



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number: LLS 20-0533	Date: October 1, 2020
Prime Sponsors: Sen. Sonnenberg; Donovan Rep. Roberts; Wilson	Bill Status: Postponed Indefinitely
	Fiscal Analyst: Josh Abram 303-866-3561 Josh.Abram@state.co.us

Bill Topic: CONSERVATION EASEMENT WORKING GROUP PROPOSALS

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill makes several changes to the Conservation Easement Tax Credit program including increasing the value of future conservation easement tax credits, creating a new transferable tax credit for previously disallowed tax credits, and creating a process for identifying and managing abandoned conservation easements.

Appropriation Summary: For FY 2020-21, the bill requires appropriations totaling \$9.6 million to multiple state agencies.

Fiscal Note Status: This final fiscal note reflects the introduced bill, as amended by the Senate Finance Committee. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under SB 20-135**

		FY 2019-20 <i>(current year)</i>	FY 2020-21	FY 2021-22
Revenue	General Fund	(\$10.0 million)	(\$20.0 million)	(\$20.0 million)
		(\$10.0 million)	(\$20.0 million)	(\$20.0 million)
Expenditures	General Fund	-	\$9,602,894	\$1,891,962
	Centrally Appropriated	-	\$127,717	\$41,294
	Total	-	\$9,730,611	\$1,933,256
	Total FTE	-	26.1 FTE	12.6 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

The bill makes several changes to the Conservation Easement Tax Credit program including modifying the value of future conservation easement tax credits, allowing taxpayers to reclaim disallowed credits from tax years 2000 through 2013, and creating a process to identify and manage abandoned easements.

Credits for new donations. Under current law, a tax credit for a conservation easement donated on or after January 1, 2015, is equal to 75 percent of the first \$100,000 of the property value, and 50 percent for any amount in excess of \$100,000. The credit is capped at \$1.5 million per donation. Beginning with conservation easements donated on or after January 1, 2020, the bill sets the value of the tax credit at 75 percent of the fair market value of the donated portion of the easement, increases the cap to \$5.0 million per donation, and limits the amount of the credit issued per year to \$1.5 million.

Claiming previously disallowed tax credits. The bill allows a landowner to claim a tax credit for each conservation easement in gross donated between January 1, 2000, and December 31, 2013, for which a tax credit was claimed but was denied in whole or in part by the Colorado Department of Revenue (DOR). The amount of the tax credit must equal the amount of the credit that could have been claimed for the donation that was in effect at the time of the donation. The state-rejected donation must have qualified for the federal tax deduction as allowed by the Federal Internal Revenue Service.

No later than August 15, 2020, the DOR must post information online notifying taxpayers who had a tax credit denied that they may be eligible to apply for a new tax credit. Taxpayers have until September 30, 2021, to submit a claim for a credit certification to the Division of Conservation in the Department of Regulatory Agencies (DORA). If the person is no longer living, a tax credit may be claimed by the appropriate estate, heir, successor, or assignee.

The division must create rules for the application and approval process in coordination with the working group created in House Bill 19-1264. Credit certificates issued for previously denied claims count against the aggregate credit certification cap of \$45 million per year. Until all valid claims are satisfied, an amount equal to 50 percent of the annual cap in 2020, 40 percent of the annual cap in 2021, and 30 percent of the annual cap in 2022 and subsequent years is reserved for certifying reclaimed tax credits.

Multiple claimants. If multiple people file claims concerning the same conservation easement, the claimants may work together to coordinate the distribution of tax credit certificates. If the original tax credit was transferred to another taxpayer, the transferee may claim the portion of the credit that was transferred.

Objections and disputes. Taxpayers and other parties to a disallowed credit may object to a claim for certification of reclaimed tax credits and submit their own application. These objections must be referred to a newly created ombudsman in the Division of Conservation to resolve the dispute. If parties are unable to resolve their objections to a claim, the ombudsman may refer the matter to an arbitrator at the expense of the DOR. Once the objection is resolved, the DOR must allow the tax credit to be claimed in accordance with the terms of the agreement reached.

Abandoned conservation easements. DORA must open an investigation and provide notifications to affected parties if the Division of Conservation becomes aware of the potential abandonment of a conservation easement. Under specified conditions, the division may find that a conservation easement is abandoned, and recommend that the Conservation Easement Oversight Commission in DORA issue an abandonment declaration. The division must coordinate with the working group created in House Bill 19-1264 to establish criteria for determining if an easement is abandoned.

Receiverships for abandoned easements. Following a public hearing, if the easement is declared abandoned, the oversight commission must appoint either themselves or a board of county commissioners as a receiver. The Department of Law (DOL) must assist the oversight commission with establishing receiverships. The bill creates a stewardship account in the department's cash fund to provide for the annual cost of monitoring obligations and other stewardship requirements of the public receiver. The bill requires that the General Assembly appropriate \$5.0 million General Fund to the stewardship account for this purpose. The oversight commission must review each easement in receivership and identify options to enable the easement to be assigned to a certified conservation easement holder. For easements that cannot be reformed to align with a certified holder, and with consent of the landowner subject to the easement, the oversight commission may submit the easement to the DOL to commence termination proceedings.

Background

The conservation easement tax credit was originally enacted in 1999. The credit is allowed for individuals and corporations that donate land for a perpetual conservation easement to a government entity or a charitable organization. The owner of an easement may prohibit certain acts on the property in order to preserve its value for recreation, education, habitat, open space, or historical importance. If the taxpayer's state income tax liability is larger than the amount of the tax credit, the unused portion of the credit may be carried forward for up to 20 years. Alternatively, the tax credit can be transferred to one or more other taxpayers.

House Bill 19-1264 created a working group of stakeholders to propose an alternative method to the existing appraisal process for certifying the value of a conservation easement tax credits, and to develop eligibility criteria and a process to provide retroactive tax credits to taxpayers whose conservation easement tax credit claim was denied in whole or in part from 2000 to 2013.

State Revenue

The bill is expected to decrease state General Fund revenue by \$10.0 million in the current FY 2019-20, and by \$20.0 million in FY 2020-21, FY 2021-22, and subsequent years. The estimate for FY 2019-20 represents a half-year impact for tax year 2020 on an accrual accounting basis. The bill reduces income tax revenue by allowing new tax credits for previously denied claims, and by increasing the value of the tax credit for new donations. Income tax revenue is subject to TABOR. The bill's revenue impacts are displayed in Table 2 and described below.

Table 2
Revenue Under SB 20-135*

	FY 2019-20 <i>(current year)</i>	FY 2020-21	FY 2021-22
Tax Credits for Previously Denied Claims	(\$8.4 million)	(\$13.5 million)	(\$10.6 million)
Tax Credits for New Donations	(\$1.6 million)	(\$6.5 million)	(\$9.4 million)
General Fund Total	(\$10.0 million)	(\$20.0 million)	(\$20.0 million)

* Totals have been rounded.

Tax credit certificates. Allowing certification of an income tax credit for previously denied claims results in the issuance of credit certificates totaling \$149.1 million over multiple years. Total credit certificates may not exceed the \$45 million cap. Under current law, credit certificates issued for new donations are expected to total \$31.0 million per year, leaving \$14.0 million available under the cap. Credits for previously denied claims are expected to preclude certification for new conservation easement donations in 2020 and 2021. The combined credit certifications for new conservation easement donations and for previously denied claims are expected to reach the \$45 million annual cap for each of the next 14 years.

Tax credits for previously denied claims. Because the reclaimed conservation easement credit is nonrefundable, the amount of credit claimed is less than the value of credits certified by the Division of Conservation. Historical data from the DOR indicate that the amount of credit applied annually is 75 percent of the total amount of credit certified by the division for the year. If certified credits are applied to tax liability more quickly, the revenue decrease will be greater than estimated.

Tax credits for new donations. Under current law, the Division of Conservation is expected to certify tax credits for an average of 35 new conservation easements annually, at an average value of \$1.0 million. The bill increases the value of the credit for new donations by about \$225,000 per easement, which reduces tax revenue when the tax credit is claimed for each new donation.

State Expenditures

For FY 2020-21, the bill increases state expenditures by \$9.7 million and 26.1 FTE. For FY 2021-22, increased expenditures are \$1.9 million and 12.6 FTE. New costs are displayed in Table 2 and described below. Personal service costs in Table 3 are prorated for the General Fund pay date shift and the August 5 effective date.

**Table 3
 Expenditures Under SB 20-135**

Cost Components	FY 2020-21	FY 2021-22
Department of Revenue		
Personal Services	\$63,799	\$14,674
Operating Expenses	\$2,295	\$405
Capital Outlay Costs	\$12,400	-
GenTax Programming / Systems Support / UAT	\$521,108	\$40,493
Document Services	\$44,126	\$13,238
Legal Services – Arbitration Costs	\$2,751,925	\$917,308
Centrally Appropriated Costs*	\$29,388	\$6,168
FTE – Personal Services	1.3 FTE	0.3 FTE
FTE – Legal Services	14.3 FTE	6.0 FTE
Subtotal (DOR)	\$3,425,041	\$992,286
Department of Regulatory Agencies		
Personal Services	\$371,771	\$135,221
Operating Expenses	\$12,150	\$3,105
Capital Outlay	\$55,800	-
Legal Services	\$767,520	\$767,520
Direct Appropriation to Stewardship Account	\$5,000,000	-
Centrally Appropriated Costs*	\$98,329	\$35,126
FTE – Personal Services	6.5 FTE	2.3 FTE
FTE – Legal Services	4.0 FTE	4.0 FTE
Subtotal (DORA)	\$6,305,570	\$940,972
Total	\$9,730,611	\$1,933,258
Total FTE	26.1 FTE	12.6 FTE

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

Department of Revenue. The department is required to process a new transferable tax credit for previously denied claims certified by the Division of Conservation. This increases costs for programming and testing to GenTax, and for business User Acceptance Testing (UAT), document servicing provided by the Department of Personnel and Administration (DPA), and tax examiners to conduct claim review, certification, and payment. The DOR is also responsible for the arbitration costs of disputed claims for certification received at DORA. It is estimated that up to 4,500 affected taxpayers may apply for credits. The complexity of verifying claims and counter claims from original easement donations and tax credit transferees will be labor intensive and require extensive legal services provided by the Department of Law.

Department of Regulatory Agencies. The bill requires the Division of Conservation in DORA to process claims for tax credit certifications for previously denied claims, and a process for determining if a landowner conveyed an easement in good faith and otherwise meets the requirements for a reclaimed tax credit. When claims cannot be established, the disputed and conflicting claims are referred to a new ombudsman in the division to provide mediation and to arrange arbitration when necessary. Arbitration expenses must be paid by the DOR. The division must also create a process to determine abandoned easements and arrange for receiverships and subsequent monitoring. The bill requires that the General Assembly appropriate \$5.0 million for a stewardship account for abandoned easements.

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 leased space. For the DOR, these are estimated to be \$29,388 in FY 2020-21 and \$6,168 in FY 2021-22. For the DORA, these are estimated to be \$98,329 in FY 2020-21 and \$35,126 in FY 2021-22.

TABOR refunds. Under the March 2020 Legislative Council Staff forecast, the state is not expected to collect revenue above the TABOR limit through FY 2021-22, and refund obligations are not anticipated for these years.

Effective Date

The bill was postponed indefinitely by the Senate Appropriations Committee on June 13, 2020.

State Appropriations

For FY 2020-21, the bill requires the following appropriations:

- A General Fund appropriation of \$3,395,653 to the Department of Revenue, and 1.3 FTE. Of this amount, \$44,126 is reappropriated to the Department of Personnel and Administration, and \$2,751,925 is reappropriated to the Department Law, and 14.3 FTE.
- A General Fund appropriation of \$6,207,241 to the Department of Regulatory Agencies, and 6.5 FTE. Of this amount, \$767,520 is reappropriated to the Department of Law, and 4.0 FTE.

State and Local Government Contacts

Law Regulatory Agencies Revenue