HB11-1208

Colorado Legislative Council Staff Fiscal Note

STATE FISCAL IMPACT

Drafting Number:	LLS 11-0279	**Date:**	March 7, 2011
Prime Sponsor(s):	Rep. McKinley	**Bill Status:**	House Finance
		Fiscal Analyst:	Harry Zeid (303-866-4753)

TITLE: CONCERNING A PERPETUAL CONSERVATION EASEMENT IN GROSS GRANTED FOR PROPERTY IN COLORADO.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue General Fund (reduction)	($222.8 million)	
State Expenditures General Fund (reduction)	($816,517)	($1,096,193)
FTE Position Change (reduction)	(3.0 FTE)	(4.0 FTE)
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2011-2012: See the State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

Under current law, a state income tax credit is allowed for a portion of the value of a perpetual conservation easement that is granted by a taxpayer on real property located in Colorado. The executive director of the Department of Revenue is authorized to review the appraisal supporting the valuation of an easement and to reject the value and the credit claimed in certain circumstances. The bill restricts the ability of the executive director to contest appraisals and tax credits claimed for easements donated prior to January 1, 2008, unless:

- prior to April 1, 2011, there is clear and convincing proof of overvaluation of the easement that has been confirmed in writing by the Attorney General; or
- the valuation is supported solely by an appraisal conducted by an appraiser convicted of fraud or another criminal act of misrepresentation prior to April 1, 2011, in connection with the preparation of the appraisal.

If the Attorney General confirms clear and convincing proof of overvaluation of an easement, and the donor of the easement subsequently prevails in protesting the disallowance of the tax credit, the bill requires the state to reimburse the donor for all costs and attorney fees incurred by the donor reasonably related to the allowance of the tax credit.

If a conservation easement is terminated for any reason, the bill requires the value of the tax credit to be repaid to the General Fund before the termination becomes effective. Conversely, if a governmental entity interferes with the conservation purpose of an easement, this would constitute a taking of or damage to the easement, which can be compensated as otherwise provided by law. If land subject to a conservation easement is condemned, the General Fund must be reimbursed for the value of the tax credit claimed for the easement.

Background

The conservation easement tax credit was originally enacted in 1999, and has been amended several times since. The credit is allowed for individuals and corporations who donate land for a perpetual conservation easement to a government entity or a charitable organization. The owner of an easement continues to maintain the right to prohibit certain acts with respect to 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 another taxpayer.

State Revenue

The bill will cause a one-time reduction in General Fund revenue of $222,819,545 in FY 2011-12. The Department of Revenue may not contest any appraisal or tax credit claimed for an easement donated prior to January 1, 2008, unless proof of overvaluation or conviction of the appraiser has occurred by April 1, 2011. Therefore, it is assumed that all of the conservation easement credits identified by the department as either "denied" or "to be denied", that were claimed for income tax years beginning prior to January 1, 2008, will be considered as granted and approved.

The estimate of General Fund revenue that will be reduced by allowing tax credits on conservation easements that were previously denied is based on data compiled by the Department of Revenue. Affected donations claimed by taxpayers for income tax years 2000 through 2007 total $154.9 million from prior conservation easement credits claims; $18.6 million in penalties assessed to date on denied credit claims; and $49.3 million in interest on those denied credit claims. This includes both assessments for refunds paid to individuals and subsequently denied, and refunds denied at the time of filing. The estimate assumes that the full amount of the income tax liability of the denied credits will be credited to the taxpayer's account, and will cause a full refund to the taxpayer that holds the easement during FY 2011-12.

State Expenditures

The Department of Revenue will experience a General Fund expenditure reduction of $816,517 and 3.0 FTE in FY 2011-12, and a reduction of $1,096,193 and 4.0 FTE in FY 2012-13.

A total of 420 conservation easement tax credits were denied for valuation issues by the Department of Revenue on claims filed between income tax years 2000 and 2007. In addition to the holder of the conservation easement, an average of four additional transferees who purchased the transferable tax credit are affected by each denied credit claim.

The Department of Revenue's FY 2011-12 budget contains $1,096,193 and 4.0 FTE for protest resolution of conservation easements. Upon passage of the bill, the department would no longer require the resources allocated for dispute resolution for credits claimed between tax year 2000 and 2007. Approximately three-quarters of the resources allocated to conservation easement issues are attributable to denials during the affected time period. For FY 2012-13, all of the resources currently allocated for this purpose would no longer be necessary.

Table 1 identifies the state expenditures that would be eliminated by passage of HB11-1208. This includes 3.0 FTE for FY 2011-12, and 4.0 FTE in FY 2012-13. Legal services for 4,050 hours in FY 2011-12, and 5,400 hours in FY 2012-13, at the rate of $73.37 per hour, that were appropriated for the Department of Law to litigate the backlog of conservation easement cases in question will also be reduced. An increase of $5,629 for temporary staff, however, will be necessary in FY 2011-12 to balance and update the approximately 2,100 tax accounts affected by the change in the tax status for the easements impacted by the bill.

Table 1. Expenditure Reduction Under HB11-1208

Cost Components	**FY 2011-12**	**FY 2012-13**
Personal Services	($243,747)	($324,995)
Contract Services (increase)	5,629	0
FTE Reduction	(3.0 FTE)	(4.0 FTE)
Operating Expenses	(2,850)	(3,800)
Contract Appraisals	(278,400)	(371,200)
Legal Services	(297,149)	(396,198)
TOTAL	**($816,517)**	**($1,096,193)**

It should be noted that certain costs associated with adding FTE, such as employee insurance and supplemental employee retirement payments, are addressed through the annual budget process and are centrally appropriated in the Long Bill or through supplemental appropriations. Since appropriations for these costs have not yet been allocated to the Department of Revenue for FY 2011-12, they will not have to be eliminated through the budget process if the bill becomes law.

State Appropriations

The Department of Revenue requires a reduction in General Fund appropriations for FY 2011-12 of $816,517 and 3.0 FTE. Of this amount, the Department of Law should receive a reduction in reappropriated funds of $297,149.

Departments Contacted

Revenue Law Regulatory Agencies