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**FISCAL NOTE**

**Drafting Number:** LLS 20-0969  
**Prime Sponsors:** Rep. Valdez A.

**Date:** March 12, 2020  
**Bill Status:** House Energy & Environment  
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**Bill Topic:** **LOW-EMISSION VEHICLE MANAGED LANE ACCESS**

- Summary of Fiscal Impact:**
- State Revenue
  - State Expenditure
  - State Transfer
  - TABOR Refund
  - Local Government
  - Statutory Public Entity

The bill requires the Department of Transportation to adopt rules by December 31, 2021, to create a program to allow eligible low-emission vehicles preferential access to managed lanes regardless of vehicle occupancy. The bill will increase state revenue and expenditures beginning in FY 2021-22.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under HB 20-1325**

		FY 2020-21	FY 2021-22
<b>Revenue</b>		-	-
<b>Expenditures</b>	State Highway Fund	-	up to \$3.3 million
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## Summary of Legislation

The bill requires that the Department of Transportation (CDOT) adopt rules to create a program that allows eligible low-emission vehicle preferential access to managed lanes regardless of the number of vehicle occupants. The rules adopted may:

- require low-emission vehicle owners to pay an annual fee to enroll in the program;
- determine the number and types of low-emission vehicles that are eligible for the program, including limits on the number of vehicles eligible, the number of years a vehicle is eligible for the program, and differing treatment among differing classes of low-emissions vehicles;
- allow preferential access to all or some of the state's managed lanes; and
- allow either free or reduced toll access to any toll lane or high occupancy toll (HOT) lane.

The bill defines managed lanes as high occupancy vehicle (HOV) and HOT lanes. The bill also defines low-emission vehicles as a motor vehicle with a gross vehicle weight of 26,000 pounds or less that is a zero-emissions vehicle that produces zero exhaust emissions as specified in the bill or a range extended battery electric vehicle.

**Current low-emission vehicle program.** Under federal law, certain hybrid and low-emission vehicles are eligible for free use of HOV lanes on federal highways. In 2019, the federal government did not renew free use of HOVs by hybrid and low-emission vehicles and, due to this, the current CDOT low-emissions program expires on May 31, 2020. The bill repeals CDOT's statutory authority for the existing low-emissions program.

## Background and Assumptions

**High-Performance Transportation Enterprise.** The High-Performance Transportation Enterprise (HPTE) 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 the HPTE. HPTE is within CDOT, but overseen by an independent board of directors.

**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.

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

- C-470 from I-25 to Wadsworth Boulevard;
- I-25 North from I-25/US 36 to Northwest Parkway/E-470;
- Central I-70 from I-25 to Chambers Road;
- North I-25 from 120th Avenue to Fort Collins;
- South I-25 Gap from Monument to Castle Rock; and
- I-70 Westbound Mountain Corridor.

The following entities operate 68 miles of Express Lanes in Colorado:

- *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. Toll rates for managed lanes operated by HPTE are set by the HPTE board. Toll rates for managed lanes operated by other entities are approved by the HPTE board.

**Current low-emission or hybrid vehicle program.** Under federal law, 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. As stated above, this program expires on May 31, 2020.

## State Revenue

The bill may increase state cash fund revenue beginning in FY 2021-22. These impacts are discussed below.

**Fee revenue.** To the extent that the rules adopted by CDOT impose an annual fee on program participants, state fee revenue will increase. Fee actual fees will be set administratively by CDOT and/or HPTE based on estimated program costs and the estimated number of individuals subject to the fee. Fee revenue may be subject to TABOR depending on which entity the rules determine is responsible for collecting the fee.

**Toll revenue.** To the extent that low-emission vehicles use managed lanes for free or at a reduced rate, toll revenue will decrease. However, in future fiscal years and under HPTE's current tolling policy, the HPTE board will increase toll rates on other drivers to offset any discount program, which is expected to result in no net change to toll revenue collected by CDOT and HPTE. Toll revenue credited to the Statewide Transportation Enterprise Special Revenue Fund is not subject to TABOR.

### **State Expenditures**

The bill will increase State Highway Fund expenditures by up to \$3.3 million in FY 2021-22. These expenditures are shown in Table 2 and discussed below.

**Table 2**  
**Expenditures Under HB 20-1325**

	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Department of Transportation</b>		
Computer Programming	-	up to \$2.3 million
Traffic and Revenue Studies	-	up to \$1.0 million
<b>Total Cost</b>	<b>-</b>	<b>\$3.3 million</b>

**Department of Transportation.** The bill requires CDOT to create rules to create a low-emissions vehicle program. Any program created to allow low-emissions vehicles in managed lanes will require one-time computer programming cost to update the current toll system, ExpressToll. Computer programming costs are based on 17,200 hours over 40 weeks for an expected cost of up to \$2.2 million. Also, additional computer programming costs will be necessary to connect CDOT to the Department of Revenue's Driver License, Record, Identification, and Vehicle Enterprise Solutions (DRIVES) system to determine vehicle eligibility for the program. These costs are estimated to be approximately \$100,000 and will depend upon the scope of the rules creating the program.

In addition, the HPTE expects costs of up to \$1.0 million to conduct traffic and revenue studies on existing managed lanes to study any revenue loss that will affect outstanding loans and contractual agreements, and to accurately adjust toll rates to help offset revenue decreases. Current HPTE policy requires toll rate adjustments if any program mandates HPTE to provide discounts other than HOV3+.

Finally, workload will increase in CDOT to adopt rules to create the program. This workload can be accomplished within existing resources.

**Department of Revenue.** Expenditures may increase for the Department of Revenue to update the DRIVES system to allow CDOT to perform vehicle verification for eligible vehicles in the low-emissions program. Computer programming costs will depend upon the scope of the rules creating the program. The fiscal note assumes these costs will be paid by CDOT.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## State and Local Government Contacts

Information Technology      Revenue      Transportation