SB 22-119

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 22-0766	**Date:**	June 14, 2022
Prime Sponsors:	Sen. Simpson; Winter	**Bill Status:**	Postponed Indefinitely
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Bill Topic: **CONSERVATION EASEMENT TAX CREDIT**

Summary of Fiscal Impact:

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

The bill would have changed the Conservation Easement Tax Credit program to create a new transferable tax credit for previously disallowed tax credits and an ombudsman and arbitration process to resolve disputes concerning the distribution of the credit among affected parties. The bill would have reduced state revenue and increased state expenditures in both FY 2022-23 and FY 2023-24. The bill was postponed indefinitely, so the impacts identified in this final fiscal note do not take effect.

Appropriation Summary: For FY 2022-23, the bill requires appropriations totaling $5.7 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 22-119

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	($66.6 million)	($88.8 million)
	Total Revenue	**($66.6 million)**	**($88.8 million)**
Expenditures	General Fund	$5,729,218	$3,515,727
	Centrally Appropriated	$72,238	$53,459
	Total Expenditures	**$5,801,459**	**$3,569,186**
	Total FTE	**17.4 FTE**	**16.4 FTE**
Transfers		-	-
Other Budget Impacts	TABOR Refund	($66.6 million)	($88.8 million)
	General Fund Reserve	$859,383	$527,359

Summary of Legislation

The bill makes changes to the Conservation Easement Tax Credit to allow taxpayers to reclaim disallowed credits from tax years 2000 through 2013, and creates a new dispute resolution process when there are multiple claimants for the same credit.

Claiming previously disallowed tax credits. The bill allows a landowner to claim a tax credit for each conservation easement in gross donated between January 1, 2000, and December 31, 2013, for which a tax credit was claimed but was denied in whole or in part by the Colorado Department of Revenue (DOR). A disallowed donation is eligible if the land subject to the easement was owned by the landowner, a family member, or a trust controlled by the family for not less than three years prior to the date of the donation.

The amount of the tax credit must equal the amount of the credit that could have been claimed for the donation based on the fair market value that was in effect at the time of the donation. The fair market value is defined as the lesser of the value of the donation accepted as a deduction by the federal Internal Revenue Service, or, if the donated property was purchased by the donor, 250 percent of the donor’s cost basis.

No later than August 15, 2022, the DOR must post information online notifying eligible taxpayers concerning the new tax credit. Taxpayers have until September 30, 2023, to submit a claim for a credit certification to the Division of Conservation in the Department of Regulatory Agencies (DORA). The division must create rules for the application and approval process in coordination with the working group created in House Bill 19-1264.

Multiple claimants. If multiple taxpayers file claims concerning the same conservation easement, the claimants may work together to coordinate the distribution of tax credit certificates. If the original tax credit was transferred to another taxpayer, the transferee may claim the portion of the credit that was transferred.

Objections and disputes. Taxpayers and other parties to a disallowed credit may object to a claim for certification of reclaimed tax credits and submit their own application. These objections must be referred to a newly created ombudsman in the Division of Conservation to resolve the dispute. If parties are unable to resolve their objections to a claim, the ombudsman may refer the matter to an arbitrator at the expense of the DOR. Once the objection is resolved, the DOR must allow the tax credit to be claimed in accordance with the terms of the agreement reached.

Background

The Conservation Easement Tax Credit was originally enacted in 1999. The credit is allowed for individuals and corporations that donate land for a perpetual conservation easement to a government entity or a charitable organization. The owner of an easement may prohibit certain acts on 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 larger 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 one or more other taxpayers.

House Bill 19-1264 created a working group of stakeholders to propose an alternative method to the existing appraisal process for certifying the value of a conservation easement tax credit, and to develop eligibility criteria and a process to provide retroactive tax credits to taxpayers whose conservation easement tax credit claim was denied in whole or in part from 2000 to 2013. As introduced, this bill includes some of the recommendations of the working group.

State Revenue

The bill is expected to reduce General Fund revenue by up to $66.6 million in FY 2022-23, and up to $88.8 million in FY 2023-24. The estimates for FY 2022-23 represents a half-year impact on an accrual accounting basis. The bill reduces individual and corporate income tax revenue, which is subject to TABOR.

Because some of the disallowed tax credits were claimed for land donated within three years of the property's purchase, those donations are ineligible for the new tax credit due to the three-year holding requirement; however, data on which credits are affected by this provision is unavailable as of this writing. This fiscal note shows the highest possible revenue impact estimate, assuming that all affected taxpayers will claim the credit under this bill; however, actual revenue impacts may be less than this amount.

Disallowed tax credits. As of March 3, 2022, the DOR estimates that up to 4,500 affected taxpayers may be associated with disallowed credits, equaling about $177.7 million in disallowed conservation easement donations made between January 1, 2000 and December 31, 2013. This amount is updated as cases are settled and considered completed or resolved.

Credit claims. Based on historical data for the conservation easement credit, the fiscal note assumes 75 percent of the $177.7 million in credits will be claimed by taxpayers in the first income tax year with the remaining 25 percent being used in the second year. In addition, the fiscal note assumes taxpayers will begin to claim credits in tax year 2022.

Because the conservation easement credit is nonrefundable and transferable, actual revenue impacts of the tax credit will vary. A taxpayer can claim the credit in the same tax year they receive certification from the Division of Conservation, or use a portion of the tax credit and carry forward the balance in up to twenty subsequent income tax years. If the full amount of tax credit is not used as early as assumed or delayed as a result of disputes, revenue reductions will be pushed into future fiscal years.

State Expenditures

For FY 2022-23, the bill increases state expenditures by about $5.8 million and 17.4 FTE. For FY 2023-24, increased expenditures are about $3.6 million and 16.4 FTE. Expenditures are from the General Fund. New costs are displayed in Table 2 and described below. Personal service costs in Table 2 are prorated for the General Fund pay date shift.

Table 2
Expenditures Under SB 22-119

Cost Components	FY 2021-22	FY 2022-23
Department of Revenue		
Personal Services	$79,962	$15,047
Operating Expenses	$2,295	-
Capital Outlay Costs	$12,400	-
GenTax Programming / Systems Support	$263,769	-
Document Services	$46,136	$13,238
Arbitration Costs	$2,751,925	$917,308
Legal Services	$2,022,656	$2,022,656
Office of Research and Analysis	$6,400	$6,400
Centrally Appropriated Costs[1]	$29,388	$6,168
FTE – Personal Services	1.6 FTE	0.3 FTE
FTE – Legal Services	11.4 FTE	11.4 FTE
DOR Subtotal	**$5,214,931**	**$2,980,817**
Department of Regulatory Agencies		
Personal Services	$176,030	$192,033
Operating Expenses	$4,050	$4,050
Capital Outlay Costs	$18,600	-
Legal Services	$344,995	$344,995
Centrally Appropriated Costs[1]	$42,850	$47,291
FTE - Personal Services	2.7 FTE	3.0 FTE
FTE – Legal Services	1.7 FTE	1.7 FTE
DORA Subtotal	**$586,525**	**$588,369**
Total	**$5,801,456**	**$3,569,186**
Total FTE	**17.4 FTE**	**16.4 FTE**

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

Department of Revenue. The DOR is required to process a new transferable tax credit for previously denied claims certified by the Division of Conservation. This increases costs for programming and testing to GenTax, and for business user acceptance testing, document servicing provided by the Department of Personnel and Administration (DPA), and tax examiners for claim review, certification, and payment. The DOR is responsible for the arbitration costs of disputed claims received at DORA. The complexity of verifying claims and counter claims from original easement donations and tax credit transferees will be labor intensive and require extensive legal services provided by the Department of Law. It is estimated that approximately 400 disputed cases will require arbitration at a cost of $4,290 per party per arbitration. The bulk of these cases are anticipated in the first fiscal year.

Finally, the Office of Research and Analysis will have annual reporting expenses beginning in FY 2022-23.

Department of Regulatory Agencies. The bill requires the Division of Conservation in DORA to process claims for tax credit certifications for previously denied claims, and to establish a process for determining if a landowner conveyed an easement in good faith and otherwise meets the requirements for a reclaimed tax credit. If an objection to a claim is filed, the disputed and conflicting claims are referred to a new ombudsman in the division to provide mediation and to arrange arbitration when necessary. The ombudsman requires legal services from the Department of Law. Final arbitration expenses, if any, must be paid by the DOR.

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 2.

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. 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 $859,383 in FY 2022-23, and by $527,359 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Effective Date

The bill was postponed indefinitely by the Senate Appropriations Committee on May 10, 2022.

State Appropriations

For 2022-23, the bill requires the following General Fund appropriations:

- $5,185,543 to the Department of Revenue, and 1.6 FTE. Of this amount, $46,136 is reappropriated to the Department of Personnel and Administration and $2,022,656 is reappropriated to the Department of Law, with an additional 11.4 FTE.

- $543,673 to the Department of Regulatory Agencies, and 2.7 FTE. Of this amount, $344,995 is reappropriated to the Department of Law, with an additional 1.7 FTE.

State and Local Government Contacts

Information Technology	Law
Regulatory Agencies	Revenue