 3 lists required expenditures for the administration of the program. This analysis does not include the expenditure of any contributions or donations to the program.

**Table 3  
Expenditures Under Initiative 169**

| <b>Cost Components</b>  | <b>FY 2020-21</b>   | <b>FY 2021-22</b>    |
|---|---------------------|----------------------|
| <b>Colorado Department of Education<br/>Out-of-School Learning Opportunities Agency</b> |                     |                      |
| Personal Services   | \$66,059            | \$132,117            |
| Operating, Capital, Employee Insurance, and Indirect Costs                              | \$31,591            | \$36,730             |
| Agency Board Travel & Reimbursement   | \$11,200            | \$3,200              |
| Nonprofit Board Travel & Reimbursement  | -                   | \$4,000              |
| Available for Grants, Administration, Learning Accounts*                                | up to \$72,946,606  | up to \$101,263,590  |
| Legal Services  | \$53,300            | \$31,980             |
| FTE – Personal Services   | 0.8 FTE             | 1.5 FTE              |
| FTE – Legal Services  | 0.3 FTE             | 0.2 FTE              |
| <b>CDE Subtotal</b>   | <b>\$73,108,756</b> | <b>\$101,471,617</b> |
| <b>Department of Revenue</b>  |                     |                      |
| Personal Services   | \$92,852            | \$154,592            |
| Operating, Capital, Employee Insurance, and Indirect Costs                              | \$66,422            | \$47,730             |
| Computer Programming  | \$64,375            | -                    |
| Document Management and Postage   | \$10,042            | \$2,877              |
| FTE – Personal Services   | 1.9 FTE             | 3.1 FTE              |
| <b>DOR Subtotal</b>   | <b>\$233,691</b>    | <b>\$205,199</b>     |
| <b>Total</b>  | <b>\$73,342,447</b> | <b>\$101,676,816</b> |
| <b>Total FTE</b>  | <b>3.0 FTE</b>      | <b>4.8 FTE</b>       |

\* The administering nonprofit may retain up to 10 percent of contributions for administrative costs and no more than 15 percent may be used for the grant program. The fund is continuously appropriated so these funds may be spent in any year.

**Out-of-school learning opportunities agency.** Creating a new agency in CDE increases expenditures to hire the necessary staff and make physical arrangements necessary to launch the new agency, including leased space, office furniture, computers and software, telephones, and other operating expenses. This analysis estimates 1.0 FTE for a state agency director and 0.5 FTE for support staff; with those amount prorated in the first year. Ongoing expenses for board travel and reimbursement are estimated at \$200 per member per meeting.

*Program funding.* Funding for grants, individual learning accounts, and administrative expenses, including contract costs, are assumed to come from the General Fund. This analysis shows funding for the program if all the revenue generated by the measure was allocated to the program; however, the actual amount available for the program will depend on decisions made by the General Assembly. In addition, once the measure results in a net revenue decrease, it is unknown how the General Assembly will allocate money to the program. Costs beyond FY 2023-24 are not estimated. This analysis does not include an estimate of the amount of contributions, gifts, grants, and donations, made to the administering nonprofit.

*Legal services.* Creating a new state agency increases costs for legal services related to contracting or creating the nonprofit, and adopting rules for the program. Legal services are purchased from the Department of Law at an hourly rate of \$106.60. It is expected that 500 hours will be required in the first year and 300 hours in subsequent years; this equates to 0.3 FTE and 0.2 FTE respectively.

**Department of Revenue.** Staff are required in the Taxpayer Service and Tax Audit Compliance Divisions of the Department of Revenue to implement the NOL changes and new credit, including modifying forms and processes, and handling an increase in questions and complaints of varying complexity. In addition, the department requires one-time modifications to state tax administrative software.

### **Economic Impact**

The measure is expected to provide out-of-school learning opportunities to Colorado students. These opportunities may improve students' educational outcomes, thereby enhancing their readiness for the workplace. To the extent that the measure improves educational outcomes, it may increase employment opportunities and wage earnings for beneficiary students. The measure is also expected to increase employment in the selected non-profit and to reduce childcare expenses of participating children.

By eliminating the NOL deduction, the measure increases corporate income taxes, resulting in corporations having less money to spend or save in other areas of the economy. Through FY 2023-24, the net increase in General Fund revenue will increase the money available for the General Assembly to save or spend on government programs such as education, health care, or transportation. In subsequent years when the measure is expected to result in a net decrease in General Fund revenue, the measure will decrease the money available for the General Assembly to save or spend on government programs.

## **Taxpayer Impact**

The measure increases income taxes for corporate taxpayers who claim an NOL deduction. Based on the 45,393 corporate taxpayers that filed a 2018 tax return, the average impact per corporate taxpayer is \$3,341 in FY 2021-22, the first full fiscal year of the measure.

The measure also decreases income taxes for taxpayers who make a contribution to the administering nonprofit and claim the tax credit. This could reduce the income tax liability for one or more taxpayers by up to a total \$50.0 million in FY 2021-22, with larger amounts available in future years.

## **Effective Date**

If approved by voters at the 2019 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

## **State and Local Government Contacts**

Education                      Law                      Revenue

## **Abstract of Initiative 169: STATE OUT-OF-SCHOOL LEARNING OPPORTUNITIES PROGRAM**

*The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at [www.ColoradoBlueBook.com](http://www.ColoradoBlueBook.com) and the abstract will be included in the ballot information booklet that is prepared for the initiative.*

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of January 14, 2020, identifies the following impacts:**

**State revenue.** The measure increases state revenue by \$73.3 million in FY 2020-21 (half year impact) and a net \$101.7 million in FY 2021-22. Beginning in FY 2024-25, the measure results in a net decrease in state revenue, with a net reduction of \$121.7 million by FY 2029-30.

**State expenditures.** The measure increases state expenditures by up to \$73.3 million in FY 2020-21 and up to \$101.7 million in FY 2021-22. Costs continue through FY 2035-36

**Economic impacts.** The measure is expected to provide out-of-school learning opportunities to Colorado students. These opportunities may improve students' educational outcomes, thereby enhancing their readiness for the workplace. To the extent that the measure improves educational outcomes, it may increase employment opportunities and wage earnings for beneficiary students. The measure is also expected to increase employment in the selected non-profit and to reduce childcare expenses of participating children.

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**Taxpayer impact.** The measure increases income taxes for corporate taxpayers who claim an NOL deduction. Based on the 45,393 corporate taxpayers that filed a 2018 tax return, the average impact per corporate taxpayer is \$3,341 in FY 2021-22, the first full fiscal year of the measure.

The measure also decreases income taxes for taxpayers who make a contribution to the administering nonprofit and claim the tax credit. This could reduce the income tax liability for one or more taxpayers by up to a total \$50.0 million in FY 2021-22, with larger amounts available in future years.