HB 22-1138

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0421	**Date:**	February 23, 2022
Prime Sponsors:	Rep. Gray; Herod Sen. Winter; Hansen	**Bill Status:**	House Finance
		Fiscal Analyst:	Will Clark | 303-866-4720 Louis Pino | 303-866-3556

Bill Topic: **REDUCE EMPLOYEE SINGLE-OCCUPANCY VEHICLE TRIPS**

Summary of Fiscal Impact:

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

The bill creates an income tax credit for employers that provide alternative transportation options to their employees; requires large employers to provide alternative transportation options to their employees; and requires the Transportation Commission to allocate funds to transportation management associations. Starting in FY 2022-23, the bill decreases state revenue and increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $23,550 to the Department of Revenue. The State Highway Fund is continuously appropriated to the Department of Transportation.

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

Table 1
State Fiscal Impacts Under HB 22-1138

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	($30.5 million)	($67.8 million)
	Total Revenue	**($30.5 million)**	**($67.8 million)**
Expenditures	General Fund	$23,550	$25,858
	State Highway Fund	$196,872	$184,472
	Multimodal Options Fund	-	$2,250,000
	Centrally Appropriated	$58,017	$56,839
	Total Expenditures	**$278,439**	**$2,517,169**
	Total FTE	**2.3 FTE**	**2.3 FTE**
Transfers		-	-
Other Budget Impacts	TABOR Refund	($30.5 million)	($67.8 million)
	General Fund Reserve	$3,533	$3,879

Summary of Legislation

The bill creates an income tax credit for employers that provide alternative transportation options to their employees; requires large employers to complete an annual commuter survey and provide alternative transportation options to their employees; and requires the Transportation Commission to allocate funds to transportation management associations and organizations in nonattainment areas. These impacts are detailed below.

Tax credit. For tax years 2023 through 2029, this bill creates an income tax credit for any employer that creates a clean commuting plan, conducts an employer commuter survey, and offers two or more alternative transportation options to at least some of its employees. The tax credit amount is equal to 50 percent of the amount spent by the employer on alternative transportation options. Employers must provide the alternative transportation options to all essential workers and those making less than $40,000 per year to qualify for the credit. The tax credit is refundable, meaning if the amount exceeds the taxpayer's state income tax liability, the balance is refunded to the taxpayer. Qualifying alternative transportation options include:

- flexwork policies;
- parking management;
- employee shuttles;
- guaranteed rides home for employees who do not drive a vehicle to the work site;
- rideshare matching;
- bicycle parking and other active commute facilities, such as lockers, changing areas, and showers;
- installation of low-cost electric vehicle charging infrastructure on the work site;
- employee usage of zero emission vehicles;
- subsidies for transit, carpools, and vanpools, or providing employer or third-party vans;
- coordination with local transit authorities for improved service to the work site;
- on-site day care facilities; and
- other options offered by the employer to reduce single-occupancy vehicle trips to and from the work site.

Clean commuting plans. Clean commuting plans must describe the strategies an employer is taking to reduce the number of single-occupancy vehicle trips taken by its employees when commuting to and from their work site. Plans must be updated and resubmitted to the Colorado Department of Transportation (CDOT) each year to claim a tax credit.

Employer commuter survey. By January 1, 2023, CDOT, in coordination with the Colorado Energy Office (CEO) and the five Metropolitan Planning Organizations (MPOs), must create an annual commuter survey for employers to use when determining how their employees commute to and from the work site. The survey must be completed by large employers (employers with over 100 employees at a single work site) and those seeking an income tax credit on an annual basis, and include questions about employee travel distances, commute practices, and the use of alternative transportation methods. By January 1, 2024, and annually thereafter, CDOT is required to compile a statewide commuter trends report based on the information in the survey and present the report both to the Colorado Air Quality Control Commission and as a part of CDOT's SMART Act presentation. The Office of the State Auditor must annually review the results from the transportation survey to determine the effectiveness of the income tax credit created by the bill.

Large employer requirements. In addition to conducting the employer commuter survey described above, the bill requires all employers with over 100 employees at a single work site in nonattainment areas to offer employees qualified transportation fringe benefits; offer employees commuter choice information; and offer a cash allowance in lieu of a parking space under certain circumstances by January 1, 2023. Large employers in the remaining areas of the state's five MPO territories must comply with these requirements by January 1, 2025, and all other large employers in the state must comply by January 1, 2027.

Transportation Commission allocations. Starting in FY 2023-24 and continuing through FY 2029-30, the Transportation Commission is required to allocate $250,000 to each of the state's transportation management associations and organizations operating in a nonattainment area, paid from the Multimodal Transportation and Mitigation Options Fund. This funding is to be used to assist large employers with clean commuting plans and complying with the requirements of the bill.

Background

Areas of the United States that do not meet ozone national ambient air quality standards set by the Environmental Protection Agency (EPA) are designated as nonattainment areas. Consequences of a nonattainment designation include additional federal regulatory monitoring and increased costs for state and local governments to attain compliance. As of November 2021, Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Weld counties are designated as nonattainment areas, along with parts of Larimer County.

There are nine transportation management associations and organizations operating within a nonattainment area. Transportation management associations and organizations are public-private partnerships designed to address traffic congestion and air-quality problems in a specific geographic area.

Assumptions

The eligible population for the new tax credit created by the bill includes private sector employers offering alternative transportation options to their employees. To estimate the reduction in state revenue associated with this bill, this fiscal note uses an estimate of the number of Colorado employees that will receive transportation benefits. Since data are not available for this specific subset of employees, a number of statistics about the broader regional and Colorado workforce are used.

According to the Bureau of Labor Statistics, approximately 11 percent of employees in the mountain region receive subsidized commuting benefits from their employer, which includes subsidized parking, public transportation, and carpool benefits. However, this figure includes government employers, which do not pay state income tax, and are therefore ineligible for this new tax credit. Approximately 85 percent of employees in Colorado are employed by private (non-government) employers. As such, this fiscal note assumes that approximately 9.4 percent (11 percent × 85 percent) of private sector employees receive subsidized transit benefits.

However, this 9.4 percent of employees that receive subsidized transit benefits includes solo drivers receiving subsidized parking benefits who are not eligible for this new tax credit, as well as employees receiving public transportation and carpooling benefits who are eligible. This fiscal note assumes that of this 9.4 percent of employees, only 20 percent will initially utilize alternative transportation options that are eligible for the income tax credit. In 2023, that equates to 53,000 employees that will receive carpooling benefits from their employer, or about 2 percent of the total private sector workforce. This number is expected to increase by 20 percent in 2024 and by an additional 15 percent in 2025 as more large employers are required to provide alternative transportation options to their employees and others choose to opt into the program. This population estimate of employees receiving alternative transportation options benefits is expected to grow at a steady rate each year the income tax credit is available. To the extent that more businesses provide alternative transportation options to their employees sooner than assumed in this fiscal note, the revenue reduction under the bill will be larger than estimated.

This fiscal note assumes that employers will expend on average $1,152 per employee per year in 2023 and $1,176 in 2024 in qualifying alternative transportation benefits. This figure is based on the estimated future price of a local RTD pass reduced by 20 percent to reflect bulk purchase pricing, an estimated $96 per month in 2023 and $98 in 2024.

Employment and inflation estimates used in this fiscal note are consistent with the December 2021 Legislative Council Staff forecast.

State Revenue

The bill is expected to decrease state revenue by $30.5 million in FY 2022-23 (a half-year impact), by $67.8 million in FY 2023-24, and by larger amounts in subsequent years until the credit expires in FY 2029-30. These amounts reflect the assumptions stated above; however, the bill's actual revenue reduction could be larger depending on the rate at which the credit is utilized. Income taxes are subject to TABOR. Revenue impacts on a tax year basis and additional information are presented in Table 2.

Table 2
Revenue Reduction Under HB 22-1138

	Tax Year 2023	Tax Year 2024
Number of employees receiving alternative transportation benefits	52,892	63,470
Average annual expenditure per employee	$1,152	$1,176
Total expenditures by employers	$121.9 million	$149.3 million
State Revenue Impact—50 percent credit	**($60.9 million)**	**($74.6 million)**

Employers are estimated to expend approximately $121.9 million in qualifying alternative transportation benefits in tax year 2023 and $149.3 million in tax year 2024. This amounts to forgone state income tax revenue of approximately $60.9 million in 2023 and $74.6 million in 2024 due to the 50 percent tax credit, if the credit is utilized by all eligible employers

State Expenditures

The bill increases state cash fund expenditures in CDOT by $255,000 in FY 2022-23 and $2.5 million in FY 2023-24 from the State Highway Fund and the Multimodal Transportation and Mitigation Options

Fund (Multimodal Options Fund). It also increases General Fund expenditures in the DOR by $23,550 in FY 2022-23 and $25,858 in FY 2023-24. Finally, the bill will increase workload in multiple state agencies. These impacts are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 22-1138

Cost Components	FY 2022-23	FY 2023-24
Department of Transportation		
Personal Services	$181,367	$181,367
Operating Expenses	$3,105	$3,105
Capital Outlay Costs	$12,400	-
Clean Commuting Plan Assistance	-	$2,250,000
Centrally Appropriated Costs[1]	$58,017	$56,839
FTE – Personal Services	2.3 FTE	2.3 FTE
CDOT Subtotal	**$254,889**	**$2,491,311**
Department of Revenue		
Computer Programming	$19,950	-
GenTax Support and Maintenance	$3,600	-
ORA Reporting	-	$6,400
Form Changes	-	$19,458
DOR Subtotal	**$23,550**	**$25,858**
Total	**$278,439**	**$2,517,169**
Total FTE	**2.3 FTE**	**2.3 FTE**

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

Department of Transportation. The bill increases CDOT administrative expenditures by 2.3 FTE in FY 2022-23 and future years. These staff will develop, implement, and analyze data from the employer commuter survey; provide reporting on survey results; assist employers with the development of their clean commuting plans; oversee and manage CDOT's clean commuting plan; manage funding distribution to transportation management associations and organizations; and provide training and outreach. Standard operating and capital outlay costs are included and will be paid from the State Highway Fund, which is continuously appropriated to the Department of Transportation.

- **Clean commuting plan assistance.** In FY 2023-24 through FY 2029-30, the bill requires the Transportation Commission to allocate $250,000 from the state allocation of the Multimodal Options Fund to transportation management associations and organizations to assist employers with the creation of their clean commuting plans. The fiscal note assumes that nine organizations will qualify for the funding, for a total allocation of $2.25 million. The Multimodal Options Fund is subject to annual appropriation from the General Assembly.

Department of Revenue. Assuming that CDOT will provide the verification the DOR requires to approve income tax credits, the bill increases General Fund expenditures in the DOR by $23,550 in FY 2022-23 for computer programing and by $25,858 in FY 2023-24 for reporting and tax form changes.

- **Computer programming.** This bill requires the DOR to program, test, and update database fields in its GenTax software system in FY 2022-23. Programming costs are estimated at $3,600, representing 16 hours of contract programming at a rate of $225 per hour. Costs for testing at the department are estimated at $19,950, representing 570 hours of Systems Support Office contract testing at a rate of $35 per hour.

  Starting in FY 2023-24 and 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. These costs are estimated at $6,400, representing 200 hours for data management and reporting at $32 per hour.

- **Tax form changes.** Starting in FY 2023-24, the bill requires tax form changes to the credit schedule for corporations. These changes will require expenditures of $19,458 in FY 2023-24, $19,680 in FY 2024-25, and $20,251 in FY 2025-26. This work is done by the Department of Personnel and Administration with reappropriated funds.

Colorado Energy Office. Workload will increase on an ongoing basis for the Colorado Energy Office to coordinate with CDOT in development and administration of the transportation survey required by the bill. This workload can be accomplished within existing appropriations.

Office of the State Auditor. The state auditor is required to annually review transportation survey data from CDOT to measure the effectiveness of the tax credit created by this bill in lowering single-occupancy vehicle commutes. This workload can be accomplished within existing appropriations.

Large state agencies. The fiscal note assumes that workload for large state agencies to complete the transportation survey, report the results to CDOT and provide information to employees about alternative transportation options will be minimal. The fiscal note also assumes that many of the alternative transportation options required by the bill for large employers are already being offered to some extent by state agencies, including transportation subsidies and telework options, and therefore any costs to comply with these requirements can be accomplished within existing appropriations.

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 December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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 beginning in FY 2022-23. 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, which will decrease the amount of General Fund available for other purposes.

Local Governments, School Districts and Special Districts

Costs will minimally increase for local governments, school districts, and other special districts with over 100 employees to complete and report the results of transportation surveys, starting with those in nonattainment areas in FY 2022-23. Costs will also increase by an indeterminate amount for these entities to comply with the bill's requirements concerning large employer transportation fringe benefits, commuter choice options and cash allowance in lieu of parking spaces. These costs will vary by employer, including to what extent any of the qualifying benefits are already being provided to employees.

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 2022-23, the bill requires an appropriation of $23,550 to the Department of Revenue from the General Fund. The State Highway Fund is continuously appropriated to the Department of Transportation.

State and Local Government Contacts

Colorado Energy Office	Counties	Local Affairs
Municipalities	Personnel	Revenue
School Districts	Special Districts	State Auditor
Transportation		