Joint Budget Committee Staff

# Memorandum

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| To: | Joint Budget Committee |
| From: | Amanda Bickel, JBC Staff (303-866-4960) |
| Date: | March 12, 2025 |
| Subject: | HB24-1340 (Incentives for Postsecondary Education) Clean-up Bill |

## Recommendation

As discussed during the staff budget briefing, staff understands that that H.B. 24-1340 (Incentives for Postsecondary Education), which was sponsored by four JBC members though not a JBC bill, requires some clean up. Staff knows that legislators have been in conversation about this, and staff understands that there is interest in having the JBC carry the clean-up bill.

Staff has attached a memo from the Department of Higher Education that describes the statutory changes that were known to be required as of March 11, 2025. **Staff recommends that the JBC carry this bill**. Staff also wants the Committee to be aware of some additional issues that may need to be addressed.

- It appears that the cost of this credit may have been significantly underestimated. Given this, s*hould a "trigger" should be added to this tax credit to turn it off based on the State falling below the TABOR cap?* Staff does not recommend this as a good *policy* choice, but it may be a good *budget* choice, particularly given the narrow margin between the TABOR cap and existing tax credit/refund commitments. As the Committee is aware, the State is locked into paying for this credit in TY 2025, but if there is no trigger, the State could be locked into it for TY 2026 before the General Assembly has an opportunity to make additional changes.
- Staff is aware that there are discussions ongoing with federal authorities that may affect the bill, so staff recommends delaying finalizing and introduction pending resolution of any remaining issues.

## Analysis

House Bill 24-1340 (Incentives for Postsecondary Education) provides for refundable income tax credits to cover tuition and fees that are not covered by grant aid for resident undergraduate students in households with incomes up to $90,000. The tax credit, which took effect January 1, 2025, applies for semesters/quarters that a student begins with less than 66 credits, i.e., it is intended to cover a student's first two years of postsecondary education. It is available to students who begin their studies within two years of high school graduation, are enrolled for at least six credit hours, and achieve an average GPA of at least 2.5. The fiscal note estimated the full-year tax expenditure from the bill at $36.7 million. The credit is continued through 2034.

*Technical Fixes Required:* Staff understands that the institutions, Department, and OSPB have collaborated to identify technical fixes required. These are described in the attached memo. These include:

- Changing from an academic to a calendar year for claiming the credit, effective with the January 1, 2026 tax credit, which will facilitate a quicker reimbursement for students.
- Modifying the deadlines for institutions to report eligible student data from January 15 to January 31 and changing deadlines for CDHE to forward consolidated data to the Department of Revenue from January 31 to February 15.
- Clarifying that the tax credit is limited to undergraduate students and clarifying that students must have graduated high school, or equivalent, in 2024 or later or must have been enrolled in postsecondary education in fall of 2024 (disqualifying students who first attended postsecondary education in 2024 and stopped out).
- Authorizing the Department of Revenue to share information with the Department of Higher Education regarding whether individuals have claimed the credit, which CDHE must also keep confidential.
- Moving up the date for a first report to the JBC and other legislative education committees from June 30, 2027 to June 30, 2026
- Adding data items that must be reported to the General Assembly, including available data on student enrollment for tax credit recipients and non-recipients, and related student outcome measures for recipients and non-recipients, including retention, completion, and loan debt data.
- Clarifying that eligibility for the tax credits will be based on the facts as of the last day of January (for the prior year) and will disregard changes after that time.
- In addition to the list above, institutions have noted to JBC staff that the bill may need to clarify that students must apply for the College Opportunity Fund stipend and/or payments must be net of stipend amounts.

## Tax Credit Cost

As described above, the fiscal note for the bill anticipated tax expenditures of $36.7 million. However, staff was aware that some institutions were concerned about the accuracy of that figure and therefore asked the Department to work with institutions prior to figure setting to attempt to refine the estimate.

Because of the short time-frame, the Department worked with the CU System and CU Boulder, which agreed to participate, to do a deeper dive into the potential cost of the tax credit. This was a significant lift, and the Department—and JBC Staff—appreciate CU's assistance in conducting this analysis.

As reflected in the table below, the collaboration with CU indicates that the **cost of the tax credit could be far higher than originally estimated, since CU's work using FY 2023-24 data indicated that cost for CU Boulder could exceed the original estimate by 76.3 percent.**

| Comparison for University of Colorado Boulder Projected Tax Credit Impact HB 24-1340 | | |
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| | Eligible Students | Estimated Cost |
| FY 2020-21 Data Used for HB24-1340 FN | 774 | $2,709,213 |
| FY 2023-24 Actual Data | 1,211 | $4,776,821 |
| Revised estimate above original estimate | 437 | $2,067,608 |
| Percentage Difference | 56.5% | **76.3%** |

**If the impacts reflected at CU Boulder were extrapolated statewide, this tax credit would be estimated to cost $64.7 million in FY 2025-26, rather than the $36.7 million in the fiscal note.**

| Extrapolating CU Boulder Data to Statewide Estimates of HB 24-1340 Costs (Million $s) | | | |
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| | FY 2024-25 | FY 2025-26 | FY 2026-27 |
| HB24-1340 Fiscal Note - tax credit estimate | -$18.1 | $36.7 | $37.8 |
| Revised Estimate Based on Extrapolating from CU Data | **$31.9** | **$64.7** | **$66.6** |
| Revised estimate above original estimate | $13.8 | $28.0 | $28.8 |

The reasons for the differences include the following issues, some of which may also affect the estimates for other institutions and some of which may not.

- **Differential tuition:** The original fiscal analysis was based on the *base* tuition paid by students. However, CU Boulder charges a tuition differential to students depending upon their program of study, i.e., students admitted to its College of Business or Engineering pay substantially more than students admitted to the College of Liberal Arts. These differential rates added **17.0** percent to the cost of tuition in the tax credit analysis. The Department notes that 7 of the 12 public 4-year institutions, including all of the CU and CSU institutions, UNC, and Adams State, apply tuition differentials. Thus, this issue is likely to affect a large share of the dollars included in the estimate. JBC Staff also note that non-mandatory fees, i.e., fees associated with particular programs of study, could also have an impact at some institutions.
- **Students not reported:** While engaged in this process, the Department determined that, at CU, students who completed a financial aid application (the FAFSA) but were not eligible for financial aid and did not take loans were not included in CU's annual financial aid data submission to the Department. This is not what the Department expects and is inconsistent with the data definitions. This appears to reflect miscommunication that dates back multiple years. *This issue may or may not be replicated at other institutions.* This accounted for $700,000—about 1/3$^{rd}$ of the difference between the original estimate and the updated estimate.

- **Work Study Funds:** The Department's original analysis included work study as a form of financial aid, but CU Boulder helped clarify that they should not be included as students report and pay income taxes on these.
- **Modeling Institutional Promise Programs:** The Department used data which had been created prior to the establishment of almost all institutional promise programs. As a result, the modeling did not capture key data points such as Satisfactory Academic Progress or FAFSA submission dates, and some students/ expenses were treated as covered by institutional promise programs that probably will not be.

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# Proposed Statutory Technical Changes to HB24-1340

## Moving from Academic Year to Calendar Year

To provide a more timely reimbursement for students, the eligible period will shift from an academic year (Fall, Spring, Summer) to calendar year (Spring, Summer, Fall), with Fall 2024 being included with the 2025 year data. The change will facilitate a quicker reimbursement of out-of-pocket costs students paid for tuition and fees.

Feedback from institutions noted the original deadline of January 15 presented significant challenges. Between final grades being reported, institutional closings during the holidays, and pre-spring semester student needs, institutional staff were concerned they would not be able to properly identify and report eligible students. After consulting with the Colorado Department of Revenue, the Department and Governor's Office have determined it is feasible to shift the initial deadline for institutions to report eligible students to the Department to January 31 of each year. This change will also align with the notification date for institutions to inform students of their eligibility.

The Department will coordinate with institutions to provide consistent language and formatting to assure students are aware of their tax credit as well as the process for reimbursement.

Proposed Statutory Changes in this Section:

- AMEND SECTION 39-22-570 (3) (A) (I) for each income tax year commencing on or after January 1, 2025, but prior to January 1, ~~2033~~ 2026, an eligible student is allowed an incentive against the income taxes imposed by this article 22 for every qualifying semester or term completed during the academic year ending during the income tax year AND ANY OTHER QUALIFYING SEMESTER OR TERM COMPLETED DURING THE INCOME TAX YEAR.

  (II) FOR EACH INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2026, BUT PRIOR TO JANUARY 1, 2033, AN ELIGIBLE STUDENT IS ALLOWED AN INCENTIVE AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 FOR EVERY QUALIFYING SEMESTER OR TERM COMPLETED DURING THE INCOME TAX YEAR.

- (b) the amount of incentive allowed to an eligible student for each ~~income tax year~~ QUALIFYING SEMESTER OR TERM is equal to the amount paid by or for the benefit of the eligible student in tuition and fees to a colorado public institution of higher education minus any scholarships or grants for ~~each~~ THE qualifying semesterS or termS ~~during the academic year completed during the prior calendar year~~.

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- (4)(a) each Colorado public institution of higher education is required by January ~~15~~ 31, 2026, and every January ~~15~~ 31, thereafter until 2033, to electronically report each eligible student for any qualifying semester or term ~~completed during the academic year completed during the~~ FOR WHICH A CREDIT IS ALLOWED PURSUANT TO THIS SECTION FOR THE prior calendar year to the department of higher education in a format prescribed by the department of higher education that includes:
- (c) the department of higher education is required by ~~JANUARY 31~~ FEBRUARY 15, 2026, and every ~~JANUARY 31~~ FEBRUARY 15 thereafter through 2034, to electronically report the information received pursuant to subsection (4)(a) of this section along with any later corrections or additions to the department of

***Note**: The change from Jan 15 to Jan 31 submission could potentially delay students' tax returns. IHEs will need to communicate clearly to students about their potential eligibility (and to be on the lookout for a standardized form notifying them of their eligibility) in order to minimize the number of corrections filers may need to submit.*

## Student Eligibility

This section includes two clarifications: First, that the tax credit only applies to undergraduate students. Second, that students must have graduated high school, or equivalent, in 2024 or later OR must have been currently enrolled in postsecondary education in the fall of 2024 to be eligible. This clarification eliminates eligibility for students who first attended postsecondary education prior to 2024 and stopped out.

Proposed Statutory Changes in this Section:

- AMEND SECTION 39-22-570 (2)(C) "eligible student" means an individual who:

- (i) ~~has matriculated at a Colorado public institution of higher education within two years of completion of high school graduation or an equivalent~~ COMPLETED HIGH SCHOOL GRADUATION OR AN EQUIVALENT ON OR AFTER JANUARY 1, 2024 OR ARE CURRENTLY ENROLLED AS OF FALL 2024;

- (I.5) HAS MATRICULATED AT A COLORADO PUBLIC INSTITUTION OF HIGHER EDUCATION WITHIN TWO ACADEMIC YEARS OF COMPLETION OF HIGH SCHOOL GRADUATION OR AN EQUIVALENT;

- (ii) is designated as a degree- or credential-seeking UNDERGRADUATE student at a Colorado public institution of higher education for the semester or term for which an incentive is claimed;

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## Data Collection

These changes clarify the data that institutions must report to the Department for their students to be eligible for the tax credit. To estimate the cost of the tax credit and meet the reporting requirements to the JBC and education committee(s), the Department will collect student-level tuition and fee charges. Additionally, the Department will annually coordinate with the Colorado Department of Revenue (DOR) to obtain data showing which of the eligible students received the tax credit in a given year.

Proposed Statutory Changes in this Section:

- AMEND SECTION 39-22-570 TO ADD THE DEPARTMENT OF REVENUE SHALL ANNUALLY PROVIDE THE COLORADO DEPARTMENT OF HIGHER EDUCATION WITH DATA THAT INDICATES WHETHER A QUALIFIED INDIVIDUAL CLAIMED THE CREDIT ALLOWED PURSUANT TO THIS SECTION.
- (d) on or before June 30, 202~~7~~6, and each year thereafter until 2037, the department of higher education shall submit a report to the joint budget committee and the house of representatives and senate education committees, or any successor committees, including, for each institution, the average percentage of state and institutional financial aid allocated to the resident student population who have a family income of ninety thousand dollars or less in the three academic years prior to the academic year 2024-25, and in each academic year thereafter until 2034. The department of higher education shall include in the report AVAILABLE DATA ON student enrollment information for TAX CREDIT RECIPIENTS, eligible NON-RECIPIENTS, AND non-eligible students, disaggregated by income, and shall include, once the data are available, disaggregated outcome measures by income for TAX CREDIT RECIPIENTS, eligible NON-RECIPIENTS, and non-eligible students, including but not limited to student retention RATES, completion rates, AND STUDENT LOAN DEBT. Each colorado public institution of higher education shall annually report student level financial aid, TUITION AND FEE, student eligibility, and incentive eligibility information to the department of higher education that the department of higher education deems necessary TO CALCULATE THE COST OF THE TAX CREDIT, TO provide to the department of revenue for incentive administration, or for inclusion in the report.

- AMEND SECTION 39-21-113 TO ADD (37) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENTS IN THIS SECTION, THE EXECUTIVE DIRECTOR MAY PROVIDE THE COLORADO DEPARTMENT OF HIGHER EDUCATION WITH INFORMATION OBTAINED PURSUANT TO THIS SECTION THAT INDICATES WHETHER A QUALIFIED INDIVIDUAL CLAIMED THE CREDIT ALLOWED BY SECTION 39-22-570, C.R.S. ANY INFORMATION PROVIDED TO THE COLORADO DEPARTMENT OF HIGHER EDUCATION PURSUANT TO THIS SUBSECTION (37) IS CONFIDENTIAL, AND ALL EMPLOYEES OF THE COLORADO DEPARTMENT OF HIGHER EDUCATION ARE SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (4) OF THIS SECTION AND THE PENALTIES SPECIFIED IN SUBSECTION (6) OF THIS SECTION.

## Post-Term Changes

Current statute does not provide deadlines or due dates for multiple eligibility components, such as FAFSA submission, grade changes, tuition appeals, etc. Institutions sometimes face changes to eligibility requirements which occur after the completion of a semester or term, which under current statute, would require institutional staff to manually re-evaluate a student's eligibility for the given term. Given the current lack of deadlines, an individual could hypothetically become eligible for the tax credit multiple years after the tax year of actual eligibility. This would impact the eligibility determination process for the tax credit, as well as the statutorily required annual reporting.

The changes here ensure that the determination of student eligibility for a term is based on a student's eligibility status at the end of a term. This would help provide structure and clarity for potentially eligible students, and help lessen the administrative burden on institutional staff. Additionally it would address the following potential after-term changes:

- FAFSA/CASFA late submissions
- Grade Changes
- Tuition Appeals

Proposed Statutory Change:

- Amend section 39-22-570 Add (3)(C) WITH REGARD TO WHETHER A PERSON IS AN ELIGIBLE STUDENT, OR A SEMESTER OR TERM IS A QUALIFYING SEMESTER OR TERM, THE COLORADO PUBLIC INSTITUTION OF HIGHER EDUCATION SHALL TAKE INTO ACCOUNT THE FACTS AND CIRCUMSTANCES DETERMINED ON OR BEFORE THE LAST DAY OF JANUARY FOLLOWING THE TAX YEAR AND SHALL DISREGARD ANY CHANGE IN FACTS OR CIRCUMSTANCES OCCURRING AFTER THAT TIME.

# Institutional Questions and Concerns Answerable by DHE (No Statutory Change Needed)

Note: additional clarification on institutional questions is forthcoming in a full FAQ.

## Third Party Payments

Third party payments used for qualified tuition and mandatory fees should be included in determining the remaining amount of reimbursement a student is eligible to receive.

## Course Materials

- HB24-1340 covers “tuition and fees”. The internal revenue code Section 25A defines “qualified tuition and related expenses” as “tuition and fees required for the enrollment or attendance”. The definition does not include books, supplies, and/or equipment.
- Note: this means that institutions should not use the same definition as used to calculate a student’s 1098-T, as the 1098-T may include course materials. Additionally, the 1098-T is based on the entire year, rather than each term.

## Transfer Credits

Institutions asked how to handle credits earned at a previous institution, but not transferred (accepted) into the new or current institution. How do these credits impact the 65-credit hour cap?

Institutions should use the available transfer data based on transcripts submitted by students. The goal is to cover the first 65 credit hours toward a degree and not penalize a student if credits do not transfer.

## Federal Reporting

Institutions expressed concern about their ability to share federal tax information (FTI) with the Department and/or State. The Department is in communication with the Federal Department of Education and will provide clarification once it is available.

## Data Definitions

In March, CDHE will form a cross-institutional working group to develop consistent guidelines and definitions for all institutions to utilize.

## Communication Responsibilities

IHE’s are responsible for providing the following information to students.

- General program description and requirements for eligibility. *
- Inform students of any specific items, documents, or information that must be submitted to determine eligibility (i.e. high school transcripts).

- Informing students of amount of eligible tax reimbursement.
- Share the process to receive the eligible tax credit. *

*CDHE will develop template documentation for IHEs, which can be refined to meet specific institutional needs.

## Data Reporting

IHE

- Reporting eligible tax reimbursement to students
  - o CDHE is working with DOR to provide examples to share with students. DOR anticipates the form will be ready by late 2025.
- Reporting eligible student data to CDHE by January 31 of each year
  - o SSN, student name, amount of eligible tax reimbursement

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- Compile, clean, and format all IHE submitted student data.

## Require COF Completion

Students are already incentivized to apply for COF as it helps cover the cost of their upfront tuition. From a State perspective, we do not see the need to require this step. Additionally, the Department does not want to create a potential barrier which may dissuade students from enrolling.

## Specifying the Tax Credit Applies to First Bachelors

The eligibility already specifies a 65 credit hour limit so an individual with a bachelors have already passed the limit. The Department believes can be addressed through the data definitions and guidelines for identifying eligible students.

## Utilize SAP in Determining Eligibility

While this criteria would help better align with individual institutional promise programs, utilizing this standard would potentially remove support to assist students who do not meet SAP, but are demonstrating positive academic improvements.

This would also be more confusing for messaging to students. All students know and understand their GPA but students likely only understand Satisfactory Academic Progress (SAP) if they are not meeting it.

## Regular Program Audit

Given this is associated with components of data and reporting, the Department does not believe that additional changes to statute are necessary. The Department can initiate an audit as needed to provide additional review of the tax credits effectiveness and efficiency.