

CHAPTER 273

PROPERTY

HOUSE BILL 18-1291

BY REPRESENTATIVE(S) Winter and Thurlow, Arndt, Bridges, Buckner, Hamner, Hansen, Kennedy, Lawrence, Michaelson Jenet, Roberts, Rosenthal, Young, Coleman, Esgar, Exum, Herod, Lontine, McLachlan, Pettersen, Salazar, Valdez, Duran;
also SENATOR(S) Sonnenberg, Aguilar, Cooke, Coram, Crowder, Donovan, Jahn, Kerr, Scott.

AN ACT

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

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

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

**PART 11
CONSERVATION EASEMENTS**

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) COLORADO'S CONSERVATION EASEMENT TAX CREDIT PROGRAM WAS DESIGNED TO GIVE LANDOWNERS AN INCENTIVE TO CONSERVE AND PRESERVE THEIR LAND IN A PREDOMINANTLY NATURAL, SCENIC, OR OPEN CONDITION;

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

(e) ESTABLISHING THE DIVISION OF CONSERVATION TO ADMINISTER THE CONSERVATION EASEMENT TAX CREDIT PROGRAM WILL:

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

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

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

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

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

12-61-1103. Conservation easement oversight commission - created - repeal.

(1) THERE IS HEREBY CREATED IN THE DIVISION A CONSERVATION EASEMENT OVERSIGHT COMMISSION. THE COMMISSION SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DIVISION AS IF TRANSFERRED

THERE TO BY A **TYPE 2** TRANSFER, AS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24. THE COMMISSION CONSISTS OF EIGHT MEMBERS AS FOLLOWS:

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

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

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

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

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

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

(e) TWO VOTING MEMBERS OF THE GENERAL PUBLIC, ONE APPOINTED BY THE PRESIDENT OF THE SENATE TO SERVE AT THE PLEASURE OF THE PRESIDENT AND ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO SERVE AT THE PLEASURE OF THE SPEAKER. APPOINTMENTS MADE PURSUANT TO THIS SUBSECTION (1)(e) ARE FOR THREE-YEAR TERMS AND NO MEMBER SHALL SERVE MORE THAN TWO CONSECUTIVE TERMS.

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

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

(b) THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT TAX CREDIT CERTIFICATE APPLICATIONS AND REQUESTS FOR OPTIONAL PRELIMINARY ADVISORY OPINIONS IN ACCORDANCE WITH SECTION 12-61-1106.

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

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

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

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

(8) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2019.

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

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

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

(2) THE DIVISION SHALL ESTABLISH AND ACCEPT APPLICATIONS FOR CERTIFICATION. THE DIVISION SHALL CONDUCT A REVIEW OF EACH APPLICATION AND CONSIDER THE RECOMMENDATIONS OF THE COMMISSION BEFORE MAKING A FINAL DETERMINATION TO GRANT OR DENY CERTIFICATION. IN REVIEWING AN APPLICATION

AND IN GRANTING CERTIFICATION, THE DIVISION AND THE COMMISSION MAY CONSIDER:

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

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

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

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

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

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

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

(4) THE CERTIFICATION PROGRAM APPLIES TO:

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

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

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

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

(6) THE COMMISSION SHALL MEET AT LEAST QUARTERLY AND MAKE RECOMMENDATIONS TO THE DIVISION REGARDING THE CERTIFICATION PROGRAM. THE DIVISION IS AUTHORIZED TO DETERMINE WHETHER AN APPLICANT FOR CERTIFICATION POSSESSES THE NECESSARY QUALIFICATIONS FOR CERTIFICATION REQUIRED BY THE RULES ADOPTED BY THE DIVISION. IF THE DIVISION DETERMINES THAT AN APPLICANT DOES NOT POSSESS THE APPLICABLE QUALIFICATIONS FOR CERTIFICATION OR THAT THE APPLICANT HAS VIOLATED ANY PROVISION OF THIS PART 11, THE RULES PROMULGATED BY THE DIVISION, OR ANY DIVISION ORDER, THE DIVISION MAY DENY THE APPLICANT A CERTIFICATION OR DENY THE RENEWAL OF A CERTIFICATION, AND, IN SUCH INSTANCE, THE DIVISION SHALL PROVIDE THE APPLICANT WITH A STATEMENT IN WRITING SETTING FORTH THE BASIS OF THE DIVISION'S DETERMINATION. THE APPLICANT MAY REQUEST A HEARING ON THE DETERMINATION AS PROVIDED IN SECTION 24-4-104(9). THE DIVISION SHALL NOTIFY SUCCESSFUL APPLICANTS IN WRITING. AN APPLICANT THAT IS NOT CERTIFIED MAY REAPPLY FOR CERTIFICATION IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE DIVISION.

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

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

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

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

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

(8) A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE APPLICATION MAY BE SUBMITTED PURSUANT TO SECTION 12-61-1106 ONLY IF THE ENTITY HAS BEEN CERTIFIED IN ACCORDANCE WITH THIS SECTION AT THE TIME THE DONATION OF THE EASEMENT IS MADE. THE DIVISION SHALL MAKE INFORMATION AVAILABLE TO THE

PUBLIC CONCERNING THE DATE THAT IT COMMENCES ACCEPTING APPLICATIONS FOR ENTITIES THAT HOLD CONSERVATION EASEMENTS AND THE REQUIREMENTS OF THIS SUBSECTION (8).

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

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

(11) THE DIVISION MAY SUBPOENA PERSONS AND DOCUMENTS, WHICH SUBPOENAS MAY BE ENFORCED BY A COURT OF COMPETENT JURISDICTION IF NOT OBEYED, FOR PURPOSES OF CONDUCTING INVESTIGATIONS PURSUANT TO SUBSECTION (10) OF THIS SECTION.

(12) NOTHING IN THIS SECTION:

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

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

(13) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2019.

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

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

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

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

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

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

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

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

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

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

(b) "CONSERVATION PURPOSE" MEANS CONSERVATION PURPOSE AS DEFINED IN SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH SECTION.

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

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

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

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

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

(2)(a) THE DIVISION SHALL ESTABLISH AND ADMINISTER A PROCESS BY WHICH A

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

(I) IS A CONTRIBUTION OF A QUALIFIED REAL PROPERTY INTEREST TO A QUALIFIED ORGANIZATION TO BE USED EXCLUSIVELY FOR A CONSERVATION PURPOSE;

(II) IS SUBSTANTIATED WITH A QUALIFIED APPRAISAL PREPARED BY A QUALIFIED APPRAISER IN ACCORDANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE; AND

(III) COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

(b) THE LANDOWNER HAS THE BURDEN OF PROOF REGARDING COMPLIANCE WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS.

(3) FOR THE PURPOSE OF REVIEWING APPLICATIONS AND MAKING DETERMINATIONS REGARDING THE ISSUANCE OF TAX CREDIT CERTIFICATES, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT CERTIFICATE TO BE ISSUED:

(a) DIVISION STAFF SHALL REVIEW EACH APPLICATION AND ADVISE AND MAKE RECOMMENDATIONS TO THE DIRECTOR AND THE COMMISSION REGARDING THE APPLICATION;

(b) THE DIRECTOR HAS AUTHORITY AND RESPONSIBILITY TO DETERMINE THE CREDIBILITY OF THE APPRAISAL. IN DETERMINING CREDIBILITY, THE DIRECTOR SHALL CONSIDER, AT A MINIMUM, COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

(I) THE APPRAISAL FOR A CONSERVATION EASEMENT DONATION FOR WHICH A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522 IS A QUALIFIED APPRAISAL FROM A QUALIFIED APPRAISER, AS DEFINED IN SECTION 170 (f) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH SECTION;

(II) THE APPRAISAL CONFORMS WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL STANDARDS BOARD OF THE APPRAISAL FOUNDATION AND ANY OTHER PROVISION OF LAW;

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

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

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

(d) THE COMMISSION HAS THE AUTHORITY AND RESPONSIBILITY TO DETERMINE

WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522 IS A QUALIFIED CONSERVATION CONTRIBUTION AS DEFINED IN SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH SECTION.

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

(5) A COMPLETE TAX CREDIT CERTIFICATE APPLICATION MUST BE MADE BY THE LANDOWNER TO THE DIVISION AND MUST INCLUDE:

- (a) A COPY OF THE FINAL CONSERVATION EASEMENT APPRAISAL;
- (b) A COPY OF THE RECORDED DEED GRANTING THE CONSERVATION EASEMENT;
- (c) DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE OF THE EASEMENT;
- (d) ANY OTHER INFORMATION OR DOCUMENTATION THE DIRECTOR OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL DETERMINATION REGARDING THE APPLICATION; AND
- (e) THE FEE REQUIRED PURSUANT TO SUBSECTION (6) OF THIS SECTION.

(6) A LANDOWNER SUBMITTING AN APPLICATION FOR A TAX CREDIT CERTIFICATE PURSUANT TO THIS SECTION OR AN APPLICATION FOR AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO SUBSECTION (14) OF THIS SECTION SHALL PAY THE DIVISION A FEE AS PRESCRIBED BY THE DIVISION. THE APPLICATION FEE FOR AN OPTIONAL PRELIMINARY ADVISORY OPINION MAY BE A DIFFERENT DOLLAR AMOUNT THAN THE APPLICATION FEE FOR A TAX CREDIT CERTIFICATE. THE FEES MUST BE ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE DIVISION AND THE COMMISSION IN ADMINISTERING THE REQUIREMENTS OF THIS SECTION, BUT NOT SO HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF CONSERVATION EASEMENTS IN THE STATE. THE STATE TREASURER SHALL CREDIT THE FEES COLLECTED PURSUANT TO THIS SUBSECTION (6) TO THE CONSERVATION CASH FUND CREATED IN SECTION 12-61-1107. ON OR BEFORE JANUARY 1, 2014, AND ON OR BEFORE EACH JANUARY 1 THEREAFTER, THE DIVISION SHALL CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT OF ANY FEES PRESCRIBED BY THE DIVISION PURSUANT TO THIS SUBSECTION (6).

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

HUNDRED TWENTY DAYS.

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

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

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

(8) THE DIRECTOR OR THE COMMISSION MAY DENY AN APPLICATION IF THE LANDOWNER:

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

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

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

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

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

(11) (a) IF ALL POTENTIAL DEFICIENCIES THAT HAVE BEEN IDENTIFIED ARE SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE DIRECTOR AND THE

COMMISSION, THE DIRECTOR AND THE COMMISSION SHALL APPROVE THE APPLICATION, AND THE DIVISION SHALL ISSUE A TAX CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT TO SECTION 12-61-1105. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE LANDOWNER MAY CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY OTHER APPLICABLE PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

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

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

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

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

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

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

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

(I) THE TOTAL NUMBER OF TAX CREDIT CERTIFICATE APPLICATIONS RECEIVED, APPROVED, AND DENIED IN ACCORDANCE WITH THIS SECTION, ALONG WITH AVERAGE PROCESSING TIMES;

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

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

(B) THE TOTAL APPRAISED VALUE OF THE EASEMENTS;

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

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

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

(c) THE DIRECTOR IS AUTHORIZED TO SHARE PUBLICLY AVAILABLE INFORMATION REGARDING CONSERVATION EASEMENTS WITH A THIRD-PARTY VENDOR FOR THE PURPOSE OF DEVELOPING AND MAINTAINING A REGISTRY OF CONSERVATION EASEMENTS IN THE STATE WITH A CORRESPONDING MAP DISPLAYING THE BOUNDARIES OF EACH EASEMENT IN THE STATE RELATIVE TO COUNTY BOUNDARIES AND OTHER RELEVANT MAPPING INFORMATION. PRIOR TO SHARING THE INFORMATION, THE DIRECTOR SHALL CONSULT WITH THE COMMISSION REGARDING THE APPROPRIATE TYPES OF INFORMATION AND THE METHODS USED FOR COLLECTING THE INFORMATION. THE DEPARTMENT OF REGULATORY AGENCIES SHALL ANNUALLY REPORT ON THE INFORMATION CONTAINED IN THE REGISTRY AS A PART OF ITS PRESENTATION TO ITS COMMITTEE OF REFERENCE AT A HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT". THE INFORMATION TO BE SHARED SHALL INCLUDE THE FOLLOWING:

(I) ANY DEEDS, CONTRACTS, OR OTHER INSTRUMENTS CREATING, ASSIGNING, OR TERMINATING THE EASEMENT, INCLUDING THE RECEPTION NUMBERS ON ALL INSTRUMENTS;

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

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

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

(V) THE CONSERVATION PURPOSES OF THE EASEMENT; AND

(VI) IF A TAX CREDIT WAS ISSUED.

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

(b) THE DIVISION, THE DIRECTOR, AND THE COMMISSION SHALL REVIEW THE INFORMATION AND DOCUMENTATION PROVIDED IN A MANNER CONSISTENT WITH THE SCOPE OF THEIR AUTHORITY AND RESPONSIBILITIES FOR REVIEWING TAX CREDIT CERTIFICATE APPLICATIONS AS OUTLINED IN SUBSECTION (3) OF THIS SECTION AND ISSUE EITHER A FAVORABLE OPINION OR A NONFAVORABLE OPINION.

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

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

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

(16) NOTWITHSTANDING THE PROVISIONS OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, THE DIVISION, THE DIRECTOR, AND THE COMMISSION SHALL DENY THE RIGHT OF PUBLIC INSPECTION OF ANY DOCUMENTATION OR OTHER RECORD RELATED TO INFORMATION OBTAINED AS PART OF AN INDIVIDUAL LANDOWNER'S APPLICATION FOR A TAX CREDIT CERTIFICATE OR AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO THE REQUIREMENTS OF THIS SECTION, INCLUDING DOCUMENTATION OR OTHER RECORDS RELATED TO ADMINISTRATIVE HEARINGS AND SETTLEMENT DISCUSSIONS HELD PURSUANT TO SUBSECTION (12) OF THIS SECTION. THE DIVISION, THE DIRECTOR, AND THE COMMISSION MAY SHARE DOCUMENTATION OR OTHER RECORDS RELATED TO INFORMATION OBTAINED PURSUANT TO THIS SECTION WITH THE DEPARTMENT OF REVENUE.

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

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

(2) AS SOON AS PRACTICABLE AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2), THE STATE TREASURER SHALL TRANSFER TO THE CONSERVATION CASH FUND ANY MONEYS IN THE DIVISION OF REAL ESTATE CASH FUND CREATED IN THE SECTION 12-61-111.5 THAT ARE ATTRIBUTABLE TO ANY FEES, GIFTS, GRANTS, OR DONATIONS CREDITED TO THE DIVISION OF REAL ESTATE CASH FUND IN ACCORDANCE WITH SECTION 12-61-724(3) OR SECTION 12-61-727 THAT ARE IN THE FUND IMMEDIATELY PRIOR TO THE REPEAL OF SECTIONS 12-61-724 AND 12-61-727. THIS SUBSECTION (2) IS REPEALED EFFECTIVE JULY 1, 2019.

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

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

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

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

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

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

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

(k) To establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement for which a tax credit is claimed pursuant to section 39-22-522. ~~C.R.S.~~ The requirements must ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements for which a tax credit is claimed. A tax credit certificate for a conservation easement shall not be given in accordance with ~~sections 12-61-726~~

~~and 12-61-727~~ SECTIONS 12-61-1105 AND 12-61-1106 unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this ~~paragraph (k)~~ SUBSECTION (1)(k) in effect at the time the appraisal was completed APPRAISAL CERTIFICATION IS SIGNED.

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

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

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

39-22-522. Credit against tax - conservation easements. (2.5) Notwithstanding any other provision of this section and the requirements of ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106, for income tax years commencing on or after January 1, 2011, a taxpayer conveying a conservation easement and claiming a credit pursuant to this section shall, in addition to any other requirements of this section and the requirements of ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106, submit a claim for the credit to the division of ~~real estate~~ CONSERVATION in the department of regulatory agencies. The division shall issue a certificate for the claims received in the order submitted. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter, any claims that exceed the amount allowed for a specified calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in the next year for which the division has not issued credit certificates in excess of the amounts specified in this subsection (2.5); except that no more than fifteen million dollars in claims shall be placed on the wait list in any given calendar year. The division shall not issue credit certificates that exceed twenty-two million dollars in each of the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter. No claim for a credit is allowed for any income tax year commencing on or after January 1, 2011, unless a certificate has been issued by the division. If all other requirements under ~~section 12-61-727, C.R.S.,~~ SECTION 12-61-1106 and this section are met, the right to claim the credit is vested in the taxpayer at the time a credit certificate is issued.

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

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

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

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

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

(II) In consultation with the division of ~~real estate~~ CONSERVATION and the conservation easement oversight commission created in ~~section 12-61-725 (1), C.R.S.~~ SECTION 12-61-1103 (1), the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed

by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, ~~C.R.S.~~; in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this ~~subparagraph (H)~~ SUBSECTION (3.5)(a)(II).

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

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

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

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

(3.8) (a) THE DIVISION OF CONSERVATION SHALL CONVENE A WORKING GROUP IN CONJUNCTION WITH THE DEPARTMENT OF LAW, THE DEPARTMENT OF REVENUE, AND THE DEPARTMENT OF REGULATORY AGENCIES TO DEVELOP STATUTORY AND REGULATORY RECOMMENDATIONS THAT DO NOT CONFLICT WITH FEDERAL LAW FOR THE FOLLOWING:

(I) AN ALTERNATE METHOD TO THE APPRAISAL PROCESS SET FORTH IN SUBSECTION (3.3) OF THIS SECTION TO ESTABLISH A BASELINE PROPERTY VALUE, USING AGREED UPON PUBLICLY AVAILABLE DATASETS FOR RURAL AND AGRICULTURAL PROPERTIES. THE BASELINE VALUATION WOULD THEN BE SUBJECT TO DIFFERENT LEVELS OF RESTRICTION INCLUDING, BUT NOT LIMITED TO, A MOST RESTRICTIVE, MEDIUM RESTRICTIVE, AND LEAST RESTRICTIVE EASEMENT TO ARRIVE AT A FINAL DETERMINATION ESTABLISHED THROUGH PUBLIC POLICY FROM WHICH THE AMOUNT OF A TAX CREDIT COULD BE CALCULATED PURSUANT TO THIS SECTION. THE ALTERNATE METHOD SHOULD WORK ACROSS THE STATE OF COLORADO.

(II) A RECOMMENDATION FOR A PROCESS TO PETITION A COURT OF COMPETENT JURISDICTION CONSISTENT WITH FEDERAL LAWS AND REGULATIONS TO EXTINGUISH A CONSERVATION EASEMENT, INCLUDING PROPOSED DEFINITIONS FOR THE TERMS "IMPOSSIBLE" AND "IMPRACTICABLE" AS THEY ARE APPLIED FOR PURPOSES OF DETERMINING WHETHER AN EASEMENT MAY BE EXTINGUISHED UNDER STATE AND FEDERAL LAW;

(III) A PROCESS TO PROVIDE RETROACTIVE TAX CREDITS TO TAXPAYERS WHO CLAIMED TAX CREDITS PURSUANT TO THIS SECTION BETWEEN JANUARY 1, 2000, AND DECEMBER 31, 2008, AND WHOSE TAX CREDITS WERE DENIED IN WHOLE OR IN PART, INCLUDING THE DEVELOPMENT OF ELIGIBILITY CRITERIA FOR SUCH RETROACTIVE TAX CREDITS; AND

(IV) THE DEVELOPMENT OF A WRITTEN FORM TO WARN LANDOWNERS WHO HAVE CONSERVATION EASEMENTS ON THEIR PROPERTY OF THE LEGAL AND OTHER CONSEQUENCES OF TERMINATING AN EASEMENT ON THEIR PROPERTY.

(b) THE WORKING GROUP SHALL SUBMIT A REPORT TO THE TRANSPORTATION AND ENERGY COMMITTEE OF THE HOUSE OF REPRESENTATIVES, THE AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES COMMITTEE OF THE HOUSE OF REPRESENTATIVES, THE AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE OF THE SENATE, AND THE TRANSPORTATION COMMITTEE OF THE SENATE NO LATER THAN DECEMBER 1, 2018. THE REPORT MUST INCLUDE ANY RECOMMENDATIONS FOR LEGISLATION OR RULEMAKING TO ADDRESS THE ISSUES ADDRESSED PURSUANT TO THIS SUBSECTION (3.8).

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

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

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

39-22-522.5. Conservation easement tax credits - dispute resolution - legislative declaration. (8) ~~On or before August 1, 2011, the conservation easement oversight commission created in section 12-61-725 (1), C.R.S., shall review conservation easements for which a tax credit is claimed pursuant to sections 39-22-522 (3.5)(a) and 12-61-725 (3), C.R.S., and for which a notice of deficiency, notice of rejection of refund claim, or notice of disallowance issued on or before May 1, 2011, but for which a final determination has not been issued before May 19, 2011, and for which the commission has not already reviewed the credit. For each conservation easement tax credit claim so reviewed, the commission shall issue an initial recommendation to the executive director on whether each credit claimed by a taxpayer who is eligible to waive a hearing and appeal a notice of deficiency, notice of rejection of refund claim, or notice of disallowance may be denied or accepted. No other information shall be required of the commission on or before such date.~~

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

24-1-122. Department of regulatory agencies - creation. (2) The department of regulatory agencies shall consist of the following divisions:

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

SECTION 9. In Colorado Revised Statutes, 24-34-104, **repeal** (14)(a)(II) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal.

(14)(a) The following agencies, functions, or both, are scheduled for repeal on July 1, 2018:

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

SECTION 10. In Colorado Revised Statutes, **repeal** 12-61-724, 12-61-725, 12-61-726, and 12-61-727.

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

Approved: May 29, 2018