

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0661.01 Gregg Fraser x4325

HOUSE BILL 18-1194

HOUSE SPONSORSHIP

Lewis, Beckman, Catlin, Covarrubias, Everett, Humphrey, Leonard, Neville P., Reyher, Saine, Van Winkle

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House Committees

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Senate Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO PROTECT THE INTERESTS OF LANDOWNERS

102 WHO CREATE CONSERVATION EASEMENTS ON THEIR PROPERTY.

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 conservation easement is an agreement in which a landowner agrees to limit the use of his or her land in perpetuity in order to protect one or more specified conservation purposes. The easement is held by a third party (holder), which monitors the use of the land and ensures that the terms of the agreement are upheld.

Current law allows a taxpayer to claim a state income tax credit for

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

a portion of the value of a conservation easement that is granted in perpetuity. A landowner must submit an application for the tax credit along with a fee, an appraisal setting forth the value of the easement, and other materials to the division of real estate in the department of regulatory agencies (division). The division reviews the application and, if the easement and its appraised value meet the applicable statutory requirements, grants the application to claim the tax credit.

Section 1 of the bill freezes the amount of the application fee to the amount charged as of January 1, 2018. Fees are not allowed to be reduced for multiple applicants. If the director of the division believes that the appraisal submitted by the landowner is not credible, the bill allows the landowner to submit 2 additional appraisals and the director must accept the average amount of the 3 appraisals as the value of the easement. The director is required to consider the appraisals as submitted and not attempt to influence the substance of the appraisals.

Section 2 requires the governing body of a local government in which a conservation easement is located to hold a public hearing before a conservation easement is created, modified, or transferred. Public notice is required prior to the hearing and the grantor of the easement, the holder of the easement, and the public are allowed to testify.

Section 3 limits the terms of conservation easements to 20 years. The instrument creating an easement is required to clearly set forth the conservation purposes of the easement and require the holder to provide a monitoring and compliance report to the landowner not less than annually. Prior to creating an easement a landowner is required to execute a disclosure form acknowledging certain specified consequences and risks associated with creating the easement.

Prior to incurring any costs associated with creating an easement, a landowner must sign a good faith estimate of the costs associated with the creation of the easement. The landowner cannot be held liable subsequently for any costs that exceed amounts in the estimate.

A holder of a conservation easement is prohibited from permitting or benefiting financially from any type of development on the property subject to the conservation easement including the development of wind, solar, oil, gas, or mineral resources on the property.

Section 4 specifies that any instrument modifying the terms of an easement must be recorded in the public real property records.

Section 5 allows a landowner to transfer or extinguish a conservation easement if the holder becomes insolvent, dissolved, or delinquent or otherwise fails to monitor and protect the conservation purposes of the easement.

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

1 **SECTION 1.** In Colorado Revised Statutes, 12-61-727, **amend**
2 (6) and (9) as follows:

3 **12-61-727. Conservation easement tax credit certificate**
4 **application process - definitions - rules.** (6) A landowner submitting an
5 application for a tax credit certificate pursuant to this section or an
6 application for an optional preliminary advisory opinion pursuant to
7 subsection (14) of this section shall pay the division a fee as prescribed
8 by the division. The application fee for an optional preliminary advisory
9 opinion may be a different dollar amount than the application fee for a tax
10 credit certificate. The fees must ~~cover~~ NOT EXCEED the costs of the
11 division and the commission in administering the requirements of this
12 section. IN NO EVENT SHALL THE AMOUNT OF THE FEE CHARGED ON OR
13 AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, EXCEED THE
14 AMOUNT CHARGED ON JANUARY 1, 2018. THE FEE SHALL NOT BE REDUCED
15 FOR LANDOWNERS SUBMITTING MULTIPLE APPLICATIONS. The state
16 treasurer shall credit the fees collected pursuant to this subsection (6) to
17 the division of real estate cash fund created in section 12-61-111.5. On or
18 before January 1, 2014, and on or before each January 1 thereafter, the
19 division shall certify to the general assembly the amount of any fees
20 prescribed by the division pursuant to this subsection (6).

21 (9) If the director reasonably believes that any appraisal submitted
22 in accordance with this section is not credible, the director, after
23 consultation with the commission, may require the landowner, at the
24 landowner's expense, to obtain either a revised appraisal or ~~a second~~
25 ~~appraisal from an appraiser who meets~~ TWO ADDITIONAL APPRAISALS
26 FROM APPRAISERS WHO MEET the requirements of this part 7 and ~~is~~ ARE
27 in good standing with the board before making a final determination

1 regarding the application. If the landowner elects to obtain the two
2 additional appraisals, the director shall accept as credible an
3 amount that is equal to the average of the three appraisals
4 submitted. In evaluating appraisals, the director shall consider
5 the appraisals as submitted by the appraisers and shall not
6 suggest amounts that would be considered credible or attempt
7 to influence the methodology or conclusions reached by an
8 appraiser.

9 **SECTION 2.** In Colorado Revised Statutes, add 29-20-110 as
10 follows:

11 **29-20-110. Conservation easements - public hearing.** (1) ON
12 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, PRIOR TO CREATING,
13 MODIFYING THE TERMS OF, OR TRANSFERRING A CONSERVATION
14 EASEMENT IN GROSS PURSUANT TO ARTICLE 30.5 OF TITLE 38, THE
15 GOVERNING BODY OF A LOCAL GOVERNMENT WITHIN WHICH THE
16 PROPERTY IS LOCATED SHALL HOLD A PUBLIC HEARING REGARDING THE
17 CREATION, MODIFICATION, OR TRANSFER OF THE EASEMENT AS PROVIDED
18 IN THIS SECTION. IF THE PROPERTY IS LOCATED ENTIRELY WITHIN THE
19 UNINCORPORATED PORTION OF ONE OR MORE COUNTIES, THE BOARD OF
20 COUNTY COMMISSIONERS OF THE COUNTY WITH THE GREATEST PORTION
21 OF THE PROPERTY SHALL HOLD THE HEARING. IF THE PROPERTY IS
22 LOCATED IN WHOLE OR IN PART WITHIN ONE OR MORE MUNICIPALITIES, THE
23 GOVERNING BODY OF THE MUNICIPALITY WITH THE GREATEST PORTION OF
24 THE PROPERTY SHALL HOLD THE HEARING.

25 (2) AT LEAST FOURTEEN DAYS' NOTICE OF THE TIME AND PLACE OF
26 A HEARING REQUIRED BY THIS SECTION SHALL BE GIVEN BY AT LEAST ONE
27 PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE

1 LOCAL GOVERNMENT. THE NOTICE SHALL DISCLOSE THE LOCATION,
2 ACREAGE, NAME OF THE GRANTOR, NAME OF THE HOLDER, AND THE
3 CONSERVATION PURPOSES OF THE CONSERVATION EASEMENT, AND SPECIFY
4 THE AMOUNT OF ANY PUBLIC MONEY USED OR TAX CREDITS THAT WILL BE
5 CLAIMED IN CONNECTION WITH THE EASEMENT. THE GRANTOR AND
6 HOLDER OF THE CONSERVATION EASEMENT SHALL BE ALLOWED TO
7 PRESENT INFORMATION ABOUT THE CONSERVATION EASEMENT AND PUBLIC
8 TESTIMONY SHALL BE ALLOWED AT THE HEARING. THE PURPOSE OF THE
9 HEARING IS TO PROVIDE PUBLIC NOTICE REGARDING THE EASEMENT, AND
10 THE GOVERNING BODY OF THE LOCAL GOVERNMENT NEED NOT TAKE ANY
11 SPECIFIC ACTION WITH RESPECT TO THE PROPOSED CREATION,
12 MODIFICATION, OR TRANSFER. IF A LOCAL GOVERNMENT HAS AN EXISTING
13 APPROVAL PROCESS FOR CONSERVATION EASEMENTS, THE HEARING
14 REQUIRED BY THIS SECTION MAY BE CONDUCTED IN CONJUNCTION WITH
15 ANY OTHER HEARING REQUIRED BY PROCESS AS LONG AS THE HEARING
16 OTHERWISE MEETS THE REQUIREMENTS OF THIS SECTION.

17 **SECTION 3.** In Colorado Revised Statutes, 38-30.5-103, **amend**
18 (3) and (4); and **add** (6), (7), and (8) as follows:

19 **38-30.5-103. Creation of conservation easements in gross.**

20 (3) A conservation easement in gross shall be perpetual unless otherwise
21 stated in the instrument creating it; EXCEPT THAT, ON AND AFTER
22 JANUARY 1, 2019, A CONSERVATION EASEMENT IN GROSS SHALL NOT HAVE
23 A TERM IN EXCESS OF TWENTY YEARS.

24 (4) The particular characteristics of a conservation easement in
25 gross shall be those granted or specified in the instrument creating the
26 easement. THE INSTRUMENT SHALL CLEARLY SET FORTH ANY
27 CONSERVATION PURPOSES OF THE EASEMENT AND REQUIRE THE HOLDER

1 OF THE EASEMENT TO REPORT NOT LESS THAN ANNUALLY TO THE
2 LANDOWNER REGARDING THE MONITORING EFFORTS OF THE HOLDER AND
3 ANY ISSUES RELATING TO COMPLIANCE WITH THE TERMS OF THE
4 EASEMENT.

5 (6) PRIOR TO CREATING A CONSERVATION EASEMENT IN GROSS,
6 THE OWNER OF THE PROPERTY WHO IS GRANTING THE EASEMENT SHALL
7 EXECUTE A DISCLOSURE FORM SPECIFICALLY ACKNOWLEDGING THE
8 CONSEQUENCES AND RISKS OF CREATING THE EASEMENT. THE DISCLOSURE
9 FORM SHALL BE PREPARED BY THE PROPOSED HOLDER OF THE EASEMENT
10 AND SHALL INCLUDE THE FOLLOWING WARNINGS IN BOLD WITH EACH
11 INITIALED INDIVIDUALLY BY THE GRANTOR OF THE EASEMENT:

12 (a) APPROXIMATELY FOURTEEN TO EIGHTEEN PERCENT OF ALL
13 CONSERVATION EASEMENTS CREATED IN COLORADO HAVE BEEN
14 DISALLOWED;

15 (b) THE APPRAISED VALUE OF A CONSERVATION EASEMENT
16 ULTIMATELY ACCEPTED AS VALID IS ALMOST ALWAYS LOWER THAN THE
17 AMOUNT INCLUDED IN AN INITIAL APPRAISAL PROVIDED TO A LANDOWNER;

18 (c) THE CREATION OF THE CONSERVATION EASEMENT REDUCES THE
19 VALUE OF THE PROPERTY INTEREST RETAINED BY THE PROPERTY OWNER;

20 (d) THE CREATION OF THE CONSERVATION EASEMENT MAKES IT
21 MORE DIFFICULT TO OBTAIN A LOAN OR OTHER FINANCING SECURED BY
22 THE PROPERTY SUBJECT TO THE EASEMENT;

23 (e) THE CREATION OF THE CONSERVATION EASEMENT IS GIVING UP
24 AN INTEREST IN THE OWNER'S PROPERTY;

25 (f) THE CONSERVATION EASEMENT IS BINDING ON FUTURE OWNERS
26 OF THE LAND;

27 (g) THE PROPERTY OWNER CAN BE HELD LIABLE TO REPAY THE

1 AMOUNT OF ANY TAX CREDIT CLAIMED IMPROPERLY FOR THE
2 CONSERVATION EASEMENT FOR A PERIOD OF FOUR YEARS AFTER THE
3 OWNER OR A TRANSFEREE OF THE CREDIT FIRST CLAIMS THE CREDIT, EVEN
4 IF THE OWNER HAS NO KNOWLEDGE OF WHEN THE TRANSFEREE FIRST
5 CLAIMS THE CREDIT;

6 (h) THE LANDOWNER CAN BE HELD LIABLE FOR MONEY DAMAGES
7 FOR INJURIES TO THE INTERESTS OF THE HOLDER OF THE CONSERVATION
8 EASEMENT;

9 (i) THE CONSERVATION EASEMENT COULD POTENTIALLY BE
10 TRANSFERRED BY THE HOLDER OF THE EASEMENT TO ANOTHER HOLDER;

11 (j) IF THE HOLDER OF THE CONSERVATION EASEMENT PURCHASES
12 THE UNDERLYING PROPERTY INTEREST IN THE PROPERTY, THE HOLDER HAS
13 THE RIGHT TO RELEASE, TERMINATE, EXTINGUISH, OR ABANDON THE
14 EASEMENT BY MERGER; AND

15 (k) IT IS HIGHLY UNLIKELY THAT A LANDOWNER CAN HAVE A
16 CONSERVATION EASEMENT RELEASED, TERMINATED, OR EXTINGUISHED
17 FROM HIS OR HER PROPERTY.

18 (7) PRIOR TO INCURRING ANY COSTS ASSOCIATED WITH CREATING
19 A CONSERVATION EASEMENT IN GROSS, THE OWNER OF THE PROPERTY WHO
20 IS GRANTING THE EASEMENT SHALL SIGN A GOOD FAITH ESTIMATE,
21 PREPARED BY THE PROPOSED HOLDER OF THE EASEMENT, OF THE TOTAL
22 AMOUNT OF COSTS TO THE OWNER THAT ARE ASSOCIATED WITH THE
23 CREATION OF THE EASEMENT. THESE COSTS INCLUDE ANY FILING FEES,
24 RECORDING FEES, CERTIFICATION FEES, REPORTING FEES, ENVIRONMENTAL
25 STUDY COSTS, AND ANY OTHER FEES, COSTS, OR OTHER CHARGES PAID TO
26 AN ATTORNEY, REAL ESTATE AGENT, APPRAISER, TAX CREDIT BROKER,
27 GOVERNMENTAL ENTITY, AND ANY OTHER INDIVIDUAL OR ENTITY IN

1 CONNECTION WITH CREATING THE EASEMENT OR CLAIMING A TAX CREDIT
2 FOR THE DONATION OF THE EASEMENT. THE OWNER OF THE PROPERTY
3 SHALL NOT BE LIABLE FOR ANY COST THAT EXCEEDS THE AMOUNT
4 SPECIFICALLY INCLUDED FOR THAT COST IN THE GOOD FAITH ESTIMATE.

5 (8) FOR ANY CONSERVATION EASEMENT CREATED ON OR AFTER
6 THE EFFECTIVE DATE OF THIS SUBSECTION (8), THE HOLDER OF A
7 CONSERVATION EASEMENT SHALL NOT HAVE THE AUTHORITY TO PERMIT
8 ANY KIND OF DEVELOPMENT UPON NOR BENEFIT FINANCIALLY FROM ANY
9 KIND OF DEVELOPMENT ON THE PROPERTY, INCLUDING THE DEVELOPMENT
10 OF WIND, SOLAR, OIL, GAS, OR MINERAL RESOURCES.

11 **SECTION 4.** In Colorado Revised Statutes, **amend** 38-30.5-106
12 as follows:

13 **38-30.5-106. Recordation upon public records.** Instruments
14 creating, MODIFYING THE TERMS OF, assigning, or otherwise transferring
15 conservation easements in gross must be recorded upon the public records
16 affecting the ownership of real property in order to be valid and shall be
17 subject in all respects to the laws relating to such recordation.

18 **SECTION 5.** In Colorado Revised Statutes, **amend** 38-30.5-107
19 as follows:

20 **38-30.5-107. Release - termination.** Conservation easements in
21 gross may, in whole or in part, be released, terminated, extinguished, or
22 abandoned by merger with the underlying fee interest in the servient land
23 or water rights or in any other manner in which easements may be
24 lawfully terminated, released, extinguished, or abandoned. IF A
25 CONSERVATION EASEMENT IS ORPHANED OR NEGLECTED, THE LANDOWNER
26 MAY ELECT TO TRANSFER THE EASEMENT TO ANOTHER HOLDER OR
27 EXTINGUISH THE EASEMENT.

1 **SECTION 6.** In Colorado Revised Statutes, 39-22-522, **amend**
2 (2)(b) as follows:

3 **39-22-522. Credit against tax - conservation easements.**

4 (2) (b) For income tax years commencing on or after January 1, 2014,
5 and, with regard to any credit over the amount of one hundred thousand
6 dollars, for income tax years commencing on or after January 1, 2003,
7 subject to ~~the provisions of~~ subsections (4) and (6) of this section, there
8 shall be allowed a credit with respect to the income taxes imposed by this
9 ~~article~~ ARTICLE 22 to each taxpayer who donates during the taxable year
10 all or part of the value of a perpetual conservation easement in gross
11 created pursuant to article 30.5 of title 38 ~~C.R.S.~~, upon real property the
12 taxpayer owns to a governmental entity or a charitable organization
13 described in section 38-30.5-104 (2). ~~C.R.S.~~ The credit shall only be
14 allowed for a donation that meets the requirements of section 170 of the
15 federal "Internal Revenue Code of 1986", as amended, and any federal
16 regulations promulgated in accordance with such section. The amount of
17 the credit shall not include the value of any portion of an easement on real
18 property located in another state. ON AND AFTER JANUARY 1, 2019, NO
19 EASEMENT IS PERPETUAL AND MUST NOT EXCEED A TERM OF TWENTY
20 YEARS AS LONG AS THE EASEMENT OTHERWISE MEETS THE REQUIREMENTS
21 OF SECTION 170 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
22 AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN
23 ACCORDANCE WITH SUCH SECTION.

24 **SECTION 7. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2018 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.