

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0786.01 Pierce Lively x2059

HOUSE BILL 23-1290

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A BILL FOR AN ACT

101 **CONCERNING THE REFERRAL OF A BALLOT ISSUE RELATED TO THE**
102 **UNDERESTIMATION OF REVENUE FROM THE TAXES ON PRODUCTS**
103 **THAT CONTAIN NICOTINE IN A REQUIRED NOTICE TO VOTERS,**
104 **AND, IN CONNECTION THEREWITH, REFERRING A BALLOT ISSUE**
105 **TO THE VOTERS TO ALLOW THE STATE TO RETAIN AND SPEND**
106 **STATE REVENUES THAT WOULD OTHERWISE NEED TO BE**
107 **REFUNDED FOR EXCEEDING THE ESTIMATE IN THE BALLOT**
108 **INFORMATION BOOKLET ANALYSIS FOR PROPOSITION EE AND TO**
109 **ALLOW THE STATE TO MAINTAIN THE TAX RATES ON**
110 **CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS**
111 **ESTABLISHED IN PROPOSITION EE THAT WOULD OTHERWISE**
112 **NEED TO BE DECREASED.**

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

SENATE
3rd Reading Unamended
May 5, 2023

SENATE
2nd Reading Unamended
May 4, 2023

HOUSE
3rd Reading Unamended
April 24, 2023

HOUSE
2nd Reading Unamended
April 21, 2023

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill refers a ballot issue to the voters at the November 7, 2023, statewide election to allow the state to retain and spend state revenues that would otherwise need to be refunded for exceeding the estimate in the ballot information booklet analysis for proposition EE and to allow the state to maintain the tax rates established in proposition EE that would otherwise need to be decreased. If voters reject the ballot issue, the state will both:

- Refund \$23.65 million to distributors and wholesalers in a reasonable manner determined by the department of revenue; and
- Reduce by 11.53% the tax rates of the taxes on cigarettes, tobacco products, and nicotine products created or increased by proposition EE.

If voters approve the ballot measure:

- The money set aside for the potential refund related to proposition EE will instead be transferred to the preschool programs cash fund and the general fund; and
- The new tax on nicotine products and the increased taxes on cigarettes and tobacco products in proposition EE will stay at the rates required by proposition EE.

The refund or alternative spending is made or backfilled from revenue in the newly created proposition EE cash fund, which consists of \$23.65 million from the preschool programs cash fund and the general fund.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Universal access to high-quality preschools can transform the
5 lives of children, families, and communities. The window from birth to
6 age five is a critical moment in a child's development, with ninety percent
7 of brain development occurring during this time.

1 (b) Research illustrates that children who attend high-quality
2 preschools are, on average, eight months ahead in academic learning and
3 about five months ahead in executive function skills, such as listening,
4 planning, and self-control, compared to those who do not. Children who
5 attend high-quality preschools are also more likely to graduate college
6 and less likely to become a teenage parent or receive public assistance
7 later in life.

8 (c) That is why in 2020, the general assembly enacted House Bill
9 20-1427, which created a new excise tax on nicotine products and
10 increased excise taxes on cigarettes and tobacco products to fund
11 preschool programs, among other things, and subsequently referred
12 proposition EE, which sought voter approval for these portions of House
13 Bill 20-1427 to take effect;

14 (d) 66.7% of voters approved proposition EE, with 2,134,608
15 votes in favor of the measure and 1,025,182 votes against it;

16 (e) And yet, if in state fiscal year 2021-22, the actual revenue the
17 state received exceeded the ballot information booklet estimate for either
18 state fiscal year spending or state revenue from the new taxes in
19 proposition EE, then the state may be required to refund revenues related
20 to proposition EE and reduce the new and increased taxes in proposition
21 EE;

22 (f) The potential refund is because section 20 (3)(c) of article X
23 of the state constitution, commonly known as TABOR, requires the
24 combined amount in excess of the blue book estimates to be refunded,
25 unless there is later voter approval to retain these excess revenues;

26 (g) The potential reduction in the rates of the new and increased
27 takes in proposition EE is because paragraph (3)(c) of TABOR also

1 requires a percentage reduction in the rate of newly created or increased
2 taxes equal to the amount of revenue in excess of the blue book estimates
3 as a percentage of the total state revenue from the new and increased
4 taxes, unless there is later voter approval;

5 (h) On September 12, 2022, legislative council staff sent a memo
6 to the executive committee of the legislative council and the prime
7 sponsors of House Bill 20-1427 informing them that:

8 (I) The state controller had released its certification of revenues
9 for state fiscal year 2021-22 certifying the state's total fiscal year spending
10 without the new taxes in proposition EE; and

11 (II) The department of revenue and the department of treasury had
12 released preliminary data for state fiscal year 2021-22 indicating the
13 amount of state revenue from the new taxes in proposition EE;

14 (i) Although the state had less fiscal year spending without the tax
15 increase than anticipated in the blue book estimate, the state received
16 \$208 million in state revenue from the new taxes, or \$21.5 million more
17 than the blue book estimate;

18 (j) Since the general assembly first became aware of state revenue
19 from the new taxes exceeding the blue book estimates on September 12,
20 2022, the same day that the secretary of state certified the ballot order and
21 content to the county clerks and recorders and after the blue book had
22 been sent to the printer, as a practical matter, it was too late to refer a
23 ballot issue for the general election on November 8, 2022;

24 (k) Consequently, this act refers a new ballot issue to the voters
25 at the first possible election to seek the voter approval necessary to avoid
26 a refund under TABOR and to avoid reducing the rates of the new and
27 increased taxes;

1 (l) If the voters approve the new ballot issue, the refund and rate
2 reductions will be unnecessary and the money that would have otherwise
3 been refunded will be retained and refunded to the preschool programs
4 cash fund and the general fund and the rates of the new and increased
5 taxes will remain as they were initially approved by the voters;

6 (m) Demand for the Colorado universal preschool program for all
7 children in the year before kindergarten has already exceeded
8 expectations ahead of its launch for the 2023-24 school year. More than
9 30,000 eligible families and over 1,800 providers have already signed up
10 to participate in the program, with months remaining in the application
11 window; and

12 (n) Additional resources would allow the state to extend preschool
13 services and additional hours to more children, setting Colorado's children
14 on a path to success in kindergarten and beyond.

15 (2) Now, therefore, it is the general assembly's intent to refer a
16 ballot issue to seek the later voter approval permitted by TABOR to avoid
17 a refund and tax rate reduction and to conditionally require the refund,
18 plus interest, and tax rate reduction, if the voters reject the ballot issue.

19 **SECTION 2.** In Colorado Revised Statutes, 26.5-4-209, **add** (6)
20 as follows:

21 **26.5-4-209. Preschool programs cash fund - created - use -**
22 **repeal.** (6) (a) (I) ON SEPTEMBER 1, 2023, THE STATE TREASURER SHALL
23 TRANSFER TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND
24 DOLLARS FROM THE UNEXPENDED AND UNENCUMBERED MONEY IN THE
25 PRESCHOOL PROGRAMS CASH FUND TO THE PROPOSITION EE REFUND CASH
26 FUND CREATED IN SECTION 39-28-503.

27 (II) NOTWITHSTANDING SUBSECTION (6)(a)(I) OF THIS SECTION, IF

1 THERE IS LESS THAN TWENTY-THREE MILLION SIX HUNDRED FIFTY
2 THOUSAND DOLLARS OF UNEXPENDED AND UNENCUMBERED MONEY IN THE
3 PRESCHOOL PROGRAMS CASH FUND AS OF SEPTEMBER 1, 2023, THE STATE
4 TREASURER SHALL TRANSFER TO THE PROPOSITION EE REFUND CASH FUND
5 CREATED IN SECTION 39-28-503:

6 (A) FROM THE PRESCHOOL PROGRAMS CASH FUND, THE BALANCE
7 OF THE UNEXPENDED AND UNENCUMBERED MONEY IN THE PRESCHOOL
8 PROGRAMS CASH FUND; AND

9 (B) FROM THE GENERAL FUND, AN AMOUNT EQUAL TO THE
10 DIFFERENCE BETWEEN TWENTY-THREE MILLION SIX HUNDRED FIFTY
11 THOUSAND DOLLARS AND THE AMOUNT THE STATE TREASURER TRANSFERS
12 PURSUANT TO SUBSECTION (6)(a)(II)(A) OF THIS SECTION.

13 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2024.

14 **SECTION 3.** In Colorado Revised Statutes, 39-28-103, **add** (2)
15 as follows:

16 **39-28-103. Tax levied.** (2) (a) IF A MAJORITY OF THE ELECTORS
17 VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE
18 BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION
19 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION THAT
20 ARE ATTRIBUTABLE TO THE VOTERS' APPROVAL OF THE TAX INCREASE AT
21 THE NOVEMBER 2020 STATEWIDE ELECTION ARE REDUCED AS SPECIFIED
22 IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF
23 ARTICLE X OF THE STATE CONSTITUTION.

24 (b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7,
25 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE
26 VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (2) IS
27 REPEALED, EFFECTIVE JANUARY 1, 2024.

1 **SECTION 4.** In Colorado Revised Statutes, 39-28.5-102, **add** (5)
2 as follows:

3 **39-28.5-102. Tax levied.** (5) (a) IF A MAJORITY OF THE ELECTORS
4 VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE
5 BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION
6 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION THAT
7 ARE ATTRIBUTABLE TO THE VOTERS' APPROVAL OF THE TAX INCREASE AT
8 THE NOVEMBER 2020 STATEWIDE ELECTION ARE REDUCED AS SPECIFIED
9 IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF
10 ARTICLE X OF THE STATE CONSTITUTION.

11 (b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7,
12 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE
13 VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (5) IS
14 REPEALED, EFFECTIVE JANUARY 1, 2024.

15 **SECTION 5.** In Colorado Revised Statutes, 39-28.6-103, **add** (4)
16 as follows:

17 **39-28.6-103. Tax levied.** (4) (a) IF A MAJORITY OF THE ELECTORS
18 VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE
19 BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION
20 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION ARE
21 REDUCED AS SPECIFIED IN SECTION 39-28-505 (1) AND IN ACCORDANCE
22 WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

23 (b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7,
24 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE
25 VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (4) IS
26 REPEALED, EFFECTIVE JANUARY 1, 2024.

27 **SECTION 6.** In Colorado Revised Statutes, **add** part 5 to article

1 28 of title 39 as follows:

2 PART 5

3 BALLOT ISSUE RELATED TO PROPOSITION EE
4 REFUNDS - RATE REDUCTIONS - PERMITTED USES

5 **39-28-501. Definitions.** AS USED IN THIS PART 5, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (1) "BALLOT ISSUE" MEANS THE BALLOT ISSUE REFERRED TO THE
8 VOTERS PURSUANT TO SECTION 39-28-502 (1).

9 (2) "PROPOSITION EE REFUND CASH FUND" OR "FUND" MEANS THE
10 CASH FUND CREATED IN SECTION 39-28-503.

11 (3) "PROPOSITION EE TAX REVENUE" MEANS THE ACTUAL
12 REVENUE FROM PROPOSITION EE TAXES RECEIVED BY THE DEPARTMENT.

13 (4) "PROPOSITION EE TAXES" MEANS THE TAX IMPOSED BY
14 SECTION 39-28.6-103 AND THE TAX INCREASES IMPOSED BY SECTIONS
15 39-28-103 AND 39-28.5-102 THAT WERE APPROVED BY VOTERS AT THE
16 NOVEMBER 2020 STATEWIDE ELECTION.

17 **39-28-502. Ballot issue - proposition EE - later voter approval.**

18 (1) AT THE ELECTION HELD ON NOVEMBER 7, 2023, THE SECRETARY OF
19 STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF THE STATE FOR
20 THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT ISSUE: "WITHOUT
21 RAISING TAXES, MAY THE STATE RETAIN AND SPEND REVENUES FROM
22 TAXES ON CIGARETTES, TOBACCO, AND OTHER NICOTINE PRODUCTS AND
23 MAINTAIN TAX RATES ON CIGARETTES, TOBACCO, AND OTHER NICOTINE
24 PRODUCTS AND USE THESE REVENUES TO INVEST TWENTY-THREE MILLION
25 SIX HUNDRED FIFTY THOUSAND DOLLARS TO ENHANCE THE VOLUNTARY
26 COLORADO PRESCHOOL PROGRAM AND MAKE IT WIDELY AVAILABLE FOR
27 FREE INSTEAD OF REDUCING THESE TAX RATES AND REFUNDING REVENUES

1 TO CIGARETTE WHOLESALERS, TOBACCO PRODUCT DISTRIBUTORS,
2 NICOTINE PRODUCTS DISTRIBUTORS, AND OTHER TAXPAYERS, FOR
3 EXCEEDING AN ESTIMATE INCLUDED IN THE BALLOT INFORMATION
4 BOOKLET FOR PROPOSITION EE?"

5 (2) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
6 VOTE "Yes/For", THIS CONSTITUTES LATER VOTER APPROVAL TO AVOID
7 THE POTENTIAL REFUND AND RATE REDUCTION REQUIRED BY SECTION 20
8 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

9 (3) FOR PURPOSES OF SECTION 1-5-407 (5)(b), THE BALLOT ISSUE
10 IS A PROPOSITION. SECTION 1-40-106 (3)(d) DOES NOT APPLY TO THE
11 BALLOT ISSUE.

12 **39-28-503. Proposition EE refund cash fund.** THE PROPOSITION
13 EE REFUND CASH FUND IS HEREBY CREATED IN THE STATE TREASURY. IN
14 ACCORDANCE WITH SECTION 26.5-4-209 (6), THE FUND CONSISTS OF
15 TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS
16 TRANSFERRED FROM THE PRESCHOOL PROGRAMS CASH FUND CREATED IN
17 SECTION 26.5-4-209 AND, IF APPLICABLE, THE GENERAL FUND. THE MONEY
18 IN THE FUND IS RESTRICTED FROM USE UNTIL JANUARY 1, 2024, AND IS NOT
19 INCLUDED IN THE YEAR-END BALANCE REQUIRED BY SECTION 24-75-201.1
20 (1)(d)(XXIII).

21 **39-28-504. Approval of ballot issue - rejection of ballot issue**
22 **- refunds.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES
23 THAT:

24 (a) IF A MAJORITY OF THE VOTERS VOTING ON THE BALLOT ISSUE
25 VOTE "No/AGAINST", THE STATE WILL BE REQUIRED BY SECTION 20 (3)(c)
26 OF ARTICLE X OF THE STATE CONSTITUTION TO MAKE REFUNDS; AND

27 (b) THE AMOUNT OF THE REFUND WOULD BE TWENTY-THREE

1 MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS, WHICH IS THE AMOUNT
2 BY WHICH THE PROPOSITION EE TAX REVENUE IN STATE FISCAL YEAR
3 2021-22 EXCEEDED THE BALLOT INFORMATION BOOKLET ESTIMATE OF
4 REVENUE FROM THE PROPOSITION EE TAX INCREASE FOR THAT SAME
5 FISCAL YEAR PLUS INTEREST.

6 (2) THE DEPARTMENT SHALL DETERMINE A REASONABLE METHOD
7 TO DISTRIBUTE THE REVENUE IN THE PROPOSITION EE REFUND CASH FUND
8 CREATED IN SECTION 39-28-503 IN ACCORDANCE WITH SECTION 20 (3)(c)
9 OF ARTICLE X OF THE STATE CONSTITUTION. THIS METHOD MUST INCLUDE
10 THE DISTRIBUTION OF MONEY FROM THE PROPOSITION EE REFUND CASH
11 FUND TO TAXPAYERS WHO PAID THE PROPOSITION EE TAXES.

12 (3) (a) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT
13 ISSUE VOTE "NO/AGAINST", THEN ON OR BEFORE JUNE 30, 2024, THE
14 STATE TREASURER SHALL REFUND THE MONEY IN THE PROPOSITION EE
15 REFUND CASH FUND IN THE MANNER DETERMINED BY THE DEPARTMENT
16 PURSUANT TO SUBSECTION (2) OF THIS SECTION.

17 (b) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
18 VOTE "YES/FOR", THEN, AS SOON AS POSSIBLE THEREAFTER, THE STATE
19 TREASURER SHALL TRANSFER THE BALANCE IN THE PROPOSITION EE
20 REFUND CASH FUND TO THE PRESCHOOL PROGRAMS CASH FUND CREATED
21 IN SECTION 26.5-4-209 AND THE GENERAL FUND, IN THE SAME PROPORTION
22 AS THE STATE TREASURER TRANSFERRED MONEY FROM THE PRESCHOOL
23 PROGRAMS CASH FUND AND THE GENERAL FUND TO THE PROPOSITION EE
24 REFUND CASH FUND.

25 **39-28-505. Rejection of ballot issue - rate reduction.** (1) IF A
26 MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE
27 "NO/AGAINST", THEN THE PROPOSITION EE TAXES SHALL BE REDUCED IN

1 A MANNER DETERMINED BY THE DEPARTMENT SO THAT THE PROPOSITION
2 EE TAXES ARE REDUCED BY ELEVEN AND FIFTY-THREE ONE-HUNDREDTHS
3 PERCENT. THIS PERCENTAGE IS EQUAL TO THE AMOUNT BY WHICH
4 PROPOSITION EE TAX REVENUE EXCEEDED ONE HUNDRED EIGHTY-SIX
5 MILLION FIVE HUNDRED THOUSAND DOLLARS, WITH THE EXCESS AMOUNT
6 DIVIDED BY ONE HUNDRED EIGHTY-SIX MILLION FIVE HUNDRED THOUSAND
7 DOLLARS.

8 (2) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
9 VOTE "YES/FOR", THEN THE PROPOSITION EE TAXES SHALL REMAIN AT
10 THE SAME RATES AS ESTABLISHED BY PROPOSITION EE.

11 **39-28-506. Repeal of part.** IF A MAJORITY OF THE ELECTORS
12 VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THEN THIS PART 5 IS
13 REPEALED, EFFECTIVE JULY 1, 2024.

14 **SECTION 7. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety.