



**Colorado  
Legislative  
Council  
Staff**

**SB16-123**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated February 17, 2016)

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0590  
**Prime Sponsor(s):** Sen. Lundberg  
Rep. Singer

**Date:** April 18, 2016  
**Bill Status:** House Transportation and Energy  
**Fiscal Analyst:** Matt Kiszka (303-866-6275)

**BILL TOPIC:** FREE ACCESS TO HIGH OCCUPANCY VEHICLE LANES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	Decrease. See State Revenue section.	
<b>State Expenditures</b>	<b><u>at least \$8.28 million</u></b>	<b><u>at least \$3.50 million</u></b>
Cash Funds	at least 8.28 million	at least 3.50 million
<b>Appropriation Required:</b> None.		
<b>Future Year Impacts:</b> Ongoing revenue decrease and expenditure increase.		

**Summary of Legislation**

The **reengrossed** bill prohibits the Colorado Department of Transportation (CDOT) from requiring a vehicle owner to purchase a switchable transponder or other device in order to drive on a high occupancy vehicle (HOV) or toll (HOT) lane on a state highway, unless this technology is provided to vehicle owners free of charge and so long as HOV users are not charged a toll. In addition, CDOT must fully reimburse all vehicle owners who have previously purchased a switchable transponder. Finally, the Transportation Commission must provide written notice to the General Assembly during the legislative session a year before CDOT, the High Performance Transportation Enterprise (HPTE), or an HPTE private partner requires that any vehicle carry three or more individuals to travel toll-free in an HOV or HOT lane (HOV-3).

**Background**

**High Performance Transportation Enterprise and HOV/HOT lanes.** The HPTE is a government-owned business within CDOT, which was created in 2009 to pursue innovative means of financing surface transportation projects, including public-private partnerships. The HPTE and its partners are authorized to impose tolls. State law authorizes CDOT and the HPTE to designate exclusive or preferential lanes on state highways for vehicles that carry a specified number of persons, known as HOV lanes. A lane that permits both HOV and tolled traffic is known as a HOT lane. Drivers that do not carry the minimum required number of passengers may use an HOT lane by paying a specified toll. Currently, two passengers (including the driver) are required to use the HOV lane, but the Transportation Commission has scheduled the implementation of HOV-3 on January 1, 2017.

**Plenary Roads Denver (Plenary).** The HPTE contracts with Plenary for the operation and maintenance of Express Lanes on US Highway 36 (US 36) and Interstate 25 (I-25). Currently, US 36 has one HOT lane running in each direction from Pecos Street in north Denver to Table Mesa Drive in Boulder. I-25 currently has two HOT switchable-direction lanes running 7 miles from downtown Denver to US 36. The HPTE has also added and is currently testing one HOT lane running in each direction on I-25 North from US 36 to 120th Avenue. These new managed lanes on I-25 North are anticipated to be fully operational by the summer of 2016, and will be operated solely by the HPTE.

HPTE's Express Lanes contract with Plenary mandates the use of switchable transponders and includes revenue projections for Plenary to collect throughout the 50-year life of the contract. Any change in law that affects those revenue projections is treated as an "HPTE change" under the agreement, which makes the HPTE liable to Plenary for annual revenue compensation payments that will put Plenary in a neutral position relative to the assumptions on which it based its bid.

**ExpressToll.** State law requires that CDOT develop standards for automatic vehicle identification system (AVIS) use on HOV and HOT lanes to ensure that drivers can purchase and install one electronic identification device, such as a transponder, to use on all toll facilities. To accomplish these requirements, the HPTE entered into a tolling services agreement with the E-470 Public Highway Authority (E-470) as part of its concession agreement with Plenary for the operation and maintenance of the I-25 and US 36 Express Lanes. This agreement allows E-470 to provide tolling services through ExpressToll, the all-electronic toll collection system available on E-470 and the Northwest Parkway, for and on behalf of HPTE and Plenary for all tolled corridors, including the I-25 and US 36 Express Lanes. This agreement also allows for E-470 to provide tolling services on future toll lanes, such as I-25 North and I-70 East through north Denver. Switchable transponders cost \$15 and a \$20 balance is required to open an online account.

**Toll rates.** Toll rates on I-25 and US 36 vary depending on time of day and whether the vehicle owner uses an ExpressToll transponder or relies on license plate tolling. ExpressToll users create an online pre-paid account from which tolls are automatically deducted, whereas license plate toll users have a photo taken of their license plates and a bill mailed to the vehicle owner's address on file with the Department of Revenue. ExpressToll transponders also have an HOV setting that allow vehicles to travel toll-free. Vehicles with a transponder pay a substantially lower toll than vehicles using license plate tolling because of the overhead costs related to license plate tolling. For informational purposes, administrative and processing costs of using switchable transponders are \$0.01 per transaction, versus \$0.62 per transaction for license plate tolling.

## **State Revenue**

The bill will decrease toll revenue for the HPTE in FY 2016-17, and potentially thereafter, on I-25 North due to the requirement that CDOT provide written notice to the General Assembly during the legislative session a year before requiring that any vehicle carry three or more individuals to travel toll-free in an HOV or HOT lane. The bill is expected to delay implementation of HOV-3 until at least May 2017. Current traffic estimates and HOV lane use for I-25 North are not available due to a lack of traffic tracking technology on this portion of the corridor prior to 2016. Therefore, estimates of decreased toll revenue cannot be determined at this time. Toll revenue is credited to the HPTE Special Revenue Fund, and can only be used for future projects on the corridor from which it was collected.

In addition, to the extent the provision of a free transponder encourages more drivers of vehicles carrying an insufficient number of passengers to use the HOT lanes on I-25 North illegally, toll revenue for the HPTE will be negatively impacted.

**State Expenditures**

The bill will increase state expenditures in CDOT by at least **\$8.28 million** in FY 2016-17 and at least **\$3.50 million** beginning in FY 2017-18 and thereafter from the continuously appropriated State Highway Fund. Costs are outlined in Table 1 and discussed below.

<b>Table 1. State Expenditures Under SB16-123</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Decreased Toll Revenue from Increased HOV Use Violations	\$3,000,000	\$3,000,000
Decreased Toll Revenue from Delaying HOV-3	1,930,000	-
E-470 Technological Updates	351,000	-
Transponder Reimbursements	1,500,000	-
Provision of New Transponders	1,500,000	500,000
<b>TOTAL</b>	<b>\$8,281,000</b>	<b>\$3,500,000</b>

**HPTE contractual obligations to Plenary.** HPTE is liable for any toll revenue losses and associated costs incurred by Plenary that cannot be addressed through increased tolls. Increased ownership of transponders is expected to result in an additional minimum of 100,000 HOV lane use violations per month on US 36 and I-25. Based on an average loss of toll revenue of \$2.50 per violation, this will result in a negative annual expenditure impact for HPTE of at least \$3,000,000 in FY 2016-17 and in subsequent years from lost toll revenue for Plenary. The fiscal note also assumes that HPTE and Plenary may utilize nascent AVIS technology, if necessary, to enforce HOV occupancy, at a cost to HPTE.

**HOV-3 notification.** The minimum passenger requirement for HOV eligibility is currently scheduled to increase to three passengers on January 1, 2017. Under the bill, the earliest that HOV-3 could be implemented is May 2017, if the Transportation Commission provides written notice to the General Assembly after the passage of the bill and during the 2016 legislative session. Delaying the implementation of increased passenger requirements is expected to affect toll revenue on US 36 and I-25, which will increase costs in the HPTE by at least \$1,930,000 in FY 2016-17 for revenue losses incurred by Plenary. In addition, any costs related to financing issues experienced by Plenary as a result of reduced toll revenue will also be passed on to HPTE.

**E-470 costs.** As the HPTE's tolling services provider, E-470 will require website and toll collection system development and other administrative costs to update internal technology to comply with new transponder requirements under the bill that allow free HOV lane access for users with transponders used for HOV purposes only. Currently, an automatic \$35 charge is required for all switchable transponder purchasers, which will no longer occur under the bill. These costs are estimated at a minimum of \$351,000 in FY 2016-17, which will be passed on to HPTE.

**Transponder—related costs.** Under the bill, CDOT is required to reimburse existing owners of a switchable transponder for the full purchase price of the transponder. Switchable transponders are provided by CDOT at-cost for \$15. As of January 31, 2016, 66,228 transponders have been sold by CDOT. By the effective date of the bill, it is anticipated that all remaining transponders from CDOT's current stock of 100,000 transponders will be sold. CDOT will therefore need to provide reimbursements at a cost of \$1,500,000 in FY 2016-17 for already-purchased transponders.

**Ongoing costs.** Beginning FY 2016-17, CDOT will also be required to provide transponders at no cost to all Express Lanes users that request one. CDOT is anticipated to provide an additional 100,000 transponders in FY 2016-17 to meet demand, at a cost of \$1,500,000. Any ongoing demand in future fiscal years for transponders for using Express Lanes will also need to be met by CDOT. HPTE is currently adding one HOT lane in each direction on I-25 between US 36 and 120th Avenue, which will connect directly with the existing I-25 Express Lanes leading into and out of downtown Denver. In addition, HPTE plans to add HOT lanes to other future highway expansion projects, including I-70 East. These additional HOV lanes are anticipated to increase the demand for transponders and subsequent costs for CDOT to provide them at no cost by at least \$500,000 in FY 2017-18 and thereafter.

**Administration and outreach.** The administrative cost of processing refunds for drivers who already purchased transponders is expected to be achieved within existing CDOT workloads.

The HPTE will also be required to update documents, materials, and other resources to reflect changes to transponder requirements. These efforts will be achieved within existing marketing and educational budgets.

### **Effective Date**

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

### **State and Local Government Contacts**

Judicial  
Transportation

Information Technology

Public Safety