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Final Fiscal Note

Drafting Number: LLS 22-1033
Prime Sponsors: Rep. Bird; Lindsay Sen. Moreno

Date: September 19, 2022
Bill Status: Signed into Law
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Bill Topic: **CONTAMINATED LAND INCOME TAX & PROPERTY TAX EXEMPT**

Summary of Fiscal Impact:

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

The bill extends and expands the state income tax credit for environmental remediation of contaminated land, and extends property tax exemptions for certain low-income housing developments. It decreases state and local government revenue and increases state expenditures and local government workload through FY 2024-25.

Appropriation Summary: For FY 2022-23, the bill requires and includes appropriations totaling \$51,102 to various agencies.

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

Table 1
State Fiscal Impacts Under HB 22-1392

		Current Year FY 2021-22	Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	(up to \$1.0 million)	(up to \$3.50 million)	(up to \$5.00 million)
	Cash Funds	-	\$0.01 million	\$0.03 million
	Total	(up to \$1.0 million)	(up to \$3.49 million)	(up to \$4.97 million)
Expenditures	General Fund	-	\$41,102	-
	Cash Funds	-	\$10,000	\$32,000
	Total	-	\$51,102	\$32,000
Transfers		-	-	-
Other Budget Impacts	TABOR Refund	(up to \$1.0 million)	(up to \$3.49 million)	(up to \$4.97 million)
	GF Reserve	-	\$6,165	-

Summary of Legislation

The bill makes changes to the state income tax credit for environmental remediation of contaminated land, and to state property tax exemptions for certain low-income housing developments, as discussed below.

Income tax credit for environmental remediation of contaminated land. The credit is scheduled to expire after tax year 2022 under current law. The bill extends the credit for two years to include tax years 2023 and 2024.

Under current law, claims for the credit are required first to be certified by the Hazardous Materials and Waste Management Division in the Department of Public Health and Environment (CDPHE). Beginning in tax year 2022, the bill increases the amount of credit that the CDPHE may certify each year from \$3 million to \$5 million. Of the capped amount, \$2 million is reserved only for projects in a rural community, meaning a municipality or unincorporated area of a county with a population of less than 50,000 people located outside of the Denver Metropolitan Area, defined to include Denver; Broomfield; Adams, Arapahoe, Boulder, and Jefferson counties; and Douglas County except for Castle Rock and Larkspur.

Under current law, credits are limited to \$525,000 for each approved remediation, and are equal to 40 percent of the first \$750,000 of remediation costs, plus 30 percent of the next \$750,000 of remediation costs. For income tax year beginning in 2022, the bill allows credits of up to \$675,000, equal to 50 percent of the first \$750,000 of remediation costs, plus 40 percent of the next \$750,000 of remediation costs, for each approved remediation in a rural community.

Under current law, the credit is nonrefundable, but may be transferred between taxpayers. The bill makes administrative changes to the transfer procedures to clarify the relationship between the taxpayer who is awarded the credit, the transferee, the CDPHE, and the Department of Revenue (DOR). Under current law, certain entities that do not pay taxes may be certified for a transferrable expense amount, which may be transferred to a taxpayer and used like a tax credit. The bill broadens the list of entities that may be awarded a transferrable expense amount to include school districts, charter schools, special districts, higher education institutions, quasi-governmental entities, and public corporations.

Property tax exemptions. Current state law allows a property tax exemption for certain low-income housing developments, including housing for disabled seniors, transitional housing developments, and other housing developments serving low-income residents. Current state law allows a 15-year exemption. The bill allows the exemption for 15 additional years, or 30 years total, for properties that qualify for an extended use period income tax credit under the federal internal revenue code.

Background

The Office of the State Auditor completed a tax expenditure evaluation of the income tax credit for environmental remediation of contaminated land in January 2022. The evaluation report is available online here:

https://leg.colorado.gov/sites/default/files/te11_contaminated_land_redevelopment_credit.pdf

State Revenue

The bill is expected to decrease state revenue by up to \$1.00 million in the current FY 2021-22, by up to \$3.49 million in FY 2022-23, and by up to \$4.97 million in FY 2023-24. The bill reduces state income tax revenue to the General Fund and increases fee revenue to the Hazardous Substance Site Response Fund; both of these revenue streams are subject to TABOR.

General Fund. The bill is expected to reduce General Fund revenue by up to \$1.0 million in the current FY 2021-22, \$3.5 million in FY 2022-23, and \$5.0 million in FY 2023-24. Revenue reductions are attributable to the expanded and extended tax credit in the bill. Increasing the tax credit cap in tax year 2022 will decrease state revenue by up to \$2 million, while extending the tax credit in tax years 2023 and 2024 will decrease state revenue by up to \$5 million annually. The revenue reduction for the current FY 2021-22 represents a half-year impact for tax year 2022 on an accrual accounting basis. The revenue reduction for FY 2022-23 represents half-year impacts for tax years 2022 and 2023 on an accrual accounting basis.

The revenue estimates in this fiscal note are maximum amounts if the entire amount of credit is utilized each year. Revenue reductions will be smaller than the amounts published here if fewer credits are certified, or if remediators choose to carry credits forward from year to year, rather than transferring them to other taxpayers.

Cash funds. Applicants for tax credit certificates for environmental remediation of contaminated land pay fees to the Hazardous Substance Site Response Fund in the CDPHE to cover the costs of processing their applications. Under current law, the CDPHE receives approximately 11 applications per year and collects approximately \$22,000 in fee revenue, or \$2,000 per application. By increasing the credit cap, the bill is estimated to result in five additional applications in FY 2022-23, increasing cash fund revenue by \$10,000. The bill extends the tax credit for 2023 and 2024, increasing cash fund revenue by an estimated \$32,000 beginning in FY 2023-24.

State Expenditures

The bill requires General Fund expenditures of \$41,102 in FY 2022-23 only, and cash fund expenditures of \$10,000 in FY 2022-23 and \$32,000 in FY 2023-24. It also increases state agency workload beginning in FY 2022-23, as discussed below.

Department of Revenue. The bill requires one-time expenditures to update DOR's GenTax software system for the expanded and extended income tax credit in the bill, and to perform additional testing. Programming changes are expected to require 25 hours and are performed by a contractor at a cost of \$225 per hour. Additional computer and user acceptance testing is needed to ensure that programming changes are functioning properly, requiring an additional \$35,477 in departmental expenditures.

Department of Public Health and Environment. Under current law, taxpayers must apply for a tax credit certificate with the CDPHE. By extending the credit, the bill increases CDPHE expenditures to process credit applications. Expenditures are paid from fee revenue credited to the Hazardous Substance Site Response Fund and are estimated to increase by \$10,000 in FY 2022-23, and by \$32,000 in FY 2023-24.

Department of Local Affairs. The bill requires one-time workload to update manuals and training documents to reflect the ongoing change in the measure, and ongoing workload to support local government officials in implementing the policy. This workload can be accomplished within existing appropriations.

Other Budget Impacts

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. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24.

Because TABOR refunds are paid from the General Fund, 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. Increased cash fund revenue will decrease the amount of General Fund available to spend or save. On net, the bill's revenue and TABOR impacts will decrease the amount of General Fund revenue available for the budget by \$10,000 in FY 2022-23 and by \$32,000 in FY 2023-24.

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 beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amount shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

By extending certain property tax exemptions for low-income housing, the bill decreases local government revenue beginning in property tax year 2022. Property taxes for 2022 are paid in calendar year 2023. Because data on this exemption are not tracked separately from those for other exemptions, the amount of the revenue impact is assessed as indeterminate. The impact on each local government will depend on the amount of exempt property located in the taxing jurisdiction.

Effective Date

The bill was signed into law by the Governor and took effect on June 7, 2022.

State Appropriations

For FY 2022-23, the bill requires and includes appropriations totaling \$51,102 as follows:

- \$41,102 from the General Fund to the Department of Revenue; and
- \$10,000 from the Hazardous Substance Site Response Fund to the Department of Public Health and Environment.

State and Local Government Contacts

Counties
Public Health and Environment

County Assessors
Revenue

Local Affairs