



**Colorado
Legislative
Council
Staff**

SB16-123

FISCAL NOTE

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

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

Date: February 17, 2016
Bill Status: Senate Transportation
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
State Revenue		
State Expenditures Cash Funds	See State Expenditures section.	
Appropriation Required: None.		
Future Year Impacts: None.		

Summary of Legislation

This bill prohibits the Colorado Department of Transportation (CDOT) from requiring a high occupancy vehicle (HOV) to use a switchable transponder or other device in order to drive on a HOV lane or a high occupancy toll (HOT) lane on a state highway on a toll-free basis.

Background

High Performance Transportation Enterprise and HOV/HOT lanes. The High Performance Transportation Enterprise (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 this will increase to three in 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, I-25 has two HOT switchable-direction lanes running 7 miles from downtown Denver to US 36. US 36 currently has one HOT lane running in each direction from Pecos Street in north Denver to 88th Street in Louisville, which will be extended to Table Mesa Drive in Boulder in 2016.

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 it based its bid on.

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 the service to be used on future toll lanes, such as those planned for I-25 North, C-470, and I-70 East through north Denver.

Toll rates. Toll rates on the 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.

Assumptions

This fiscal note assumes that a majority of drivers will continue to utilize and purchase ExpressToll transponders. Prohibiting the requirement that HOV lane users carry a transponder will lead to an initial increase in HOV lane use by vehicles without transponders. These users will receive a license plate toll bill in the mail for using the HOV lane without a transponder, which they will be able to dispute. This will result in a corresponding increase in administrative and processing expenses for Plenary. It is assumed regular users of the HOV lanes will still adopt the transponder technology for convenience, mitigating the value of the impacts.

The HPTE has existing statutory authority to raise tolls through its board and enforce tolls through AVIS. Because of this, the fiscal note assumes that the HPTE may raise tolls, to the extent it is economically feasible, to address lost toll revenue. The HPTE is, however, limited in its toll-raising ability as increased tolls are anticipated to decrease the use of toll lanes. HPTE will therefore be liable for any remaining revenue losses incurred by Plenary that cannot be addressed through increased tolls. The fiscal note also assumes that HPTE and Plenary may utilize AVIS technology, if necessary, to enforce HOV use.

State Expenditures

This bill may impact HPTE's contractual partner, Plenary, in a variety of ways, as discussed below. Because of HPTE's contractual obligations to Plenary, these are considered HPTE impacts for the purposes of this fiscal note. First, the bill may result in a decrease in revenue for Plenary and therefore an increase in expenditures for HPTE to hold Plenary harmless. Under the contract, Plenary is also allowed to recoup higher administrative and processing costs for toll collection if it is limited from exercising its preferred method of collection, resulting in another potential increase in HPTE expenditures.

Toll revenue. This bill may affect toll revenue in two ways. The bill may increase HOV lane use by vehicles without transponders, but because Plenary will have no means of identifying the HOV status of vehicles that do not carry transponders, it will process all of these users through license plate tolling. The majority of users without transponders may dispute the license plate toll received, which will lead to additional costs for Plenary. In addition, some HOT lane users without transponders that do not meet HOV requirements may petition the license plate toll charge. Because Plenary has no way of proving HOV status, Plenary may see some reduced toll revenue from HOV lane violators.

To address the decrease in toll revenue on I-25 and US 36, it is anticipated that toll rates may be adjusted, to an extent that rates allow, by the HPTE Board to recoup Plenary's lost revenue. Any outstanding revenue loss may need to be reimbursed by the HPTE. In addition, HPTE may adopt AVIS technologies to enforce legal HOV lane use, resulting in more driver compliance with HOV requirements.

Toll administration and processing. Plenary, and its contractual partner ExpressToll (E-470), will incur additional costs to mail license plate toll invoices to vehicle owners that use HOV lanes without a transponder. Current license plate toll rates are already substantially higher than ExpressToll rates to account for higher administrative and processing costs, but these additional rates may not be sufficient to cover the increased number of HOV lane users that do not carry transponders and dispute their license plate toll bills. Under the terms of the concession agreement, HPTE is liable to reimburse these costs if required by Plenary to do so. HPTE may adjust tolls to cover these costs, to the extent that tolls can be increased, and may need to reimburse Plenary for any remaining toll administration and processing costs.

Automated vehicle identification system (AVIS) technology. This bill may increase expenditures for HPTE's partner, Plenary, to purchase and install AVIS or other photographic equipment to aid in enforcement of toll violations, including those related to HOV use. The costs for purchasing and installing this equipment on I-25 and US 36 are estimated at \$660,000 in FY 2016-17, with ongoing administrative costs for operating the equipment. AVIS technology for HOV monitoring is nascent, and the state would be the first to use it.

Future HOT lanes. 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. The new lanes are scheduled to open by July 1, 2016. In addition, HPTE currently plans to add HOT lanes to other future highway expansion projects, including I-70 East. This bill may impact HPTE's administrative, processing, and equipment costs for implementing future HOT lane projects.

Marketing and education. HPTE will be required to update documents, materials, and other resources to reflect changes to transponder requirements and, if necessary, increased tolls and the use of AVIS technology in the HOV/HOT lanes on US 36 and I-25. These efforts will be achieved within existing marketing and educational budgets.

Technical Note

To the extent that the bill hinders the HPTE's ability to deliver on its contractual obligations to Plenary, Plenary could decide to void or renegotiate its \$182 million concession agreement with HPTE for the operation and maintenance of the Express Lanes on I-25 and US 36. Under certain circumstances, it could potentially hold the HPTE financially liable for unexpected revenue projections that are attributed to the bill. Agreements for future projects with Plenary may also be impacted by the bill.

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.

Departmental Difference

Under its concession agreement with HPTE, Plenary can recoup reduced tolling revenue that results from changes in state law and higher administrative and processing costs for toll collection if it is limited from exercising its preferred method of toll collection. CDOT believes that the bill will cause negative annual expenditure impacts for HPTE of \$3,600,000 from lost toll revenue and \$1,488,000 from administration and processing costs of increased license plate tolling. CDOT anticipates that these costs will need to be paid for by the HPTE, potentially through increased tolls on Express Lanes. Furthermore, CDOT believes the bill could impact the ability of the HPTE to deliver HOV lanes free of charge in the future.

State and Local Government Contacts

Judicial
Transportation

Information Technology

Public Safety