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Fiscal Note

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| Drafting Number: | LLS 24-0792 | Date: | March 4, 2024 |
| Prime Sponsors: | Sen. Simpson; Roberts Rep. McCormick | Bill Status: | Senate Ag. & Natural Resources |
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Bill Topic: **REGENERATIVE AGRICULTURE TAX CREDIT**

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|----------------------------------|---|--|--|
| Summary of Fiscal Impact: | <input checked="" type="checkbox"/> State Revenue | <input type="checkbox"/> State Transfer | <input type="checkbox"/> Local Government |
| | <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> TABOR Refund | <input type="checkbox"/> Statutory Public Entity |

The bill creates a refundable state income tax credit for food and beverage retailers buying from local producers practicing regenerative agriculture in tax years 2024 through 2028. The bill increases state expenditures and decreases state revenue through FY 2028-29.

Appropriation Summary: For FY 2024-25, the bill requires appropriations totaling \$187,572 to multiple agencies.

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

**Table 1
State Fiscal Impacts Under SB 24-152**

| | | Current Year FY 2023-24 | Budget Year FY 2024-25 | Out Year FY 2025-26 |
|-----------------------------|---------------------------|------------------------------------|-----------------------------------|--------------------------------|
| Revenue | General Fund | (\$250,000) | (\$1.5 million) | (\$2.5 million) |
| | Total Revenue | (\$250,000) | (\$1.5 million) | (\$2.5 million) |
| Expenditures | General Fund | - | \$187,572 | \$154,683 |
| | Centrally Appropriated | - | \$18,818 | \$25,584 |
| | Total Expenditures | - | \$206,390 | \$180,267 |
| | Total FTE | - | 1.2 FTE | 1.5 FTE |
| Transfers | | - | - | - |
| Other Budget Impacts | TABOR refunds | (\$250,000) | (\$1.5 million) | (\$2.5 million) |
| | General Fund Reserve | - | \$28,136 | \$23,203 |

Summary of Legislation

For tax years 2024 through 2028, the bill creates a refundable state income tax credit for qualified food and beverage retailers who purchase agricultural commodities from Colorado-based agricultural producers practicing regenerative agriculture.

Regenerative agriculture. Regenerative agriculture is defined as a conservation and rehabilitation approach to food and farming systems focused on:

- topsoil regeneration;
- increasing biodiversity;
- improving the water cycle;
- enhancing ecosystem services;
- supporting biosequestration;
- increasing resilience to climate change; and
- strengthening the health and vitality of farm soil.

The application and certification process is managed by the Department of Agriculture (CDA). Qualifying retailers are allowed an income tax credit equal to 25 percent of the total amount paid for all purchases from a qualifying producer in the income tax year. In aggregate, CDA may issue up to \$2.5 million in tax credits per year. A qualifying retailer is allowed to receive one tax credit certificate per income tax year.

Assumptions

Qualified producers. According to CDA, many of Colorado's 38,900 farms and ranches employ at least some practices that satisfy the definition of regenerative agriculture in the bill. For example, USDA estimates that nearly 87 percent of farmland uses a form of conservation tillage, which increases soil health, improves water and nutrient cycling, builds organic matter, and increases resilience to difficult growing conditions. This fiscal note assumes that CDA will determine producer eligibility by utilizing its existing agricultural producer certifications, potentially including the Soil Health Program, the Saving Tomorrow's Agricultural Resources (STAR) framework, the Soil Carbon Initiative, Regenerative Organic Certified producers, and others that are determined to have appropriate verification standards. The actual list of qualifications will be established by CDA in rule.

Qualified retailers. The number of restaurants and bars that purchase from Colorado farms and ranches practicing regenerative agriculture is unknown. It is assumed that the number of qualifying retailers who purchase from a qualified producer is comparable to the number of Colorado producers certified under the programs listed above. Producers can be certified under more than one program. CDA currently has over 250 producers enrolled in the STAR program with a goal of 450 by 2025. Correspondingly, the fiscal note estimates CDA will issue tax credits to up to 300 qualified retailers per year.

Credit amount. Extrapolating from Colorado retail sales data, it is estimated that about \$10 million in food and beverage retailer expenditures would be from commodities purchased from qualifying producers practicing regenerative agriculture. As qualified retailers are allowed a tax credit equal to 25 percent of the total amount paid to qualifying producers, it is assumed that the maximum aggregate tax credit amount of \$2.5 million per year will be reached, once the program is fully ramped up.

Timing. Although the tax credit may be claimed for tax years 2024 through 2028, CDA expects to be developing the application after the bill becomes law in fall 2024. Therefore, the issuance of 2024 tax credits is expected to be limited by time and public awareness of the tax credit.

State Revenue

The bill will reduce General Fund revenue by \$250,000 in the current FY 2023-24, \$1.5 million in FY 2024-25, and \$2.5 million beginning in FY 2025-26. Impacts will continue until a final half-year impact of \$1.25 million in FY 2028-29. The bill reduces income tax revenue, which is subject to TABOR.

State Expenditures

The bill increases state General Fund expenditures by about \$206,000 in FY 2024-25 and \$180,000 in FY 2025-26 and subsequent years.

**Table 2
 Expenditures Under SB 24-152**

| | FY 2024-25 | FY 2025-26 |
|---|------------------|------------------|
| Department of Agriculture | | |
| Personal Services | \$105,355 | \$142,835 |
| Operating Expenses | \$1,408 | \$1,920 |
| Capital Outlay Costs | \$13,340 | - |
| Lodging and Mileage | \$1,300 | \$2,600 |
| Legal Services | \$15,362 | - |
| Centrally Appropriated Costs ¹ | \$18,818 | \$25,584 |
| FTE – Personal Services | 1.1 FTE | 1.5 FTE |
| FTE – Legal Services | 0.1 FTE | - |
| CDA Total | \$155,583 | \$172,939 |

Table 2
Expenditures Under SB 24-152 (Cont.)

| | FY 2024-25 | FY 2025-26 |
|-----------------------------------|------------------|------------------|
| Department of Revenue | | |
| GenTax Programming and Testing | \$40,821 | - |
| Office of Research and Analysis | \$7,392 | \$7,328 |
| Document Management (paid to DPA) | \$2,594 | - |
| DOR Total | \$50,807 | \$7,328 |
| Total Cost | \$206,390 | \$180,267 |
| Total FTE | 1.2 FTE | 1.5 FTE |

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

Department of Agriculture (CDA). Beginning in FY 2024-25, CDA will require additional personnel, travel, and legal services expenses to implement the tax credit. Legal expenditures are one-time impacts in FY 2024-25. Personnel and lodging resources are ongoing costs.

- **Staffing.** Beginning in September 2024, CDA will require 1.0 FTE administrator to develop the application process; review and approve applications; correspond with applicants; issue tax credit certificates; and conduct reporting. Starting in January 2025, CDA will require 0.5 FTE accountant personnel to audit and review applications and certifications; validate documents provided in applications and eligibility; reconcile documentation to tax credit amounts; and provide financial tracking of approved credits.
- **Lodging and mileage.** CDA will have costs for 10 days of per diem and 5 overnight lodging for random audit of tax credit recipients and other meetings in the state as needed in order to report to the General Assembly, DOR, state auditors, and others on the effectiveness of the credit. Fleet needs will be minimal and utilize pool vehicles, mileage included.
- **Legal services.** It is estimated that 120 hours of legal services will be needed for rulemaking in FY 2025-26. Ongoing legal costs will be less than 100 hours and are considered absorbable.

Department of Revenue (DOR). Beginning in FY 2024-25, DOR will require resources for GenTax programming and development, paper form changes, and reporting done by the Office of Research and Analysis (ORA) within DOR. Programming and form changes are one-time expenditures in FY 2024-25, while ORA expenditures are ongoing.

- **GenTax programming and testing.** For FY 2024-25, the bill will require changes to DOR's GenTax software system. This includes \$23,175 in GenTax programming costs, \$12,110 in development and testing in support of the GenTax programming, and \$5,536 in business and user acceptance testing following the GenTax programming.

- **Office of Research and Analysis.** The Office of Research and Analysis within the Department of Revenue will perform 231 hours of work at a rate of \$32 per hour in FY 2024-25, and 229 hours of work in future years, to update database fields and conduct ongoing reporting.
- **Document management.** For FY 2024-25, DOR will incur \$2,594 in document management costs. This includes updates to five tax return forms. These expenditures will occur in the Department of Personnel and Administration (DPA) using reappropriated DOR funds. The population workload impact is expected to be minimal and absorbable.

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. For FY 2024-25 and FY 2025-26, the bill decreases the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. TABOR refunds are paid from the General Fund; therefore, 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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing 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. The tax credit may be claimed for tax years 2024 and beyond.

State Appropriations

For FY 2024-25, the bill requires the following General Fund appropriations:

- \$50,807 to the Department of Revenue, of which \$2,594 is reappropriated to the Department of Personnel; and
- \$136,765 to the Department of Agriculture, and 1.1 FTE. Of this amount, \$15,362 is reappropriated to the Department of Law, with an additional 0.1 FTE.

State and Local Government Contacts

Agriculture
OEDIT
State Auditor

Information Technology
Personnel

Local Affairs
Revenue

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](#).