

  
*Colorado Legislative Council Staff Fiscal Note*  
**STATE**  
**REVISED FISCAL IMPACT**  
(replaces fiscal note dated February 2, 2010)

<b>Drafting Number:</b> LLS 10-0743	<b>Date:</b> February 15, 2010
<b>Prime Sponsor(s):</b> Rep. Ferrandino Sen. Heath	<b>Bill Status:</b> Senate Finance
	<b>Fiscal Analyst:</b> Harry Zeid (303-866-4753)

**TITLE:** CONCERNING A DECREASE IN THE MAXIMUM AMOUNT OF A STATE INCOME TAX CREDIT THAT MAY BE CLAIMED FOR THE DONATION OF A CONSERVATION EASEMENT IN GROSS.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
<b>State Revenue</b> General Fund	\$18,500,000*	\$37,000,000
<b>State Expenditures</b> Cash Funds Conservation Easement Appraisal Review Fund	\$9,028	\$9,028
<b>FTE Position Change</b>	0.2 FTE	0.2 FTE
<b>Effective Date:</b> August 11, 2010, assuming the General Assembly adjourns May 12, 2010, as scheduled and no referendum petition is filed.		
<b>Appropriation Summary for FY 2010-2011:</b> See the State Appropriations section.		
<b>Local Government Impact:</b> None.		

*\*Represents one-half year on an accrual accounting basis.*

**This fiscal note has been updated to reflect new information regarding the baseline estimated value of conservation easements to be claimed under current law. In addition, the fiscal note reflects the bill as reengrossed by the House of Representatives.**

**Summary of Legislation**

Under current law, taxpayers are allowed to claim a state income tax credit for donating a conservation easement. The credit is equal to 50% of the fair market value of the easement, with a cap of \$375,000 per easement. The reengrossed bill caps at \$26 million annually the total amount of conservation easement income tax credits that may be claimed for tax years 2011, 2012, and 2013. The bill also requires the Division of Real Estate in the Department of Regulatory Agencies to issue a certificate for the claims received in the order that they are submitted. The division is authorized to promulgate rules for the issuance of certificates. The bill also requires the Department of Revenue to make quarterly reports to the General Assembly regarding the quarterly and cumulative net revenue gain to the state resulting from enactment of the bill.

## **Background**

The conservation easement tax credit was originally enacted in 1999, and has been amended several times since. The credit is allowed for individuals and corporations who donate land for a perpetual conservation easement to a government entity or a charitable organization. The owner of an easement continues to maintain the right to prohibit certain acts with respect to 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 another taxpayer.

For tax year 2008, the state is expected to provide \$63 million in new conservation easement tax credits. This includes \$43 million in new tax credits claimed on income tax schedules already processed by the Department of Revenue; \$5 million in credits claimed on schedules received by the department, but not yet processed; and \$15 million in credits related to documentation received by the Division of Real Estate that have not yet been claimed for income tax purposes.

## **State Revenue**

Limiting conservation easement tax credits under HB10-1197 will increase General Fund revenue by an estimated **\$18.5 million in FY 2010-11 and \$37.0 million in FY 2011-12**, as compared to current law.

Assuming that conservation easement tax credits for 2011 through 2013 would have otherwise matched the 2008 level — \$63 million per year — capping the credits at \$26 million will increase General Fund revenue by \$37 million per year. On an accrual basis, the impact for FY 2010-11 and FY 2013-14 is estimated to be \$18.5 million to account for one-half of the fiscal year.

The bill could also affect taxpayer behavior before and after the limit is imposed. For example, the number and value of conservation easement donations in the current 2010 income tax year may be higher than expected as donors attempt to have their conservation easements approved prior to the \$26 million cap being put in place on January 1, 2011. Similarly, beginning January 1, 2014, when the cap is removed, the number and value of conservation easements claimed will likely be higher than the current \$63 million level.

## **State Expenditures**

*Department of Regulatory Agencies.* The bill requires a cash fund expenditure of **\$9,028 and 0.2 FTE per year for FY 2010-11 through FY 2012-13**, the three years in which the \$26 million annual income tax credit cap on conservation easements is in place. The Division of Real Estate requires 360 hours per year to collect, record, and track claims for certification of conservation easement tax credits. Since the cap is in place for only three years, the process will be conducted manually. Costs will be paid from the Conservation Easement Appraisal Review Fund.

*Department of Revenue.* It is assumed that the department can absorb the costs of providing information on the amount of money foregone by taxpayers to the extent that data are available using their current information systems. Additionally, since the conservation easement tax credit currently exists on the state income tax return, the department will be unaffected by the \$26 million annual cap for the value of the credit proposed by the bill. Minimal computer programming costs necessary on the accounting system will be absorbed. Additionally, data entry costs will remain unchanged.

*Impact on State Aid Through the School Finance Act.* The reengrossed bill states that nothing in the bill requires or permits the reclassification of agricultural land or improvements, including residential property, due solely to subjecting the land to a perpetual conservation easement. On land subject to a conservation easement, several county assessors have been valuing the portion of land that is actually used for nonagricultural commercial or residential purposes at market value, rather than at the land's agricultural value. The bill may be interpreted as prohibiting that method of valuation. This could result in portions of land being revalued from a market-based value to the lower agricultural land value. This change in valuation could have a slight impact on additional school finance aid being allocated to affected school districts. This impact cannot be quantified.

### **Expenditures Not Included**

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. The centrally appropriated costs subject to this policy are summarized in Table 1.

<b>Table 1. Division of Real Estate Expenditures Not Included Under HB10-1197*</b>		
<b>Cost Components</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$1,420	\$1,420
Supplemental Employee Retirement Payments	336	336
<b>TOTAL</b>	<b>\$1,756</b>	<b>\$1,756</b>

\*More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

### **State Appropriations**

The Department of Regulatory Agencies will require a cash funds appropriation of \$9,028 and 0.2 FTE from the Conservation Easement Appraisal Review Fund in FY 2010-11 to implement the bill.

### **Departments Contacted**

Revenue            Regulatory Agencies