SB 24-190

Legislative Council Staff

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Revised Fiscal Note

(replaces fiscal note dated April 5, 2024)

Drafting Number:	LLS 24-0183	**Date:**	April 22, 2024
Prime Sponsors:	Sen. Roberts Rep. Lukens; McCluskie	**Bill Status:**	House Finance
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Bill Topic: **RAIL & COAL TRANSITION COMMUNITY ECONOMIC MEASURES**

Summary of Fiscal Impact:

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

The bill creates two state income tax credits for freight rail use and railroad operators servicing coal transition communities; allows coal transition communities to be designated as enterprise zones and enhanced rural enterprise zones; expands the duties of the Rural Opportunity Office; and makes changes to the Moffat Tunnel Improvement District. The bill increases state expenditures beginning in FY 2024-25 and reduces state revenue beginning in FY 2025-26.

Appropriation Summary: For FY 2024-25, the bill includes an appropriation of $215,021 to the Office of Economic Development.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 24-190

		Budget Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
Revenue	General Fund	-	($1.4 million)	($5.4 million)	($8.2 million)
	Total Revenue	**-**	**($1.4 million)**	**($5.4 million)**	**($8.2 million)**
Expenditures	General Fund	$215,021	$172,561	$221,517	$229,865
	State Highway Fund	-	$64,190	$57,520	$57,520
	Centrally Appropriated	$34,752	$46,524	$46,524	$46,524
	Total Expenditures	**$249,773**	**$283,275**	**$325,561**	**$333,909**
	Total FTE	**1.5 FTE**	**2.0 FTE**	**2.0 FTE**	**2.0 FTE**
Transfers		-	-	-	-
Other Budget Impacts	TABOR Refunds	-	($1.4 million)	Not estimated	Not estimated
	General Fund Reserve	$32,253	$25,884	$33,228	$34,480

Summary of Legislation

The bill creates two state income tax credits for freight rail use and railroad operators servicing coal transition communities; allows tier 1 coal transition communities to be designated as enterprise zones and enhanced rural enterprise zones; expands the duties of the Rural Opportunity Office; and makes a change to the Moffat Tunnel Improvement District. These provisions are detailed below.

Freight Rail Use Tax Credit. The bill creates a state income tax credit for a taxpayer that incurs qualified costs utilizing a freight rail line that originates or terminates at a business located in a coal transition community, if the rail line has been determined by the Colorado Department of Transportation (CDOT) as being at risk of inactivity due to a lack of demand resulting from coal transition. The taxpayer must be engaged in manufacturing, agriculture, repairing or refurbishing, recycling, distribution centers for consumer products or energy production.

The taxpayer may apply for the state income tax credit beginning in 2025 but cannot start claiming the credit until tax year 2026. The application process is available through 2035 and the taxpayer can claim the credit through tax year 2038.

The amount of the credit is equal to 75 percent of the costs incurred by the taxpayer for using the freight rail line. The total amount of the credit that can be approved by the Colorado Office of Economic Development and International Trade (OEDIT) is $5 million per calendar year. If OEDIT does not approve the full amount allowed each year, the remaining balance is added to following year cap.

To qualify for the credit, the taxpayer must submit a freight rail use plan to OEDIT providing an estimate of the amount of qualified costs they expect to incur for one or more future tax years using the designated freight rail line. The policies and procedures to submit the plan are determined by OEDIT. The applications are also approved by OEDIT and are responsible for issuing an income tax certificate to the taxpayer which must be submitted to the Department of Revenue to claim the credit.

Finally, beginning on or after January 1, 2031, the bill allows OEDIT to determine if there is insufficient interest in this credit and not accept any more applications. If OEDIT determines there is insufficient interest, the amount of credits that CDOT may issue for the Railroad Operators Tax Credit (described below) is increased by $5 million each year through tax year 2037.

Railroad Operators Tax Credit. For income tax years 2027 through 2037, the bill creates a state income tax credit for a common railroad carrier engaged in the transportation of freight on a rail line that has been determined by CDOT as being at risk of inactivity or abandonment dues to lack of demand and is covered by an access agreement for passenger rail access between the taxpayer and the state through at least January 31, 2034.

The amount of the income tax credit is equal to 75 percent of direct operating and capital improvement expenditures incurred by the taxpayer to improve or maintain the qualified rail line. The total amount of the credit that can be approved by the CDOT is $5 million per calendar year. If CDOT does not approve the full amount allowed each year, the remaining balance is added to following year cap.

To qualify for the credit, the taxpayer must submit an application to CDOT before December 31 of the year for which the taxpayer wishes to claim the credit. The policies for certification are determined by CDOT and responsible for reviewing the applications to verify if the expenditures qualify for credit. In addition, CDOT is responsible for issuing an income tax certificate to taxpayer which must be submitted to the Department of Revenue to claim the credit.

Enhanced Rural Enterprise Zones Tax Credits. For income tax years 2025 through 2035, the bill allows businesses within a rural enterprise zone that are also in a coal transition community to qualify for additional economic development program incentives as if they were in an enhanced rural enterprise zone.

Enterprise zones. From July 1, 2024, through December 31, 2033, the bill allows tier 1 coal transition communities to be designated as an enterprise zone. Additionally, from January 1, 2025, through December 31, 2035, the portion of any county within a rural enterprise zone that is a tier 1 coal transition community is designated as an enhanced rural enterprise zone.

Rural Opportunity Office. The bill expands the duties of the Rural Opportunity Office in the Office of Economic Development and International Trade (OEDIT) to include coordinating economic development opportunities for coal transition communities.

Moffat Tunnel Improvement District. The bill requires that contracts regarding Moffat Tunnel use be limited to 99 years. The bill allows the Department of Local Affairs to convey or transfer district property for less than fair market value if it deems it in the public interest.

Background

Coal transition communities. House Bill 19-1314 created coal transition communities, defined as municipality, county, or region that has been affected in the previous twelve months, or that demonstrates it will be impacted in the next thirty-six months, by the loss of fifty or more jobs in total from a coal mine, coal-fueled electrical power generating plant, or the manufacturing and transportation supply chains of either. The Office of Just Transition within the Colorado Department of Labor and Employment works with coal communities in Colorado to support long-term transition strategies.

Coal transition communities are grouped into two tiers depending on their challenges. Tier one Coal transition communities consist of Morgan, Moffat, Rio Blanco, Routt and Pueblo counties, and the West End of Montrose County (including the Town of Norwood in San Miguel County). Tier two coal transition communities contain Delta, Gunnison, El Paso, La Plata, and Larimer Counties.

Enhanced Rural Enterprise Zone Program. Enterprise zone areas within rural counties that meet additional economic distress criteria receive enhanced rural enterprise zone status. Businesses within enhanced rural enterprise zones earn additional tax credits when adding net new employees. Specifically, businesses located in an enhanced rural enterprise zone receives an additional $2,000 per new employee and $500 per employee that qualifies for the agricultural processor new employee credit.

Assumptions

Freight Rail Use Tax Credit. The fiscal note assumes approximately 25 taxpayers will claim the credit in tax years 2026 and 2027, generating, on average, about $109,080 in credits each year, representing $145,400, or $12,120 per month, in qualified expenditures for use of a certified freight rail line. In March 2024, the average flatbed rate per mile was $2.12. The fiscal note assumes the average length of haul is 1,000 miles and the average carload is 100 tons per month. The amount of credit claimed is expected to steadily increase through the period it is available as more taxpayers become aware of the income tax credit, consistent with other new state credits.

Railroad Operators Tax Credit. The fiscal note assumes the full $5 million in credits each year will be claimed. Rail maintenance costs vary widely with some estimates showing between $33,000 to $124,000 per mile for operating and maintenance costs.

Enhanced Rural Enterprise Zones. On average from 2020 to 2022, businesses located in rural enterprise zone and a coal transition community had 64 employees that qualified for the new employee credit generating about $70,366 in state income tax credits. In addition, these businesses were allowed, on average, $9,000 in Agricultural Processer New Employee Credits from 2020-22. The fiscal note adjusts these estimates to account for the additional benefits received by being in an enhanced rural enterprise zone.

State Revenue

Based on the assumptions above, the bill is expected to decrease General Fund revenue by $1.4 million in FY 2025-26 (half-year impact), $5.4 million in FY 2026-27, and $8.2 million in FY 2027-28. The bill reduces income tax revenue, which is subject to TABOR.

Table 2
Revenue Under SB 24-190*

	FY 2025-26	FY 2026-27	FY 2027-28
Freight Rail Use Tax Credit	($1.4 million)	($2.7 million)	($3.0 million)
Railroad Operators Tax Credit	-	($2.5 million)	($5.0 million)
Enhanced Rural Enterprise Zones Tax	($0.1 million)	($0.2 million)	($0.2 million)
Revenue Impact	**($1.4 million)**	**($5.4 million)**	**($8.2 million)**

* Totals may not sum due to rounding.

To the extent the number of taxpayers claiming the income tax credit it more or less than assumed above, the estimated revenue impact will vary from the amounts shown. Also, the timing of when the credit is claimed depends on when the taxpayer applies for the credit and when either OEDIT or CDOT issues a credit certificate to the taxpayer, which may fluctuate depending on applicant business decisions.

State Expenditures

The bill increases state expenditures by about $250,000 in FY 2024-25, $285,000 in FY 2025-26, $325,000 in FY 2026-27, and $335,000 in FY 2027-28, as shown in Table 3 and detailed below. Applicable costs are ongoing through the period of the respective tax credit. Expenditures are paid from the General Fund for OEDIT and DOR, and from the State Highway Fund for CDOT.

Table 3
Expenditures Under SB 24-190

	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28
Office of Economic Development				
Personal Services	$170,641	$170,641	$170,641	$170,641
Operating Expenses	$1,920	$1,920	$1,920	$1,920
Capital Outlay Costs	$13,340	-	-	-
Computer Programming	$29,120	-	-	-
Centrally Appropriated Costs[1]	$34,752	$34,752	$34,752	$34,752
FTE – Personal Services	1.5 FTE	1.5 FTE	1.5 FTE	1.5 FTE
OEDIT Subtotal	**$249,773**	**$207,313**	**$207,313**	**$207,313**
Department of Transportation				
Personal Services	-	$56,880	$56,880	$56,880
Operating Expenses	-	$640	$640	$640
Capital Outlay Costs	-	$6,670	-	$6,670
Centrally Appropriated Costs[1]	-	$11,772	$11,772	$11,772
FTE – Personal Services	-	0.5 FTE	0.5 FTE	0.5 FTE
CDOT Subtotal	**-**	**$75,962**	**$69,292**	**$69,292**
Department of Revenue				
GenTax Programming	-	-	$38,979	$39,999
Office of Research and Analysis	-	-	$7,392	$14,720
Form Changes (DPA)	-	-	$2,585	$2,585
DOR Subtotal	**-**	**-**	**$48,956**	**$57,304**
Total	**$249,773**	**$283,275**	**$325,561**	**$333,909**
Total FTE	**1.5 FTE**	**2.0 FTE**	**2.0 FTE**	**2.0 FTE**

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

Office of Economic Development. Beginning in FY 2024-25, OEDIT requires 1.0 FTE to manage the new responsibilities of the Rural Opportunity Office related to economic development in coal transition communities. The office also requires 0.5 FTE to administer the Freight Rail Use Tax Credit through FY 2029-30 and one-time associated computer programming. Costs are paid from the General Fund, and include standard operating and capital outlay costs for staff.

Department of Transportation. CDOT requires 0.5 FTE to administer the Railroad Operators Tax Credit beginning in FY 2025-26. Costs are paid from the State Highway Fund, and include standard operating and capital outlay costs for staff.

Department of Revenue. DOR requires computer programming for the two tax credits in FY 2026-27 and FY 2027-28 only. Ongoing expenditures in the Office of Research and Analysis are required for changes in the related GenTax reports so that the department can access and document tax statistics related to the new tax policy. Finally, the credits require form changes, costs for which are reappropriated to the Department of Personnel and Administration.

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 3.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2024 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. 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.

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 2024-25, the bill requires and includes a General Fund appropriation of $215,021 to the Office of Economic Development, and 1.5 FTE.

State and Local Government Contacts

Counties	Economic Development	Labor
Local Affairs	Personnel	Revenue
State Auditor	Transportation	

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the General Assembly website.