HB 18-1123

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 18-0660	**Date:**	August 13, 2018
Prime Sponsors:	Rep. Lewis Sen. Sonnenberg; Marble	**Bill Status:**	Postponed Indefinitely
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Bill Topic: CONSERVATION EASEMENT TAX CREDIT TIME OUT

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☐ Local Government
- ☐ Statutory Public Entity

This bill suspends the conservation easement tax credit for conservation easements created in 2019, 2020, and 2021. This will temporarily increase state revenue and decrease state expenditures.

Appropriation Summary: For FY 2018-19, the bill requires that cash fund appropriations to the Department of Regulatory Agencies be reduced by $72,589 and 0.9 FTE.

Fiscal Note Status: This fiscal note reflects the introduced bill. The bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 18-1123

		FY 2018-19	FY 2019-20	FY 2020-21
Revenue	General Fund	$1,300,000	$3,450,000	$5,690,000
	Cash Funds	($123,500)	($321,100)	($407,550)
	Total	**$1,177,000**	**$3,128,900**	**$5,282,450**
Expenditures	Cash Funds	($72,589)	($218,535)	($295,484)
	Centrally Appropriated	($12,957)	($33,148)	($48,071)
	Total	**($85,546)**	**($251,683)**	**($343,555)**
	Total FTE	**(0.9 FTE)**	**(2.1 FTE)**	**(3.1 FTE)**
Transfers		-	-	-

Summary of Legislation

This bill suspends a taxpayer's ability to claim a tax credit for conservation easements created in 2019, 2020, and 2021. Credits may still be claimed for conservation easements created in prior years.

Background

A conservation easement is a voluntary legal agreement between a landowner and a charitable organization or government entity that permanently protects scenic or agricultural open space, natural habitat, or recreational areas. These agreements can be tailored to preserve the specific qualities tied to the property, allowing it to remain under private ownership and control. Colorado offers a state income tax credit for conservation easements that qualify as charitable contributions under federal law.

A Colorado taxpayer can claim a state income tax credit during the tax year when the easement is donated. Beginning in tax year 2014, taxpayers are required to apply for a credit certificate from the Division of Real Estate in the Department of Regulatory Agencies. The division reviews an assessment of the property's fair market value in order to determine the amount of credit for which the easement qualifies. Since tax year 2011, state law has capped the aggregate value of credit certificates that the division can issue for a single tax year. The cap is set at $45 million for 2014 and all subsequent tax years. The division may process applications for credit certificates after the $45 million cap has been reached; however, approved certificates are not issued until the following tax year when the cap has reset. The division is responsible for notifying the Department of Revenue of certificates issued each year.

State Revenue

Suspending the credit for conservation easements created in 2019, 2020, and 2021 will increase General Fund revenue by $1.3 million in FY 2018-19, $3.5 million in FY 2019-20, and $5.7 million in FY 2020-21. It will also reduce application fee revenue by $123,500 in FY 2018-19, $321,100 in FY 2019-20, and $407,550 in FY 2020-21. These revenue impacts are temporary.

Income tax. The Department of Revenue internally tracks when conservation easements are created and when the credits are claimed. Based on this data, it is estimated that a portion of the credit will be claimed in the year the conservation easement is created and some of the credit will be carried forward into future tax years. It is assumed that credit amounts will equal the average claimed for conservation easements created in 2014 and 2015. These amounts are shown in Table 2, which are the estimated amount of tax credits claimed for conservation easements created in 2019, 2020, and 2021. The FY 2018-19 revenue impact represents six months of activity as the credit amounts for tax years 2019 through 2021 in Table 2 are accrued to fiscal years.

Table 2
Revenue Impact of HB 18-1123

Year Created	Credit Claimed 2019	Credit Claimed 2020	Credit Claimed 2021
2019	$2,597,459	$1,707,664	$2,765,382
2020	-	$2,597,459	$1,707,644
2021	-	-	$2,597,459
Total	**$2,597,459**	**$4,305,123**	**$7,070,505**

Application fees. The Department of Regulatory Agencies collects a fee of $12,350 to process applications for conservation easement tax credits. The department processes applications after the conservation easement has been created. Over the past four years, the department has received an average of 35 conservation easement tax credit applications per year. The applications include easements created in the current and prior years. It is assumed they will have 10 fewer applications for conservation easements created in 2019 in FY 2018-19, 26 fewer applications for conservation easements created in 2019 and 2020 in FY 2019-20, and 33 fewer applications for conservation easements created in 2019, 2020, and 2021 in FY 2020-21. The department will still process applications received for conservation easements created prior to 2019. The reduction in applications will reduce revenue from application fees by $123,500 in FY 2018-19, $321,100 in FY 2019-20, and $407,550 in FY 2020-21.

TABOR Refund

The bill increases state revenue subject to TABOR by $1.2 million in FY 2018-19, $3.1 million in FY 2019-20, and $5.3 million in FY 2020-21. State revenue is not currently expected to exceed the TABOR limit in these years and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

State expenditures in Department of Regulatory Agencies will be reduced by $85,546 in FY 2018-19, $251,683 in FY 2019-20, and $343,555 in FY 2020-21.

Department of Regulatory Agencies. The Division of Real Estate within the Department of Regulatory Agencies certifies the value of conservation easements and tax credit amounts. The department will process fewer applications for the tax credit for conservation easements created in 2019, 2020, and 2021, however they will still process applications for conservation easements created in prior years. It is assumed that there will be 10 fewer applications in FY 2018-19, 26 fewer applications in FY 2019-20, and 33 fewer applications in FY 2020-21.

Table 3
Expenditures Under HB 18-1123

	FY 2018-19	FY 2019-20	FY 2020-21
Department of Regulatory Agencies			
Personal Services	($63,209)	($188,184)	($264,183)
Operating Expenses and Capital Outlay Costs	($855)	($1,900)	($2,850)
Legal Services	($8,525)	($28,451)	($28,451)
Centrally Appropriated Costs*	($12,957)	($33,148)	($48,071)
FTE – Personal Services	(0.9 FTE)	(2.0 FTE)	(3.0 FTE)
FTE – Legal Services	-	(0.1 FTE)	(0.1 FTE)
Total Cost	**($85,546)**	**($251,683)**	**($343,555)**
Total FTE	**(0.9)**	**(2.1)**	**(3.1)**

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

Department of Law. The Department of Law provided an average of 535.8 hours over the past two years to the Department of Regulatory Agencies advising the Division of Real Estate related to conservation easements. It is assumed that the bill will reduce hours needed by 15 percent in FY 2018-19 and by 50 percent in FY 2019-20 and FY 2020-21. The legal costs are reappropriated from the Department of Regulatory Agencies to the Department of Law.

Department of Revenue. The Department of Revenue will process fewer income tax returns claiming the conservation easement credit. The department will continue to process and administer returns with credits generated from prior conservation easements, however the bill results in reduced workload.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be reduced by $12,957 in FY 2018-19, $33,148 in FY 2019-20, and $48,071 in FY 2020-21.

Effective Date

The bill was postponed indefinitely by the House Health, Insurance, and Environment Committee on March 15, 2018.

State Appropriations

For FY 2018-19, the bill requires that cash fund appropriations to the Department of Regulatory Agencies be reduced by $72,589 and 0.9 FTE.

State and Local Government Contacts

Information Technology	Law	Natural Resources
Personnel	Regulatory Agencies	Revenue