

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 18-0394.01 Gregg Fraser x4325

HOUSE BILL 18-1291

HOUSE SPONSORSHIP

Winter and Thurlow,

SENATE SPONSORSHIP

Sonnenberg,

House Committees

Transportation & Energy
Appropriations

Senate Committees

State, Veterans, & Military Affairs
Finance
Appropriations

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE CONSERVATION EASEMENT
102 OVERSIGHT COMMISSION, AND, IN CONNECTION THEREWITH,
103 IMPLEMENTING THE RECOMMENDATIONS OF THE 2017 SUNSET
104 REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.

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/>.)

Sunset Process - House Transportation and Energy Committee. The bill implements the recommendations of the department of regulatory agencies in its sunset review of the conservation easement

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.

SENATE
Amended 2nd Reading
May 8, 2018

HOUSE
3rd Reading Unamended
April 27, 2018

HOUSE
Amended 2nd Reading
April 24, 2018

oversight commission by extending the repeal date of the commission for 7 years until 2025 (*Recommendation 2*). The bill modifies the composition of the commission and reduces the number of members on the commission from in 7 to 5 members in accordance with *Recommendation 3*; except that it retains the current member representing the great outdoors Colorado program and adds one member of the general public rather than two.

The commission is currently a **type 2** entity, which means its powers, duties, and functions belong to the executive director of the department of regulatory agencies. The bill changes the commission to a **type 1** entity, allowing the commission to exercise its powers, duties, and functions independently.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 11 to article
3 61 of title 12 as follows:

4 PART 11

5 CONSERVATION EASEMENTS

6 **12-61-1101. Legislative declaration. (1)** THE GENERAL
7 ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

8 (a) COLORADO'S CONSERVATION EASEMENT PROGRAM IS AN
9 IMPORTANT PRESERVATION TOOL USED TO BALANCE ECONOMIC NEEDS
10 WITH NATURAL RESOURCES SUCH AS LAND AND WATER PRESERVATION.
11 COLORADO'S CONSERVATION EASEMENT TAX CREDIT AND THE FEDERAL
12 TAX DEDUCTION HAVE ALLOWED MANY FARMERS AND RANCHERS THE
13 OPPORTUNITY TO DONATE THEIR DEVELOPMENT RIGHTS TO PRESERVE A
14 LEGACY OF OPEN SPACES IN COLORADO FOR WILDLIFE, AGRICULTURE, AND
15 RANCHING.

16 (b) CITIZENS THROUGHOUT COLORADO BELIEVE GOOD, SOUND
17 CONSERVATION PRACTICES ARE IMPORTANT TO COLORADO'S QUALITY OF
18 LIFE, AGRICULTURE, AND NATURAL HERITAGE;

19 (c) COLORADO'S CONSERVATION EASEMENT TAX CREDIT PROGRAM

1 WAS DESIGNED TO GIVE LANDOWNERS AN INCENTIVE TO CONSERVE AND
2 PRESERVE THEIR LAND IN A PREDOMINANTLY NATURAL, SCENIC, OR OPEN
3 CONDITION;

4 (d) CREATING A DIVISION OF CONSERVATION WITHIN THE
5 DEPARTMENT OF REGULATORY AGENCIES WILL KEEP A FIREWALL BETWEEN
6 PROFESSIONAL EVALUATION AND PROFESSIONAL DISCIPLINE, WHILE
7 CREATING A DIVISION TO ENSURE THIS PROGRAM ALLOWS LANDOWNERS
8 TO EXERCISE THEIR PRIVATE PROPERTY RIGHTS WHILE PROTECTING
9 TAXPAYERS FROM THE FRAUD AND ABUSE THAT EXISTED IN THE PROGRAM
10 PRIOR TO 2009;

11 (e) IN RECOGNITION OF THE FRAUD AND ABUSE THAT HAS EXISTED
12 IN THE PROGRAM, IT IS APPROPRIATE TO ALLOW AN EASEMENT TO BE
13 EXTINGUISHED IF THE VALUE OF THE EASEMENT IS REDUCED OR
14 ELIMINATED BY THE STATE IN CONNECTION WITH CLAIMING A TAX CREDIT
15 FOR THE EASEMENT AND THE CREDIT IS DISALLOWED OR ANY AMOUNT
16 ALLOWED IS NOT CLAIMED OR IS REPAID BY A LANDOWNER;

17 (f) ESTABLISHING THE DIVISION OF CONSERVATION TO ADMINISTER
18 THE CONSERVATION EASEMENT TAX CREDIT PROGRAM WILL:

19 (I) ALLOW THE DIVISION TO CONTINUE TO CERTIFY CONSERVATION
20 EASEMENT HOLDERS TO IDENTIFY FRAUDULENT OR UNQUALIFIED
21 ORGANIZATIONS AND PREVENT THEM FROM HOLDING CONSERVATION
22 EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED IN THE STATE;

23 (II) ALLOW THE CONSERVATION EASEMENT OVERSIGHT
24 COMMISSION TO ADVISE THE DIVISION OF CONSERVATION AND THE
25 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR
26 WHICH A TAX CREDIT IS CLAIMED AND TO REVIEW APPLICATIONS FOR
27 CONSERVATION EASEMENT HOLDER CERTIFICATION; AND

1 (III) ENSURE THAT THE DIVISION OF CONSERVATION AND THE
2 DEPARTMENT OF REVENUE ARE SHARING RELEVANT INFORMATION
3 CONCERNING CONSERVATION EASEMENT APPRAISALS IN ORDER TO ENSURE
4 COMPLIANCE WITH ACCEPTED APPRAISAL PRACTICES AND OTHER
5 PROVISIONS OF LAW.

6 **12-61-1102. Division of conservation - director.** (1) THE
7 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES IS
8 AUTHORIZED BY THIS SECTION TO EMPLOY, SUBJECT TO THE PROVISIONS
9 OF THE STATE PERSONNEL SYSTEM LAWS OF THE STATE, A DIRECTOR OF
10 THE DIVISION OF CONSERVATION, REFERRED TO IN THIS PART 11 AS THE
11 "DIVISION", WHO IN TURN SHALL EMPLOY SUCH DEPUTIES, CLERKS, AND
12 ASSISTANTS AS ARE NECESSARY TO DISCHARGE THE DUTIES IMPOSED BY
13 THIS PART 11. THE DIVISION OF CONSERVATION, WHICH IS A DIVISION IN
14 THE DEPARTMENT OF REGULATORY AGENCIES, AND THE DIRECTOR OF THE
15 DIVISION SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND
16 FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF
17 THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.

18 (2) IT IS THE DUTY OF THE DIRECTOR OF THE DIVISION,
19 PERSONALLY OR HIS OR HER DESIGNEE, TO AID IN THE ADMINISTRATION
20 AND ENFORCEMENT OF THIS PART 11 AND TO ADMINISTER, IN
21 CONSULTATION WITH THE CONSERVATION EASEMENT OVERSIGHT
22 COMMISSION, THE CERTIFICATION OF CONSERVATION EASEMENT HOLDERS
23 AND ISSUANCE OF TAX CREDIT CERTIFICATES AS PROVIDED IN THIS PART
24 11.

25 **12-61-1103. Conservation easement oversight commission -**
26 **created - repeal.** (1) THERE IS HEREBY CREATED IN THE DIVISION A
27 CONSERVATION EASEMENT OVERSIGHT COMMISSION. THE COMMISSION

1 SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS
2 UNDER THE DIVISION AS IF TRANSFERRED THERETO BY A TYPE 2 TRANSFER,
3 AS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968",
4 ARTICLE 1 OF TITLE 24. THE COMMISSION CONSISTS OF EIGHT MEMBERS AS
5 FOLLOWS:

6 (a) ONE MEMBER REPRESENTING THE GREAT OUTDOORS
7 COLORADO PROGRAM, APPOINTED BY AND SERVING AS AN ADVISORY,
8 NONVOTING MEMBER AT THE PLEASURE OF THE STATE BOARD OF THE
9 GREAT OUTDOORS COLORADO TRUST FUND ESTABLISHED IN ARTICLE
10 XXVII OF THE STATE CONSTITUTION;

11 (b) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
12 NATURAL RESOURCES, APPOINTED BY AND SERVING AT THE PLEASURE OF
13 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES;

14 (c) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
15 AGRICULTURE, APPOINTED BY AND SERVING AT THE PLEASURE OF THE
16 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE;

17 (d) THREE VOTING MEMBERS APPOINTED BY THE GOVERNOR AS
18 FOLLOWS:

19 (I) TWO VOTING REPRESENTATIVES OF CERTIFIED CONSERVATION
20 EASEMENT HOLDERS; AND

21 (II) A VOTING INDIVIDUAL WHO IS COMPETENT AND QUALIFIED TO
22 ANALYZE THE CONSERVATION PURPOSE OF CONSERVATION EASEMENTS;
23 AND

24 (e) TWO VOTING MEMBERS OF THE GENERAL PUBLIC, ONE
25 APPOINTED BY THE PRESIDENT OF THE SENATE TO SERVE AT THE PLEASURE
26 OF THE PRESIDENT AND ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF
27 REPRESENTATIVES TO SERVE AT THE PLEASURE OF THE SPEAKER.

1 APPOINTMENTS MADE PURSUANT TO THIS SUBSECTION (1)(e) ARE FOR
2 THREE-YEAR TERMS AND NO MEMBER SHALL SERVE MORE THAN TWO
3 CONSECUTIVE TERMS.

4 (2) IN MAKING APPOINTMENTS TO THE COMMISSION, THE
5 GOVERNOR SHALL CONSULT WITH THE THREE MEMBERS OF THE
6 COMMISSION APPOINTED PURSUANT TO SUBSECTIONS (1)(a) THROUGH
7 (1)(c) OF THIS SECTION AND WITH APPROPRIATE ORGANIZATIONS
8 REPRESENTING THE PARTICULAR INTEREST OR AREA OF EXPERTISE THAT
9 THE APPOINTEES IN SUBSECTIONS (1)(d)(I) AND (1)(d)(II) OF THIS SECTION
10 REPRESENT. NOT MORE THAN TWO OF THE GOVERNOR'S APPOINTEES
11 SERVING AT THE SAME TIME SHALL BE FROM THE SAME POLITICAL PARTY.
12 IN MAKING THE INITIAL APPOINTMENTS, THE GOVERNOR SHALL APPOINT
13 ONE MEMBER FOR A TERM OF TWO YEARS. ALL OTHER APPOINTMENTS BY
14 THE GOVERNOR ARE FOR TERMS OF THREE YEARS. NO MEMBER SHALL
15 SERVE MORE THAN TWO CONSECUTIVE TERMS. IN THE EVENT OF A
16 VACANCY BY DEATH, RESIGNATION, REMOVAL, OR OTHERWISE, THE
17 GOVERNOR SHALL APPOINT A MEMBER TO FILL THE UNEXPIRED TERM. THE
18 GOVERNOR MAY REMOVE ANY MEMBER FOR MISCONDUCT, NEGLIGENCE OF
19 DUTY, OR INCOMPETENCE.

20 (3) (a) AT THE REQUEST OF THE DIVISION OR THE DEPARTMENT OF
21 REVENUE, THE COMMISSION SHALL ADVISE THE DIVISION AND THE
22 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR
23 WHICH A STATE INCOME TAX CREDIT IS CLAIMED PURSUANT TO SECTION
24 39-22-522.

25 (b) THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT
26 TAX CREDIT CERTIFICATE APPLICATIONS AND REQUESTS FOR OPTIONAL
27 PRELIMINARY ADVISORY OPINIONS IN ACCORDANCE WITH SECTION

1 12-61-1106.

2 (4) THE COMMISSION SHALL MEET AT LEAST QUARTERLY. THE
3 DIVISION SHALL CONVENE THE MEETINGS OF THE COMMISSION AND
4 PROVIDE STAFF SUPPORT AS REQUESTED BY THE COMMISSION. A MAJORITY
5 OF THE VOTING MEMBERS OF THE COMMISSION CONSTITUTES A QUORUM
6 FOR THE TRANSACTION OF ALL BUSINESS, AND ACTIONS OF THE
7 COMMISSION REQUIRE A VOTE OF A MAJORITY OF THE VOTING MEMBERS
8 PRESENT IN FAVOR OF THE ACTION TAKEN. THE COMMISSION MAY
9 DELEGATE TO THE DIRECTOR OF THE DIVISION THE AUTHORITY TO ACT ON
10 BEHALF OF THE COMMISSION ON OCCASIONS AND IN CIRCUMSTANCES THAT
11 THE COMMISSION DEEMS NECESSARY FOR THE EFFICIENT AND EFFECTIVE
12 ADMINISTRATION AND EXECUTION OF THE COMMISSION'S RESPONSIBILITIES
13 UNDER THIS PART 11.

14 (5) THE COMMISSION SHALL ESTABLISH A CONFLICT-OF-INTEREST
15 POLICY TO ENSURE THAT ANY MEMBER OF THE COMMISSION IS
16 DISQUALIFIED FROM PERFORMING AN ACT THAT CONFLICTS WITH A
17 PRIVATE PECUNIARY INTEREST OF THE MEMBER OR FROM PARTICIPATING
18 IN THE DELIBERATION OR DECISION-MAKING PROCESS FOR CERTIFICATION
19 FOR AN APPLICANT REPRESENTED BY THE MEMBER.

20 (6) THE COMMISSION SHALL ADVISE AND MAKE
21 RECOMMENDATIONS TO THE DIRECTOR OF THE DIVISION REGARDING THE
22 CERTIFICATION OF CONSERVATION EASEMENT HOLDERS IN ACCORDANCE
23 WITH SECTION 12-61-1104.

24 (7) COMMISSION MEMBERS ARE IMMUNE FROM LIABILITY IN
25 ACCORDANCE WITH THE PROVISIONS OF THE "COLORADO GOVERNMENTAL
26 IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

27 (8) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.

1 PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES
2 SHALL REVIEW THE COMMISSION AS PROVIDED IN SECTION 24-34-104.

3 **12-61-1104. Certification of conservation easement holders -**
4 **rules - definition - repeal.** (1) THE DIVISION SHALL, IN CONSULTATION
5 WITH THE COMMISSION CREATED IN SECTION 12-61-1103, ESTABLISH AND
6 ADMINISTER A CERTIFICATION PROGRAM FOR QUALIFIED ORGANIZATIONS
7 UNDER SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF
8 1986", AS AMENDED, THAT HOLD CONSERVATION EASEMENTS FOR WHICH
9 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522. THE
10 PURPOSES OF THE PROGRAM ARE TO:

11 (a) ESTABLISH MINIMUM QUALIFICATIONS FOR CERTIFYING
12 ORGANIZATIONS THAT HOLD CONSERVATION EASEMENTS TO ENCOURAGE
13 PROFESSIONALISM AND STABILITY; AND

14 (b) IDENTIFY FRAUDULENT OR UNQUALIFIED APPLICANTS, AS
15 DETERMINED UNDER THE RULES OF THE DIVISION, TO PREVENT THEM FROM
16 BECOMING CERTIFIED BY THE PROGRAM.

17 (2) THE DIVISION SHALL ESTABLISH AND ACCEPT APPLICATIONS
18 FOR CERTIFICATION. THE DIVISION SHALL CONDUCT A REVIEW OF EACH
19 APPLICATION AND CONSIDER THE RECOMMENDATIONS OF THE COMMISSION
20 BEFORE MAKING A FINAL DETERMINATION TO GRANT OR DENY
21 CERTIFICATION. IN REVIEWING AN APPLICATION AND IN GRANTING
22 CERTIFICATION, THE DIVISION AND THE COMMISSION MAY CONSIDER:

23 (a) THE APPLICANT'S PROCESS FOR REVIEWING, SELECTING, AND
24 APPROVING A POTENTIAL CONSERVATION EASEMENT;

25 (b) THE APPLICANT'S STEWARDSHIP PRACTICES AND CAPACITY,
26 INCLUDING THE ABILITY TO MAINTAIN, MONITOR, AND DEFEND THE
27 PURPOSES OF THE EASEMENT;

1 (c) AN AUDIT OF THE APPLICANT'S FINANCIAL RECORDS;

2 (d) THE APPLICANT'S SYSTEM OF GOVERNANCE AND ETHICS
3 REGARDING CONFLICTS OF INTEREST AND TRANSACTIONS WITH RELATED
4 PARTIES AS DESCRIBED IN SECTION 267 (b) OF THE FEDERAL "INTERNAL
5 REVENUE CODE OF 1986", AS AMENDED, DONORS, BOARD MEMBERS, AND
6 INSIDERS. FOR PURPOSES OF THIS SUBSECTION (2)(d), "INSIDERS" MEANS
7 BOARD AND STAFF MEMBERS, SUBSTANTIAL CONTRIBUTORS, PARTIES
8 RELATED TO THOSE ABOVE, THOSE WHO HAVE AN ABILITY TO INFLUENCE
9 DECISIONS OF THE ORGANIZATION, AND THOSE WITH ACCESS TO
10 INFORMATION NOT AVAILABLE TO THE GENERAL PUBLIC.

11 (e) ANY OTHER INFORMATION DEEMED RELEVANT BY THE DIVISION
12 OR THE COMMISSION; AND

13 (f) THE UNIQUE CIRCUMSTANCES OF THE DIFFERENT ENTITIES TO
14 WHICH THIS CERTIFICATION APPLIES AS SET FORTH IN SUBSECTION (4) OF
15 THIS SECTION.

16 (3) AT THE TIME OF SUBMISSION OF AN APPLICATION, AND EACH
17 YEAR THE ENTITY IS CERTIFIED PURSUANT TO THIS SECTION, THE
18 APPLICANT SHALL PAY THE DIVISION A FEE, AS PRESCRIBED BY THE
19 DIVISION, TO COVER THE COSTS OF THE DIVISION AND THE COMMISSION IN
20 ADMINISTERING THE CERTIFICATION PROGRAM FOR ENTITIES THAT HOLD
21 CONSERVATION EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED
22 PURSUANT TO SECTION 39-22-522. THE DIVISION SHALL HAVE THE
23 AUTHORITY TO ACCEPT AND EXPEND GIFTS, GRANTS, AND DONATIONS FOR
24 THE PURPOSES OF THIS SECTION. THE STATE TREASURER SHALL CREDIT
25 FEES, GIFTS, GRANTS, AND DONATIONS COLLECTED PURSUANT TO THIS
26 SUBSECTION (3) TO THE CONSERVATION CASH FUND CREATED IN SECTION
27 12-61-1107. ON OR BEFORE EACH JANUARY 1, THE DIVISION SHALL

1 CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT OF THE FEE
2 PRESCRIBED BY THE DIVISION PURSUANT TO THIS SUBSECTION (3).

3 (4) THE CERTIFICATION PROGRAM APPLIES TO:

4 (a) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY WITH
5 CONSERVATION VALUES CONSISTING OF RECREATION OR EDUCATION,
6 PROTECTION OF ENVIRONMENTAL SYSTEMS, OR PRESERVATION OF OPEN
7 SPACE;

8 (b) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY FOR
9 HISTORIC PRESERVATION; AND

10 (c) THE STATE AND ANY MUNICIPALITY, COUNTY, CITY AND
11 COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE
12 STATE THAT HOLDS AN EASEMENT.

13 (5) THE CERTIFICATION PROGRAM SHALL CONTAIN A PROVISION
14 ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION OF AN
15 ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
16 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
17 CONSERVATION INDUSTRY.

18 (6) THE COMMISSION SHALL MEET AT LEAST QUARTERLY AND
19 MAKE RECOMMENDATIONS TO THE DIVISION REGARDING THE
20 CERTIFICATION PROGRAM. THE DIVISION IS AUTHORIZED TO DETERMINE
21 WHETHER AN APPLICANT FOR CERTIFICATION POSSESSES THE NECESSARY
22 QUALIFICATIONS FOR CERTIFICATION REQUIRED BY THE RULES ADOPTED
23 BY THE DIVISION. IF THE DIVISION DETERMINES THAT AN APPLICANT DOES
24 NOT POSSESS THE APPLICABLE QUALIFICATIONS FOR CERTIFICATION OR
25 THAT THE APPLICANT HAS VIOLATED ANY PROVISION OF THIS PART 11, THE
26 RULES PROMULGATED BY THE DIVISION, OR ANY DIVISION ORDER, THE
27 DIVISION MAY DENY THE APPLICANT A CERTIFICATION OR DENY THE

1 RENEWAL OF A CERTIFICATION, AND, IN SUCH INSTANCE, THE DIVISION
2 SHALL PROVIDE THE APPLICANT WITH A STATEMENT IN WRITING SETTING
3 FORTH THE BASIS OF THE DIVISION'S DETERMINATION. THE APPLICANT MAY
4 REQUEST A HEARING ON THE DETERMINATION AS PROVIDED IN SECTION
5 24-4-104 (9). THE DIVISION SHALL NOTIFY SUCCESSFUL APPLICANTS IN
6 WRITING. AN APPLICANT THAT IS NOT CERTIFIED MAY REAPPLY FOR
7 CERTIFICATION IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE
8 DIVISION.

9 (7) THE DIVISION SHALL PROMULGATE RULES TO EFFECTUATE THE
10 DUTIES OF THE COMMISSION PURSUANT TO ARTICLE 4 OF TITLE 24. SUCH
11 RULES SHALL SPECIFICALLY ADDRESS THE FOLLOWING:

12 (a) ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION
13 OF AN ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
14 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
15 CONSERVATION INDUSTRY;

16 (b) A STREAMLINED AND LOWER-COST PROCESS FOR
17 CONSERVATION EASEMENT HOLDERS THAT DO NOT INTEND TO ACCEPT
18 NEW DONATIONS OF CONSERVATION EASEMENTS FOR WHICH TAX CREDITS
19 WOULD BE CLAIMED THAT FOCUSES ON THE HOLDER'S STEWARDSHIP
20 CAPABILITIES;

21 (c) THE FEES CHARGED PURSUANT TO SUBSECTION (3) OF THIS
22 SECTION OR SECTION 12-61-1106 (6), SPECIFICALLY ENSURING THAT THE
23 FEES ARE ADEQUATE TO PAY FOR ADMINISTRATIVE COSTS BUT NOT SO
24 HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF CONSERVATION
25 EASEMENTS IN THE STATE; AND

26 (d) THE ADOPTION OF BEST PRACTICES, PROCESSES, AND
27 PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW

1 CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE,
2 PROCESS, OR PROCEDURE DEEMING QUALIFIED CONSERVATION EASEMENT
3 APPRAISALS APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT
4 REVIEWS AS CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT
5 TAX CREDIT.

6 (8) A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE
7 APPLICATION MAY BE SUBMITTED PURSUANT TO SECTION 12-61-1106
8 ONLY IF THE ENTITY HAS BEEN CERTIFIED IN ACCORDANCE WITH THIS
9 SECTION AT THE TIME THE DONATION OF THE EASEMENT IS MADE. THE
10 DIVISION SHALL MAKE INFORMATION AVAILABLE TO THE PUBLIC
11 CONCERNING THE DATE THAT IT COMMENCES ACCEPTING APPLICATIONS
12 FOR ENTITIES THAT HOLD CONSERVATION EASEMENTS AND THE
13 REQUIREMENTS OF THIS SUBSECTION (8).

14 (9) THE DIVISION SHALL MAINTAIN AND UPDATE AN ONLINE LIST,
15 ACCESSIBLE TO THE PUBLIC, OF THE ORGANIZATIONS THAT HAVE APPLIED
16 FOR CERTIFICATION AND WHETHER EACH HAS BEEN CERTIFIED, REJECTED
17 FOR CERTIFICATION, OR HAD ITS CERTIFICATION REVOKED OR SUSPENDED
18 IN ACCORDANCE WITH THIS SECTION.

19 (10) THE DIVISION MAY INVESTIGATE THE ACTIVITIES OF ANY
20 ENTITY THAT IS REQUIRED TO BE CERTIFIED PURSUANT TO THIS SECTION
21 AND TO IMPOSE DISCIPLINE FOR NONCOMPLIANCE, INCLUDING THE
22 SUSPENSION OR REVOCATION OF A CERTIFICATION OR THE IMPOSITION OF
23 FINES. THE DIVISION MAY PROMULGATE RULES IN ACCORDANCE WITH
24 ARTICLE 4 OF TITLE 24 FOR THE CERTIFICATION PROGRAM AND DISCIPLINE
25 AUTHORIZED BY THIS SECTION.

26 (11) THE DIVISION MAY SUBPOENA PERSONS AND DOCUMENTS,
27 WHICH SUBPOENAS MAY BE ENFORCED BY A COURT OF COMPETENT

1 JURISDICTION IF NOT OBEYED, FOR PURPOSES OF CONDUCTING
2 INVESTIGATIONS PURSUANT TO SUBSECTION (10) OF THIS SECTION.

3 (12) NOTHING IN THIS SECTION:

4 (a) AFFECTS ANY TAX CREDIT THAT WAS CLAIMED PURSUANT TO
5 SECTION 39-22-522 BEFORE CERTIFICATION WAS REQUIRED BY THIS
6 SECTION; OR

7 (b) REQUIRES THE CERTIFICATION OF AN ENTITY THAT HOLDS A
8 CONSERVATION EASEMENT FOR WHICH A TAX CREDIT IS NOT CLAIMED
9 PURSUANT TO SECTION 39-22-522.

10 (13) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.
11 PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES
12 SHALL REVIEW THE CERTIFICATION REQUIREMENT AS PROVIDED FOR IN
13 SECTION 24-34-104.

14 **12-61-1105. Conservation easement tax credit certificates -**
15 **rules.** (1) THE DIVISION SHALL RECEIVE TAX CREDIT CERTIFICATE
16 APPLICATIONS FROM AND ISSUE CERTIFICATES TO LANDOWNERS FOR
17 INCOME TAX CREDITS FOR CONSERVATION EASEMENTS DONATED ON OR
18 AFTER JANUARY 1, 2011, IN ACCORDANCE WITH SECTION 39-22-522 (2.5)
19 AND THIS PART 11. NOTHING IN THIS SECTION RESTRICTS OR LIMITS THE
20 AUTHORITY OF THE DIVISION TO ENFORCE THIS PART 11. THE DIVISION
21 MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24
22 FOR THE ISSUANCE OF THE CERTIFICATES. IN PROMULGATING RULES, THE
23 DIVISION MAY INCLUDE PROVISIONS GOVERNING:

24 (a) THE REVIEW OF THE TAX CREDIT CERTIFICATE APPLICATION
25 PURSUANT TO THIS PART 11;

26 (b) THE ADMINISTRATION AND FINANCING OF THE CERTIFICATION
27 PROCESS;

1 (c) THE NOTIFICATION TO THE PUBLIC REGARDING THE AGGREGATE
2 AMOUNT OF TAX CREDIT CERTIFICATES THAT HAVE BEEN ISSUED AND THAT
3 ARE ON THE WAIT LIST PURSUANT TO SECTION 39-25-522 (2.5);

4 (d) THE NOTIFICATION TO THE LANDOWNER, THE ENTITY TO WHICH
5 THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE
6 REGARDING THE TAX CREDIT CERTIFICATES ISSUED; AND

7 (e) ANY OTHER MATTERS RELATED TO ADMINISTERING SECTION
8 39-22-522 (2.5) OR THIS PART 11.

9 (2) THE DIVISION SHALL APPLY THE AMOUNT CLAIMED IN A
10 COMPLETED TAX CREDIT CERTIFICATE APPLICATION AGAINST THE ANNUAL
11 TAX CREDIT LIMIT IN THE ORDER THAT COMPLETED APPLICATIONS ARE
12 RECEIVED. THE DIVISION SHALL APPLY CLAIMED TAX CREDIT AMOUNTS
13 THAT EXCEED THE ANNUAL LIMIT IN ANY YEAR AGAINST THE LIMIT FOR
14 THE NEXT AVAILABLE YEAR AND ISSUE TAX CREDIT CERTIFICATES FOR USE
15 IN THE YEAR IN WHICH THE AMOUNT WAS APPLIED TO THE ANNUAL LIMIT.

16 (3) THE DIVISION SHALL NOT ISSUE TAX CREDIT CERTIFICATES
17 THAT IN AGGREGATE EXCEED THE LIMIT SET FORTH IN SECTION 39-22-522
18 (2.5) DURING A PARTICULAR CALENDAR YEAR.

19 **12-61-1106. Conservation easement tax credit certificate**
20 **application process - definitions - rules. (1) FOR PURPOSES OF THIS**
21 **SECTION:**

22 (a) "APPLICATION" MEANS AN APPLICATION FOR A TAX CREDIT
23 CERTIFICATE SUBMITTED PURSUANT TO SECTION 12-61-1105 OR THIS
24 SECTION.

25 (b) "CONSERVATION PURPOSE" MEANS CONSERVATION PURPOSE AS
26 DEFINED IN SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE
27 OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED

1 IN CONNECTION WITH SUCH SECTION.

2 (c) "CREDIBILITY" MEANS THE RESULTS ARE WORTHY OF BELIEF
3 AND ARE SUPPORTED BY RELEVANT EVIDENCE AND LOGIC TO THE DEGREE
4 NECESSARY FOR THE INTENDED USE.

5 (d) "DEFICIENCY" MEANS NONCOMPLIANCE WITH A REQUIREMENT
6 FOR OBTAINING A TAX CREDIT CERTIFICATE THAT, UNLESS SUCH
7 NONCOMPLIANCE IS REMEDIED, IS GROUNDS FOR THE DENIAL OF A TAX
8 CREDIT CERTIFICATE APPLICATION SUBMITTED PURSUANT TO THIS
9 SECTION.

10 (e) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF
11 CONSERVATION OR HIS OR HER DESIGNEE.

12 (f) "LANDOWNER" MEANS THE RECORD OWNER OF THE SURFACE OF
13 THE LAND AND, IF APPLICABLE, OWNER OF THE WATER OR WATER RIGHTS
14 BENEFICIALLY USED THEREON WHO CREATES A CONSERVATION EASEMENT
15 IN GROSS PURSUANT TO SECTION 38-30.5-104.

16 (g) "TAX CREDIT CERTIFICATE" MEANS THE CONSERVATION
17 EASEMENT TAX CREDIT CERTIFICATE ISSUED PURSUANT TO SECTION
18 12-61-1105 AND THIS SECTION.

19 (2) (a) THE DIVISION SHALL ESTABLISH AND ADMINISTER A
20 PROCESS BY WHICH A LANDOWNER SEEKING TO CLAIM AN INCOME TAX
21 CREDIT FOR ANY CONSERVATION EASEMENT DONATION MADE ON OR AFTER
22 JANUARY 1, 2014, MUST APPLY FOR A TAX CREDIT CERTIFICATE AS
23 REQUIRED BY SECTION 39-22-522 (2.5) AND (2.7). THE PURPOSE OF THE
24 APPLICATION PROCESS IS TO DETERMINE WHETHER A CONSERVATION
25 EASEMENT DONATION FOR WHICH A TAX CREDIT WILL BE CLAIMED:

26 (I) IS A CONTRIBUTION OF A QUALIFIED REAL PROPERTY INTEREST
27 TO A QUALIFIED ORGANIZATION TO BE USED EXCLUSIVELY FOR A

1 CONSERVATION PURPOSE;
2 (II) IS SUBSTANTIATED WITH A QUALIFIED APPRAISAL PREPARED BY
3 A QUALIFIED APPRAISER IN ACCORDANCE WITH THE UNIFORM STANDARDS
4 OF PROFESSIONAL APPRAISAL PRACTICE OR BY COMPLYING WITH THE
5 ADMINISTRATIVE CALCULATION FORMULAS PROMULGATED AND
6 PUBLICIZED BY THE DIVISION; AND
7 (III) COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.
8 (b) THE LANDOWNER HAS THE BURDEN OF PROOF REGARDING
9 COMPLIANCE WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS.
10 (3) FOR THE PURPOSE OF REVIEWING APPLICATIONS AND MAKING
11 DETERMINATIONS REGARDING THE ISSUANCE OF TAX CREDIT
12 CERTIFICATES, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT
13 CERTIFICATE TO BE ISSUED:
14 (a) DIVISION STAFF SHALL REVIEW EACH APPLICATION AND ADVISE
15 AND MAKE RECOMMENDATIONS TO THE DIRECTOR AND THE COMMISSION
16 REGARDING THE APPLICATION;
17 (b) THE DIRECTOR HAS AUTHORITY AND RESPONSIBILITY TO
18 DETERMINE THE CREDIBILITY OF THE APPRAISAL. IN DETERMINING
19 CREDIBILITY, THE DIRECTOR SHALL CONSIDER, AT A MINIMUM,
20 COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:
21 (I) THE APPRAISAL FOR A CONSERVATION EASEMENT DONATION
22 FOR WHICH A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522
23 IS A QUALIFIED APPRAISAL FROM A QUALIFIED APPRAISER, AS DEFINED IN
24 SECTION 170(f) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
25 AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN
26 CONNECTION WITH SUCH SECTION;
27 (II) THE APPRAISAL CONFORMS WITH THE UNIFORM STANDARDS OF

1 PROFESSIONAL APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL
2 STANDARDS BOARD OF THE APPRAISAL FOUNDATION AND ANY OTHER
3 PROVISION OF LAW:

4 (III) THE APPRAISER HOLDS A VALID LICENSE AS A CERTIFIED
5 GENERAL APPRAISER IN ACCORDANCE WITH PART 7 OF THIS TITLE 12; AND

6 (IV) THE APPRAISER MEETS ANY EDUCATION AND EXPERIENCE
7 REQUIREMENTS ESTABLISHED BY THE BOARD OF REAL ESTATE APPRAISERS
8 IN ACCORDANCE WITH SECTION 12-61-704 (1)(k).

9 (c) THE DIRECTOR HAS THE AUTHORITY AND RESPONSIBILITY TO
10 DETERMINE CONFORMANCE WITH THE ADMINISTRATIVE CALCULATION
11 REQUIREMENTS OF SECTION 39-22-522 (3.8).

12 (d) THE DIRECTOR HAS THE AUTHORITY AND RESPONSIBILITY TO
13 DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF SECTION
14 12-61-1104.

15 (e) THE COMMISSION HAS THE AUTHORITY AND RESPONSIBILITY TO
16 DETERMINE WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH
17 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522 IS A
18 QUALIFIED CONSERVATION CONTRIBUTION AS DEFINED IN SECTION 170(h)
19 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
20 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
21 SECTION OR THE ADMINISTRATIVE CALCULATION OPTION AS DESCRIBED IN
22 SECTION 39-22-522 (3.8).

23 (4) THE DEPARTMENT OF REVENUE IS NOT AUTHORIZED TO
24 DISALLOW A CONSERVATION EASEMENT TAX CREDIT BASED ON ANY
25 REQUIREMENTS THAT ARE UNDER THE JURISDICTION OF THE DIVISION, THE
26 DIRECTOR, OR THE COMMISSION PURSUANT TO THIS SECTION.

27 (5) A COMPLETE TAX CREDIT CERTIFICATE APPLICATION MUST BE

1 MADE BY THE LANDOWNER TO THE DIVISION AND MUST INCLUDE:
2 (a) A COPY OF THE FINAL CONSERVATION EASEMENT APPRAISAL OR
3 THE ADMINISTRATIVE CALCULATION;
4 (b) A COPY OF THE RECORDED DEED GRANTING THE
5 CONSERVATION EASEMENT;
6 (c) DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE
7 OF THE EASEMENT;
8 (d) ANY OTHER INFORMATION OR DOCUMENTATION THE DIRECTOR
9 OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL
10 DETERMINATION REGARDING THE APPLICATION; AND
11 (e) THE FEE REQUIRED PURSUANT TO SUBSECTION (6) OF THIS
12 SECTION.
13 (6) A LANDOWNER SUBMITTING AN APPLICATION FOR A TAX
14 CREDIT CERTIFICATE PURSUANT TO THIS SECTION OR AN APPLICATION FOR
15 AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO SUBSECTION
16 (14) OF THIS SECTION SHALL PAY THE DIVISION A FEE AS PRESCRIBED BY
17 THE DIVISION. THE APPLICATION FEE FOR AN OPTIONAL PRELIMINARY
18 ADVISORY OPINION MAY BE A DIFFERENT DOLLAR AMOUNT THAN THE
19 APPLICATION FEE FOR A TAX CREDIT CERTIFICATE. THE FEES MUST BE
20 ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE DIVISION AND
21 THE COMMISSION IN ADMINISTERING THE REQUIREMENTS OF THIS SECTION,
22 BUT NOT SO HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF
23 CONSERVATION EASEMENTS IN THE STATE. THE STATE TREASURER SHALL
24 CREDIT THE FEES COLLECTED PURSUANT TO THIS SUBSECTION (6) TO THE
25 CONSERVATION CASH FUND CREATED IN SECTION 12-61-1107. ON OR
26 BEFORE JANUARY 1, 2014, AND ON OR BEFORE EACH JANUARY 1
27 THEREAFTER, THE DIVISION SHALL CERTIFY TO THE GENERAL ASSEMBLY

1 THE AMOUNT OF ANY FEES PRESCRIBED BY THE DIVISION PURSUANT TO
2 THIS SUBSECTION (6).

3 (7) (a) IF, DURING THE REVIEW OF AN APPLICATION FOR A TAX
4 CREDIT CERTIFICATE, THE DIRECTOR OR THE COMMISSION IDENTIFIES ANY
5 POTENTIAL DEFICIENCIES, THE DIRECTOR OR COMMISSION SHALL
6 DOCUMENT THE POTENTIAL DEFICIENCIES IN A LETTER SENT TO THE
7 LANDOWNER BY FIRST CLASS MAIL. THE DIVISION SHALL SEND LETTERS
8 DOCUMENTING POTENTIAL DEFICIENCIES TO LANDOWNERS IN A TIMELY
9 MANNER SO THAT THE NUMBER OF DAYS BETWEEN THE DATE A
10 COMPLETED APPLICATION IS RECEIVED BY THE DIVISION AND THE MAILING
11 DATE OF THE DIVISION'S LETTER TO THE LANDOWNER DOES NOT EXCEED
12 ONE HUNDRED TWENTY DAYS.

13 (b) THE LANDOWNER HAS SIXTY DAYS AFTER THE MAILING DATE
14 OF THE DIVISION'S LETTER TO ADDRESS THE POTENTIAL DEFICIENCIES
15 IDENTIFIED BY THE DIRECTOR AND THE COMMISSION AND PROVIDE
16 ADDITIONAL INFORMATION OR DOCUMENTATION THAT THE DIRECTOR OR
17 THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL DETERMINATION
18 REGARDING THE APPLICATION.

19 (c) THE DIRECTOR AND THE COMMISSION HAVE NINETY DAYS
20 AFTER THE DATE OF RECEIPT OF ANY ADDITIONAL INFORMATION OR
21 DOCUMENTATION PROVIDED BY THE LANDOWNER TO REVIEW THE
22 INFORMATION AND DOCUMENTATION AND MAKE A FINAL DETERMINATION
23 REGARDING THE APPLICATION.

24 (d) THE DEADLINES PRESCRIBED BY THIS SUBSECTION (7) MAY BE
25 EXTENDED UPON MUTUAL AGREEMENT BETWEEN THE DIRECTOR AND THE
26 COMMISSION AND THE LANDOWNER.

27 (8) THE DIRECTOR OR THE COMMISSION MAY DENY AN

1 APPLICATION IF THE LANDOWNER:

2 (a) HAS NOT DEMONSTRATED TO THE SATISFACTION OF THE
3 DIRECTOR OR THE COMMISSION THAT THE APPLICATION COMPLIES WITH
4 ANY REQUIREMENT OF THIS PART 11;

5 (b) DOES NOT PROVIDE THE INFORMATION AND DOCUMENTATION
6 REQUIRED PURSUANT TO THIS PART 11; OR

7 (c) FAILS TO TIMELY RESPOND TO ANY WRITTEN REQUEST OR
8 NOTICE FROM THE DIVISION, THE DIRECTOR, OR THE COMMISSION.

9 (9) IF THE DIRECTOR REASONABLY BELIEVES THAT ANY APPRAISAL
10 SUBMITTED IN ACCORDANCE WITH THIS SECTION IS NOT CREDIBLE, THE
11 DIRECTOR, AFTER CONSULTATION WITH THE COMMISSION, MAY REQUEST
12 THAT THE LANDOWNER, AT THE LANDOWNER'S EXPENSE, OBTAIN EITHER
13 A SECOND APPRAISAL OR A REVIEW OF THE APPRAISAL SUBMITTED WITH
14 THE APPLICATION FROM AN APPRAISER WHO MEETS THE REQUIREMENTS OF
15 PART 7 OF THIS TITLE 12 AND IS IN GOOD STANDING WITH THE BOARD
16 BEFORE MAKING A FINAL DETERMINATION REGARDING THE APPLICATION.

17 (10) IF THE DIRECTOR AND THE COMMISSION DO NOT IDENTIFY ANY
18 POTENTIAL DEFICIENCIES WITH AN APPLICATION, THE DIRECTOR AND THE
19 COMMISSION SHALL APPROVE THE APPLICATION, AND THE DIVISION SHALL
20 ISSUE A TAX CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT TO
21 SECTION 12-61-1105 IN A TIMELY MANNER SO THAT THE NUMBER OF DAYS
22 BETWEEN THE DATE A COMPLETED APPLICATION IS RECEIVED BY THE
23 DIVISION AND THE DATE THE TAX CREDIT CERTIFICATE IS ISSUED DOES NOT
24 EXCEED ONE HUNDRED TWENTY DAYS. ONCE A TAX CREDIT CERTIFICATE
25 IS ISSUED, THE LANDOWNER MAY CLAIM AND USE THE TAX CREDIT SUBJECT
26 TO ANY OTHER APPLICABLE PROCEDURES AND REQUIREMENTS UNDER
27 TITLE 39.

1 (11) (a) IF ALL POTENTIAL DEFICIENCIES THAT HAVE BEEN
2 IDENTIFIED ARE SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
3 DIRECTOR AND THE COMMISSION, THE DIRECTOR AND THE COMMISSION
4 SHALL APPROVE THE APPLICATION, AND THE DIVISION SHALL ISSUE A TAX
5 CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT TO SECTION
6 12-61-1105. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE LANDOWNER
7 MAY CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY OTHER APPLICABLE
8 PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

9 (b) IF ANY POTENTIAL DEFICIENCIES THAT HAVE BEEN IDENTIFIED
10 ARE NOT SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
11 DIRECTOR AND THE COMMISSION, THE DIVISION SHALL ISSUE A WRITTEN
12 DENIAL OF THE APPLICATION TO THE LANDOWNER DOCUMENTING THOSE
13 DEFICIENCIES THAT WERE THE SPECIFIC BASIS FOR THE DENIAL. THE
14 DIVISION SHALL DATE THE WRITTEN DENIAL AND SEND IT BY FIRST CLASS
15 MAIL TO THE LANDOWNER AT THE ADDRESS PROVIDED BY THE
16 LANDOWNER ON THE APPLICATION. THE DIRECTOR MAY ACT ON BEHALF OF
17 THE COMMISSION FOR PURPOSES OF ADMINISTERING THE PROCESS FOR
18 ISSUING APPROVALS AND DENIALS OF APPLICATIONS AND FOR
19 ADMINISTERING SUBSECTION (12) OF THIS SECTION.

20 (12) (a) THE LANDOWNER MAY APPEAL TO THE DIRECTOR EITHER
21 THE DIRECTOR'S OR THE COMMISSION'S DENIAL OF AN APPLICATION, IN
22 WRITING, WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL. THIS
23 WRITTEN APPEAL CONSTITUTES A REQUEST FOR AN ADMINISTRATIVE
24 HEARING.

25 (b) IF THE LANDOWNER FAILS TO APPEAL THE DENIAL OF AN
26 APPLICATION WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL,
27 THE DENIAL BECOMES FINAL, AND THE DIVISION SHALL NOT ISSUE A TAX

1 CREDIT CERTIFICATE TO THE LANDOWNER.

2 (c) ADMINISTRATIVE HEARINGS MUST BE CONDUCTED IN
3 ACCORDANCE WITH SECTION 24-4-105. AT THE DISCRETION OF THE
4 DIRECTOR, HEARINGS MAY BE CONDUCTED BY AN AUTHORIZED
5 REPRESENTATIVE OF THE DIRECTOR OR THE COMMISSION OR AN
6 ADMINISTRATIVE LAW JUDGE FROM THE OFFICE OF ADMINISTRATIVE
7 COURTS IN THE DEPARTMENT OF PERSONNEL. ALL HEARINGS MUST BE
8 HELD IN THE COUNTY WHERE THE DIVISION IS LOCATED UNLESS THE
9 DIRECTOR DESIGNATES OTHERWISE. THE DECISION OF THE DIRECTOR OR
10 THE COMMISSION IS SUBJECT TO JUDICIAL REVIEW BY THE COURT OF
11 APPEALS AND IS SUBJECT TO THE PROVISIONS OF SECTION 24-4-106.

12 (d) IN CONDUCTING SETTLEMENT DISCUSSIONS WITH A
13 LANDOWNER, THE DIRECTOR AND THE COMMISSION MAY COMPROMISE ON
14 ANY OF THE DEFICIENCIES IDENTIFIED IN THE APPLICATION AND
15 SUPPORTING DOCUMENTATION, INCLUDING THE DOLLAR AMOUNT OF THE
16 TAX CREDIT CERTIFICATE TO BE ISSUED. THE DIRECTOR SHALL PLACE ON
17 FILE IN THE DIVISION A RECORD OF ANY COMPROMISE AND THE REASONS
18 FOR THE COMPROMISE.

19 (e) THE DIRECTOR MAY PROMULGATE RULES PURSUANT TO
20 ARTICLE 4 OF TITLE 24 TO EFFECTUATE THE PURPOSES OF THIS SUBSECTION
21 (12).

22 (13) (a) COMMENCING WITH THE 2014 CALENDAR YEAR, AND FOR
23 EACH CALENDAR YEAR THEREAFTER, THE DIVISION SHALL CREATE A
24 REPORT, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC, CONTAINING
25 THE FOLLOWING AGGREGATE INFORMATION:

26 (I) THE TOTAL NUMBER OF TAX CREDIT CERTIFICATE APPLICATIONS
27 RECEIVED, APPROVED, AND DENIED IN ACCORDANCE WITH THIS SECTION,

1 ALONG WITH AVERAGE PROCESSING TIMES:

2 (II) FOR APPLICATIONS APPROVED IN ACCORDANCE WITH THIS
3 SECTION:

4 (A) THE TOTAL ACREAGE UNDER EASEMENT SUMMARIZED BY THE
5 ALLOWABLE CONSERVATION PURPOSES AS DEFINED IN SECTION 170(h) OF
6 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
7 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
8 SECTION:

9 (B) THE TOTAL APPRAISED VALUE OF THE EASEMENTS:

10 (C) THE TOTAL DONATED VALUE OF THE EASEMENTS; AND

11 (D) THE TOTAL DOLLAR AMOUNT OF TAX CREDIT CERTIFICATES
12 ISSUED.

13 (b) THE DIVISION MAY INCLUDE ADDITIONAL EASEMENT-SPECIFIC
14 INFORMATION IN THE PUBLIC REPORT THAT, NOTWITHSTANDING THE
15 PROVISIONS OF THIS PART 11 OR ANY OTHER LAW TO THE CONTRARY,
16 WOULD OTHERWISE BE PUBLICLY AVAILABLE.

17 (c) THE DIRECTOR IS AUTHORIZED TO SHARE PUBLICLY AVAILABLE
18 INFORMATION REGARDING CONSERVATION EASEMENTS WITH A
19 THIRD-PARTY VENDOR FOR THE PURPOSE OF DEVELOPING AND
20 MAINTAINING A REGISTRY OF CONSERVATION EASEMENTS IN THE STATE
21 WITH A CORRESPONDING MAP DISPLAYING THE BOUNDARIES OF EACH
22 EASEMENT IN THE STATE RELATIVE TO COUNTY BOUNDARIES AND OTHER
23 RELEVANT MAPPING INFORMATION. PRIOR TO SHARING THE INFORMATION,
24 THE DIRECTOR SHALL CONSULT WITH THE COMMISSION REGARDING THE
25 APPROPRIATE TYPES OF INFORMATION AND THE METHODS USED FOR
26 COLLECTING THE INFORMATION. THE DEPARTMENT OF REGULATORY
27 AGENCIES SHALL ANNUALLY REPORT ON THE INFORMATION CONTAINED IN

1 THE REGISTRY AS A PART OF ITS PRESENTATION TO ITS COMMITTEE OF
2 REFERENCE AT A HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF
3 THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND
4 TRANSPARENT (SMART) GOVERNMENT ACT". THE INFORMATION TO BE
5 SHARED SHALL INCLUDE THE FOLLOWING:

6 (I) ANY DEEDS, CONTRACTS, OR OTHER INSTRUMENTS CREATING,
7 ASSIGNING, TRANSFERRING, CONVEYING, TERMINATING, OR OTHERWISE
8 AFFECTING THE EASEMENT, INCLUDING THE RECEPTION NUMBERS ON ALL
9 INSTRUMENTS;

10 (II) THE LOCATION AND ACREAGE OF EACH EASEMENT,
11 DELINEATED BY COUNTY;

12 (III) THE NAME OF THE ORIGINAL GRANTOR OF THE EASEMENT AND
13 THE NAME OF THE ORIGINAL GRANTEE OF THE EASEMENT.

14 (IV) WHETHER THE HOLDER OF THE EASEMENT IS A CERTIFIED
15 ORGANIZATION PURSUANT TO SECTION 12-61-1104;

16 (V) THE CONSERVATION PURPOSES OF THE EASEMENT; AND

17 (VI) IF A TAX CREDIT WAS ISSUED.

18 (14) (a) IN ADDITION TO THE TAX CREDIT CERTIFICATE
19 APPLICATION PROCESS SET FORTH IN THIS SECTION, A LANDOWNER MAY
20 SUBMIT A PROPOSED CONSERVATION EASEMENT DONATION TO THE
21 DIVISION TO OBTAIN AN OPTIONAL PRELIMINARY ADVISORY OPINION
22 REGARDING THE TRANSACTION. THE OPINION MAY ADDRESS THE
23 PROPOSED DEED OF CONSERVATION EASEMENT, APPRAISAL,
24 CONSERVATION PURPOSE, OR OTHER RELEVANT ASPECT OF THE
25 TRANSACTION.

26 (b) THE DIVISION, THE DIRECTOR, AND THE COMMISSION SHALL
27 REVIEW THE INFORMATION AND DOCUMENTATION PROVIDED IN A MANNER

1 CONSISTENT WITH THE SCOPE OF THEIR AUTHORITY AND RESPONSIBILITIES
2 FOR REVIEWING TAX CREDIT CERTIFICATE APPLICATIONS AS OUTLINED IN
3 SUBSECTION (3) OF THIS SECTION AND ISSUE EITHER A FAVORABLE OPINION
4 OR A NONFAVORABLE OPINION.

5 (c) THE DIRECTOR OR THE COMMISSION MAY REQUEST THAT THE
6 LANDOWNER SUBMIT ADDITIONAL INFORMATION OR DOCUMENTATION
7 THAT THE DIRECTOR OR THE COMMISSION DEEMS NECESSARY TO
8 COMPLETE THE REVIEW AND ISSUE AN OPINION.

9 (d) A NONFAVORABLE OPINION SHALL SET FORTH ANY POTENTIAL
10 DEFICIENCIES IDENTIFIED BY THE DIRECTOR OR THE COMMISSION AND
11 THAT FALL WITHIN THE SCOPE OF THE DIRECTOR'S AND THE COMMISSION'S
12 REVIEW OF THE CONSERVATION EASEMENT TRANSACTION. THE
13 PRELIMINARY OPINION IS ADVISORY ONLY AND IS NOT BINDING FOR ANY
14 PURPOSE UPON THE DIVISION, THE DIRECTOR, THE COMMISSION, OR THE
15 DEPARTMENT OF REVENUE.

16 (15) THE DIVISION MAY PROMULGATE RULES TO EFFECTUATE THE
17 PURPOSE, IMPLEMENTATION, AND ADMINISTRATION OF THIS SECTION
18 PURSUANT TO ARTICLE 4 OF TITLE 24. THE AUTHORITY TO PROMULGATE
19 RULES INCLUDES THE AUTHORITY TO DEFINE FURTHER IN RULE THE
20 ADMINISTRATIVE PROCESSES AND REQUIREMENTS, INCLUDING
21 APPLICATION PROCESSING AND REVIEW TIME FRAMES, FOR OBTAINING AND
22 ISSUING AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO
23 SUBSECTION (14) OF THIS SECTION.

24 (16) NOTWITHSTANDING THE PROVISIONS OF THE "COLORADO
25 OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, THE DIVISION,
26 THE DIRECTOR, AND THE COMMISSION SHALL DENY THE RIGHT OF PUBLIC
27 INSPECTION OF ANY DOCUMENTATION OR OTHER RECORD RELATED TO

1 INFORMATION OBTAINED AS PART OF AN INDIVIDUAL LANDOWNER'S
2 APPLICATION FOR A TAX CREDIT CERTIFICATE OR AN OPTIONAL
3 PRELIMINARY ADVISORY OPINION PURSUANT TO THE REQUIREMENTS OF
4 THIS SECTION, INCLUDING DOCUMENTATION OR OTHER RECORDS RELATED
5 TO ADMINISTRATIVE HEARINGS AND SETTLEMENT DISCUSSIONS HELD
6 PURSUANT TO SUBSECTION (12) OF THIS SECTION. THE DIVISION, THE
7 DIRECTOR, AND THE COMMISSION MAY SHARE DOCUMENTATION OR OTHER
8 RECORDS RELATED TO INFORMATION OBTAINED PURSUANT TO THIS
9 SECTION WITH THE DEPARTMENT OF REVENUE.

10 (17) NOTHING IN THIS SECTION AFFECTS ANY TAX CREDIT THAT IS
11 CLAIMED OR USED PURSUANT TO SECTION 39-22-522 FOR CONSERVATION
12 EASEMENT DONATIONS OCCURRING PRIOR TO JANUARY 1, 2014.

13 **12-61-1107. Conservation cash fund - repeal.** (1) THERE IS
14 HEREBY CREATED IN THE STATE TREASURY THE CONSERVATION CASH
15 FUND, WHICH CONSISTS OF ANY MONEYS TRANSFERRED PURSUANT TO
16 SECTION 12-61-1104 AND 12-61-1106 AND ANY GIFTS, GRANTS, AND
17 DONATIONS PROVIDED TO CARRY OUT THE PURPOSES OF THIS PART 11. ALL
18 MONEY IN THE FUND SHALL BE USED AS PROVIDED IN THIS PART 11.
19 INTEREST EARNED ON THE FUND SHALL REMAIN IN THE FUND AND SHALL
20 NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY
21 OTHER FUND.

22 (2) ON JULY 1, 2018, THE STATE TREASURER SHALL TRANSFER TO
23 THE CONSERVATION CASH FUND ANY MONEYS IN THE DIVISION OF REAL
24 ESTATE CASH FUND CREATED IN THE SECTION 12-61-111.5 THAT ARE
25 ATTRIBUTABLE TO ANY FEES, GIFTS, GRANTS, OR DONATIONS CREDITED TO
26 THE DIVISION OF REAL ESTATE CASH FUND IN ACCORDANCE WITH SECTION
27 12-61-724 (3) OR SECTION 12-61-727 THAT ARE IN THE FUND

1 IMMEDIATELY PRIOR TO THE REPEAL OF SECTIONS 12-61-724 AND
2 12-61-727. THIS SUBSECTION (2) IS REPEALED EFFECTIVE JULY 1, 2019.

3 **SECTION 2.** In Colorado Revised Statutes, 12-61-111.5, **repeal**
4 (2)(b)(II)(A) as follows:

5 **12-61-111.5. Fee adjustments - cash fund created - repeal.**
6 (2) (b) (II) (A) ~~On June 30, 2017, the state treasurer shall transfer to the~~
7 ~~division of real estate cash fund all unexpended and unencumbered~~
8 ~~money that remained in the HOA information and resource center cash~~
9 ~~fund created in section 12-61-406.5, the conservation easement holder~~
10 ~~certification fund created in section 12-61-724, the conservation easement~~
11 ~~tax credit certificate review fund created in section 12-61-727, and the~~
12 ~~mortgage company and loan originator licensing cash fund created in~~
13 ~~section 12-61-908 immediately prior to the repeal of those funds.~~

14 **SECTION 3.** In Colorado Revised Statutes, 12-61-702, **repeal** (5)
15 as follows:

16 **12-61-702. Definitions.** As used in this part 7, unless the context
17 otherwise requires:

18 (5) ~~"Commission" means the conservation easement oversight~~
19 ~~commission created in section 12-61-725 (1).~~

20 **SECTION 4.** In Colorado Revised Statutes, 12-61-704, **amend**
21 (1)(k) as follows:

22 **12-61-704. Powers and duties of the board - rules.** (1) In
23 addition to all other powers and duties imposed upon it by law, the board
24 has the following powers and duties:

25 (k) ~~To establish classroom education and experience requirements~~
26 ~~for an appraiser who prepares an appraisal for a conservation easement~~
27 ~~for which a tax credit is claimed pursuant to section 39-22-522. C.R.S.~~

1 The requirements must ensure that appraisers have a sufficient amount of
2 training and expertise to accurately prepare appraisals that comply with
3 the uniform standards of professional appraisal practice and any other
4 provision of law related to the appraisal of conservation easements for
5 which a tax credit is claimed. A tax credit certificate for a conservation
6 easement shall not be given in accordance with sections 12-61-726 and
7 12-61-727 SECTIONS 12-61-1105 AND 12-61-1106 unless the appraiser
8 who prepared the appraisal of the easement met all requirements
9 established in accordance with this paragraph (k) SUBSECTION (1)(k) in
10 effect at the time the appraisal was completed APPRAISAL CERTIFICATION
11 IS SIGNED.

12 SECTION 5. In Colorado Revised Statutes, 39-21-113, amend
13 (17) as follows:

14 39-21-113. Reports and returns - rule. (17) Notwithstanding
15 any other provision of this section, the executive director may require that
16 such detailed information regarding a claim for a credit for the donation
17 of a conservation easement in gross pursuant to section 39-22-522 and
18 any appraisal submitted in support of the credit claimed be given to the
19 division of real estate CONSERVATION in the department of regulatory
20 agencies and the conservation easement oversight commission created
21 pursuant to section 12-61-725 (1), C.R.S., SECTION 12-61-1103 as the
22 executive director determines is necessary in the performance of the
23 department's functions relating to the credit. The executive director may
24 provide copies of any appraisal and may file a complaint regarding any
25 appraisal as authorized pursuant to section 39-22-522 (3.3).
26 Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S.,
27 in order to protect the confidential financial information of a taxpayer, the

1 executive director shall deny the right to inspect any information or
2 appraisal required in accordance with the provisions of this subsection
3 (17).

4 **SECTION 6.** In Colorado Revised Statutes, 39-22-522, amend
5 (2), (2.5), (2.7), (3)(d), (3)(e), (3)(f) introductory portion, (3.5)(a)(I),
6 (3.5)(a)(II), (3.5)(b), (3.6)(b), (4)(a)(I), (4)(a)(II), (4)(a)(II.5), and (7)(g);
7 and add (3.8) as follows:

8 **39-22-522. Credit against tax - conservation easements.**
9 (2) (a) For income tax years commencing on or after January 1, 2000, but
10 prior to January 1, 2014, and, with regard to any credit over the amount
11 of one hundred thousand dollars, for income tax years commencing on or
12 after January 1, 2003, subject to the provisions of subsections (4) and (6)
13 of this section, there shall be allowed a credit with respect to the income
14 taxes imposed by this ~~article~~ ARTICLE 22 to each taxpayer who donates
15 during the taxable year all or part of the value of a perpetual conservation
16 easement in gross created pursuant to article 30.5 of title 38 C.R.S., upon
17 real property the taxpayer owns to a governmental entity or a charitable
18 organization described in section 38-30.5-104 (2) C.R.S. The credit shall
19 only be allowed for a donation that is eligible to qualify as a qualified
20 conservation contribution pursuant to section 170 (h) of the internal
21 revenue code, as amended, and any federal regulations promulgated in
22 connection with such section OR THE ADMINISTRATIVE CALCULATION
23 OPTION AS DESCRIBED IN SUBSECTION (3.8) OF THIS SECTION. The amount
24 of the credit shall not include the value of any portion of an easement on
25 real property located in another state.

26 (b) For income tax years commencing on or after January 1, 2014,
27 BUT PRIOR TO JANUARY 1, 2019, AND FOR INCOME TAX YEARS

1 COMMENCING ON OR AFTER JANUARY 1, 2022, and, with regard to any
2 credit over the amount of one hundred thousand dollars, for income tax
3 years commencing on or after January 1, 2003, subject to the provisions
4 of subsections (4) and (6) of this section, there shall be allowed a credit
5 with respect to the income taxes imposed by this article ARTICLE 22 to
6 each taxpayer who donates during the taxable year all or part of the value
7 of a perpetual conservation easement in gross created pursuant to article
8 30.5 of title 38 C.R.S., upon real property the taxpayer owns to a
9 governmental entity or a charitable organization described in section
10 38-30.5-104 (2). C.R.S. The credit shall only be allowed for a donation
11 that meets the requirements of section 170 of the federal "Internal
12 Revenue Code of 1986", as amended, and any federal regulations
13 promulgated in accordance with such section OR FOR DONATIONS THAT
14 USE THE ADMINISTRATIVE CALCULATION DESCRIBED IN SECTION 39-22-522
15 (3.8). The amount of the credit shall not include the value of any portion
16 of an easement on real property located in another state.

17 (2.5) Notwithstanding any other provision of this section and the
18 requirements of section 12-61-727, C.R.S. SECTION 12-61-1106, for
19 income tax years commencing on or after January 1, 2011, a taxpayer
20 conveying a conservation easement and claiming a credit pursuant to this
21 section shall, in addition to any other requirements of this section and the
22 requirements of section 12-61-727, C.R.S. SECTION 12-61-1106, submit
23 a claim for the credit to the division of real estate CONSERVATION in the
24 department of regulatory agencies. The division shall issue a certificate
25 for the claims received in the order submitted. After certificates have
26 been issued for credits that exceed an aggregate of twenty-two million
27 dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four

1 million dollars for the 2013 calendar year, and forty-five million dollars
2 for each calendar year thereafter, any claims that exceed the amount
3 allowed for a specified calendar year shall be placed on a wait list in the
4 order submitted and a certificate shall be issued for use of the credit in the
5 next year for which the division has not issued credit certificates in excess
6 of the amounts specified in this subsection (2.5); except that no more than
7 fifteen million dollars in claims shall be placed on the wait list in any
8 given calendar year. The division shall not issue credit certificates that
9 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
10 years, thirty-four million dollars for the 2013 calendar year, and forty-five
11 million dollars for each calendar year thereafter. No claim for a credit is
12 allowed for any income tax year commencing on or after January 1, 2011,
13 unless a certificate has been issued by the division. If all other
14 requirements under section 12-61-727, C.R.S., SECTION 12-61-1106 and
15 this section are met, the right to claim the credit is vested in the taxpayer
16 at the time a credit certificate is issued.

17 (2.7) Notwithstanding any other provision, for income tax years
18 commencing on or after January 1, 2014, no claim for a credit shall be
19 allowed unless a tax credit certificate is issued by the division of real
20 estate CONSERVATION in accordance with sections 12-61-726 and
21 12-61-727, C.R.S., SECTIONS 12-61-1105 AND 12-61-1106 and the
22 taxpayer files the tax credit certificate with the income tax return filed
23 with the department of revenue.

24 (3) For conservation easements donated prior to January 1, 2014,
25 in order for any taxpayer to qualify for the credit provided for in
26 subsection (2) of this section, the taxpayer shall submit the following in
27 a form approved by the executive director to the department of revenue

1 at the same time as the taxpayer files a return for the taxable year in
2 which the credit is claimed:

3 (d) A summary of a qualified appraisal that meets the
4 requirements set forth in subsection (3.3) of this section; however, if
5 requested by the department of revenue, the taxpayer shall submit the
6 appraisal itself, OR THE CONFIRMATION OF CONFORMANCE TO THE
7 ADMINISTRATIVE CALCULATION FORMULAS DESCRIBED IN SUBSECTION
8 (3.8) OF THIS SECTION AS SET FORTH BY THE DIVISION;

9 (e) A copy of the appraisal and accompanying affidavit from the
10 appraiser submitted to the division of real estate in the department of
11 regulatory agencies in accordance with the provisions of section
12 12-61-719, C.R.S., as said section existed prior to its repeal on July 1,
13 2013, OR THE CONFIRMATION OF CONFORMANCE TO THE ADMINISTRATIVE
14 CALCULATION FORMULAS DESCRIBED IN SUBSECTION (3.8) OF THIS
15 SECTION AS SET FORTH BY THE DIVISION;

16 (f) If the holder of the conservation easement is an organization
17 to which the certification program in section 12-61-724 SECTION
18 12-61-1104 applies, a sworn affidavit from the holder of the conservation
19 easement in gross that includes the following:

20 (3.5) (a) For conservation easements donated prior to January 1,
21 2014:

22 (I) The executive director shall have the authority, pursuant to
23 subsection (8) of this section, to require additional information from the
24 taxpayer or transferee regarding the appraisal value of the easement, the
25 amount of the credit, and the validity of the credit. In resolving disputes
26 regarding the validity or the amount of a credit allowed pursuant to
27 subsection (2) of this section, including the value of the conservation

1 easement for which the credit is granted, the executive director shall have
2 the authority, for good cause shown and in consultation with the division
3 of real estate CONSERVATION and the conservation easement oversight
4 commission created in section 12-61-725 (1), C.R.S., SUBSECTION
5 12-61-1103 (1) to review and accept or reject, in whole or in part, the
6 appraisal value of the easement, the amount of the credit, and the validity
7 of the credit based upon the internal revenue code and federal regulations
8 in effect at the time of the donation. If the executive director reasonably
9 believes that the appraisal represents a gross valuation misstatement,
10 receives notice of such a valuation misstatement from the division of real
11 estate, or receives notice from the division of real estate that an
12 enforcement action has been taken by the board of real estate appraisers
13 against the appraiser, the executive director shall have the authority to
14 require the taxpayer to provide a second appraisal at the expense of the
15 taxpayer. The second appraisal shall be conducted by a certified general
16 appraiser in good standing and not affiliated with the first appraiser that
17 meets qualifications established by the division of real estate. In the event
18 the executive director rejects, in whole or in part, the appraisal value of
19 the easement, the amount of the credit, or the validity of the credit, the
20 procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and
21 39-21-105 shall apply.

22 (II) In consultation with the division of real estate CONSERVATION
23 and the conservation easement oversight commission created in section
24 12-61-725 (1), C.R.S. SECTION 12-61-1103 (1), the executive director
25 shall develop and implement a separate process for the review by the
26 department of revenue of gross conservation easements. The review
27 process shall be consistent with the statutory obligations of the division

1 and the commission and shall address gross conservation easements for
2 which the department of revenue has been informed that an audit is being
3 performed by the internal revenue service. The executive director shall
4 share information used in the review of gross conservation easements
5 with the division. Notwithstanding part 2 of article 72 of title 24, C.R.S.,
6 in order to protect the confidential financial information of a taxpayer, the
7 division and the commission shall deny the right to inspect any
8 information provided by the executive director in accordance with this
9 subparagraph (H) SUBSECTION (3.5)(a)(II).

10 (b) For conservation easements donated on or after January 1,
11 2014, and subject to the restrictions of section 12-61-727 (4), C.R.S.
12 SECTION 12-61-1106 (4), the executive director shall have the authority,
13 pursuant to subsection (8) of this section, to require additional
14 information from the taxpayer or transferee regarding the amount of the
15 credit and the validity of the credit. In resolving disputes regarding the
16 validity or the amount of a credit allowed pursuant to subsection (2) of
17 this section, the executive director shall have the authority, for good cause
18 shown, to review and accept or reject, in whole or in part, the amount of
19 the credit and the validity of the credit based upon the internal revenue
20 code and federal regulations in effect at the time of the donation, except
21 those requirements for which authority is granted to the division of real
22 estate CONSERVATION, the director of the division of real estate
23 CONSERVATION, or the conservation easement oversight commission
24 pursuant to section 12-61-727, C.R.S. SECTION 12-61-1106.

25 (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
26 FOR ANY CONSERVATION EASEMENT IN GROSS DONATED FOR ANY TAX
27 YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, FOR WHICH A CREDIT

1 CLAIMED PURSUANT TO THIS SECTION WAS SUBSEQUENTLY DENIED IN
2 WHOLE OR IN PART BECAUSE THE APPRAISED VALUE OF THE EASEMENT
3 WAS DETERMINED BY THE STATE TO BE TOO HIGH, THE TAXPAYER MAY
4 ELECT IN ANY SUBSEQUENT TAX YEAR TO AMEND THE RETURN FOR SUCH
5 TAX YEAR AND CLAIM A RETROACTIVE TAX CREDIT AS DESCRIBED IN
6 SECTION 39-22-522 (3.8).

7 (3.6) For conservation easements donated on or after January 1,
8 2014, in order for any taxpayer to qualify for the credit provided for in
9 subsection (2) of this section, the taxpayer must submit the following in
10 a form, approved by the executive director, to the department of revenue
11 at the same time as the taxpayer files a return for the taxable year in
12 which the credit is claimed:

13 (a) (I) A tax credit certificate issued under section 12-61-727,
14 ~~C.R.S.~~ SECTION 12-61-1106; and

15 (b) Notwithstanding any other provisions of law, the executive
16 director retains the authority to administer all issues related to the claim
17 or use of a tax credit for the donation of a conservation easement that are
18 not granted to the director of the division of real estate CONSERVATION or
19 the conservation easement oversight commission under section
20 12-61-727, ~~C.R.S.~~ SECTION 12-61-1106.

21 (3.8) (a) AS AN ALTERNATIVE TO THE APPRAISAL REQUIREMENTS
22 SET FORTH IN SUBSECTION (3.3) OF THIS SECTION, A TAXPAYER MAY ELECT
23 TO HAVE THE AMOUNT OF THE TAX CREDIT CALCULATED IN ACCORDANCE
24 WITH THE CONSERVATION EASEMENT TAX CREDIT FORMULA SET FORTH IN
25 THIS SUBSECTION (3.8).

26 (b) A BASELINE PROPERTY VALUE SHALL BE DETERMINED FROM
27 PUBLICLY AVAILABLE DATA, OR A COMBINATION OF PUBLICLY AVAILABLE

1 DATA, FOR RURAL AND AGRICULTURAL PROPERTIES AS IDENTIFIED IN
2 RULES TO BE PROMULGATED BY THE DIVISION IN CONSULTATION WITH THE
3 CONSERVATION EASEMENT OVERSIGHT COMMISSION. SUCH SOURCES MAY
4 INCLUDE COUNTY ASSESSOR DATA, COLORADO STATE LAND BOARD DATA,
5 UNITED STATES DEPARTMENT OF AGRICULTURE NATIONAL AGRICULTURAL
6 STATISTICS SERVICE, OR OTHER DATA SETS AS IDENTIFIED BY THE DIVISION.
7 SUCH SOURCES DO NOT HAVE TO BE PROPERTY SPECIFIC BUT SHALL BE
8 SUFFICIENT FOR A TAXPAYER TO DETERMINE THEIR BASELINE PROPERTY
9 VALUE FOR PURPOSES OF THIS SUBSECTION (3.8).

10 (c) WHEN THE BASELINE PROPERTY VALUE IS DETERMINED IN
11 ACCORDANCE WITH SUBSECTION (3.8)(b) OF THIS SECTION, THE
12 ADJUSTMENTS IN VALUE TO BE APPLIED TO THE BASELINE PROPERTY SHALL
13 BE ACCORDING TO THE FOLLOWING FORMULA, WITH THE AMOUNT OF THE
14 TAX CREDIT DETERMINED, SUBJECT TO ANY OTHER LIMITATIONS OF THIS
15 SECTION, BY APPLYING THE ADJUSTMENTS AGAINST THE BASELINE
16 PROPERTY VALUE:

- 17 (I) SIXTY PERCENT FOR A MOST RESTRICTIVE EASEMENT;
- 18 (II) FORTY-FIVE PERCENT FOR A MEDIUM RESTRICTIVE EASEMENT;
- 19 AND
- 20 (III) THIRTY PERCENT FOR A LEAST RESTRICTIVE EASEMENT.

21 (d) THE DIVISION SHALL PROMULGATE RULES:
22 (I) DESCRIBING THE REQUIREMENTS FOR A MOST RESTRICTIVE
23 EASEMENT, A MEDIUM RESTRICTIVE EASEMENT, AND A LEAST RESTRICTIVE
24 EASEMENT, WHICH MAY INCLUDE AN UPWARD ADJUSTMENT OF UP TO TEN
25 PERCENT FOR EACH CATEGORY FOR ENCUMBERING WATER RIGHTS OR
26 APPLYING FUTURE AGRICULTURAL SALE VALUE RESTRICTIONS;

27 (II) SETTING FORTH THE PROCESS TO APPLY FOR THE ALTERNATIVE

1 VALUATION PROCESS SET FORTH IN THIS SUBSECTION (3.8); AND

2 (III) SETTING FORTH A PROCESS FOR A TAXPAYER TO REQUEST
3 CONFIRMATION FROM THE DIVISION OF THE BASELINE PROPERTY VALUE OF
4 THE PROPERTY PROPOSED FOR INCLUSION IN A CONSERVATION EASEMENT,
5 AND FOR CONFIRMATION OF THE TERMS OF THE PROPOSED CONSERVATION
6 EASEMENT AS TO THE RESTRICTION LEVEL QUALIFIED FOR PURSUANT TO
7 SUBSECTION (3.8)(c) OF THIS SECTION.

8 (e) IF NO PUBLIC SOURCE IS AVAILABLE FOR A TAXPAYER TO
9 DETERMINE THE BASELINE PROPERTY VALUE OF THEIR PROPERTY, THEN
10 THE TAXPAYER SHALL DETERMINE THE VALUE OF THE CONSERVATION
11 EASEMENT PURSUANT TO SUBSECTION (3.3) OF THIS SECTION.

12 (f) A CONSERVATION EASEMENT VALUED IN ACCORDANCE WITH
13 THIS SUBSECTION (3.8) SHALL ONLY BE ALLOWED FOR A DONATION THAT
14 IS ELIGIBLE TO QUALIFY AS A QUALIFIED CONSERVATION CONTRIBUTION
15 PURSUANT TO SECTION 170 (h) OF THE INTERNAL REVENUE CODE, AS
16 AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN
17 CONNECTION WITH SUCH SECTION.

18 (g) THE ALTERNATIVE VALUATION SET FORTH IN THIS SUBSECTION
19 (3.8) SHALL ONLY BE AVAILABLE FOR CONSERVATION EASEMENT
20 DONATIONS COMPLETED ON OR BEFORE DECEMBER 31, 2023.

21 (h) THE ALTERNATIVE TAX CREDIT CALCULATION DESCRIBED IN
22 THIS SUBSECTION (3.8) MAY NOT BE USED BY A TAXPAYER UNTIL AFTER
23 THE LATTER OF JULY 1, 2019, OR THE ADOPTION OF THE RULES SET FORTH
24 IN SUBSECTION (3.8)(d) OF THIS SECTION.

25 (i) THE DIVISION SHALL CREATE A COMMITTEE, AND MEMBERS OF
26 THE COMMITTEE SHALL BE SELECTED IN CONSULTATION WITH THE
27 SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE

1 SENATE. THE PURPOSE OF THE COMMITTEE SHALL BE:

2 (I) TO MAKE RECOMMENDATIONS TO THE DIVISION TO INFORM ITS
3 RULEMAKING AND SPECIFICALLY TO MAKE RECOMMENDATIONS FOR THE
4 MINIMUM REQUIREMENTS FOR A MOST RESTRICTIVE EASEMENT, A MEDIUM
5 RESTRICTIVE EASEMENT, AND A LEAST RESTRICTIVE EASEMENT:

6 (II) TO ADVISE ABOUT OTHER STATUTORY CHANGES REQUIRED IN
7 THIS SECTION TO PERMIT THE AMOUNT OF THE TAX CREDIT TO BE
8 DETERMINED IN ACCORDANCE WITH THIS SUBSECTION (3.8) WITHOUT THE
9 SUBMISSION OF THE APPRAISAL REQUIRED BY SUBSECTION (3.3) OF THIS
10 SECTION; AND

11 (III) TO RECOMMEND A MECHANISM FOR A RETROACTIVE TAX
12 CREDIT CALCULATION IN ACCORDANCE WITH THIS SUBSECTION (3.8) FOR
13 CONSERVATION EASEMENTS IN GROSS FOR TAX YEARS COMMENCING ON OR
14 AFTER JANUARY 1, 2000, AND BEFORE DECEMBER 31, 2008, FOR WHICH A
15 CREDIT CLAIMED PURSUANT TO THIS SECTION WAS SUBSEQUENTLY DENIED
16 IN WHOLE OR IN PART BECAUSE THE APPRAISED VALUE OF THE EASEMENT
17 WAS DETERMINED BY THE STATE TO BE TOO HIGH.

18 (j) ANY RETROACTIVE TAX CREDIT ISSUED IS LIMITED TO THE
19 TRANSACTION CAPS IMPOSED BY SECTION 39-22-522 (4)(a)(I) TO
20 (4)(a)(II.5) AT THE TIME OF THE ORIGINAL DONATION AND FURTHER
21 REDUCED BY THE AMOUNT OF ANY PREVIOUSLY ISSUED TAX CREDIT. THE
22 RETROACTIVE TAX CREDIT IS SUBJECT TO A TEN-YEAR CARRYFORWARD
23 FROM THE TIME THE RETROACTIVE TAX CREDIT IS ISSUED.

24 (k) THE ALTERNATIVE TAX CREDIT CALCULATION SET FORTH IN
25 THIS SUBSECTION (3.8) IS NOT INTENDED AS AN ALTERNATIVE MEANS OF
26 VALUING THE DONATION OF A CONSERVATION EASEMENT IN GROSS FOR
27 PURPOSES OF A FEDERAL CHARITABLE DEDUCTION PURSUANT TO SECTION

1 170 (h) OF THE INTERNAL REVENUE CODE, AS AMENDED, AND ANY
2 FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
3 SECTION.

4 (4) (a) (I) For a conservation easement in gross created in
5 accordance with article 30.5 of title 38 C.R.S., that is donated prior to
6 January 1, 2007, to a governmental entity or a charitable organization
7 described in section 38-30.5-104 (2), C.R.S., the credit provided for in
8 subsection (2) of this section shall be an amount equal to one hundred
9 percent of the first one hundred thousand dollars of the fair market value
10 OR THE ADMINISTRATIVE CALCULATION of the donated portion of such
11 conservation easement in gross when created, and forty percent of all
12 amounts of the donation in excess of one hundred thousand dollars;
13 except that in no case shall the credit exceed two hundred sixty thousand
14 dollars per donation.

15 (II) For a conservation easement in gross created in accordance
16 with article 30.5 of title 38 C.R.S., that is donated on or after January 1,
17 2007, and prior to January 1, 2015, to a governmental entity or a
18 charitable organization described in section 38-30.5-104 (2), C.R.S., the
19 credit provided for in subsection (2) of this section shall be an amount
20 equal to fifty percent of the fair market value OR THE ADMINISTRATIVE
21 CALCULATION of the donated portion of such conservation easement in
22 gross when created; except that, in no case shall the credit exceed three
23 hundred seventy-five thousand dollars per donation.

24 (II.5) For a conservation easement in gross created in accordance
25 with article 30.5 of title 38 C.R.S., that is donated on or after January 1,
26 2015, to a governmental entity or a charitable organization described in
27 section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2)

1 of this section shall be an amount equal to seventy-five percent of the first
2 one hundred thousand dollars of the fair market value OR THE
3 ADMINISTRATIVE CALCULATION of the donated portion of such
4 conservation easement in gross when created, and fifty percent of all
5 amounts of the donation in excess of one hundred thousand dollars;
6 except that, in no case shall the credit exceed one million five hundred
7 thousand dollars per donation.

8 (7) For income tax years commencing on or after January 1, 2000,
9 a taxpayer may transfer all or a portion of a tax credit granted pursuant to
10 subsection (2) of this section to another taxpayer for such other taxpayer,
11 as transferee, to apply as a credit against the taxes imposed by this article
12 subject to the following limitations:

13 (g) A transferee of a tax credit shall purchase the credit prior to
14 the due date imposed by this article, not including any extensions, for
15 filing the transferee's income tax return;

16 **SECTION 7.** In Colorado Revised Statutes, 39-22-522.5, **repeal**
17 (8) as follows:

18 **39-22-522.5. Conservation easement tax credits - dispute**
19 **resolution - legislative declaration.** (8) ~~On or before August 1, 2011,~~
20 ~~the conservation easement oversight commission created in section~~
21 ~~12-61-725 (1), C.R.S., shall review conservation easements for which a~~
22 ~~tax credit is claimed pursuant to sections 39-22-522 (3.5)(a) and~~
23 ~~12-61-725 (3), C.R.S., and for which a notice of deficiency, notice of~~
24 ~~rejection of refund claim, or notice of disallowance issued on or before~~
25 ~~May 1, 2011, but for which a final determination has not been issued~~
26 ~~before May 19, 2011, and for which the commission has not already~~
27 ~~reviewed the credit. For each conservation easement tax credit claim so~~

1 reviewed, the commission shall issue an initial recommendation to the
2 executive director on whether each credit claimed by a taxpayer who is
3 eligible to waive a hearing and appeal a notice of deficiency, notice of
4 rejection of refund claim, or notice of disallowance may be denied or
5 accepted. No other information shall be required of the commission on or
6 before such date.

7 **SECTION 8.** In Colorado Revised Statutes, 24-1-122, **add** (2)(l)
8 as follows:

9 **24-1-122. Department of regulatory agencies - creation.**

10 (2) The department of regulatory agencies shall consist of the following
11 divisions:

12 (l) DIVISION OF CONSERVATION, THE HEAD OF WHICH IS THE
13 DIRECTOR OF THE DIVISION. THE DIVISION OF CONSERVATION AND THE
14 DIRECTOR OF THE DIVISION, CREATED BY PART 11 OF ARTICLE 61 OF TITLE
15 12, SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND
16 FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF
17 THEY WERE TRANSFERRED TO THE DEPARTMENT BY A TYPE 2 TRANSFER.
18 THE CONSERVATION EASEMENT OVERSIGHT COMMISSION, CREATED BY
19 SECTION 12-61-1103, AND ITS POWERS, DUTIES, AND FUNCTIONS ARE
20 TRANSFERRED BY A TYPE 2 TRANSFER TO THE DEPARTMENT OF
21 REGULATORY AGENCIES AND ALLOCATED TO THE DIVISION OF
22 CONSERVATION.

23 **SECTION 9.** In Colorado Revised Statutes, **amend** 38-30.5-107
24 as follows:

25 **38-30.5-107. Release - termination.** (1) Conservation easements
26 in gross may, in whole or in part, be released, terminated, extinguished,
27 or abandoned by merger with the underlying fee interest in the servient

1 land or water rights or in any other manner in which easements may be
2 lawfully terminated, released, extinguished, or abandoned. FOR
3 EASEMENTS CREATED ON OR AFTER JANUARY 1, 2019, IF A CONSERVATION
4 EASEMENT IS ORPHANED OR NEGLECTED, THE LANDOWNER MAY PETITION
5 THE DISTRICT COURT OF THE COUNTY IN WHICH THE PROPERTY IS SITUATED
6 TO REQUEST A TRANSFER OF THE EASEMENT TO ANOTHER HOLDER OR FOR
7 AN ORDER THAT THE ABANDONMENT OR NEGLECT OF THE CONSERVATION
8 EASEMENT HAS RESULTED IN CIRCUMSTANCES WHICH MAKE THE
9 CONTINUED USE OF THE PROPERTY FOR CONSERVATION PURPOSES
10 IMPOSSIBLE OR IMPRACTICABLE. THE PETITION TO THE DISTRICT COURT
11 SHALL ALSO BE SERVED ON THE ATTORNEY GENERAL AND THE ATTORNEY
12 GENERAL SHALL BE ENTITLED TO BE HEARD.

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

18 (a) THE STATE HAS REJECTED THE CLAIM FOR THE CREDIT OR THE
19 TAXPAYER HAS REPAID TO THE STATE ANY AMOUNT PREVIOUSLY ALLOWED
20 BY THE STATE AND CLAIMED BY THE TAXPAYER;

21 (b) THE EASEMENT WAS DETERMINED BY THE STATE TO HAVE
22 LOWER VALUE THAN ORIGINALLY CLAIMED BY THE TAXPAYER; AND

23 (c) THE HOLDER OF THE EASEMENT EITHER PROVIDED NO
24 COMPENSATION FOR THE EASEMENT OR HAS BEEN REIMBURSED IN WHOLE
25 FOR ANY COMPENSATION PROVIDED.

26 (3) THE DIVISION OF CONSERVATION SHALL DEVELOP A WRITTEN
27 FORM TO WARN LANDOWNERS WHO HAVE CONSERVATION EASEMENTS ON

1 THEIR PROPERTY OF THE LEGAL AND OTHER CONSEQUENCES OF
2 RELEASING, TERMINATING, OR EXTINGUISHING A CONSERVATION
3 EASEMENT. THE FORM SHALL INCLUDE A WARNING OF THE POTENTIAL
4 FEDERAL TAX CONSEQUENCES, POTENTIAL LEGAL CLAIMS BY EASEMENT
5 HOLDERS AND OTHER PARTIES FOR BREACH OF CONTRACT, POTENTIAL
6 FINANCIAL EXPENSE, AND SUCH OTHER INFORMATION AS THE DIVISION
7 FINDS APPROPRIATE TO HELP A LANDOWNER MAKE AN INFORMED DECISION
8 AND PROTECT HIS OR HER INTERESTS PRIOR TO RELEASING, TERMINATING,
9 OR EXTINGUISHING AN EASEMENT. PRIOR TO RELEASING, TERMINATING, OR
10 EXTINGUISHING A CONSERVATION EASEMENT, A LANDOWNER SHALL
11 NOTIFY THE DIVISION OF CONSERVATION OF THE LANDOWNER'S INTENT TO
12 RELEASE, TERMINATE, OR EXTINGUISH THE EASEMENT. UPON RECEIVING
13 SUCH NOTIFICATION, THE DIVISION OF CONSERVATION SHALL PROVIDE A
14 COPY OF THE FORM DEVELOPED PURSUANT TO THIS SUBSECTION (3) TO THE
15 LANDOWNER SETTING FORTH THE POTENTIAL CONSEQUENCES OF
16 RELEASING, TERMINATING, OR EXTINGUISHING THE EASEMENT.

17 **SECTION 10.** In Colorado Revised Statutes, 24-34-104, repeal
18 (14)(a)(II); and add (26)(a)(VIII) and (26)(a)(IX) as follows:

19 **24-34-104. General assembly review of regulatory agencies**
20 **and functions for repeal, continuation, or reestablishment - legislative**
21 **declaration - repeal.** (14) (a) The following agencies, functions, or both,
22 are scheduled for repeal on July 1, 2018:

23 (II) The conservation easement oversight commission created in
24 section 12-61-725, C.R.S.;

25 (26) (a) The following agencies, functions, or both, are scheduled
26 for repeal on September 1, 2025:

27 (VIII) THE CONSERVATION EASEMENT OVERSIGHT COMMISSION

1 CREATED IN SECTION 12-61-1103; AND
2 (IX) THE CERTIFICATION OF CONSERVATION EASEMENT HOLDERS
3 BY THE CONSERVATION EASEMENT OVERSIGHT COMMISSION AS PROVIDED
4 FOR IN SECTION 12-61-1104.
5 **SECTION 11.** In Colorado Revised Statutes, **repeal** 12-61-724,
6 12-61-725, 12-61-726, and 12-61-727.
7 **SECTION 12. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.