SB13-142

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL CONDITIONAL FISCAL IMPACT

Drafting Number:	LLS 13-0078	**Date:**	February 8, 2013
Prime Sponsor(s):	Sen. Renfroe Rep. Sonnenberg	**Bill Status:**	Senate SVMA
		Fiscal Analyst:	Kirk Mlinek (303-866-2756)

TITLE: CONCERNING THE REQUIREMENT THAT THE FEDERAL GOVERNMENT EXTINGUISH TITLE TO ALL AGRICULTURAL PUBLIC LANDS AND TRANSFER TITLE TO THE STATE.

Fiscal Impact Summary *	FY 2013-14	FY 2014-15	FY 2015-16
State Revenue Cash Funds Trust Administration Fund			 $89.5M
State Transfers Transfer from the Land and Water Management Fund to the State Public School Fund to the Public School Capital Construction Assistance Fund			 $44.75M 44.75M
State Expenditures Cash Funds Land and Water Management Fund		See State Expenditures section.	
FTE Position Change			
Effective Date: August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed.			
Appropriation Summary for FY 2012-2013: None required.			
Local Government Impact: See Local Government section.			

* ***The impacts shown in this table are conditional upon the federal government ceding all agricultural public land in Colorado and the State Land Board holding, rather than selling, the land. An alternative scenario is discussed below.***

Summary of Legislation

The bill requires the United States government to cede or otherwise extinguish title to all agricultural public lands on or before December 31, 2014, and transfer title to the state. The bill requires the State Land Board (SLB) in the Department of Natural Resources to manage the lands in a manner that produces reasonable and consistent income over time. In the event that the SLB disposes of the lands, the federal government is entitled to receive 95 percent of the proceeds, with the remaining 5 percent of proceeds credited to the Internal Improvements Trust Fund (trust fund), created in the bill. The bill requires the state treasurer to credit 50 percent of the interest and income earned on the trust fund to the State Education Fund at the end of each fiscal year. The General Assembly may annually appropriate the remaining 50 percent for water storage projects recommended by the Colorado Water Conservation Board.

The bill defines "agricultural public lands" to mean any lands within the state that are, or could be, used for agriculture except those privately held, or those held in trust by the state, a political subdivision, or an independent entity, including all land owned by the Colorado State Land Board. Other specific exemptions include national parks, land used for military purposes, and land belonging to an Indian, Indian tribe, or community that is held in trust by the United States.

Technical note. Both legal and practical questions arise regarding the state's ability to require that the federal government transfer title of all agricultural public lands to the state. As such, the bill is assessed as having a conditional fiscal impact. The fiscal note assumes that the SLB will, upon receipt of the transfer and in the short term, retain the land for some period of time in order to assess how best to comply with the bill's mandate to manage the lands to produce reasonable and consistent income over time.

Background

Colorado is comprised of 104,094 square miles, or 66.1 million acres. Of that amount, 24.9 million acres are owned and managed by the federal government or are dedicated to two Indian tribes. Federal agencies with land in Colorado include the Department of the Interior, Bureau of Land Management; the Department of Defense; the National Park Service, the United States Forest Service, the United States Fish and Wildlife Service, the Bureau of Reclamation, and the Bureau of Indian Affairs. Six Colorado counties have more than 1.0 million acres of federal land within their boundaries; four counties have no federal lands.

National Park Service lands, land used for military purposes, and lands belonging to an Indian or Indian tribe, or that are held in trust by the United States for the Indian community, are exempt from the provisions of the bill. These categories total 1.9 million acres, meaning that the bill applies to the remaining 23 million acres of federally owned land.

State Revenue

New state revenue is conditional on federal action to transfer title of all federal public agricultural lands to the state. Revenue to the state will increase in several ways, as discussed below.

SLB revenue from leases. The SLB receives an average of $3.89 in revenue per acre from agricultural leases. The addition of 23 million acres could increase SLB revenue by at least $89.5 million, plus any additional revenue from mineral leases. Such revenue is split between the Public School Capital Construction Assistance Fund, which provides financing for the Building Excellent Schools Today (BEST) program, and the Public School Fund, after administrative expenses for the SLB.

Proceeds from land sales. Should the SLB sell the ceded land, five percent of the revenue, net of expenses associated with the sale, are required to be deposited in the Internal Improvements Trust Fund. Assuming that the SLB were to sell all such lands, and assuming an average value of $1,170 per acre (average value of all agricultural lands in Colorado as reported by the USDA, National Agriculture Statistics Service, August 2012) and expenses of 10 percent of gross proceeds, the state stands to gain $1.26 billion for the corpus of the trust. The fiscal note assumes that up to this amount could be received in FY 2014-15 were the SLB to liquidate immediately, in which case interest earnings will begin July 1, 2015. Assuming a return of 2 percent, the trust fund will yield approximately $24.2 million per year in interest earnings, half of which is to be credited to the School Education Fund, and half of which may be appropriated by the General Assembly for water storage projects recommended by the Colorado Water Conservation Board.

Public vs. private ownership. The move from public to private ownership of the agricultural land in question could affect state revenue to the extent that income-producing activities on the land are affected. This revenue could take the form of income taxes or severance taxes. In some cases, activities and revenue will increase; in others it will decrease. The overall impact on state revenue is unknown. Please refer to the Local Government Impact section for a discussion of the bill's property tax implications.

State Transfers

The bill requires the state treasurer to credit 50 percent of interest and income earnings on the trust fund to the State Education Fund at the end of each fiscal year. Under the scenario where the SLB liquidates, the fiscal note assumes that the earliest sale proceeds will be deposited is June 30, 2015. Interest and income earnings of up to $24.2 million could accrue, with half of that amount transferred to the State Education Fund on June 30, 2016. The remaining half could be appropriated to the Colorado Water Conservation Board during the 2016 legislative session for use in FY 2016-17.

State Expenditures

SLB expenditures will increase under the bill, including during the period of portfolio assessment, and as it implements a longer-term management strategy. An estimate of these costs is not provided in this fiscal note. The SLB currently incurs a $1.79 per acre operating cost for the approximately 2.8 million acres under its management, and has an operating budget of $5.0 million and 41 FTE. The magnitude of the proposed land transfer means that these costs will increase. The Department of Law currently provides legal services to the SLB. An increase in the SLB's holdings will result in a corresponding increase in legal services.

The bill potentially makes money available for expenditure and could reduce the need for General Fund for the School Finance Act beginning in FY 2016-17. The State Education Fund and the Water Conservation Board stand to receive, and are expected to spend, as much as $12.1 million each per year under a scenario in which all federal lands that are subject to the bill are sold.

School finance. An increase in property tax revenue increases the local share of funding under the school finance act. Given the current operation of school finance funding, this fiscal note assumes that overall spending on school finance will increase by the increase in the local share, estimated at $500,000 per year under the assumption that the SLB will hold, and not sell, federal lands transferred to it under the bill. The fiscal note assumes that state funding for school finance will not be reduced because of the higher local contributions.

If the federal land in question is transferred to the SLB and sold before January 1, 2015, school district property taxes for school finance will increase by $7.3 million in FY 2015-16 and subsequent years. However, as noted below, this increase in property taxes may be offset by a reduction in PILT payments from the federal government.

Enforceability. It is assumed that litigation may be necessary to enforce the provisions of the bill, requiring legal services on the part of the Attorney General's office. No legal costs have been estimated at this time.

Local Government Impact

The bill affects local governments in several ways, including a potential increase in property tax collections, impacts to severance tax receipts, and the loss of revenue from the federal Payments in Lieu of Taxes (PILT) program. These issues are discussed below.

Revenue from property taxation. All of the lands transferred to the SLB are subject to sale and, therefore, subject to property taxation effective January 1, 2015. The actual value of agricultural land for tax purposes, exclusive of improvements, is based on the earning or productive capacity of the land, capitalized at the statutory rate of 13 percent. For the lands subject to the bill, the fiscal note assumes a taxable value of $54 per acre (the weighted average value per acre of agricultural lands in the state), which yields approximately $1.24 billion in total actual value. For property tax purposes, land used for agriculture is assessed at 29 percent of actual value. The assessed value for the lands that are subject to sale totals $360.2 million. The application of a statewide average mill levy of 75 mills means that $27.1 million in property taxes statewide will be collected if all federal lands are sold and become subject to property taxation. Taxes assessed in calendar year 2015 are payable in the first six months of calendar year 2016.

School district impact. Starting in FY 2015-16, school districts would collect an estimated $7.3 million per year for school purposes, assuming an average school finance mill levy of 20.4. The fiscal note assumes this would increase total school finance funding by a similar amount and not reduce the state's contribution. To the degree that school districts have passed a mill levy override for a specific dollar amount, other taxpayers may see a reduction in property taxes because of the higher assessed value in the district. Alternatively, if school districts have passed a specific mill levy, property tax revenue from overrides will increase under the bill.

PILT. The federal Payments in Lieu of Taxes program, created in 1976, makes payments to local governments that are intended to offset the loss of tax revenue to local governments caused by the presence of tax-exempt federal lands within their taxing jurisdictions. For 2012, Colorado received PILT payments totaling $27.7 million. This revenue, lost under the bill, will be offset by those same parcels being subject to property taxes under the bill.

Departments Contacted

Education	Property Tax	Treasury	Law
Local Affairs	Governor	Natural Resources	Counties
Municipalities	Special Districts	Treasury	Military Affairs