SB15-206

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number:	LLS 15-0553	**Date:**	August 6, 2015
Prime Sponsor(s):	Sen. Roberts; Hodge Rep. Garnett; Keyser	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Greg Sobetski (303-866-4105)

BILL TOPIC: IMPLEMENT CONSERVATION EASEMENT AUDIT REQUIREMENTS

Fiscal Impact Summary*	FY 2014-2015 (current year)	FY 2015-2016	FY 2016-2017
State Revenue	**(up to $3.5 million)**	**(up to $7.0 million)**	**(up to $7.0 million)**
General Fund	(up to 3.5 million)	(up to 7.0 million)	(up to 7.0 million)
State Expenditures		**$5,300**	
General Fund		5,300	
FTE Position Change			
TABOR Set-Aside	(up to $3.5 million)	(up to $7.0 million)	(up to $7.0 million)
Appropriation Required: $5,300 - Department of Revenue (FY 2015-16).			

* *This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.*

Summary of Legislation

This bill makes two changes to the gross conservation easement income tax credit beginning in tax year 2015. First, credit awarded for the first $100,000 of a donated conservation easement is increased to 75 percent of the easement's fair market value, up from 50 percent in current law. Second, the maximum credit that may be awarded to a donor for a single donation is increased to $1,500,000 from the $375,000 cap in current law.

The bill does not affect the annual cap on the total amount of credit that may be awarded to taxpayers participating in the gross conservation easement income tax credit program, set at $45 million beginning in tax year 2014.

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. The state has offered a tax credit for the donation of conservation easements since tax year 2000. Beginning in tax year 2011, the total amount of conservation easement credit that may be claimed by Colorado taxpayers is capped each year. The cap is set at $45 million for tax year 2014 and each year thereafter.

Outstanding credit may be carried forward for up to 20 years, but must first be used to offset a taxpayer's current year income tax liability. Additionally, a taxpayer may transfer a full or partial amount of credit to one or more other taxpayers, who may use the transferred credit against their own income tax liability.

In tax year 2013, the state awarded credit worth $28.2 million, below the $34 million cap in statute. In both tax years 2012 and 2011, the total amount of credit awarded reached the $22 million statutory cap.

For a tax year following a fiscal year when state revenue subject to TABOR exceeds the Referendum C cap, a donor with outstanding credit may claim up to $50,000, less his or her income tax liability, as a tax refund. Because a TABOR surplus is expected in FY 2014-15, the credit is expected to become refundable in tax year 2015. Taxpayers may not claim a refund using transferred credit.

State Revenue

This bill is expected to decrease General Fund revenue by up to $3.5 million in FY 2014-15, and up to $7.0 million in each of FY 2015-16 and FY 2016-17. The estimate for FY 2014-15 represents a half-year impact for changes to the income tax credit beginning in tax year 2015.

Assumptions. From 50 easement donations that could qualify for credit in 2014, the Division of Real Estate in the Department of Regulatory Agencies reports receiving 43 applications, of which 13 were for the maximum amount of credit. As of late March 2015, the Division had issued 18 credit certificates worth a total of $5.2 million, well below the $45 million cap in statute for tax year 2014.

As of the date of this fiscal note, the Division of Real Estate has not denied any of these credit certificate applications. Assuming that all pending certificate applications are approved, the aggregate value of credit certificates issued by the division would have increased by $7.0 million for tax year 2014 had the bill been in effect for that year. Of this, $5.9 million is attributable to 13 applications for which the fair market value of the donated easement exceeded $750,000, beyond which no additional credit is awarded under current law. The bill would award credit for easement values up to $2,950,000.

The remaining $1.1 million is attributable to a $25,000 increase in the value of each certificate, owing to the increase in the value of the credit for the first $100,000 of easement value from 50 percent to 75 percent. The number of donations for which easement value is less than $100,000 is assumed to be negligible.

A similar increase in the value of credit certificates is assumed for tax year 2015 and subsequent tax years. Assumed changes to the amount of credit awarded are summarized in Table 1 on the following page.

Table 1. Additional Conservation Easement Tax Credit under SB15-206*			
Impact of:	**Credits assumed to be affected**	**Impact on individual credits**	**Estimated revenue impact**
Increased cap from $750,000 to $1.5 million	13 of 43 donations valued at more than $750,000 each	up to $1.1 million increase	($5.9 million)
Increase in value of credit from 50 percent to 75 percent of first $100,000	All 43 donations	$25,000 increase	($1.1 million)
		Estimated total revenue impact	**($7.0 million)**

Source: Department of Regulatory Agencies, Division of Real Estate.
* *Based on Gross Conservation Easement Income Tax Credit applications for tax year 2014. Table shows anticipated full-year impact.*

For most donors, the bill will not result in a reduction in income tax liability for several years, because the value of the credit will exceed both their income tax liability and the $50,000 refundability cap even without the bill. However, because the credit is transferable, the entire increase in the aggregate value of credit certificates could be used to reduce state income tax revenue beginning as early as FY 2014-15. Because donors can maximize the immediate financial benefit of their donation by transferring credit as quickly as possible, this fiscal note assumes that all credit not used by a donor will be transferred and used by a transferee for the tax year in which the certificate is awarded. To the extent that taxpayers instead choose to carry their credits forward to later tax years, the estimate in this fiscal note will be overstated.

Tax year 2014 is assumed to be representative of future income tax years because data from 2014 capture the effects of prior legislation that increased oversight of the conservation easement program.

TABOR Impact

This bill decreases state revenue subject to TABOR, which will decrease the amount required to be refunded under TABOR by up to $3.5 million for FY 2014-15, and up to $7.0 million for each of FY 2015-16 and FY 2016-17. TABOR refunds are paid from the General Fund.

State Expenditures

General Fund expenditures will increase by $5,300 in FY 2015-16. The Department of Revenue will incur a one-time cost of $5,300 in FY 2015-16 to program changes to modify its GenTax system. This cost represents an estimated 25 hours of software development at a cost of $212 per hour.

Effective Date

The bill was signed into law by the Governor and took effect on June 4, 2015.

State Appropriations

For FY 2015-16, the bill includes a $5,300 General Fund appropriation to the Department of Revenue.

State and Local Government Contacts

Natural Resources	Property Taxation	Regulatory Agencies
Revenue		