SENATE COMMITTEE OF REFERENCE REPORT

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March 12, 2020

Chair of Committee Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

SB20-135 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

Amend printed bill, page 4, line 7, strike "NINETY" and substitute "SEVENTY-FIVE".

Page 6, strike lines 3 through 27.

Strike pages 7 through 10.

Page 11, strike lines 1 through 18 and substitute:

"SECTION 2. In Colorado Revised Statutes, add 39-22-522.7 as follows:


(1) The General Assembly hereby finds and declares that:

(a) It is the intent of this section to provide relief that will repair the harm caused by the Department of Revenue's disallowance of Colorado conservation easement tax credits to landowners who in good faith, subject to subsection (5) of this section, conveyed conservation easements to qualified conservation easement holders between January 1, 2000, and December 31, 2013;

(b) State Representative Kimmi Lewis from House District 64, who passed away in December 2019, worked tirelessly during her career as a legislator to provide help to landowners who
HAD CONSERVATION EASEMENT CREDITS ARBITRARILY DISALLOWED; AND

(c) RESOLUTION OF THIS HARM BY ALLOWING A LANDOWNER TO
CLAIM A TAX CREDIT FOR A CONSERVATION EASEMENT DONATION THAT
WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE AND
CONVEYED IN GOOD FAITH SUBJECT TO SUBSECTION (5) OF THIS SECTION,
BUT ULTIMATELY DENIED BY THE STATE WILL END THE NEARLY
TWO-DECADES-LONG CONFLICT OVER COLORADO'S CONSERVATION
EASEMENT TAX CREDIT PROGRAM, RESTORE THE INTEGRITY OF THE
PROGRAM, AND ALLOW THE PROGRAM TO MOVE FORWARD TO CONTINUE
THE GOOD WORK OF CONSERVING COLORADO’S INCREASINGLY LIMITED
OPEN SPACE AND NATURAL RESOURCES.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
LANDOWNER SHALL BE ALLOWED TO CLAIM A TAX CREDIT WITH RESPECT
TO THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 FOR EACH PERPETUAL
CONSERVATION EASEMENT IN GROSS DONATED IN GOOD FAITH BETWEEN
JANUARY 1, 2000, AND DECEMBER 31, 2013, FOR WHICH A TAX CREDIT
WAS CLAIMED PURSUANT TO SECTION 39-22-522 AND WAS DENIED IN
WHOLE OR IN PART IF A FEDERAL CONSERVATION EASEMENT TAX
DEDUCTION WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE
FOR THE SAME DONATION. FOR PURPOSES OF THIS SECTION:

(a) THE AMOUNT OF THE CREDIT ALLOWED FOR EACH DONATION
SHALL BE EQUAL TO THE FULL AMOUNT OF THE CREDIT THAT COULD HAVE
BEEN CLAIMED FOR THE DONATION PURSUANT TO THE APPLICABLE LAW IN
EFFECT AT THE TIME OF THE DONATION;

(b) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE FAIR
MARKET VALUE OF THE CONSERVATION EASEMENT CONTRIBUTION
ACCEPTED BY THE INTERNAL REVENUE SERVICE AS REFLECTED ON THE
FEDERAL INCOME TAX FORM 8283 OR AMENDED BY A SUBSEQUENT
FEDERAL APPEAL PROCESS, FEDERAL COURT, OR UNITED STATES TAX
COURT RULING; AND

(c) THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS
SECTION SHALL BE DECREASED BY ANY AMOUNT OF CREDIT THAT WAS
OTHERWISE ALLOWED TO BE CLAIMED AGAINST THE TAXES IMPOSED BY
THIS ARTICLE 22 OR OTHERWISE REINSTATED, AND BY ANY AMOUNT THAT
WAS REIMBURSED OR OTHERWISE ALLOWED TO THE TRANSFEREE AS A
RESULT OF A SETTLEMENT, LITIGATION, OR OTHER MEANS THAT PROVIDED
COMPENSATION TO THE TRANSFEREE.

(3) BY AUGUST 15, 2020, THE DEPARTMENT OF REVENUE SHALL
MAKE INFORMATION READILY AVAILABLE ONLINE FOR TAXPAYERS WHO
HAD A TAX CREDIT DENIED IN WHOLE OR IN PART FOR A CONSERVATION
EASEMENT DONATED BETWEEN JANUARY 1, 2000, AND DECEMBER 31,
2013, that the taxpayer may be eligible to apply for a credit pursuant to this section. The online information must outline the process for applying for a credit and the criteria used to determine the amount of the credit.

(4) A taxpayer must submit a claim for a credit to the Division of Conservation in the Department of Regulatory Agencies no later than September 30, 2021. The claim must be submitted using a form and process created by the Division and in coordination with the working group convened in accordance with section 12-15-106 (14.5). The claim must be accompanied by the following:

(a) A copy of the federal income tax form 8283 used to substantiate a federal deduction for the donated conservation easement;

(b) If the original amount of deduction claimed on the federal income tax form 8283 was adjusted, documentation confirming the amount ultimately allowed by the Internal Revenue Service, a federal court, or the United States Tax Court and claimed by means of an adjusted federal tax return accepted by the Internal Revenue Service; and

(c) Documentation confirming settlement of the credit amount allowed by the Department of Revenue.

(5) (a) The Division of Conservation shall establish a process by rule in coordination with the working group convened in accordance with section 12-15-106 (14.5) for determining whether a landowner conveyed an easement in good faith and otherwise meets the requirements set forth in this section for receiving a credit.

(b) As used in this section, "good faith" means that a person or entity honestly relied upon a licensed professional to establish the value of a conservation easement, did not knowingly misrepresent the value of the conservation easement, and followed the applicable laws and regulations set forth in statute, Department of Revenue rules, and the Federal Internal Revenue Code and Federal Department of Treasury regulations in effect at the time of the conveyance of the conservation easement.

(6) (a) The Division of Conservation shall issue a certificate for the claims received in the order submitted no later than ninety days after an application is received unless a dispute arises pursuant to subsection (10) of this section. Credits
ISSUED PURSUANT TO THIS SECTION COUNT AGAINST THE AGGREGATE
ANNUAL CAP FOR ALL CONSERVATION EASEMENT TAX CREDITS SET FORTH
IN SECTION 39-22-522 (2.5) AND THE AGGREGATE AMOUNT OF CREDITS
ISSUED PURSUANT TO THIS SECTION AND SECTION 39-22-522 SHALL NOT
EXCEED THE AGGREGATE ANNUAL CAP.

(b) EXCEPT AS PROVIDED IN SUBSECTION (6)(c) OF THIS SECTION,
THE DIVISION OF CONSERVATION SHALL ISSUE CERTIFICATES UP TO THE
FOLLOWING PERCENTAGES OF THE AGGREGATE ANNUAL CAP SET FORTH IN
SECTION 39-22-522 (2.5) AS FOLLOWS:

(I) FIFTY PERCENT OF THE ANNUAL CAP IN THE FIRST CALENDAR
YEAR;

(II) FORTY PERCENT OF THE ANNUAL CAP IN THE SECOND
CALENDAR YEAR; AND

(III) THIRTY PERCENT OF THE ANNUAL CAP IN THE THIRD
CALENDAR YEAR AND EACH SUBSEQUENT YEAR THEREAFTER UNTIL THE
OBLIGATION IS FULLY SATISFIED.

(c) IF THE TOTAL AMOUNT OF CREDITS ENCUMBERED AND THE
TOTAL AMOUNT OF CREDITS PROJECTED TO BE ENCUMBERED PURSUANT TO
THIS SECTION AND SECTION 39-22-522 (2.5) IS LESS THAN FORTY-FIVE
MILLION DOLLARS AT THE END OF A CALENDAR YEAR, ADDITIONAL
CERTIFICATES MAY BE ISSUED PURSUANT TO THIS SECTION AS LONG AS THE
TOTAL AMOUNT OF CREDITS ISSUED PURSUANT TO THIS SECTION AND
SECTION 39-22-522 (2.5) DOES NOT EXCEED FORTY-FIVE MILLION DOLLARS
FOR THE CALENDAR YEAR. AT SUCH TIME AS ALL VALID CLAIMS MADE
PURSUANT TO SUBSECTION (4) OF THIS SECTION HAVE BEEN SATISFIED, THE
FULL AMOUNT NOT USED FOR CREDITS UP TO FORTY FIVE MILLION DOLLARS
SHALL BE ELIGIBLE FOR USE FOR NEW CONSERVATION EASEMENTS.

(d) ANY CLAIMS FOR A TAX CREDIT MADE PURSUANT TO THIS
SECTION THAT EXCEED THE AMOUNT ALLOWED FOR A SPECIFIED
CALENDAR YEAR SHALL BE PLACED ON A WAIT LIST IN THE ORDER
SUBMITTED AND A CERTIFICATE SHALL BE ISSUED FOR THE USE OF THE
CREDIT IN THE NEXT YEAR FOR WHICH THE DIVISION HAS NOT ISSUED
CREDIT CERTIFICATES IN EXCESS OF THE AMOUNTS ALLOWED PURSUANT
TO THIS SECTION.

(7) IF A PERSON ELIGIBLE TO RECEIVE A CREDIT PURSUANT TO THIS
SECTION IS NO LONGER LIVING, THE CREDIT MAY BE CLAIMED BY THE
APPROPRIATE ESTATE, HEIR, SUCCESSOR, OR ASSIGN.

(8) IF MORE THAN ONE PERSON OR ENTITY HAS A CLAIM TO A
CREDIT RELATED TO A PARTICULAR DONATION OF A CONSERVATION
EASEMENT, CLAIMANTS MAY WORK TOGETHER TO COORDINATE THE
APPROPRIATE DISTRIBUTION OF CREDITS.
(9) If a taxpayer transferred all or a portion of a tax credit for a conservation easement donation that qualifies for a credit pursuant to this section to another taxpayer as transferhee pursuant to section 39-22-522(7), then the transferor may claim a credit pursuant to this section. The transferor and any transferees may submit claims for credits pursuant to this section individually or mutually as a group if they agree upon the terms for dividing the credit. Applicants must attempt to notify any other taxpayer or transferhee that was a party to the transfer that an application is being made to claim a credit pursuant to this section. Any party who receives such notice has ninety days from receipt of the notice to file an objection to the claim for the credit. An objection shall be submitted in the form of an application for a credit and shall set forth the proposed alternative amount or distribution of the credit. In no event shall the amount of compensation provided to a transferee exceed the amount paid by the transferee for the credit, less any amount that was reinstated, reimbursed, or otherwise allowed to the transferee as a result of a settlement, litigation, or other means that provided compensation to the transferee unless otherwise mutually agreed upon by the parties.

(10) If an objection to a claim for a credit is filed pursuant to subsection (9) of this section, the Division of Conservation shall refer the matter to the ombudsman designated pursuant to section 12-15-108 for final resolution of any disputes related to amounts to be allowed pursuant to this section.

(11) Credits allowed pursuant to this section are not refundable, but may be transferred or carried forward in the same manner as credits allowed pursuant to section 39-22-522(4)(a) for a period of time beginning at the time of the issuance of the credit."

Page 11, line 21, strike "compensation" and substitute "credit".

Page 11, strike line 24 and substitute "TAX CREDITS IF AN OBJECTION TO A CLAIM FOR A TAX CREDIT HAS".

Page 11, line 26, strike "(8)." and substitute "(10).".

Page 12, line 2, strike "COMPENSATION" and substitute "A TAX CREDIT".
Page 12, line 8, strike "PROVIDE THE COMPENSATION" and substitute "ALLOW THE TAX CREDIT TO BE CLAIMED".

Page 18, after line 11 insert:

"(12) THE DIVISION OF CONSERVATION SHALL COORDINATE WITH THE WORKING GROUP CONVENED IN ACCORDANCE WITH SECTION 12-15-106 (14.5) AND ADOPT RULES TO ESTABLISH CRITERIA FOR DETERMINING WHETHER AN ENTITY HOLDING A CONSERVATION EASEMENT IS NONFUNCTIONING AND ANY OTHER CRITERIA NECESSARY TO DETERMINE WHETHER A CONSERVATION EASEMENT IS ABANDONED.".

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