Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Bill Topic:	STUDENTS SUBJECTED TO A SCHOOL SAFETY INCIDENT

Summary of Fiscal Impact:	⊠ State Revenue	⊠ TABOR Refund	
	⊠ State Expenditure *(minimal)*	⊠ School Districts *(minimal)*	
	☐ State Transfer	☐ Statutory Public Entity	

This bill creates exceptions to state law regarding section 529 savings accounts and enrollment across school district boundaries for students subjected to a school safety incident. It decreases state revenue and minimally decreases workload on an ongoing basis; school district allocations may be minimally affected.

Appropriation Summary:	No appropriation is required.
Fiscal Note Status:	This fiscal note reflects the introduced bill.

Table 1*
State Fiscal Impacts Under SB 19-087

		FY 2019-20	FY 2020-21
Revenue	General Fund	($50,000)	($150,000)
Expenditures		-	-
Transfers		-	-
TABOR Refund	General Fund	($50,000)	-

*Omits fiscal impacts affecting private 529 college savings accounts managed by CollegeInvest, a state enterprise.

Summary of Legislation

This bill makes exceptions to state law for students subjected to a school safety incident. A school safety incident is an incident of harassment, hazing, bullying, threat or intimidation, or physical or sexual assault that a student has been subjected to while enrolled in a kindergarten through twelfth grade (K-12) public, private, or religious school.

529 accounts. The bill modifies the state income tax deduction for contributions to an education savings account established under section 529 of the Internal Revenue Code (529 account). The bill allows money in a 529 account to be withdrawn to pay for qualified K-12 education expenses, including those for enrollment or attendance at a public, private, or religious school, for students who have been subjected to a school safety incident. Under the bill, these withdrawals are not subject to income tax recapture.

Public schools of choice. State law requires that school districts allow enrollment of nonresident Colorado pupils in particular programs offered by the district. Under current law, a school district is not required to enroll a nonresident student after the pupil enrollment count day. The bill makes an exception for students subjected to a school safety incident. School districts retain their current law ability to deny a nonresident student's enrollment if there is insufficient space or staff, if the appropriate program is not offered, or if the pupil does not meet program eligibility requirements.

Background

Current state deduction for 529 account contributions. Current state law allows a taxpayer annually to deduct up to $10,000 in 529 account contributions from state taxable income. Prior to December 2017, money in 529 accounts could be used only for higher education expenses, with limited exceptions. Money spent for other purposes, including K-12 education, was subject to income tax recapture, including penalty and interest.

The federal Tax Cuts and Jobs Act (TCJA) was enacted in December 2017. The TCJA broadens the use of 529 accounts to include K-12 education expenditures, and allows money saved for these expenditures to accrue interest exempt from federal income tax. According to an Office of Legislative Legal Services (OLLS) legal memorandum dated February 27, 2018, 529 account contributions that will eventually be spent for K-12 education purposes are eligible for the state deduction; however, 529 account withdrawals for these purposes remain subject to income tax recapture. Expenditures for additional income tax recapture associated with this provision of the TCJA are not included in FY 2018-19 appropriations to the Department of Revenue, the department's FY 2018-19 supplemental request, or the department's FY 2019-20 budget request.

Assumptions

Current law. This fiscal note assumes that current law will be administered in a manner consistent with the February 27, 2018, OLLS memorandum. Accordingly, 529 account contributions for K-12 expenses are assumed to qualify for the state deduction. However, taxpayers making 529 account withdrawals for these purposes are assumed to be subject to income tax recapture, including penalty and interest. Expenditures required for the DOR to administer this obligation in future years have not been estimated and are currently assessed as indeterminate.

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Timing of 529 account withdrawals. Because the state income tax deduction for contributions to a 529 account can be accessed during the same year for which qualified expenses are paid, this fiscal note assumes no lag time between 529 account deposits and withdrawals.

State Revenue

The bill is expected to decrease General Fund revenue by $50,000 in FY 2019-20, $150,000 in FY 2020-21, and larger amounts in subsequent fiscal years. The bill reduces individual income tax revenue, which is subject to TABOR.

These estimates assume that 31.5 percent of the state's 34,500 students attending private K-12 schools have 529 accounts, based on the utilization rate for college students, and that annual 529 account contributions for K-12 tuition will average $6,650, consistent with disbursements for college students. Based on data published in the U.S. Department of Education's 2017 Indicators of School Crime and Safety report, it is assumed that 2.9 percent of students are subjected to a school safety incident each year. Based on these assumptions, the parents of 315 students are expected to begin to claim the deduction for 529 account contributions for K-12 expenses each year.

Estimates do not account for additional enrollment in private school based on the incentive offered in the bill. To the extent that students migrate from public school to private school more so than would be expected under current law, the bill's revenue impact may be greater than estimated.

State Expenditures

The bill decreases tax administration workload in the Department of Revenue to the extent that withdrawals from 529 accounts that would be subject to income tax recapture under current law are permitted to occur without triggering a recapture requirement as a result of the bill. The effect on departmental workload is expected to be minimal.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by $50,000 in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly reduce the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21. A forecast of state revenue subject to TABOR is not available beyond FY 2020-21.

School Districts

State school finance allocations to school districts are determined in part by school district enrollment measured on the pupil count day. The bill creates a school safety incident exception to the current law stipulation that districts not be required to enroll nonresident Colorado students after the pupil count day, potentially resulting in the enrollment of students that will not be reflected in the district's school finance allocations until one year later than they otherwise would. Shifts in district allocations are assessed as minimal, and the bill is not expected to affect the state share of total program funding.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Education	Higher Education	Information Technology
Law	Revenue	School Districts