



Legislative  
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*Nonpartisan Services for Colorado's Legislature*

# FINAL FISCAL NOTE

<b>Drafting Number:</b>	LLS 19-0750	<b>Date:</b>	May 14, 2019
<b>Prime Sponsors:</b>	Sen. Woodward	<b>Bill Status:</b>	Postponed Indefinitely
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**Bill Topic:** STUDENTS SUBJECTED TO A SCHOOL SAFETY INCIDENT

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure ( <i>minimal</i> )	<input checked="" type="checkbox"/> School Districts ( <i>minimal</i> )
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> 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. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1\***  
**State Fiscal Impacts Under SB 19-087**

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

\*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 The bill allows money in a 529 account to be withdrawn to pay for qualified K-12 education expenses, including those for enrollment or attendance at a public, private, or religious school, for students who have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 529 account contributions when computing their state taxable income. Taxpayers are allowed to spend money from 529 accounts for "qualified higher education expenses," as defined under a particular section in federal law, or as a result of the beneficiary student's death or disability or receipt of a scholarship. Disbursements that do not fit one of these purposes are subject to income tax recapture, meaning that taxpayers must pay income tax on the amount disbursed, plus penalty and interest. Colorado 529 accounts are managed by CollegenInvest, a state enterprise administered through the Department of Higher Education.

**Federal deduction.** Federal law allows for investment income earned in a 529 account to be deducted for federal tax purposes.

**Tax Cuts and Jobs Act.** The Tax Cuts and Jobs Act (TCJA) became law in December 2017. It amends section 529 to broaden the types of expenses that qualify for the federal deduction. Specifically, the TCJA permits expenses up to \$10,000 per beneficiary per year for an elementary or secondary public, private, or religious school; for tuition for tutoring or educational classes outside the home; for dual enrollment with a higher education institution; and for educational therapies for students with disabilities in connection with a home school.

According to an Office of Legislative Legal Services (OLLS) legal memorandum dated February 27, 2018, 529 account contributions for K-12 expenses and for other expenses added in the TCJA are eligible for the state deduction; however, 529 account withdrawals for these purposes are subject to income tax recapture, including penalty and interest. Expenditures for additional income tax recapture associated with this provision of the TCJA are not included in the 2019 Long Bill.

## **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.

**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; however, the state is not expected to collect a TABOR surplus in FY 2019-20 or FY 2020-21.

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.

## **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 was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on February 4, 2019.

**State and Local Government Contacts**

Education  
Law

Higher Education  
Revenue

Information Technology  
School Districts