HB 21-1080

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 21-0174	**Date:**	July 20, 2021
Prime Sponsors:	Rep. Baisley	**Bill Status:**	Postponed Indefinitely
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Bill Topic: **NONPUBLIC EDUCATION AND COVID-19 RELIEF ACT**

Summary of Fiscal Impact:

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

The bill makes an income tax credit available when children are moved from a public school to a private school or home-based education, and for children who begin their education in Colorado in a private school or home-based setting after the bill's effective date. It decreases state revenue, and decreases state expenditures on net, on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of $257,139 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the introduced bill. The bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 21-1080

		Current Year FY 2020-21	Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2033-34
Revenue	General Fund	($19.2 million)	($73.8 million)	($140.1 million)	($662.8 million)
	Total	**($19.2 million)**	**($73.8 million)**	**($140.1 million)**	**($662.8 million)**
Expenditures	School Finance[1]	-	($48.9 million)	($93.6 million)	($511.2 million)
	General Fund	-	$257,139	$445,661	*
	Central Approp	-	$22,912	$114,539	*
	Total	-	**($48.6 million)**	**($93.0 million)**	*
	Total FTE	-	1.6 FTE	7.9 FTE	*
Transfers		-	-	-	-
TABOR Refund		-	-	-	*

[1]School finance expenditures may be paid from the General Fund, the State Education Fund, the State Public School Fund, or a combination thereof.
**Not estimated.*

Summary of Legislation

The bill creates a transferrable income tax credit for taxpayers who enroll their dependent child in a home-based or private primary or secondary school, or who offer a scholarship to a child who enrolls in a private primary or secondary school. Qualifying taxpayers may receive credits as shown in Table 2.

Table 2
Tax Credits Available Under HB 21-1080

Taxpayer	Amount of Credit	
	Full-Time Student	**Half-Time Student**
Parents/guardians enrolling their child in private school*	Lesser of 50% of prior year state average per pupil funding or the amount of tuition paid	Lesser of 25% of prior year state average per pupil funding or the amount of tuition paid
Scholarship benefactors for children in private school*	Lesser of 50% of prior year state average per pupil funding or the amount of tuition paid	Lesser of 25% of prior year state average per pupil funding or the amount of tuition paid
Parents or guardians providing home-based education	$1,000	$500

**Either the parent/guardian or scholarship benefactor may be allowed a tax credit, but not both.*

To qualify for the credit, a child enrolled in a private school must have been enrolled in a public school, or must have been too young to enroll in kindergarten, during the school year prior to the bill's effective date. To qualify by receiving home-based education, a child must not have received home-based education or been enrolled in a private school prior to the bill's effective date. Taxpayers may qualify for the credit each year until the child graduates or otherwise leaves private school or home-based education.

In order to receive a credit, a taxpayer must obtain a credit certificate from the private school and submit the certificate to the Department of Revenue with their income tax return. Private schools are required to provide the department with an electronic report for each tax credit they issue, along with identifying taxpayer information. A certificate is not required for children who receive home-based education.

Tax credits allowed under the bill are nonrefundable, and any amount by which the credit exceeds the taxpayer's state income tax liability may be carried forward for up to three tax years. Credits are also transferrable, such that they may be sold or otherwise transferred in whole or in part to another taxpayer. If a tax credit is transferred, both the transferor and transferee must submit signed statements with their tax returns to indicate the amount of the transfer. The taxpayer who initially claimed the credit is the tax matters representative for any correspondence or disputes between the taxpayer(s) and the state.

Assumptions

Assumptions in this fiscal note that affect estimates of the bill's revenue and expenditure impacts are discussed below.

Timing. It is assumed that the bill will be signed into law on or before June 30, 2021, such that the school year prior to the bill's effective date is the 2019-20 school year. Based on this assumption, this fiscal note anticipates that revenue impacts will result from 2021 tax credits claimed for kindergarteners who attended a private school in Colorado for the 2020-21 school year, and for students who transferred from a public school to a private school between the 2019-20 and 2020-21 school years.

Because the bill does not allow the credit for providing home-based education for children who were enrolled in a private school or taught at home before the bill's effective date, it is assumed that the credit for home-based education will be claimed beginning in tax year 2022 for children who first receive home-based education during the 2021-22 school year.

Credit amounts for children taught at home. It is assumed that a child who receives home-based education may qualify for a $1,000 credit or a $500 credit, but not both.

Enrollment behavior – current law. The bill is expected to allow tax credits for students who would have enrolled in private schools, or who would have been taught at home, under current law. The bill does not change school finance expenditures for these students.

It is assumed that 6,169 students annually will transfer from public school to private school under current law, and that 8,868 students annually will leave public school for home-based education. These amounts represent average gross transfers of students from public to private and home-based school in recent years. It is assumed that 3,287 kindergarteners will begin private school each year, and that 1,694 kindergarteners will begin home-based education each year. These students are eligible for the credit.

Enrollment behavior – induced by the bill. The bill is expected to motivate some parents and guardians to move their children from public schools to private schools or home-based education. The bill will allow tax credits for these students while also reducing state expenditures for their enrollment in the public school system.

This fiscal note assumes that 0.9 percent of public school students will move annually to private schools, and that 0.2 percent of public school students will move annually to home-based education. These assumptions are based on evidence from the Milwaukee Parental Choice Program, a school voucher program in Milwaukee, Wisconsin. If more students move than expected, both state revenue and state expenditures will decrease by more than estimated. If fewer students move than expected, both state revenue and state expenditures will decrease by less than estimated.

The bill may allow students who are already enrolled in a private school to qualify for a tax credit if they transfer to a public school for one or more school years, and then transfer back to a private school. This fiscal note does not account for the potential impacts of this behavior. If parents of private school students temporarily move their children to public schools in order to access a tax credit in future years, school finance expenditures will decrease by a lesser amount than estimated, and state revenue will decrease by a greater amount than estimated.

Application of tax credits to reduce tax liability. Because the tax credits in the bill are transferrable, the fiscal note assumes that they will be applied to reduce tax liability in the year when they are awarded. If taxpayers whose tax liability is less than their tax credit choose not to transfer the credit, and instead to apply it in later tax years, part of the estimated revenue reduction will occur in later years than expected.

Growth rates. This fiscal note is based on the December 2020 LCS forecast for K-12 enrollment and school finance. For years beyond the current forecast period, enrollment in public schools is assumed to decline by 0.2 percent annually under current law, while the inflation contribution to base per pupil funding is assumed to be 2.3 percent per year. The fiscal note assumes that the budget stabilization factor will remain constant.

State Revenue

The bill will reduce General Fund revenue by $19.2 million in the current FY 2020-21, $73.8 million in FY 2021-22, and $140.1 million in FY 2022-23. Revenue reductions will be larger in later years as each successive cohort of K-12 students becomes eligible for the tax credit. When fully phased in for FY 2033-34, the bill is estimated to reduce General Fund revenue by $662.8 million annually. The bill reduces income tax revenue, which is subject to TABOR.

The estimate for the current FY 2020-21 represents a half-year impact for tax year 2021 on an accrual accounting basis. Because only students who enrolled in a private school, and not home-based education, are expected to qualify for the credit for the 2020-21 school year, the estimate for tax year 2021 is less than expected for 2022 and later years. Table 3 presents estimates for the number of credit claimants and the state revenue impact for tax years 2022 and 2023. Tax year 2022 is expected to be the first year for which children educated at home will qualify and the second year for which children enrolled in private school will qualify.

Table 3
HB 21-1080 Applicants and Tax Credit Amounts
Income Tax Years 2022 and 2023

Income Tax Year 2022

Applicants	Current Law	Induced by Bill	Total
Eligible Private School Students	16,406	7,067	23,473
Eligible Home-Based Students	10,562	1,570	12,132
Total Eligible Students	**26,968**	**8,637**	**35,605**

Tax Credits	Credit Amount	Number of Children	Revenue Impact
Private School	Up to $4,159	23,473	$97.6 million
Home-Based Education			
Full-Time	$1,000	10,829	$10.8 million
Part Time	$500	1,303	$0.7 million
		Total Tax Credits	**$109.1 million***

Income Tax Year 2023

Applicants	Current Law	Induced by Bill	Total
Eligible Private School Students	22,934	12,476	35,410
Eligible Home-Based Students	18,468	2,772	21,240
Total Eligible Students	**41,402**	**15,248**	**56,560**

Tax Credits	Credit Amount	Number of Children	Revenue Impact
Private School	Up to $4,250	35,410	$150.5 million
Home-Based Education			
Full-Time	$1,000	19,934	$19.9 million
Part Time	$500	1,306	$0.7 million
		Total Tax Credits	**$171.1 million***

**These amounts are presented on a tax year basis in this table. They are converted to a state fiscal year basis for Table 1 and elsewhere in this fiscal note.*

State Expenditures

The bill is expected to decrease state expenditures by $48.6 million in FY 2021-22 and $93.0 million in FY 2022-23. As shown in Table 4, the majority of the expenditure impact is a reduction in school finance expenditures. While expenditures will decrease on net, the bill requires the addition of 1.6 FTE in FY 2021-22 and 7.9 FTE in FY 2022-23 to administer the tax credit.

Expenditures will fall further for years beyond FY 2022-23 as children move from public schools to private schools or home-based education as a result of the incentive in the bill. As shown in Table 1, the bill is expected to reduce school finance expenditures by $511.2 million in FY 2033-34 when fully phased in.

Table 4
Expenditures Under HB 21-1080

Cost Components		FY 2021-22	FY 2022-23
School Finance		**($48.9 million)**	**($93.6 million)**
Department of Revenue			
Personal Services		$76,387	$392,786
Operating Expenses		$2,295	$11,205
Capital Outlay Costs		$18,600	$37,200
Computer Programming and Testing		$113,328	-
Form Changes and Document Management		$44,769	$2,710
Data Management and Analysis		$1,760	$1,760
Centrally Appropriated Costs[1]		$22,912	$114,539
FTE – Personal Services		1.6 FTE	7.9 FTE
Dept. of Revenue Subtotal		**$280,051**	**$560,200**
	Total	**($48.6 million)**	**($93.0 million)**

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

Public school finance. School finance expenditures will decrease by an estimated $48.9 million in FY 2021-22, $93.6 million in FY 2022-23, and larger amounts in later years. The total decrease in school finance expenditures will occur in the state share of school finance, as revenue that makes up the local share is unaffected by this bill. Reductions in school finance expenditures could result in cost savings in the General Fund, the State Education Fund, the State Public School Fund, or a combination thereof. It is assumed that the change to school finance expenditures will be accommodated in the FY 2021-22 school finance midyear adjustment once the amount of the enrollment decrease is known.

This bill will cause an estimated 8,637 students who would have otherwise enrolled in a public school to enroll instead in a private school, or receive home-based education, in the fall of 2021. As a result, state expenditures for school finance will decrease. Savings are attributable only to those children who would have otherwise enrolled in a public school under current law. These estimates assume that 40 percent of the state's public school enrollment will be located in districts with declining enrollment over time, which defers a portion of the cost savings because of five-year enrollment averaging.

The savings will be larger if base per pupil funding is increased at rates greater than inflation in future years. If the budget stabilization factor is adjusted such that total program funding increases at slower rates, then the savings will be smaller.

Department of Education. The department is required to provide state average per pupil school finance funding information to the Department of Revenue each year. This minimal workload increase can be accomplished within existing appropriations.

Department of Revenue. The bill will increase departmental expenditures by $280,051 and 1.6 FTE in FY 2021-22 and $560,200 and 7.9 FTE in FY 2022-23. Expenditures will increase in years beyond FY 2022-23 as the number of taxpayers claiming the tax credits in the bill increases.

Expenditures are primarily for the addition of tax examiners in the department's taxpayer service section. Staff are required to assist taxpayers as they prepare and file their tax forms, to review submitted materials, and to contact taxpayers to correct improper filings. In FY 2021-22, the department will add 1.6 FTE to handle filings for tax year 2021, prorated for their start date and the General Fund pay date shift. In FY 2022-23, the department will require 7.9 FTE, prorated, to handle filings for tax year 2022.

The bill requires changes to four state income tax forms and ongoing expenditures for processing tax documents that are filed on paper. Workload for form changes and document management occurs in the Department of Personnel and Administration, but is paid from funds reappropriated from the Department of Revenue. Other costs are for programming and testing of the department's GenTax software system, which will be conducted in FY 2021-22, and for staff in the department's Office of Research and Analysis to query and report data on the credit.

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 $22,912 in FY 2021-22 and $114,539 in FY 2022-23.

TABOR refund. The bill decreases income tax revenue, which is subject to TABOR. Under the December 2020 LCS forecast, state revenue is expected to remain below the TABOR limit through at least FY 2022-23, and no refunds to taxpayers are expected through at least FY 2023-24. The bill does not change these expectations concerning refunds to taxpayers. For future years when the state would collect a TABOR surplus under current law, the bill will reduce the amount required to be refunded by as much as $662.8 million each year when fully phased in.

School Districts

School district funded pupil counts and state aid to districts will decrease as a result of reduced public school enrollment. Although the bill does not require public schools to certify taxpayer eligibility for the credit, school districts may experience a small workload increase to verify taxpayer eligibility in response to state, private school, or parent/guardian inquiries.

Effective Date

The bill was postponed indefinitely by the House Education Committee on February 25, 2021.

State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of $257,139 to the Department of Revenue. From this amount, $44,769 should be reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Education	Information Technology	Law
Personnel	Revenue	School Districts