SB 21-033

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0301	**Date:**	February 17, 2021
Prime Sponsors:	Sen. Sonnenberg	**Bill Status:**	Senate Finance
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Bill Topic: **CONSERVATION EASEMENT WORKING GROUP PROPOSALS**

Summary of Fiscal Impact:

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

The bill changes to the Conservation Easement Tax Credit program to create a new transferable tax credit for previously disallowed tax credits and an ombudsman and arbitration process to resolve disputes concerning the distribution of the credit among affected parties. The bill reduces state revenue and increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires appropriations totaling about $3.9 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-033

		Current Year FY 2020-21	Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	General Fund	($8.5 million)	($17.1 million)	($17.1 million)
	Total Revenue	**($8.5 million)**	**($17.1 million)**	**($17.1 million)**
Expenditures	General Fund	-	$3,867,910	$1,967,931
	Centrally Appropriated	-	$75,745	$57,285
	Total Expenditures	**-**	**$3,943,655**	**$2,025,216**
	Total FTE	**-**	**21.7 FTE**	**12.7 FTE**
Transfers		-	-	-
TABOR Refund	General Fund	-	-	-

Summary of Legislation

The bill makes changes to the Conservation Easement Tax Credit to allow taxpayers to reclaim disallowed credits from tax years 2000 through 2013, and creates a new dispute resolution process when there are multiple claimants for the same credit.

Claiming previously disallowed tax credits. The bill allows a landowner to claim a tax credit for each conservation easement in gross donated between January 1, 2000, and December 31, 2013, for which a tax credit was claimed but was denied in whole or in part by the Colorado Department of Revenue (DOR). The amount of the tax credit must equal the amount of the credit that could have been claimed for the donation that was in effect at the time of the donation. The state-rejected donation must have qualified for the federal tax deduction as allowed by the federal Internal Revenue Service.

No later than August 15, 2021, the DOR must post information online notifying taxpayers who had a tax credit denied that they may be eligible to apply for a new tax credit. Taxpayers have until September 30, 2022, to submit a claim for a credit certification to the Division of Conservation in the Department of Regulatory Agencies (DORA). If the person is no longer living, a tax credit may be claimed by the appropriate estate, heir, successor, or assignee.

The division must create rules for the application and approval process in coordination with the working group created in House Bill 19-1264. Credit certificates issued for previously denied claims count against the aggregate credit certification cap of $45 million per year.

Multiple claimants. If multiple taxpayers file claims concerning the same conservation easement, the claimants may work together to coordinate the distribution of tax credit certificates. If the original tax credit was transferred to another taxpayer, the transferee may claim the portion of the credit that was transferred.

Objections and disputes. Taxpayers and other parties to a disallowed credit may object to a claim for certification of reclaimed tax credits and submit their own application. These objections must be referred to a newly created ombudsman in the Division of Conservation to resolve the dispute. If parties are unable to resolve their objections to a claim, the ombudsman may refer the matter to an arbitrator at the expense of the DOR. Once the objection is resolved, the DOR must allow the tax credit to be claimed in accordance with the terms of the agreement reached.

Background

The Conservation Easement Tax Credit was originally enacted in 1999. The credit is allowed for individuals and corporations that donate land for a perpetual conservation easement to a government entity or a charitable organization. The owner of an easement may prohibit certain acts on 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 one or more other taxpayers.

House Bill 19-1264 created a working group of stakeholders to propose an alternative method to the existing appraisal process for certifying the value of a conservation easement tax credit, and to develop eligibility criteria and a process to provide retroactive tax credits to taxpayers whose conservation easement tax credit claim was denied in whole or in part from 2000 to 2013. As introduced, this bill includes some of the recommendations of the working group.

State Revenue

The bill is expected to decrease state revenue by $8.5 million in the current FY 2020-21 and by $17.1 million in FY 2021-22, FY 2022-23 and later years. The estimate for FY 2020-21 represents a half-year impact for tax year 2021 on an accrual accounting basis. The bill reduces income tax revenue by allowing new tax credits for previously denied claims. Income tax revenue is subject to TABOR.

Tax credit certificates. Between 2000 and 2013, The DOR disallowed $149.1 million in credits. This bill allows those taxpayers a new credit which is anticipated to equal $149.1 million over multiple years. Consistent with the pace at which the Division of Conservation has issued credit certificates through 2020, this fiscal note assumes that certificates for newly donated easements will average $22.3 million of the $45.0 million credit cap under current law, leaving about $22.7 million annually for credits for previously denied claims. Based on this assumption, it is expected to take until 2027 to issue all the tax credit certificates allowed by the bill.

Credit claims. Because the conservation easement credit is nonrefundable, the amount of credit claimed is less than the value of credits certified. Historical data from DOR indicate that the amount of the credit applied annually is about 75 percent of the amount of credit certified for the year. If certified credits are applied to tax liability more quickly, the revenue decrease will be greater than estimated.

State Expenditures

For FY 2021-22, the bill increases state expenditures by about $3.9 million and 21.7 FTE. For FY 2022-23 and future years, increased expenditures are about $2.0 million and 12.7 FTE. New costs are displayed in Table 2 and described below. Personal service costs in Table 2 are prorated for the General Fund pay date shift and the presumed September effective date.

Table 2
Expenditures Under SB 21-033

Cost Components		FY 2021-22	FY 2022-23
Department of Revenue			
Personal Services		$63,799	$14,674
Operating Expenses		$2,295	$405
Capital Outlay Costs		$12,400	-
GenTax Programming / Systems Support		$12,400	$40,493
Document Services		$44,126	$13,238
Legal Services - Arbitration Costs		$2,751,925	$917,308
Centrally Appropriated Costs[1]		$29,388	$6,168
FTE – Personal Services		1.3 FTE	0.3 FTE
FTE – Legal Services		14.3 FTE	6.0 FTE
Dept. Subtotal		**$2,916,333**	**$992,286**
Department of Regulatory Agencies			
Personal Services		$213,935	$233,383
Operating Expenses		$4,050	$4,050
Capital Outlay Costs		$18,600	-
Legal Services		$744,380	$744,380
Centrally Appropriated Costs[1]		$46,357	$51,117
FTE - Personal Services		2.7 FTE	3.0 FTE
FTE – Legal Services		3.4 FTE	3.4 FTE
Dept. Subtotal		**$1,027,322**	**$1,032,930**
	Total	**$3,943,655**	**$2,025,216**
	Total FTE	**21.7 FTE**	**12.7 FTE**

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

Department of Revenue. The department is required to process a new transferable tax credit for previously denied claims certified by the Division of Conservation. This increases costs for programming and testing to GenTax, and for business User Acceptance Testing (UAT), document servicing provided by the Department of Personnel and Administration (DPA), and tax examiners to conduct claim review, certification, and payment. The DOR is also responsible for the arbitration costs of disputed claims for certification received at DORA. It is estimated that up to 4,500 affected taxpayers may apply for credits. The complexity of verifying claims and counter claims from original easement donations and tax credit transferees will be labor intensive and require extensive legal services provided by the Department of Law (DOL).

Department of Regulatory Agencies. The bill requires the Division of Conservation in DORA to process claims for tax credit certifications for previously denied claims, and to establish a process for determining if a landowner conveyed an easement in good faith and otherwise meets the requirements for a reclaimed tax credit. When claims cannot be established, the disputed and conflicting claims are referred to a new ombudsman in the division to provide mediation and to arrange arbitration when necessary. The ombudsman requires legal services from the DOL. Final arbitration expenses must be paid by the DOR.

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 $75,545 in FY 2021-22 and $57,285 in FY 2022-23.

TABOR refunds. The bill reduces income tax revenue, which is subject to TABOR. Based on the December 2020 LCS revenue forecast, state revenue is expected to remain below the TABOR limit (Referendum C cap) through at least FY 2022-23, and no TABOR refunds are expected through at least FY 2023-24. The bill does not change these expectations concerning refunds to taxpayers. For future years in which the state would be required to issue TABOR refunds, the bill will decrease the amount to be refunded each year.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For 2021-22, the bill requires the following appropriations:

- a General Fund appropriation of $2,886,945 to the Department of Revenue, and 1.3 FTE. Of this amount, $44,126 is reappropriated to the Department of Personnel and Administration and $2,751,925 is reappropriated to the Department of Law, and 14.3 FTE.

- a General Fund appropriation of $980,965 to the Department of Regulatory Agencies, and 2.7 FTE. Of this amount, $744,380 is reappropriated to the Department of Law, and 3.4 FTE.

State and Local Government Contacts

Law	Regulatory Agencies	Revenue