SB 20-135

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 20-0533	**Date:**	February 10, 2020
Prime Sponsors:	Sen. Sonnenberg; Donovan Rep. Roberts; Wilson	**Bill Status:**	Senate Agriculture
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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 makes several changes to the Conservation Easement Tax Credit program including increasing the value of future conservation easement tax credits, refunding disallowed credits from tax years 2000 through 2013, and creating a process for abandoned easements.

Appropriation Summary: For FY 2020-21, the bill requires appropriations totaling $156.8 million to multiple state agencies.

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

Table 1
State Fiscal Impacts Under SB 20-135

		FY 2019-20 *(current year)*	FY 2020-21	FY 2021-22
Revenue	General Fund	($8.4 million)	($16.8 million)	($16.8 million)
Expenditures	General Fund	-	$156,750,052	$2,711,676
	Centrally Appropriated	-	$249,617	$302,766
	Total	**-**	**$156,999,669**	**$3,014,442**
	Total FTE	**-**	**21.5 FTE**	**25.3 FTE**
Transfers		-	-	-
TABOR Refund	General Fund	($8.4 million)	($16.8 million)	($16.8 million)

Summary of Legislation

The bill makes several changes to the Conservation Easement Tax Credit program including increasing the value of future conservation easement tax credits, refunding disallowed credits from tax years 2000 through 2013, and creating a process for abandoned easements.

Conservation easement income tax credit. Under current law, a tax credit for a conservation easement donated on or after January 1, 2015, is equal to 75 percent of the first $100,000 of the property value, and 50 percent for any amount in excess of $100,000. The credit is capped at $1.5 million per donation. Beginning with conservation easements donated on or after January 1, 2020, this bill sets the value of the tax credit at 90 percent of the fair market value of the donated portion of the easement, increases the cap to $5.0 million per donation, and limits the amount of credits issued per year to $1.5 million.

Compensation for disallowed tax credits. The bill requires that the state pay compensation 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 compensation 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. If partial credit was allowed, compensation must equal the denied portion of the credit. The state-rejected donation must also have qualified for the federal tax deduction as allowed by the Federal Internal Revenue Service.

Affected taxpayers. Taxpayers may elect to receive compensation as a tax credit, as a refund, or as a combination of the two. Claims for compensation must be paid in the order received. If the person is no longer living, compensation must be paid to the appropriate estate, heir, successor, or assign. No later than September 30, 2020, the DOR is required to notify each affected taxpayer that he or she is eligible for compensation. Taxpayers have until December 31, 2022, to file a claim using a form created by the DOR, and approved by the working group created in House Bill 19-1264. The DOR must issue the compensation within 30 days of receiving the application.

Multiple claimants. If multiple people file claims concerning the same conservation easement, the claimants may work together to coordinate the distribution of the compensation. If the tax credit was transferred to another taxpayer, the transferee may claim compensation for 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 compensation and submit their own application. These objections must be referred to a newly created ombudsman in the Division of Conservation in the Department of Regulatory Agencies (DORA) 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 pay the compensation in accordance with the terms of the agreement reached.

Abandoned conservation easements. DORA must open an investigation and provide notifications to affected parties if the Division of Conservation becomes aware of the potential abandonment of a conservation easement. Under specified conditions, the division may find that a conservation easement is abandoned, and recommend that the Conservation Easement Oversight Commission in DORA issue an abandonment declaration.

Receiverships for abandoned easements. Following a public hearing, if the easement is declared abandoned, the oversight commission must appoint either themselves or a board of county commissioners as a receiver. The Department of Law (DOL) must assist the oversight commission with establishing receiverships. The bill creates a stewardship account in the department's cash fund to provide for the annual cost of monitoring obligations and other stewardship requirements of the public receiver. The bill requires that the General Assembly appropriate $5.0 million General Fund to the stewardship account for this purpose. The oversight commission must review each easement in receivership and identify options to enable the easement to be assigned to a certified conservation easement holder. For easements that cannot be reformed to align with a certified holder, and with consent of the landowner subject to the easement, the oversight commission may submit the easement to the DOL to commence termination proceedings.

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 credits, 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.

Assumptions and Technical Note

The requirement that the DOR notify affected taxpayers by September 20, 2020, may not be possible given the bill's presumed August 5, 2020, effective date. Similarly, the bill requires that the DOR develop a form and process for paying compensation which must receive approval from the HB 19-1264 workgroup. It is assumed these requirements will be satisfied during the first six months of FY 2020-21.

The bill requires that all claims for compensation be paid within 30 days. This may not be possible given the DOR's current processes, even with the additional staff necessary to implement the bill and process claims. Affected taxpayers have until December 2022 (FY 2022-23) to file a claim. This fiscal note estimates the total expenditure for refunds in the first fiscal year, and assumes a distributed execution of refund claims and associated personnel costs across fiscal years.

State Revenue

The bill is expected to decrease state revenue by $8.4 million in the current FY 2019-20 and by $16.8 million in FY 2020-21, FY 2021-22, and subsequent years. The estimate for FY 2019-20 represents a half-year impact for tax year 2020 on an accrual accounting basis. The bill reduces income tax revenue, which is subject to TABOR.

Credit certifications. Under current law, the Division of Conservation is expected to certify tax credits for an average of 35 conservation easements per year, and each easement is expected to be valued at approximately $1.0 million. Current law allows a tax credit of $525,000 for each $1.0 million easement. The bill increases the value of the credit to $900,000 per $1.0 million easement, allowing an additional $375,000 in credit per easement, or an estimated $13.1 million annually beginning in tax year 2020.

Based on observed increase in conservation easement credit certifications following the tax credit increase in SB 15-206, the value of land conserved in an easement is assumed to increase by 41 cents for each dollar increase in the value of the credit. Because the bill increases the value of the credit by 71 percent, from $525,000 to $900,000, for an average donor, the bill is expected to increase the value of land conserved in easements by 30 percent. Based on these assumptions, the bill is expected to increase the value of land added to conservation easements by $10.4 million annually beginning in tax year 2019. The bill allows credits to be certified for 90 percent of this value, or an estimated $9.3 million per year.

Credit claims. Because the conservation easement credit is either nonrefundable or partially refundable in all years, the amount of credit claimed applied against income tax liability each year is less than the value of credits certified by the Division of Conservation. Historical data from the DOR indicate that, on average, the amount of credit applied to taxes each year is approximately 75 percent of the total amount of credit certified for the year. Assuming that this share does not change, the bill is expected to decrease state revenue by about $16.8 million annually, or 75 percent of the anticipated $22.5 million annual increase in credit certifications.

To the extent that certified credits are applied to tax liability more quickly than in the past, the revenue decrease attributable to the bill will be greater than estimated.

State Expenditures

For FY 2020-21, the bill increases state expenditures by $157.0 million and 21.5 FTE. For FY 2021-22, increased expenditures are $3.0 million and 25.3 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 August 5 effective date.

Table 2
Expenditures Under SB 20-135

Cost Components		FY 2020-21	FY 2021-22
Department of Revenue			
Tax Credit Refunds		$149,063,622	-
Personal Services		$477,750	$637,000
Operating Expenses		$14,580	$17,550
Capital Outlay Costs		$80,600	-
GenTax Programming and Testing		$60,360	-
Document Services and Postage		$2,790	-
Legal Services		$1,151,280	$1,151,280
Centrally Appropriated Costs*		$134,759	$181,585
FTE – Personal Services		9.6 FTE	13.0 FTE
FTE – Legal Services		6.0 FTE	6.0 FTE
(DOR Subtotal)		**$150,985,741**	**$1,987,415**
Department of Regulatory Agencies			
Personal Services		$116,450	$135,221
Operating Expenses		$2,700	$3,105
Capital Outlay		$12,400	
Legal Services		$767,520	$767,520
Direct Appropriation to Stewardship Account		$5,000,000	-
Centrally Appropriated Costs*		$114,858	$121,181
FTE – Personal Services		1.9 FTE	2.3 FTE
FTE – Legal Services		4.0 FTE	4.0 FTE
(DORA Subtotal)		**$6,013,928**	**$1,027,027**
	Total	**$156,999,669**	**$3,014,442**
	Total FTE	**21.5 FTE**	**25.3 FTE**

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

Compensation to affected taxpayers. This fiscal note assumes that all affected taxpayers will elect to receive compensation as a refund instead of a tax credit, or some combination of the two. The bill will require at least $149.1 million as refunds to affected taxpayers.

Current law permits the Division of Conservation in the DORA to issue up to $45 million in tax credit certificates annually. This bill requires that compensation be paid from the unclaimed amount of certificates that could have been issued between 2013 and 2019 ($315.0 million). Between 2014 and 2018, the only years with available data, the unclaimed amount was about $172.5 million. It should be noted that the amount of unclaimed certificates for conservation easement tax credits has no corresponding cash value in any state fund. All costs for taxpayer refunds and other state expenditures are from the General Fund.

Department of Revenue. The department is required to implement a refund program, including a taxpayer notification and application process. This increases costs for programming and testing to GenTax, document servicing and postage, and FTE to conduct claim review, certification, and payment. The DOR estimates that up to 4,500 affected taxpayers may apply for compensation. The complexity of verifying claims and counter claims from original easement donations and tax credit transferees will be labor intensive and require additional analyst positions, with corresponding administrative and supervisory FTE in the department.

Department of Regulatory Agencies. When claims cannot be established with the DOR, the disputed and conflicting claims will be referred to a new ombudsman in the Division of Conservation in the DORA to provide mediation and to arrange arbitration when necessary. The division must also create a process to determine abandoned easements and arrange for receiverships and subsequent monitoring. The bill requires an appropriation of $5.0 million for a stewardship account for abandoned easements.

Department of Law. The DOL will provide legal services to the DOR and the DORA. Legal services are calculated at the blended rate of $106.60 per hour with 1800 hours annually equivalent to 1.0 FTE.

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. For the DOR, these are estimated to be $134,759 in FY 2020-21 and $181,585 in FY 2021-22. For the DORA, these are estimated to be $114,858 in FY 2020-21 and $121,181 in FY 2021-22.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by $8.4 million in the current FY 2019-20 and by $16.8 million in each of FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2020-21, the bill requires the following:

- A General Fund appropriation of $150,850,982 to the Department of Revenue, and 9.6 FTE. Of this amount, $1,151,280 is reappropriated to the Department of Law, and 6.0 FTE.
- A General Fund appropriation of $5,899,070 to the Department of Regulatory Agencies, and 1.9 FTE. Of this amount, $767,520 is reappropriated to the Department of Law, and 4.0 FTE.

State and Local Government Contacts

Agriculture	Counties	County Clerks
Information Technology	Judicial	Law
Local Affairs	Municipalities	Natural Resources
Regulatory Agencies	Revenue	