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**HB 19-1199**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated February 28, 2019)

<b>Drafting Number:</b>	LLS 19-0609	<b>Date:</b>	March 6, 2019
<b>Prime Sponsors:</b>	Rep. Valdez A. Sen. Pettersen; Winter	<b>Bill Status:</b>	House Finance
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**Bill Topic:** COLORADO CLEAN PASS ACT

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

Beginning on July 1, 2020, the bill allows a certain number of plug-in electric vehicles to access standard high-occupancy vehicle lanes for free and Express Lanes at a reduced rate. The bill increases both state and local government revenue in beginning in FY 2020-21 and expenditures in FY 2019-20.

**Appropriation Summary:** In FY 2019-20, the bill requires a cash fund appropriation of \$272,250 to the Department of Revenue. No appropriation is required to the High-Performance Transportation Enterprise within the Department of Transportation.

**Fiscal Note Status:** The fiscal note reflects the introduced bill, as amended by the House Transportation and Local Government Committee.

**Table 1  
State Fiscal Impacts Under HB 19-1199**

		<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Revenue</b>	Cash Funds	-	\$142,895
<b>Expenditures</b>	Cash Funds	\$1,976,250	-
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	General Fund	-	-

## Summary of Legislation

Beginning on July 1, 2020, the bill creates a program that allows a certain number of plug-in electric motor vehicle owners to access standard high-occupancy vehicle lanes for free and toll lanes or high-occupancy toll lanes (Express Lanes) for one-half the amount of the usual toll rate no matter the number of occupants by paying a \$35 fee upon registration.

**Qualifying vehicles.** In order to be eligible for the program, a plug-in electric motor vehicle must be less than 19,500 pounds and:

- be able to store electricity in a rechargeable battery pack that can be recharged from an external electricity source and uses that energy for propulsion; or
- qualify for the federal electric motor vehicle credit.

Beginning on July 1, 2020, owners of plug-in electric motor vehicles may apply to participate in the program. Vehicles qualify to participate in the program if:

- the owner purchased a new qualifying vehicle and the vehicle is in its first through third year of service; or
- the owner purchased a used qualifying vehicle and the owner is registering the vehicle for the first through third year of ownership.

The number of qualifying vehicles applying for the program cannot exceed:

- 10,000 vehicles from July 1, 2020 to January 1, 2021;
- 20,000 vehicles from July 1, 2021 to January 1, 2022;
- 40,000 vehicles from July 1, 2022 to January 1, 2023;
- 80,000 vehicles from July 1, 2023 to January 1, 2024; and
- 120,000 vehicles from July 1, 2024 onward.

If a vehicle owner chooses to participate in the program, qualified vehicle owners must pay a \$35 fee upon registration, to be deposited in the Statewide Transportation Enterprise Special Revenue Fund. Qualified and approved vehicles must display an identifying exemption permit and a transponder.

**Initial program administration.** The High-Performance Transportation Enterprise (HPTE) within the Colorado Department of Transportation (CDOT) will administer the program, along with the Colorado Department of Revenue (DOR). HPTE and DOR must coordinate to ensure that HPTE, along with DOR and county Division of Motor Vehicles offices, know when a vehicle owner is eligible to pay the fee. In addition, DOR must notify HPTE when a fee is paid. CDOT is required to annually report to the General Assembly at its annual State Measurement for Accountable, Responsive, and Transparent Government (SMART) Act hearing about the program. HPTE may promulgate rules to ensure the implementation, administration, and enforcement of the program.

**Initial restriction or elimination of the program.** If CDOT, in consultation with the Regional Transportation District (RTD), determines through its periodic level-of-service evaluation that the program over the next three months will violate contractual level of service guarantees (i.e. traffic speeds in Express Lanes) or will be unable to satisfy debt service coverage requirements, CDOT may restrict or eliminate the program. In addition, if the U.S. Department of Transportation determines that the program would disqualify the state from receiving federal funds, the program will be eliminated.

**Low-emission or hybrid program.** Currently, CDOT administers a program that allows pre-approved low-emission or hybrid vehicles to use Express Lanes with a single occupant and without paying a toll. Under the bill, this exemption is repealed effective on the vehicle's first registration after July 1, 2022. The program is fully repealed on July 1, 2023.

## Background

**High-Performance Transportation Enterprise.** CDOT oversees the HPTE, which is a government-owned business that has the authority to issue revenue bonds, and receives less than 10 percent of its revenue from state and local government sources. HPTE is tasked with actively pursuing innovative means of transportation finance through public-private partnerships, operation of concession agreements, and fee-based projects. Money in the Statewide Transportation Enterprise Special Revenue Fund is continuously appropriated to HPTE.

**Standard HOV lane.** A standard HOV lane, such as the lane on US 85/Santa Fe Drive, does not require a transponder and is restricted to carpools, buses, and motorcycles at all times or during certain periods.

**Express Lanes.** CDOT, HPTE, and its partners manage several Express Lanes in the Denver metropolitan area and on I-70 in the mountains.

Express Lanes are currently in operation on:

- I-25 Central from 20th Street to I-25/US 36 intersection;
- I-25 North from US 36 to 120th Avenue;
- US 36 from Denver to Boulder; and
- I-70 Eastbound Mountain Corridor, from Empire to Idaho Springs.

The following Express Lanes are opening in 2019:

- C-470 from I-25 to Wadsworth Boulevard; and
- I-25 North from I-25/US 36 to Northwest Parkway/E-470.

Express Lanes are also under construction or planned for the following interstate sections:

- Central I-70 from I-25 to Chambers Road (opening 2022);
- North I-25 from 120th Avenue to Fort Collins (opening 2022);
- South I-25 Gap from Castle Rock to Monument (opening 2022); and
- I-70 Westbound Mountain Corridor (in development).

The following entities operate express lanes:

- *Plenary Roads Denver.* The HPTE contracts with Plenary Roads Denver for the operation and maintenance of Express Lanes on US 36 and Central I-25. Currently, US 36 has one lane running in each direction from Table Mesa Drive in Boulder to the junction with I-25 in Denver, while there are two switchable-direction lanes running seven miles from the junction of US 36 and I-25 to 20th Street in downtown Denver.
- *HPTE.* HPTE operates a single Express Lane running in each direction on I-25 between US 36 and 120th Avenue.

- *CDOT*. CDOT manages the eastbound peak-period shoulder Express Lane on I-70 between Empire and Idaho Springs with federal permission. The lane is only open on weekends and holidays and is a shoulder lane when not in use.

**ExpressToll.** State law requires CDOT to standardize automatic vehicle identification systems used on Express Lanes to ensure that drivers can purchase and install one electronic identification device, such as a transponder, to use on all toll facilities. As a result, the HPTe entered into a tolling services agreement with the E-470 Public Highway Authority to provide tolling services through ExpressToll. Switchable transponders cost \$15, and a \$20 balance is required to open an online account. Free transponders are available for HOV-only travelers.

**Toll rates.** Express Lane toll rates vary depending on time of day, and whether the vehicle owner uses an ExpressToll transponder or relies on license plate tolling.

**Current low-emission or hybrid vehicle program.** CDOT began a limited low-emission or hybrid vehicle program in 2008 that allowed qualified vehicles owners to apply for a permit to use HOV/HOT lanes with a single occupant. Qualified and approved vehicles must display the required exemption permit and transponder. CDOT has reached its quota of 2,000 permits, with new applicants being placed on a waiting list.

**Traffic infraction.** A violator of these requirements commits an existing class A traffic infraction and is subject to a \$65 fine. If a violator is convicted of a third or subsequent offense within a 12 month period, the violator is subject to an enhanced penalty of \$125.

## Data and Assumptions

**Electric vehicles in Colorado.** This fiscal note assumes that there are 11,340 plug-in electric vehicles registered in Colorado, with 6,488 in their first three years of registration. Based on projections by the Colorado Energy Office, this fiscal note assumes there will be over 100,000 electric vehicles registered in Colorado by FY 2022-23. The fiscal note assumes that plug-in electric vehicles will account for up to 8 percent of all Express Lane trips by 2024.

**Average toll rate.** This fiscal note only estimates revenue impacts for the Express Lanes currently in operation. The fiscal note also assumes that all operational and under construction Express Lanes are toll lanes for which plug-in electric motor vehicles will pay one-half the amount of the usual toll rate. Table 2 below identifies the estimated discounted express lane toll rates.

**Effective date.** This fiscal note assumes that DOR and CDOT will begin implementing the program on July 1, 2019.

**Table 2**  
**FY 2020-21 Estimated EV Toll Revenue**

<b>Corridor</b>	<b>Average Discounted Toll Rate</b>	<b>Annual EV Trips FY 2020-21</b>	<b>Revenue Impact FY 2020-21</b>
C-470	\$1.30	32,163	(\$41,812)
I-25 Central	\$1.02	20,524	(\$20,935)
I-25 North	\$0.87	80,938	(\$70,416)
I-70 Mountain	\$3.25	6,870	(\$22,328)
US 36	\$1.25	41,291	(\$51,614)
<b>Total FY 2020-21</b>			<b>(\$207,105)</b>

**State Revenue**

The bill increases state cash fund revenue in HPTE by \$142,895 in FY 2020-21. While the bill could increase fine revenue from civil penalties and court fees, the fiscal note assumes a negligible increase in fine revenue, which is discussed further below.

**Toll revenue assumptions.** The bill will decrease toll revenue to HPTE by an estimated \$207,105 in FY 2020-21, as shown in Table 2. It is assumed that \$350,000 in fee revenue will offset toll revenue reductions, as shown in Table 3. This fiscal note assumes vehicle participation will reach the bill's cap of 10,000 and 20,000 vehicles, respectively. In future fiscal years, if the program increases demand and the amount of traffic in express lanes, toll rates may increase to offset discounted rates.

**Fee impact on eligible plug-in electric vehicle owners who opt into the program.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The bill creates a \$35 fee for plug-in electric vehicle owners who wish to participate in the program. The fee is exempt from TABOR. While the fiscal note assumes full participation in the program, any reduction in the number of vehicles participating in the program will result in reduced fee impacts. The table below identifies the fee impact of this bill, beginning in FY 2020-21.

**Table 3**  
**Fee Impact on Plug-in Electric Vehicle Owners Who Opt Into the Program**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 2020-21	EV Express Lane Access Fee	\$35	10,000	<b>\$350,000</b>
FY 2021-22		\$35	20,000	<b>\$700,000</b>
FY 2022-23		\$35	40,000	<b>\$1,400,000</b>

**Class A traffic infraction.** Beginning in FY 2020-21, this bill may minimally increase fine revenue to the Highway Users Tax Fund (HUTF), of which 65 percent goes to the State Highway Fund in CDOT. The bill may also minimally increase revenue to the Judicial Department from court fees. These impacts are expected to be negligible and have been excluded from this fiscal note.

**State Expenditures**

The bill increases state cash fund expenditures by a total of \$1.9 million in FY 2019-20 only. Of this amount, the bill increases expenditures for HPTE by \$1,704,000 from the Statewide Transportation Enterprise Special Revenue Fund and for DOR by \$272,250 from the DRIVES Vehicle Services Account. Finally, the bill may increase workloads for the Department of Public Safety and the Judicial Department.

**Table 4  
 Expenditures Under HB 19-1199**

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Department of Transportation</b>		
E-470 Software and Integration Costs	\$1,504,000	-
C-470 Traffic and Revenue Analysis	\$200,000	-
Debt Obligations	-	-
<b>CDOT (Subtotal)</b>	<b>\$1,704,000</b>	<b>-</b>
<b>Department of Revenue</b>		
Computer Programming	\$272,250	-
<b>DOR (Subtotal)</b>	<b>\$272,250</b>	<b>-</b>
<b>Total</b>	<b>\$1,976,250</b>	<b>-</b>

**Department of Transportation.** The bill will increase expenditures in CDOT by \$1,704,000 in FY 2019-20. Additional information on CDOT expenditures are outlined below.

- *E-470.* E-470 requires one-time computer programming and integration costs of \$1,504,000 to update their computer system in order to identify vehicles in the program. As discussed above, HPTE entered into a tolling services agreement with the E-470 Public Highway Authority to provide tolling services through ExpressToll. Cost estimates are based on a similar system implementation for HOV 3+ and motorcycle access in 2017.
- *C-470 traffic and revenue analysis.* HPTE requires \$200,000 to conduct a traffic and revenue analysis for the ongoing C-470 Express Lane project. The U.S. Department of Transportation provided a \$107 million Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for the project and will require an updated traffic forecast and revenue model to determine if the program will adversely affect the project's traffic and revenue assumptions. It is assumed that HPTE will hire a traffic consultant at a cost of \$150,000 and that HPTE's financial advisor will require \$50,000 to update the revenue models.

- *HPTE contractual debt obligations.* The bill may increase HPTE expenditures to meet its contractual debt obligations. HPTE has outstanding obligations with Plenary Roads Denver on the US 36 and I-25 Central corridors and with Bank of America Merrill Lynch on North I-25 and I-70 Mountain Express corridors. HPTE is contractually obligated to compensate Plenary Roads Denver for any lost toll revenue. HPTE may need to compensate Plenary Roads Denver in future fiscal years. In addition, if a change in law results in increased volumes without additional revenue, HPTE may need to obtain a loan from CDOT with interest to meet its contractual loan obligations with Bank of America Merrill Lynch. For informational purposes, these loan amounts are \$23.6 million (North I-25) and \$25.0 million (I-70 Mountain).
- *Workload impacts.* CDOT and HPTE workload will increase to implement and administer the program, promulgate rules, and report to the General Assembly. This increase can be accomplished within existing resources.

In addition, the bill may increase borrowing costs for CDOT on future express lane project financing due to overall decreased capacity limits.

**Department of Revenue.** In FY 2019-20, the Department of Revenue requires one-time programming costs of \$272,250 to update the Driver License, Record, Identification, and Vehicle Enterprise Solutions (DRIVES) system to process fee payment, and to electronically notify HPTE and authorized agents of eligible vehicle owners and which owners have paid the fee. Programming costs are calculated at 1,210 hours at a rate of \$225 per hour. Additionally, workload will increase in DOR to update rules, forms, manuals, and the department's website to reflect the change in law, as well as provide training to authorized agents, Title and Registration Section staff, call center employees, and law enforcement. Any workload increases or costs associated with these activities can be accomplished within existing appropriations. Should a change in funding be required for any agency or division within DOR, the fiscal note assumes it will be addressed through the annual budget process.

**Department of Public Safety.** The bill may increase workload for the Colorado State Patrol in the Department of Public Safety to enforce provisions of the bill. This increase can be accomplished within existing resources.

**Judicial Department.** This bill may increase workload for the trial courts in the Judicial Department to process additional case filings. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division within the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

## Local Government

**Authorized county agents.** The bill will increase costs for county clerks to collect and remit the \$35 fee for plug-in electric vehicles. These cost have not been estimated for this fiscal note, but will vary based on jurisdiction.

**HUTF fine revenue.** The bill may minimally increase local government HUTF revenue beginning in FY 2020-21. HUTF revenue generated by traffic fines is distributed to counties (26 percent) and municipalities (9 percent) for transportation needs.

**Denver County Court.** The bill may increase workload for the Denver County Court, which is managed and funded by the City and County of Denver, to process additional cases under the bill.

### **Regional Transportation District**

The bill may increase workload for RTD to consult with CDOT to perform periodic level-of-service evaluations of the program.

### **Technical Note**

This fiscal note assumes that DOR and HPTE will begin implementing the program on July 1, 2019. However, if funds are not appropriated in FY 2019-20, the program's implementation may be delayed past July 1, 2020.

### **Effective Date**

The bill takes effect July 1, 2020, except that the High-Performance Transportation Enterprise may begin promulgating rules on July 1, 2019.

### **State Appropriations**

For FY 2019-20, the bill requires an appropriation of \$272,250 from the Colorado DRIVES Vehicle Services Account to the Department of Revenue. As discussed above, money in the Statewide Transportation Enterprise Special Revenue Fund is continuously appropriated to the High-Performance Transportation Enterprise in the Department of Transportation.

### **State and Local Government Contacts**

Public Safety	Regional Transportation District
Revenue	Transportation