# HB 20-1193

Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# FISCAL NOTE

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|---|---|---|---|
| **Drafting Number:** | LLS 20-0468 | **Date:** | March 11, 2020 |
| **Prime Sponsors:** | Rep. Landgraf; Van Winkle | **Bill Status:** | House Finance |
| | | **Fiscal Analyst:** | Louis Pino \| 303-866-3556<br>louis.pino@state.co.us |

**Bill Topic:** **INCOME TAX BENEFITS FOR FAMILY LEAVE**

**Summary of Fiscal Impact:**

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☒ TABOR Refund
- ☐ Local Government
- ☐ Statutory Public Entity

This bill creates a state income tax credit for employers who provide paid family leave. It also creates a state income tax deduction for employees and employers who make contributions to a family leave savings account. The bill decreases state revenue and increases state expenditures on an ongoing basis beginning in FY 2020-21.

**Appropriation Summary:** For FY 2020-21, the bill will require an appropriation of $39,086 to the Department of Health Care Policy and Financing.

**Fiscal Note Status:** This fiscal note reflects the introduced bill.

**Table 1**
**State Fiscal Impacts Under HB 20-1193**

| | | FY 2020-21 | FY 2021-22 | FY2022-23 |
|---|---|---|---|---|
| **Revenue** | General Fund | ($9.9 million) | ($20.4 million) | ($22.2 million) |
| | **Total** | **($9.9 million)** | **($20.4 million)** | **($22.2 million)** |
| **Expenditures** | General Fund | $39,086 | $509,087 | $449,466 |
| | Centrally Appropriated | $7,845 | $146,682 | $176,338 |
| | **Total** | $46,931 | $655,769 | $625,804 |
| | **Total FTE** | 0.5 FTE | 7.4 FTE | 8.8 FTE |
| **Transfers** | | - | - | - |
| **TABOR Refund** | General Fund | ($9.9 million) | ($20.4 million) | Not Estimated |

## Summary of Legislation

Beginning in tax year 2021, this bill creates an income tax credit and an income tax deduction relating to a leave of absence from work (leave) for reasons of:

- the birth or adoption of an employee's child, or placement of a foster child in the employee's care;
- care for an employee's spouse, child, or parent with a serious health condition;
- a serious health condition that causes the employee to be unable to perform his or her work; or
- a qualified exigency determined by the U.S. Secretary of Labor attributable to the employee's spouse, child, or parent's active duty in the U.S. Armed Forces.

**Income tax credit.** The bill creates a tax credit for employers who pay employees while on leave, provided that they are paid for a leave period of at least eight weeks. The credit may be claimed for pay for up to 12 weeks of leave. The employer must pay at least 50 percent of the employees's regular wage. The credit is equal to 15 percent of the amount the employer paid to an employee while on leave from work for a qualified reason. The credit is nonrefundable, and the amount by which the credit exceeds the employer's income tax liability may be carried forward for a period of up to five succeeding years.

**Income tax deduction.** The bill allows employees to create a savings account to save money for use during their period of leave. Accounts are established in private financial institutions and designated by the taxpayer. Employees are permitted to claim a state income tax deduction worth up to $5,000 in wages withheld on a pretax basis and contributed to the account each year. Employers are permitted to claim a deduction for matching contributions up to the amount contributed by the employee.

Account contributions may be saved for an unlimited period of time and withdrawn either for expenses incurred by the individual while on leave, or to pay account service fees charged by the financial institution. Withdrawals for other purposes are subject to income tax recapture, including a penalty of 10 percent. If the account holder dies, the balance of the account is subject to income tax recapture without penalty.

The Department of Health Care Policy and Financing is required to create a form for account holders to record the purposes for which the funds in their account were used and attach supporting documentation. This form must be filed annually by taxpayers who claim the deduction.

## State Revenue

The bill is expected to reduce General Fund revenue by $9.9 million in FY 2020-21, $20.4 million in FY 2021-22, and $22.2 million in FY 2022-23 and subsequent years. The estimate for FY 2020-21 represents a half-year impact for tax year 2021 on an accrual accounting basis. The bill reduces individual and corporate income tax revenue, which is subject to TABOR.

**Income tax credit.** The income tax credit in the bill is expected to reduce General Fund revenue by $7.1 million in FY 2020-21, $15.0 million in FY 2021-22, and $17.0 million in FY 2022-23 and subsequent years.

These estimates are based on the following assumptions:

- In 2019, 18 percent of all U.S. private sector workers had access to paid family leave, according to the U.S. Bureau of Labor Statistics. Access to paid family leave varied by industry as shown in Table 2. The fiscal note assumes the same industry distribution for Colorado employers that provide access to paid family leave in 2021, the first year in which the income tax credit is available, and for future years. Of the employees in these industries , 3.5 percent are assumed to take leave in 2021 with slight increases each year after as long-term-family leave becomes more common. On average, 60 percent of these workers are assumed to take leave for 8 weeks and 40 percent will take leave from 9 to 12 weeks.

**Table 2**
**Percent of U.S Employees with Access to Paid Family Leave (2019)**

| Industry | Access to Paid Family Leave |
|---:|:---:|
| Construction | 8% |
| Manufacturing | 15% |
| Trade, transportation, and utilities | 14% |
| Information | 46% |
| Financial Activities | 30% |
| Professional and Business Services | 21% |
| Education and Health Services | 23% |
| Leisure Hospitality | 11% |
| Other Services | 11% |
| **All workers** | **18%** |

*Source: U.S. Bureau of Labor Statistics.*

- In 2019, there were approximately 2.3 million private sector employees in Colorado, according to the U.S. Bureau of Labor Statistics. The 2019 employment data was adjusted by Legislative Council Staff's December 2019 employment forecast to obtain estimates for 2021.

- In 2019, the statewide average annual weekly wage for all industries was $1,215, according to the U.S. Bureau of Labor Statistics. The weekly wage by industry data was also adjusted by Legislative Council Staff's December 2019 wage and salaries forecast to obtain estimates for 2021.

- It is assumed that employers will pay will pay 50 percent of an employees wages while the employee is on leave.

Estimates for the tax credit assume that all credits will reduce tax liability in the year that they are earned, rather than being carried forward to future tax years, based on the assumption that employers offering six or more weeks of paid leave have an income tax liability that exceeds the amount of their tax credits. To the extent that an employer's tax liability is less than the credit amount, the revenue impact of the bill will be partially delayed into future fiscal years. Finally, to the degree that the utilization rate is higher/lower than that assumed here, reductions in General Fund revenue will be higher or lower.

Table 3 shows the estimated number of employees taking paid family leave for the first four tax years under HB 20-1193. The table also show the assumed 50 percent average weekly wage by industry and the utilization rate for each year.

**Table 3**
**Estimated Number of Employees Taking Paid Family Leave**
**Under HB 20-1193**

| | **2021** Utilization Rate = 3.5% | | **2022** Utilization Rate = 3.7% | | **2023** Utilization Rate = 4.0% | | **2024** Utilization Rate = 4.2% | |
|---|---|---|---|---|---|---|---|---|
| Industry | 50 % Average Weekly Wage* | Employees Taking Paid Family Leave ** | 50 % Average Weekly Wage* | Employees Taking Paid Family Leave ** | 50 % Average Weekly Wage* | Employees Taking Paid Family Leave ** | 50 % Average Weekly Wage* | Employees Taking Paid Family Leave ** |
| Construction | $708 | 498 | $742 | 532 | $778 | 582 | $815 | 617 |
| Manufacturing | $802 | 768 | $840 | 800 | $881 | 851 | $923 | 880 |
| Trade, transportation and utilities | $568 | 2,342 | $595 | 2,471 | $623 | 2,667 | $653 | 2,796 |
| Information | $1,143 | 1,202 | $1,198 | 1,268 | $1,255 | 1,368 | $1,315 | 1,434 |
| Financial Activities | $960 | 1,746 | $1,006 | 1,851 | $1,054 | 2,007 | $1,105 | 2,114 |
| Professional and Business Services | $923 | 3,553 | $968 | 3,883 | $1,014 | 4,339 | $1,063 | 4,709 |
| Education and Health Services | $569 | 2,827 | $597 | 3,017 | $625 | 3,293 | $655 | 3,491 |
| Leisure and Hospitality | $294 | 1,365 | $308 | 1,452 | $322 | 1,579 | $338 | 1,668 |
| Other Services | $465 | 331 | $487 | 353 | $511 | 384 | $535 | 407 |
| **TOTAL** | | **14,632** | | **15,627** | | **17,071** | | **18,115** |

* *The credit is equal to 15 percent of the amount the employer paid to an employee while on leave from work for a qualified reason.*
** *Assumes 60 percent of employees will take 8 weeks of leave, 20 percent at 9 weeks, 10 percent at 10 weeks, 8 percent at 11 weeks, and 2 percent at 12 weeks.*

**Income tax deduction.** The income tax deduction in the bill is expected to reduce General Fund revenue by $2.8 million in FY 2020-21,$5.4 in FY 2021-22, and $5.2 million in FY 2022-23 and subsequent years.

The fiscal note assumes that approximately 1 percent (23,000) of Colorado employees will create a leave savings account in tax year 2021. Of these employees, approximately half will make a contribution to the savings account of up to $2,000, generating a state income tax deduction of up to $92.60 per taxpayer ($2,000 times the state income tax rate of 4.63 percent). The remaining employees will contribute up to $5,000, generating state income tax deduction of up to $232 per taxpayer ($5,000 times the state income tax rate of 4.63 percent). The fiscal note assumes about half of the employee contribution amounts will be matched by their employer. Finally, the fiscal note assumes the number of new savings accounts will increase by 1 percent each year.

## State Expenditures

This bill is expected to increase state expenditures by $46,931 and 0.5 FTE in FY 2020-21, $655,769 and 7.4 FTE in FY 2021-22, and $625,804 and 8.8 FTE in FY 2022-23 and subsequent years. Expenditures are summarized in Table 4 and explained in detail below.

**Table 4**
**Expenditures Under HB 20-1193**

| Cost Components | FY 2020-21 | FY 2021-22 | FY 2022-23 |
|---|---|---|---|
| **Department of Revenue** | | | |
| Personal Services | - | $374,396 | $441,011 |
| Operating Expenses and Capital Outlay Costs | - | $39,951 | $8,455 |
| Computer Programming and Testing | - | $69,354 | - |
| Document Management | - | $25,386 | - |
| Centrally Appropriated Costs* | - | $146,682 | $176,338 |
| FTE – Personal Services | - | 7.4 FTE | 8.8 FTE |
| **(Subtotal)** | **-** | **$655,769** | **$625,804** |
| **Department of Health Care Policy and Financing** | | | |
| Personal Services | $32,886 | - | - |
| Operating Expenses and Capital Outlay Costs | $6,200 | - | - |
| Centrally Appropriated Costs* | $7,845 | - | - |
| FTE – Personal Services | 0.5 FTE | - | - |
| **(Subtotal)** | **$46,931** | **-** | **-** |
| **Total** | **$46,931** | **$655,769** | **$625,804** |
| **Total FTE** | **0.5 FTE** | **7.4 FTE** | **8.8 FTE** |

** Centrally appropriated costs are not included in the bill's appropriation.*

**Department of Revenue, tax administration.** The costs presented in Table 4 for personal services, operating expenses, capital outlay, and document management reflect the costs expected to be incurred by the Department of Revenue to process income tax deductions and credits claimed under the bill. Expenditures assume that 100 percent of claimed deductions and credits will be reviewed, consistent with current department policy related to the administration of similar tax expenditures. Tax administration costs also reflect the assumption that an additional 10 percent of tax returns will claim the credit or deduction incorrectly; that 18 percent of taxpayers claiming the deduction or credit will call the department; and that 10 percent of credits and deductions claimed will require the department to contact taxpayers by mail, based on the department's prior experience with similarly structured tax expenditures.

To the extent that actual costs incurred beyond FY 2020-21 are different from those estimated in this fiscal note, it is assumed that any increases or decreases in department resources will be accommodated through the annual budget process.

**Department of Revenue, software programming and testing.** Software programming and testing costs for FY 2020-21 reflect the expenditures required to add the deduction and credit to the state's tax software system, which is overseen by a contractor, and for department staff to test the system's functionality when updated.

**Department of Healthcare Policy and Financing, form creation.** The Department of Healthcare Policy and Financing will require one-time costs of $46,996 and 0.5 FTE for FY 2020-21 to create the form required for reporting of the leave savings account and identify any supporting documentation required by the Department of Revenue.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be $14,717 in FY 2020-21 and $162,913 in FY 2021-22.

**TABOR refunds.** The bill is expected to decrease state General Fund obligations for TABOR refunds by $9.9 million in FY 2020-21 and $20.4 million in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

## Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

## State Appropriations

For FY 2020-21, the bill will require a General Fund appropriation of $39,086 to the Department of Health Care Policy and Financing.

## Departmental Difference

The Department of Healthcare Policy and Financing assess that they will require 1.0 FTE in FY 2020-21 and subsequent years to create and maintain the form required for reporting to the Department of Revenue. The Department feels they do not currently have any expertise related to employee leave tax form and would require the full 1.0 FTE because of the difficulty in hiring, attracting and retaining partial FTE. The fiscal note assumes that creating the required form and identification of supporting documents are one-time costs and can be done for 0.5 FTE.

## State and Local Government Contacts

| | |
|---|---|
| Health Care Policy And Financing | Information Technology |
| Personnel | Revenue |