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Fiscal Note

Drafting Number: LLS 24-0505 Date: February 20, 2024
Prime Sponsors: Sen. Will; Winter F. Rep. Lukens; Lynch Bill Status: Senate Ag. & Natural Resources Fiscal Analyst: Greg Sobetski | 303-866-4105 greg.sobetski@coleg.gov

Bill Topic: CONSERVATION EASEMENT INCOME TAX CREDIT

Summary of Fiscal Impact: [X] State Revenue [ ] State Transfer [ ] Local Government [X] State Expenditure [X] TABOR Refund [ ] Statutory Public Entity

The bill extends the Conservation Easement Oversight Commission and the program for certifying conservation easement holders indefinitely, increases the maximum amount of conservation easement tax credits that may be certified annually, and broadens the circumstances in which tax credits may be transferred. It decreases state revenue and increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$32,500 to the Department of Regulatory Agencies.

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

Table 1 State Fiscal Impacts Under SB 24-126

Table with 4 columns: Category, Sub-category, Budget Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue (General Fund, Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refunds, General Fund Reserve).

## **Summary of Legislation**

The bill makes modifications to the conservation easement tax credit program, as discussed below.

**Extension of expiring provisions.** The sections of state law that create the Conservation Easement Oversight Commission and require the certification of conservation easement holders are scheduled to expire on July 1, 2026. The bill extends these provisions indefinitely.

**Conservation easement tax credit.** Beginning for tax year 2025, the bill increases the cap on the amount of tax credit certificates that may be issued by the Department of Regulatory Agencies (DORA) for each tax year from \$45 million to \$75 million.

Under current law, a donor of a conservation easement may transfer all or a portion of their tax credit to another taxpayer (transferee). The bill allows transferees to transfer the credit to other taxpayers ("subsequent transferees"). The bill also allows credits to be transferred to pass-through business entities, including partnerships and S corporations, in which case the credit is allocated to owners of the business.

## **Background**

**Conservation easements.** A conservation easement is a voluntary legal agreement between a landowner and a charitable organization or government entity that permanently preserves scenic or agricultural open space, natural habitat, or recreational areas for the benefit of the public.

**Tax credit.** The state has offered a tax credit for the donation of conservation easements since 2000. The tax credit is nonrefundable, meaning that the amount claimed each year may not exceed the taxpayer's income tax liability. The excess may be carried forward to later tax years or transferred (usually sold) to another taxpayer with greater tax liability.

The Division of Conservation in DORA reviews conservation easement donations and certifies tax credits. Under current law enacted in House Bill 21-1233, tax credits are valued at 90 percent of the value of the donated easement. The division may certify up to \$45 million in credits in any tax year, and certifications that would exceed one year's cap may be reserved against future caps. Demand for the credit increased significantly after the passage of HB 21-1233, and credits are already reserved against the 2024, 2025, and 2026 caps.

**Conservation Easement Oversight Commission.** The commission was created in House Bill 08-1323 to advise the Division of Conservation and the Department of Revenue (DOR) regarding conservation easement tax credits. The commission was extended in House Bill 19-1264 following a 2017 sunset review, and is currently set to repeal on July 1, 2026.

**Certification of conservation easement holders.** HB 08-1323 also requires DORA to certify the organizations that hold conservation easements through the application of qualifications and identification of fraudulent holders. The certified holder program was extended in HB 19-1264 following a 2017 sunset review, and is currently set to repeal on July 1, 2026.

**Assumptions**

Based on the volume of certificate applications received since the passage of HB 21-1233, DORA is expected to certify tax credits up to the \$75 million cap each year for at least the first several years for which the higher cap level established in this bill is in place. Because a portion of the current law cap has already been reserved through tax year 2026, the increase in the number of certificates awarded is initially expected to be limited to about 10 percent, or about 5 certificates annually.

**State Revenue**

On net, the bill decreases state revenue by \$15.0 million in FY 2024-25 and by \$29.9 million in FY 2025-26 and later years. The bill decreases General Fund income tax revenue and increases Conservation Cash Fund fee revenue as discussed below.

**General Fund.** The bill decreases income tax revenue, which is subject to TABOR. Increasing the maximum amount of tax credits that may be certified annually will decrease state revenue by \$30 million annually, based on the above assumption that the full amount allowed under the cap will be certified. The actual timing of revenue reductions may vary across fiscal years depending on the pace of transfers and the timing when credits are claimed. The revenue impact for FY 2024-25 represents a half-year impact for tax year 2025 on an accrual accounting basis.

**Cash funds.** The bill increases revenue to the Conservation Cash Fund in DORA by \$33,900 in FY 2024-25 and \$56,500 in FY 2025-26 and later years. This revenue is from tax credit certification fees based on the assumed number of new certifications each year. The fee revenue is subject to TABOR.

**Fee impact on individuals and businesses.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by DORA based on cash fund balance, program costs, and the number of tax credit applications subject to the fee. Table 2 below presents the fee impact of SB 24-126.

**Table 2**  
**Fee Impact of SB 24-126 on Individuals and Businesses**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Current Fee</b>	<b>Number Newly Affected</b>	<b>Fee Impact</b>
<b>FY 2024-25</b>	Tax Credit Certification Fee	\$11,300	3	\$33,900
			<b>FY 2024-25 Total</b>	<b>\$33,900</b>
<b>FY 2025-26</b>	Tax Credit Certification Fee	\$11,300	5	\$56,500
			<b>FY 2025-26 Total</b>	<b>\$56,500</b>

**State Expenditures**

The bill increases state expenditures in DORA and DOR by \$39,690 in FY 2024-25, \$222,165 in FY 2025-26, and smaller amounts in later years. Expenditures for DORA are paid from the Conservation Cash Fund, and expenditures for DOR are paid from the General Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3  
Expenditures Under SB 24-126**

	FY 2024-25	FY 2025-26
<b>Department of Regulatory Agencies</b>		
Personal Services	\$25,338	\$50,676
Operating Expenses	\$512	\$1,024
Capital Outlay Costs	\$6,670	-
Centrally Appropriated Costs <sup>1</sup>	\$7,170	\$14,340
FTE – Personal Services	0.4 FTE	0.8 FTE
<b>DORA Subtotal</b>	<b>\$39,690</b>	<b>\$66,040</b>
<b>Department of Revenue</b>		
Personal Services	-	\$11,491
Software Programming and Testing	-	\$141,233
Centrally Appropriated Costs <sup>1</sup>	-	\$3,401
FTE – Personal Services	-	0.2 FTE
<b>DOR Subtotal</b>	<b>-</b>	<b>\$156,125</b>
<b>Total</b>	<b>\$39,690</b>	<b>\$222,165</b>
<b>Total FTE</b>	<b>0.4 FTE</b>	<b>1.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Regulatory Agencies.** The bill requires the addition of 0.8 FTE personnel in DORA to review additional applications for tax credit certificates and track secondary transfers of tax credits. Personal service costs in FY 2024-25 are prorated to reflect an assumed January 1, 2025, start date, and include standard operating expenses, and capital outlay costs are paid from the Conservation Cash Fund.

Beginning in FY 2026-27, the bill will extend DORA expenditures that would otherwise end upon the repeal of statute creating the Conservation Easement Oversight Commission and requiring the certification of conservation easement holders. The bill is expected to require ongoing

expenditures at current levels. These expenditures will be shown in future versions of this fiscal note.

**Department of Revenue.** Expenditures in the department begin in FY 2025-26 and include one-time software programming and testing expenses and ongoing personnel costs. Costs are a result of allowing subsequent transfers of tax credits and allowing transfers to pass-through business entities, which require system modifications and review by tax personnel.

- **Staffing.** Table 3 shows expenditures for the addition of 0.3 FTE to review transferred tax credits, prorated to reflect an expected November 1, 2025, start date.
- **GenTax programming and testing.** The bill requires expenditures of \$141,233 to program, test, and update database fields in DOR's GenTax software system. Programming costs are estimated at \$90,383, representing 390 hours of contract programming at a rate of \$231.75 per hour. Costs for testing at the department include \$33,250 for 950 hours of innovation, strategy, and delivery programming support at a rate of \$35 per hour, and \$17,600 for 550 hours of user acceptance testing at a rate of \$32 per hour.

**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 for FY 2024-25 and FY 2025-26. This estimate assumes the December 2023 LCS revenue forecast, and estimates are not available after FY 2025-26.

The bill decreases General Fund revenue subject to TABOR, which will decrease the amount of General Fund revenue required to be refunded to taxpayers with no net impact on the amount available for the General Fund budget.

The bill increases cash fund revenue subject to TABOR, which will increase the amount of General Fund revenue required to be refunded to taxpayers, correspondingly decreasing the amount available for the General Fund budget.

**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 2024-25. Based on this fiscal note, the bill is expected to decrease the amount of General Fund held in reserve by the amounts shown in Table 1, which will increase the amount of General Fund available for other purposes.

### **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 2024-25, the bill requires an appropriation of \$32,520 from the Conservation Cash Fund to DORA, and 0.4 FTE.

### **State and Local Government Contacts**

Agriculture	Governor's Office of Boards and Commissions
Information Technology	Natural Resources
Personnel	Regulatory Agencies
Revenue	

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).