SB 23-280

Legislative Council Staff

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Revised Fiscal Note

(replaces fiscal note dated April 17, 2023)

Drafting Number:	LLS 23-0270	**Date:**	April 21, 2023
Prime Sponsors:	Sen. Mullica Rep. Snyder	**Bill Status:**	Senate Appropriations
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Bill Topic: **HAZARDOUS MATERIAL MITIGATION**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☒ State Transfer
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

The bill creates an enterprise, two grant programs, and an income tax credit, among other changes, to address hazardous materials transportation and vehicle emissions. It increases state and local revenue and expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of $576,346 to the Department of Revenue. See State Appropriations section.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the Senate Finance Committee.

Table 1
State Fiscal Impacts Under SB 23-280

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	General Fund	$14,000	$9,000
	Cash Funds	$16.8 million	$22.7 million
	Net Revenue	**$16.8 million**	**$22.7 million**
Expenditures	General Fund	$576,346	$7,328
	Cash Funds	$16,672,256	$17,958,128
	Centrally Appropriated	$87,286	$54,130
	Total Expenditures	**$17,335,888**	**$18,019,586**
	Total FTE	**6.1 FTE**	**3.9 FTE**
Transfers	Petroleum ST Fund	(up to $500,000)	(up to $500,000)
	Petroleum C&R Fund	up to $500,000	up to $500,000
	Net Transfer	**$0**	**$0**
Other Budget Impacts	TABOR Refund	$14,000	$9,000
	General Fund Reserve	$86,452	$1,099

Summary of Legislation

The bill makes a number of changes to address hazardous materials transportation and vehicle emissions, including creating an enterprise, two grant programs, and an income tax credit. The changes in the bill are discussed below.

Fuels Impact Enterprise. The bill creates the Fuels Impact Enterprise in the Department of Transportation (CDOT) to improve the transportation of fuel and monitor vehicle emissions. The enterprise repeals January 1, 2030.

- **Fuel impacts reduction fee.** Beginning September 1, 2023, the enterprise will impose a fuels impact reduction fee of up to 0.6125 cents per gallon of fuel on licensed fuel excise tax distributors and licensed fuel distributors.

- **Grant program.** The enterprise will administer the Fuel Impacts Reduction Grant Program, which makes grants to certain communities, governments, and transportation corridors for improving hazardous mitigation corridors and projects related to emergency responses, environmental mitigation, or fuel transportation.

- **Cash fund.** The bill creates the Fuels Impact Enterprise Cash Fund, which consists of fuels impact reduction fee revenue, any federal money received by the enterprise, and any gifts, grants, or donations. The fund is continuously appropriated to the enterprise, and the fund balance is limited to $15 million.

Grant program and heavy-duty diesel vehicle registration. The bill creates the Diesel Truck Emissions Reduction Grant Program in CDPHE to provide grants for decommissioning and replacing older diesel trucks. The grants are funded by a new registration fee on heavy-duty diesel vehicles. The fee amount depends on model year of the vehicle and how much the vehicle is driven in Colorado. Fee revenue is credited to the newly created Clean Fleet Enterprise Diesel Truck Emissions Reduction Grant Program Cash Fund, which is continuously appropriated to the Clean Fleet Enterprise in CDPHE to administer the grant program. The bill specifies the program's application and reporting requirements of truck owners, and CDPHE's reporting requirements to the General Assembly.

Enterprise zone commercial vehicle investment tax credit. The bill eliminates the existing enterprise zone commercial vehicle investment tax credit beginning in tax year 2024. The credit is currently available for purchases of commercial trucks, truck tractors, tractors, and semi-trailers weighing 54,000 pounds or more that are model year 2010 or newer. The credit is equal to 1.5 percent of the total investment of the purchase.

Clean commercial truck tax credit. The bill replaces the existing enterprise zone commercial vehicle investment tax credit with a new, refundable tax credit for the conversion, lease, or purchase of a clean truck beginning in tax year 2024. To claim the credit, a taxpayer must purchase, lease, or convert a clean truck that is part of a motor vehicle fleet, and must be located within an enterprise zone. The credit amounts are shown in Table 2.

Table 2
Clean Commercial Truck Tax Credit by Type of Truck

Duty	Fuel Types	Tax Years 2023-2025	Tax Years 2026-2029
Heavy-duty	Hybrid or renewable fuel truck	$10,000	$7,500
Medium-duty	Hybrid or renewable fuel truck	$5,000	$3,500
Light-duty	Hybrid or renewable fuel truck	$3,500	$1,500
Heavy-duty	Bi-fuel renewable, low nitrogen oxides, or plug-in hybrid electric truck	$5,000	$3,750
Medium-duty	Bi-fuel renewable, low nitrogen oxides, or plug-in hybrid electric truck	$2,500	$1,750
Light-duty	Bi-fuel renewable, low nitrogen oxides, or plug-in hybrid electric truck	$1,750	$750

The credit is limited to the difference between the manufacturer's suggested retail price and a comparable traditional fuel truck or, for a conversion, the price of the conversion. A taxpayer who purchase or leases a qualifying clean commercial truck may assign the tax credit to the financing entity or motor vehicle dealer, and may not also claim the innovative truck credit allowed in current law for the same tax year.

Petroleum and other fuel fees. Purchasers, manufacturers, and distributors of odorized liquefied petroleum gas may pay a fee per tank truckload of fuel products delivered. The fee depends on the balance of the Petroleum Storage Tank Fund. Under current law, no fee is required if the fund balance exceeds $8 million; otherwise it is $25. Under current law, the fund balance limit is scheduled to repeal on September 1, 2023, at which point fees increase. The bill extends the existing fee schedule for ten years, until September 1, 2033.

Under current law, manufacturers and distributors of certain other fuel products also pay a fee of $25 per tank truckload of fuel products delivered. The bill extends this fee, which is currently scheduled to repeal September 1, 2026, until September 1, 2031. The bill also adjusts the formula by which fee revenue is paid to support various state functions, as described in Table 3.

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Table 3
Distribution of Fuel Product Fees

Recipient	Current Law	Under SB 23-280
Department of Public Safety for the regulation of hazardous materials on highways	$100,000	$2,000,000
Department of Revenue	Administrative costs	Administrative costs
Perfluoroalkyl and Polyfluoroalkyl Substances Cash Fund	75 percent of remaining revenue	70 percent of remaining revenue
Department of Transportation for hazardous material safety products	25 percent of remaining revenue	30 percent of remaining revenue

In current law, these fees are only collected if the balance of the Perfluoroalkyl and Polyfluoroalkyl Substances Cash fund is less than $8 million. The bill increases this threshold to $9 million on October 1, 2023. The bill extends CDPHE's existing reporting requirements on the Perfluoroalkyl and Polyfluoroalkyl Substances Cash Fund and related activities from 2027 to 2036.

Phasing out older diesel trucks for state projects. The bill establishes a schedule to phase out the use of older diesel trucks at state project sites in ozone nonattainment areas. Diesel truck owners who violate the restrictions are subject to a fine.

Petroleum regulations. The bill allows the Department of Labor and Employment (CDLE) to transfer up to $500,000 annually from the Petroleum Storage Tank Fund to the Petroleum Cleanup and Redevelopment Fund.

Current law allows certain owners and operators of underground or aboveground petroleum storage tanks to access state funds for remediation. They must repay the state the lesser of the remediation amount or $10,000. The bill allows CDLE to instead base the payment on a percentage of the remediation amount.

State Revenue

The bill decreases state revenue beginning in FY 2023-24 from the new income tax credit, and increases state revenue from the new fees on fuel distributors and diesel truck registrations. In total, revenue will increase by about $16.8 million in FY 2023-24 and $22.7 million in FY 2024-25, as shown in Table 4 below and discussed below.

Table 4
Revenue Changes Under SB 23-280

Revenue Change	FY 2023-24	FY 2024-25
Repeal Enterprise Zone Commercial Vehicle Investment Tax Credit	$46,000	$96,000
Clean Commercial Truck Income Tax Credit	($32,000)	($87,000)
Fuel Distribution Fee	$14,500,000	$19,500,000
Heavy-Duty Diesel Vehicle Registration Fee	$2,347,500	$3,130,000
Net Revenue Change	**$16,861,500**	**$22,639,000**

Enterprise Zone Commercial Vehicle Investment Tax Credit

Eliminating the current tax credit is expected to increase General Fund revenue by $46,000 in FY 2023-24 (half-year impact) and $96,000 in FY 2024-25.

Clean Commercial Truck Income Tax Credit

The clean commercial truck income tax credit is expected to decrease revenue by $32,000 in FY 2023-24 (half-year impact) and $87,000 in FY 2024-25. Based on expected growth rates in clean vehicle adoption and the share of vehicles expected to be purchased for fleets located in enterprise zones, the credit in the bill is expected to be claimed for about 55 qualifying vehicles in tax year 2024 and increasing amounts in future years.

For purchasers or lessees of electric trucks, the estimated amounts reflect the marginal value by which the credit in the bill exceeds the current law innovative vehicle credit that taxpayers would otherwise be able to claim through tax year 2025. Beginning in tax year 2026, the revenue impact of the credit will increase because the innovative trucks credit in current law will no longer be available.

Table 5
Clean Commercial Truck Tax Credit

Fiscal Year	Credits Claimed	Revenue Impact
FY 2023-24	28	$32,000
FY 2024-25	71	$87,000

Fuel Distribution Fees—Fee Impact on Fuel Distributors

The Fuels Impact Enterprise will impose a fee of up to 0.6125 cents per gallon on distributors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the Fuels Impact Enterprise based on cash fund balance, program costs, and the amount of product subject to the fee. The table below identifies the fee impact of this bill. The fiscal note assumes the maximum fee of 0.6125 cents per gallon. The total fuel estimate in FY 2023-24 is prorated for nine months of the fiscal year based on the bill's effective date. This revenue is not subject to TABOR because it is collected by an enterprise.

Table 6
Fee Impact on Fuel Distribution

Fiscal Year	Type of Fee	Proposed Fee	Number of Gallons Affected	Total Fee Impact
FY 2023-24	Fuels Impact Reduction	$0.006125	2.37 billion	$14.5 million
FY 2024-25	Fuels Impact Reduction	$0.006125	3.19 billion	$19.5 million

Fee Impact on Heavy-Duty Diesel Vehicle Registrations

Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the Clean Fleet Enterprise based on cash fund balance, program costs, and the number of registrations subject to the fee. The table below identifies the fee impact of this bill. The fiscal note assumes the maximum fee levels, which are specified by the bill. Registrations in FY 2023-24 are prorated for nine months of the fiscal year based on the bill's effective date. This revenue is not subject to TABOR because it is collected by an enterprise.

Table 7
Fee Impact on Heavy-Duty Diesel Vehicle Registrations

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2023-24	2010-2014 Models	$30	12,000	$360,000
	Older models	$50	39,750	$1,987,500
	FY 2023-24 Total			**$2,347,500**
FY 2024-25	2010-2014 Models	$30	16,000	$480,000
	Older models	$50	53,000	$2,650,000
	FY 2024-25 Total			**$3,130,000**

Gifts, Grants, And Donations

The bill potentially increases state revenue to the Fuels Impact Enterprise Cash Fund from gifts, grants, or donations; however, no sources have been identified at this time. Gifts, grants, and donations are exempt from TABOR revenue limits.

State Transfers

Beginning in FY 2023-24, CDLE may transfer up to $500,000 annually from the Petroleum Storage Tank Fund to the Petroleum Cleanup and Redevelopment Fund.

State Expenditures

The bill increases state expenditures by $17.3 million in FY 2023-24 and $18.0 million in FY 2024-25. As shown in Table 8 and discussed below, these costs include:

- $14.4 million in FY 2023-24 and $14.9 million in FY 2024-25 for CDOT, paid from the Fuels Impact Enterprise Cash Fund;
- $2.3 million in FY 2023-24 and $3.1 million in FY 2024-25 for CDPHE, paid from the Clean Fleet Enterprise Diesel Truck Emissions Reduction Grant Program Cash Fund; and
- $600,000 in FY 2023-24 and $7,000 in FY 2024-25 in the Department of Revenue (DOR), paid from the General Fund.

Table 8
Expenditures Under SB 23-280

	FY 2023-24	FY 2024-25
Department of Transportation		
Personal Services	$81,871	$98,246
Operating Expenses	$1,080	$1,350
Capital Outlay Costs	$6,670	-
Grants	$14,300,000	$14,800,000
Centrally Appropriated Costs[1]	$16,486	$20,223
FTE – Personal Services	0.8 FTE	1.0 FTE
CDOT Subtotal	**$14,406,107**	**$14,919,819**
Department of Public Health and Environment		
Personal Services	$115,457	$138,549
Operating Expenses	$2,160	$2,565
Capital Outlay Costs	$13,340	-
Grants	$1,900,000	$2,700,000
Legal Services	$224,592	$190,332
Programming and Software	$12,952	$12,952
Communications Materials	$12,000	$12,000
Travel	$2,134	$2,134
Centrally Appropriated Costs[1]	$28,439	$33,907
FTE – Personal Services	1.6 FTE	1.9 FTE
FTE – Legal Services	1.2 FTE	1.0 FTE
CDPHE Subtotal	**$2,311,074**	**$3,092,439**

Table 8
Expenditures Under SB 23-280 (Cont.)

		FY 2023-24	FY 2024-25
Department of Revenue			
Personal Services		$158,307	-
Operating Expenses		$3,375	-
Capital Outlay Costs		$20,010	-
GenTax Programming		$333,303	-
DRIVES Programming		$29,912	-
Document Management		$24,047	-
Office of Research and Analysis		$7,392	$7,328
Centrally Appropriated Costs[1]		$42,361	-
FTE – Personal Services		2.5 FTE	-
DOR Subtotal		**$618,707**	**$7,328**
	Total	**$17,335,888**	**$18,019,586**
	Total FTE	**6.1 FTE**	**3.9 FTE**

[1] *Centrally appropriated costs are not included in the bill's appropriation.*

Department of Transportation

Expenditures include administering the new Fuels Impact Enterprise, the associated grant program, and updating its fleet.

- **Staffing.** Administering the enterprise and awarding grants under the bill requires 1.0 FTE beginning in FY 2023-24. Standard operating and capital outlay costs are included, and costs have been prorated for the bill's effective date.

- **Grant program.** The total amount available in grant awards depends on the amount of fuels impact reduction fee revenue collected, any revenue retained by the Department of Revenue for its administrative expenses, and the number of applications for discretionary grants.

- **Fleet impacts.** Phasing out older diesel trucks from state project sites may impact CDOT's ability to use some of its vehicles. CDOT estimates that it owns 188 trucks older than model year 2002, and that the number older than model year 2010 may reach 400 by 2027. Costs to replace existing assets vary by the type of vehicle. It is assumed funding to replace CDOT equipment will be addressed through the annual budget process and that costs will be spread over multiple years as necessary depending on prioritization of needs, asset availability, and available funding.

Department of Public Health and Environment

Expenditures increase in the Clean Fleet Enterprise to administer the Diesel Truck Emissions Reduction Grant Program.

- **Staffing.** The grant program requires an estimated 1.9 FTE to develop policies, market the program, and to award and monitor grants. Standard operating and capital outlay costs are included, and positions are prorated in FY 2023-24 for the bill's effective date.

- **Other operating costs.** Additional expenditures for the grant program include communication materials, grants management software, some programming hours, and travel costs for grant monitoring.

- **Grants.** After administrative expenditures, the remaining revenue to the Clean Fleet Enterprise Diesel Truck Emissions Reduction Grant Program Cash Fund from registration fees is available for grants for decommissioning and replacing diesel trucks. This is estimated at $2.7 million annually, prorated for the bill's effective date in FY 2023-24. Actual expenditures for grants depend on available revenue and the number of applications received.

State Fleet Vehicles

DPA manages the state fleet on behalf of state agencies. Similar to CDOT, expenditures for DPA may increase to phase out older diesel trucks. The fiscal note assumes that the exceptions for routine maintenance and travel make the number of replacements minimal. To the extent that DPA must acquire new vehicles, it will make payments from the Motor Fleet Management Fund. Because this fund is supported by allocations to state agencies, expenditures likewise increase for those agencies based on their use of affected fleet vehicles. Any changes to revenue or expenditures will be addressed through the annual budget process.

Department of Revenue

Expenditures increase to implement the new tax credit and the new registration fee.

- **GenTax programming and testing.** In FY 2022-23 only, the bill requires changes to the DOR's GenTax system and additional computer and user acceptance testing. Approximately 1,111 hours of computer programming are required to make changes in the GenTax system, totaling $249,975. Additional computer and user acceptance testing are required to ensure programming changes are functioning properly, resulting in an additional $83,328.

- **DRIVES programming and testing.** In FY 2023-24, the bill requires one-time programming costs of $29,912 to update the Driver License, Record, Identification and Vehicle Enterprise Solutions (DRIVES) system with the new registration fee. Programming costs assume 108 hours at a rate of $238 per hour. Testing can be accomplished within existing appropriations. Office of Information Technology support requirements are estimated at 42.5 hours at a rate of $99 per hour, which will be allocated to DOR and paid to OIT via real-time billing.

- **Document management.** The bill requires an additional $24,047 in expenditures to implement tax form changes in FY 2023-24. These expenditures will be reappropriated to the Department of Personnel and Administration.

- **Data reporting.** Beginning in FY 2023-24, the Office of Research and Analysis within DOR will expend about $7,400 each year to collect and report data on the new tax credit.

Other Expenditures Impacts

Distribution of fuel fees. Changing the distribution of fuel fee revenue among the Department of Public Safety, the Perfluoroalkyl and Polyfluoroalkyl Substances Cash Fund in CDPHE and CDOT causes no net increase in expenditures, but shifts where these expenditures will occur. Generally speaking, expenditures in CDPS will increase, expenditures in CDPHE will decrease, and expenditures in CDOT may increase or decrease, depending on the total revenue collected.

Other state agencies' fleet impacts. Similar to CDOT and DPA, any state agency that owns and operates older diesel trucks may need to replace them beginning in FY 2023-24. Any increase in expenditures will be addressed through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 8.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the tax credit amounts shown in Table 4 of the State Revenue section above. This estimate assumes the March 2023 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 General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

Revenue and expenditures will increase in any local government that receives a grant from the Fuels Impact Enterprise. The bill specifies annual awards as follows:

- $6,400,000 to Adams County;
- $2,000,000 to the city of Aurora;
- $1,300,000 to El Paso County;
- $240,000 to Mesa County; and
- $60,000 to Otero County.

Technical Note

The Department of Revenue may be unable to complete the required changes to the state's tax management systems based on the deadlines in the bill.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires an appropriation of $576,346 from the General Fund to the Department of Revenue, and 2.5 FTE.

The Fuels Impact Enterprise Cash Fund is continuously appropriated to the Fuels Impact Enterprise in the Department of Transportation, which requires 0.8 FTE.

The Clean Fleet Enterprise Diesel Truck Emissions Reduction Grant Program Cash Fund is continuously appropriated to the Clean Fleet Enterprise in the Department of Public Health and Environment, which requires 1.6 FTE.

State and Local Government Contacts

Colorado Energy Office	Information Technology	Labor
Law	Personnel	Public Health and Environment
Public Safety	Revenue	Transportation