SB13-221

Colorado Legislative Council Staff Fiscal Note

STATE FISCAL IMPACT

Drafting Number:	LLS 13-0558	**Date:**	April 4, 2013
Prime Sponsor(s):	Sen. King Rep. Ryden	**Bill Status:**	Senate Finance
		Fiscal Analyst:	Josh Abram (303-866-3561)

TITLE: CONCERNING AN APPLICATION AND REVIEW PROCESS FOR ISSUING TAX CREDIT CERTIFICATES FOR A STATE INCOME TAX CREDIT ALLOWED FOR THE DONATION OF A PERPETUAL CONSERVATION EASEMENT.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue Conservation Easement Tax Credit Certificate Review Fund	$315,000	$400,000
State Transfers Transfers from the Conservation Easement Appraisal Review Fund and the Conservation Easement Holder Certification Fund to the Conservation Easement Tax Credit Certificate Review Fund	$42,785	
State Expenditures* General Fund Conservation Easement Tax Credit Certificate Review Fund	$48,000 275,046	 $348,845
FTE Position Change	4.0 FTE	4.5 FTE
Effective Date: The bill takes effect on August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed. Section 2 of the act and part of Section 5 are effective on January 1, 2014.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: None.		

* *The bill authorizes a General Fund loan to provide startup costs to the Department of Regulatory Agencies should fee revenue be insufficient. It is anticipated that any loan made in the first half of FY 2013-14 will be repaid by cash fund revenue during the same fiscal year. State revenue from fees exceeds state expenditures to account for expenses noted in the Expenditures Not Included section of this fiscal note.*

Summary of Legislation

This bill, ***as recommended by the Legislative Audit Committee***, requires that the Division of Real Estate (division) in the Department of Regulatory Agencies (DORA) create an application and certification process for landowners seeking to claim an income tax credit for a conservation easement. Beginning with income tax year 2014, a claim for the tax credit must be pre-certified by the division.

The certification process will determine if the easement is a qualified contribution to an authorized entity, is substantiated by a credible appraisal, and conforms to all other legal requirements. Landowners may also seek a preliminary advisory opinion on an application. The division may charge fees for applications and advisory opinions. Effective January 1, 2014, the authority to charge appraisers a fee for submitting conservation easement appraisals for review is repealed, and any balance remaining in the Conservation Easement Appraisal Review Fund is transferred to the newly created Conservation Easement Tax Credit Certificate Review Fund. The bill authorizes a General Fund loan to the division to provide start-up funding for the new process, to be repaid as fee revenue becomes available as of January 2014. The director of the division must promulgate rules to implement the new program and prepare an annual report to the public.

The bill modifies the composition of the Conservation Easement Oversight Commission (commission) and authorizes it as a type 2 agency under the control of the division. The current authority to review and advise concerning conservation easement transactions, applications, and related documents is repealed, as are reporting requirements. The commission retains the authority to determine whether a conservation easement donation qualifies as a conservation contribution pursuant to federal tax regulations.

Landowners may address deficiencies found in an application and are provided an appeals process if an application is denied. If neither the division nor the commission identify deficiencies with an application, the landowner is issued a tax credit certificate which may then be used to claim the income tax credit from the Department of Revenue (DOR).

Under current law, the DOR maintains a separate process to review gross conservation easements and may challenge in whole or in part the validity or amount of a conservation easement tax credit claimed by a taxpayer. The review of tax credit claims for compliance with legal requirements is conducted after a tax return is filed by the taxpayer. The bill clarifies that the DOR does not have the authority to disallow a claimed tax credit based on the pre-certification requirements under the jurisdiction of the division and the commission.

Background

Under current law, a taxpayer may claim a state income tax credit for all or part of a conservation easement that is donated in perpetuity to a certified governmental entity or nonprofit organization. The credit is equal to 50 percent of the fair market value of the easement, with a cap of $375,000 per easement. The owner of an easement continues to maintain 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.

Between tax years 2001 and 2009, taxpayers claimed approximately $639 million in credits for donation of approximately 3,200 conservation easements. The program reached a high in 2007, with $128.5 million in tax credits claimed for that year. Subsequent to legislative changes and the implementation of a fixed cap on total credits for 2011, 2012, and 2013, both donations and the amount of credits claimed have decreased. Legislation introduced during the current legislative session (House Bill 13-1183) proposes a cap on total credits of $45 million beginning tax year 2014. Without HB13-1183, the existing cap on total credits expires with the current tax year.

Conservation easement tax credits were limited to $22 million for tax years 2011 and 2012, and limited to $34 million for tax year 2013. This fiscal note assumes that without a dollar limitation during the past three years, more easements would have been donated, and more tax credits granted, than actually occurred. This is assumed for two reasons. First, the cap reduced existing and otherwise qualifying tax credits by virtue of the fixed dollar limitation: only credits up to the cap were permitted, and taxpayers who were disallowed due to the cap must apply their credit in a future year. Second, the limitation likely discouraged some property owners from donating conservation easements, knowing that the cap placed them in low priority for receiving the credit. In some cases, these property owners did not donate an easement, nor receive a tax credit.

State Transfers

On January 1, 2014, the bill transfers the balance of the Appraisal Review Fund in the division to the newly-created Tax Credit Certificate Review Fund. The division also collects a fee to certify conservation easement tax credits for application in future years whenever a claim is made in excess of existing caps. Fees for this certification are processed through the Conservation Easement Holder Certification Fund. Since certification of tax credits for easements is assumed under the new application and certification process, the division will cease collecting this fee and the existing balance is also transferred. The combined total of these funds available for transfer is estimated to be $42,785.

State Revenue

For FY 2013-14, increased state revenue is $315,000 from fees charged for tax credit certification of conservation easement donations. For FY 2014-15, increased revenue is $400,000. Fee revenue is deposited in the Conservation Easement Tax Credit Certificate Review Fund.

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. The fee impact of this bill includes the elimination of existing fees for appraisers who submit a conservation easement appraisal, and the fee to certify conservation easements in excess of existing statutory caps. The full application and certification process will now be paid by landowners in order to obtain a tax credit certificate from the division; however, this analysis assumes that conservation easement holders will also bear part of any fee burden.

The fee amounts in Table 1 are estimates only; actual fee calculations will be set administratively by the DORA based on the cash fund balance, estimated program costs, and the estimated number of applications for certification and requests for prior opinions. Based on the assumption that between $45 and $70 million in tax credits will be sought for tax year 2014, and given the historical average of $280,000 per credit, the division can anticipate up to 250 applications during the first two years of the new program. As pent up demand dissipates, it is anticipated that donations of conservation easements will average about $45 million annually, and that the DORA will consider, on average, 160 conservation easement tax credit certifications annually. Some amount of these will also seek a prior review and opinion. Since the program takes effect January 1, 2014, the FY 2013-14 estimate represents a half year impact.

Table 1. Fee Impact on Landowners and Conservation Easement Holders

Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
Tax Credit Certification FY 2013-14	$3,000	80	$240,000
Prior Approval Opinion FY 2013-14	$1,500	50	$75,000
Tax Credit Certification FY 2014-15	$2,000	160	$320,000
Prior Approval Opinion FY 2014-15	$800	100	$80,000
FY 2013-14			**$315,000**
FY 2014-15			**$400,000**
2-YEAR TOTAL			**$715,000**

Senate Bill 13-221 is not anticipated to change state revenue from income tax collections. Under current law, the total amount of conservation easement tax credits is capped for fiscal years 2011, 2012, and 2013. Without the cap, state revenue from income taxes is anticipated to decrease beginning in 2014, as additional credits are claimed and because each dollar claimed as a tax credit is a dollar less in state revenue; however, legislation recommended by the Joint Budget Committee proposes capping the credit in 2014 and beyond (HB13-1183). If that proposal becomes law, state revenue increases, since pent up demand over the preceding fiscal years would otherwise increase the amount of tax credits claimed. In either case, the provisions of this bill are not anticipated to change the total amount of donations made, or of tax credits claimed, and will not change state income tax collections.

State Expenditures

The bill increases expenditures for the Division of Real Estate in the DORA, the Department of Revenue, and the Department of Law. For FY 2013-14, state expenditures increase $323,046 and 4.0 FTE. For FY 2014-15, increased expenditures are $348,845 and 4.5 FTE.

The bill affects donated conservation easements beginning with tax year 2014. Therefore, the personal service cost to implement the bill is estimated at one half year impact, allowing the DORA time to establish the program and hire staff in order to begin reviewing conservation easement tax credit applications on January 1, 2014. Staff effort is anticipated to increase in the latter half of FY 2013-14 and full implementation costs will be evident in FY 2014-15. The state expenditures to implement the bill are displayed in Table 2 and described below.

Table 2. Expenditures Under Senate Bill 13-221

Cost Components	FY 2013-14*	FY 2014-15
Personal Services	$100,735	201,470
FTE	4.0	4.5
Operating Expenses	3,325	3,325
Capital Expenses	16,461	-
Consulting	10,000	-
Legal Services	69,525	139,050
Computer Programming - DORA	75,000	5,000
Computer Programming - DOR	48,000	-
TOTAL	**$323,046**	**$348,845**

Personal Services in FY 2013-14 are estimated as a 1/2 year impact.

Department of Regulatory Agencies. The DORA will require the addition of 3.5 FTE beginning in FY 2013-14 to implement the bill. Staff is needed to review all related documentation for a proposed conservation easement tax credit, including deeds, baseline reports, and land appraisals. Conservation easement appraisals are anticipated to be complex and require investigators with extensive experience for review and verification. The DORA also requires new administrative FTE support and must program and update computer systems.

Department of Revenue. The DOR will have one time start-up costs to program and update computer systems and tax forms. The bill does not affect DOR resources devoted to the collection, administration, and enforcement of the conservation easement tax credit in the short-term. The department has resources sufficient to review tax credits within current statute of limitations for income tax years (4 years). Since the bill is applicable for credits claimed beginning with tax year 2014, the department's current resources are needed through FY 2017-18 to account for the statute of limitations for taxes filed during FY 2013-14.

Department of Law. The Department of Law (DOL) will provide legal assistance to the DORA and the DOR as needed to implement the bill. It is anticipated that for FY 2013-14, the DOL will provide 900 hours of legal services at a blended rate of $77.25 (a half year impact). Legal services for FY 2014-15 are anticipated to be 1,800 hours. For attorneys at the DOL, 1,800 hours is equivalent to 1.0 FTE.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under SB13-221*

Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$23,441	$23,527
Supplemental Employee Retirement	9,275	13,991
TOTAL	**$32,716**	**$37,518**

**More information is available at: http://colorado.gov/fiscalnotes*

State Appropriations

For FY 2013-14, this bill requires an appropriation of $275,046 General Fund and 3.5 FTE to the Department of Regulatory Agencies. Of this amount, the Department of Law requires $69,525 in reappropriated funds and 0.5 FTE. The Department of Revenue requires an appropriation of $48,000 General Fund.

Departments Contacted

Judicial	Law	Local Affairs
Natural Resources	Regulatory Agencies	Revenue