SB 24-126

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated April 18, 2024)

Drafting Number:	LLS 24-0505	**Date:**	April 25, 2024
Prime Sponsors:	Sen. Will; Winter F. Rep. Lukens; Lynch	**Bill Status:**	House Finance
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Bill Topic: **CONSERVATION EASEMENT INCOME TAX CREDIT**

Summary of Fiscal Impact:

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

The bill extends the Conservation Easement Oversight Commission and the program for certifying conservation easement holders indefinitely and increases the maximum amount of conservation easement tax credits that may be certified beginning in tax year 2025. It decreases state revenue beginning in FY 2025-26 and increases state expenditures on an ongoing basis beginning in FY 2024-25.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of $12,925 to the Department of Regulatory Agencies.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill, as amended by the House Agriculture, Water, and Natural Resources Committee.

Table 1
State Fiscal Impacts Under SB 24-126

		Budget Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
Revenue	General Fund	-	($750,000)	($14,750,000)	($29,750,000)
	Cash Funds	$33,900	$56,500	$56,500	$169,470
	Total Revenue	**$33,900**	**($693,500)**	**($14,693,500)**	**($29,580,530)**
Expenditures	Cash Funds	$12,925	$25,850	$90,475	$90,475
	Centrally Appropriated	$3,585	$7,170	$25,095	$25,095
	Total Expenditures	**$16,510**	**$33,020**	**$115,570**	**$115,570**
	Total FTE	**0.2 FTE**	**0.4 FTE**	**1.4 FTE**	**1.4 FTE**
Transfers		-	-	-	-
Other Budget Impacts	TABOR Refunds	-	($750,000)	not estimated	not estimated

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 and modifies commission membership.

Conservation easement tax credit. The bill increases the cap on the amount of tax credit certificates that may be issued by the Department of Regulatory Agencies (DORA) from $45 million to $60 million for tax year 2025, $70 million for 2026, and $75 million in 2027 and each year thereafter. For tax years 2025 and 2026, the value of the credit is 90 percent of the value of the donated easement, as in current law. For tax years 2027 and each year thereafter, the amount decreases to 80 percent of the value of the donated easement. Beginning in tax year 2027, the bill removes the requirement that state revenues exceed certain thresholds for taxpayers to claim a refundable tax credit and increases the amount the tax may claim to $200,000 from $50,000 per tax year.

The bill directs DORA to prioritize and issue tax credit certificates in the order that claims are received, and repeals the $15 million limit on the amount of tax credits that may be reserved against future year caps. The bill also allows transferees to claim the credit against the insurance premium tax, rather than the state income tax, subject to the same limitations that would otherwise apply. Finally, beginning in tax year 2025, the holder of the conservation easement may approve wind or solar energy facilities that are compatible with conservation values.

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 allowed cap in each year for at least the first several years for which the higher cap level established in this bill is in place. Under current law, the reserve cap ($15 million) has already been reached through tax year 2026.

The Division of Conservation in DORA estimates it takes about two or three years for taxpayers to claim the credit from the time the division receives an application from the taxpayer. This includes the time for the application process to be completed and the period the taxpayer was placed on the waitlist. The fiscal note assumes, on average, the additional credits certified under this bill will be claimed beginning at least one year from when the division completes the application. For example, credits applications approved by the division in calendar year 2025 will begin to be claimed by taxpayers beginning in tax year 2026.

Further, the fiscal note assumes for tax credits issued in tax years 2025 and 2026 will be claimed at lower rates until tax year 2027, as taxpayers hold on to these credits for the larger refund option allowed beginning on January 1, 2027. Credits for tax years 2027 and each year thereafter will be claimed at higher rate, approximately 70 percent in first year of eligibility and the remaining balance claimed in the second or third years.

State Revenue

On net, the bill decreases state revenue by $33,900 in FY 2024-25 and by $693,501 in FY 2025-26, $14.6 million in FY 2026-27 and about $30 million in FY 2027-28 and future years. The bill decreases General Fund income tax revenue and increases Conservation Cash Fund fee revenue as discussed below.

General Fund. Based on the assumptions above, 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 $750,000 in FY 2025-26, $14.8 million in FY 2026-27, $29.8 million in FY 2026-27and by about $30 million for each year thereafter. The actual timing of revenue reductions may vary across fiscal years depending on the pace of transfers and the timing when credits are claimed.

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. This bill increases tax credit certification fees, with total revenue generate to the Conservation Cash Fund based on the assumed number of new certifications each year. The fee revenue is subject to TABOR. 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 for FY 2024-25 and FY 2025-26. The number of applications are expected to steadily increase beginning in FY 2027-28, as the amount of allowed refunds increases and the higher credit cap that DOLA can reserve.

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

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

State Expenditures

The bill increases state expenditures in DORA by $16,500 in FY 2024-25, $33,000 in FY 2025-26, $115,600 in FY 2026-27, and smaller amounts in later years. Expenditures are paid from the Conservation Cash Fund. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under SB 24-126

	FY 2024-25	FY 2025-26	FY 2026-27
Department of Regulatory Agencies			
Personal Services	$12,669	$25,338	$88,683
Operating Expenses	$256	$512	$1,792
Centrally Appropriated Costs[1]	$3,585	$7,170	$25,095
Total Costs	**$16,510**	**$33,020**	**$115,570**
Total FTE	**0.2 FTE**	**0.4 FTE**	**1.4 FTE**

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

Department of Regulatory Agencies. The bill requires the addition of 0.4 FTE personnel in DORA to review additional applications for tax credit certificates. 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 requires ongoing expenditures for 1.0 FTE compliance specialist to perform these duties. Continuation costs for this staff person are included in Table 3 beginning in FY 2026-27. This portion of the bill does not require the addition of staff beyond the current staffing level.

Department of Revenue. Beginning in FY 2025-26, the bill increases department workload to process tax credit claims. This workload increase is assessed as minimal and can 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. 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 also 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.

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 $12,925 from the Conservation Cash Fund to DORA, and 0.2 FTE.

State and Local Government Contacts

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