HB 21-1233

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0102	**Date:**	April 1, 2021
Prime Sponsors:	Rep. Roberts; Will Sen. Donovan; Winter	**Bill Status:**	House Agriculture
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Bill Topic: **CONSERVATION EASEMENT TAX CREDIT MODIFICATIONS**

Summary of Fiscal Impact:

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

This bill makes modifications to the conservation easement tax credit program by increasing credit amounts, changing how transferred credits are tracked and verified, and broadening the entities that can donate or accept donations of easements. It decreases state revenue and increases state expenditures on an ongoing basis, and potentially increases revenue to certain special districts.

Appropriation Summary: For FY 2021-22, the bill requires appropriations totaling $888,388 to various agencies.

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

Table 1
State Fiscal Impacts Under HB 21-1233

		Current Year FY 2020-21	Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	General Fund	(12.0 million)	($24.0 million)	($24.0 million)
	Cash Funds	-	$0.1 million	$0.1 million
	Total	**($12.0 million)**	**($23.9 million)**	**($23.9 million)**
Expenditures	General Fund	-	$809,055	$193,688
	Cash Funds	-	$79,333	$73,133
	Centrally Appropriated	-	$94,676	$23,443
	Total	**-**	**$983,064**	**$290,264**
	Total FTE	**-**	**6.8 FTE**	**2.2 FTE**
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

The bill makes modifications to the conservation easement tax credit program. These changes are discussed below.

Tax credit amount. Under current law, a donor of a conservation easement may qualify for a tax credit worth 75 percent of the first $100,000 of the donated easement's fair market value, and 50percent of the fair market value in excess of $100,000. For example, a donated easement worth $1 million may qualify for a credit worth $525,000. For tax year 2021 and later years, the bill increases the value of a tax credit to 90 percent of an easement's fair market value, so that a donated easement worth $1 million may qualify for a credit worth $900,000.

The bill also increases the amount of tax credit that may be allocated to each owner of a business with multiple owners from $375,000 per year to $5 million per year.

Addition to taxable income. For tax year 2022 and later years, the bill repeals the requirement that a taxpayer who claims a state conservation easement credit add back any amount they deducted on their federal income tax return for donation of the easement.

Tax credit verification and tracking. For conservation easements donated beginning in 2022, the bill states that issuance of a tax credit certificate by the Division of Conservation in the Department of Regulatory Agencies (DORA) shall be sufficient to demonstrate the credit's validity. It eliminates the current law requirement that a taxpayer file the certificate with their income tax return, and discontinues the Department of Revenue's (DOR) authority to require additional verifying information from taxpayers.

Taxpayers who transfer their tax credits, and their transferees, are required to jointly file a written transfer notice within 30 days of the transfer, rather than with their income tax return. The DOR is required to develop a system to track transfers of tax credits donated on or after January 1, 2014, and to provide written confirmation that the transfer is properly tracked within 30 days of receiving the transfer notice.

Changes to tax credit framework. For a conservation easement donated prior to 2014, the bill repeals current law restrictions on the ability of a taxpayer to claim an additional tax credit in an income tax year in which:

- the taxpayer applied an amount carried forward from a conservation easement credit claimed in a prior tax year;
- the taxpayer received a refundable conservation easement credit; or
- a transferee used a tax credit transferred by the taxpayer.

These restrictions do not apply to conservation easements donated on or after January 1, 2014, under either current law or the bill.

Under current law, a taxpayer who donates a conservation easement is the tax matters representative in disputes between the DOR and taxpayers concerning transferred credits, and final resolution of disputes between the DOR and the tax matters representative are binding on transferees. The bill retroactively changes these provisions so that they apply only to easements donated prior to January 1, 2014.

Donor and recipient eligibility. The bill allows nonprofit entities, entities with authority to conduct water activities under state law, and ditch or reservoir companies to donate conservation easements and claim a state income tax credit. Entities that have no tax liability may sell credits to transferees, as under current law.

The bill authorizes the Division of Conservation to accept and hold donated conservation easements.

Reporting requirements. The bill repeals obsolete reporting requirements.

Background

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. The state has offered a tax credit for the donation of conservation easements since 2000. The total amount of tax credits that may be certified is capped at $45 million per year.

State Revenue

The bill decreases state revenue by at least $12.0 million in the current FY 2020-21, and by at least $23.9 million in FY 2021-22, FY 2022-23, and subsequent fiscal years. The estimate for FY 2020-21 represents a half-year impact. The bill reduces General Fund income tax revenue by an estimated $24.0 million annually and increases Conservation Cash Fund revenue from fees by an estimated $0.1 million annually; both of these sources are subject to TABOR.

Tax revenue. Under current law, it is assumed that easements worth about $40 million will be donated annually and certified for state tax credits totaling $21 million. Increasing the value of the credits to 90 percent of the fair market value increases certified credits for donations expected under current law to $36 million annually. Additionally, strengthening the tax incentive and broadening donor and recipient eligibility is expected to spur additional donations, such that the amount of credits certified annually will reach the $45 million statutory limit.

The bill also accelerates the application of credits certified in prior years and carried forward, by loosening restrictions on the number and amounts of credits that can be claimed annually. However, the DOR does not currently track credits carried forward from prior years, and the amount of this impact is unknown. For informational purposes, the DOR reports that tax credits worth $78.7 million were applied on tax forms between tax years 2015 and 2019, while the Division of Conservation reports having certified $84.9 million in credits over that time.

The bill eliminates the requirement that a taxpayer add back any federal income tax deduction taken for donation of a conservation easement if the taxpayer also claims a state income tax credit. This provision has no fiscal impact, as a taxpayer who claims the state credit is not expected to be able to access a federal income tax deduction for the same donation under current federal law and tax administration.

Fee impact on applicants for conservation easement tax credit certificates. Colorado law requires legislative service agency review of measures that create or increase any fee collected by a state agency. These fee amounts are estimates only; actual fees will be set administratively by the Division of Conservation based on the available cash fund balance, estimated program costs, and the estimated number of applications subject to the fee. Table 2 below identifies the fee impact of this bill, based on the assumption that annual cash fund expenses for the Division of Conservation will increase by about $77,500 annually.

Table 2
Fee Impact on Applicants for Conservation Easement Credit Certificates
Beginning FY 2021-22

	Current Law	HB 21-1233	Change
Fee Amount	$1,000	$2,500	**$1,500**
Number of Payers	35	45	**10**
Fee Revenue	$35,000	$112,500	**$77,500**

State Expenditures

The bill increases state expenditures by $1.0 million and 6.8 FTE in FY 2021-22, and by $0.3 million and 2.2 FTE in FY 2022-23 and subsequent years. Expenditures are displayed in Table 3 and described below.

Table 3
Expenditures Under HB 21-1233

Cost Components	FY 2021-22	FY 2022-23
Department of Regulatory Agencies		
Personal Services	$71,783	$71,783
Operating Expenses	$1,350	$1,350
Capital Outlay Costs	$6,200	-
Centrally Appropriated Costs[1]	$24,032	$23,443
FTE – Personal Services	1.0 FTE	1.0 FTE
DORA Subtotal	**$103,365**	**$96,576**
Department of Revenue		
Personal Services	$272,364	-
Operating Expenses	$6,210	-
Capital Outlay Costs	$111,600	-
Computer Programming and Testing	$227,470	$2,276
Legal Services	$191,412	$191,412
Centrally Appropriated Costs[1]	$70,644	-
FTE – Personal Services	4.6 FTE	-
FTE – Legal Services	1.2 FTE	1.2 FTE
DOR Subtotal	**$879,699**	**$193,688**
Total	**$983,064**	**$290,264**
Total FTE	**6.8 FTE**	**2.2 FTE**

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

Department of Regulatory Agencies. Expenditures in the DORA are for the addition of a compliance specialist in the Division of Conservation (division). The bill makes certification by the division sufficient to demonstrate that a taxpayer is qualified to claim the credit, effectively shifting the burden for determining eligibility entirely to the division. Additionally, the bill is expected to drive additional easement donations, and empowers the division to receive donations and hold conservation easements. These provisions require the addition of a staffperson.

Costs for the division are paid from the Conservation Cash Fund. Under current law, the division is required to set fees that are sufficient to cover costs; see the State Revenue section for expected fee increases.

Department of Revenue. Expenditures in the DOR are paid from the General Fund and described below.

Database. The bill requires the DOR to track conservation easement tax credits that were claimed, transferred, and carried forward in prior tax years. This provision applies only to credits for easements donated on or after January 1, 2014; however, the department's current system cannot distinguish whether a tax credit carried forward is for a donation that occurred before or after that date. Populating the department's business credit manager system with the necessary data necessary requires manual review of at least 26,962 tax returns. Based on an assumed 20 minutes per return, populating the database will require 4.3 FTE data management personnel; these is a one-time workload requirement for FY 2021-22 only.

Computer programming and testing. The bill requires one-time expenditures for programming and testing of the department's GenTax software system, and ongoing costs for maintenance.

Legal services. Legal service costs are related to the retroactive changes to the framework in which prior tax credit disputes were resolved and for rulemaking. Costs are computed based on the requirement for 1,800 hours of legal services per year to be provided by the Department of Law.

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, supplemental employee retirement payments, and indirect costs for the DORA, are estimated to be $94,676 in FY 2021-22 and $23,443 in FY 2022-23.

TABOR refunds. The bill decreases state revenue subject to TABOR. The March 2021 LCS forecast projects that revenue will fall short of the TABOR limit through at least FY 2022-23, though revenue expectations are close enough to the limit that a refund obligation is possible within normal forecast error. If actual revenue would exceed the limit under current law, the bill will decrease the amount required to be refunded to taxpayers. If the bill causes revenue to fall below the limit by $30 million or more in FY 2022-23 and subsequent years, it will trigger annual transfers of up to $30 million from the Unclaimed Property Trust Fund to the Housing Development Grant Fund under current law enacted in House Bill 19-1322.

Local Government

The bill allows certain special districts to donate a conservation easement and claim a tax credit. Revenue may increase for districts that donate a conservation easement and transfer the resulting tax credit.

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 2021-22, the bill requires appropriations of $888,388 as follows:

- $79,333 from the Conservation Cash Fund to the Department of Regulatory Agencies, and 1.0 FTE; and
- $809,055 from the General Fund to the Department of Revenue, and 4.6 FTE; of this amount, $191,412 should be reappropriated to the Department of Law, and an additional 1.2 FTE.

State and Local Government Contacts

Law	Natural Resources	Personnel
Regulatory Agencies	Revenue	