

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0107.01 Gregg Fraser x4325

HOUSE BILL 17-1066

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HOUSE SPONSORSHIP

Becker J. and Lewis,

SENATE SPONSORSHIP

(None),

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House Committees

State, Veterans, & Military Affairs

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING A PERPETUAL CONSERVATION EASEMENT IN GROSS  
102 GRANTED FOR PROPERTY IN COLORADO FOR WHICH A TAX  
103 CREDIT CLAIM HAS BEEN REJECTED.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

A state income tax credit is allowed for a portion of the value of a perpetual conservation easement that is granted by a taxpayer on real property located in Colorado. In the past, when the department of revenue disputed the validity or amount of one of these credits, a taxpayer could attempt to resolve the dispute using an administrative appeal process

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

within the department. If the taxpayer was not satisfied with the final determination resulting from the administrative process, the taxpayer could appeal the final determination to a district court.

Starting in 2011, after a backlog of disputed conservation easement claims developed in the administrative process, the law was changed to allow taxpayers to elect to appeal directly to a district court and avoid the administrative appeal process. Unlike taxpayers who stayed in the administrative process, taxpayers who elected to appeal directly to district court were not required to provide a surety bond or other deposit in connection with their appeals, and additional interest and penalties ceased to accrue during their appeals. The bill provides that no surety bond or other deposit is required and no interest and penalties are to accrue for both the administrative appeal process and the district court appeal process.

The law currently allows a conservation easement to be terminated in the same manner as any other easement. The bill specifies that, in addition, a court may exercise its equitable jurisdiction to terminate a conservation easement for which a tax credit has been claimed in certain circumstances if the claim has been rejected.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** In Colorado Revised Statutes, 39-22-522.5, **amend**  
3 (2) introductory portion, (2)(c), (2)(d), and (6) as follows:

4           **39-22-522.5. Conservation easement tax credits - dispute**  
5 **resolution - legislative declaration.** (2) For any credit claimed pursuant  
6 to section 39-22-522, for which a notice of deficiency, notice of  
7 disallowance, or notice of rejection of refund claim has been mailed by  
8 the department of revenue as of May 1, 2011, but for which a final  
9 determination has not been issued before May 19, 2011, the tax matters  
10 representative may elect to waive the administrative process provided by  
11 section 39-21-103 and appeal the notice of deficiency, disallowance, or  
12 rejection of refund claim directly to a district court in accordance with the  
13 following provisions, which also apply to an appeal filed in accordance  
14 with subsection (6) of this section; except that ~~paragraphs (a), (c), and (d)~~

1 ~~of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION shall not apply  
2 to such an appeal:

3 (c) If a tax matters representative elects to waive the  
4 administrative process and appeal directly to a district court pursuant to  
5 this subsection (2), no surety bond or other deposit shall be required in  
6 connection with the appeal. ~~This paragraph (c) shall not apply to tax~~  
7 ~~matters representatives who do not elect to waive the administrative~~  
8 ~~process.~~

9 (d) If the tax matters representative elects to waive the  
10 administrative process and appeal directly to a district court pursuant to  
11 this subsection (2), additional interest and penalties shall cease to accrue  
12 while the matter is on appeal before the district court, beginning with the  
13 date the notice of appeal is received by the district court. ~~This paragraph~~  
14 ~~(d) shall not apply to tax matters representatives who do not elect to~~  
15 ~~waive the administrative process.~~

16 (6) For any tax matters representative for which the executive  
17 director issued a final determination on or after May 1, 2011, the tax  
18 matters representative may appeal the final determination of the executive  
19 director pursuant to the provisions of section 39-21-105. NO SURETY  
20 BOND OR OTHER DEPOSIT SHALL BE REQUIRED IN CONNECTION WITH  
21 EITHER AN ADMINISTRATIVE REVIEW OR A JUDICIAL APPEAL OF A CLAIM OF  
22 A TAX CREDIT. ADDITIONAL INTEREST AND PENALTIES SHALL NOT ACCRUE  
23 PRIOR TO THE TIME THE EXECUTIVE DIRECTOR ISSUES A FINAL  
24 DETERMINATION OR WHILE THE MATTER IS ON APPEAL. The procedure  
25 governing such appeal shall be in accordance with the provisions of  
26 subsection (2) of this section; except that ~~paragraphs (a), (c), and (d) of~~  
27 ~~said subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION shall not apply. If

1 a tax matters representative fails to file a timely appeal pursuant to this  
2 subsection (6), any person who has claimed a credit or who may be  
3 eligible to claim a tax credit in relation to the tax matters representative's  
4 donation may petition the department to change the tax matters  
5 representative's designation within ten days after the final date for filing  
6 an appeal. The executive director shall promulgate rules on or before  
7 September 1, 2011, specifying the procedures for a change to the tax  
8 matters representative's designation when the executive director  
9 determines that the tax matters representative is unavailable or unwilling  
10 to act as the tax matters representative. If the department of revenue  
11 grants the petition, the new tax matters representative may file an appeal  
12 pursuant to the provisions of this subsection (6) within thirty days of the  
13 department's order regarding the petition.

14 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-30.5-107  
15 as follows:

16 **38-30.5-107. Release - termination.** (1) Conservation easements  
17 in gross may, in whole or in part, be released, terminated, extinguished,  
18 or abandoned by merger with the underlying fee interest in the servient  
19 land or water rights or in any other manner in which easements may be  
20 lawfully terminated, released, extinguished, or abandoned.

21 (2) IN ADDITION TO THE METHODS SET FORTH IN SUBSECTION (1)  
22 OF THIS SECTION, A COURT EXERCISING ITS EQUITABLE JURISDICTION MAY  
23 TERMINATE A CONSERVATION EASEMENT IN GROSS CREATED FOR THE  
24 PURPOSE OF CLAIMING A STATE INCOME TAX CREDIT PURSUANT TO  
25 SECTION 39-22-522 IF:

- 26 (a) THE STATE HAS REJECTED THE CLAIM FOR THE CREDIT;  
27 (b) THE EASEMENT HAS BEEN APPRAISED TO HAVE NO VALUE OR

1 NO MORE THAN A NOMINAL DOLLAR VALUE; AND

2 (c) THE HOLDER OF THE EASEMENT EITHER PROVIDED NO  
3 COMPENSATION FOR THE EASEMENT OR HAS BEEN REIMBURSED IN WHOLE  
4 FOR ANY COMPENSATION PROVIDED.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,  
6 determines, and declares that this act is necessary for the immediate  
7 preservation of the public peace, health, and safety.