Bill 6

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0166	**Date:**	October 25, 2021
Prime Sponsors:		**Bill Status:**	Bill Request
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Bill Topic: **CONSTRUCTION MATERIALS SALES TAX EXEMPTION FOR CHARITIES**

Summary of Fiscal Impact:

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

The bill expands the state construction and building materials sales and use tax exemption for charitable organizations. The bill will decrease state revenue and increase state expenditures on an ongoing basis. The bill will decrease local government revenue for state-collected taxing jurisdictions.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $59,271 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the bill draft requested by the Legislative Oversight Committee Concerning Tax Policy.

Table 1
State Fiscal Impacts Under Bill 6

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	($2.1 million)	($2.1 million)
	Total Revenue	**($2.1 million)**	**($2.1 million)**
Expenditures	General Fund	$59,271	$44,881
	Centrally Appropriated	$14,657	$12,932
	Total Expenditures	**$73,928**	**$57,813**
	Total FTE	**1.0 FTE**	**0.9 FTE**
Transfers		-	-
TABOR Refund	General Fund	($2.1 million)	($2.1 million)

Summary of Legislation

The bill expands the construction and building materials exemption for charitable organizations, removing the requirement that a project must be owned and used by the organization, and extending the exemption to all building associated with an organization's charitable functions.

Background

The construction and building materials exemption was enacted in 1979 and exempts purchases of construction and building materials from sales and use tax by contractors and subcontractors working on projects for government, public and nonprofit schools, and charitable organizations. The exemption applies to structures, highways, roads, streets, or public works projects that are owned and used by these tax-exempt entities. Contractors and subcontractors for qualifying projects may apply for a project-specific exemption certificate from the Department of Revenue.

The construction and building materials exemption differs from the sales to charitable organizations exemption. This exemption exempts sales of construction and building materials purchased directly by a charitable organization.

Assumptions

The fiscal note assumes that housing projects targeted for low-income households are the most likely beneficiaries of the expanded sales and use tax exemption. The extent that affordable housing projects that are eligible for the expanded exemption differ from the assumptions described above will either increase or decrease the estimated impacts in the analysis. However, the extent that other projects conducted by charitable organizations qualify for the exemption is unclear. For instance, community land trusts, a charitable model likely to qualify under the bill, often partner to acquire and develop commercial spaces with private developers. These types of projects can include permanently affordable office space for other nonprofits, health clinics, and other commercial uses. If the bill applies to these and other projects, there will be a larger decrease in state and local government revenues, and potentially increased state expenditures.

State Revenue

The bill is estimated to decrease General Fund revenue by $2.1 million in FY 2022-23 and $2.1 million in FY 2023-24, with ongoing impacts in subsequent years. Sales and use tax revenue is subject to TABOR.

Data and assumptions. Affordable housing projects conducted by nonprofit organizations were the most likely projects identified that would utilize the expanded exemption under the bill based on current outreach and research (see Technical Note section below). Many of these projects utilize low income housing tax credits (LIHTC) that are available for rental projects administered by the U.S. Department of Housing and Urban Development. The fiscal note assumes that an average of 242 new housing units will be eligible for the exemption each year based on LIHTC awards to projects sponsored by nonprofit organizations from 2015 to 2019. Further, the fiscal note assumes that an average of 48 housing units each year will be acquired and rehabilitated by nonprofit organizations, requiring added costs for remodeling.

For-sale housing is another project type that could utilize the expanded exemption. For-sale units are assumed to equal half of the eligible projects based on outreach to industry contacts. The average construction value of eligible units is an estimated $273,000 based on the U.S. Census Bureau's Building Permits Survey for Colorado in 2020, adjusted for inflation. Eligible units are assumed to comprise the mix of single- and multifamily housing permitted in Colorado based on the survey. The analysis assumes building materials comprise 50 percent of the construction cost, and that remodel costs are 50 percent of the cost of a new unit.

State Expenditures

The bill increases state expenditures from the General Fund by $73,928 in FY 2022-23, and $57,813 in FY 2023-24, with similar impacts in subsequent years. Expenditures are summarized in Table 2 and described below.

Table 2
Expenditures Under Bill 6

	FY 2022-23	FY 2023-24
Department of Revenue		
Personal Services	$51,721	$43,666
Operating Expenses	$1,350	$1,215
Capital Outlay Costs	$6,200	-
Centrally Appropriated Costs[1]	$14,657	$12,932
Total Cost	**$73,928**	**$57,813**
Total FTE	**1.0 FTE**	**0.9 FTE**

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

Department of Revenue. The bill is expected to increase expenditures for the Department of Revenue. In FY 2022-23 and thereafter, the department will need to process increased applications for exemption certificates related to the expanded exemption, requiring 1.0 FTE and standard operating and capital outlay expenses. From 2019 to 2020, the department processed between 7,800 and 8,780 applications from contractors for all entities utilizing the construction and building materials exemption. The analysis assumes there will be an additional 1,500 applications each year. Processing these applications will require additional ongoing work in the Taxpayer Services Division.

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.

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 2022-23 and FY 2023-24. TABOR refunds are paid from the General Fund. This estimate is based on the September 2021 Legislative Council Staff forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24.

Local Government

Expanding the construction and building materials exemption for charitable organizations will decrease sales and use tax revenue for state-collected local governments and special districts, and for those jurisdictions that may implement local policies that create a similar change. This analysis does not estimate the pattern of purchases for each area within the state and the impact cannot be determined based on available data.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

In FY 2022-23, the bill requires a General Fund appropriation of $59,271 to the Department of Revenue, and 1.0 FTE.

State and Local Government Contacts

Counties	Information Technology
Municipalities	Regional Transportation District
Revenue	Special Districts