Second Regular Session

Sixty-second General Assembly

LLS NO. 00-0684.01 Nicole Hoffman HOUSE BILL 00-1198

STATE OF COLORADO

BY REPRESENTATIVES Keller, Kaufman, Smith, and Windels;
also SENATOR Perlmutter.

A BILL FOR AN ACT

CONCERNING THE CREATION OF A COLORADO INCOME TAX CREDIT FOR THE EDUCATIONAL EXPENSES OF CHILDREN INCURRED BY THEIR PARENTS AS A MEANS OF REFUNDING STATE REVENUE IN EXCESS OF THE CONSTITUTIONAL LIMITATION ON STATE FISCAL YEAR SPENDING IN ANY GIVEN FISCAL YEAR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Allows an educational expenses income tax credit for parents of children in public or nonpublic elementary or secondary schools or home-based educational programs in the state for any income tax year commencing on or after January 1, 2000, if the amount of state revenues exceeds the limitation on state fiscal year spending for the fiscal year that ends in such income tax year and voters have not authorized the state to retain and spend all or any portion of the excess state revenues. Authorizes a specific amount of the credit that may be claimed. Requires a minimum amount of excess state revenues in order to trigger the tax credit. Requires the minimum amount of excess state revenues to be adjusted in future years to reflect the rate of growth of Colorado personal income.

Defines terms.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 22 of title 39, Colorado Revised

Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-125. Expenses related to children's education - credits against state tax - legislative declaration - definitions. (1) SUBJECT TO THE PROVISIONS OF SUBSECTION (5) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2000, IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR ENDING IN THAT INCOME TAX YEAR EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION AND THE VOTERS STATEWIDE EITHER HAVE NOT AUTHORIZED THE STATE TO RETAIN AND SPEND ALL OR ANY PORTION OF THE EXCESS STATE REVENUES FOR THAT FISCAL YEAR, THERE SHALL BE ALLOWED TO ANY PARENT OF A CHILD A CREDIT AGAINST THE STATE INCOME TAXES DUE ON THE PARENT'S INCOME UNDER THIS ARTICLE FOR NONREIMBURSED EDUCATIONAL EXPENSES INCURRED FOR EACH CHILD DURING THE ACADEMIC YEAR, AS DEFINED IN SECTION 22-33-102 (1), C.R.S., THAT ENDS IN THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED. THE AMOUNT OF THE CREDIT SHALL BE _____ FOR EACH CHILD OF THE PARENT DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED.

(2) IF THE CREDIT ALLOWED UNDER SUBSECTION (1) OF THIS SECTION EXCEEDS THE INCOME TAXES DUE ON THE PARENT'S INCOME, THE AMOUNT OF THE CREDIT NOT USED TO OFFSET INCOME TAXES SHALL BE CARRIED FORWARD AS A CREDIT AGAINST THE PARENT'S SUBSEQUENT

YEARS' INCOME TAX LIABILITY FOR A PERIOD NOT EXCEEDING _____ YEARS AND SHALL BE APPLIED FIRST TO THE EARLIEST YEARS POSSIBLE.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CHILD" MEANS A CHILD WHO IS SIX YEARS OF AGE OR OLDER AND UNDER NINETEEN YEARS OF AGE WHO IS ENROLLED IN A PUBLIC OR NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL OR PARTICIPATES IN A HOME-BASED EDUCATIONAL PROGRAM, AS DEFINED IN SECTION 22-33-104.5 (2) (a), C.R.S., FOR THE ACADEMIC YEAR THAT ENDS IN THE TAXABLE YEAR FOR WHICH A CREDIT IS CLAIMED.

(b) "EDUCATIONAL EXPENSES" MEANS THE EDUCATION RELATED COSTS INCURRED BY THE PARENT OF A CHILD, INCLUDING, BUT NOT LIMITED TO, TRANSPORTATION, TUITION, TEXTBOOKS, LIBRARY BOOKS, PERIODICALS, INSTRUCTIONAL SUPPLIES OR MATERIALS, COMPUTER HARDWARE AND SOFTWARE EQUIPMENT, LAB FEES AND EQUIPMENT, UNIFORMS, AND OTHER EDUCATIONAL AND EXTRACURRICULAR-RELATED EXPENSES.

(c) "PARENT" MEANS A TAXPAYER WHO IS THE MOTHER, FATHER, OR LEGAL GUARDIAN OF A CHILD AND WHO CLAIMS THAT CHILD AS A DEPENDENT FOR FEDERAL INCOME TAX PURPOSES.

(4) ANY INCOME TAX CREDIT ALLOWED FOR ANY GIVEN TAXABLE YEAR PURSUANT TO THIS SECTION SHALL BE PUBLISHED IN RULES PROMULGATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE INCLUDED IN INCOME TAX FORMS FOR THAT TAXABLE YEAR.

(5) (a) IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE

CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1, 1999, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT FISCAL YEAR BY LESS THAN _____ MILLION DOLLARS, THEN THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR COMMENCING ON JANUARY 1, 2000.

(b) IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2000, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT FISCAL YEAR BY LESS THAN _____ MILLION DOLLARS, AS ADJUSTED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (5), THEN THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SAID STATE FISCAL YEAR ENDED.

(c) (I) NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2001, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (5) TO REFLECT THE RATE OF GROWTH OF COLORADO PERSONAL INCOME FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH SUCH ADJUSTMENT IS MADE. FOR PURPOSES OF THIS SUBPARAGRAPH (I), "THE RATE OF GROWTH OF COLORADO PERSONAL INCOME" MEANS THE

PERCENTAGE CHANGE BETWEEN THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE AND THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR PRIOR TO THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE.

(II) UPON CALCULATING THE ADJUSTMENT OF SAID DOLLAR AMOUNT IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOTIFY IN WRITING THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL CREATED PURSUANT TO SECTION 2-3-301 (1), C.R.S., OF THE ADJUSTED DOLLAR AMOUNT AND THE BASIS FOR THE ADJUSTMENT. WRITTEN NOTIFICATION SHALL BE GIVEN WITHIN FIVE WORKING DAYS AFTER SUCH CALCULATION IS COMPLETED, BUT SUCH WRITTEN NOTIFICATION SHALL BE GIVEN NO LATER THAN OCTOBER 1 OF THE CALENDAR YEAR.

(III) IT IS THE FUNCTION OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL TO REVIEW AND APPROVE OR DISAPPROVE THE ADJUSTMENT OF SAID DOLLAR AMOUNT WITHIN TWENTY DAYS AFTER RECEIPT OF THE WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. ANY ADJUSTMENT THAT IS NOT

APPROVED OR DISAPPROVED BY THE EXECUTIVE COMMITTEE WITHIN SAID TWENTY DAYS SHALL BE AUTOMATICALLY APPROVED; EXCEPT THAT, IF WITHIN SAID TWENTY DAYS THE EXECUTIVE COMMITTEE SCHEDULES A HEARING ON THE ADJUSTMENT, THE AUTOMATIC APPROVAL SHALL NOT OCCUR UNLESS THE EXECUTIVE COMMITTEE DOES NOT APPROVE OR DISAPPROVE THE ADJUSTMENT AFTER THE CONCLUSION OF THE HEARING. ANY HEARING CONDUCTED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUBPARAGRAPH (III) SHALL BE CONCLUDED NO LATER THAN TWENTY-FIVE DAYS AFTER RECEIPT OF THE WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR.

(IV) (A) IF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL DISAPPROVES ANY ADJUSTMENT OF SAID DOLLAR AMOUNT CALCULATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE PURSUANT TO THIS PARAGRAPH (c), THE EXECUTIVE COMMITTEE SHALL SPECIFY SUCH ADJUSTED DOLLAR AMOUNT TO BE UTILIZED BY THE EXECUTIVE DIRECTOR. ANY ADJUSTED DOLLAR AMOUNT SPECIFIED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUB-SUBPARAGRAPH (A) SHALL BE CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH (c).

(B) FOR THE PURPOSE OF DETERMINING WHETHER THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION IS TO BE ALLOWED FOR ANY GIVEN INCOME TAX YEAR, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT UTILIZE ANY ADJUSTED DOLLAR AMOUNT THAT HAS NOT BEEN APPROVED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) OR OTHERWISE SPECIFIED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV).

(V) IF ONE OR MORE BALLOT QUESTIONS ARE SUBMITTED TO THE VOTERS AT A STATEWIDE ELECTION TO BE HELD IN NOVEMBER OF ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, THAT SEEK AUTHORIZATION FOR THE STATE TO RETAIN AND SPEND ALL OR ANY PORTION OF THE AMOUNT OF EXCESS STATE REVENUES FOR THE STATE FISCAL YEAR ENDING DURING SAID CALENDAR YEAR, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT DETERMINE WHETHER THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED AND SHALL NOT PROMULGATE RULES CONTAINING SAID CREDIT UNTIL THE IMPACT OF THE RESULTS OF SAID ELECTION ON THE AMOUNT OF THE EXCESS STATE REVENUES TO BE REFUNDED IS ASCERTAINED.

(6) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT A TAX CREDIT FOR NONREIMBURSED EDUCATIONAL EXPENSES IS A REASONABLE METHOD OF REFUNDING A PORTION OF THE EXCESS STATE REVENUES REQUIRED TO BE REFUNDED IN ACCORDANCE WITH SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.