Initiative # 171

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
Revenue	General Fund	$108.9 million	$173.7 million	($76.3 million)
	Total	**$108.9 million**	**$173.7 million**	**($76.3 million)**
Expenditures	General Fund	up to $108.9 million	up to $173.7 million	not estimated
	Total	**up to $108.9 million**	**up to $173.7 million**	**not estimated**

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 The program is repealed January 1, 2036, unless continued by the General Assembly.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, corporations' net operating loss (NOL) deduction on their state income taxes may not exceed $250,000. The additional tax revenue attributable to capping deductions for net operating losses must be deposited in 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 for the taxpayer monetary donations to the administering nonprofit, for tax years 2021 through 2035. The tax credit is nonrefundable and may be carry forwarded 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 increase state General Fund revenue by $108.9 million in FY 2020-21 (half year impact), a net $173.7 million in FY 2021-22. In subsequent years, once the decrease in state revenue from the tax credit exceeds the increase in revenue from eliminating the NOL deduction, there will be 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 171

Fiscal Year	Revenue Change from Tax Credit	Change in Corporate Tax Revenue	Net Change
FY 2020-21	-	$108.9 million	$108.9 million
FY 2021-22	($50.0 million)	$223.7 million	$173.7 million
FY 2022-23	($100.0 million)	$223.7 million	$123.7 million
FY 2023-24	($150.0 million)	$223.7 million	$73.7 million
FY 2024-25	($200.0 million)	$223.7 million	$23.7 million)
FY 2025-26	($250.0 million)	$223.7 million	($26.3 million)
FY 2026-27	($300.0 million)	$223.7 million	($76.3 million)
FY 2027-28	($300.0 million)	$223.7 million	($76.3 million)
FY 2028-29	($300.0 million)	$223.7 million	($76.3 million)
FY 2029-30	($300.0 million)	$223.7 million	($76.3 million)

* *FY 2020-21 represents a 6-month impact assuming the NOL cap applies starting in tax year 2021.*
** *A corporate income tax forecast is unavailable after FY 2021-22. As a result, the last year full-year estimate is used in FY 2022-23 through FY 2026-27.*

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.

Capping NOL deductions at $250,000. Capping the NOL will limit the deduction that taxpayers may claim, generating more corporate tax revenue to Colorado starting in FY 2020-21. The Colorado Department of Revenue provided data for tax year 2018 containing 45,393 corporate taxpayers, 7,265 of which have claimed an NOL deduction on their 2018 return. Capping the NOL deduction claimed at $250,000 would have increased their tax liability by 27.3 percent.

In December, Legislative Council Staff estimated that corporate income tax revenue would total $797.9 million in FY 2020-21 and $819.4 million in FY 2021-22. Using the estimated increase in tax liability from 2018, applying a cap of $250,000 to NOLs claimed on tax returns starting in 2021 would increase corporate income tax revenue by an estimated $108.9 million in FY 2020-21 and $223.7 million in FY 2021-22. Estimates for FY 2020-21 represent six months of filing activity for tax year 2021. This analysis assumes that the cap applies to all NOL deductions, including those carried forward.

State Expenditures

The measure increases state expenditures by up to $108.9 million in FY 2021-22, and $173.7 million in FY 2021-22. Expenditures are expected to continue through FY 2036-37 and 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 additional contributions or donations to the program.

Table 3
Expenditures Under Initiative 171

Cost Components	FY 2020-21	FY 2021-22
Colorado Department of Education **Out-of-School Learning Opportunities Agency**		
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, Learning Accounts, Administration*	$108,504,160	$173,286,773
Legal Services	$53,300	$31,980
FTE – Personal Services	0.8 FTE	1.5 FTE
FTE – Legal Services	0.3 FTE	0.2 FTE
CDE Subtotal	**$108,666,310**	**$173,494,800**
Department of Revenue		
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	$10,041	$2,878
FTE – Personal Services	1.9 FTE	3.1 FTE
DOR Subtotal	**$233,690**	**$205,200**
Total	**$108,900,000**	**$173,700,000**
Total FTE	**3.0 FTE**	**4.8 FTE**

* *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 2025-26 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 the state's tax administration 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 corporate income taxes for corporate taxpayers who claim an NOL deduction on their state income tax. Based on the 45,393 corporate taxpayers that filed a 2018 tax return, the impact on the average corporate taxpayer is $2,399 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.

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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 171: 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 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 $108.9 million in FY 2020-21, and by a net $173.7 million in FY 2021-22. Beginning in FY 2025-26, the measure results in a net decrease in state revenue, with a net reduction of $75.3 million by FY 2029-30.

State expenditures. The measure increases state expenditures by up to $108.9 million in FY 2021-22, and $173.7 million in FY 2021-22. Expenditure increases 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.

By eliminating the NOL deduction, the measure increases corporate income taxes, resulting in corporations having less money to spend and save in 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 corporate income taxes for corporate taxpayers who claim an NOL deduction on their state income tax. Based on the 45,393 corporate taxpayers that filed a 2018 tax return, the impact on the average corporate taxpayer is $2,399 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.