Initiative # 69

Legislative
Council Staff
Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: April 16, 2019 **Fiscal Analyst:** Josh Abram (303-866-3561)

LCS TITLE: ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM WITH NEW TAX ON NICOTINE PRODUCTS

Fiscal Impact Summary		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	General Fund Decrease	($25.0 million)	($75.0 million)	($125.0 million)
	Cash Fund Increase	-	up to $4.1 million	up to $4.1 million
	Net Change	**($25.0 million)**	**($70.9 million)**	**($120.9 million)**
Expenditures	General Fund	$385,491	-	-
	Cash Funds	-	$748,963	$1,073,295
	Total	**$385,491**	**$748,963**	**$1,073,295**

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 Expanded Learning Opportunities Agency (state agency) and the Colorado Expanded Learning Opportunities Program (program) in the Colorado Department of Education (CDE). The program establishes individual learning savings accounts maintained by a third-party nonprofit administrator that provide funding for parents or legal guardians to purchase out-of-school educational materials, services, or experiences for their eligible children. The measure creates an income tax credit and imposes additional sales taxes on non-tobacco nicotine products. The state agency and program are repealed January 1, 2031, unless the legislature acts to reauthorize.

Expanded learning opportunities agency. The state agency is created as an independent entity within the CDE to establish the program and arrange for its administration. The agency must be governed by a 7 member board of directors (agency board). The measure specifies requirements for the agency board's selection, composition, and terms of service. Board members serve without compensation, but may be reimbursed for expenses.

No later than August 1, 2020, the state agency must establish a process to select a nonprofit organization to administer the program, or create a new nonprofit corporation to take this responsibility if no existing Colorado nonprofit entity satisfies the selection criteria. The state agency is required to create and develop criteria for use by the administering nonprofit related to:

- allowable uses for funding distributed to parents or guardians from individual learning accounts;
- publication, solicitation, receipt, and evaluation of applications from potential providers of out-of-school learning experiences;
- the certification, approval, and compensation of providers of out-of-school services;

- ensuring student safety;
- establishing and managing parent-directed individual learning accounts funded through eligible contributions and other donations; and
- protocols for the rollover of 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 funded through eligible contributions. Contributions to the agency received prior to January 1, 2021, may be retained for administrative and organizational start-up purposes; the nonprofit may also seek and accept gifts, grants, or private donations for these costs. Thereafter, the nonprofit may retain up to 10 percent of eligible contributions for administrative expenses. This rate may be adjusted by the legislature in future years if necessary. The administering nonprofit must be governed by a volunteer board of directors (nonprofit board). Members of the nonprofit board receive no compensation, but may be reimbursed for expenses.

Individual learning accounts. Funding from individual learning accounts must be provided and administered by the nonprofit on a sliding scale, with the amount of funding being inversely related to the family income and financial means of an eligible student. Subject to rules adopted by the state agency, the administering nonprofit will have control over when and how funding is distributed to approved providers that parents choose.

Income tax credit. The measure creates a state income tax credit for taxpayer monetary or in-kind contributions to the administering nonprofit. Beginning tax year 2020, a state income tax credit is allowed for 100 percent of contributions up to a fiscal year credit cap. The tax credit is non-refundable and may be carried forward for up to three tax years. The credit is repealed effective January 1, 2031, subject to reauthorization.

The amount of the cap is initially set at $50 million. The measure requires the Department of Revenue to track credits claimed against the cap and to disallow credits claimed after the applicable cap has been reached. If for a given fiscal year the amount of credits claimed equals or exceeds 90 percent of the cap, the cap is increased by $50 million for the following fiscal year. The measure allows the cap to increase to up to 1 percent of combined General Fund and cash fund appropriations for the prior completed fiscal year.

The measure directs the state legislature to repeal other tax credits in order to reduce state income tax revenue by at least the amount of the revenue reduction attributable to the new income tax credit in the measure. In making decisions regarding which credit(s) to retain or repeal, the measure directs the legislature to prioritize retaining credits that benefit veterans, parks, open space, early childhood education programs, low-income Coloradans, seniors, and other under served and vulnerable communities.

Tax on non-tobacco nicotine products. The measure imposes a tax of $0.05 per milliliter or device on non-tobacco nicotine products, such as e-cigarettes, vaporizers, and e-liquid used in an e-cigarette or vaporizer. The tax is assessed in addition to the state sales and use tax but is not imposed on products that are already subject to the state cigarette or tobacco excise taxes. Revenue is credited to the Expanded Learning Opportunities Agency for its administrative and operational expenses, and may not be used to fund individual learning accounts or directed to the administering nonprofit. Revenue from the tax is exempt from TABOR as a voter-approved revenue change.

State Revenue

The measure will both reduce and increase state revenue. Revenue from income taxes to the General Fund is reduced by $25.0 million in FY 2019-20, reduced by $75.0 million in FY 2020-21, and reduced by $125.0 million in FY 2021-22. State revenue from sales taxes are increased between $2.3 million and $4.1 million beginning in FY 2020-21, with larger amounts collected in subsequent years. Changes to state revenue are described below.

Income tax credit. The income tax credit in the measure is expected to reduce General Fund revenue by up to $25 million in FY 2019-20 (half-year impact) and up to $75 million in FY 2020-21. The revenue impact will increase by up to $50 million annually until the fiscal year credit cap is increased to the maximum amount in the measure, which is 1 percent of prior year combined appropriations from the General Fund and cash funds.

The maximum amount of the cap will not be known until future budgets and supplemental appropriations are enacted. The introduced version of Senate Bill 19-207, the 2019 Long Bill, includes $21.58 billion in General Fund and cash fund appropriations. At this level of appropriations, the maximum fiscal year credit cap would be $215.8 million.

Because the measure offers a 100 percent tax credit, there is no financial cost or benefit to a taxpayer who makes a financial contribution to the administering nonprofit up to the amount of the taxpayer's income tax liability, and who is allowed to claim the tax credit. The fiscal year credit cap in the measure increases when tax credits allowed for the prior year equal at least 90 percent of that year's cap. Because future taxpayer contributions to the administering nonprofit are uncertain, timing for when the cap will increase is also uncertain. Table 2 presents the revenue reduction attributable to the measure if the maximum amount of the credit is allowed each year and the maximum fiscal year credit cap is $215.8 million in all years. Under these assumptions, the credit would cease growing in FY 2025-26. Because the revenue impact for a single tax year is accrued across two fiscal years, the revenue impact of the tax credit is not equal to the fiscal year credit cap.

Table 2
Maximum Revenue Reduction Under Initiative #69
assuming a $215.8 million maximum fiscal year credit cap

	Revenue Reduction
FY 2019-20	($25.0 million)
FY 2020-21	($75.0 million)
FY 2021-22	($125.0 million)
FY 2022-23	($175.0 million)
FY 2023-24	($207.9 million)
FY 2024-25	($215.8 million)
FY 2025-26	($215.8 million)

Elimination of current law credits. The measure includes a provision directing the General Assembly to eliminate current law tax credits in the amount of the revenue reduction. To the extent that credits are eliminated, tax revenue will increase. Most credits reduce the amount of income tax revenue, which is credited to the General Fund.

Tax on non-tobacco nicotine products. The new tax is estimated to increase cash fund revenue by between $2.3 million and $4.1 million in FY 2020-21 and larger amounts in subsequent years as the market share of non-tobacco nicotine products grows. While the measure theoretically imposes the tax from the date of its enactment, this estimate assumes that the tax will be collected beginning in FY 2020-21 after a system for tax collection, remittance, and enforcement is created.

Revenue estimates are based on the experiences of Louisiana and North Carolina, which each assess a unit tax on a rate of $0.05 per milliliter. North Carolina collected $4.5 million, or $0.44 per person, during FY 2017-18, while Louisiana collected $1.2 million, or $0.25 per person, during the same year. The discrepancy between the two states is assumed to reflect different consumption habits and levels of tax compliance and enforcement. Both states reported significant tax revenue growth over the last two fiscal years. The estimated range for Colorado's tax revenue assumes consumption and compliance consistent with Louisiana (lower-bound estimate) and North Carolina (upper-bound estimate), and grows an estimate for FY 2017-18 by 21 percent for FY 2018-19, 21 percent for FY 2019-20, and 14 percent for FY 2020-21, consistent with rapid consumption growth in other states.

A tax of $0.05 per milliliter is expected to account for a small share of the purchase price of a unit of vaping liquid, estimated to cost about $4.50 for a 0.7 milliliter pod before taxes. Therefore, taxation at this rate is expected to have a very small effect on consumption.

Technical Note

Fiscal year credit cap. The income tax credit in the measure is subject to a fiscal year credit cap, which limits the aggregate amount of income tax credits that may reduce state income tax revenue for a given year. While the measure caps the credit on a fiscal year basis, the Department of Revenue administers income taxes on a tax year basis. This fiscal impact statement treats the fiscal year credit cap as limiting the amount of credit that can be claimed for the tax year that ends during the fiscal year for which the cap applies. If the cap is administered differently, the revenue impact of the measure may shift across fiscal years.

State Expenditures

The bill increases state expenditures by $385,491 in FY 2019-20 (a half year impact), $748,963 in FY 2021-22 and $1,073,295 in FY 2021-22 and subsequent years. Expenditures are expected to continue through FY 2031-32. This analysis assumes that new revenue from a tax on non-tobacco nicotine products is intended to pay administrative expenses of the new state agency, administering nonprofit, and any other state agency expenses. Because this analysis also assumes no new revenue until FY 2020-21, administrative expenses in FY 2019-20 require appropriations from the General Fund. New state expenditures are summarized in Table 3 and described below.

Table 3
Expenditures Under Initiative #69

	FY 2019-20*	FY 2020-21	FY 2021-22
Colorado Department of Education Expanded Learning Opportunities Agency			
Personal Services	$67,894	$131,052	$131,052
Operating, Capital Outlay, Leased Space, Etc.	$13,153	$13,628	$13,628
Employee Insurance, Disability, Pension	$12,155	$23,135	$23,135
Agency Board Travel & Reimbursement	$11,200	$14,000	$14,000
Nonprofit Administrator Contract	$250,000	-	-
Department of Law			
Legal Services	$31,089	$62,178	$31,089
Department of Revenue			
Personal Services	-	$301,647	$668,263
Operating & Capital Outlay	-	$70,977	$12,825
Employee Insurance, Disability, Pension	-	$79,236	$179,303
Computer Programming	-	$53,110	-
Total	**$385,491**	**$748,963**	**$1,073,295**
FTE	**0.8 FTE**	**7.4 FTE**	**15.0 FTE**

** Half-year impact*.

Expanded learning opportunities agency. Creating a new agency in the CDE increases expenditures to hire agency staff and make the physical arrangements necessary to launch the new enterprise, including leased space, office furniture, computers and software, telephones, and other operating expenses.

Once operational, the state agency has ongoing expenses for staff, board travel and reimbursement, and costs to contract or create a third-party nonprofit corporation, and a separate nonprofit board of directors to administer the program. This analysis assumes at least one full time state agency director and one half time support staff is required during the first year.

The agency will have costs to contract or create a nonprofit third party administrator. A preliminary estimate of this expense is $250,000 in the first year; ongoing costs will be paid out of available revenue sources.

Department of Law. Creating a new state agency increases cost for legal services related to contracting or creating the nonprofit corporation and adopting rules for the expanded learning opportunities program. Legal services are purchased from the CDE and new agency from the Attorney General's Department of Law.

Department of Revenue. Staff are required in the DOR's Taxpayer Service Division to verify and process tax returns claiming the credit and interact with taxpayers who file incorrectly or have questions. The DOR must also program and update database fields in the GenTax software system, modify related reporting features, update forms, and provide technical assistance to retailers for the new state sales tax on non-tobacco nicotine products.

Economic Impact

The measure is expected to provide expanded learning opportunities to Colorado students. Expanded learning 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 the beneficiary students. The measure is also expected to increase employment in the selected non-profit and to reduce child care expenses for parents of participating children.

The measure will reduce state revenue, reducing revenue available to fund public education, health care, human services, courts and prisons, and other government functions. This will reduce income to government employees or contractors and benefits to recipients of state services. Specific funding allocations will be made as a result of future legislative and executive decisions.

The measure directs the General Assembly to repeal current law tax credits to offset the measure's revenue impact. If tax credits are repealed, taxpayers who currently benefit from the credits will owe increased taxes, thereby reducing their after-tax incomes and spending or saving elsewhere in the economy.

For consumers of nicotine products, the tax will reduce available income to be spent or saved elsewhere in the economy.

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

Initiative # 69

Abstract of Initiative 69: ESTABLISHMENT OF EXPANDED LEARNING OPPORTUNITIES PROGRAM WITH NEW TAX ON NICOTINE PRODUCTS

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 April 16, 2019, identifies the following impacts:

State revenue. The measure will both reduce and increase state revenue. Revenue from income taxes to the General Fund is reduced by $25.0 million in FY 2019-20, reduced by $75.0 million in FY 2020-21, and reduced by $125.0 million in FY 2021-22. State revenue from sales taxes are increased between $2.3 million and $4.1 million beginning in FY 2020-21, with larger amounts collected in subsequent years. The measure directs the legislature to eliminate current law tax credits in the amount of the reduced revenue from the new tax credit. If tax credits are eliminated, the estimated reduction in income tax collections will be partially or completely offset.

State expenditures. The bill increases state expenditures by $385,491 in FY 2019-20, $748,963 in FY 2021-22 and $1,073,295 in FY 2021-22 and subsequent years. Expenditures are expected to continue through FY 2031-32.

Economic impacts. The measure is expected to provide expanded learning opportunities to Colorado students. Expanded learning 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 the beneficiary students. The measure is also expected to increase employment in the selected non-profit and to reduce child care expenses for parents of participating children.

The measure will reduce state revenue, reducing revenue available to fund public education, health care, human services, courts and prisons, and other government functions. This will reduce income to government employees or contractors and benefits to recipients of state services. Specific funding allocations will be made as a result of future legislative and executive decisions.

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