HB 21-1233

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 21-0102	**Date:**	August 26, 2021
Prime Sponsors:	Rep. Roberts; Will Sen. Donovan; Winter	**Bill Status:**	Signed into Law
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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, decreases the state obligation for TABOR refunds to taxpayers, and potentially increases revenue to certain special districts.

Appropriation Summary: For FY 2021-22, the bill requires and includes appropriations totaling $461,370 to various agencies.

Fiscal Note Status: This fiscal note reflects the enacted 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	($11.5 million)	($23.1 million)	($23.1 million)
	Cash Funds	-	$0.3 million	$0.3 million
	Total	**($11.5 million)**	**($22.8 million)**	**($22.8 million)**
Expenditures	General Fund	-	$206,998	$2,276
	Cash Funds	-	$254,372	$241,972
	Centrally Appropriated	-	$57,155	$55,977
	Total	**-**	**$518,525**	**$300,225**
	Total FTE	**-**	**2.9 FTE**	**2.6 FTE**
Transfers		-	-	-
TABOR Refund		($11.5 million)	($22.8 million)	($22.8 million)

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 50 percent 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.

Tax credit verification and tracking. The bill requires the Division of Conservation in the Department of Regulatory Agencies (DORA) to issue tax credit certificates to transferees upon the receipt of tax credit transfer documentation. The Department of Revenue (DOR) must rely on certification by DORA as being accurate, and neither DORA nor DOR may adjust the transferred tax credit amounts certified by the division.

DORA is required to develop a system to track transfers of tax credits for which certificates were first issued on or after January 1, 2021. The bill allows for certain tax credit information to be shared between DORA and DOR.

Changes to tax credit framework. 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 changes these provisions so that they apply only to easements donated prior to January 1, 2021.

For 2014 and later tax years, the bill clarifies that a taxpayer may claim one new conservation easement tax credit per year regardless of whether the taxpayer has carried forward other conservation easement tax credits claimed in prior tax years.

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 or, for entities that have no tax liability, a transferable expense amount. Entities that have no tax liability may sell transferable expense amounts to transferees, who may use these amounts to reduce their tax liability as they would use a tax credit.

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 $11.5 million in the current FY 2020-21, and by $22.8 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 and increases Conservation Cash Fund revenue from fees; both of these sources are subject to TABOR. Revenue impacts are presented in Table 2 and discussed below.

Table 2
Revenue Impacts of HB 21-1233

	FY 2020-21	FY 2021-22	FY 2022-23
Increase and Broaden Tax Credit	($12.0 million)	($24.0 million)	($24.0 million)
Increased Income from Tax Credit Transfers	$0.5 million	$0.9 million	$0.9 million
Total General Fund Revenue	**($11.5 million)**	**($23.1 million)**	**($23.1 million)**
Fee Revenue Increase	-	$0.3 million	$0.3 million
Total Conservation Cash Fund Revenue	**-**	**$0.3 million**	**$0.3 million**
Total State Revenue	**($11.5 million)**	**($22.8 million)**	**($22.8 million)**

Tax credit. 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.

Taxable income. The bill increases taxable income for taxpayers who transfer a tax credit and receive monetary payment, thereby incurring a taxable capital gain. The fiscal note assumes that an additional $24 million in tax credits will be transferred each year and that transferors will receive 85 percent of a credit's value as a taxable capital gain, increasing state income tax revenue by an estimated $0.9 million annually.

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 3 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 $302,500 annually.

Table 3
Fee Impact on Applicants for Conservation Easement Credit Certificates
Beginning FY 2021-22

	Current Law	HB 21-1233	Change
Fee Amount	$1,000	$7,500	**$6,500**
Number of Payers	35	45	**10**
Fee Revenue	$35,000	$337,500	**$302,500**

State Expenditures

The bill increases state expenditures by $0.5 million and 2.9 FTE in FY 2021-22, and by $0.3 million and 2.6 FTE in FY 2022-23 and subsequent years. Expenditures are displayed in Table 4 and described below.

Table 4
Expenditures Under HB 21-1233

Cost Components	FY 2021-22	FY 2022-23
Department of Regulatory Agencies		
Personal Services	$143,566	$143,566
Operating Expenses	$2,700	$2,700
Capital Outlay Costs	$12,400	-
Legal Services	$95,706	$95,706
Centrally Appropriated Costs[1]	$57,155	$55,977
FTE – Personal Services	2.0 FTE	2.0 FTE
FTE – Legal Services	0.6 FTE	0.6 FTE
DORA Subtotal	**$311,527**	**$297,949**
Department of Revenue		
Computer Programming and Testing	$159,145	$2,276
Legal Services	$47,853	-
FTE – Legal Services	0.3 FTE	-
DOR Subtotal	**$206,998**	**$2,276**
Total	**$518,525**	**$300,225**
Total FTE	**2.9 FTE**	**2.6 FTE**

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

Department of Regulatory Agencies. Expenditures in the DORA are primarily for the addition of two compliance specialists 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, empowers the division to receive donations and hold conservation easements, and requires the division to track all transferred credits. The division is also expected to require legal services to support determinations of taxpayer eligibility and for its role as a holder of conservation easements. Legal costs assume 900 hours of legal services per year to be provided by the Department of Law.

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. The bill requires one-time expenditures to program and test the department's GenTax software system, and ongoing costs for maintenance. One-time legal service costs are for rulemaking. Legal costs assume 450 hours of legal services in FY 2021-22 only, 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, are estimated to be $57,155 in FY 2021-22 and $55,977 in FY 2022-23.

TABOR refunds. The bill decreases state revenue subject to TABOR, and decreases the state obligation for TABOR refunds by the amount of the revenue decrease: $11.5 million in FY 2020-21, and $22.8 million in FY 2021-22 and FY 2022-23. TABOR refunds are paid from the General Fund in the fiscal year after surplus revenue is collected. Because the bill decreases General Fund revenue and increases cash fund revenue subject to TABOR, it will reduce the amount available for the General Fund budget in years when the state incurs a TABOR refund obligation. The amount of this effect is equal to the amount by which the bill increases cash fund revenue subject to TABOR, or $0.3 million.

A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

Local Government

The bill allows certain special districts to donate a conservation easement and claim a transferable expense amount. Revenue may increase for districts that donate a conservation easement and sell the resulting transferable expense amount to a taxpayer.

Effective Date

The bill was signed into law by the Governor and took effect on June 30, 2021.

State Appropriations

For FY 2021-22, the bill requires and includes appropriations of $461,370 as follows:

- $254,372 from the Conservation Cash Fund to the Department of Regulatory Agencies, with 2.0 FTE; of this amount, $95,706 is reappropriated to the Department of Law, and an additional 0.6 FTE; and
- $206,998 from the General Fund to the Department of Revenue; of this amount, $47,853 is reappropriated to the Department of Law, and 0.3 FTE.

State and Local Government Contacts

Law	Natural Resources	Personnel
Regulatory Agencies	Revenue	