



**Colorado
Legislative
Council
Staff**

HB17-1066

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0107 **Date:** January 26, 2017
Prime Sponsor(s): Rep. Becker J.; Lewis **Bill Status:** House SVMA
Fiscal Analyst: Josh Abram (303-866-3561)

BILL TOPIC: CONSERVATION EASEMENT TAX CREDIT LANDOWNER RELIEF

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019	FY 2019-20
State Revenue*	<u>Reduction (\$407,204 - \$2,326,707)</u>		
General Fund	See State Revenue section		
State Expenditures			
TABOR Impact: Yes. See TABOR Impact section.			
Appropriation Required: None required.			
Future Year Impacts: Ongoing revenue reduction through FY 2019-20			

* Note: the summary box estimates a range of interest payments foregone across the next three fiscal years. For more detail, see the State Revenue section.

Summary of Legislation

Under current law, taxpayers may claim a state income tax credit for a portion of the value of a perpetual conservation easement that the taxpayer donates. If the executive director of the Department of Revenue (DOR) disputes the claim of the credit, current law sets forth procedures for resolving the claim administratively, or through an appeal process in the courts, at the taxpayers discretion.

Taxpayers who choose resolution through the courts are not required to post a surety bond, and no interest or penalties accrue while the matter is on appeal. Taxpayers choosing resolution through DOR's administrative process are required to post a surety bond and deposit while the matter is being considered. This bill removes the requirement for taxpayers using the DOR administrative process to post any surety or deposit, and no additional interest may accrue until the DOR makes a final determination.

Current law allows a conservation easement to be terminated in the same manner as any other easement. This bill also allows the courts to terminate a conservation easement if:

- the state rejects the claim;
- the easement has been appraised as having no or only nominal value; and,
- the holder of the easement either provided no compensation or has been reimbursed in whole or in part for any compensation the holder did provide.

Background

The conservation easement tax credit is allowed for individuals and corporations who donate land for a perpetual conservation easement to a government entity or a charitable organization. The owner of an easement continues to maintain the right to prohibit certain acts with respect to the property in order to preserve its value for recreation, education, habitat, open space, or historical importance. If the taxpayer's state income tax liability is less than the amount of the tax credit, the unused portion of the credit may be carried forward for up to 20 years. Alternatively, the tax credit can be transferred to another taxpayer.

There are 62 current and active cases on appeal with the DOR involving credits claimed after May 1, 2011. These remaining cases involve an estimated \$16.7 million in taxes due, and about \$2.3 million in additional interest owed.

State Revenue

The bill reduces state General Fund revenue for FY 2017-18 through FY 2019-20. This reduction is estimated at no less than \$407,204 and as much \$2.3 million over the next three fiscal years.

The final outcome of the 62 disputed cases still on administrative appeal with the DOR and the date of their settlement cannot be known. As such, the total amount of penalties and interest that could be waived under the bill cannot be stated definitively. The revenue reduction estimate in this section represents the amount of additional interest that would otherwise accrue between the bill's effective date and the date at which the settled amount is paid.

On the high end of the estimate, foregone interest payments were calculated based on 62 remaining cases on administrative appeal, an outstanding tax liability of \$16.7 million, and assuming that the full amount of interest allowable under current law for each contested tax credit will be paid to the DOR.

Historically, the DOR has settled disputed conservation easement tax credits by accepting approximately 30 percent of the value of the tax credit and disallowing the remaining 70 percent. The DOR then historically waives 75 percent of the penalties and interest on that disallowed portion. This fiscal note assumes that future settlements will follow this historical pattern, and that the total amount of interest owed will likely be discounted by some amount. Additional accrual of monetary penalties in these cases is not anticipated.

To the extent that future cases involving disputed conservation easement tax credits are considered by either the DORs administrative process or the courts, the revenue reductions described in this fiscal note for existing unresolved cases will continue to affect state revenue collections.

TABOR Impact

This bill reduces state revenue from interest on contested conservation easement tax credits, which will reduce the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. TABOR refund obligations are not expected for FY 2016-17.

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
Natural Resources

Judicial
Regulatory Agencies

Law
Revenue