



Legislative Council Staff

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Final Fiscal Note

Drafting Number: LLS 23-0786 **Date:** August 9, 2023
Prime Sponsors: Rep. McCluskie; Sirota **Bill Status:** Signed into Law
 Sen. Moreno; Fields **Fiscal Analyst:** Emily Dohrman | 303-866-3687
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Bill Topic: PROPOSITION EE FUNDING RETENTION RATE REDUCTION

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue <i>(conditional)</i>	<input checked="" type="checkbox"/> TABOR Refund <i>(conditional)</i>
<input checked="" type="checkbox"/> State Expenditure <i>(conditional)</i>	<input type="checkbox"/> Local Government
<input checked="" type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill refers a ballot measure to voters at the November 2023 statewide election to retain excess revenue collected from Proposition EE that otherwise would be refunded, and to maintain the tax rates that were approved in Proposition EE. If voters approve the ballot measure, the bill increases state revenue relative to current law expectations for reduced tax rates. The bill also clarifies current law if the measure is not approved by the voters. Conditional upon voter approval, the bill increases state revenue, which is transferred to and spent from a cash fund. Regardless of voter approval, the bill creates a one-time transfer of the excess revenue to a holding fund.

Appropriation Summary: No appropriation is required or included. See State Appropriations section.

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

Table 1
Conditional State Fiscal Impacts Under HB 23-1290

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	General Fund	\$14.7 million	\$31.4 million
	Total Revenue	\$14.7 million	\$31.4 million
Expenditures	Cash Funds	-	-
	Total Expenditures	-	-
Transfers¹	General Fund	(\$14.7 million)	(\$31.4 million)
	Cash Funds	\$14.7 million	\$31.4 million
	Net Transfers	\$0	\$0
Other Budget Impacts	TABOR Refund (CF)	(\$23.65 million)	-

¹ Regardless of voter approval, an additional transfer of \$23.65 million will occur on September 1, 2023, which represents the amount of excess revenue collected under Proposition EE. The transfer is expected to be from the Preschool Programs Cash Fund to the Proposition EE Refund Cash Fund, a net cash fund transfer total of \$0.

Summary of Legislation

The bill refers a ballot measure to voters at the November 2023 statewide election to retain excess revenue collected from Proposition EE that otherwise would need to be refunded and to maintain the tax rates that were approved in Proposition EE. The bill also clarifies the administration of a current law refund requirement if the measure is not approved by the voters.

The bill creates the Proposition EE Refund Cash Fund and transfers a total of \$23.65 million, the amount by which the actual revenue exceeded the Blue Book estimate plus interest, from the Preschool Programs Cash Fund the fund on September 1, 2023. If the balance of the Preschool Programs Cash Fund is less than \$23.65 million at the time of the transfer, the full balance of the Preschool Programs Cash Fund will be transferred and an amount equal to the difference between the balance of the Preschool Programs Cash Fund and \$23.65 million will be transferred from the General Fund to the Proposition EE Refund Cash Fund.

If the ballot measure is approved by the voters, the money in the Proposition EE Refund Cash Fund will be transferred to the Preschool Programs Cash Fund and the General Fund in the same proportions as they were originally transferred into the fund. Additionally, the tax rates on cigarettes, tobacco, and nicotine will remain at the level that was approved in Proposition EE.

If the ballot is not approved by the voters, the Department of Revenue (DOR) must reduce the Proposition EE tax rates on cigarettes, tobacco, and nicotine created in Proposition EE by 11.53 percent. The tax rate decrease would not apply to the statutory or Amendment 35 taxes imposed on sales of cigarettes and tobacco. The DOR must also refund the money in the Proposition EE Refund Cash Fund to taxpayers by June 30, 2024.

Background

Proposition EE. Proposition EE was referred to voters under House Bill 20-1427 and approved in November 2020. The measure increased cigarette and tobacco taxes, created a new tax on nicotine products, and created a minimum price for cigarette sales. Revenue from the new taxes is exempt from TABOR as a voter-approved revenue change. Beginning January 1, 2021, the cigarette tax increased from \$0.84 to \$1.94 per pack; the tax for tobacco products increased from 40 percent to 50 percent of manufacturer's list price (MLP); and the new tax for nicotine products, 30 percent of MLP, was instituted. The measure requires tax rates to increase incrementally until FY 2027-28, reaching \$2.64 per pack for cigarettes and 62 percent of MLP for tobacco and nicotine products.

Revenue distribution. Revenue from Proposition EE is considered General Fund revenue. Via the Old Age Pension Fund, revenue is deposited in the General Fund and transferred into the 2020 Tax Holding Fund. In FY 2023-24, revenue is distributed from the 2020 Tax Holding Fund such that \$10.95 million is transferred to the Tobacco Tax Cash Fund, \$4.05 million is transferred back to the General Fund, and the remainder is distributed to the Preschool Programs Cash Fund.

Excess revenue. TABOR requires that certain fiscal information be provided to voters when a new tax or tax increase is included on the ballot. This information includes an estimate of revenue from the new or increased taxes in the first full fiscal year for which the taxes will be in effect. If actual revenue exceeds the estimate, TABOR requires the excess to be refunded and the tax rates to be reduced in proportion to the excess unless voters approve a measure allowing for the revenue to be retained.

The 2020 Blue Book estimated that Proposition EE would raise revenue by \$186.5 million in its first full fiscal year, FY 2021-22. Because actual revenue came in at \$208.0 million in FY 2021-22, the excess amount plus interest, totaling \$23.65 million, must be refunded unless voters approve a measure to allow for its retention.

Assumptions

The fiscal note assumes that the bill's provisions for reducing Proposition EE tax rates and refunding the excess revenue in the event that the ballot measure is not approved clarify, but do not change, current law. The fiscal note also assumes that if the ballot measure fails, the tax rates will be reduced beginning on January 1, 2024.

State Revenue

Conditional upon voter approval, the bill is expected to increase General Fund Revenue by \$14.7 million in FY 2023-24 (half-year impact), \$31.4 million in FY 2024-25, and increasing amounts in future years as tax rates increase. These amounts reflect the impact of reversing the tax rate reductions that would otherwise be required under current law. Revenue is exempt from TABOR as a voter-approved revenue change under Proposition EE. Revenue will ultimately be distributed to the Preschool Programs Cash Fund as described in the State Transfers section below.

State Transfers

The bill unconditionally transfers \$23.65 million to the Proposition EE Refund Cash Fund on September 1, 2023. The fiscal note assumes the full amount of the transfer will come from the Preschool Programs Cash Fund. Conditional upon voter approval, the bill transfers the \$23.65 from the Proposition EE Refund Cash Fund back to the General Fund and the Preschool Programs Cash Fund in the amounts that they were originally transferred into the fund. The fiscal note assumes the full \$23.65 million would be returned to the Preschool Programs Cash Fund.

Additionally, all Proposition EE revenue is credited to the General Fund and then transferred into the 2020 Tax Holding Fund. If the ballot measure is approved, thus increasing the amount of Proposition EE revenue collected, the size of the transfer out of the General Fund will increase by an estimated \$14.7 million in FY 2023-24 and \$31.4 million in FY 2024-25.

State Expenditures

Conditional upon voter approval, the bill increases TABOR-exempt revenue available to spend or save by \$14.7 million in FY 2023-24 and \$31.4 million in FY 2024-25. The additional revenue will be deposited into the Preschool Programs Cash Fund, but requires appropriation by the General Assembly in order to be spent. If the ballot measure is not approved and \$23.65 million is refunded to taxpayers, the Preschool Programs Cash Fund is still expected to receive enough revenue to fully fund the Department of Early Childhood's FY 2023-24 Long Bill appropriation.

Election expenditure impact – existing appropriations. This bill includes a referred measure that will appear before voters at the November 2023 statewide election. While no additional appropriation is required, certain election costs are incurred by the state when ballot measures are referred. These include reimbursing counties for certain election costs; publishing the text and title of the measure in newspapers across the state; and preparing and mailing the ballot information booklet.

Other Budget Impacts

TABOR refunds. Conditional upon voter approval, the bill is expected to reduce the amount of state revenue required to be refunded to taxpayers by \$23.65 million in FY 2023-24 only. If the ballot measure fails, the refund is paid from the Proposition EE Refund Cash Fund, not from the General Fund.

Effective Date

The bill was signed into law by the Governor and took effect on June 2, 2023.

State Appropriations

No appropriation is required or included. If the ballot measure fails and the DOR requires funds to change tax rates or issue refunds, appropriations will be addressed through the annual budget process as these requirements are considered current law. However, these expenses are expected to be absorbable.

State and Local Government Contacts

Early Childhood

Personnel

Revenue