


Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 11-0621	Date: August 17, 2011
Prime Sponsor(s): Rep. Looper	Bill Status: Signed into Law
Sen. Grantham; Nicholson	Fiscal Analyst: Harry Zeid (303-866-4753)

TITLE: CONCERNING THE RESOLUTION OF A DISPUTED CLAIM FOR A STATE INCOME TAX CREDIT FOR A DONATION OF A PERPETUAL CONSERVATION EASEMENT THAT INCLUDES A PROCESS THAT ALLOWS A TAXPAYER TO WAIVE AN EXPEDITED ADMINISTRATIVE HEARING FOR THE PURPOSE OF APPEALING DIRECTLY TO A DISTRICT COURT, AND MAKING AN APPROPRIATION THEREFOR.

Fiscal Impact Summary	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
State Revenue				
General Fund (cap reduction)*	\$2,000,000	\$4,000,000	(\$2,000,000)	(\$4,000,000)
Cash Funds				
Con. Easement Holder Cert. Fund		12,112		
State Transfers or Diversions				
Increased Transfer from the General Fund to the State Education Fund**	(\$1,998,026)			
State Expenditures				
General Fund	\$1,974	\$3,395,991	\$3,304,892	\$3,304,892
Cash Funds				
Con. Easement Holder Cert. Fund		12,112		
FTE Position Change		18.7 FTE	18.9 FTE	18.9 FTE
Effective Date: The bill was signed into law by the Governor and took effect on May 19, 2011.				
Appropriation Summary for FY 2011-2012: See the State Appropriations section.				
Local Government Impact: None.				

* These impacts do not account for any General Fund revenue impact that may result from court determinations on disputed claims for state income tax credits on donated conservation easements. See the State Revenue section for further details.

** The 2011 income tax year cap reduction for the conservation easement tax credit will increase the required General Fund transfer to the State Education Fund by \$2.0 million in FY 2010-11. See the State Transfers section for further details.

Summary of Legislation

This bill authorizes a new expedited method for resolving disputed claims over conservation easement state income tax credits. The bill allows the donor of a conservation easement, designated as a tax matters representative (TMR) the option of either waiving the administrative hearing process

before the Department of Revenue and instead appeal directly to a district court, or requesting an expedited administrative hearing and final determination by the department. If the TMR does not make either election, this bill provides for a resolution to disputed claims when certain circumstances occur.

TMR option 1 — waive administrative hearing. This bill requires the TMR to mail a signed notice of appeal via certified mail on or before October 1, 2011, to the department and the district court of the decision to waive an administrative hearing before the department and resolve the disputed or disallowed state income tax credit issue before the district court. The bill specifies that interest and penalties will cease to accrue while the case is on appeal before the court and no surety bond or other deposit is required in connection with the appeal.

TMR option 2 — request an expedited administrative hearing. This bill requires the TMR to mail a written request via certified mail on or before October 1, 2011, to the department to request a hearing and final determination. Under this option, the department is required to hold a hearing and issue a final determination on or before July 1, 2014, unless the TMR and department mutually agree to an extended date.

If a TMR proceeds with the hearing process before the department, and either the TMR or one or more transferee(s) pays the amount of taxes owed that is agreed to by the department, the department must waive all additional penalties and interest. The payment by the TMR or transferees(s) for the agreed upon taxes owed must be made on or before June 30, 2012.

TMR option 3 — make no decision. If the TMR does not choose to resolve a disputed state income tax credit issue through the district court process or request an expedited hearing before the department by October 1, 2011, this bill requires the department to hold a hearing and issue a final determination on or before July 1, 2016. If the department fails to issue a final determination by this date, the department is required to allow the full amount of the credit in dispute and waive any interest and penalties assessed on any amount owed.

For purposes of resolving claims in the district courts, this bill:

- establishes venue for the appeals in a manner that allows cases to be consolidated regionally;
- provides procedures for the administrative process;
- establishes a process for courts to publish notices to taxpayers who cannot be located;
- allows claims to be consolidated and settled, and allows additional parties to intervene at the discretion of the court; and
- specifies procedures related to discovery, case management conferences, the disclosure of information by the parties, trial management orders, and the phasing of issues to be resolved by the court.

The bill modifies the current law cap on the aggregate amount of conservation easements that can be claimed for income tax purposes as follows:

- for income tax years 2011 and 2012, the aggregate cap is lowered from \$26 million per year to \$22 million per year; and
- for income tax year 2013, the aggregate cap is increased from \$26 million to \$34 million.

The bill requires the executive director of the Department of Revenue, the State Court Administrator, and the Conservation Easement Oversight Commission to report certain findings and actions to committees of the General Assembly. Finally, the bill specifies that members of the Conservation Easement Oversight Commission are immune from liability in accordance with the Colorado Governmental Immunity Act.

Background

Conservation Easement Income Tax Credits. The conservation easement income tax credit was originally enacted in 1999, and has been amended several times since. A credit is allowed for individuals and corporations who donate land for a perpetual conservation easement to a government entity or a charitable organization. The tax credit may be transferred to another taxpayer. A conservation easement tax credit can be claimed for an amount equal to 50 percent of the appraised value of the donation, up to a maximum of \$375,000 per easement.

Current Dispute Resolution Status. If the Department of Revenue disputes the claim of the credit, a method is in place to allow for a hearing on the matter. There are currently a large number of disputes regarding conservation easement credit claims awaiting hearing and final determination by the executive director. As of July 1, 2011, the department reported that:

- it disallowed conservation easement tax credits in 615 cases;
- of these cases, 23 were eventually allowed the conservation easement tax credit in full, 44 cases were resolved prior to the effective date of this legislation (May 19, 2011), 2 cases were disallowed after the effective date of this legislation, and 546 cases remain to be resolved by the department.

State law requires the Conservation Easement Oversight Commission to provide consultation on conservation easement donations that are tied to tax credits claimed by TMRs and transferees. To date, the commission has provided consultation and recommendations on 401 of the 611 total conservation easement appraisals. The remaining 210 conservation easement appraisals will be evaluated by the commission in mid-2011.

State Revenue

Impact on General Fund Revenue. The bill changes existing law that caps the aggregate amount of conservation easements that can be claimed in tax years 2011, 2012, and 2013. The bill lowers the cap by \$4 million per year to \$22 million per year in 2011 and 2012, but raises the cap

by \$8 million from \$26 million to \$34 million in 2013. Since the state fiscal year bridges two income tax years, the bill will affect state General Fund revenue as follows:

- \$2 million General Fund revenue increase for FY 2010-11;
- \$4 million General Fund revenue increase for FY 2011-12;
- \$2 million General Fund revenue decrease for FY 2012-13; and
- \$4 million General Fund revenue decrease for FY 2013-14.

Impact on Conservation Easement Case Outcomes. The impact of the bill on final case determinations by the court or by the Department of Revenue administrative hearings is indeterminate. Disputed cases involve \$222.8 million in tax credits, interest, and penalties. Final court judgements from these cases will likely be lower than the total amount being contested.

It is the position of the Department of Revenue that all of the conservation easement tax credits in question either do not meet the criteria to be eligible for the tax credit or are based on inaccurate or overvalued appraisals. The bill allows for an expedited settlement of the disputed claims through the option of either an administrative hearing before the Executive Director of the Department of Revenue or cases will be adjudicated through a hearing directly in a district court. The imposition of additional interest and penalties will be suspended for taxpayers who appeal directly to a district court.

For those TMRs who proceed with the hearing process before the department, if either the TMR or one or more transferee(s) pays the amount of taxes owed as agreed to by the department, there may be a portion of penalty and interest money waived that would otherwise be paid. Thus, General Fund revenue would be lowered by a corresponding amount. This amount is indeterminate.

Department of Regulatory Agencies. The department requires additional cash funds fee revenue of \$12,112 in FY 2011-12. In order to accomplish this, the 41 certified conservation easement holders registered with the Division of Real Estate will experience a one-time fee increase of \$296 from \$3,010 to \$3,306 in FY 2011-12 to cover the additional costs of reviewing previous conservation easement claims.

State Transfers

The General Fund transfer to the State Education Fund will be increased by \$2.0 million in FY 2010-11. SB11-156, signed by the Governor on March 9, 2011, specified that any moneys in excess of the required 2.3 percent General Fund reserve in FY 2010-11 be transferred to the State Education Fund. An estimated \$270.0 million will be transferred to the State Education Fund. By reducing the conservation easement income tax credit cap from \$26 million to \$22 million for income tax year 2011, HB11-1300 will increase General Fund revenue by \$2.0 million in FY 2010-11 and will increase General Fund moneys available for transfer to the State Education Fund by a corresponding amount.

State Expenditures

Preliminary estimates of state expenditures required to implement the bill are summarized in Table 1 below. These estimates will be updated as additional information becomes available.

Table 1. Total Estimated General Fund Expenditures Under HB11-1300			
Cost Components	FY 2010-11	FY 2011-12	FY 2012-13
Personal Services		\$1,977,030	\$1,968,190
FTE		18.7	18.9
Operating and Travel	\$1,974	321,432	301,702
Appraisal - Contract Services		1,035,000	1,035,000
Capital Outlay		62,529	
TOTAL	\$1,974	\$3,395,991	\$3,304,892

Department of Revenue. In addition to funds currently appropriated to the Department of Revenue and the Department of Law to resolve disputes concerning conservation easement tax credits, direct General Fund expenditures for the Department of Revenue are \$1,974 for postage in FY 2010-11, \$1,393,410 and 3.6 FTE in FY 2011-12, and \$1,332,664 and 3.6 FTE in FY 2012-13.

The expenditures identified below for the Department of Law will come from reappropriated funds from the Department of Revenue. Table 2 shows a breakdown of direct General Fund expenditures for the Department of Revenue.

Table 2. Direct Expenditures For the Department of Revenue			
Cost Components	FY 2010-11	FY 2011-12	FY 2012-13
Personal Services		\$295,842	\$258,044
FTE		3.6	3.6
Operating Expenses	\$1,974	62,568	39,620
Appraisals - Contracted Services		1,035,000	1,035,000
TOTAL	\$1,974	\$1,393,410	1,332,664

Department of Law. As shown in Table 3, the Department of Law will require \$1,349,581 and 9.1 FTE in FY 2011-12, and \$1,381,757 and 9.3 FTE in FY 2012-13. These moneys will be reappropriated from the Department of Revenue.

Table 3. Expenditures For the Department of Law (Reappropriated Funds from the Department of Revenue)		
Cost Components	FY 2011-12	FY 2012-13
Personal Services	\$1,110,667	\$1,139,625
FTE	9.1	9.3
Operating and Travel Expenses	131,714	134,932
Court Reporter Expenses	107,200	107,200
TOTAL	\$1,349,581	\$1,381,757

Judicial Branch. As shown in Table 4, the Judicial Branch will incur costs totaling \$653,000 and 6.0 FTE in FY 2011-12, and \$590,471 and 6.0 FTE in FY 2012-13. These costs will be paid from the General Fund.

Table 4. Expenditures For the Judicial Branch		
Cost Components	FY 2011-12	FY 2012-13
Personal Services	\$570,521	\$570,521
FTE	6.0	6.0
Operating	19,950	19,950
Capital Outlay	62,529	
TOTAL	\$653,000	\$590,471

Costs identified for the Judicial Branch are based on new case filings related to a notice of deficiency, disallowance, or rejection from the Department of Revenue regarding a claimed tax credit on conservation easements. Due to the ability to consolidate cases of common easements, it is projected that an additional 72 district civil cases will result from the bill. Since these cases will involve multiple parties in an effort to resolve complex legal issues, resource requirements will be greater than the normal civil case. Given the caseload and the complexity, the bill will require 3 additional judges. The Judicial branch expects to use retired judges to hear the cases. Each retired judge will require 1 support staff to handle the electronic processing of case documents along with other general support staff duties.

Department of Regulatory Agencies. The Division of Real Estate in the Department of Regulatory Agencies will experience a one-time cash funds expenditure requirement in FY 2011-12 of \$12,112. On or before August 1, 2011, the Conservation Easement Oversight Commission in the Division of Real Estate must review certain conservation easements that have not previously been reviewed by the commission. These include each conservation easements for which a tax credit has been claimed and for which a notice of deficiency, notice of rejection of claim, or notice of

disallowance was issued on or before May 1, 2011, but for which a final determination has not been issued. The commission will issue an initial recommendation on whether each credit should be denied or accepted. Additionally, on or before July 1, 2011, and on a quarterly basis thereafter, the commission must provide a report to the Joint Budget Committee and the Finance Committees of the General Assembly describing the conservation easement tax credits for which the commission provided advice to the Executive Director of the Department of Revenue.

Of the \$12,112 requested, \$8,000 is for contract personal services, \$1,760 is for board meeting expenses, and \$2,352 is for additional legal services. Currently, 41 certified conservation easement holders pay an annual fee of \$3,010 to the conservation Easement Holder Certification Fund. The fee will need to be increased by \$296 to \$3,306 for FY 2011-12 to cover the additional costs of reviewing previous claims for conservation easements.

State Appropriations

For FY 2010-11, the Department of Revenue requires \$1,974 General Fund.

For FY 2011-12, the following appropriations are required:

- \$2,742,991 General Fund and 12.7 FTE to the Department of Revenue, of which \$1,349,581 and 9.1 FTE should be reappropriated to the Department of Law for the provision of legal services;
- \$653,000 General Fund and 6.0 FTE to the Judicial Branch, of which \$62,529 is for courthouse capital/infrastructure maintenance, and \$590,471 is for personal services and operating expenditures; and
- \$12,112 from the Conservation Easement Holder Certification Fund to the Department of Regulatory Agencies for the Conservation Easement Oversight Commission in the Division of Real Estate, of which \$2,352 should be reappropriated to the Department of Law for the provision of legal services.

Departments Contacted

Revenue Judicial Law Regulatory Agencies