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Final Fiscal Note

Drafting Number: LLS 23-0752
Prime Sponsors: Rep. Pugliese
Sen. Will

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Bill Status: Postponed Indefinitely
Fiscal Analyst: Emily Dohrman | 303-866-3687
emily.dohrman@coleg.gov

Bill Topic: REPEAL RETAIL DELIVERY FEES

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill would have eliminated retail delivery fees imposed by the state and various enterprises beginning on July 1, 2023, by stating that the fees may be collected in FY 2022-23 only. The bill would have reduced revenue to state and local governments on an ongoing basis beginning in FY 2023-24 and increased state expenditures in FY 2022-23 only.

Appropriation Summary: The bill would have required an appropriation of \$40,536 to the Department of Revenue in the current FY 2022-23, and a \$16,523,192 decrease in appropriations to the Department of Transportation in FY 2023-24.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was postponed indefinitely by the House Transportation, Housing, and Local Government Committee on February 21, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 23-1166

		Current Year FY 2022-23	Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	Cash Funds	-	(\$88.2 million)	(\$95.6 million)
Expenditures	General Fund	\$40,536	up to (\$88.2 million)	up to (\$95.6 million)
Transfers		-	-	-
Other Budget Impacts	TABOR Refund	-	(\$27.6 million)	(\$29.9 million)

Summary of Legislation

For FY 2023-24 and all later years, the bill eliminates the retail delivery fees created in Senate Bill 21-260 by stating that the fees may be collected in FY 2022-23 only.

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 collected by the Department of Revenue (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. The amount of each fee is shown in Table 2.

Table 2
FY 2022-23 Maximum Retail Delivery Fees

	TABOR Status	Fee per Delivery
State (Highway Users Tax Fund, Multimodal Transportation and Mitigation Options Fund, and DOR)	Nonexempt	8.4 ¢
Bridge and Tunnel Enterprise	Exempt	2.7 ¢
Community Access Enterprise	Exempt	6.9 ¢
Clean Fleet Enterprise	Exempt	5.3 ¢
Clean Transit Enterprise	Exempt	3.0 ¢
Nonattainment Area Air Pollution Mitigation Enterprise	Exempt	0.7 ¢
Total		27.0 ¢

State Revenue

The bill decreases state revenue by \$88.2 million on an ongoing basis starting in FY 2023-24. Revenue impacts occur in eight state cash funds, including five state enterprises. Table 3 presents revenue reduction estimates through FY 2024-25. This fiscal note assumes that retail delivery fees will be adjusted for inflation in FY 2023-24 and FY 2024-25 consistent with the December 2022 LCS forecast.

**Table 3
Revenue Under HB 23-1166**

Fund	FY 2023-24	FY 2024-25
Department of Revenue*	(\$0.04 million)	(\$0.04 million)
Highway Users Tax Fund*	(\$19.4 million)	(\$21.1 million)
Multimodal Transportation and Mitigation Options Fund*	(\$8.2 million)	(\$8.9 million)
Bridge and Tunnel Enterprise	(\$8.8 million)	(\$9.5 million)
Community Access Enterprise	(\$22.5 million)	(\$24.4 million)
Clean Fleet Enterprise	(\$17.3 million)	(\$18.7 million)
Clean Transit Enterprise	(\$9.8 million)	(\$10.6 million)
Nonattainment Area Air Pollution Mitigation Enterprise	(\$2.3 million)	(\$2.5 million)
Total	(\$88.2 million)	(\$95.6 million)
Total Subject to TABOR	(\$27.6 million)	(\$29.9 million)
Total Exempt from TABOR	(\$60.5 million)	(\$65.7 million)

* This revenue is subject to the TABOR limit

Department of Revenue. The DOR is responsible for administering all of the retail delivery fees, and may retain a portion of the state retail delivery fee to cover the cost of administration. This amount is assumed to be \$40,000 annually.

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 \$7.8 million 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 \$1.2 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 \$40,536 to program, test, and update the DOR's GenTax software system to eliminate the retail delivery fee. Programming costs are estimated at \$27,000, representing 120 hours of contract programming at a rate of \$225 per hour. Costs for testing

at the department are estimated at \$13,536, representing 423 hours of user acceptance testing at a rate of \$32 per hour. In FY 2023-24 and later years, the DOR will no longer need to administer the fee, resulting in a decrease in expenditures of about \$40,000 annually.

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.

- *State Highway Fund.* Expenditures from the State Highway Fund for maintenance activities and match funds for the Infrastructure Investment and Jobs Act are expected to decrease under this bill. The State Highway Fund is continuously appropriated and most funding is dedicated to multi-year projects. Therefore, the amount of the decrease in expenditures for each fiscal year is not known.
- *Multimodal Transportation and Mitigation Options Fund.* The MMOF is appropriated annually with three years of roll-forward authority, and most funding is dedicated to multi-year projects. The bill will result in fewer multimodal projects receiving funding, but the amount of the decrease in expenditures for each fiscal year is not known.
- *Bridge and Tunnel Enterprise.* Revenue from the bridge and tunnel retail delivery fee is expected to make up about 12 percent of total enterprise revenue in FY 2024-25. Some of the future revenue from the retail delivery fee was advance budgeted for urgent projects, and a loss of this revenue would require the enterprise to seek loans or external financing to backfill the lost revenue. Because the fund is continuously appropriated, the exact amount of the decrease in expenditures for each fiscal year is not known.
- *Clean Transit Enterprise.* The Clean Transit Enterprise is funded entirely by the clean transit retail delivery fee. The Clean Transit Enterprise Fund is subject to annual appropriation by the General Assembly. Eliminating this fee revenue is expected to decrease expenditures by the enterprise's full appropriation beginning in FY 2023-24.
- *Nonattainment Area Air Pollution Mitigation Enterprise.* The Nonattainment Area Air Pollution Mitigation Enterprise is funded by its retail delivery fee and passenger ride fee. In the first quarter of FY 2022-23, the retail delivery fee made up about 25 percent of the enterprise's revenue. The bill will result in less expenditures by the enterprise, but because the fund is continuously appropriated, the amount of the decrease in expenditures for each fiscal year is not known.

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. In the first quarter of FY 2022-23, the retail delivery fee made up about 90 percent of the enterprise's revenue. Because the funds are continuously appropriated, it is not known in which fiscal years the decrease in expenditures will occur.

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. The Community Access Enterprise is funded entirely by the community access retail delivery fee. Eliminating this fee revenue is expected to decrease expenditures by the enterprise's full appropriation in future years.

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 subject to TABOR will increase the amount of General Fund available to spend or save. Decreased enterprise revenue will have no impact on the state TABOR refund obligation.

Local Government

The bill will decrease revenue to local governments from the HUTF by \$6.8 million on an ongoing basis beginning in FY 2023-24. Of this amount, \$3.3 million is allocated to counties and \$3.5 million is allocated to municipalities.

This bill reduces funds from the MMOF for local projects by \$6.9 million on an ongoing basis beginning in FY 2023-24. Funds for local projects from the MMOF may be used to expand local transit or other multimodal projects.

Technical Note

Due to resource limitations and workload constraints, the DOR believes it will not have the capacity to complete the necessary programming required to repeal the retail delivery fees by July 1, 2023 as is required by the bill. The department estimates the earliest feasible implementation is January 1, 2024.

Effective Date

The bill takes effect July 1, 2023.

State Appropriations

For the current FY 2022-23, the bill requires a General Fund appropriation of \$40,536 to the Department of Revenue.

For FY 2023-24, 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 \$7,390,320 and \$9,132,872, respectively. These amounts are based on Department of Transportation's forecast, rather than the LCS forecast described in the State Revenue section.

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
Transportation

Public Health and Environment

Revenue