Colorado Legislative Council Staff

HB16-1174

FISCAL NOTE

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

Drafting Number:	LLS 16-0186	**Date:**	February 10, 2016
Prime Sponsor(s):	Rep. Becker J.	**Bill Status:**	House SVMA
		Fiscal Analyst:	Greg Sobetski (303-866-4105)

BILL TOPIC: CONSERVATION EASEMENT TAX CREDIT LANDOWNER RELIEF

Fiscal Impact Summary	FY 2015-2016 *(current year)*	FY 2016-2017	FY 2017-2018
State Revenue	**$0**	**($730,000)**	**($1.2 million)**
General Fund		(730,000)	(1.2 million)
State Expenditures	**$947,857**	**$41,275**	**$2,316**
General Fund	947,857	29,075	2,130
Centrally Appropriated Costs		12,200	186
TABOR Impact	$0	($730,000)	($1.2 million)
FTE Position Change		0.6 FTE	0.1 FTE
Appropriation Required: See State Appropriations section.			
Future Year Impacts: Ongoing state revenue decrease.			

Summary of Legislation

The bill requires the Department of Revenue (DOR) to allow income tax credits claimed for conservation easements donated prior to January 1, 2008, unless, prior to July 1, 2016:

- the DOR and the taxpayer have reached a final settlement;
- the DOR provides clear and convincing evidence of the easement's overvaluation, which is accepted by the Attorney General; or
- the easement's appraiser has been convicted of a criminal act of misrepresentation in connection with preparation of the appraisal.

The bill also authorizes a court to terminate a conservation easement created for the purpose of claiming an income tax credit if the state has rejected the claim for the credit, the easement is appraised as having no more than a nominal value, and the easement's holder provided no compensation for donation of the easement or was reimbursed in whole for any compensation provided.

Background

The DOR has contested conservation easement income tax credits claimed by taxpayers for tax years 2000 through 2013. The majority of cases have been settled, with taxpayers agreeing to pay most of the tax for which a credit was claimed in exchange for reductions in penalties and interest assessed. As of January 20, 2016, disputes are ongoing in 50 cases for credits first claimed prior to January 1, 2008, involving $16.6 million in taxes, interest, and penalties.

State Revenue

State General Fund revenue will be reduced by $730,000 in FY 2016-17, $1.2 million in FY 2017-18, and a similar amount in subsequent fiscal years.

Assumptions. It is assumed that the bill applies only to cases in which a dispute between a taxpayer and the DOR is ongoing. If the bill is interpreted to apply to cases in which a settlement has been signed, the revenue reduction in this section will be understated.

It is assumed that six of the 50 currently active cases will be settled prior to the bill becoming law. The remaining 44 cases are assumed to be resolved between 2016 and 2020 under current law, with taxpayers agreeing to pay tax, interest, and penalties to an extent consistent with past settlements. Based on the outstanding amounts stated as due by the DOR, it is assumed that each donor who settles with the department under current law will agree to pay approximately $175,000 in tax, $1,750 in interest, and $750 in penalty.

Taxpayers may agree to pay the settled amount immediately or over a period of years. This fiscal note assumes that all settlements will result in installment agreements for four payments over four years, identical except for the accrual of additional interest. Between FY 2016-17 and FY 2023-24, the bill is expected to reduce state General Fund revenue by an aggregate $7.8 million.

TABOR Impact

This bill reduces state revenue from income taxes, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Since the bill reduces both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will reduce money available for the General Fund budget in the future during years the state does not collect money above the TABOR limit.

State Expenditures

State General Fund expenditures will increase by $947,857 in the current FY 2015-16, $41,275 and 0.6 FTE in FY 2016-17, and $2,316 in FY 2017-18. Expenditures are summarized in Table 1 and detailed below.

Table 1. Expenditures Under HB16-1174

Cost Components	FY 2015-16	FY 2016-17	FY 2017-18
Department of Revenue	**$784,559**	**$41,275**	**$2,316**
Personal Services	14,515	23,422	2,130
FTE		0.6 FTE	0.1 FTE
Operating and Capital Expenses		5,653	
Legal Services	418,044		
Secondary Appraisals	352,000		
Centrally Appropriated Costs*		12,200	186
Department of Law	**$163,298**	**$0**	**$0**
Personal Services	155,565		
Operating and Capital Expenses	7,733		
TOTAL	**$947,857**	**$41,275**	**$2,316**

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

Department of Revenue. The bill establishes a deadline of July 1, 2016, for the DOR to submit clear and convincing evidence of an easement's overvaluation. This is a higher legal standard than the DOR is required to meet in current law and will entail increased costs. Examination of donation records will require the DOR to add the equivalent of 0.3 FTE in contract personnel in FY 2015-16. The DOR will also need to solicit secondary appraisals of 44 easements at a cost of $8,000 per appraisal, as well as legal representation for the department totaling 100 billed hours of attorney time for each easement. These costs, totaling $770,044 in FY 2015-16, will be reappropriated to the Department of Law (DOL).

Beginning FY 2016-17, the DOR will require personnel to close approximately 816 income tax returns on which conservation easement credits have been claimed for the 44 donations affected by the bill. The number of returns exceeds the number of donations because credit is transferred to multiple other taxpayers and claimed over multiple tax years.

Department of Law. The majority of DOL expenditures are associated with representing the DOR in proceedings to determine whether conservation easement donations were overvalued. These costs are expected to be paid from DOR reappropriations.

Additionally, the bill designates the Attorney General as responsible for determining whether the DOR has provided clear and convincing evidence for disallowance of a tax credit. Because the DOL will represent the DOR and will also determine whether or not credits are disallowed, the DOL must hire separate personnel to avoid an internal conflict of interest. For this reason, the DOL requires a direct General Fund appropriation for contract personnel equivalent to 1.0 FTE at the Senior Assistant Attorney General level in FY 2015-16.

Judicial Department. The bill will result in the dismissal of appeals currently pending in state courts, decreasing caseload. The bill also authorizes courts to terminate existing conservation easements under specific circumstances, which may result in new cases being filed. Any net increase in caseload is expected to 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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB16-1174		
Cost Components	**FY 2016-17**	**FY 2017-18**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$4,796	$4
Supplemental Employee Retirement Payments	2,004	182
Leased Space	5,400	
TOTAL	**$12,200**	**$186**

Technical Note

The bill requires the DOR to provide clear and convincing proof of an easement's overvaluation by July 1, 2016. Depending on when the bill is signed into law, this deadline may not allow sufficient time for DOR to establish a case at this legal standard.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For the current FY 2015-16, the bill requires a General Fund appropriation of $784,559 to the Department of Revenue. From this amount, $770,044 should be reappropriated to the Department of Law. The bill also requires a direct General Fund appropriation of $163,298 to the Department of Law.

For FY 2016-17, the bill requires an allocation of 0.6 FTE and a General Fund appropriation of $29,075 to the Department of Revenue.

State and Local Government Contacts

Higher Education	Information Technology	Judicial
Law	Natural Resources	Regulatory Agencies
Revenue		