



**Legislative
Council Staff**
Nonpartisan Services for Colorado's Legislature

Initiative # 250

INITIAL FISCAL IMPACT STATEMENT

Date: February 18, 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 |
|-----------------------|--|------------|--|
| Revenue | General Fund - Income Tax Credit General Fund - NOL Limit | | (up to \$50.0 million) up to \$50.0 million |
| Expenditures | General Fund* | \$645,840 | \$413,227 |

* A portion of the expenditures will be paid through gifts, grants, and donations received for the program.

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 The program is repealed January 1, 2036, unless continued by the General Assembly.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 an eight 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 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 who 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.

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.

Net operating loss. Beginning January 1, 2021 and prior to January 1, 2036, the measure requires that the Department of Revenue limit the amount of net operating losses (NOL) that corporations may take on their state income taxes so that the additional tax revenue received does not exceed the decrease in revenue from the tax credit.

State Revenue

The measure is assumed to have no net change on state revenue from the General Fund, as it decreases General Fund revenue by up to \$50.0 million from the new income tax credit, and increases it by up to \$50.0 million in FY 2021-22 from limiting the NOL. The measure also increases state revenue from gifts, grants, and donations.

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. In addition, the measure states that the tax credit is available on a fiscal year basis, rather than a tax year basis. This fiscal impact statement assumes that the tax credits certified for FY 2021-22 will be claimed on a 2021 tax returns when they are filed in April of 2022.

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.

Limiting the NOL. The measure requires that the Department of Revenue limit the NOL deductions so as to increase state revenue by an amount not to exceed the revenue decrease from the tax credit. Based on the estimated impact of the tax credit, the fiscal note assumes that limiting the NOL will generate no more than \$50.0 million in FY 2021-22 and no more than \$100.0 million in FY 2022-23. Actual revenue increases will depend on how the NOL limit is administered and actual taxpayer behavior. The limit will be a function of prior year income, prior year business expenses, future business expenses, and future income.

State Expenditures

The measure increases state expenditures by \$645,840 in FY 2020-21 and \$413,227 in FY 2021-22. Costs continue through FY 2036-37. Expenditures are from the contributions made for the Out of School Learning Opportunities Program. Table 2 lists required expenditures for the administration of the program, contingent upon sufficient contributions being received. This analysis does not include the expenditure of any contributions for the individual learning accounts or the grant program.

**Table 2
Expenditures Under Initiative 250**

| 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 Administrator Contract & Board Travel | \$250,000 | \$4,000 |
| 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 | \$412,150 | \$208,027 |

**Table 2
Expenditures Under Initiative 250 (Cont.)**

| Cost Components | FY 2020-21 | FY 2021-22 |
|--|-------------------|-------------------|
| 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 | \$10,042 | \$2,877 |
| FTE – Personal Services | 1.9 FTE | 3.1 FTE |
| DOR Subtotal | \$233,691 | \$205,199 |
| Total | \$645,841 | \$413,226 |
| Total FTE | 3.0 FTE | 4.8 FTE |

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. Administrative expenses are assumed to come from gifts, grants, and donations for the program.

Program funding. Funding for grants, individual learning accounts, and administrative expenses, including contract costs, are also assumed to come from donations made for the program. It is estimated that the cost to contract with an administering nonprofit will be about \$250,000. This analysis does not include an estimate of the amount of contributions, gifts, grants, and donations, spent on the individual learning accounts and grant program.

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. The department also requires one-time modifications to state tax administrative software. The fiscal impact statement assumes that data is available that allows the department to limit the NOL as specified in the measure; to the extent that data is not available, there may be additional costs incurred. Implementing legislation and administrative rules may also result in additional appropriations, which will be requested through future legislation or the annual budget process.

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 limiting 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.

Taxpayer Impacts

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 \$1,101 in FY 2021-22, the first full fiscal year of the measure. The actual impact on taxpayers will depend on how the NOL limit is administered.

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. The credit is equal to 100 percent of the contribution to the nonprofit, allowing taxpayers to offset their state tax liability with a contribution to the nonprofit. In addition, taxpayers that itemize their deductions for federal tax purposes will be allowed to deduct the contribution from federal taxes. For a taxpayer at the highest federal income bracket of 37 percent, a \$1.00 contribution will reduce their combined state and federal tax liability by \$1.37.

Effective Date

If approved by voters at the 2020 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 Revenue

Abstract of Initiative 250: 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 February 17, 2020, identifies the following impacts:

State revenue. The measure is assumed to have no net change on state revenue from the General Fund, as it decreases General Fund revenue by up to \$50.0 million from the new income tax credit, and increases it by up to \$50.0 million in FY 2021-22 from limiting the NOL. The measure also increases state revenue from gifts, grants, and donations.

State expenditures. The measure increases state expenditures by \$645,840 in FY 2020-21 and \$413,227 in FY 2021-22. Costs continue through FY 2036-37. A portion of expenditures are from the General Fund and a portion are from the contributions made for the Out of School Learning Opportunities Program.

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 limiting 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.

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 \$1,101 in FY 2021-22, the first full fiscal year of the measure. The actual impact on taxpayers will depend on how the NOL limit is administered.

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. The credit is equal to 100 percent of the contribution to the nonprofit, allowing taxpayers to offset their state tax liability with a contribution to the nonprofit. In addition, taxpayers that itemize their deductions for federal tax purposes will be allowed to deduct the contribution from federal taxes. For a taxpayer at the highest federal income bracket of 37 percent, a \$1.00 contribution will reduce their combined state and federal tax liability by \$1.37.