

EXECUTIVE AGENCY
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 13, 2023

Agency Submitting: Department of Transportation

Items of Revenue or Expense, or Both	Fiscal Year 2022-23	Fiscal Year 2023-24	Fiscal Year 2024-25	Effect on Future Biennia
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

See response attached.

Name Debbie Binggeli
Title Customer Service
Manager/Legislative Coordinator

GOVERNOR'S OFFICE OF FINANCE COMMENTS

Date Friday, March 10, 2023

The agency's response appears reasonable.

Name Amy Stephenson
Title Director

AB184 Fiscal Impact to NDOT: Cannot be determined

While NDOT fully supports the transition to alternative fuel vehicles as a critical component of meeting the State's climate goals and reduction of other pollutants that impact air quality, NDOT is unable to calculate a fiscal impact at this time due to administration and programmatic concerns regarding the Carbon Reduction Program.

First, the Federal Highway Administration has determined that the funding mechanism proposed in AB184 is incompatible with 23 CFR 1.3. Per 23 CFR 1.3, the State Department of Transportation is the recipient of all Title 23 funds unless specifically legislated by the United States Congress. As the Carbon Reduction Program funds are Allocated Formula Funds, they are subject to the normal Title 23 process of reimbursement activities used by the State Department of Transportation. However, section 16, paragraph 5 of AB184 states that the Department of Transportation shall deposit 35 percent of the federally allocated Carbon Reduction Program funds into an account administered by NDEP. Since federal transportation funding is provided on a reimbursement basis and no subrecipient agreement process is addressed, AB184 cannot be implemented as written.

Even if this bill was capable of being implemented as written, NDOT is unable to determine a reliable cost estimate at this time. The funding requested in the bill, 35 percent of the Carbon Reduction program, would account for approximately \$4,000,000 per year (with an anticipated annual increase), but the Department's actual fiscal impact may be higher or lower than that amount due to unknown administrative costs. Additionally, using these funds for this purpose would impact NDOT's ability to fund other [eligible programs and projects](#). Finally, the current version of the bill does not include state government entities as eligible (e.g., NDOT alone operates over 800 medium and heavy-duty vehicles meeting the criteria outlined in the bill but is not listed as an eligible entity).

Second, NDOT is still awaiting guidance from FHWA as to whether the program created by this bill would be eligible for FHWA funding. While the bill provides a program that would reduce carbon emissions from the transportation sector, it's not clear that the FHWA would consider it a "transportation project," which is generally a primary eligibility measure for all FHWA funding. If deemed eligible, NDOT could enter into an agreement with DCNR to administer the program; however, NDOT is required to maintain oversight and ultimate responsibility to ensure all federal requirements are met. As this program is not a typical use of State Highway funds, which are normally utilized for programs that seek FHWA reimbursement, some additional analysis would be required to determine the administrative costs to NDOT and what other sources of state, local, or private funding would be used prior to requesting reimbursement from FHWA as well as the required non-federal match.

NDOT is supportive of the intent of this bill and is actively collaborating with numerous partners with respect to carbon reduction strategies as part of the State's Transportation Emission Reduction Plan, including studying potential funding sources like the Carbon Reduction Program, that will be complete by early November 2023.