



*Colorado Legislative Council Staff Fiscal Note*  
**STATE**  
**FISCAL IMPACT**

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

**Date:** March 10, 2008  
**Bill Status:** House Finance  
**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.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
<b>State Revenue</b>		
Cash Funds		
Conservation Easement Appraisal Review Fund*	\$180,000	\$180,000
Conservation Easement Holder Certification Fund*	435,750	58,100
<b>State Expenditures</b>		
Cash Funds		
Conservation Easement Appraisal Review Fund	\$236,937	95,946
Conservation Easement Holder Certification Fund	236,937	95,946
<b>FTE Position Change</b>	3.6 FTE	2.6 FTE
<b>Effective Date:</b> July 1, 2008.		
<b>Appropriation Summary for FY 2008-2009:</b> See the State Appropriations section.		
<b>Local Government Impact:</b> 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**

This bill 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. 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. 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.

**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.

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

**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 3.6 FTE for FY 2008-09, and \$191,892 and 2.6 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.

**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 under the bill.

<b>Table 2. Expenditures for the Department of Regulatory Agencies Under HB08-1353</b>		
<b>Cost Components</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>
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
<b>TOTAL</b>	<b>\$473,874</b>	<b>\$191,892</b>

**Department of Revenue.** The Department of Revenue will require no additional resources to administer the conservation easement tax credit or the program changes identified in the bill.

**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. Numbers in parentheses reflect FY 2008-09 and FY 2009-10 costs for each item.

- group health, life and dental insurance (\$22,904 / \$16,217)
- short-term disability (\$218 / \$149)
- indirect cost (\$45,160 / \$31,976)
- workers' compensation (\$673 / \$345)
- risk management (\$487 / \$345)

**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 \$18,000 in reappropriated funds.

**Departments Contacted**

Regulatory Agencies	Natural Resources	Revenue
Local Affairs	State Treasury	Agriculture