

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 19-0532.01 Gregg Fraser x4325

**HOUSE BILL 19-1091**

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**HOUSE SPONSORSHIP**

**Lewis,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**  
Rural Affairs & Agriculture

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING CONSERVATION EASEMENT TRANSPARENCY.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

A conservation easement is an agreement in which a property owner agrees to limit the use of his or her land in perpetuity in order to protect one or more specified conservation purposes. The instruments creating the conservation easement are recorded in the public records affecting the ownership of the property. The conservation easement is held by a third party, which monitors the use of the land and ensures that the terms of the agreement are upheld.

Prior to creating a conservation easement, the bill requires the

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

property owner to sign a disclosure form acknowledging certain specified consequences and risks of creating the easement on his or her land.

The bill requires the commissioner of agriculture to work with local government officials to create a database of conservation easements in the state. The database includes specified information about the easements and a corresponding map displaying each easement in the state relative to county boundaries. Local government officials and the commissioner of agriculture are authorized to enter into contracts to assist in gathering information for the database. The bill specifies the sources of information that may be used to create the database. The commissioner of agriculture is required to annually update the information in the database and make the information and corresponding map available to the public at no charge on the department of agriculture's website.

When a conservation easement agreement, amendment, or transfer is recorded with a county clerk and recorder, the bill requires a complete copy of the agreement, amendment, or transfer to be submitted to the commissioner of agriculture and the county tax assessor of the county in which the easement is located. The commissioner of agriculture is required to create a tracking form with specified information for each conservation easement agreement, amendment, or transfer submitted. The tracking forms are made available on the department of agriculture's website and can be used by the commissioner of agriculture to create and maintain the database of conservation easements.

If a single property owner acquires both a conservation easement and title to the underlying property, current law allows the conservation easement to be released, terminated, extinguished, or abandoned by a process known as "merger". The bill prohibits a conservation easement from being extinguished by taking fee title to the land to which the conservation easement is attached.

For any state income tax credit claimed for a donation of a conservation easement that is disallowed, the bill allows a landowner to elect to either extinguish the conservation easement for which the credit was claimed or receive an equitable relief payment from the state. If a landowner elects to extinguish the conservation easement, the bill requires the department of revenue to reimburse the taxpayer for all reasonable costs incurred by the landowner in establishing the conservation easement donation as well any federal or state income tax liability incurred by the taxpayer. The attorney general is required to assist landowners with executing any documents required to seek a court order to extinguish a conservation easement.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-30.5-103, **add** (6)

1 as follows:

2 **38-30.5-103. Creation of conservation easements in gross.**

3 (6) PRIOR TO CREATING A CONSERVATION EASEMENT IN GROSS, THE  
4 OWNER OF THE PROPERTY WHO IS GRANTING THE CONSERVATION  
5 EASEMENT SHALL EXECUTE A DISCLOSURE FORM SPECIFICALLY  
6 ACKNOWLEDGING THE CONSEQUENCES AND RISKS OF CREATING THE  
7 CONSERVATION EASEMENT. A SAMPLE COPY OF THE DISCLOSURE FORM  
8 SHALL BE AVAILABLE ON THE WEBSITE OF THE DEPARTMENT OF  
9 AGRICULTURE UNDER A TAB OR OTHER EXISTING WEB PAGE RELATED TO  
10 THE TOPIC OF CONSERVATION. THE DISCLOSURE FORM SHALL BE PREPARED  
11 BY THE PROPOSED HOLDER OF THE CONSERVATION EASEMENT AND SHALL  
12 INCLUDE THE FOLLOWING WARNINGS IN BOLD WITH EACH INITIALED  
13 INDIVIDUALLY BY THE GRANTOR AND GRANTEE OF THE CONSERVATION  
14 EASEMENT:

15 (a) APPROXIMATELY FOURTEEN TO EIGHTEEN PERCENT OF ALL  
16 CONSERVATION EASEMENTS CREATED IN COLORADO HAVE BEEN  
17 DISALLOWED IN THE PAST AND SOME CONTINUE TO BE DISALLOWED;

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

21 (c) THE CREATION OF THE CONSERVATION EASEMENT REDUCES THE  
22 VALUE OF THE PROPERTY INTEREST RETAINED BY THE PROPERTY OWNER  
23 AS WELL AS THE VALUE OF SURROUNDING PROPERTIES;

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

27 (e) THE CREATION OF THE CONSERVATION EASEMENT RESULTS IN

- 1 THE LOSS OF AN INTEREST IN THE OWNER'S PROPERTY;
- 2 (f) THE CONSERVATION EASEMENT IS BINDING ON FUTURE OWNERS  
3 OF THE LAND;
- 4 (g) THE PROPERTY OWNER CAN BE HELD LIABLE TO REPAY THE  
5 AMOUNT OF ANY TAX CREDIT CLAIMED IMPROPERLY FOR THE  
6 CONSERVATION EASEMENT FOR A PERIOD OF FOUR YEARS AFTER THE  
7 OWNER OR A TRANSFEREE OF THE CREDIT FIRST CLAIMS THE CREDIT, EVEN  
8 IF THE OWNER HAS NO KNOWLEDGE OF WHEN THE TRANSFEREE FIRST  
9 CLAIMS THE CREDIT;
- 10 (h) THE LANDOWNER CAN BE HELD LIABLE FOR MONEY DAMAGES  
11 FOR INJURIES TO THE INTERESTS OF THE HOLDER OF THE CONSERVATION  
12 EASEMENT;
- 13 (i) THE CONSERVATION EASEMENT COULD POTENTIALLY BE  
14 TRANSFERRED BY THE HOLDER OF THE CONSERVATION EASEMENT TO  
15 ANOTHER HOLDER;
- 16 (j) IF THE HOLDER OF THE CONSERVATION EASEMENT PURCHASES  
17 THE UNDERLYING PROPERTY INTEREST IN THE PROPERTY, THE HOLDER HAS  
18 THE RIGHT TO RELEASE, TERMINATE, EXTINGUISH, OR ABANDON THE  
19 CONSERVATION EASEMENT BY MERGER; AND
- 20 (k) A CONSERVATION EASEMENT LASTS IN PERPETUITY, AND IT IS  
21 HIGHLY UNLIKELY THAT A LANDOWNER CAN HAVE A CONSERVATION  
22 EASEMENT RELEASED, TERMINATED, OR EXTINGUISHED FROM HIS OR HER  
23 PROPERTY WITHOUT TAKING LEGAL ACTION AND OBTAINING A COURT  
24 ORDER.

25 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-30.5-106  
26 as follows:

27 **38-30.5-106. Recordation upon public records.** (1) Instruments

1 creating, assigning, or otherwise transferring conservation easements in  
2 gross must be recorded upon the public records affecting the ownership  
3 of real property in order to be valid and shall be subject in all respects to  
4 the laws relating to such recordation.

5 (2) WHEN A CONSERVATION EASEMENT AGREEMENT, AMENDMENT,  
6 OR TRANSFER IS RECORDED WITH THE COUNTY CLERK AND RECORDER, THE  
7 COUNTY CLERK AND RECORDER SHALL SUBMIT A COMPLETE COPY OF THE  
8 RECORDED CONSERVATION EASEMENT AGREEMENT, AMENDMENT, OR  
9 TRANSFER TO THE COMMISSIONER OF AGRICULTURE AND THE COUNTY TAX  
10 ASSESSOR OF THE COUNTY WHERE THE CONSERVATION EASEMENT IS FILED  
11 BY FACSIMILE OR EMAIL WITHIN THIRTY DAYS OF THE DATE OF RECORDING.  
12 FOR EACH CONSERVATION EASEMENT AGREEMENT, AMENDMENT, OR  
13 TRANSFER SUBMITTED TO THE COMMISSIONER OF AGRICULTURE, THE  
14 COMMISSIONER SHALL PREPARE A TRACKING FORM. EACH TRACKING FORM  
15 MUST USE A LETTERING AND NUMBERING METHOD THAT ALLOWS THE  
16 FORMS TO BE IDENTIFIED AND INDEXED BY THE COUNTY IN WHICH THE  
17 CONSERVATION EASEMENT IS LOCATED. THE FORMS SHALL BE PUBLIC  
18 INFORMATION AND THE COMMISSIONER OF AGRICULTURE SHALL MAKE THE  
19 COMPLETED FORMS AVAILABLE ON THE WEBSITE OF THE DEPARTMENT OF  
20 AGRICULTURE UNDER A TAB OR OTHER EXISTING WEB PAGE RELATED TO  
21 THE TOPIC OF CONSERVATION. THE COMMISSIONER OF AGRICULTURE MAY  
22 USE THE TRACKING FORMS TO ASSIST IN THE CREATION AND MAINTENANCE  
23 OF THE STATEWIDE DATABASE OF CONSERVATION EASEMENTS PURSUANT  
24 TO SECTION 39-22-522 (12). FOR EACH CONSERVATION EASEMENT  
25 AGREEMENT, AMENDMENT, OR TRANSFER SUBMITTED, THE FOLLOWING  
26 INFORMATION MUST BE DISCLOSED ON THE TRACKING FORM:

27 (a) THE DATE THE CONSERVATION EASEMENT AGREEMENT,

1 AMENDMENT, OR TRANSFER WAS EXECUTED AND THE DATE IT WAS  
2 SUBMITTED FOR RECORDING;

3 (b) THE NAMES AND ADDRESSES OF THE GRANTOR AND GRANTEE  
4 OF THE CONSERVATION EASEMENT;

5 (c) A LEGAL DESCRIPTION OF THE PROPERTY;

6 (d) THE NUMBER OF ACRES BEING CONSERVED;

7 (e) THE CONSERVATION PURPOSES OF THE CONSERVATION  
8 EASEMENT; AND

9 (f) THE RECEPTION NUMBER FOR THE CONSERVATION EASEMENT.

10 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-30.5-107  
11 as follows:

12 **38-30.5-107. Release - termination.** Conservation easements in  
13 gross may ~~in whole or in part, be released, terminated, extinguished, or~~  
14 ~~abandoned by merger with the underlying fee interest in the servient land~~  
15 ~~or water rights, or in any other manner in which easements may be~~  
16 ~~lawfully terminated, released, extinguished, or abandoned~~ NOT BE  
17 EXTINGUISHED BY TAKING FEE TITLE TO THE LAND TO WHICH THE  
18 CONSERVATION EASEMENT IS ATTACHED.

19 **SECTION 4.** In Colorado Revised Statutes, 39-22-522, **add** (12)  
20 and (13) as follows:

21 **39-22-522. Credit against tax - conservation easements.**

22 (12) (a) THE COMMISSIONER OF AGRICULTURE SHALL WORK WITH THE  
23 APPROPRIATE PUBLIC OFFICIALS IN EACH COUNTY OR CITY AND COUNTY TO  
24 CREATE A DATABASE OF THE CONSERVATION EASEMENTS IN GROSS THAT  
25 HAVE BEEN CREATED WITH RESPECT TO ANY LAND, WATER AREA,  
26 AIRSPACE ABOVE THE LAND OR WATER, OR WATER RIGHTS BENEFICIALLY  
27 USED UPON THAT LAND OR WATER AREA WITHIN THE STATE SINCE

1 JANUARY 1, 1998. FOR EACH CONSERVATION EASEMENT, THE DATABASE  
2 SHALL INCLUDE INFORMATION REGARDING:

3 (I) THE LOCATION AND ACREAGE OF EACH CONSERVATION  
4 EASEMENT, DELINEATED BY COUNTY;

5 (II) THE NAMES AND ADDRESSES OF ANY GRANTORS OF THE  
6 CONSERVATION EASEMENT AND THE NAMES AND ADDRESSES OF ANY  
7 HOLDERS OF THE CONSERVATION EASEMENT SINCE ITS CREATION;

8 (III) WHETHER THE HOLDER OF THE CONSERVATION EASEMENT IS  
9 A CERTIFIED ORGANIZATION;

10 (IV) THE CONSERVATION PURPOSES OF THE CONSERVATION  
11 EASEMENT;

12 (V) ANY DEEDS, CONTRACTS, OR OTHER INSTRUMENTS CREATING,  
13 ASSIGNING, TRANSFERRING, CONVEYING, TERMINATING, OR OTHERWISE  
14 AFFECTING THE CONSERVATION EASEMENT AND THE RECEPTION NUMBER  
15 FOR EACH INSTRUMENT; AND

16 (VI) THE AMOUNT OF ANY INCOME TAX CREDITS CLAIMED OR  
17 ALLOWED FOR THE CONSERVATION EASEMENT AND THE AMOUNT OF ANY  
18 SUCH CREDITS THAT WERE TRANSFERRED TO ANOTHER TAXPAYER  
19 PURSUANT TO SUBSECTION (7) OF THIS SECTION.

20 (b) THE DATABASE MUST INCLUDE A SEPARATE GEOGRAPHIC  
21 INFORMATION SYSTEM DATABASE AND CORRESPONDING MAP DISPLAYING  
22 THE BOUNDARIES OF EACH CONSERVATION EASEMENT IN THE STATE  
23 RELATIVE TO COUNTY BOUNDARIES AND OTHER RELEVANT MAPPING  
24 INFORMATION.

25 (c) THE APPROPRIATE PUBLIC OFFICIALS IN EACH COUNTY OR CITY  
26 AND COUNTY MAY ENTER INTO CONTRACTS WITH QUALIFIED INDEPENDENT  
27 PERSONS OR ENTITIES AT THE LOCAL LEVEL TO ASSIST IN GATHERING

1 INFORMATION TO CREATE THE DATABASE REQUIRED BY THIS SUBSECTION  
2 (12). ANY SUCH CONTRACTS SHALL BE AWARDED TO A RELIABLE AND  
3 RESPONSIBLE BIDDER, AFTER PUBLIC ADVERTISEMENT ONCE IN A  
4 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY. THE PERSON OR  
5 ENTITY SHALL NOT HAVE PARTICIPATED IN THE CREATION, PROMOTION,  
6 VALUATION, OR SALE OR OTHERWISE HAVE RECEIVED A FINANCIAL  
7 BENEFIT FROM A CONSERVATION EASEMENT. THE DEPARTMENT OF  
8 AGRICULTURE MAY PROVIDE, IN ITS DISCRETION, REASONABLE  
9 REIMBURSEMENT TO A COUNTY FOR ITS COST IN PROVIDING OR  
10 CONTRACTING TO PROVIDE INFORMATION FOR THE DATABASE.

11 (d) THE COMMISSIONER OF AGRICULTURE MAY CONTRACT WITH A  
12 QUALIFIED INDEPENDENT PERSON OR ENTITY TO ASSIST IN GATHERING  
13 INFORMATION FOR COUNTIES THAT ARE UNABLE OR UNWILLING TO ASSIST  
14 IN GATHERING INFORMATION TO CREATE THE DATABASE. THE PERSON OR  
15 ENTITY SHALL NOT HAVE PARTICIPATED IN THE CREATION, PROMOTION,  
16 VALUATION, OR SALE OR OTHERWISE HAVE RECEIVED A FINANCIAL  
17 BENEFIT FROM A CONSERVATION EASEMENT.

18 (e) ANY PERSON OR ENTITY GATHERING INFORMATION FOR THE  
19 DATABASE MAY USE PUBLIC RECORDS, AVAILABLE REPORTS, WORK  
20 PAPERS, INTERVIEWS WITH LANDOWNERS AND CONSERVATION EASEMENT  
21 HOLDERS, AND ANY OTHER APPROPRIATE MEANS TO COMPLETE THE  
22 DATABASE. PUBLIC ENTITIES, INCLUDING THE DEPARTMENT OF  
23 REGULATORY AGENCIES, THE DIVISION OF CONSERVATION, THE  
24 CONSERVATION EASEMENT OVERSIGHT COMMISSION, THE DEPARTMENT OF  
25 REVENUE, THE DEPARTMENT OF NATURAL RESOURCES, THE DIVISION OF  
26 PARKS AND WILDLIFE, COMAP, AND LOCAL GOVERNMENTS SHALL  
27 COOPERATE AND PROVIDE INFORMATION AND INPUT INTO THE



1 PREPARATION OF THE DATABASE.

2 (f) THE PERSON OR ENTITY CREATING THE DATABASE SHALL:

3 (I) USE AND INCORPORATE, TO THE EXTENT FEASIBLE, ANY  
4 EXISTING PUBLIC OR PRIVATE RECORDS, STUDIES, DATABASES, SOFTWARE,  
5 MAPS, OR OTHER AVAILABLE SOURCES OF INFORMATION IN ORDER TO  
6 REDUCE COSTS, INCREASE EFFICIENCIES, AND AVOID DUPLICATION OF  
7 WORK IN CREATING THE DATABASE; AND

8 (II) CONTACT AND WORK WITH ENTITIES THAT MAY HAVE  
9 INFORMATION RELEVANT TO THE DATABASE OR AN INTEREST IN USING THE  
10 DATABASE INCLUDING THE COLORADO NATURAL HERITAGE PROGRAM AND  
11 THE GEOSPATIAL CENTROID AT COLORADO STATE UNIVERSITY AND THE  
12 STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND.

13 (g) THE COMMISSIONER OF AGRICULTURE SHALL ANNUALLY  
14 UPDATE THE INFORMATION IN THE DATABASE FOR ANY NEW  
15 CONSERVATION EASEMENTS, AMENDMENTS, OR TRANSFERS THAT ARE  
16 CREATED AND MAKE THE INFORMATION AVAILABLE TO THE PUBLIC ON THE  
17 WEBSITE OF THE DEPARTMENT OF AGRICULTURE. THE GEOGRAPHIC  
18 INFORMATION SYSTEM DATABASE AND MAP CREATED AS PART OF THE  
19 DATABASE PURSUANT TO SUBSECTION (12)(b) OF THIS SECTION MUST BE  
20 MADE AVAILABLE AT NO CHARGE ON THE WEBSITE OF THE DEPARTMENT  
21 OF AGRICULTURE IN A FORMAT THAT CAN BE READILY ACCESSED AND  
22 NAVIGATED BY THE GENERAL PUBLIC. ANY DATA USED TO CREATE THE  
23 DATABASE AND MAP MUST BE MADE PUBLICLY AVAILABLE FOR  
24 DOWNLOAD. THE DATABASE AND MAP MUST BE UPDATED ANNUALLY TO  
25 REFLECT ANY NEW CONSERVATION EASEMENTS OR OTHER CHANGES IN THE  
26 DATA USED TO CREATE THE DATABASE AND MAP.

27 (h) NOTHING IN THIS SECTION ALLOWS THE PUBLIC SHARING OF

1 PROTECTED FEDERAL TAX INFORMATION THAT IS PROTECTED PURSUANT  
2 TO 26 U.S.C. SEC. 6103, BY THE COMMISSIONER OF AGRICULTURE, THE  
3 PERSON OR ENTITY CREATING THE DATABASE, THE DEPARTMENT OF  
4 REVENUE, OR ANY OTHER ENTITY.

5 (13) FOR ANY TAX CREDIT CLAIMED PURSUANT TO THIS SECTION  
6 THAT IS DISALLOWED EITHER IN WHOLE OR IN PART, A LANDOWNER MAY  
7 ELECT TO EITHER EXTINGUISH THE CONSERVATION EASEMENT FOR WHICH  
8 THE CREDIT WAS CLAIMED OR RECEIVE AN EQUITABLE RELIEF PAYMENT  
9 FROM THE STATE. IF A LANDOWNER ELECTS TO EXTINGUISH THE  
10 CONSERVATION EASEMENT, THE DEPARTMENT OF REVENUE SHALL  
11 REIMBURSE THE TAXPAYER FOR ALL REASONABLE COSTS INCURRED BY THE  
12 LANDOWNER IN ESTABLISHING THE CONSERVATION EASEMENT DONATION  
13 AS WELL AS ANY FEDERAL OR STATE INCOME TAX LIABILITY INCLUDING  
14 ANY PENALTIES AND INTEREST ASSESSED AGAINST THE TAXPAYER. THE  
15 ATTORNEY GENERAL SHALL ASSIST LANDOWNERS WITH EXECUTING ANY  
16 DOCUMENTS REQUIRED TO SEEK A COURT ORDER TO EXTINGUISH A  
17 CONSERVATION EASEMENT PURSUANT TO THIS SUBSECTION (13).

18 **SECTION 5.** In Colorado Revised Statutes, 39-21-113, **add** (25)  
19 as follows:

20 **39-21-113. Reports and returns - rule. (25)** NOTWITHSTANDING  
21 THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR OF THE  
22 DEPARTMENT OF REVENUE SHALL PROVIDE INFORMATION TO THE  
23 COMMISSIONER OF AGRICULTURE AS REQUIRED PURSUANT TO SECTION  
24 39-22-522 (12).

25 **SECTION 6. Act subject to petition - effective date.** This act  
26 takes effect at 12:01 a.m. on the day following the expiration of the  
27 ninety-day period after final adjournment of the general assembly (August

1 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a  
2 referendum petition is filed pursuant to section 1 (3) of article V of the  
3 state constitution against this act or an item, section, or part of this act  
4 within such period, then the act, item, section, or part will not take effect  
5 unless approved by the people at the general election to be held in  
6 November 2020 and, in such case, will take effect on the date of the  
7 official declaration of the vote thereon by the governor.