

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

April 23, 2018  
Date

Committee on Appropriations.

After consideration on the merits, the Committee recommends the following:

HB18-1291 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike the Committee on Transportation & Energy  
2 report dated March 15, 2018 and substitute:

3 "Amend printed bill, strike everything below the enacting clause and  
4 substitute:

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

7 PART 11  
8 CONSERVATION EASEMENTS

9 **12-61-1101. Legislative declaration.** (1) THE GENERAL  
10 ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

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

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

22 (c) COLORADO'S CONSERVATION EASEMENT TAX CREDIT PROGRAM  
23 WAS DESIGNED TO GIVE LANDOWNERS AN INCENTIVE TO CONSERVE AND

1 PRESERVE THEIR LAND IN A PREDOMINANTLY NATURAL, SCENIC, OR OPEN  
2 CONDITION;

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

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

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

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

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

26 **12-61-1102. Division of conservation - director.** (1) THE  
27 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES IS  
28 AUTHORIZED BY THIS SECTION TO EMPLOY, SUBJECT TO THE PROVISIONS  
29 OF THE STATE PERSONNEL SYSTEM LAWS OF THE STATE, A DIRECTOR OF  
30 THE DIVISION OF CONSERVATION, REFERRED TO IN THIS PART 11 AS THE  
31 "DIVISION", WHO IN TURN SHALL EMPLOY SUCH DEPUTIES, CLERKS, AND  
32 ASSISTANTS AS ARE NECESSARY TO DISCHARGE THE DUTIES IMPOSED BY  
33 THIS PART 11. THE DIVISION OF CONSERVATION, WHICH IS A DIVISION IN  
34 THE DEPARTMENT OF REGULATORY AGENCIES, AND THE DIRECTOR OF THE  
35 DIVISION SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND  
36 FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF  
37 THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.

38 (2) IT IS THE DUTY OF THE DIRECTOR, PERSONALLY OR HIS OR HER  
39 DESIGNEE, TO AID IN THE ADMINISTRATION AND ENFORCEMENT OF THIS  
40 PART 11 AND TO ADMINISTER, IN CONSULTATION WITH THE CONSERVATION  
41 EASEMENT OVERSIGHT COMMISSION, THE CERTIFICATION OF

1 CONSERVATION EASEMENT HOLDERS AND ISSUANCE OF TAX CREDIT  
2 CERTIFICATES AS PROVIDED IN THIS PART 11.

3 **12-61-1103. Conservation easement oversight commission -**  
4 **created - repeal.** (1) THERE IS HEREBY CREATED IN THE DIVISION A  
5 CONSERVATION EASEMENT OVERSIGHT COMMISSION. THE COMMISSION  
6 SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS  
7 UNDER THE DIVISION AS IF TRANSFERRED THERETO BY A **TYPE 2** TRANSFER,  
8 AS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968",  
9 ARTICLE 1 OF TITLE 24. THE COMMISSION CONSISTS OF EIGHT MEMBERS AS  
10 FOLLOWS:

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

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

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

22 (d) FIVE VOTING MEMBERS APPOINTED BY THE GOVERNOR AS  
23 FOLLOWS:

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

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

29 (III) TWO VOTING MEMBERS OF THE GENERAL PUBLIC.

30 (2) IN MAKING APPOINTMENTS TO THE COMMISSION, THE  
31 GOVERNOR SHALL CONSULT WITH THE THREE MEMBERS OF THE  
32 COMMISSION APPOINTED PURSUANT TO SUBSECTIONS (1)(a) THROUGH  
33 (1)(c) OF THIS SECTION AND WITH APPROPRIATE ORGANIZATIONS  
34 REPRESENTING THE PARTICULAR INTEREST OR AREA OF EXPERTISE THAT  
35 THE APPOINTEES IN SUBSECTIONS (1)(d)(I) AND (1)(d)(II) OF THIS SECTION  
36 REPRESENT. NOT MORE THAN THREE OF THE GOVERNOR'S APPOINTEES  
37 SERVING AT THE SAME TIME SHALL BE FROM THE SAME POLITICAL PARTY.  
38 IN MAKING THE INITIAL APPOINTMENTS, THE GOVERNOR SHALL APPOINT  
39 THREE MEMBERS FOR TERMS OF TWO YEARS. ALL OTHER APPOINTMENTS  
40 BY THE GOVERNOR ARE FOR TERMS OF THREE YEARS. NO MEMBER SHALL  
41 SERVE MORE THAN TWO CONSECUTIVE TERMS. IN THE EVENT OF A

1 VACANCY BY DEATH, RESIGNATION, REMOVAL, OR OTHERWISE, THE  
2 GOVERNOR SHALL APPOINT A MEMBER TO FILL THE UNEXPIRED TERM. THE  
3 GOVERNOR MAY REMOVE ANY MEMBER FOR MISCONDUCT, NEGLIGENCE OF  
4 DUTY, OR INCOMPETENCE.

5 (3) (a) AT THE REQUEST OF THE DIVISION OR THE DEPARTMENT OF  
6 REVENUE, THE COMMISSION SHALL ADVISE THE DIVISION AND THE  
7 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR  
8 WHICH A STATE INCOME TAX CREDIT IS CLAIMED PURSUANT TO SECTION  
9 39-22-522.

10 (b) THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT  
11 TAX CREDIT CERTIFICATE APPLICATIONS AND REQUESTS FOR OPTIONAL  
12 PRELIMINARY ADVISORY OPINIONS IN ACCORDANCE WITH SECTION  
13 12-61-1106.

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

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

32 (6) THE COMMISSION SHALL ADVISE AND MAKE  
33 RECOMMENDATIONS TO THE DIRECTOR REGARDING THE CERTIFICATION OF  
34 CONSERVATION EASEMENT HOLDERS IN ACCORDANCE WITH SECTION  
35 12-61-1104.

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

39 (8) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.  
40 PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES  
41 SHALL REVIEW THE COMMISSION AS PROVIDED IN SECTION 24-34-104.

1           **12-61-1104. Certification of conservation easement holders -**  
2 **rules - definition - repeal.** (1) THE DIVISION SHALL, IN CONSULTATION  
3 WITH THE COMMISSION CREATED IN SECTION 12-61-1103, ESTABLISH AND  
4 ADMINISTER A CERTIFICATION PROGRAM FOR QUALIFIED ORGANIZATIONS  
5 UNDER SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF  
6 1986", AS AMENDED, THAT HOLD CONSERVATION EASEMENTS FOR WHICH  
7 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522. THE  
8 PURPOSES OF THE PROGRAM ARE TO:  
9           (a) ESTABLISH MINIMUM QUALIFICATIONS FOR CERTIFYING  
10 ORGANIZATIONS THAT HOLD CONSERVATION EASEMENTS TO ENCOURAGE  
11 PROFESSIONALISM AND STABILITY; AND  
12           (b) IDENTIFY FRAUDULENT OR UNQUALIFIED APPLICANTS, AS  
13 DETERMINED UNDER THE RULES OF THE DIVISION, TO PREVENT THEM FROM  
14 BECOMING CERTIFIED BY THE PROGRAM.  
15           (2) THE DIVISION SHALL ESTABLISH AND ACCEPT APPLICATIONS  
16 FOR CERTIFICATION. THE DIVISION SHALL CONDUCT A REVIEW OF EACH  
17 APPLICATION AND CONSIDER THE RECOMMENDATIONS OF THE COMMISSION  
18 BEFORE MAKING A FINAL DETERMINATION TO GRANT OR DENY  
19 CERTIFICATION. IN REVIEWING AN APPLICATION AND IN GRANTING  
20 CERTIFICATION, THE DIVISION AND THE COMMISSION MAY CONSIDER:  
21           (a) THE APPLICANT'S PROCESS FOR REVIEWING, SELECTING, AND  
22 APPROVING A POTENTIAL CONSERVATION EASEMENT;  
23           (b) THE APPLICANT'S STEWARDSHIP PRACTICES AND CAPACITY,  
24 INCLUDING THE ABILITY TO MAINTAIN, MONITOR, AND DEFEND THE  
25 PURPOSES OF THE EASEMENT;  
26           (c) AN AUDIT OF THE APPLICANT'S FINANCIAL RECORDS;  
27           (d) THE APPLICANT'S SYSTEM OF GOVERNANCE AND ETHICS  
28 REGARDING CONFLICTS OF INTEREST AND TRANSACTIONS WITH RELATED  
29 PARTIES AS DESCRIBED IN SECTION 267 (b) OF THE FEDERAL "INTERNAL  
30 REVENUE CODE OF 1986", AS AMENDED, DONORS, BOARD MEMBERS, AND  
31 INSIDERS. FOR PURPOSES OF THIS SUBSECTION (2)(d), "INSIDERS" MEANS  
32 BOARD AND STAFF MEMBERS, SUBSTANTIAL CONTRIBUTORS, PARTIES  
33 RELATED TO THOSE ABOVE, THOSE WHO HAVE AN ABILITY TO INFLUENCE  
34 DECISIONS OF THE ORGANIZATION, AND THOSE WITH ACCESS TO  
35 INFORMATION NOT AVAILABLE TO THE GENERAL PUBLIC.  
36           (e) ANY OTHER INFORMATION DEEMED RELEVANT BY THE DIVISION  
37 OR THE COMMISSION; AND  
38           (f) THE UNIQUE CIRCUMSTANCES OF THE DIFFERENT ENTITIES TO  
39 WHICH THIS CERTIFICATION APPLIES AS SET FORTH IN SUBSECTION (4) OF  
40 THIS SECTION.  
41           (3) AT THE TIME OF SUBMISSION OF AN APPLICATION, AND EACH

1 YEAR THE ENTITY IS CERTIFIED PURSUANT TO THIS SECTION, THE  
2 APPLICANT SHALL PAY THE DIVISION A FEE, AS PRESCRIBED BY THE  
3 DIVISION, TO COVER THE COSTS OF THE DIVISION AND THE COMMISSION IN  
4 ADMINISTERING THE CERTIFICATION PROGRAM FOR ENTITIES THAT HOLD  
5 CONSERVATION EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED  
6 PURSUANT TO SECTION 39-22-522. THE DIVISION SHALL HAVE THE  
7 AUTHORITY TO ACCEPT AND EXPEND GIFTS, GRANTS, AND DONATIONS FOR  
8 THE PURPOSES OF THIS SECTION. THE STATE TREASURER SHALL CREDIT  
9 FEES, GIFTS, GRANTS, AND DONATIONS COLLECTED PURSUANT TO THIS  
10 SUBSECTION (3) TO THE CONSERVATION CASH FUND CREATED IN SECTION  
11 12-61-1107. ON OR BEFORE EACH JANUARY 1, THE DIVISION SHALL  
12 CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT OF THE FEE  
13 PRESCRIBED BY THE DIVISION PURSUANT TO THIS SUBSECTION (3).

14 (4) THE CERTIFICATION PROGRAM APPLIES TO:

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

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

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

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

29 (6) THE COMMISSION SHALL MEET AT LEAST QUARTERLY AND  
30 MAKE RECOMMENDATIONS TO THE DIVISION REGARDING THE  
31 CERTIFICATION PROGRAM. THE DIVISION IS AUTHORIZED TO DETERMINE  
32 WHETHER AN APPLICANT FOR CERTIFICATION POSSESSES THE NECESSARY  
33 QUALIFICATIONS FOR CERTIFICATION REQUIRED BY THE RULES ADOPTED  
34 BY THE DIVISION. IF THE DIVISION DETERMINES THAT AN APPLICANT DOES  
35 NOT POSSESS THE APPLICABLE QUALIFICATIONS FOR CERTIFICATION OR  
36 THAT THE APPLICANT HAS VIOLATED ANY PROVISION OF THIS PART 11, THE  
37 RULES PROMULGATED BY THE DIVISION, OR ANY DIVISION ORDER, THE  
38 DIVISION MAY DENY THE APPLICANT A CERTIFICATION OR DENY THE  
39 RENEWAL OF A CERTIFICATION, AND, IN SUCH INSTANCE, THE DIVISION  
40 SHALL PROVIDE THE APPLICANT WITH A STATEMENT IN WRITING SETTING  
41 FORTH THE BASIS OF THE DIVISION'S DETERMINATION. THE APPLICANT MAY

1 REQUEST A HEARING ON THE DETERMINATION AS PROVIDED IN SECTION  
2 24-4-104 (9). THE DIVISION SHALL NOTIFY SUCCESSFUL APPLICANTS IN  
3 WRITING. AN APPLICANT THAT IS NOT CERTIFIED MAY REAPPLY FOR  
4 CERTIFICATION IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE  
5 DIVISION.

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

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

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

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

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

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

38 (9) THE DIVISION SHALL MAINTAIN AND UPDATE AN ONLINE LIST,  
39 ACCESSIBLE TO THE PUBLIC, OF THE ORGANIZATIONS THAT HAVE APPLIED  
40 FOR CERTIFICATION AND WHETHER EACH HAS BEEN CERTIFIED, REJECTED  
41 FOR CERTIFICATION, OR HAD ITS CERTIFICATION REVOKED OR SUSPENDED

1 IN ACCORDANCE WITH THIS SECTION.

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

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

13 (12) NOTHING IN THIS SECTION:

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

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

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

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

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

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

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

41 (d) THE NOTIFICATION TO THE LANDOWNER, THE ENTITY TO WHICH



1 THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE  
2 REGARDING THE TAX CREDIT CERTIFICATES ISSUED; AND

3 (e) ANY OTHER MATTERS RELATED TO ADMINISTERING SECTION  
4 39-22-522 (2.5) OR THIS PART 11.

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

12 (3) THE DIVISION SHALL NOT ISSUE TAX CREDIT CERTIFICATES  
13 THAT IN AGGREGATE EXCEED THE LIMIT SET FORTH IN SECTION 39-22-522  
14 (2.5) DURING A PARTICULAR CALENDAR YEAR.

15 **12-61-1106. Conservation easement tax credit certificate**  
16 **application process - definitions - rules.** (1) FOR PURPOSES OF THIS  
17 SECTION:

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

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

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

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

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

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

39 (g) "TAX CREDIT CERTIFICATE" MEANS THE CONSERVATION  
40 EASEMENT TAX CREDIT CERTIFICATE ISSUED PURSUANT TO SECTION  
41 12-61-1105 AND THIS SECTION.

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

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

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

14           (III) COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

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

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

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

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

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

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

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

40           (IV) THE APPRAISER MEETS ANY EDUCATION AND EXPERIENCE  
41 REQUIREMENTS ESTABLISHED BY THE BOARD OF REAL ESTATE APPRAISERS

1 IN ACCORDANCE WITH SECTION 12-61-704 (1)(k).  
2 (c) THE DIRECTOR HAS THE AUTHORITY AND RESPONSIBILITY TO  
3 DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF SECTION  
4 12-61-1104.  
5 (d) THE COMMISSION HAS THE AUTHORITY AND RESPONSIBILITY TO  
6 DETERMINE WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH  
7 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522 IS A  
8 QUALIFIED CONSERVATION CONTRIBUTION AS DEFINED IN SECTION 170(h)  
9 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND  
10 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH  
11 SECTION.  
12 (4) THE DEPARTMENT OF REVENUE IS NOT AUTHORIZED TO  
13 DISALLOW A CONSERVATION EASEMENT TAX CREDIT BASED ON ANY  
14 REQUIREMENTS THAT ARE UNDER THE JURISDICTION OF THE DIVISION, THE  
15 DIRECTOR, OR THE COMMISSION PURSUANT TO THIS SECTION.  
16 (5) A COMPLETE TAX CREDIT CERTIFICATE APPLICATION MUST BE  
17 MADE BY THE LANDOWNER TO THE DIVISION AND MUST INCLUDE:  
18 (a) A COPY OF THE FINAL CONSERVATION EASEMENT APPRAISAL;  
19 (b) A COPY OF THE RECORDED DEED GRANTING THE  
20 CONSERVATION EASEMENT;  
21 (c) DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE  
22 OF THE EASEMENT;  
23 (d) ANY OTHER INFORMATION OR DOCUMENTATION THE DIRECTOR  
24 OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL  
25 DETERMINATION REGARDING THE APPLICATION; AND  
26 (e) THE FEE REQUIRED PURSUANT TO SUBSECTION (6) OF THIS  
27 SECTION.  
28 (6) A LANDOWNER SUBMITTING AN APPLICATION FOR A TAX  
29 CREDIT CERTIFICATE PURSUANT TO THIS SECTION OR AN APPLICATION FOR  
30 AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO SUBSECTION  
31 (14) OF THIS SECTION SHALL PAY THE DIVISION A FEE AS PRESCRIBED BY  
32 THE DIVISION. THE APPLICATION FEE FOR AN OPTIONAL PRELIMINARY  
33 ADVISORY OPINION MAY BE A DIFFERENT DOLLAR AMOUNT THAN THE  
34 APPLICATION FEE FOR A TAX CREDIT CERTIFICATE. THE FEES MUST BE  
35 ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE DIVISION AND  
36 THE COMMISSION IN ADMINISTERING THE REQUIREMENTS OF THIS SECTION,  
37 BUT NOT SO HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF  
38 CONSERVATION EASEMENTS IN THE STATE. THE STATE TREASURER SHALL  
39 CREDIT THE FEES COLLECTED PURSUANT TO THIS SUBSECTION (6) TO THE  
40 CONSERVATION CASH FUND CREATED IN SECTION 12-61-1107. ON OR  
41 BEFORE JANUARY 1, 2014, AND ON OR BEFORE EACH JANUARY 1

1 THEREAFTER, THE DIVISION SHALL CERTIFY TO THE GENERAL ASSEMBLY  
2 THE AMOUNT OF ANY FEES PRESCRIBED BY THE DIVISION PURSUANT TO  
3 THIS SUBSECTION (6).

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

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

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

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

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

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

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

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

37 (9) IF THE DIRECTOR REASONABLY BELIEVES THAT ANY APPRAISAL  
38 SUBMITTED IN ACCORDANCE WITH THIS SECTION IS NOT CREDIBLE, THE  
39 DIRECTOR, AFTER CONSULTATION WITH THE COMMISSION, MAY REQUEST  
40 THAT THE LANDOWNER, AT THE LANDOWNER'S EXPENSE, OBTAIN EITHER  
41 A SECOND APPRAISAL OR A REVIEW OF THE APPRAISAL SUBMITTED WITH

1 THE APPLICATION FROM AN APPRAISER WHO MEETS THE REQUIREMENTS OF  
2 PART 7 OF THIS TITLE 12 AND IS IN GOOD STANDING WITH THE BOARD  
3 BEFORE MAKING A FINAL DETERMINATION REGARDING THE APPLICATION.

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

15 (11) (a) IF ALL POTENTIAL DEFICIENCIES THAT HAVE BEEN  
16 IDENTIFIED ARE SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE  
17 DIRECTOR AND THE COMMISSION, THE DIRECTOR AND THE COMMISSION  
18 SHALL APPROVE THE APPLICATION, AND THE DIVISION SHALL ISSUE A TAX  
19 CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT TO SECTION  
20 12-61-1105. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE LANDOWNER  
21 MAY CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY OTHER APPLICABLE  
22 PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

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

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

39 (b) IF THE LANDOWNER FAILS TO APPEAL THE DENIAL OF AN  
40 APPLICATION WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL,  
41 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,  
28 ALONG WITH AVERAGE PROCESSING TIMES;

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

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

36 (B) THE TOTAL APPRAISED VALUE OF THE EASEMENTS;

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

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

40 (b) THE DIVISION MAY INCLUDE ADDITIONAL EASEMENT-SPECIFIC  
41 INFORMATION IN THE PUBLIC REPORT THAT, NOTWITHSTANDING THE

1 PROVISIONS OF THIS PART 11 OR ANY OTHER LAW TO THE CONTRARY,  
2 WOULD OTHERWISE BE PUBLICLY AVAILABLE.

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

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

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

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

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

36 (16) NOTWITHSTANDING THE PROVISIONS OF THE "COLORADO  
37 OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, THE DIVISION,  
38 THE DIRECTOR, AND THE COMMISSION SHALL DENY THE RIGHT OF PUBLIC  
39 INSPECTION OF ANY DOCUMENTATION OR OTHER RECORD RELATED TO  
40 INFORMATION OBTAINED AS PART OF AN INDIVIDUAL LANDOWNER'S  
41 APPLICATION FOR A TAX CREDIT CERTIFICATE OR AN OPTIONAL

1 PRELIMINARY ADVISORY OPINION PURSUANT TO THE REQUIREMENTS OF  
2 THIS SECTION, INCLUDING DOCUMENTATION OR OTHER RECORDS RELATED  
3 TO ADMINISTRATIVE HEARINGS AND SETTLEMENT DISCUSSIONS HELD  
4 PURSUANT TO SUBSECTION (12) OF THIS SECTION. THE DIVISION, THE  
5 DIRECTOR, AND THE COMMISSION MAY SHARE DOCUMENTATION OR OTHER  
6 RECORDS RELATED TO INFORMATION OBTAINED PURSUANT TO THIS  
7 SECTION WITH THE DEPARTMENT OF REVENUE.

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

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

20 (2) ON JULY 1, 2018, THE STATE TREASURER SHALL TRANSFER TO  
21 THE CONSERVATION CASH FUND ANY MONEYS IN THE DIVISION OF REAL  
22 ESTATE CASH FUND CREATED IN THE SECTION 12-61-111.5 THAT ARE  
23 ATTRIBUTABLE TO ANY FEES, GIFTS, GRANTS, OR DONATIONS CREDITED TO  
24 THE DIVISION OF REAL ESTATE CASH FUND IN ACCORDANCE WITH SECTION  
25 12-61-724 (3) OR SECTION 12-61-727 THAT ARE IN THE FUND  
26 IMMEDIATELY PRIOR TO THE REPEAL OF SECTIONS 12-61-724 AND  
27 12-61-727. THIS SUBSECTION (2) IS REPEALED EFFECTIVE JULY 1, 2019.

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

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

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

41 **12-61-702. Definitions.** As used in this part 7, unless the context



1 otherwise requires:

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

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

6 **12-61-704. Powers and duties of the board - rules.** (1) In  
7 addition to all other powers and duties imposed upon it by law, the board  
8 has the following powers and duties:

9 (k) To establish classroom education and experience requirements  
10 for an appraiser who prepares an appraisal for a conservation easement  
11 for which a tax credit is claimed pursuant to section 39-22-522. ~~C.R.S.~~  
12 The requirements must ensure that appraisers have a sufficient amount of  
13 training and expertise to accurately prepare appraisals that comply with  
14 the uniform standards of professional appraisal practice and any other  
15 provision of law related to the appraisal of conservation easements for  
16 which a tax credit is claimed. A tax credit certificate for a conservation  
17 easement shall not be given in accordance with ~~sections 12-61-726 and~~  
18 ~~12-61-727~~ SECTIONS 12-61-1105 AND 12-61-1106 unless the appraiser  
19 who prepared the appraisal of the easement met all requirements  
20 established in accordance with this ~~paragraph (k)~~ SUBSECTION (1)(k) in  
21 effect at the time the appraisal was completed ASSIGNMENT IS  
22 PERFORMED.

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

25 **39-21-113. Reports and returns - rule.** (17) Notwithstanding  
26 any other provision of this section, the executive director may require that  
27 such detailed information regarding a claim for a credit for the donation  
28 of a conservation easement in gross pursuant to section 39-22-522 and  
29 any appraisal submitted in support of the credit claimed be given to the  
30 division of ~~real estate~~ CONSERVATION in the department of regulatory  
31 agencies and the conservation easement oversight commission created  
32 pursuant to ~~section 12-61-725 (1), C.R.S.,~~ SECTION 12-61-1103 as the  
33 executive director determines is necessary in the performance of the  
34 department's functions relating to the credit. The executive director may  
35 provide copies of any appraisal and may file a complaint regarding any  
36 appraisal as authorized pursuant to section 39-22-522 (3.3).  
37 Notwithstanding ~~the provisions of part 2 of article 72 of title 24, C.R.S.,~~  
38 in order to protect the confidential financial information of a taxpayer, the  
39 executive director shall deny the right to inspect any information or  
40 appraisal required in accordance with ~~the provisions of this subsection~~  
41 (17).

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

4           **39-22-522. Credit against tax - conservation easements.**  
5 (2.5) Notwithstanding any other provision of this section and the  
6 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106, for  
7 income tax years commencing on or after January 1, 2011, a taxpayer  
8 conveying a conservation easement and claiming a credit pursuant to this  
9 section shall, in addition to any other requirements of this section and the  
10 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106, submit  
11 a claim for the credit to the division of ~~real estate~~ CONSERVATION in the  
12 department of regulatory agencies. The division shall issue a certificate  
13 for the claims received in the order submitted. After certificates have  
14 been issued for credits that exceed an aggregate of twenty-two million  
15 dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four  
16 million dollars for the 2013 calendar year, and forty-five million dollars  
17 for each calendar year thereafter, any claims that exceed the amount  
18 allowed for a specified calendar year shall be placed on a wait list in the  
19 order submitted and a certificate shall be issued for use of the credit in the  
20 next year for which the division has not issued credit certificates in excess  
21 of the amounts specified in this subsection (2.5); except that no more than  
22 fifteen million dollars in claims shall be placed on the wait list in any  
23 given calendar year. The division shall not issue credit certificates that  
24 exceed twenty-two million dollars in each of the 2011 and 2012 calendar  
25 years, thirty-four million dollars for the 2013 calendar year, and forty-five  
26 million dollars for each calendar year thereafter. No claim for a credit is  
27 allowed for any income tax year commencing on or after January 1, 2011,  
28 unless a certificate has been issued by the division. If all other  
29 requirements under ~~section 12-61-727, C.R.S.~~, SECTION 12-61-1106 and  
30 this section are met, the right to claim the credit is vested in the taxpayer  
31 at the time a credit certificate is issued.

32           (2.7) Notwithstanding any other provision, for income tax years  
33 commencing on or after January 1, 2014, no claim for a credit shall be  
34 allowed unless a tax credit certificate is issued by the division of ~~real~~  
35 ~~estate~~ CONSERVATION in accordance with ~~sections 12-61-726 and~~  
36 ~~12-61-727, C.R.S.~~, SECTIONS 12-61-1105 AND 12-61-1106 and the  
37 taxpayer files the tax credit certificate with the income tax return filed  
38 with the department of revenue.

39           (3) For conservation easements donated prior to January 1, 2014,  
40 in order for any taxpayer to qualify for the credit provided for in  
41 subsection (2) of this section, the taxpayer shall submit the following in

1 a form approved by the executive director to the department of revenue  
2 at the same time as the taxpayer files a return for the taxable year in  
3 which the credit is claimed:

4 (f) If the holder of the conservation easement is an organization  
5 to which the certification program in ~~section 12-61-724~~ SECTION  
6 12-61-1104 applies, a sworn affidavit from the holder of the conservation  
7 easement in gross that includes the following:

8 (3.5) (a) For conservation easements donated prior to January 1,  
9 2014:

10 (I) The executive director shall have the authority, pursuant to  
11 subsection (8) of this section, to require additional information from the  
12 taxpayer or transferee regarding the appraisal value of the easement, the  
13 amount of the credit, and the validity of the credit. In resolving disputes  
14 regarding the validity or the amount of a credit allowed pursuant to  
15 subsection (2) of this section, including the value of the conservation  
16 easement for which the credit is granted, the executive director shall have  
17 the authority, for good cause shown and in consultation with the division  
18 of ~~real estate~~ CONSERVATION and the conservation easement oversight  
19 commission created in ~~section 12-61-725 (1), C.R.S.~~, SUBSECTION  
20 12-61-1103 (1) to review and accept or reject, in whole or in part, the  
21 appraisal value of the easement, the amount of the credit, and the validity  
22 of the credit based upon the internal revenue code and federal regulations  
23 in effect at the time of the donation. If the executive director reasonably  
24 believes that the appraisal represents a gross valuation misstatement,  
25 receives notice of such a valuation misstatement from the division of real  
26 estate, or receives notice from the division of real estate that an  
27 enforcement action has been taken by the board of real estate appraisers  
28 against the appraiser, the executive director shall have the authority to  
29 require the taxpayer to provide a second appraisal at the expense of the  
30 taxpayer. The second appraisal shall be conducted by a certified general  
31 appraiser in good standing and not affiliated with the first appraiser that  
32 meets qualifications established by the division of real estate. In the event  
33 the executive director rejects, in whole or in part, the appraisal value of  
34 the easement, the amount of the credit, or the validity of the credit, the  
35 procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and  
36 39-21-105 shall apply.

37 (II) In consultation with the division of ~~real estate~~ CONSERVATION  
38 and the conservation easement oversight commission created in ~~section~~  
39 ~~12-61-725 (1), C.R.S.~~ SECTION 12-61-1103 (1), the executive director  
40 shall develop and implement a separate process for the review by the  
41 department of revenue of gross conservation easements. The review

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

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

26 (3.6) For conservation easements donated on or after January 1,  
27 2014, in order for any taxpayer to qualify for the credit provided for in  
28 subsection (2) of this section, the taxpayer must submit the following in  
29 a form, approved by the executive director, to the department of revenue  
30 at the same time as the taxpayer files a return for the taxable year in  
31 which the credit is claimed:

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

34 (b) Notwithstanding any other provisions of law, the executive  
35 director retains the authority to administer all issues related to the claim  
36 or use of a tax credit for the donation of a conservation easement that are  
37 not granted to the director of the division of ~~real-estate~~ CONSERVATION or  
38 the conservation easement oversight commission under ~~section~~  
39 ~~12-61-727, C.R.S.~~ SECTION 12-61-1106.

40 (7) For income tax years commencing on or after January 1, 2000,  
41 a taxpayer may transfer all or a portion of a tax credit granted pursuant to

1 subsection (2) of this section to another taxpayer for such other taxpayer,  
2 as transferee, to apply as a credit against the taxes imposed by this article  
3 subject to the following limitations:

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

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

9 **39-22-522.5. Conservation easement tax credits - dispute**  
10 **resolution - legislative declaration.** (8) ~~On or before August 1, 2011,~~  
11 ~~the conservation easement oversight commission created in section~~  
12 ~~12-61-725 (1), C.R.S., shall review conservation easements for which a~~  
13 ~~tax credit is claimed pursuant to sections 39-22-522 (3.5)(a) and~~  
14 ~~12-61-725 (3), C.R.S., and for which a notice of deficiency, notice of~~  
15 ~~rejection of refund claim, or notice of disallowance issued on or before~~  
16 ~~May 1, 2011, but for which a final determination has not been issued~~  
17 ~~before May 19, 2011, and for which the commission has not already~~  
18 ~~reviewed the credit. For each conservation easement tax credit claim so~~  
19 ~~reviewed, the commission shall issue an initial recommendation to the~~  
20 ~~executive director on whether each credit claimed by a taxpayer who is~~  
21 ~~eligible to waive a hearing and appeal a notice of deficiency, notice of~~  
22 ~~rejection of refund claim, or notice of disallowance may be denied or~~  
23 ~~accepted. No other information shall be required of the commission on or~~  
24 ~~before such date.~~

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

27 **24-1-122. Department of regulatory agencies - creation.**  
28 (2) The department of regulatory agencies shall consist of the following  
29 divisions:

30 (l) DIVISION OF CONSERVATION, THE HEAD OF WHICH IS THE  
31 DIRECTOR OF THE DIVISION. THE DIVISION OF CONSERVATION AND THE  
32 DIRECTOR OF THE DIVISION, CREATED BY PART 11 OF ARTICLE 61 OF TITLE  
33 12, SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND  
34 FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF  
35 THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.  
36 THE CONSERVATION EASEMENT OVERSIGHT COMMISSION, CREATED BY  
37 SECTION 12-61-1103, AND ITS POWERS, DUTIES, AND FUNCTIONS ARE  
38 TRANSFERRED BY A **TYPE 2** TRANSFER TO THE DEPARTMENT OF  
39 REGULATORY AGENCIES AND ALLOCATED TO THE DIVISION OF  
40 CONSERVATION.

41 **SECTION 9.** In Colorado Revised Statutes, 24-34-104, **repeal**

1 (14)(a)(II); and **add** (26)(a)(VIII) as follows:  
2 **24-34-104. General assembly review of regulatory agencies**  
3 **and functions for repeal, continuation, or reestablishment - legislative**  
4 **declaration - repeal.** (14) (a) The following agencies, functions, or both,  
5 are scheduled for repeal on July 1, 2018:  
6 (II) ~~The conservation easement oversight commission created in~~  
7 ~~section 12-61-725, C.R.S.;~~  
8 (26) (a) The following agencies, functions, or both, are scheduled  
9 for repeal on September 1, 2025:  
10 (VIII) THE CONSERVATION EASEMENT OVERSIGHT COMMISSION  
11 CREATED IN SECTION 12-61-1103.  
12 **SECTION 10.** In Colorado Revised Statutes, **repeal** 12-61-724,  
13 12-61-725, 12-61-726, and 12-61-727.  
14 **SECTION 10. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety."."

\*\* \*\*\* \*\* \*\*\* \*\*