

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

INTRODUCED

LLS NO. 21-0102.01 Gregg Fraser x4325

HOUSE BILL 21-1233

HOUSE SPONSORSHIP

Roberts and Will,

SENATE SPONSORSHIP

Donovan and Winter,

House Committees

Agriculture, Livestock, & Water

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE REQUIREMENTS FOR CLAIMING**
102 **AN INCOME TAX CREDIT FOR THE DONATION OF A PERPETUAL**
103 **CONSERVATION EASEMENT.**

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>.)

The bill makes the following changes affecting claims for an income tax credit allowed for the donation of a perpetual conservation easement in gross (tax credit):

- Specifies that the division of conservation can be a holder of a conservation easement in gross;

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.

- Eliminates a requirement that amounts deducted for federal income tax purposes for the donation of a conservation easement be added back for purposes of calculating Colorado taxable income;
- Modifies the definition of "taxpayer" to clarify the applicability of the tax credit to donations made by certain nonprofit and governmental entities;
- Modifies the process for filing conservation easement tax credit certificates with income tax returns;
- Eliminates the authority of the executive director of the department of revenue to require additional information regarding the amount and validity of tax credits and to resolve disputes regarding the credits;
- Establishes a process for the department of revenue to track the transfer of and certify the ownership of tax credits;
- Modifies the formula used to calculate the amount of the tax credit;
- Modifies the manner in which the amount of a tax credit is allocated among owners, partners, members, or shareholders of certain legal entities;
- Modifies certain provisions regarding the number of tax credits that may be claimed and the manner of claiming the credits;
- Eliminates the requirement that the donor of an easement is the tax matters representative for purposes of resolving issues and disputes relating to a transferred credit; and
- Eliminates obsolete reporting requirements.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-15-102, **add** (3)
 3 as follows:

4 **12-15-102. Division of conservation - creation - director.**

5 (3) TO AID IN THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE
 6 15, THE DIVISION HAS THE AUTHORITY TO ACCEPT GRANTS FOR AND ACT
 7 AS A HOLDER OF CONSERVATION EASEMENTS IN GROSS.

8 **SECTION 2.** In Colorado Revised Statutes, 38-30.5-104, **amend**
 9 (2) as follows:

10 **38-30.5-104. Creation of conservation easements in gross.**

1 (2) A conservation easement in gross may only be created through a
2 grant to or a reservation by a governmental entity, INCLUDING THE
3 DIVISION OF CONSERVATION CREATED IN SECTION 12-15-102, or a grant to
4 or a reservation by a charitable organization exempt under section 501
5 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, which
6 organization was created at least two years prior to receipt of the
7 conservation easement.

8 **SECTION 3.** In Colorado Revised Statutes, 39-22-104, **amend**
9 (3)(g) as follows:

10 **39-22-104. Income tax imposed on individuals, estates, and**
11 **trusts - single rate - legislative declaration - definitions - repeal.**

12 (3) There shall be added to the federal taxable income:

13 (g) For the income tax years commencing on or after January 1,
14 2000, BUT PRIOR TO JANUARY 1, 2022, an amount equal to the charitable
15 contribution deduction allowed by section 170 of the internal revenue
16 code to the extent such deduction includes a contribution of real property
17 to a charitable organization for a conservation purpose for which an
18 income tax credit is claimed pursuant to section 39-22-522;

19 **SECTION 4.** In Colorado Revised Statutes, 39-22-522, **amend**
20 (1), (2.7), (3.5)(b), (4)(a)(II.5), (4)(b), (6), (7) introductory portion, (7)(i),
21 and (7)(j); **repeal** (7)(d), (10), and (11); and **add** (4)(a)(II.7) as follows:

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

23 (1) For the purposes of this section:

24 (a) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1,
25 2021, "taxpayer" means a resident individual or a domestic or foreign
26 corporation subject to the provisions of part 3 of this article, a
27 partnership, S corporation, or other similar pass-through entity, estate, or

1 trust that donates a conservation easement as an entity, and a partner,
2 member, and subchapter S shareholder of such pass-through entity.

3 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
4 1, 2021, "TAXPAYER" MEANS ANY PERSON OR ENTITY FILING A STATE
5 INCOME TAX RETURN OR A DOMESTIC OR FOREIGN CORPORATION SUBJECT
6 TO THE PROVISIONS OF PART 3 OF THIS ARTICLE 22, A PARTNERSHIP, S
7 CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, ESTATE, TRUST,
8 NONPROFIT ENTITY, OR AN ENTITY THAT HAS AUTHORITY TO CONDUCT
9 WATER ACTIVITIES, AS DEFINED BY SECTION 37-45.1-102 (3) AND CREATED
10 PURSUANT TO ARTICLE 41, 45, 46, 47, 48, OR 50 OF TITLE 37, OR ARTICLE
11 42 OF TITLE 7, THAT CONVEYS A CONSERVATION EASEMENT IN GROSS
12 PURSUANT TO SECTION 38-30.5-104. A DITCH OR RESERVOIR COMPANY
13 FORMED PURSUANT TO ARTICLE 42 OF TITLE 7, OR OTHERWISE, IS ENTITLED
14 TO ACT ON ITS OWN BEHALF IN GRANTING A CONSERVATION EASEMENT
15 AND EARNING AND TRANSFERRING TAX CREDITS UNDER THIS SECTION,
16 WHETHER OR NOT ANY OF ITS SHAREHOLDERS OR MEMBERS ARE
17 GOVERNMENTAL ENTITIES.

18 (2.7) Notwithstanding any other provision, for income tax years
19 commencing on or after January 1, 2014, no claim for a credit shall be
20 allowed unless a tax credit certificate is issued by the division of real
21 estate prior to May 30, 2018, or by the division of conservation on or after
22 May 30, 2018, in accordance with sections 12-15-105 and 12-15-106 and,
23 FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014,
24 BUT PRIOR TO JANUARY 1, 2022, the taxpayer files the tax credit certificate
25 with the income tax return filed with the department of revenue.

26 (3.5) (b) (I) For conservation easements donated on or after
27 January 1, 2014, and subject to the restrictions of section 12-15-106 (4),

1 the executive director shall have the authority, pursuant to subsection (8)
2 of this section, to require additional information from the taxpayer or
3 transferee regarding the amount of ~~the~~ A credit TRANSFERRED PRIOR TO
4 JANUARY 1, 2022, and the validity of the credit. In resolving disputes
5 regarding the validity or the amount of a credit allowed pursuant to
6 subsection (2) of this section, the executive director shall have the
7 authority, for good cause shown, to review and accept or reject, in whole
8 or in part, the amount of the credit and the validity of the credit based
9 upon the internal revenue code and federal regulations in effect at the
10 time of the donation, except those requirements for which authority is
11 granted to the division of conservation, the director of the division of
12 conservation, or the conservation easement oversight commission
13 pursuant to section 12-15-106.

14 (II) FOR CONSERVATION EASEMENTS DONATED ON OR AFTER
15 JANUARY 1, 2014, AND FOR TAX CREDIT CERTIFICATES ISSUED BY THE
16 DIVISION ON OR AFTER JANUARY 1, 2022, THE DIVISION SHALL NOTIFY THE
17 DEPARTMENT OF REVENUE OF THE ISSUANCE OF A TAX CREDIT
18 CERTIFICATE. SUCH NOTICE SHALL PERFECT THE VALIDITY OF THE CREDIT
19 WITH THE DEPARTMENT OF REVENUE FOR THE USE OR TRANSFER OF THE
20 CREDIT BY A TAXPAYER. FOR CONSERVATION EASEMENTS DONATED ON OR
21 AFTER JANUARY 1, 2014, AND TRANSFERRED ON OR AFTER JANUARY 1,
22 2022, THE TRANSFEROR AND TRANSFEREE OF THE TAX CREDIT SHALL
23 JOINTLY FILE A COPY OF A WRITTEN CREDIT TRANSFER NOTICE WITH THE
24 DEPARTMENT OF REVENUE WITHIN THIRTY DAYS AFTER THE TRANSFER.
25 THE DEPARTMENT SHALL DEVELOP A SYSTEM TO TRACK SUCH TRANSFERS
26 OF TAX CREDITS AND TO CONFIRM THE TRANSFER AND OWNERSHIP OF TAX
27 CREDITS TO THE TRANSFEREE'S ACCOUNT. THE DEPARTMENT HAS THIRTY

1 DAYS FROM RECEIPT OF THE WRITTEN TRANSFER NOTICE TO PROVIDE
2 WRITTEN CONFIRMATION OF ACKNOWLEDGMENT AND POSTING TO THE
3 TRANSFEREE'S ACCOUNT OF THE TRANSFER IN THE DEPARTMENT'S
4 TRACKING SYSTEM TO THE TRANSFEROR AND TRANSFEREE. THE
5 DEPARTMENT SHALL NOT ADJUST THE AMOUNT OF TAX CREDITS AS TO THE
6 TRANSFEREE; EXCEPT THAT THE DEPARTMENT RETAINS ANY REMEDIES IT
7 MAY HAVE AGAINST THE TRANSFEROR. THE DEPARTMENT MAY
8 PROMULGATE RULES TO PERMIT VERIFICATION OF THE OWNERSHIP AND
9 AMOUNT OF THE TAX CREDITS; EXCEPT THAT ANY RULES PROMULGATED
10 SHALL NOT UNDULY RESTRICT OR HINDER THE TRANSFER OR USE OF THE
11 TAX CREDITS.

12 (4) (a) (II.5) For a conservation easement in gross created in
13 accordance with article 30.5 of title 38 that is donated on or after January
14 1, 2015, BUT PRIOR TO JANUARY 1, 2021, to a governmental entity or a
15 charitable organization described in section 38-30.5-104 (2), the credit
16 provided for in subsection (2) of this section shall be an amount equal to
17 seventy-five percent of the first one hundred thousand dollars of the fair
18 market value of the donated portion of such conservation easement in
19 gross when created, and fifty percent of all amounts of the donation in
20 excess of one hundred thousand dollars; except that in no case shall the
21 credit exceed five million dollars per donation. Credits shall be issued in
22 increments of no more than one million five hundred thousand dollars per
23 year. Credits for easements donated in a prior year shall be eligible for tax
24 credit certificates in subsequent years in order of application and before
25 new applications and those credit applications, if any, on the wait list.

26 (II.7) FOR A CONSERVATION EASEMENT IN GROSS CREATED IN
27 ACCORDANCE WITH ARTICLE 30.5 OF TITLE 38 THAT IS DONATED ON OR

1 AFTER JANUARY 1, 2021, TO A GOVERNMENTAL ENTITY OR A CHARITABLE
2 ORGANIZATION DESCRIBED IN SECTION 38-30.5-104 (2), THE CREDIT
3 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION IS AN AMOUNT THAT IS
4 DETERMINED BY THE TAXPAYER BUT THAT IS NO MORE THAN NINETY
5 PERCENT OF THE FAIR MARKET VALUE OF THE DONATED PORTION OF SUCH
6 CONSERVATION EASEMENT IN GROSS WHEN CREATED; EXCEPT THAT IN NO
7 CASE SHALL THE CREDIT EXCEED FIVE MILLION DOLLARS PER DONATION.
8 CREDITS SHALL BE ISSUED IN INCREMENTS OF NO MORE THAN ONE MILLION
9 FIVE HUNDRED THOUSAND DOLLARS PER YEAR. CREDITS FOR EASEMENTS
10 DONATED IN A PRIOR YEAR ARE ELIGIBLE FOR TAX CREDIT CERTIFICATES
11 IN SUBSEQUENT YEARS IN ORDER OF APPLICATION AND BEFORE NEW
12 APPLICATIONS AND THOSE CREDIT APPLICATIONS, IF ANY, ON THE WAIT
13 LIST.

14 (b) For income tax years commencing on or after January 1, 2000,
15 in the case of a joint tenancy, tenancy in common, partnership, S
16 corporation, or other similar entity or ownership group that donates a
17 conservation easement as an entity or group, the amount of the credit
18 allowed pursuant to subsection (2) of this section shall MUST be allocated
19 to the entity's owners, partners, members, or shareholders in proportion
20 to the owners', partners', members', or shareholders' distributive shares of
21 income or ownership percentage from such entity or group. For income
22 tax years commencing on or after January 1, 2000, but prior to January 1,
23 2003, the total aggregate amount of the credit allocated to such owners,
24 partners, members, and shareholders shall not exceed one hundred
25 thousand dollars, and, if any refund is claimed pursuant to ~~subparagraph~~
26 ~~(I) of paragraph (b) of subsection (5)~~ SUBSECTION (5)(b)(I) of this section,
27 the aggregate amount of the refund and the credit claimed by such

1 partners, members, and shareholders shall not exceed twenty thousand
2 dollars for that income tax year. For income tax years commencing on or
3 after January 1, 2003, but prior to January 1, 2007, the total aggregate
4 amount of the credit allocated to such owners, partners, members, and
5 shareholders shall not exceed two hundred sixty thousand dollars, and, if
6 any refund is claimed pursuant to ~~subparagraph (f) of paragraph (b) of~~
7 ~~subsection (5)~~ SUBSECTION (5)(b)(I) of this section, the aggregate amount
8 of the refund and the credit claimed by such owners, partners, members,
9 and shareholders shall not exceed fifty thousand dollars for that income
10 tax year. For income tax years commencing on or after January 1, 2007,
11 AND PRIOR TO JANUARY 1, 2015, the total aggregate amount of the credit
12 allocated to such owners, partners, members, and shareholders shall not
13 exceed three hundred seventy-five thousand dollars, and, if any refund is
14 claimed pursuant to ~~subparagraph (f) of paragraph (b) of subsection (5)~~
15 SUBSECTION (5)(b)(I) of this section, the aggregate amount of the refund
16 and the credit claimed by such owners, partners, members, and
17 shareholders shall not exceed fifty thousand dollars for that income tax
18 year. FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,
19 2015, THE TOTAL AGGREGATE AMOUNT OF THE CREDIT ALLOCATED TO
20 SUCH OWNERS, PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT
21 EXCEED FIVE MILLION DOLLARS, AND, IF ANY REFUND IS CLAIMED
22 PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION, THE AGGREGATE
23 AMOUNT OF THE REFUND AND THE CREDIT CLAIMED BY SUCH OWNERS,
24 PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED FIFTY
25 THOUSAND DOLLARS FOR THAT INCOME TAX YEAR.

26 (6) (a) ~~For conservation easements donated prior to January 1,~~
27 ~~2014, a taxpayer may claim only one tax credit under this section per~~

1 ~~income tax year; except that a transferee of a tax credit under subsection~~
2 ~~(7) of this section may claim an unlimited number of credits. A taxpayer~~
3 ~~who has carried forward or elected to receive a refund of part of the tax~~
4 ~~credit in accordance with subsection (5) of this section shall not claim an~~
5 ~~additional tax credit under this section for any income tax year in which~~
6 ~~the taxpayer applies the amount carried forward against income tax due~~
7 ~~or receives a refund. A taxpayer who has transferred a credit to a~~
8 ~~transferee pursuant to subsection (7) of this section shall not claim an~~
9 ~~additional tax credit under this section for any income tax year in which~~
10 ~~the transferee uses such transferred credit.~~

11 (b) For conservation easements donated on or after ~~January 1,~~
12 ~~2014~~ JANUARY 1, 2000, a taxpayer may claim only one tax credit under
13 this section per income tax year; except that a transferee of a tax credit
14 under subsection (7) of this section may claim an unlimited number of
15 credits.

16 (7) For income tax years commencing on or after January 1, 2000,
17 a taxpayer may transfer all or a portion of a tax credit granted pursuant to
18 subsection (2) of this section to ~~another taxpayer~~ A TRANSFEREE for such
19 ~~other taxpayer,~~ as transferee to apply as a credit against the taxes imposed
20 by this ~~article~~ ARTICLE 22 subject to the following limitations:

21 (d) ~~For any tax year in which a tax credit is transferred pursuant~~
22 ~~to this subsection (7), both the taxpayer and the transferee shall file~~
23 ~~written statements with their income tax returns specifying the amount of~~
24 ~~the tax credit that has been transferred. A transferee may not claim a~~
25 ~~credit transferred pursuant to this subsection (7) unless the taxpayer's~~
26 ~~written statement verifies the amount of the tax credit claimed by the~~
27 ~~transferee.~~

1 (i) FOR A DONATION MADE PRIOR TO JANUARY 1, 2014, the donor
2 of an easement for which a tax credit is claimed or the transferor of a tax
3 credit CLAIMED FOR THE DONATION OF THE EASEMENT transferred
4 pursuant to this subsection (7) ~~shall be~~ IS the tax matters representative in
5 all matters with respect to the credit. The tax matters representative ~~shall~~
6 ~~be~~ IS responsible for representing and binding the transferees with respect
7 to all issues affecting the credit, including, but not limited to, the
8 charitable contribution deduction, the appraisal, notifications and
9 correspondence from and with the department of revenue, audit
10 examinations, assessments or refunds, settlement agreements, and the
11 statute of limitations. The transferee ~~shall be~~ IS subject to the same statute
12 of limitations with respect to the credit as the transferor of the credit.

13 (j) FOR A TAX CREDIT CLAIMED FOR THE DONATION OF AN
14 EASEMENT MADE PRIOR TO JANUARY 1, 2014, final resolution of disputes
15 regarding the tax credit between the department of revenue and the tax
16 matters representative, including final determinations, compromises,
17 payment of additional taxes or refunds due, and administrative and
18 judicial decisions, ~~shall be~~ IS binding on transferees.

19 ~~(10) On or before July 1, 2008, the department of revenue shall~~
20 ~~create a report, which shall be made available to the public, on the credits~~
21 ~~claimed in the previous year in accordance with this section. For each~~
22 ~~credit claimed for a conservation easement in gross, the report shall~~
23 ~~summarize by county where the easement is located, the acres under~~
24 ~~easement, the appraised value of the easement, the donated value of the~~
25 ~~easement, and the name of any holders of the easement; except that the~~
26 ~~department shall combine such information for multiple counties where~~
27 ~~necessary to ensure that the information for no fewer than three~~

1 easements is summarized for any county or combination of counties in the
2 report. The report shall be updated annually to reflect the same
3 information for any additional credits that have been granted since the
4 previous report. This report shall not be required for conservation
5 easements donated on or after January 1, 2014.

6 (11) ~~On or before December 31, 2007, the department of revenue~~
7 ~~shall create a report, which shall be made available to the public, with as~~
8 ~~much of the information specified in paragraph (c) of subsection (3) of~~
9 ~~this section as is available to the department, summarized by county, for~~
10 ~~each tax credit claimed for a conservation easement in gross for tax years~~
11 ~~commencing on or after January 1, 2000. This report shall not be required~~
12 ~~for conservation easements donated on or after January 1, 2014.~~

13 **SECTION 5. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2022 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.