HB 19-1058

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 19-0318	**Date:**	January 28, 2019
Prime Sponsors:	Rep. Landgraf; Beckman Sen. Priola	**Bill Status:**	House Finance
		Fiscal Analyst:	Greg Sobetski | 303-866-4105 Louis Pino | 303-866-3556

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. It decreases state revenue and increases state expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Table 1
State Fiscal Impacts Under HB 19-1058

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	General Fund	($5.4 million)	($12.3 million)	($15.1 million)
	Total	**($5.4 million)**	**($12.3 million)**	**($15.1 million)**
Expenditures	General Fund	-	$0.4 million	$0.3 million
	Centrally Appropriated	-	$0.1 million	$0.1 million
	Total	-	**$0.5 million**	**$0.4 million**
	Total FTE	-	**4.6 FTE**	**6.2 FTE**
Transfers		-	-	-
TABOR Refund	General Fund	($5.4 million)	-	not estimated

Summary of Legislation

Beginning in tax year 2020, 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 six weeks. The credit may be claimed for pay for up to 12 weeks of leave. The amount of the credit is equal to:

- 50 percent of the amount paid by employers with fewer than 50 employees; or
- 25 percent of the amount paid by employers with 50 employees or more.

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 Revenue 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 $5.4 million in FY 2019-20, $12.3 million in FY 2020-21, and $15.1 million in FY 2021-22 and subsequent years. The estimate for FY 2019-20 represents a half-year impact for tax year 2020 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 $5.0 million in FY 2019-20, $11.2 million in FY 2020-21, and $13.6 million in FY 2021-22 and subsequent fiscal years.

These estimates are based on the following assumptions:

- About 6,700 employees will be paid for leave periods of six weeks or more during tax year 2020. Employees will be paid wages totaling $32.1 million while on leave.
- About 8,200 employees will be paid for leave periods of six weeks or more during tax year 2021. Employees will be paid wages totaling $39.1 million while on leave.
- About 9,900 employees will be paid for leave periods of six weeks or more during tax year 2022. Employees will be paid wages totaling $46.9 million while on leave.

Estimates reflect the share of employers by industry who offer paid leave as reported by the Congressional Research Service and the average weekly wage paid by employers in each industry as shown in the U.S. Bureau of Labor Statistics Quarterly Census of Employment and Wages. It is assumed that employers will pay 50 percent of an employee's wages while the employee is on leave, the minimum amount required for the employer to qualify for federal tax benefits associated with paid family leave. It is further assumed that 2.5 percent of employees whose employers offer paid leave of six weeks or more will take leave of this duration in 2020, and that this share will grow to 2.75 percent in 2021 and 3.0 percent in 2022 as long-term family leave becomes more common.

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 income tax liability that exceeds the amount of their tax credits. To the extent that tax liability is less than the credit amount, the revenue impact of the bill will be partially delayed into future fiscal years.

Income tax deduction. The income tax deduction in the bill is expected to reduce General Fund revenue by $0.4 million in FY 2019-20, $1.1 million in FY 2020-21, and $1.5 million in FY 2021-22 and subsequent fiscal years.

These estimates are based on the following assumptions:

- approximately 110,000 employed individuals will take family leave of any duration each year, based on the number and imputed employment rates of parents of new children in Colorado;
- 11 percent of employers will offer payroll deductions for savings account contributions, based on the share of national employers offering payroll deductions for contributions to 529 college savings accounts;
- when the bill is fully implemented, 48 percent of employees who take leave, and whose employers offer payroll deductions, will utilize payroll deductions, based on the utilization rate for 529 college savings accounts;
- for tax year 2020, employees' savings account utilization rate is assumed to be half of that expected for 2021 and subsequent years as employees become aware of the program;
- employers will make savings account contributions for 9 percent of employees who make savings account contributions, based on national statistics for employer contributions to 529 college savings accounts; and
- all account contributors will contribute $5,000, the maximum amount allowed under the bill, for one year.

An employee who makes a $5,000 account contribution is eligible for a $5,000 income tax deduction, reducing the employee's income tax liability by $231.50 per year based on the state's 4.63 percent income tax rate.

State Expenditures

The bill is expected to increase state expenditures by $457,633 and 4.6 FTE in FY 2020-21, and by $437,658 and 6.2 FTE in FY 2021-22 and subsequent fiscal years. Expenditures are summarized in Table 2 and explained in detail below. The bill is not expected to affect state expenditures for FY 2019-20.

Table 2
Expenditures Under HB 19-1058

	FY 2020-21	FY 2021-22
Department of Revenue		
Personal Services	$224,853	$301,815
Operating Expenses and Capital Outlay Costs	$27,885	$5,890
Document Management	$25,386	-
Computer Programming and Testing	$88,313	$7,150
Centrally Appropriated Costs*	$91,196	$122,803
Total Cost	**$457,633**	**$437,658**
Total FTE	**4.6 FTE**	**6.2 FTE**

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

Tax administration. The costs presented in Table 2 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 new 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 increases or decreases in department resources will be accommodated through the annual budget process.

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. An ongoing cost of $7,150 is required for the department's Office of Research and Analysis to report tax data on the deduction and credit from the software system.

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 $91,196 in FY 2020-21 and $122,803 in FY 2021-22.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by $5.4 million 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.

Technical Note

The introduced bill creates a tax credit based on the amount that an employer pays to an employee while the employee is on leave. This fiscal note assumes that the credit applies only to payment for an employee's period of leave. If the bill is interpreted to allow a credit in cases where wages and salaries to compensate an employee for previous time worked are paid to the employee during the employee's leave period, the credit will be available to employers that do not offer paid leave, and will decrease revenue and increase expenditures to a greater extent than estimated in this fiscal note.

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. The income tax credit and income tax deduction in this bill are available beginning in tax year 2020.

State and Local Government Contacts

Counties	Information Technology
Labor and Employment	Legislative Council Staff Economists
Municipalities	Personnel
Regulatory Agencies	Revenue