



Legislative
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FISCAL NOTE

Drafting Number: LLS 19-0697
Prime Sponsors: Sen. Priola
 Rep. Gray

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Bill Status: Senate Transportation
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Bill Topic: REPLACE MOTOR FUEL TAXES WITH ADDITIONAL SALES TAX

Summary of Fiscal Impact:

<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 type="checkbox"/> Statutory Public Entity

This bill repeals the state motor fuels tax and replaces it with an increase in the state sales and use tax for the purpose of funding transportation projects.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SCR 19-003

		FY 2021-22	FY 2022-23
Revenue	State Highway Fund	(\$4.2 million)	\$4.5 million
Expenditures	General Fund	\$77,010	-
Transfers		-	-
TABOR Refund	General Fund	Not estimated	Not estimated

Summary of Legislation

This concurrent resolution refers a measure to the November 2020 ballot to amend the constitution to repeal all excise tax on motor fuels, including gasoline, diesel, and natural gas, but excluding the excise tax on aviation fuels. It also requires the state sales tax to be increased to a higher rate that would offset 99 percent of the lost revenue from motor fuel taxes. The additional sales tax revenue must be used for state transportation expenditures only.

Additional sales tax revenue that exceeds FY 2020-21 fuel excise tax revenue is exempt from TABOR as a voter-approved revenue change.

Background

Motor fuel taxes. The motor fuel taxes consist of the gasoline tax and the special fuels tax. The gasoline tax was implemented in 1933 in Colorado and has been set at \$0.22 per gallon since 1991. It includes conventional gasoline and gasohol. The federal gasoline tax rate is \$0.184 per gallon and has been in place since 1993. The special fuel tax rate is \$0.205 per gallon, and includes primarily diesel fuel, but also kerosene and ethanol blends of over 10 percent ethanol. Beginning in 2014, compressed natural gas (CNG), liquified natural gas (LNG), and liquefied petroleum gas (LPF) are subject to tax rates that change annually. A history of gasoline tax rates in Colorado can be found in Table 2.

**Table 2
History of Colorado Gasoline Tax**

Year Enacted	Tax Rate
1933	\$0.04 / gallon
1953	\$0.06 / gallon
1967	\$0.07 / gallon
1981	\$0.09 / gallon
1983	\$0.12 / gallon
1986	\$0.18 / gallon
1989	\$0.20 / gallon
1991	\$0.22 / gallon

Gasoline tax in Colorado historically comprises about 80 percent of the total motor fuel tax, while special fuel taxes comprise close to 20 percent and natural gas and propane around 0.3 percent. Motor fuel taxes are allocated to the Highway Users Tax Fund (HUTF), which is the primary source of state highway system funding in Colorado. In FY 2017-18, HUTF revenue was approximately \$1.2 billion, and motor fuel taxes make up the largest share of this revenue at \$655.8 million. All motor fuel tax revenue is subject to TABOR.

Sales and use tax. Sales and use taxes were introduced in Colorado in 1935 and 1937, respectively. The sales and use tax rate for the state has been set at 2.9 percent since 2001. Sales taxes are owed on sales of tangible personal property and select services. The use tax complements the sales tax and is owed when sales tax is not collected. A history of Colorado's sales and use tax rates are in Table 3 below.

Table 3
History of Colorado Sales and Use Tax Rates

<u>Year Enacted</u>	<u>Tax Rate</u>
1935	2.0 percent
1965	3.0 percent
1983	3.5 percent
1984	3.0 percent
2001	2.9 percent

Sales and use taxes totaled \$3.2 billion in revenue for the state during FY 2017-18, with sales tax comprising 90.4 percent of the total. Sales and use tax revenue is allocated to the General Fund via the Old Age Pension Fund. All sales and use tax revenue is subject to TABOR.

Assumptions

This analysis is based on the March 2019 forecast for fuel excise tax, sales tax, and use tax revenue. For FY 2021-22 and FY 2022-23 that are not yet forecast, revenue streams are grown by the compound average annual growth rates in these revenue streams from FY 2000-01 to FY 2017-18. Gasoline and special fuel excise tax revenue grew by a compound average annual growth rate of 1.3 percent between FY 2000-01 and FY 2017-18. Combined sales and use tax revenue grew by a compound average annual growth rate of 3.1 percent over the same period.

For FY 2020-21, the bill is expected to generate additional sales and use tax revenue equal to 18.1 percent of sales and use tax revenue forecast under current law. This fiscal note assumes a 0.53 percent supplementary sales and use tax rate to the 2.90 percent current law rate, resulting in a new total sales and use tax rate of 3.43 percent. A tax rate increase of this magnitude is not expected to reduce consumption of taxable goods and services on which the tax is assessed. Revenue in excess of the excise fuel tax collected in FY 2020-21 is not subject to TABOR's limitations on state fiscal year spending.

Forecasts of fuel tax revenue do not distinguish between special fuel excise tax collected on diesel fuel, which is affected by the bill, and special fuel excise tax collected on natural gas and propane, which are unaffected. In FY 2017-18, natural gas and propane accounted for 0.3 percent of total fuel excise tax revenue. This fiscal note assumes that the portion of fuel tax attributable to natural gas and propane will remain a small fraction of total fuel tax revenue.

State Revenue

Conditional on voter approval, this concurrent resolution is estimated to decrease state revenue by \$4.2 million in FY 2021-22, and increase revenue by \$4.5 million in FY 2022-23. In future years, revenue increases are expected to continue, since sales tax revenue historically grows at a faster rate than motor fuel tax revenue.

Distribution. Table 4 presents the revenue distribution impact of the concurrent resolution using the first stream and second stream HUTF allocations pursuant to current state law. Since in the first fiscal year there is a 1 percent decrease in revenue, the distributions at the state, county, and city levels will decrease proportionately according to their existing distribution formulas. In FY 2022-23 and future years, an increase in distributions is expected at all levels, based on the expected increase in sales and use tax revenue relative to fuel excise tax revenue.

**Table 4
 HUTF Distributional Impacts Under SCR 19-003**

		FY 2021-22	FY 2022-23
Distribution Impacts			
	State Highway Fund/CDOT	(\$4.2 million)	\$4.5 million
	Counties	(\$1.6 million)	\$1.7 million
	Municipalities	(\$1.0 million)	\$1.1 million
Total Revenue	Highway Users Tax Fund	(\$6.8 million)	\$7.3 million

State Expenditures

This concurrent resolution is expected to increase one-time General Fund expenditures by \$77,010 in FY 2019-20 only for one-time administrative changes. Beginning in FY 2020-21, state expenditures from the HUTF will change by amounts consistent with the bill's revenue impact. These impacts are described in the following paragraphs.

Highway Users Tax Fund. The concurrent resolution decreases FY 2021-22 HUTF distributions and increases distributions in ongoing years, as shown in Table 2 above.

Department of Transportation. Expenditures from the State Highway Fund (SHF) for construction and maintenance of state highways will potentially decrease in FY 2021-22 and increase annually in FY 2022-23 and ongoing years. The amount and timing of expenditures is determined by the Transportation Commission, which directs SHF moneys to state highway purposes.

Department of Revenue. One-time General Fund expenditures for the Department of Revenue will increase by \$77,010 in FY 2021-22 only. Expenditures are primarily for changes to the department's GenTax software system for both sales and use taxes and fuel excise taxes. Changes are programmed by a contractor at a rate of \$250 per hour. The changes in this bill are expected to increase General Fund expenditures by \$39,000, representing 156 hours of programming. All GenTax programming changes are tested by the department. Testing for this

bill will require expenditures for contract personnel totaling \$15,360, representing 640 hours of testing at a rate of \$24 per hour. Additionally, programming changes in the Department of Motor Vehicles DRIVES software system are required and will total \$8,250 for 33 hours of programming at \$250 an hour and includes testing.

The concurrent resolution also requires changes to 11 tax forms. Form changes are completed in the Department of Personnel and Administration using reappropriated DOR funds. Form change costs are expected to total \$13,200 at a rate of \$1,200 per form.

Departmental expenditures for administration of the fuel excise tax are not expected to decrease by more than a minimal amount. The department will continue to be responsible for fuel tax administration and reporting consistent with its obligations under the International Fuel Tax Agreement and federal regulations. See the Technical Note section in this Fiscal Note for more information.

TABOR refund. A forecast of state revenue subject to TABOR is currently unavailable beyond FY 2020-21. This concurrent resolution is expected to decrease state revenue subject to TABOR by \$6.8 million in FY 2021-22. This change in state revenue will affect TABOR refund obligations if the state collects a TABOR surplus in FY 2021-22.

This concurrent resolution also decreases revenue subject to TABOR beginning in FY 2022-23 to the extent that excise tax revenue would increase in these years relative to FY 2020-21.

Election expenditure impact — existing appropriations. This bill includes a referred measure that will appear before voters at the November 2020 general election. While no additional appropriation is required in this bill, certain election costs are incurred by the state when ballot measures are referred to voters. These costs, paid using existing appropriations, are in two areas. First, current law requires the state to reimburse counties for costs incurred conducting a ballot measure election, paid from the Department of State Cash Fund in the Secretary of State's Office, estimated at \$3.2 million in FY 2020-21. Second, the text and title of the measure must be published in one legal newspaper per county and an analysis of the measure must be included in the Ballot Information Booklet mailed to all registered voter households, paid from the Ballot Analysis Revolving Fund in the Legislative Department, which is estimated to cost \$2.1 million in FY 2020-21. Publication costs increase by approximately \$115,000 per measure beyond this base amount for each additional referred or initiated measures placed on the ballot.

Local Government

Local government revenue from the HUTF distributions will decrease by \$2.6 million in FY 2021-22. Revenue to counties and cities is expected to grow faster than the growth rate for historical motor fuel tax revenue in future years, by approximately \$1.7 million for counties and \$1.1 million for cities in FY 2022-23, since sales and use tax revenue has grown at a faster pace historically than motor fuel tax revenue. These figures are shown in Table 2 above.

State disbursements to local governments are subject to local TABOR limits. Jurisdictions where voters have not authorized an exemption of these funds from TABOR may be required to issue additional TABOR refunds as a result of this bill.

Technical Note

Sales and use tax on gasoline and special fuel. Current state law includes a sales and use tax exemption for gasoline and special fuel that is subject to the fuel excise tax. This analysis assumes that gasoline and special fuel will not be subject to either the 2.90 percent current law sales and use tax or the 0.53 percent supplementary tax. To the extent that the law is interpreted such that these fuels are subject to sales and use tax, the bill will increase General Fund and HUTF revenue by a greater amount than presented here.

International Fuel Tax Agreement and federal regulations. Colorado is a member state of the International Fuel Tax Agreement (IFTA) and subject to federal reporting regulations related to the federal fuel excise tax. The IFTA requires auditing and monitoring by member states unrelated to the state fuel tax. Because these requirements will still exist under the concurrent resolution, most state infrastructure related to fuel sale and administration will continue. The concurrent resolution is not expected to affect the state’s membership in the IFTA, though it could decrease the amount that the state receives through the IFTA from trucking company fuel taxes apportioned among states where these companies operate.

Effective Date

If approved by voters at the 2020 election, this measure takes effect upon proclamation of the Governor and requires the legislature to enact legislation during the 2021 legislative session so that changes under the measure can take effect by July 1, 2021.

State and Local Government Contacts

Counties	Information Technology	Municipalities	Personnel
Revenue	Regional Transportation District	Special Districts	Transportation