SB15-130

Colorado Legislative Council Staff Fiscal Note

STATE FISCAL IMPACT

Drafting Number: LLS 15-0443
Prime Sponsor(s): Sen. Kefalas
Date: February 5, 2015
Bill Status: Senate Finance
Fiscal Analyst: Greg Sobetski (303-866-4105)

BILL TOPIC: ASSIST CONSERVATION EASEMENT TAX CREDIT BUYERS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017	FY 2017-2018
State Revenue	**(at least $8.7 million)**	**(at least $17.4 million)**	**(at least $17.4 million)**
General Fund	(at least $8.7 million)	(at least $17.4 million)	(at least $17.4 million)
State Expenditures		**$267,768**	**$252,468**
General Fund		$237,911	$199,119
Centrally Appropriated Costs**		$29,857	$53,349
TABOR Set Aside	(at least $8.7 million)	(at least $17.4 million)	***
FTE Position Change		2.5 FTE	4.4 FTE
Appropriation Required: None.			

* *This summary shows changes from current law under the bill for each fiscal year. Transfers result in no net change to state revenue. Parentheses indicate a decrease in funds.*
** *These costs are not included in the bill's appropriation. See the State Expenditures section for more information.*
*** *Neither state revenue subject to TABOR, nor the Referendum C cap, has been forecast for FY 2017-18.*

Summary of Legislation

This bill creates an income tax credit for good-faith loss incurred by taxpayers who purchased and claimed transferable conservation easement income tax credits prior to January 1, 2014, that were later denied by the Department of Revenue (DOR). The value of the new tax credit is equal to 100 percent of the loss incurred, divided into equal portions for each of five income tax years beginning with tax year 2016. Transferees must claim the credit in tax year 2016 to be eligible to claim it in subsequent tax years. A credit that exceeds a taxpayer's income tax liability is not refundable and may be carried forward for up to seven tax years, with the final credit expiring after tax year 2027.

Only taxpayers who claimed a conservation easement tax credit "in good faith," i.e., without knowledge that any irregularity existed with respect to the valuation of the conservation easement, are able to claim the credit in the bill. The credit for good-faith loss is not transferable. Finally, the DOR is required to publish information regarding the availability of the credit and make a reasonable attempt to notify transferees who potentially qualify.

Background

A conservation easement is a voluntary legal agreement between a landowner and a charitable organization or government entity that permanently preserves scenic or agricultural open space, natural habitat, or recreational areas for the benefit of the public. Colorado has offered an income tax credit for the donation of conservation easements since tax year 2000. A donor may sell their credit to another taxpayer, called a "transferee," who may use the transferred credit to offset his or her own income tax liability.

The amount of credit awarded for a conservation easement donation is based on the fair market value of the easement itself. The DOR has disputed the assessed value of some easements for which a credit was awarded. Transferees claiming a credit that originated from the donation of an easement found to have been improperly assessed are not able to reduce their tax liability, and their claims are denied by the DOR.

House Bill 11-1300 created a mechanism to expedite the resolution of disputed claims over the conservation easement credit, allowing a donor whose claim had been disputed to forego a hearing before the DOR and proceed to resolve the matter in a district court. This legislation designated the easement donor, and not a transferee, as the tax matters representative for the purpose of resolving the credit.

State Revenue

General Fund revenue will decrease by at least $8.7 million in FY 2015-16, and by at least $17.4 million in FY 2016-17 and FY 2017-18. The revenue estimate for FY 2015-16 represents a half-year impact for the income tax credit beginning in tax year 2016.

Assumptions. The estimated revenue reduction assumes that every transferee from every settlement agreement involved in a House Bill 11-1300 case will receive an income tax credit equal to the amount the transferee paid for the credit less the conservation easement credit amount allowed to the transferee as part of the settlement. Using these assumptions, there is an aggregate $87.0 million good-faith loss to 3,775 transferees. For each of tax years 2016 through 2020, these transferees are expected to claim $17.4 million, or 20 percent of the estimated aggregate good-faith loss.

There are an estimated 3,000 transferees who claimed transferred conservation easement credit prior to January 1, 2014, and whose claims have not yet been reviewed. Depending on the number of claims that are denied and the terms of settlements between transferees and the DOR, some share of these transferees will incur good-faith loss that will be eligible to be claimed as new tax credit under this bill. The amount by which General Fund revenue is reduced in excess of the above estimates depends on resolution of these cases. However, because the claims are for credit from conservation easements donated after additional regulation was placed on the program, the amount of good-faith loss per transferee in these cases is expected to be significantly lower than that for the 3,775 cases that have been resolved.

To the extent that the new tax credit awarded to individual taxpayers exceeds their income tax liability for a given tax year, the amount of new tax credit that may be used to reduce income tax liability in the tax year will be lower. Assuming that 3,775 transferees will be awarded a credit, the average annual credit available to each taxpayer will be $4,609. Transferable tax credits tend to be purchased by taxpayers with sufficient tax liability to claim the full credit. Thus, this analysis assumes that all credit will be used to reduce tax liability in the year that it is awarded. To the extent that credit is carried forward to subsequent tax years, the impact on state revenue will be smaller than estimated for FY 2015-16 and FY 2016-17.

TABOR Impact

The state TABOR set aside will be reduced by at least $8.7 million in FY 2015-16 and at least $17.4 million in FY 2016-17. Neither the state TABOR limit nor state revenue subject to TABOR is forecast for FY 2017-18.

State income tax revenue is subject to TABOR. Because the bill reduces state revenue subject to TABOR, the size of the TABOR surpluses expected in FY 2015-16 and FY 2016-17, and the size of the TABOR refunds expected in FY 2016-17 and FY 2017-18, will be reduced.

State Expenditures

General Fund expenditures will increase $267,768 and 2.5 FTE in FY 2016-17, and $252,468 and 4.4 FTE in FY 2017-18. Because the credit will first appear on the income tax form to be remitted by April 15, 2017, for tax year 2016, **no expenditures are required in FY 2015-16**. Expenditures are summarized in Table 1 and explained below.

Table 1. Expenditures Under SB15-130		
Cost Components	**FY 2016-17**	**FY 2017-18**
Personal Services	$102,760	$180,715
FTE	2.5 FTE	4.4 FTE
Operating Expenses, Capital Outlay, and Contractor Costs	$135,151	$18,404
Legal Services		
Centrally Appropriated Costs*	$29,857	$53,349
TOTAL	**$267,768**	**$252,468**

** Centrally appropriated costs are not included in the bill's appropriation.*

Department of Revenue. State expenditures for the DOR will increase $267,768 and 2.5 FTE in FY 2016-17, and $252,468 and 4.4 FTE in FY 2017-18.

Expenditures for the DOR's Tax Conferee Section will increase $149,914 and 2.4 FTE in FY 2016-17, and $228,547 and 4.2 FTE in FY 2017-18. These estimates include the cost of building a database of transferees and their losses from denied conservation easement credits so that individual transferees can be identified and contacted. The Tax Conferee Section will require funds and staff time to process tax returns and associated paperwork from each transferee. This analysis assumes that all 3,775 currently eligible transferees, as well as 2,000 of the 3,000 transferees whose returns have not yet been reviewed, will claim the credit.

Expenditures for the DOR's Executive Director's Office will increase $5,995 and 0.1 FTE in FY 2016-17 and $9,697 and 0.2 FTE in FY 2017-18. These costs are associated with data entry of forms that cannot be scanned into DOR's computer system. They also include the cost of mailing letters to potentially eligible transferees.

The DOR's contractor and document management expenditures will increase $111,859 and $14,224 in FY 2016-17 and FY 2017-18, respectively. Contractor costs in FY 2016-17 are for programming the new tax credit in the state tax system.

Department of Law. To the extent that the DOR rejects any credits claimed under this bill based on the DOR's interpretation that the credit was not claimed in good faith, a transferee may choose to seek legal remedy that requires the involvement of the Department of Law (DOL). Any such challenges would not occur until FY 2016-17, and the number of such challenges is expected to be small. However, they could rise to the level of requiring additional resources in the DOL.

Judicial Department. Trial courts within the Judicial Department may incur increased caseload resulting from disputes between transferees and the DOR regarding whether a denied credit was claimed in good faith. The fiscal impact to the Judicial Department is expected to be minimal and can be addressed within existing resources.

Centrally appropriated costs. 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 estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB15-130*

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$20,044	$35,277
Supplemental Employee Retirement Payments	$9,813	$18,072
TOTAL	**$29,857**	**$53,349**

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

Effective Date

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Judicial	Law	Natural Resources
Property Taxation	Regulatory Agencies	Revenue