

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

PREAMENDED

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

LLS NO. 20-0533.01 Gregg Fraser x4325

SENATE BILL 20-135

SENATE SPONSORSHIP

Sonnenberg and Donovan,

HOUSE SPONSORSHIP

Roberts and Wilson,

Senate Committees

Agriculture & Natural Resources
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ADOPTION OF STATUTORY CHANGES RELATED TO**
102 **CONSERVATION EASEMENTS THAT WERE RECOMMENDED BY THE**
103 **CONSERVATION EASEMENT WORKING GROUP CONVENED IN**
104 **ACCORDANCE WITH HOUSE BILL 19-1264.**

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 working group was convened over the 2019 interim pursuant to House Bill 19-1264 to develop proposed statutes to address certain issues affecting the creation, valuation, tax treatment, and stewardship of

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.

conservation easements in the state. The bill implements the recommendations of the working group as follows:

- ! **Section 1** of the bill modifies the method of calculating the amount of the state income tax credit that may be claimed for the donation of a conservation easement. The section also clarifies the manner in which certain business entities claim the credit.
- ! **Section 2** requires the state to provide compensation for certain taxpayers who were denied state income tax credits for conservation easements donated between 2000 and 2013 if the federal internal revenue service allowed a federal income tax deduction for the same donation. The amount of the compensation is based upon the amount of the credit that could have been claimed at the time of the original donation based upon the value of the donation accepted by the internal revenue service. The amount of compensation is reduced by any amount that was allowed to be claimed against Colorado income tax or otherwise reinstated to the claimant of the compensation. Where a tax credit was transferred to another taxpayer as transferee, the bill provides a process for all parties to the transaction to submit a mutual application for compensation or, if there is objection, a process to resolve disputes about the distribution of compensation. The total amount of compensation to be paid to all claimants is limited to the amount of unused conservation easement tax credits that could have been claimed between 2013 and 2019 under an existing statutory cap amount, but were not claimed. If the unclaimed amounts are not sufficient to satisfy all claims, then any unsatisfied claims would be paid in future years. The cap for each future year would be reduced by the amount of claims paid; except that the total amount of claims paid in a year could not exceed 50% of the amount of the cap for that year.
- ! **Section 3** requires the director of the division of conservation to designate an ombudsman to assist in resolving certain disputes related to conservation easements.
- ! Section 3 also addresses the abandonment of conservation easements, which occurs when the holder of an easement no longer fulfills its stewardship obligations with respect to the easement. The division of conservation is required to investigate potential abandoned easements, make findings regarding each easement, and report its findings to the conservation easement oversight commission

(commission). The commission then conducts a public hearing on the easement and, if it determines that an easement is abandoned, appoints a receiver to monitor the easement. Receivership for an abandoned easement is limited to 5 years, during which time the commission reviews the easement and attempts to identify options to reform the easement, have it assigned to another holder, or extinguish the easement. A stewardship account is established to provide for the cost of carrying out the stewardship obligations resulting from abandoned easements. A specified amount of money is appropriated to the stewardship account for the 2020-21 fiscal year, with a corresponding reduction in the amount of conservation easement tax credits that can be claimed for one year.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-522, **amend**
3 (4)(a)(II.5) and (4)(b); and **add** (4)(a)(II.7) as follows:

4 **39-22-522. Credit against tax - conservation easements.**

5 (4) (a) (II.5) For a conservation easement in gross created in accordance
6 with article 30.5 of title 38 that is donated on or after January 1, 2015,
7 BUT PRIOR TO JANUARY 1, 2020, to a governmental entity or a charitable
8 organization described in section 38-30.5-104 (2), the credit provided for
9 in subsection (2) of this section shall be an amount equal to seventy-five
10 percent of the first one hundred thousand dollars of the fair market value
11 of the donated portion of such conservation easement in gross when
12 created, and fifty percent of all amounts of the donation in excess of one
13 hundred thousand dollars; except that in no case shall the credit exceed
14 five million dollars per donation. Credits shall be issued in increments of
15 no more than one million five hundred thousand dollars per year. Credits
16 for easements donated in a prior year shall be eligible for tax credit
17 certificates in subsequent years in order of application and before new

1 applications and those credit applications, if any, on the wait list.

2 (II.7) FOR A CONSERVATION EASEMENT IN GROSS CREATED IN
3 ACCORDANCE WITH ARTICLE 30.5 OF TITLE 38 THAT IS DONATED ON OR
4 AFTER JANUARY 1, 2020, TO A GOVERNMENTAL ENTITY OR A CHARITABLE
5 ORGANIZATION DESCRIBED IN SECTION 38-30.5-104 (2), THE CREDIT
6 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION SHALL BE AN AMOUNT
7 EQUAL TO SEVENTY-FIVE PERCENT, UNLESS THE TAXPAYER ELECTS TO
8 RECEIVE A LOWER PERCENTAGE, OF THE FAIR MARKET VALUE OF THE
9 DONATED PORTION OF SUCH CONSERVATION EASEMENT IN GROSS WHEN
10 CREATED; EXCEPT THAT IN NO CASE SHALL THE CREDIT EXCEED FIVE
11 MILLION DOLLARS PER DONATION. CREDITS SHALL BE ISSUED IN
12 INCREMENTS OF NO MORE THAN ONE MILLION FIVE HUNDRED THOUSAND
13 DOLLARS PER YEAR. CREDITS FOR EASEMENTS DONATED IN A PRIOR YEAR
14 SHALL BE ELIGIBLE FOR TAX CREDIT CERTIFICATES IN SUBSEQUENT YEARS
15 IN ORDER OF APPLICATION AND BEFORE NEW APPLICATIONS AND THOSE
16 CREDIT APPLICATIONS, IF ANY, ON THE WAIT LIST.

17 (b) For income tax years commencing on or after January 1, 2000,
18 in the case of a joint tenancy, tenancy in common, partnership, S
19 corporation, or other similar entity or ownership group that donates a
20 conservation easement as an entity or group, the amount of the credit
21 allowed pursuant to subsection (2) of this section shall be allocated to the
22 entity's owners, partners, members, or shareholders in proportion to the
23 owners', partners', members', or shareholders' distributive shares of
24 income or ownership percentage from such entity or group. For income
25 tax years commencing on or after January 1, 2000, but prior to January 1,
26 2003, the total aggregate amount of the credit allocated to such owners,
27 partners, members, and shareholders shall not exceed one hundred

1 thousand dollars, and, if any refund is claimed pursuant to ~~subparagraph~~
2 ~~(I) of paragraph (b) of subsection (5)~~ SUBSECTION (5)(b)(I) of this section,
3 the aggregate amount of the refund and the credit claimed by such
4 partners, members, and shareholders shall not exceed twenty thousand
5 dollars for that income tax year. For income tax years commencing on or
6 after January 1, 2003, but prior to January 1, 2007, the total aggregate
7 amount of the credit allocated to such owners, partners, members, and
8 shareholders shall not exceed two hundred sixty thousand dollars, and, if
9 any refund is claimed pursuant to ~~subparagraph (I) of paragraph (b) of~~
10 ~~subsection (5)~~ SUBSECTION (5)(b)(I) of this section, the aggregate amount
11 of the refund and the credit claimed by such owners, partners, members,
12 and shareholders shall not exceed fifty thousand dollars for that income
13 tax year. For income tax years commencing on or after January 1, 2007,
14 the total aggregate amount of the credit allocated to such owners,
15 partners, members, and shareholders shall not exceed three hundred
16 seventy-five thousand dollars, and, if any refund is claimed pursuant to
17 ~~subparagraph (I) of paragraph (b) of subsection (5)~~ SUBSECTION (5)(b)(I)
18 of this section, the aggregate amount of the refund and the credit claimed
19 by such owners, partners, members, and shareholders shall not exceed
20 fifty thousand dollars for that income tax year. FOR INCOME TAX YEARS
21 COMMENCING ON OR AFTER JANUARY 1, 2015, THE TOTAL AGGREGATE
22 AMOUNT OF THE CREDIT ALLOWED TO SUCH OWNERS, PARTNERS,
23 MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED FIVE MILLION
24 DOLLARS, WHICH SHALL BE ISSUED IN INCREMENTS OF NO MORE THAN ONE
25 MILLION FIVE HUNDRED THOUSAND DOLLARS PER YEAR, AND, IF ANY
26 REFUND IS CLAIMED PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION,
27 THE AGGREGATE AMOUNT OF THE REFUND AND CREDIT CLAIMED BY SUCH

1 OWNERS, PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED
2 FIFTY THOUSAND DOLLARS FOR THAT INCOME TAX YEAR.

3

4 SECTION 2. In Colorado Revised Statutes, add 39-22-522.7 as
5 follows:

6 39-22-522.7. Conservation easement tax credits - credit for
7 previously denied claims - rules - legislative declaration - definition.

8 (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

9 (a) IT IS THE INTENT OF THIS SECTION TO PROVIDE RELIEF THAT
10 WILL REPAIR THE HARM CAUSED BY THE DEPARTMENT OF REVENUE'S
11 DISALLOWANCE OF COLORADO CONSERVATION EASEMENT TAX CREDITS
12 TO LANDOWNERS WHO IN GOOD FAITH, SUBJECT TO SUBSECTION (5) OF
13 THIS SECTION, CONVEYED CONSERVATION EASEMENTS TO QUALIFIED
14 CONSERVATION EASEMENT HOLDERS BETWEEN JANUARY 1, 2000, AND
15 DECEMBER 31, 2013;

16 (b) STATE REPRESENTATIVE KIMMI LEWIS FROM HOUSE DISTRICT
17 64, WHO PASSED AWAY IN DECEMBER 2019, WORKED TIRELESSLY DURING
18 HER CAREER AS A LEGISLATOR TO PROVIDE HELP TO LANDOWNERS WHO
19 HAD CONSERVATION EASEMENT CREDITS ARBITRARILY DISALLOWED; AND

20 (c) RESOLUTION OF THIS HARM BY ALLOWING A LANDOWNER TO
21 CLAIM A TAX CREDIT FOR A CONSERVATION EASEMENT DONATION THAT
22 WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE AND
23 CONVEYED IN GOOD FAITH SUBJECT TO SUBSECTION (5) OF THIS SECTION,
24 BUT ULTIMATELY DENIED BY THE STATE WILL END THE NEARLY
25 TWO-DECADES-LONG CONFLICT OVER COLORADO'S CONSERVATION
26 EASEMENT TAX CREDIT PROGRAM, RESTORE THE INTEGRITY OF THE
27 PROGRAM, AND ALLOW THE PROGRAM TO MOVE FORWARD TO CONTINUE

1 THE GOOD WORK OF CONSERVING COLORADO'S INCREASINGLY LIMITED
2 OPEN SPACE AND NATURAL RESOURCES.

3 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
4 LANDOWNER SHALL BE ALLOWED TO CLAIM A TAX CREDIT WITH RESPECT
5 TO THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 FOR EACH PERPETUAL
6 CONSERVATION EASEMENT IN GROSS DONATED IN GOOD FAITH BETWEEN
7 JANUARY 1, 2000, AND DECEMBER 31, 2013, FOR WHICH A TAX CREDIT
8 WAS CLAIMED PURSUANT TO SECTION 39-22-522 AND WAS DENIED IN
9 WHOLE OR IN PART IF A FEDERAL CONSERVATION EASEMENT TAX
10 DEDUCTION WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE
11 FOR THE SAME DONATION. FOR PURPOSES OF THIS SECTION:

12 (a) THE AMOUNT OF THE CREDIT ALLOWED FOR EACH DONATION
13 SHALL BE EQUAL TO THE FULL AMOUNT OF THE CREDIT THAT COULD HAVE
14 BEEN CLAIMED FOR THE DONATION PURSUANT TO THE APPLICABLE LAW IN
15 EFFECT AT THE TIME OF THE DONATION;

16 (b) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE FAIR
17 MARKET VALUE OF THE CONSERVATION EASEMENT CONTRIBUTION
18 ACCEPTED BY THE INTERNAL REVENUE SERVICE AS REFLECTED ON THE
19 FEDERAL INCOME TAX FORM 8283 OR AMENDED BY A SUBSEQUENT
20 FEDERAL APPEAL PROCESS, FEDERAL COURT, OR UNITED STATES TAX
21 COURT RULING; AND

22 (c) THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS
23 SECTION SHALL BE DECREASED BY ANY AMOUNT OF CREDIT THAT WAS
24 OTHERWISE ALLOWED TO BE CLAIMED AGAINST THE TAXES IMPOSED BY
25 THIS ARTICLE 22 OR OTHERWISE REINSTATED, AND BY ANY AMOUNT THAT
26 WAS REIMBURSED OR OTHERWISE ALLOWED TO THE TRANSFEREE AS A
27 RESULT OF A SETTLEMENT, LITIGATION, OR OTHER MEANS THAT PROVIDED

1 COMPENSATION TO THE TRANSFEREE.

2 (3) BY AUGUST 15, 2020, THE DEPARTMENT OF REVENUE SHALL
3 MAKE INFORMATION READILY AVAILABLE ONLINE FOR TAXPAYERS WHO
4 HAD A TAX CREDIT DENIED IN WHOLE OR IN PART FOR A CONSERVATION
5 EASEMENT DONATED BETWEEN JANUARY 1, 2000, AND DECEMBER 31,
6 2013, THAT THE TAXPAYER MAY BE ELIGIBLE TO APPLY FOR A CREDIT
7 PURSUANT TO THIS SECTION. THE ONLINE INFORMATION MUST OUTLINE
8 THE PROCESS FOR APPLYING FOR A CREDIT AND THE CRITERIA USED TO
9 DETERMINE THE AMOUNT OF THE CREDIT.

10 (4) A TAXPAYER MUST SUBMIT A CLAIM FOR A CREDIT TO THE
11 DIVISION OF CONSERVATION IN THE DEPARTMENT OF REGULATORY
12 AGENCIES NO LATER THAN SEPTEMBER 30, 2021. THE CLAIM MUST BE
13 SUBMITTED USING A FORM AND PROCESS CREATED BY THE DIVISION AND
14 IN COORDINATION WITH THE WORKING GROUP CONVENED IN ACCORDANCE
15 WITH SECTION 12-15-106 (14.5). THE CLAIM MUST BE ACCOMPANIED BY
16 THE FOLLOWING:

17 (a) A COPY OF THE FEDERAL INCOME TAX FORM 8283 USED TO
18 SUBSTANTIATE A FEDERAL DEDUCTION FOR THE DONATED CONSERVATION
19 EASEMENT;

20 (b) IF THE ORIGINAL AMOUNT OF DEDUCTION CLAIMED ON THE
21 FEDERAL INCOME TAX FORM 8283 WAS ADJUSTED, DOCUMENTATION
22 CONFIRMING THE AMOUNT ULTIMATELY ALLOWED BY THE INTERNAL
23 REVENUE SERVICE, A FEDERAL COURT, OR THE UNITED STATES TAX COURT
24 AND CLAIMED BY MEANS OF AN ADJUSTED FEDERAL TAX RETURN
25 ACCEPTED BY THE INTERNAL REVENUE SERVICE; AND

26 (c) DOCUMENTATION CONFIRMING SETTLEMENT OF THE CREDIT
27 AMOUNT ALLOWED BY THE DEPARTMENT OF REVENUE.

1 (5) (a) THE DIVISION OF CONSERVATION SHALL ESTABLISH A
2 PROCESS BY RULE IN COORDINATION WITH THE WORKING GROUP
3 CONVENED IN ACCORDANCE WITH SECTION 12-15-106 (14.5) FOR
4 DETERMINING WHETHER A LANDOWNER CONVEYED AN EASEMENT IN GOOD
5 FAITH AND OTHERWISE MEETS THE REQUIREMENTS SET FORTH IN THIS
6 SECTION FOR RECEIVING A CREDIT.

7 (b) AS USED IN THIS SECTION, "GOOD FAITH" MEANS THAT A
8 PERSON OR ENTITY HONESTLY RELIED UPON A LICENSED PROFESSIONAL TO
9 ESTABLISH THE VALUE OF A CONSERVATION EASEMENT, DID NOT
10 KNOWINGLY MISREPRESENT THE VALUE OF THE CONSERVATION
11 EASEMENT, AND FOLLOWED THE APPLICABLE LAWS AND REGULATIONS SET
12 FORTH IN STATUTE, DEPARTMENT OF REVENUE RULES, AND THE FEDERAL
13 INTERNAL REVENUE CODE AND FEDERAL DEPARTMENT OF TREASURY
14 REGULATIONS IN EFFECT AT THE TIME OF THE CONVEYANCE OF THE
15 CONSERVATION EASEMENT.

16 (6) (a) THE DIVISION OF CONSERVATION SHALL ISSUE A
17 CERTIFICATE FOR THE CLAIMS RECEIVED IN THE ORDER SUBMITTED NO
18 LATER THAN NINETY DAYS AFTER AN APPLICATION IS RECEIVED UNLESS A
19 DISPUTE ARISES PURSUANT TO SUBSECTION (10) OF THIS SECTION. CREDITS
20 ISSUED PURSUANT TO THIS SECTION COUNT AGAINST THE AGGREGATE
21 ANNUAL CAP FOR ALL CONSERVATION EASEMENT TAX CREDITS SET FORTH
22 IN SECTION 39-22-522 (2.5) AND THE AGGREGATE AMOUNT OF CREDITS
23 ISSUED PURSUANT TO THIS SECTION AND SECTION 39-22-522 SHALL NOT
24 EXCEED THE AGGREGATE ANNUAL CAP.

25 (b) EXCEPT AS PROVIDED IN SUBSECTION (6)(c) OF THIS SECTION,
26 THE DIVISION OF CONSERVATION SHALL ISSUE CERTIFICATES UP TO THE
27 FOLLOWING PERCENTAGES OF THE AGGREGATE ANNUAL CAP SET FORTH IN

1 SECTION 39-22-522 (2.5) AS FOLLOWS:

2 (I) FIFTY PERCENT OF THE ANNUAL CAP IN THE FIRST CALENDAR
3 YEAR;

4 (II) FORTY PERCENT OF THE ANNUAL CAP IN THE SECOND
5 CALENDAR YEAR; AND

6 (III) THIRTY PERCENT OF THE ANNUAL CAP IN THE THIRD
7 CALENDAR YEAR AND EACH SUBSEQUENT YEAR THEREAFTER UNTIL THE
8 OBLIGATION IS FULLY SATISFIED.

9 (c) IF THE TOTAL AMOUNT OF CREDITS ENCUMBERED AND THE
10 TOTAL AMOUNT OF CREDITS PROJECTED TO BE ENCUMBERED PURSUANT TO
11 THIS SECTION AND SECTION 39-22-522 (2.5) IS LESS THAN FORTY-FIVE
12 MILLION DOLLARS AT THE END OF A CALENDAR YEAR, ADDITIONAL
13 CERTIFICATES MAY BE ISSUED PURSUANT TO THIS SECTION AS LONG AS THE
14 TOTAL AMOUNT OF CREDITS ISSUED PURSUANT TO THIS SECTION AND
15 SECTION 39-22-522 (2.5) DOES NOT EXCEED FORTY-FIVE MILLION DOLLARS
16 FOR THE CALENDAR YEAR. AT SUCH TIME AS ALL VALID CLAIMS MADE
17 PURSUANT TO SUBSECTION (4) OF THIS SECTION HAVE BEEN SATISFIED, THE
18 FULL AMOUNT NOT USED FOR CREDITS UP TO FORTY FIVE MILLION DOLLARS
19 SHALL BE ELIGIBLE FOR USE FOR NEW CONSERVATION EASEMENTS.

20 (d) ANY CLAIMS FOR A TAX CREDIT MADE PURSUANT TO THIS
21 SECTION THAT EXCEED THE AMOUNT ALLOWED FOR A SPECIFIED
22 CALENDAR YEAR SHALL BE PLACED ON A WAIT LIST IN THE ORDER
23 SUBMITTED AND A CERTIFICATE SHALL BE ISSUED FOR THE USE OF THE
24 CREDIT IN THE NEXT YEAR FOR WHICH THE DIVISION HAS NOT ISSUED
25 CREDIT CERTIFICATES IN EXCESS OF THE AMOUNTS ALLOWED PURSUANT
26 TO THIS SECTION.

27 (7) IF A PERSON ELIGIBLE TO RECEIVE A CREDIT PURSUANT TO THIS

1 SECTION IS NO LONGER LIVING, THE CREDIT MAY BE CLAIMED BY THE
2 APPROPRIATE ESTATE, HEIR, SUCCESSOR, OR ASSIGN.

3 (8) IF MORE THAN ONE PERSON OR ENTITY HAS A CLAIM TO A
4 CREDIT RELATED TO A PARTICULAR DONATION OF A CONSERVATION
5 EASEMENT, CLAIMANTS MAY WORK TOGETHER TO COORDINATE THE
6 APPROPRIATE DISTRIBUTION OF CREDITS.

7 (9) IF A TAXPAYER TRANSFERRED ALL OR A PORTION OF A TAX
8 CREDIT FOR A CONSERVATION EASEMENT DONATION THAT QUALIFIES FOR
9 A CREDIT PURSUANT TO THIS SECTION TO ANOTHER TAXPAYER AS
10 TRANSFeree PURSUANT TO SECTION 39-22-522 (7), THEN THE TRANSFeree
11 MAY CLAIM A CREDIT PURSUANT TO THIS SECTION. THE TRANSFEROR AND
12 ANY TRANSFereES MAY SUBMIT CLAIMS FOR CREDITS PURSUANT TO THIS
13 SECTION INDIVIDUALLY OR MUTUALLY AS A GROUP IF THEY AGREE UPON
14 THE TERMS FOR DIVIDING THE CREDIT. APPLICANTS MUST ATTEMPT TO
15 NOTIFY ANY OTHER TAXPAYER OR TRANSFeree THAT WAS A PARTY TO THE
16 TRANSFER THAT AN APPLICATION IS BEING MADE TO CLAIM A CREDIT
17 PURSUANT TO THIS SECTION. ANY PARTY WHO RECEIVES SUCH NOTICE HAS
18 NINETY DAYS FROM RECEIPT OF THE NOTICE TO FILE AN OBJECTION TO THE
19 CLAIM FOR THE CREDIT. AN OBJECTION SHALL BE SUBMITTED IN THE FORM
20 OF AN APPLICATION FOR A CREDIT AND SHALL SET FORTH THE PROPOSED
21 ALTERNATIVE AMOUNT OR DISTRIBUTION OF THE CREDIT. IN NO EVENT
22 SHALL THE AMOUNT OF COMPENSATION PROVIDED TO A TRANSFeree
23 EXCEED THE AMOUNT PAID BY THE TRANSFeree FOR THE CREDIT, LESS
24 ANY AMOUNT THAT WAS REINSTATED, REIMBURSED, OR OTHERWISE
25 ALLOWED TO THE TRANSFeree AS A RESULT OF A SETTLEMENT,
26 LITIGATION, OR OTHER MEANS THAT PROVIDED COMPENSATION TO THE
27 TRANSFeree UNLESS OTHERWISE MUTUALLY AGREE UPON BY THE PARTIES.

1 (10) IF AN OBJECTION TO A CLAIM FOR A CREDIT IS FILED
2 PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE DIVISION OF
3 CONSERVATION SHALL REFER THE MATTER TO THE OMBUDSMAN
4 DESIGNATED PURSUANT TO SECTION 12-15-108 FOR FINAL RESOLUTION OF
5 ANY DISPUTES RELATED TO AMOUNTS TO BE ALLOWED PURSUANT TO THIS
6 SECTION.

7 (11) CREDITS ALLOWED PURSUANT TO THIS SECTION ARE NOT
8 REFUNDABLE, BUT MAY BE TRANSFERRED OR CARRIED FORWARD IN THE
9 SAME MANNER AS CREDITS ALLOWED PURSUANT TO SECTION 39-22-522
10 (4)(a) FOR A PERIOD OF TIME BEGINNING AT THE TIME OF THE ISSUANCE OF
11 THE CREDIT.

12 **SECTION 3.** In Colorado Revised Statutes, **add** 12-15-108 and
13 12-15-109 as follows:

14 **12-15-108. Disputed credit claims - ombudsman.** (1) THE
15 DIRECTOR OF THE DIVISION SHALL DESIGNATE A PERSON TO SERVE AS AN
16 OMBUDSMAN TO MEDIATE OR OTHERWISE ASSIST CLAIMANTS OF TAX
17 CREDITS IF AN OBJECTION TO A CLAIM FOR A TAX CREDIT HAS BEEN
18 REFERRED TO THE OMBUDSMAN PURSUANT TO SECTION 39-22-522.7 (10).
19 THE OMBUDSMAN MAY BE AN EMPLOYEE OF THE DIVISION OR ANOTHER
20 PROFESSIONAL WITH KNOWLEDGE OF CONSERVATION EASEMENT
21 TRANSACTIONS. IF THE PARTIES ARE UNABLE TO RESOLVE THEIR
22 OBJECTIONS TO A CLAIM FOR A TAX CREDIT WITH THE ASSISTANCE OF THE
23 OMBUDSMAN, THE OMBUDSMAN MAY REFER THE MATTER TO AN
24 ARBITRATOR, AT THE EXPENSE OF THE DEPARTMENT OF REVENUE, TO
25 COME TO A FINAL RESOLUTION OF THE DISPUTE. UPON FINAL RESOLUTION
26 OF THE DISPUTE, THE OMBUDSMAN SHALL NOTIFY THE DEPARTMENT OF
27 REVENUE OF THE TERMS OF THE RESOLUTION AND THE DEPARTMENT OF

1 REVENUE SHALL ALLOW THE TAX CREDIT TO BE CLAIMED IN ACCORDANCE
2 WITH SUCH TERMS AND SECTION 39-22-522.7.

3 **12-15-109. Administration of abandoned conservation**
4 **easements.** (1) THE DIVISION SHALL OPEN AN INVESTIGATION PROMPTLY
5 UPON BEING NOTIFIED OF OR BECOMING AWARE OF THE POTENTIAL
6 ABANDONMENT OF A CONSERVATION EASEMENT IN THE STATE. WITHIN
7 TEN BUSINESS DAYS FOLLOWING THE OPENING OF THE INVESTIGATION, THE
8 DIVISION SHALL NOTIFY THE LANDOWNER AND EASEMENT HOLDER OF
9 RECORD BY CERTIFIED MAIL OF THE INVESTIGATION. THE NOTICE SHALL BE
10 SENT TO EACH AFFECTED LANDOWNER AND EASEMENT HOLDER AT THEIR
11 LAST KNOWN ADDRESS. THE NOTICE MUST INCLUDE A SUMMARY OF THE
12 BASIS FOR THE INVESTIGATION, A DETAILED EXPLANATION OF THE PROCESS
13 BY WHICH THE INVESTIGATION WILL BE CONDUCTED, AN OUTLINE OF
14 POSSIBLE OUTCOMES FROM THE INVESTIGATION, AND CONTACT
15 INFORMATION FOR THE APPROPRIATE OFFICIALS IN THE DIVISION TO WHOM
16 QUESTIONS ABOUT THE INVESTIGATION MAY BE DIRECTED.

17 (2) AFTER CONDUCTING AN INVESTIGATION PURSUANT TO
18 SUBSECTION (1) OF THIS SECTION, THE DIVISION MAY MAKE A FINDING
19 THAT A CONSERVATION EASEMENT IS ABANDONED IF THE DIVISION
20 DETERMINES THAT THE EASEMENT IS HELD BY AN ENTITY THAT:

21 (a) IS NONFUNCTIONING BUT NOT LEGALLY DISSOLVED;
22 (b) IS FUNCTIONING BUT HAS SUBMITTED A WRITTEN STATEMENT
23 TO THE DIVISION PROVIDING THAT THE ENTITY IS UNABLE OR UNWILLING
24 TO CONTINUE TO FULFILL THE PERPETUAL STEWARDSHIP OBLIGATIONS OF
25 AN EASEMENT HOLDER; OR

26 (c) HAS NOT COMPLETED ITS ANNUAL MONITORING OBLIGATIONS
27 FOR THREE CONSECUTIVE YEARS.

1 (3) IF THE DIVISION FINDS THAT A CONSERVATION EASEMENT IS
2 ABANDONED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE DIVISION
3 SHALL PREPARE A REPORT FOR THE COMMISSION OUTLINING THE DIVISION'S
4 FINDINGS AND MAKING A RECOMMENDATION TO THE COMMISSION TO ISSUE
5 AN ABANDONMENT DECLARATION. THE COMMISSION SHALL REVIEW THE
6 REPORT AND MAKE A DETERMINATION AT A PUBLIC HEARING OF WHETHER
7 OR NOT AN EASEMENT HOLDER HAS ABANDONED THE CONSERVATION
8 EASEMENT. THE DIVISION SHALL PROVIDE NOTICE OF THE PUBLIC HEARING
9 AND MAKE THE REPORT AVAILABLE PRIOR TO THE HEARING TO ANY
10 LANDOWNER OR EASEMENT HOLDER WITH AN INTEREST IN THE EASEMENT.
11 LANDOWNERS AND EASEMENT HOLDERS HAVE THE RIGHT TO ATTEND AND
12 PARTICIPATE IN THE HEARING WHERE THE REPORT IS REVIEWED. IF THE
13 COMMISSION DETERMINES THAT AN EASEMENT HOLDER HAS ABANDONED
14 A CONSERVATION EASEMENT, THE COMMISSION SHALL, IN CONSULTATION
15 WITH THE DEPARTMENT OF LAW, ISSUE AN ABANDONMENT DECLARATION
16 AND APPOINT A RECEIVER FOR THE EASEMENT. THE RECEIVER MUST BE
17 EITHER THE COMMISSION OR THE BOARD OF COUNTY COMMISSIONERS FOR
18 THE COUNTY IN WHICH THE ABANDONED EASEMENT EXISTS. THE
19 LANDOWNER, IN CONSULTATION WITH THE COMMISSION, MAY DETERMINE
20 WHETHER THE COMMISSION OR THE BOARD OF COUNTY COMMISSIONERS
21 WILL BE THE RECEIVER.

22 (4) WITHIN TEN BUSINESS DAYS OF ISSUING AN ABANDONMENT
23 DECLARATION FOR A CONSERVATION EASEMENT PURSUANT TO
24 SUBSECTION (3) OF THIS SECTION, THE DIVISION SHALL SEND A NOTICE BY
25 CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF EACH AFFECTED
26 LANDOWNER AND EASEMENT HOLDER OF RECORD SETTING FORTH THE
27 FOLLOWING:

1 (a) THE BASIS FOR THE DECLARATION THAT THE EASEMENT HAS
2 BEEN ABANDONED;

3 (b) THE PROCESS AND TIMELINES ASSOCIATED WITH THE
4 RECEIVERSHIP PROCESS FOR THE EASEMENT;

5 (c) THE OPTIONS AVAILABLE TO A LANDOWNER, INCLUDING THE
6 POTENTIAL FOR EXTINGUISHING THE EASEMENT PURSUANT TO SECTION
7 38-30.5-107;

8 (d) A LIST OF ALL ENTITIES CERTIFIED TO HOLD CONSERVATION
9 EASEMENTS IN THE STATE, INCLUDING LAND TRUSTS, GOVERNMENT
10 AGENCIES, MUNICIPALITIES, AND COUNTIES;

11 (e) CONTACT INFORMATION FOR THE APPROPRIATE OFFICIALS TO
12 CONTACT WITH QUESTIONS REGARDING THE RECEIVERSHIP; AND

13 (f) INSTRUCTIONS FOR A LANDOWNER TO COMPLETE AN ONLINE
14 SURVEY ON THE DIVISION'S WEBSITE TO IDENTIFY AND RANK IN ORDER OF
15 PREFERENCE WHICH CERTIFIED HOLDERS THE LANDOWNER WOULD PREFER
16 HAVING THE EASEMENT TRANSFERRED TO AFTER IT IS OUT OF
17 RECEIVERSHIP.

18 (5) AN ABANDONED CONSERVATION EASEMENT SHALL BE PLACED
19 IN RECEIVERSHIP NO LATER THAN NINETY DAYS FOLLOWING THE ISSUANCE
20 OF AN ABANDONMENT DECLARATION PURSUANT TO SUBSECTION (3) OF
21 THIS SECTION. THE COMMISSION SHALL CONSULT WITH THE DEPARTMENT
22 OF LAW TO ENSURE THAT THE RECEIVER HAS BEEN PROPERLY AND
23 LEGALLY ESTABLISHED AND THAT ALL DUE PROCESS REQUIREMENTS FOR
24 PLACING THE ABANDONED CONSERVATION EASEMENT INTO RECEIVERSHIP
25 HAVE BEEN MET. ABANDONED CONSERVATION EASEMENTS SHALL BE
26 PLACED INTO RECEIVERSHIP FOR A PERIOD NOT TO EXCEED FIVE YEARS.

27 (6) ONCE IN RECEIVERSHIP, ANNUAL MONITORING OBLIGATIONS

1 FOR AN ABANDONED CONSERVATION EASEMENT ARE THE RESPONSIBILITY
2 OF THE RECEIVER. THE RECEIVER IS RESPONSIBLE FOR DETERMINING, IN
3 CONSULTATION WITH THE COMMISSION, WHETHER THE TERMS OF AN
4 ABANDONED CONSERVATION EASEMENT HELD IN RECEIVERSHIP HAVE
5 BEEN VIOLATED AND REFERRING ANY VIOLATIONS TO THE PROPER
6 ENFORCEMENT AGENCY FOR REMEDY.

7 (7) A STEWARDSHIP ACCOUNT IS ESTABLISHED WITHIN THE
8 CONSERVATION CASH FUND CREATED PURSUANT TO SECTION 12-15-107 TO
9 PROVIDE FOR THE ANNUAL COST OF PERFORMING MONITORING
10 OBLIGATIONS FOR CONSERVATION EASEMENTS HELD IN RECEIVERSHIP
11 PURSUANT TO THIS SECTION OR THE ONGOING COST OF CERTIFIED HOLDERS
12 CARRYING OUT THEIR STEWARDSHIP OBLIGATIONS IMPOSED BY ACCEPTING
13 THE ASSIGNMENT OF ABANDONED EASEMENTS PURSUANT TO SUBSECTION
14 (11) OF THIS SECTION. THE COMMISSION SHALL ENTER INTO MONITORING
15 CONTRACTS WITH WILLING CERTIFIED CONSERVATION EASEMENT
16 HOLDERS, COUNTIES ACTING AS RECEIVERS, OR OTHER PROFESSIONALS
17 WITH EXPERIENCE MONITORING CONSERVATION EASEMENTS TO MONITOR
18 ANY CONSERVATION EASEMENTS THAT ARE BEING HELD IN RECEIVERSHIP.
19 MONITORING CONTRACTS SHALL BE RENEWED ON AN ANNUAL BASIS.
20 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AMOUNT OF TAX
21 CREDIT CERTIFICATES THAT MAY BE ISSUED PURSUANT TO SECTION
22 39-22-522 (2.5) IN THE 2020 CALENDAR YEAR IS REDUCED BY FIVE
23 MILLION DOLLARS. THE GENERAL ASSEMBLY SHALL APPROPRIATE FIVE
24 MILLION DOLLARS FROM THE GENERAL FUND TO THE STEWARDSHIP
25 ACCOUNT FOR THE 2020-2021 FISCAL YEAR. MONEY IN THE STEWARDSHIP
26 ACCOUNT SHALL BE ANNUALLY APPROPRIATED TO THE DIVISION TO
27 PROVIDE FOR CONTRACTING WITH CERTIFIED EASEMENT HOLDERS,

1 COUNTIES ACTING AS RECEIVERS, OR OTHER PROFESSIONALS WITH
2 EXPERIENCE MONITORING CONSERVATION EASEMENTS AS PROVIDED FOR
3 IN THE ANNUAL MONITORING CONTRACTS.

4 (8) (a) THE COMMISSION SHALL BE RESPONSIBLE FOR
5 SYSTEMATICALLY REVIEWING EACH CONSERVATION EASEMENT HELD IN
6 RECEIVERSHIP PURSUANT TO THIS SECTION. THE REVIEW SHALL SEEK TO
7 IDENTIFY OPTIONS FOR REFORMS, IF ANY, TO EACH CONSERVATION
8 EASEMENT THAT WOULD ENABLE THE EASEMENT TO BE ASSIGNED TO
9 ANOTHER CERTIFIED EASEMENT HOLDER AND IDENTIFY CERTIFIED
10 HOLDERS WILLING TO TAKE ASSIGNMENT OF THE EASEMENT. THE
11 COMMISSION SHALL ISSUE A FINAL REPORT WITH THE CONCLUSION OF ITS
12 REVIEW NO LATER THAN ONE YEAR AFTER THE EASEMENT WAS PLACED IN
13 RECEIVERSHIP. THE REPORT SHALL ASSIGN EACH CONSERVATION
14 EASEMENT HELD IN RECEIVERSHIP INTO ONE OF THE FOLLOWING THREE
15 CATEGORIES:

16 (I) EASEMENTS THAT CAN BE ASSIGNED WITHOUT REFORMATION
17 OR AMENDMENT;

18 (II) EASEMENTS THAT CAN BE ASSIGNED WITH REFORMATION
19 THROUGH AMENDMENT; OR

20 (III) EASEMENTS THAT CANNOT BE REFORMED IN A MANNER THAT
21 WOULD ALLOW FOR ASSIGNMENT.

22 (b) THE COMMISSION MAY REASSIGN A CONSERVATION EASEMENT
23 THAT HAS BEEN PLACED IN A CATEGORY PURSUANT TO SUBSECTION (8)(a)
24 OF THIS SECTION TO A DIFFERENT CATEGORY AT ANY TIME IF NEW
25 INFORMATION BECOMES AVAILABLE TO WARRANT THE REASSIGNMENT.

26 (9) WITH THE EXPRESSED WRITTEN CONSENT OF THE OWNER OF
27 LAND SUBJECT TO A CONSERVATION EASEMENT ASSIGNED TO THE

1 CATEGORY DESCRIBED IN SUBSECTION (8)(a)(III) OF THIS SECTION, THE
2 COMMISSION MAY SUBMIT THE EASEMENT TO THE DEPARTMENT OF LAW OR
3 TO A SPECIAL MASTER AS PROVIDED BY LAW TO COMMENCE PROCEEDINGS
4 TO TERMINATE, RELEASE, EXTINGUISH, OR ABANDON THE EASEMENT IN
5 ACCORDANCE WITH SECTION 38-30.5-107.

6 (10) THE DIVISION AND THE COMMISSION HAVE FOUR YEARS
7 FOLLOWING THE ISSUANCE OF A REPORT PURSUANT TO SUBSECTION (8)(a)
8 OF THIS SECTION REGARDING A CONSERVATION EASEMENT HELD IN
9 RECEIVERSHIP TO RESOLVE AND REMOVE THE EASEMENT FROM
10 RECEIVERSHIP EITHER BY ASSIGNING THE EASEMENT TO ANOTHER
11 CERTIFIED EASEMENT HOLDER OR BY TERMINATING, RELEASING, OR
12 EXTINGUISHING THE EASEMENT PURSUANT TO SUBSECTION (9) OF THIS
13 SECTION. THE DIVISION AND THE COMMISSION MUST CONSULT WITH THE
14 OWNER OF THE LAND SUBJECT TO THE EASEMENT, AND ONLY WITH THE
15 LANDOWNER'S EXPRESS WRITTEN CONSENT WILL THE SUBJECT PROPERTY
16 BE REASSIGNED TO A NEW CONSERVATION EASEMENT HOLDER. IF A
17 DISPUTE ARISES BETWEEN A LANDOWNER AND THE DIVISION OR THE
18 COMMISSION OVER THE ASSIGNMENT OF A CONSERVATION EASEMENT, THE
19 MATTER SHALL BE REFERRED TO THE OMBUDSMAN DESIGNATED PURSUANT
20 TO SECTION 12-15-108. IF THE OMBUDSMAN PROCESS FAILS, THE MATTER
21 SHALL BE REFERRED TO AN ARBITRATOR AT THE DIVISION'S EXPENSE FOR
22 FINAL RESOLUTION.

23 (11) A CERTIFIED HOLDER THAT ACCEPTS THE ASSIGNMENT OF AN
24 ABANDONED CONSERVATION EASEMENT THAT WAS HELD IN RECEIVERSHIP
25 PURSUANT TO THIS SECTION SHALL BE ENTITLED TO RECEIVE A PORTION OF
26 THE MONEY FROM THE STEWARDSHIP ACCOUNT CREATED IN SUBSECTION
27 (7) OF THIS SECTION FOR CARRYING OUT ITS FUTURE ONGOING

1 STEWARDSHIP OBLIGATIONS IMPOSED BY ACCEPTING THE ASSIGNMENT.
2 THE AMOUNT OF THE STEWARDSHIP ACCOUNT TO BE PROVIDED SHALL BE
3 DETERMINED THROUGH MUTUAL AGREEMENT BETWEEN THE CERTIFIED
4 HOLDER AND THE DIVISION.

5 (12) THE DIVISION OF CONSERVATION SHALL COORDINATE WITH
6 THE WORKING GROUP CONVENED IN ACCORDANCE WITH SECTION
7 12-15-106 (14.5) AND ADOPT RULES TO ESTABLISH CRITERIA FOR
8 DETERMINING WHETHER AN ENTITY HOLDING A CONSERVATION EASEMENT
9 IS NONFUNCTIONING AND ANY OTHER CRITERIA NECESSARY TO DETERMINE
10 WHETHER A CONSERVATION EASEMENT IS ABANDONED.

11 **SECTION 4. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2020 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.