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Fiscal Note

Drafting Number: LLS 23-0306 Date: February 16, 2023
Prime Sponsors: Sen. Fenberg; Van Winkle Bill Status: Senate Finance
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Bill Topic: RETAIL DELIVERY FEES

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] Statutory Public Entity

The bill modifies the administration of retail delivery fees and creates an exemption from the fees for small and new businesses. The bill decreases revenue beginning in FY 2022-23 and increases expenditures in FY 2023-24 only.

Appropriation Summary: The bill requires that Department of Transportation appropriations be decreased by \$62,502 in the current FY 2022-23 and \$276,355 in FY 2023-24, and Department of Revenue appropriations be increased by \$17,086 in FY 2023-24.

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

Table 1
State Fiscal Impacts Under SB 23-143

Table with 4 columns: Category, Current Year FY 2022-23, Budget Year FY 2023-24, Out Year FY 2024-25. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Total Expenditures), Transfers, and Other Budget Impacts (TABOR Refund).

Summary of Legislation

The bill modifies the administration of the retail delivery fees enacted in Senate Bill 21-260. It creates an exemption from the fees for businesses with retail sales less than or equal to \$500,000 in the prior year. It also allows sellers to pay the fee on the purchaser's behalf, such that the fee does not need to be separately itemized for each delivery, and requires the Department of Revenue (DOR) to waive processing costs if the processing costs would exceed the amount of retail delivery fees the retailer is remitting and the payment is remitted by automated clearing house debit.

Background

Senate Bill 21-260 created retail delivery fees imposed on retail deliveries by motor vehicles that transport tangible personal property subject to the state sales tax. The retail delivery fees went into effect on July 1, 2022. There are six retail delivery fees that are administered by the DOR, and then distributed to the Highway Users Tax Fund (HUTF), the Multimodal Transportation and Mitigation Options Fund (MMOF), and five enterprises. The DOR is permitted to retain a portion of the revenue to pay for the costs of collecting, administering and enforcing the fees. The fees total 27 cents per delivery in FY 2022-23 and may be adjusted for inflation in future years.

Data and Assumptions

Of the 161.2 million deliveries for which retail delivery fees were paid between July 2022 and December 2022, 2.5 million were remitted by retailers with sales of less than or equal to \$500,000. This fiscal note assumes that the percentage of retail deliveries that are attributable to retailers with revenue below the \$500,000 threshold will stay constant at 1.5 percent throughout the forecast period. The fiscal note also assumes that the retail delivery fees will be adjusted for inflation, as required under current law, consistent with December 2022 LCS forecast inflation expectations.

The bill specifies that the small retailer exemption should go into effect upon the bill's passage. The fiscal note assumes that the bill will be passed on April 1, 2023, such that the exemption will be in effect for three months of the current FY 2022-23.

State Revenue

The bill decreases state revenue by \$307,133 in the current FY 2022-23, \$1.4 million in FY 2023-24, and increasing amounts in later years. Revenue impacts occur in various state cash funds, including five state enterprises. Table 2 presents revenue estimates through FY 2024-25 and shows which revenue is expected to be subject to, and exempt from, the state TABOR limit.

**Table 2
Revenue Under SB 23-143**

Fund	FY 2022-23	FY 2023-24	FY 2024-25
Highway Users Tax Fund*	(\$67,727)	(\$299,461)	(\$324,781)
Multimodal Transportation and Mitigation Options Fund*	(\$28,482)	(\$125,933)	(\$136,582)
Bridge and Tunnel Enterprise	(\$30,618)	(\$135,380)	(\$146,827)
Community Access Enterprise	(\$78,246)	(\$345,971)	(\$375,225)
Clean Fleet Enterprise	(\$60,102)	(\$265,746)	(\$288,216)
Clean Transit Enterprise	(\$34,020)	(\$150,422)	(\$163,141)
Nonattainment Area Air Pollution Mitigation Enterprise	(\$7,938)	(\$35,099)	(\$38,066)
Total	(\$307,133)	(\$1,358,012)	(\$1,472,838)
Total Subject to TABOR	(\$96,209)	(\$425,394)	(\$461,363)
Total Exempt from TABOR	(\$210,924)	(\$932,618)	(\$1,011,475)

* This revenue is subject to the TABOR limit

Highway Users Tax Fund. Of the revenue from retail delivery fees that is distributed to the HUTF, 40 percent is allocated to the State Highway Fund within CDOT, 33 percent is allocated to counties, and 27 percent is allocated to municipalities. The State Highway Fund portion of revenue loss is estimated to be \$119,784 in FY 2023-24. The revenue is spent at the discretion of the Transportation Commission for highway improvements, transit-related projects, and other transportation projects.

Multimodal Transportation and Mitigation Options Fund. Revenue to the MMOF is used for multimodal transportation projects and greenhouse gas mitigation projects. Of these funds, 85 percent are used to support local projects and 15 percent are retained by CDOT for statewide projects. The portion of the lost revenue attributable to state projects is estimated to be \$18,890 million in FY 2023-24.

Enterprises. Each of the five enterprises listed above impose their own retail delivery fees to be used to be allocated at the discretion of each enterprise's governing board. All revenue collected by enterprises is exempt from the state TABOR limit.

State Expenditures

Department of Revenue. This bill requires expenditures of \$17,046 to program, test, and update the DOR's GenTax software system. Programming costs are estimated at \$6,750, representing 30 hours of contract programming at a rate of \$225 per hour. Costs for testing at the department are estimated at \$10,336, representing 323 hours of user acceptance testing at a rate of \$32 per hour.

Although the bill goes into effect in FY 2022-23, the DOR does not need to make the GenTax updates prior to implementation in order to be compliant. Therefore, the expenditure is expected in FY 2023-24.

Department of Transportation. The decrease in revenue to the State Highway Fund, MMOF, Bridge and Tunnel Enterprise, Clean Transit Enterprise, and Nonattainment Area Air Pollution Mitigation Enterprise will result in a reduction of expenditures in the Department of Transportation by the amounts specified in the revenue section. Funds in the State Highway Fund, Bridge and Tunnel Enterprise, and Nonattainment Area Air Pollution Mitigation Enterprise are continuously appropriated while funds in the MMOF are annually appropriated with three years of roll-forward authority. Because of the nature of the appropriations, the decrease in expenditures for each fiscal year is not known.

Funds for the Clean Transit Enterprise are annually appropriated. Expenditures in the Clean Transit Enterprise are expected to decrease by \$34,020 in the current FY 2022-23, \$150,422 in FY 2023-24, and \$163,141 in FY 2024-25.

Department of Public Health and Environment. The decrease in revenue to the Clean Fleet Enterprise outlined in the revenue section will result in a decrease in expenditures in the Department of Public Health and Environment. The funds otherwise would be dedicated toward supporting electric vehicles and other clean fleet technology in government and private fleets. Because the funds are continuously appropriated, the decrease in expenditures for each fiscal year is not known.

Colorado Energy Office. The decrease in revenue to the Community Access Enterprise outlined in the revenue section will result in a decrease in expenditures in the Colorado Energy Office. The funds otherwise would be used to support and incentivize adoption of electric vehicles and electric alternatives to motor vehicles, including development of vehicle charging infrastructure. Because the funds are continuously appropriated, the decrease in expenditures for each fiscal year is not known.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, decreased cash fund revenue that is subject to TABOR will increase the amount of General Fund available to spend or save. Decreased revenue to enterprises will have no impact on TABOR refunds.

Local Government

The bill will decrease revenue to local governments from the HUTF and the MMOF on an ongoing basis beginning in FY 2022-23. The impact is summarized in Table 3.

**Table 3
Local Revenue Under SB 23-143**

Fund	FY 2022-23	FY 2023-24	FY 2024-25
Highway Users Tax Fund	(\$40,636)	(\$179,676)	(\$194,869)
<i>Counties</i>	(\$22,350)	(\$98,822)	(\$107,178)
<i>Municipalities</i>	(\$18,286)	(\$80,854)	(\$87,691)
Multimodal Transportation & Mitigation Options Fund	(\$24,209)	(\$107,043)	(\$116,094)
Total Local Government Revenue Impact	(\$64,846)	(\$286,720)	(\$310,963)

Funds for local projects from the MMOF may be used to expand local transit or other multimodal projects. Local HUTF revenue may be used for a variety of transportation-related projects.

Effective Date

The bill takes effect on April 1, 2023, except that the exemption for qualified businesses takes effect upon the bill's passage.

State Appropriations

For FY 2022-23, this bill requires reductions in appropriations from the Multimodal Transportation and Mitigation Options Fund and the Clean Transit Enterprise Fund to the Department of Transportation in the amounts of \$28,482 and \$34,020, respectively.

For FY 2023-24, the bill requires the following changes in appropriations:

- \$17,086 from the General Fund to the Department of Revenue;
- (\$125,933) from the Multimodal Transportation and Options Fund to the Department of Transportation; and
- (\$150,422) from the Clean Transit Enterprise Fund to the Department of Transportation.

No change in appropriations is required for the State Highway Fund, Statewide Bridge Enterprise Special Revenue Fund, Nonattainment Area Air Pollution Mitigation Enterprise Fund, Clean Fleet Enterprise Fund, or the Community Access Enterprise Fund because these funds are continuously appropriated to their respective departments.

State and Local Government Contacts

Colorado Energy Office Revenue	Information Technology Transportation	Public Health and Environment
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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.