

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

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.

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, 12-61-702, **add** (6.5)
3 as follows:

4 **12-61-702. Definitions.** As used in this part 7, unless the context
5 otherwise requires:

6 (6.5) "DEPARTMENT" MEANS THE DEPARTMENT OF REGULATORY
7 AGENCIES.

8 **SECTION 2.** In Colorado Revised Statutes, 12-61-724, **amend** (1)
9 introductory portion, (1)(b), (2) introductory portion, (2)(e), (3), (6), (7)
10 introductory portion, (8), (9), (10), (11), and (13) as follows:

11 **12-61-724. Certification of conservation easement holders -**
12 **rules - definition - repeal.** (1) The ~~division~~ DEPARTMENT shall, in
13 consultation with the commission created in section 12-61-725, establish
14 and administer a certification program for qualified organizations under
15 section 170 (h) of the federal "Internal Revenue Code of 1986", as
16 amended, that hold conservation easements for which a tax credit is
17 claimed pursuant to section 39-22-522. ~~C.R.S.~~ The purposes of the
18 program are to:

19 (b) Identify fraudulent or unqualified applicants, as determined

1 under the rules of the ~~division~~ DEPARTMENT, to prevent them from
2 becoming certified by the program.

3 (2) The ~~division~~ DEPARTMENT shall establish and accept
4 applications for certification. The ~~division~~ DEPARTMENT shall conduct a
5 review of each application and consider the recommendations of the
6 commission before making a final determination to grant or deny
7 certification. In reviewing an application and in granting certification, the
8 division and the commission may consider:

9 (e) Any other information deemed relevant by the ~~division~~
10 DEPARTMENT or the commission; and

11 (3) At the time of submission of an application, and each year the
12 entity is certified pursuant to this section, the applicant shall pay the
13 ~~division~~ DEPARTMENT a fee, as prescribed by the ~~division~~ DEPARTMENT,
14 to cover the costs of the ~~division~~ DEPARTMENT and the commission in
15 administering the certification program for entities that hold conservation
16 easements for which tax credits are claimed pursuant to section
17 39-22-522. The ~~division~~ DEPARTMENT shall have the authority to accept
18 and expend gifts, grants, and donations for the purposes of this section.
19 The state treasurer shall credit fees, gifts, grants, and donations collected
20 pursuant to this subsection (3) to the ~~division of real estate~~ DEPARTMENT
21 OF REGULATORY AGENCIES CONSERVATION EASEMENT CERTIFICATION
22 cash fund created in section 12-61-111.5. On or before each January 1,
23 the division shall certify to the general assembly the amount of the fee
24 prescribed by the ~~division~~ DEPARTMENT pursuant to this subsection (3).

25 (6) The commission shall meet at least quarterly and make
26 recommendations to the division regarding the certification program. The
27 ~~division~~ DEPARTMENT is authorized to determine whether an applicant for

1 certification possesses the necessary qualifications for certification
2 required by the rules adopted by the ~~division~~ DEPARTMENT. If the ~~division~~
3 DEPARTMENT determines that an applicant does not possess the applicable
4 qualifications for certification or that the applicant has violated any
5 provision of this part 7, the rules promulgated by the ~~division~~
6 DEPARTMENT, or any ~~division~~ DEPARTMENT order, the ~~division~~
7 DEPARTMENT may deny the applicant a certification or deny the renewal
8 of a certification, and, in such instance, the ~~division~~ DEPARTMENT shall
9 provide the applicant with a statement in writing setting forth the basis of
10 the ~~division's~~ DEPARTMENT'S determination. The applicant may request a
11 hearing on the determination as provided in section 24-4-104 (9). C.R.S.
12 The ~~division~~ DEPARTMENT shall notify successful applicants in writing.
13 An applicant that is not certified may reapply for certification in
14 accordance with procedures established by the ~~division~~ DEPARTMENT.

15 (7) The ~~division~~ DEPARTMENT shall implement the certification
16 program in a manner that either commences accepting applications for
17 certification:

18 (8) A conservation easement tax credit certificate application may
19 be submitted pursuant to section 12-61-727 only if the entity has been
20 certified in accordance with this section at the time the donation of the
21 easement is made. The ~~division~~ DEPARTMENT shall make information
22 available to the public concerning the date that it commences accepting
23 applications for entities that hold conservation easements and the
24 requirements of this subsection (8).

25 (9) The ~~division~~ DEPARTMENT shall maintain and update an online
26 list, accessible to the public, of the organizations that have applied for
27 certification and whether each has been certified, rejected for

1 certification, or had its certification revoked or suspended in accordance
2 with this section.

3 (10) The ~~division~~ DEPARTMENT may investigate the activities of
4 any entity that is required to be certified pursuant to this section and to
5 impose discipline for noncompliance, including the suspension or
6 revocation of a certification or the imposition of fines. The ~~division~~
7 DEPARTMENT may promulgate rules in accordance with article 4 of title
8 24 ~~C.R.S.~~, for the certification program and discipline authorized by this
9 section.

10 (11) The ~~division~~ DEPARTMENT may subpoena persons and
11 documents, which subpoenas may be enforced by a court of competent
12 jurisdiction if not obeyed, for purposes of conducting investigations
13 pursuant to subsection (10) of this section.

14 (13) This section is repealed, effective ~~July 1, 2018~~ SEPTEMBER
15 1, 2025. Prior to the repeal, the department of ~~regulatory agencies~~ shall
16 review the certification requirement as provided for in section 24-34-104.
17 ~~C.R.S.~~

18 **SECTION 3.** In Colorado Revised Statutes, 12-61-725, **amend**
19 (1) introductory portion, (3)(a), (4), (6), and (8); and **add** (6.5) as follows:

20 **12-61-725. Conservation easement oversight commission -**
21 **created - repeal.** (1) There is hereby created in the ~~division~~
22 DEPARTMENT a conservation easement oversight commission. The
23 commission shall exercise its powers and perform its duties and functions
24 under the ~~division~~ DEPARTMENT as if transferred thereto by a **type 2**
25 transfer, as defined in the "Administrative Organization Act of 1968",
26 article 1 of title 24. ~~C.R.S.~~ The commission consists of nine members as
27 follows:

1 (3) (a) At the request of the ~~division~~ DEPARTMENT or the
2 department of revenue, the commission shall advise the ~~division~~
3 DEPARTMENT and the department of revenue regarding conservation
4 easements for which a state income tax credit is claimed pursuant to
5 section 39-22-522. ~~C.R.S.~~

6 (4) The commission shall meet not less than once each quarter.
7 The ~~division~~ DEPARTMENT shall convene the meetings of the commission
8 and provide staff support as requested by the commission. A majority of
9 the members of the commission constitutes a quorum for the transaction
10 of all business, and actions of the commission require a vote of a majority
11 of the members present in favor of the action taken. The commission may
12 delegate to the EXECUTIVE director OF THE DEPARTMENT OR HIS OR HER
13 DESIGNEE the authority to act on behalf of the commission on occasions
14 and in circumstances that the commission deems necessary for the
15 efficient and effective administration and execution of the commission's
16 responsibilities under this part 7.

17 (6) (a) The commission shall advise and make recommendations
18 to the EXECUTIVE director OF THE DEPARTMENT OR HIS OR HER DESIGNEE
19 regarding the certification of conservation easement holders in
20 accordance with section 12-61-724. The ~~division~~ DEPARTMENT may
21 determine whether an applicant for certification possesses the necessary
22 qualifications for certification required by the rules adopted by the
23 ~~division~~ DEPARTMENT.

24 (b) If the ~~division~~ DEPARTMENT determines that an applicant does
25 not possess the applicable qualifications for certification or that the
26 applicant has violated any provision of this part 7, the rules promulgated
27 by the ~~division~~ DEPARTMENT, or any ~~division~~ DEPARTMENT order, the

1 ~~division~~ DEPARTMENT may deny the applicant a certification or deny the
2 renewal of a certification. In such instance, the ~~division~~ DEPARTMENT
3 shall provide the applicant with a statement in writing setting forth the
4 basis of the ~~division's~~ DEPARTMENT'S determination. The applicant may
5 request a hearing on the determination as provided in section 24-4-104
6 (9). ~~C.R.S.~~

7 (c) The ~~division~~ DEPARTMENT shall notify successful applicants
8 in writing.

9 (d) An applicant that is not certified may reapply for certification
10 in accordance with the procedure established by the ~~division~~
11 DEPARTMENT.

12 (6.5) THE COMMISSION SHALL PROMULGATE RULES TO EFFECTUATE
13 THE DUTIES OF THE COMMISSION PURSUANT TO ARTICLE 4 OF TITLE 24.
14 SUCH RULES SHALL SPECIFICALLY ADDRESS THE FOLLOWING:

15 (a) A PROCESS FOR EXPEDITED OR AUTOMATIC CERTIFICATION OF
16 AN ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
17 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
18 CONSERVATION INDUSTRY;

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

24 (c) THE FEES CHARGED PURSUANT TO SECTION 12-61-724 (3) OR
25 12-61-727 (6), SPECIFICALLY ENSURING THAT THE FEES ARE ADEQUATE TO
26 PAY FOR ADMINISTRATIVE COSTS BUT NOT SO HIGH AS TO ACT AS A
27 DISINCENTIVE TO THE CREATION OF CONSERVATION EASEMENTS IN THE

1 STATE; AND

2 (d) THE ADOPTION OF BEST PRACTICES, PROCESSES, AND
3 PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW
4 CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE,
5 PROCESS, OR PROCEDURE DEEMING CONSERVATION EASEMENT APPRAISALS
6 APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT REVIEWS AS
7 CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT TAX CREDIT.

8 (8) This section is repealed, effective ~~July 1, 2018~~ SEPTEMBER 1,
9 2025. Prior to the repeal, the department of regulatory agencies shall
10 review the commission as provided in section 24-34-104. ~~C.R.S.~~

11 **SECTION 4.** In Colorado Revised Statutes, 12-61-725, **repeal**
12 **and reenact, with amendments,** (1) and (2) as follows:

13 **12-61-725. Conservation easement oversight commission -**
14 **created - repeal.** (1) THERE IS HEREBY CREATED IN THE DEPARTMENT A
15 CONSERVATION EASEMENT OVERSIGHT COMMISSION. THE COMMISSION
16 SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS
17 UNDER THE DEPARTMENT AS IF TRANSFERRED THERETO BY A **TYPE 1**
18 TRANSFER, AS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF
19 1968", ARTICLE 1 OF TITLE 24. THE COMMISSION CONSISTS OF SEVEN
20 MEMBERS AS FOLLOWS:

21 (a) ONE MEMBER REPRESENTING THE GREAT OUTDOORS
22 COLORADO PROGRAM, APPOINTED BY AND SERVING AT THE PLEASURE OF
23 THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND
24 ESTABLISHED IN ARTICLE XXVII OF THE STATE CONSTITUTION;

25 (b) ONE MEMBER REPRESENTING THE DEPARTMENT OF NATURAL
26 RESOURCES, APPOINTED BY AND SERVING AT THE PLEASURE OF THE
27 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES;

1 (c) ONE MEMBER REPRESENTING THE DEPARTMENT OF
2 AGRICULTURE, APPOINTED BY AND SERVING AT THE PLEASURE OF THE
3 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AND

4 (d) FOUR MEMBERS APPOINTED BY THE GOVERNOR AS FOLLOWS:

5 (I) TWO REPRESENTATIVES OF CERTIFIED CONSERVATION
6 EASEMENT HOLDERS;

7 (II) AN INDIVIDUAL WHO IS COMPETENT AND QUALIFIED TO
8 ANALYZE THE CONSERVATION PURPOSE OF CONSERVATION EASEMENTS;
9 AND

10 (III) A MEMBER OF THE GENERAL PUBLIC.

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

27 **SECTION 5.** In Colorado Revised Statutes, 12-61-726, **amend** (1)

1 introductory portion, (2), and (3) as follows:

2 **12-61-726. Conservation easement tax credit certificates -**

3 **rules.** (1) The ~~division~~ DEPARTMENT shall receive tax credit certificate
4 applications from and issue certificates to landowners for income tax
5 credits for conservation easements donated on or after January 1, 2011,
6 in accordance with section 39-22-522 (2.5) ~~C.R.S.~~, and this part 7.
7 Nothing in this section restricts or limits the authority of the ~~division~~
8 DEPARTMENT to enforce this part 7. The ~~division~~ DEPARTMENT may
9 promulgate rules in accordance with article 4 of title 24 ~~C.R.S.~~, for the
10 issuance of the certificates. In promulgating rules, the ~~division~~
11 DEPARTMENT may include provisions governing:

12 (2) The ~~division~~ DEPARTMENT shall apply the amount claimed in
13 a completed tax credit certificate application against the annual tax credit
14 limit in the order that completed applications are received. The ~~division~~
15 DEPARTMENT shall apply claimed tax credit amounts that exceed the
16 annual limit in any year against the limit for the next available year and
17 issue tax credit certificates for use in the year in which the amount was
18 applied to the annual limit.

19 (3) The ~~division~~ DEPARTMENT shall not issue tax credit certificates
20 that in aggregate exceed the limit set forth in section 39-22-522 (2.5)
21 ~~C.R.S.~~, during a particular calendar year.

22 **SECTION 6.** In Colorado Revised Statutes, 12-61-727, **amend**
23 (1)(e), (2)(a) introductory portion, (3)(a), (4), (5) introductory portion, (6),
24 (7)(a), (8)(c), (10), (11), (12)(b), (12)(c), (12)(d), (13)(a) introductory
25 portion, (13)(b), (14)(a), (14)(b), (14)(d), (15), and (16); and **add** (18) as
26 follows:

27 **12-61-727. Conservation easement tax credit certificate**

1 **application process - definitions - rules.** (1) For purposes of this
2 section:

3 (e) "Director" means the EXECUTIVE director of the division of real
4 estate DEPARTMENT or his or her designee.

5 (2) (a) The ~~division~~ DEPARTMENT shall establish and administer
6 a process by which a landowner seeking to claim an income tax credit for
7 any conservation easement donation made on or after January 1, 2014,
8 must apply for a tax credit certificate as required by section 39-22-522
9 (2.5) and (2.7). ~~C.R.S.~~ The purpose of the application process is to
10 determine whether a conservation easement donation for which a tax
11 credit will be claimed:

12 (3) For the purpose of reviewing applications and making
13 determinations regarding the issuance of tax credit certificates, including
14 the dollar amount of the tax credit certificate to be issued:

15 (a) ~~Division~~ DEPARTMENT staff shall review each application and
16 advise and make recommendations to the director and the commission
17 regarding the application;

18 (4) The department of revenue is not authorized to disallow a
19 conservation easement tax credit based on any requirements that are
20 under the jurisdiction of the ~~division~~ DEPARTMENT, the director, or the
21 commission pursuant to this section.

22 (5) A complete tax credit certificate application must be made by
23 the landowner to the ~~division~~ DEPARTMENT and must include:

24 (6) A landowner submitting an application for a tax credit
25 certificate pursuant to this section or an application for an optional
26 preliminary advisory opinion pursuant to subsection (14) of this section
27 shall pay the ~~division~~ DEPARTMENT a fee as prescribed by the ~~division~~

1 DEPARTMENT. The application fee for an optional preliminary advisory
2 opinion may be a different dollar amount than the application fee for a tax
3 credit certificate. The fees must cover the costs of the ~~division~~
4 DEPARTMENT and the commission in administering the requirements of
5 this section. The state treasurer shall credit the fees collected pursuant to
6 this subsection (6) to the ~~division of real estate~~ DEPARTMENT OF
7 REGULATORY AGENCIES CONSERVATION EASEMENT CERTIFICATION cash
8 fund created in ~~section 12-61-111.5~~ SUBSECTION (18) OF THIS SECTION.
9 On or before January 1, 2014, and on or before each January 1 thereafter,
10 the ~~division~~ DEPARTMENT shall certify to the general assembly the amount
11 of any fees prescribed by the ~~division~~ DEPARTMENT pursuant to this
12 subsection (6).

13 (7) (a) If, during the review of an application for a tax credit
14 certificate, the director or the commission identifies any potential
15 deficiencies, the director or commission shall document the potential
16 deficiencies in a letter sent to the landowner by first class mail. The
17 ~~division~~ DEPARTMENT shall send letters documenting potential
18 deficiencies to landowners in a timely manner so that the average number
19 of days between the date a completed application is received by the
20 ~~division~~ DEPARTMENT and the mailing date of the ~~division's~~
21 DEPARTMENT'S letter to the landowner does not exceed one hundred
22 twenty days.

23 (8) The director or the commission may deny an application if the
24 landowner:

25 (c) Fails to timely respond to any written request or notice from
26 the ~~division~~ DEPARTMENT, the director, or the commission.

27 (10) If the director and the commission do not identify any

1 potential deficiencies with an application, the director and the
2 commission shall approve the application, and the ~~division~~ DEPARTMENT
3 shall issue a tax credit certificate to the landowner pursuant to section
4 12-61-726 in a timely manner so that the average number of days between
5 the date a completed application is received by the ~~division~~ DEPARTMENT
6 and the date the tax credit certificate is issued does not exceed one
7 hundred twenty days. Once a tax credit certificate is issued, the landowner
8 may claim and use the tax credit subject to any other applicable
9 procedures and requirements under title 39. ~~C.R.S.~~

10 (11) (a) If all potential deficiencies that have been identified are
11 subsequently addressed to the satisfaction of the director and the
12 commission, the director and the commission shall approve the
13 application, and the ~~division~~ DEPARTMENT shall issue a tax credit
14 certificate to the landowner pursuant to section 12-61-726. Once a tax
15 credit certificate is issued, the landowner may claim and use the tax credit
16 subject to any other applicable procedures and requirements under title
17 39. ~~C.R.S.~~

18 (b) If any potential deficiencies that have been identified are not
19 subsequently addressed to the satisfaction of the director and the
20 commission, the ~~division~~ DEPARTMENT shall issue a written denial of the
21 application to the landowner documenting those deficiencies that were the
22 specific basis for the denial. The ~~division~~ DEPARTMENT shall date the
23 written denial and send it by first class mail to the landowner at the
24 address provided by the landowner on the application. The ~~director~~
25 DEPARTMENT may act on behalf of the commission for purposes of
26 administering the process for issuing approvals and denials of
27 applications and for administering subsection (12) of this section.

1 (12) (b) If the landowner fails to appeal the denial of an
2 application within thirty days after the issuance of the denial, the denial
3 becomes final, and the ~~division~~ DEPARTMENT shall not issue a tax credit
4 certificate to the landowner.

5 (c) Administrative hearings must be conducted in accordance with
6 section 24-4-105. ~~€R.S.~~ At the discretion of the director, hearings may
7 be conducted by an authorized representative of the director or the
8 commission or an administrative law judge from the office of
9 administrative courts in the department of personnel. All hearings must
10 be held in the county where the ~~division~~ DEPARTMENT is located unless
11 the director designates otherwise. The decision of the director or the
12 commission is subject to judicial review by the court of appeals and is
13 subject to the provisions of section 24-4-106. ~~€R.S.~~

14 (d) In conducting settlement discussions with a landowner, the
15 director and the commission may compromise on any of the deficiencies
16 identified in the application and supporting documentation, including the
17 dollar amount of the tax credit certificate to be issued. The director shall
18 place on file in the ~~division~~ DEPARTMENT a record of any compromise and
19 the reasons for the compromise.

20 (13) (a) Commencing with the 2014 calendar year, and for each
21 calendar year thereafter, the ~~division~~ DEPARTMENT shall create a report,
22 which shall be made available to the public, containing the following
23 aggregate information:

24 (b) The ~~division~~ DEPARTMENT may include additional
25 easement-specific information in the public report that, notwithstanding
26 the provisions of this part 7 or any other law to the contrary, would
27 otherwise be publicly available.

1 (14) (a) In addition to the tax credit certificate application process
2 set forth in this section, a landowner may submit a proposed conservation
3 easement donation to the ~~division~~ DEPARTMENT to obtain an optional
4 preliminary advisory opinion regarding the transaction. The opinion may
5 address the proposed deed of conservation easement, appraisal,
6 conservation purpose, or other relevant aspect of the transaction.

7 (b) The ~~division~~ DEPARTMENT, the director, and the commission
8 shall review the information and documentation provided in a manner
9 consistent with the scope of their authority and responsibilities for
10 reviewing tax credit certificate applications as outlined in subsection (3)
11 of this section and issue either a favorable opinion or a nonfavorable
12 opinion.

13 (d) A nonfavorable opinion shall set forth any potential
14 deficiencies identified by the director or the commission and that fall
15 within the scope of the director's and the commission's review of the
16 conservation easement transaction. The preliminary opinion is advisory
17 only and is not binding for any purpose upon the ~~division~~ DEPARTMENT,
18 the director, the commission, or the department of revenue.

19 (15) The ~~division~~ DEPARTMENT may promulgate rules to
20 effectuate the purpose, implementation, and administration of this section
21 pursuant to article 4 of title 24. ~~C.R.S.~~ The authority to promulgate rules
22 includes the authority to define further in rule the administrative
23 processes and requirements, including application processing and review
24 time frames, for obtaining and issuing an optional preliminary advisory
25 opinion pursuant to subsection (14) of this section. THE AUTHORITY TO
26 PROMULGATE RULES FURTHER INCLUDES THE AUTHORITY TO ESTABLISH,
27 AFTER CONSULTATION WITH THE COMMISSION, MONTHLY CAPS ON THE

1 NUMBER OF APPLICATIONS FOR TAX CREDIT CERTIFICATES AND
2 PRELIMINARY ADVISORY OPINIONS ACCEPTED BY THE DEPARTMENT.

3 (16) Notwithstanding ~~the provisions of~~ the "Colorado Open
4 Records Act", part 2 of article 72 of title 24, ~~C.R.S.~~, the ~~division~~
5 DEPARTMENT, the director, and the commission shall deny the right of
6 public inspection of any documentation or other record related to
7 information obtained as part of an individual landowner's application for
8 a tax credit certificate or an optional preliminary advisory opinion
9 pursuant to the requirements of this section, including documentation or
10 other records related to administrative hearings and settlement discussions
11 held pursuant to subsection (12) of this section. The ~~division~~
12 DEPARTMENT, the director, and the commission may share documentation
13 or other records related to information obtained pursuant to this section
14 with the department of revenue.

15 (18) ALL FEES AND OTHER MONEY COLLECTED BY THE
16 DEPARTMENT PURSUANT TO THIS SECTION AND SECTION 12-61-724 SHALL
17 BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE
18 SAME TO THE DEPARTMENT OF REGULATORY AGENCIES CONSERVATION
19 EASEMENT CERTIFICATION CASH FUND, WHICH FUND IS HEREBY CREATED.
20 ALL MONEY CREDITED TO THE FUND SHALL BE USED AS PROVIDED IN THIS
21 SECTION OR IN SECTION 12-61-724 AND SHALL NOT BE DEPOSITED IN OR
22 TRANSFERRED TO THE GENERAL FUND OF THE STATE OR ANY OTHER FUND.

23 **SECTION 7.** In Colorado Revised Statutes, 12-61-727, **amend**
24 (7)(a) and (10) as follows:

25 **12-61-727. Conservation easement tax credit certificate**
26 **application process - definitions - rules.** (7) (a) If, during the review of
27 an application for a tax credit certificate, the director or the commission

1 identifies any potential deficiencies, the director or commission shall
2 document the potential deficiencies in a letter sent to the landowner by
3 first class mail. The division shall send letters documenting potential
4 deficiencies to landowners in a timely manner so that the average number
5 of days between the date a completed application is received by the
6 division and the mailing date of the division's letter to the landowner does
7 not exceed one hundred twenty days.

8 (10) If the director and the commission do not identify any
9 potential deficiencies with an application, the director and the
10 commission shall approve the application, and the division shall issue a
11 tax credit certificate to the landowner pursuant to section 12-61-726 in a
12 timely manner so that the average number of days between the date a
13 completed application is received by the division and the date the tax
14 credit certificate is issued does not exceed one hundred twenty days. Once
15 a tax credit certificate is issued, the landowner may claim and use the tax
16 credit subject to any other applicable procedures and requirements under
17 title 39. C.R.S.

18 **SECTION 8.** In Colorado Revised Statutes, 24-34-104, **repeal**
19 (14)(a)(II); and **add** (26)(a)(VIII) as follows:

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

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

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

1 (VIII) THE CONSERVATION EASEMENT OVERSIGHT COMMISSION
2 CREATED IN SECTION 12-61-725.

3 **SECTION 9.** In Colorado Revised Statutes, 39-22-522, **amend**
4 (2.5), (2.7), (3.5)(b), and (3.6)(b) as follows:

5 **39-22-522. Credit against tax - conservation easements.**

6 (2.5) Notwithstanding any other provision of this section and the
7 requirements of section 12-61-727, ~~C.R.S.~~, for income tax years
8 commencing on or after January 1, 2011, a taxpayer conveying a
9 conservation easement and claiming a credit pursuant to this section shall,
10 in addition to any other requirements of this section and the requirements
11 of section 12-61-727, ~~C.R.S.~~, submit a claim for the credit to the ~~division~~
12 ~~of real estate in the~~ department of regulatory agencies. The ~~division~~
13 DEPARTMENT shall issue a certificate for the claims received in the order
14 submitted. After certificates have been issued for credits that exceed an
15 aggregate of twenty-two million dollars for all taxpayers for the 2011 and
16 2012 calendar years, thirty-four million dollars for the 2013 calendar year,
17 and forty-five million dollars for each calendar year thereafter, any claims
18 that exceed the amount allowed for a specified calendar year shall be
19 placed on a wait list in the order submitted and a certificate shall be
20 issued for use of the credit in the next year for which the ~~division~~
21 DEPARTMENT has not issued credit certificates in excess of the amounts
22 specified in this subsection (2.5); except that no more than fifteen million
23 dollars in claims shall be placed on the wait list in any given calendar
24 year. The ~~division~~ DEPARTMENT shall not issue credit certificates that
25 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
26 years, thirty-four million dollars for the 2013 calendar year, and forty-five
27 million dollars for each calendar year thereafter. No claim for a credit is

1 allowed for any income tax year commencing on or after January 1, 2011,
2 unless a certificate has been issued by the ~~division~~ DEPARTMENT. If all
3 other requirements under section 12-61-727 ~~C.R.S.~~, and this section are
4 met, the right to claim the credit is vested in the taxpayer at the time a
5 credit certificate is issued.

6 (2.7) Notwithstanding any other provision, for income tax years
7 commencing on or after January 1, 2014, no claim for a credit shall be
8 allowed unless a tax credit certificate is issued by the ~~division of real~~
9 ~~estate~~ DEPARTMENT OF REGULATORY AGENCIES in accordance with
10 sections 12-61-726 and 12-61-727 ~~C.R.S.~~, and the taxpayer files the tax
11 credit certificate with the income tax return filed with the department of
12 revenue.

13 (3.5) (b) For conservation easements donated on or after January
14 1, 2014, and subject to the restrictions of section 12-61-727 (4), ~~C.R.S.~~,
15 the executive director shall have the authority, pursuant to subsection (8)
16 of this section, to require additional information from the taxpayer or
17 transferee regarding the amount of the credit and the validity of the credit.
18 In resolving disputes regarding the validity or the amount of a credit
19 allowed pursuant to subsection (2) of this section, the executive director
20 shall have the authority, for good cause shown, to review and accept or
21 reject, in whole or in part, the amount of the credit and the validity of the
22 credit based upon the internal revenue code and federal regulations in
23 effect at the time of the donation, except those requirements for which
24 authority is granted to the ~~division of real estate~~ DEPARTMENT OF
25 REGULATORY AGENCIES, the EXECUTIVE director of the ~~division of real~~
26 ~~estate~~ DEPARTMENT OF REGULATORY AGENCIES, or the conservation
27 easement oversight commission pursuant to section 12-61-727. ~~C.R.S.~~

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

7 (b) Notwithstanding any other provisions of law, the executive
8 director retains the authority to administer all issues related to the claim
9 or use of a tax credit for the donation of a conservation easement that are
10 not granted to the EXECUTIVE director of the ~~division of real estate~~
11 DEPARTMENT OF REGULATORY AGENCIES or the conservation easement
12 oversight commission under section 12-61-727. ~~C.R.S.~~

13 **SECTION 10. Effective date.** This act takes effect upon passage;
14 except that section 4 takes effect July 1, 2019.

15 **SECTION 11. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.