

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 08-0713
Prime Sponsor(s): Rep. Madden
 Sen. Isgar

Date: June 16, 2008
Bill Status: Signed into Law
Fiscal Analyst: Harry Zeid (303-866-4753)

TITLE: CONCERNING THE IMPLEMENTATION OF ADDITIONAL REQUIREMENTS TO VERIFY THE VALIDITY OF A STATE INCOME TAX CREDIT CLAIMED BY A TAXPAYER FOR DONATING A CONSERVATION EASEMENT IN THE STATE, REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
Cash Funds		
Conservation Easement Appraisal Review Fund*	\$180,000	\$180,000
Conservation Easement Holder Certification Fund*	435,750	58,100
State Expenditures		
General Fund	\$92,818	\$87,808
Cash Funds		
Conservation Easement Appraisal Review Fund	236,937	95,946
Conservation Easement Holder Certification Fund	236,937	95,946
FTE Position Change	5.9 FTE	4.8 FTE
Effective Date: The Governor signed the bill into law on June 5, 2008, and the bill will take effect on July 1, 2008.		
Appropriation Summary for FY 2008-2009: See the State Appropriations section.		
Local Government Impact: None.		

* Fees are set to cover both the direct and indirect costs of a program's implementation. Pursuant to JBC policy, the fiscal note does not include all costs incurred under the bill. See **Expenditures Not Included** section of the fiscal note for these costs. The fee is set at a level to provide sufficient revenue over the first three years of the program to cover all direct and indirect costs.

Summary of Legislation

HB08-1353 provides additional requirements to verify the validity of a state income tax credit claimed by a taxpayer for donating a conservation easement. Major provisions of the bill are described in the paragraphs below.

Conservation Easement Oversight Commission. The bill creates the nine-member Conservation Easement Oversight Commission in the Division of Real Estate within the Department of Regulatory Agencies, and specifies its composition. The commission will advise the Division of Real Estate and the Department of Revenue regarding conservation values, the capacity of

conservation easement holders, and the integrity and accuracy of conservation easement transactions related to the conservation easement state income tax credit. It must also respond to requests of these agencies to review conservation easement transactions, applications, and other documents. The commission will meet at least quarterly to make recommendations to the division regarding certification of conservation easement holders. Commission members shall receive compensation and reimbursement of expenses out of annual appropriations from the Conservation Easement Holder Certification Fund. The commission shall terminate on July 1, 2018.

Certification Program for Conservation Easement Holders. A certification program is established for qualified conservation easement holders. The purpose of the program is to establish minimum qualifications for certifying organizations that hold conservation easements; to encourage professionalism and stability; and to identify fraudulent or unqualified applicants and to prevent them from becoming certified by the program. The program will be established and begin accepting applications for certification no later than January 1, 2009.

Additional Responsibilities of the Division of Real Estate. The Division of Real Estate is responsible for implementing the certification program. A tax credit may be claimed for the easement only if the entity has been certified by the division. Certification will be effective for a three-year period. The division will maintain and update an online list regarding organizations that have applied for certification. Additionally, the division is granted the authority to investigate the activities of any entity that is required to be certified, and to impose discipline for noncompliance. Disciplinary actions may include suspension or revocation of a certification, or the imposition of fines.

Additional Responsibilities of the Board of Real Estate Appraisers. The Board of Real Estate Appraisers is authorized to investigate a written complaint concerning the activities of any appraiser who submits information regarding an appraisal of a conservation easement. If the board determines that a material violation of the uniform standards of professional appraisal practice or a substantial misstatement of value has occurred in any appraisal submitted, the board will notify the Department of Revenue of its findings. If an appraiser fails to file an appraisal, affidavit, or other required information, the board has the authority to take disciplinary action, including possible license revocation or suspension, probation or public censure. Additionally, the board is authorized to establish classroom education and experience requirements for any appraiser who prepares an appraisal for a conservation easement.

Conservation Easement Appraisal Review Fee. Any appraiser who submits a copy of an appraisal to the Division of Real Estate will pay a fee to cover the costs of the division in administering the requirements of the conservation easement appraisal review process. In no event shall the fee exceed \$600. Fee revenue is credited to the Conservation Easement Appraisal Review Fund.

Conservation Easement Holder Fee. An applicant for a qualified conservation easement certificate will pay a fee to the Division of Real Estate to cover the costs of administering the certification program by the division and the commission. In no event shall the fee exceed \$5,810. Fees will be credited to the Conservation Easement Holder Certification Fund.

Appraiser Requirements. Any appraiser who conducts an appraisal for a conservation easement is required to submit a copy of the completed appraisal to the Division of Real Estate within 30 days following completion of the appraisal. In addition to the appraisal, the appraiser must submit an affidavit that includes additional information in a form approved by the Board of Real Estate Appraisers. Information submitted will be reviewed by the division to ensure that it is complete, and will be recorded and maintained in an electronic database. The information may be shared with the Department of Revenue.

Conservation Easement Income Tax Credit Changes. The bill extends the internal revenue code's tax basis limitation on qualified conservation contributions over property held for less than one year to state conservation tax credits. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170(e) and 170(h) of the Internal Revenue Code.

Additional Responsibilities of the Department of Revenue. As amended, the bill requires the executive director of the Department of Revenue to develop and implement a separate process for the review of gross conservation easements in consultation with the Division of Real Estate and the Conservation Easement Oversight Commission. The review process will include the review of gross conservation easements for which the Department of Revenue has been informed that an audit is being performed by the Internal Revenue Service.

Accountability. Two years after the bill becomes law, the legislative service agencies of the General Assembly are required to conduct a post-enactment review of the bill's implementation.

State Revenue

HB08-1353 increases fees by a combined total of \$1,091,950 beginning in FY 2008-09 through FY 2010-11. It is assumed that 300 appraisal reviews will be conducted annually. The certification program for conservation easement holders will begin January 1, 2009. An estimated 75 current easement holders will apply for certification during FY 2008-09. Approximately 10 new applications per year occur in each subsequent year.

Since certification is for a three-year period, fees have been calculated in a manner to generate sufficient revenue to cover program costs over three years. Cost components include personal services, operating expenses, IT costs, legal costs, and commission costs. In total, this includes fee revenue of \$540,000 over three years divided by 900 appraisals = **\$600 per Conservation Easement Appraisal Review Fee**; and \$551,950 to reflect costs for 95 conservation holder certificates = **\$5,810 per Conservation Easement Holder Fee**.

Fee Impact on Individuals, Families or Business. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill.

Table 1. Three-Year Fee Impact on Appraisal Review and Conservation Easement Holders, FY 2008-09 through FY 2010-11					
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
Conservation Easement Appraisal Review Fee	\$0	\$600	\$600	900	\$540,000
Conservation Easement Holder Certification Fee	\$0	\$5,810	\$5,810	95	\$551,950
3-YEAR TOTAL					\$1,091,950

Conservation Easement Income Tax Credit Changes. The bill states that if the gain on the sale of a conservation easement is not a long-term gain (i.e., the property was held for less than one year), and if at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the easement used to calculate the tax credit shall be reduced to the taxpayer's tax basis in the conservation easement. This addition to statute clarifies the current practice of the Department of Revenue in such instances. This provision will limit abuses in the valuing of charitable donations.

The department indicates that under current law, if a taxpayer presents an appraisal for a conservation easement that show the value of the donated property to be higher than the purchase price within one year of the property purchase, the department will challenge the appraisal value for tax purposes. As such, no change in General Fund revenue as a result of the bill is anticipated.

State Expenditures

The bill is assessed with a cash funds impact for the **Department of Regulatory Agencies** of **\$473,874 and 3.9 FTE for FY 2008-09, and \$191,892 and 2.8 FTE for FY 2009-10**. These expenditures will be split evenly between the two newly created cash funds - the Conservation Easement Appraisal Review Fund and the Conservation Easement Holder Certification Fund and includes the need for reappropriated funds of \$40,481 and 0.3 FTE in FY 2008-09, and \$24,274 and 0.2 FTE to the Department of Law. In addition, the **Department of Revenue** will require **\$92,818 GF and 2.0 FTE in FY 2008-09, and \$87,808 GF and 2.0 FTE in FY 2009-10**.

Department of Regulatory Agencies. The bill adds a number of new requirements that will affect the Division of Real Estate concerning conservation easements transactions:

- requires appraisers to submit transactions to the department, and allows investigation and disciplinary action by the Board of Real Estate Appraisers;
- creates a Conservation Easement Oversight Commission to review transactions and to advise the division; and
- creates a certification program to be administered by the Division of Real Estate for organizations that hold easements and claim the tax credits.

The Division of Real Estate will require 3.6 FTE in FY 2008-09 and 2.6 FTE in FY 2009-10. Responsibilities include administrative functions, investigation of complaints, examination of applications for financial viability, audits of the holders of conservation easements, and supervision of financial examiners and operational support staff.

Table 2. identifies total expenditures for the Department of Regulatory Agencies.

Table 2. Expenditures for the Department of Regulatory Agencies Under HB08-1353		
Cost Components	FY 2008-09	FY 2009-10
Personal Services	\$187,072	\$127,619
FTE	3.6 FTE	2.6 FTE
Operating Expenses	3,852	3,185
Board Meetings	16,911	16,911
IT Costs	202,428	3,198
Capital Outlay (one-time cost)	8,010	5,785
Leased Space	15,120	10,920
Legal Services	40,481	24,274
TOTAL	\$473,874	\$191,892

Department of Law. The Department of Law requires **\$40,481 and 0.3 FTE in FY 2008-09, and \$24,274 and 0.2 FTE in FY 2009-10** in reappropriated funds to provide legal services for the Department of Regulatory Agencies, which are necessary for implementation of the bill. For FY 2008-09, 250 hours for rulemaking and 312 hours for enforcement of disciplinary actions attributable to increased enforcement of both appraiser and conservation easement holders is assumed. For FY 2009-10, 25 hours for rulemaking and 312 hours for enforcement of disciplinary actions will be required.

Department of Revenue. The Department of Revenue will develop and implement a separate process for the review of gross conservation easements in consultation with the Division of Real Estate and the Conservation Easement Oversight Commission, including the review of gross conservation easements for which the Department of Revenue has been informed that an audit is being performed by the Internal Revenue Service.

The Department of Revenue expects to process 3,215 documents involving conservation easement credits in FY 2008-09, and 3,376 documents in FY 2009-10. The bill will require 1.0 FTE (Tax Examiner I) in the Taxpayer Service Division to provide an up-front review of claims as they are submitted. The credits will be tracked to identify common errors that can either be addressed at the point of application or need to be referred to a field auditor for further evaluation. In addition, 1.0 FTE (Revenue Agent Intern) will be necessary in the Tax Auditing and Compliance Division to complete full-scale audits on the largest and most complex credit claims.

As shown in Table 3, the Department of Revenue will require a General Fund appropriation of **\$92,818 and 2.0 FTE in FY 2008-09**, and **\$87,808 and 2.0 FTE in FY 2009-10**.

Table 3. Expenditures for the Department of Revenue Under HB08-1353		
Cost Components	FY 2008-09	FY 2009-10
Personal Services	\$84,008	\$85,908
FTE	2.0 FTE	2.0 FTE
Operating Expenses	1,900	1,900
Capital Outlay (one-time cost)	6,910	0
TOTAL	\$92,818	\$87,808

Legislative Service Agencies. Two years after the bill becomes law, the legislative service agencies of the General Assembly are required to conduct a post-enactment review of the implementation of the bill. This task is assessed as having no fiscal impact on the legislative service agencies. It is assumed that the necessary information will be provided to the service agencies by the Department of Regulatory Agencies and the Department of Revenue. The service agencies will then consolidate the information and prepare a report for the General Assembly. This will be accomplished within existing appropriations.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program.

- group health, life and dental insurance
- indirect cost
- risk management
- short-term disability
- workers' compensation

State Appropriations

The Department of Regulatory Agencies requires a cash funds appropriation of \$236,937 and 1.8 FTE from the Conservation Easement Appraisal Review Fund and a cash funds appropriation of \$236,937 and 1.8 FTE from the Conservation Easement Holder Certification Fund for FY 2008-09. Of those funds, the Department of Law requires \$40,481 in reappropriated funds and authorization for 0.3 FTE.

The Department of Revenue requires a General Fund appropriation of \$92,818 and 2.0 FTE for FY 2008-09.

Departments Contacted

Regulatory Agencies
Local Affairs

Natural Resources
State Treasury

Revenue
Agriculture