

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 22-0766.01 Jason Gelender x4330

SENATE BILL 22-119

SENATE SPONSORSHIP

Simpson and Winter,

HOUSE SPONSORSHIP

(None),

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONSERVATION EASEMENTS, AND, IN CONNECTION**
102 **THEREWITH, ALLOWING TAXPAYERS WHO WERE PREVIOUSLY**
103 **DENIED A STATE INCOME TAX CREDIT FOR DONATING**
104 **CONSERVATION EASEMENTS TO CLAIM AN INCOME TAX CREDIT**
105 **FOR THOSE DONATIONS IF SPECIFIED REQUIREMENTS ARE**
106 **SATISFIED.**

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 creates a new state income tax credit (new credit) for

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.

certain taxpayers who were denied state income tax credits for conservation easements donated between 2000 and 2013 (original credit) if the federal internal revenue service allowed a federal income tax deduction for the same donation. A donation is eligible for the new credit only if the land subject to the donated conservation easement for which the original credits were disallowed was owned by the landowner, a family member of the landowner, or a trust or other legal entity controlled by the landowner or one or more members of the family of the landowner for not less than 3 consecutive years prior to the date of the donation.

The amount of the new credit is based upon the amount of the original 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; except that the fair market value of the land used to calculate the value of the new credit cannot exceed 250% of the donor's cost basis in the land subject to the donated conservation easement. The amount of the new credit is reduced by any amount that was allowed to be claimed against Colorado income tax or otherwise reinstated to the claimant of the original credit. The new credit is not refundable but may be carried forward or transferred in the same manner as the original credit. The department of revenue is required to make information about the new credit available online.

The bill establishes a process for applying to the division of conservation to claim the new credit. If the original credit that was denied was transferred to another taxpayer as transferee, the bill provides a process for all parties to the transaction to submit a mutual application to claim the new credit or, if there is objection, an ombudsman process to resolve disputes about the distribution of the credit.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 39-22-522.7 as
3 follows:

4 **39-22-522.7. Conservation easement tax credits - credit for**
5 **previously denied claims - rules - legislative declaration - intent -**
6 **definition.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES
7 THAT:

8 (a) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROVIDE
9 RELIEF THAT WILL REPAIR THE HARM CAUSED BY THE ___ DISALLOWANCE
10 OF COLORADO CONSERVATION EASEMENT TAX CREDITS TO LANDOWNERS

1 WHO IN GOOD FAITH, SUBJECT TO SUBSECTION (6) OF THIS SECTION,
2 CONVEYED CONSERVATION EASEMENTS TO QUALIFIED CONSERVATION
3 EASEMENT HOLDERS BETWEEN JANUARY 1, 2000, AND DECEMBER 31,
4 2013;

5 (b) STATE REPRESENTATIVE KIMMI LEWIS FROM HOUSE DISTRICT
6 64, WHO PASSED AWAY IN DECEMBER 2019, WORKED TIRELESSLY DURING
7 HER CAREER AS A LEGISLATOR TO PROVIDE HELP TO LANDOWNERS WHO
8 HAD CONSERVATION EASEMENT CREDITS DISALLOWED; AND

9 (c) RESOLUTION OF THIS HARM BY ALLOWING A LANDOWNER TO
10 CLAIM A TAX CREDIT, OR PURSUE EXTINGUISHMENT, FOR A CONSERVATION
11 EASEMENT DONATION THAT WAS ACCEPTED BY THE FEDERAL INTERNAL
12 REVENUE SERVICE AND CONVEYED IN GOOD FAITH SUBJECT TO
13 SUBSECTION (5) OF THIS SECTION, BUT ULTIMATELY DENIED BY THE STATE,
14 WILL END THE NEARLY TWO-DECADES-LONG CONFLICT OVER COLORADO'S
15 CONSERVATION EASEMENT TAX CREDIT PROGRAM, ENSURE THE INTEGRITY
16 OF THE PROGRAM, AND ALLOW THE PROGRAM TO MOVE FORWARD TO
17 CONTINUE THE GOOD WORK OF CONSERVING COLORADO'S INCREASINGLY
18 LIMITED OPEN SPACE AND NATURAL RESOURCES.

19 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND
20 SUBJECT TO THE REQUIREMENTS AND LIMITATIONS SET FORTH IN
21 SUBSECTION (3) OF THIS SECTION, A LANDOWNER SHALL BE ALLOWED TO
22 CLAIM A TAX CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED BY
23 THIS ARTICLE 22 FOR EACH PERPETUAL CONSERVATION EASEMENT IN
24 GROSS DONATED IN GOOD FAITH BETWEEN JANUARY 1, 2000, AND
25 DECEMBER 31, 2013, FOR WHICH A TAX CREDIT WAS CLAIMED PURSUANT
26 TO SECTION 39-22-522 AND WAS DENIED IN WHOLE OR IN PART IF A
27 FEDERAL CONSERVATION EASEMENT TAX DEDUCTION WAS ACCEPTED BY

1 THE FEDERAL INTERNAL REVENUE SERVICE FOR THE SAME DONATION.

2 (3) (a) A DONATION OF A PERPETUAL CONSERVATION EASEMENT
3 IN GROSS IS ELIGIBLE FOR THE CREDIT ALLOWED BY SUBSECTION (2) OF
4 THIS SECTION ONLY IF THE LAND SUBJECT TO THE PERPETUAL
5 CONSERVATION EASEMENT IN GROSS FOR WHICH THE INITIAL CREDITS
6 WERE DISALLOWED WAS OWNED BY THE LANDOWNER, A FAMILY MEMBER
7 OF THE LANDOWNER, OR A TRUST OR OTHER LEGAL ENTITY CONTROLLED
8 BY THE LANDOWNER OR ONE OR MORE MEMBERS OF THE FAMILY OF THE
9 LANDOWNER FOR NOT LESS THAN THREE CONSECUTIVE YEARS PRIOR TO
10 THE DATE OF THE DONATION OF THE PERPETUAL CONSERVATION
11 EASEMENT IN GROSS.

12 (b) 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, BASED ON THE FAIR MARKET VALUE
15 DETERMINED PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION,
16 PURSUANT TO THE APPLICABLE LAW IN EFFECT AT THE TIME OF THE
17 DONATION.

18 (c) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE
19 LESSER OF:

20 (I) THE FAIR MARKET VALUE OF THE CONSERVATION EASEMENT
21 CONTRIBUTION ACCEPTED BY THE INTERNAL REVENUE SERVICE AS
22 REFLECTED ON THE FEDERAL INCOME TAX FORM 8283 OR AMENDED BY A
23 SUBSEQUENT FEDERAL APPEAL PROCESS, FEDERAL COURT, OR UNITED
24 STATES TAX COURT RULING; OR

25 (II) IF THE DONATED REAL PROPERTY WAS PURCHASED BY THE
26 DONOR WITHIN FIVE YEARS PRIOR TO THE DATE OF THE DONATION FROM
27 A PERSON OTHER THAN A FAMILY MEMBER OF THE DONOR OR A TRUST OR

1 OTHER LEGAL ENTITY CONTROLLED BY THE DONOR OR ONE OR MORE
2 FAMILY MEMBERS OF THE DONOR, TWO HUNDRED FIFTY PERCENT OF THE
3 DONOR'S COST BASIS.

4 (d) THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS
5 SECTION SHALL BE DECREASED BY ANY AMOUNT OF CREDIT THAT WAS
6 OTHERWISE ALLOWED TO BE CLAIMED AGAINST THE TAXES IMPOSED BY
7 THIS ARTICLE 22 OR OTHERWISE REINSTATED, AND BY ANY AMOUNT THAT
8 WAS REIMBURSED OR OTHERWISE ALLOWED TO THE TRANSFEREE AS A
9 RESULT OF A SETTLEMENT, LITIGATION, OR OTHER MEANS THAT PROVIDED
10 COMPENSATION TO THE TRANSFEREE.

11 (4) BY AUGUST 15, 2022, THE DEPARTMENT OF REVENUE SHALL
12 MAKE READILY AVAILABLE ONLINE FOR ANY TAXPAYER WHO HAD A TAX
13 CREDIT DENIED IN WHOLE OR IN PART FOR A CONSERVATION EASEMENT
14 DONATED BETWEEN JANUARY 1, 2000, AND DECEMBER 31, 2013,
15 INFORMATION THAT THE TAXPAYER MAY BE ELIGIBLE TO APPLY FOR A
16 CREDIT PURSUANT TO THIS SECTION. THE INFORMATION MUST INCLUDE
17 THE APPLICATION FORM AND PROCESS CREATED BY THE DIVISION
18 PURSUANT TO SUBSECTION (5) OF THIS SECTION. THE ONLINE
19 INFORMATION MUST OUTLINE THE PROCESS FOR APPLYING FOR A CREDIT
20 AND THE CRITERIA USED TO DETERMINE THE AMOUNT OF THE CREDIT.

21 (5) A TAXPAYER MUST SUBMIT A CLAIM FOR A CREDIT TO THE
22 DIVISION OF CONSERVATION IN THE DEPARTMENT OF REGULATORY
23 AGENCIES NO LATER THAN SEPTEMBER 30, 2023. THE CLAIM MUST BE
24 SUBMITTED USING A FORM AND PROCESS CREATED BY THE DIVISION.
25 THE CLAIM MUST BE ACCOMPANIED BY THE FOLLOWING:

26 (a) A COPY OF THE FEDERAL INCOME TAX FORM 8283 USED TO
27 SUBSTANTIATE A FEDERAL DEDUCTION FOR THE DONATED CONSERVATION

1 EASEMENT;

2 (b) IF THE ORIGINAL AMOUNT OF DEDUCTION CLAIMED ON THE
3 FEDERAL INCOME TAX FORM 8283 WAS ADJUSTED, DOCUMENTATION
4 CONFIRMING THE AMOUNT ULTIMATELY ALLOWED BY THE INTERNAL
5 REVENUE SERVICE, A FEDERAL COURT, OR THE UNITED STATES TAX COURT
6 AND CLAIMED BY MEANS OF AN ADJUSTED FEDERAL TAX RETURN
7 ACCEPTED BY THE INTERNAL REVENUE SERVICE; AND

8 (c) DOCUMENTATION CONFIRMING SETTLEMENT OF THE CREDIT
9 AMOUNT ALLOWED BY THE DEPARTMENT OF REVENUE.

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

19 (7) IF A PERSON ELIGIBLE TO RECEIVE A CREDIT PURSUANT TO THIS
20 SECTION IS NO LONGER LIVING, THE CREDIT MAY BE CLAIMED BY THE
21 APPROPRIATE ESTATE, HEIR, SUCCESSOR, OR ASSIGNEE.

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

26 (9) IF A TAXPAYER TRANSFERRED ALL OR A PORTION OF A TAX
27 CREDIT FOR A CONSERVATION EASEMENT DONATION THAT QUALIFIES FOR

1 A CREDIT PURSUANT TO THIS SECTION TO ANOTHER TAXPAYER AS
2 TRANSFEREE PURSUANT TO SECTION 39-22-522 (7), THEN THE TRANSFEREE
3 MAY CLAIM A CREDIT PURSUANT TO THIS SECTION. THE TRANSFEROR AND
4 ANY TRANSFEREES MAY SUBMIT CLAIMS FOR CREDITS PURSUANT TO THIS
5 SECTION INDIVIDUALLY OR MUTUALLY AS A GROUP IF THEY AGREE UPON
6 THE TERMS FOR DIVIDING THE CREDIT. APPLICANTS MUST ATTEMPT TO
7 NOTIFY ANY OTHER TAXPAYER OR TRANSFEREE THAT WAS A PARTY TO THE
8 TRANSFER THAT AN APPLICATION IS BEING MADE TO CLAIM A CREDIT
9 PURSUANT TO THIS SECTION. ANY PARTY WHO RECEIVES SUCH NOTICE HAS
10 NINETY DAYS FROM RECEIPT OF THE NOTICE TO FILE AN OBJECTION TO THE
11 CLAIM FOR THE CREDIT. AN OBJECTION SHALL BE SUBMITTED IN THE FORM
12 OF AN APPLICATION FOR A CREDIT AND SHALL SET FORTH THE PROPOSED
13 ALTERNATIVE AMOUNT OR DISTRIBUTION OF THE CREDIT. THE AMOUNT OF
14 THE NEW CREDIT ISSUED TO A TRANSFEREE SHALL NOT EXCEED THE
15 AMOUNT OF THE ORIGINAL TAX CREDIT PURCHASED BY THE TRANSFEREE,
16 LESS ANY AMOUNT THAT WAS REINSTATED, REIMBURSED, OR OTHERWISE
17 ALLOWED TO THE TRANSFEREE AS A RESULT OF A SETTLEMENT,
18 LITIGATION, OR OTHER MEANS THAT PROVIDED COMPENSATION TO THE
19 TRANSFEREE UNLESS OTHERWISE MUTUALLY AGREED UPON BY THE
20 PARTIES.

21 (10) IF AN OBJECTION TO A CLAIM FOR A CREDIT IS FILED
22 PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE DIVISION OF
23 CONSERVATION SHALL REFER THE MATTER TO THE OMBUDSMAN
24 DESIGNATED PURSUANT TO SECTION 12-15-108 FOR FINAL RESOLUTION OF
25 ANY DISPUTES RELATED TO AMOUNTS TO BE ALLOWED PURSUANT TO THIS
26 SECTION.

27 (11) CREDITS ALLOWED PURSUANT TO THIS SECTION ARE NOT

1 REFUNDABLE, BUT MAY BE TRANSFERRED OR CARRIED FORWARD IN THE
2 SAME MANNER AS CREDITS ALLOWED PURSUANT TO SECTION 39-22-522
3 (4)(a) FOR A PERIOD BEGINNING AT THE TIME OF THE ISSUANCE OF THE
4 CREDIT.

5 **SECTION 2.** In Colorado Revised Statutes, **add** 12-15-108 as
6 follows:

7 **12-15-108. Disputed credit claims - ombudsman.** THE DIRECTOR
8 OF THE DIVISION SHALL DESIGNATE A PERSON TO SERVE AS AN
9 OMBUDSMAN TO MEDIATE OR OTHERWISE ASSIST CLAIMANTS OF TAX
10 CREDITS IF AN OBJECTION TO A CLAIM FOR A TAX CREDIT HAS BEEN
11 REFERRED TO THE OMBUDSMAN PURSUANT TO SECTION 39-22-522.7 (10).
12 THE OMBUDSMAN MAY BE AN EMPLOYEE OF THE DIVISION OR ANOTHER
13 PROFESSIONAL WITH KNOWLEDGE OF CONSERVATION EASEMENT
14 TRANSACTIONS. IF THE PARTIES ARE UNABLE TO RESOLVE THEIR
15 OBJECTIONS TO A CLAIM FOR A TAX CREDIT WITH THE ASSISTANCE OF THE
16 OMBUDSMAN, THE OMBUDSMAN MAY REFER THE MATTER TO AN
17 ARBITRATOR, AT THE EXPENSE OF THE DEPARTMENT OF REVENUE, TO
18 COME TO A FINAL RESOLUTION OF THE DISPUTE. UPON FINAL RESOLUTION
19 OF THE DISPUTE, THE OMBUDSMAN SHALL NOTIFY THE DEPARTMENT OF
20 REVENUE OF THE TERMS OF THE RESOLUTION AND THE DEPARTMENT OF
21 REVENUE SHALL ALLOW THE TAX CREDIT TO BE CLAIMED IN ACCORDANCE
22 WITH SUCH TERMS AND SECTION 39-22-522.7.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, or safety.