

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 24-0505.01 Jed Franklin x5484

SENATE BILL 24-126

SENATE SPONSORSHIP

Will and Winter F., Pelton R., Roberts

HOUSE SPONSORSHIP

Lukens and Lynch, Armagost, Hartsook, Martinez, Velasco

Senate Committees

Agriculture & Natural Resources
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONSERVATION EASEMENT INCOME TAX CREDIT,**
102 **AND, IN CONNECTION THEREWITH, EXTENDING THE**
103 **CONSERVATION EASEMENT OVERSIGHT COMMISSION AND THE**
104 **CERTIFIED HOLDER PROGRAM INDEFINITELY, INCREASING THE**
105 **LIMIT ON CONSERVATION EASEMENT INCOME TAX CREDITS**
106 **AVAILABLE TO DONORS IN ONE CALENDAR YEAR, ALLOWING**
107 **MULTIPLE TRANSFERS OF CONSERVATION EASEMENT INCOME**
108 **TAX CREDITS, AND MAKING AN APPROPRIATION.**

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

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

SENATE
Amended 2nd Reading
April 16, 2024

<http://leg.colorado.gov>.)

Under current law, the conservation easement oversight commission (commission) and the certified holder program (program) are repealed on July 1, 2026. The bill eliminates the repeal dates to extend the commission and program indefinitely.

There is currently a cap of \$45 million for the total value of conservation easement income tax credits (credits) that may be claimed by and credited to donors of a conservation easement in one calendar year. Credits filed after the cap is reached are placed on a wait list for the next calendar year. The bill increases the cap to \$75 million beginning in calendar year 2025.

Current law provides that partnerships, S corporations, or other similar entities (pass-through entities) may not be transferees of a credit. The bill allows pass-through entities to be transferees of a credit beginning on January 1, 2025. The bill also allows insurance companies to purchase credits to offset insurance premium taxes.

Currently, a credit may be transferred once, in whole or in part, from a donor to a transferee. The bill allows a transferee to transfer a credit to a subsequent transferee beginning with the income tax year starting on January 1, 2025.

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

2 **SECTION 1. Legislative declaration. (1) The general assembly**
3 **hereby finds and declares that:**

4 **(a) Over the last sixty years, Colorado families have conserved**
5 **over three million three hundred thousand acres of working farms,**
6 **ranches, and private lands across the state;**

7 **(b) Since 2000, Colorado has proactively invested in conservation**
8 **through the conservation easement tax credit program;**

9 **(c) The conservation easement tax credit program incentivizes**
10 **private landowners to voluntarily protect their properties, which creates**
11 **public benefits to Colorado's lands, waters, wildlife, and people.**

12 **(d) The benefits of conservation are unique and wide-ranging.**
13 **Conservation has contributed significantly to the protection of wildlife**

1 habitat, critical wetlands, urban open space, and working farms and
2 ranches.

3 (e) The conservation easement tax credit program has aided
4 Colorado in reducing its carbon emissions and accomplishing its
5 biodiversity goals, while supporting rural economic resiliency, benefiting
6 all Coloradans;

7 (f) In pursuit of greater equity in conservation, it is crucial to
8 enhance programs that promote public benefits for all Coloradans; and

9 (g) Equity in conservation requires ongoing collaboration with
10 private landowners, state and federal public land managers, and counties
11 and municipalities. Underscoring and investing in the inclusion of
12 underserved communities, tribes, and historically marginalized land
13 interests will further amplify these efforts.

14 (2) Therefore, it is in the best interests of Coloradans to enhance
15 the conservation easement tax credit program.

16 **SECTION 2.** In Colorado Revised Statutes, 12-15-103, **amend**
17 (1) introductory portion, (1)(a), (1)(d) introductory portion, and (1)(d)(I);
18 **repeal** (8); and **add** (1)(d)(III) as follows:

19 **12-15-103. Conservation easement oversight commission -**
20 **created.** (1) There is created in the division a conservation easement
21 oversight commission, referred to in this article 15 as the "commission".
22 The commission is a **type 2** entity, as defined in section 24-1-105, and
23 exercises its powers and performs its duties and functions under the
24 division. The commission consists of ~~eight~~ NINE members as follows:

25 (a) ~~One member representing the great outdoors Colorado~~
26 ~~program, appointed by and serving as an advisory, nonvoting member at~~
27 ~~the pleasure of the state board of the great outdoors Colorado trust fund~~

1 established in article XXVII of the state constitution; ONE VOTING
2 MEMBER REPRESENTING THE GREAT OUTDOORS COLORADO TRUST FUND,
3 APPOINTED BY AND SERVING AT THE PLEASURE OF THE EXECUTIVE
4 DIRECTOR OF THE STATE BOARD OF THE GREAT OUTDOORS COLORADO
5 TRUST FUND;

6 (d) Three FOUR voting members appointed by the governor as
7 follows:

8 (I) Two voting representatives of certified conservation easement
9 holders; and

10 (III) A VOTING INDIVIDUAL WHO MEETS THE DEFINITION OF
11 "SOCIALLY DISADVANTAGED FARMER OR RANCHER" IN 7 U.S.C. SEC. 2279.

12 (8) This section is repealed, effective July 1, 2026.

13 **SECTION 3.** In Colorado Revised Statutes, 12-15-104, **repeal**
14 (13) as follows:

15 **12-15-104. Certification of conservation easement holders -**
16 **rules - definition.** (13) This section is repealed, effective July 1, 2026.

17 **SECTION 4.** In Colorado Revised Statutes, 12-15-105, **amend**
18 (1)(c) and (3) as follows:

19 **12-15-105. Conservation easement tax credit certificates -**
20 **rules.** (1) The division shall receive tax credit certificate applications
21 from and issue certificates to landowners for income tax credits for
22 conservation easements donated on or after January 1, 2011, in
23 accordance with section 39-22-522 (2.5) and this article 15. Nothing in
24 this section restricts or limits the authority of the division to enforce this
25 article 15. The division may promulgate rules in accordance with article
26 4 of title 24 for the issuance of the certificates. In promulgating rules, the
27 division may include provisions governing:

1 (c) The notification to the public regarding the aggregate amount
2 of tax credit certificates that have been issued and that are on the wait list
3 pursuant to section 39-25-522 (2.5);

4 (3) The division shall not issue tax credit certificates that in
5 aggregate exceed the limit set forth in section 39-22-522 (2.5) during a
6 particular calendar year. THE DIVISION MAY ISSUE MULTIPLE TAX CREDIT
7 CERTIFICATES FOR A SINGLE CONSERVATION EASEMENT AS REQUIRED BY
8 SECTION 39-22-522.

9 **SECTION 5.** In Colorado Revised Statutes, 12-15-106, **amend**
10 (10) as follows:

11 **12-15-106. Conservation easement tax credit certificate**
12 **application process - definitions - rules.** (10) If the director and the
13 commission do not identify any potential deficiencies with an application,
14 the director and the commission shall approve the application, and the
15 division shall issue a tax credit certificate to the landowner pursuant to
16 section 12-15-105 in a timely manner so that the number of days between
17 the date a completed application is received by the division and the date
18 the tax credit certificate is issued does not exceed one hundred twenty
19 days. Once a tax credit certificate is issued, the landowner may claim and
20 use the tax credit subject to any other applicable procedures and
21 requirements under title 39. THE DEADLINE PRESCRIBED BY THIS
22 SUBSECTION (10) MAY BE EXTENDED UPON MUTUAL AGREEMENT OF THE
23 DIRECTOR, THE COMMISSION, AND THE LANDOWNER.

24 **SECTION 6.** In Colorado Revised Statutes, 38-30.5-103, **add** (7)
25 as follows:

26 **38-30.5-103. Nature of conservation easements in gross.** (7) A
27 CONSERVATION EASEMENT IN GROSS IS A REAL PROPERTY INTEREST AS

1 DEFINED IN SECTION 38-30.5-102 THAT IS TO BE CREATED, ADMINISTERED,
2 STEWARDED, ENFORCED, MODIFIED, AND TERMINATED PURSUANT TO THIS
3 ARTICLE 30.5 AND, AS APPLICABLE, SECTION 39-22-522.

4 **SECTION 7.** In Colorado Revised Statutes, 39-22-522, **amend**
5 (2)(a), (2)(b), (2.5), (4)(a)(II.7), (4)(b)(II)(D), (5)(b)(III), and (7.5)(a);
6 **repeal** (5)(b)(II); and add (4)(a)(II.8), (4)(b)(II)(E), (12), (13), and (14)
7 as follows:

8 **39-22-522. Credit against tax - conservation easements -**
9 **definitions.**

10 =====

11 (2) (a) For income tax years commencing on or after January 1,
12 2000, but prior to January 1, 2014, and, with regard to any credit over the
13 amount of one hundred thousand dollars, for income tax years
14 commencing on or after January 1, 2003, BUT BEFORE JANUARY 1, 2032,
15 subject to the provisions of subsections (4) and (6) of this section, there
16 shall be allowed a credit with respect to the income taxes imposed by this
17 article to each taxpayer who donates during the taxable year all or part of
18 the value of a perpetual conservation easement in gross created pursuant
19 to article 30.5 of title 38. C.R.S. upon real property the taxpayer owns to
20 a governmental entity or a charitable organization described in section
21 38-30.5-104 (2). C.R.S. The credit shall only be allowed for a donation
22 that is eligible to qualify as a qualified conservation contribution pursuant
23 to section 170 (h) of the internal revenue code, as amended, and any
24 federal regulations promulgated in connection with such section. The
25 amount of the credit shall not include the value of any portion of an
26 easement on real property located in another state.

27 (b) For income tax years commencing on or after January 1, 2014,

1 BUT BEFORE JANUARY 1, 2032, and, with regard to any credit over the
2 amount of one hundred thousand dollars, for income tax years
3 commencing on or after January 1, 2003, BUT BEFORE JANUARY 1, 2032,
4 subject to the provisions of subsections (4) and (6) of this section, there
5 shall be allowed a credit with respect to the income taxes imposed by this
6 article to each taxpayer who donates during the taxable year all or part of
7 the value of a perpetual conservation easement in gross created pursuant
8 to article 30.5 of title 38, C.R.S. upon real property the taxpayer owns to
9 a governmental entity or a charitable organization described in section
10 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation
11 that meets the requirements of section 170 of the federal "Internal
12 Revenue Code of 1986", as amended, and any federal regulations
13 promulgated in accordance with such section. The amount of the credit
14 shall not include the value of any portion of an easement on real property
15 located in another state.

16 (2.5) Notwithstanding any other provision of this section and the
17 requirements of section 12-15-106, for income tax years commencing on
18 or after January 1, 2011, BUT BEFORE JANUARY 1, 2032, a taxpayer
19 conveying a conservation easement and claiming a credit pursuant to this
20 section shall, in addition to any other requirements of this section and the
21 requirements of section 12-15-106, submit a claim for the credit to the
22 division of conservation in the department of regulatory agencies. The
23 division shall issue a certificate for the claims received in the order
24 submitted. THE DIVISION MUST PRIORITIZE TAX CREDIT APPLICATIONS IN
25 THE ORDER RECEIVED. THE DIVISION MUST ASSIGN EACH APPLICATION
26 WITH THE DATE AND TIME RECEIVED BASED ON THE ORDER IN WHICH A
27 COMPLETED APPLICATION WAS SUBMITTED PURSUANT TO SECTION

1 12-15-106 (5). INCOMPLETE APPLICATIONS DO NOT GET PRIORITY IN THE
2 REVIEW PROCESS. DISAPPROVED APPLICATIONS LOSE THEIR PRIORITY IN
3 THE REVIEW PROCESS. After certificates have been issued for credits that
4 exceed an aggregate of twenty-two million dollars for all taxpayers for the
5 2011 and 2012 calendar years, thirty-four million dollars for the 2013
6 calendar year, ~~and~~ forty-five million dollars for each OF THE 2014 TO 2024
7 calendar ~~year thereafter~~ YEARS, SIXTY MILLION DOLLARS FOR THE 2025
8 CALENDAR YEAR, SEVENTY MILLION DOLLARS FOR THE 2026 CALENDAR
9 YEAR, AND SEVENTY-FIVE MILLION DOLLARS FOR EACH OF THE 2025 TO
10 2031 CALENDAR YEARS, any claims that exceed the amount allowed for
11 a specified ___ calendar year shall be placed on a wait list in the order
12 submitted and a certificate shall be issued for use of the credit in the next
13 year for which the division has not issued credit certificates in excess of
14 the amounts specified in this subsection (2.5). except that no more than
15 fifteen million dollars in claims shall be placed on the wait list in any
16 given calendar year. The division shall not issue credit certificates that
17 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
18 years, thirty-four million dollars for the 2013 calendar year, ~~and~~ forty-five
19 million dollars for each OF THE 2014 TO 2024 calendar ~~year thereafter~~
20 YEARS, SIXTY MILLION DOLLARS FOR THE 2025 CALENDAR YEAR, SEVENTY
21 MILLION DOLLARS FOR THE 2026 CALENDAR YEAR, AND SEVENTY-FIVE
22 MILLION DOLLARS FOR EACH CALENDAR YEAR THEREAFTER. No claim for
23 a credit is allowed for any income tax year commencing on or after
24 January 1, 2011, unless a certificate has been issued by the division. If all
25 other requirements under section 12-15-106 and this section are met, the
26 right to claim the credit is vested in the taxpayer at the time a credit
27 certificate is issued.

1 (4) (a) (II.7) For a conservation easement in gross created in
2 accordance with article 30.5 of title 38 that is donated on or after January
3 1, 2021, to a governmental entity or a charitable organization described
4 in section 38-30.5-104 (2), the credit provided for in subsection (2) of this
5 section is an amount equal to:

6 (A) FOR CONSERVATION EASEMENTS DONATED ON OR AFTER
7 JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2027, ninety percent of the fair
8 market value of the donated portion of such conservation easement in
9 gross when created; except that in no case shall the credit exceed five
10 million dollars per donation; Credits shall be issued in increments of no
11 more than one million five hundred thousand dollars per year. Credits for
12 easements donated in a prior year are eligible for tax credit certificates in
13 subsequent years in order of application and before new applications and
14 those credit applications, if any, on the wait list AND

15 (B) FOR CONSERVATION EASEMENTS DONATED ON OR AFTER
16 JANUARY 1, 2027, BUT BEFORE JANUARY 1, 2032, EIGHTY PERCENT OF THE
17 FAIR MARKET VALUE OF THE DONATED PORTION OF SUCH CONSERVATION
18 EASEMENT IN GROSS WHEN CREATED; EXCEPT THAT IN NO CASE SHALL THE
19 CREDIT EXCEED FIVE MILLION DOLLARS PER DONATION.

20 (II.8) CREDITS SHALL BE ISSUED IN INCREMENTS OF NO MORE THAN
21 ONE MILLION FIVE HUNDRED THOUSAND DOLLARS PER YEAR. CREDITS FOR
22 EASEMENTS DONATED IN A PRIOR YEAR ARE ELIGIBLE FOR TAX CREDIT
23 CERTIFICATES IN SUBSEQUENT YEARS IN ORDER OF APPLICATION.

24 (b) (II) (D) For income tax years commencing on or after January
25 1, 2015, BUT BEFORE JANUARY 1, 2027, the total aggregate amount of the
26 credit allocated to such owners, partners, members, and shareholders shall
27 not exceed five million dollars, and, if any refund is claimed pursuant to

1 subsection (5)(b)(I) of this section, the aggregate amount of the refund
2 and the credit claimed by such owners, partners, members, and
3 shareholders shall not exceed fifty thousand dollars for that income tax
4 year.

5 (E) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
6 1, 2027, BUT BEFORE JANUARY 1, 2032, THE TOTAL AGGREGATE AMOUNT
7 OF THE CREDIT ALLOCATED TO SUCH OWNERS, PARTNERS, MEMBERS, AND
8 SHAREHOLDERS SHALL NOT EXCEED FIVE MILLION DOLLARS, AND, IF ANY
9 REFUND IS CLAIMED PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION,
10 THE AGGREGATE AMOUNT OF THE REFUND AND THE CREDIT CLAIMED BY
11 SUCH OWNERS, PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT
12 EXCEED TWO HUNDRED THOUSAND DOLLARS FOR THAT INCOME TAX YEAR.

13 (5) (b) (II) A taxpayer may elect to claim a refund pursuant to
14 subparagraph (I) of this paragraph (b) only if, based on the financial
15 report prepared by the controller in accordance with section 24-77-106.5,
16 C.R.S., the controller certifies that the amount of state revenues for the
17 state fiscal year ending in the income tax year for which the refund is
18 claimed exceeds the limitation on state fiscal year spending imposed by
19 section 20 (7)(a) of article X of the state constitution and the voters
20 statewide either have not authorized the state to retain and spend all of the
21 excess state revenues or have authorized the state to retain and spend only
22 a portion of the excess state revenues for that fiscal year.

23 (III) If any refund is claimed pursuant to subsection (5)(b)(I) of
24 this section, then the aggregate amount of the refund and amount of the
25 credit used as an offset against income taxes, excluding amounts
26 transferred to or used by a transferee, for that income tax year shall not
27 exceed fifty thousand dollars for that income tax year FOR INCOME TAX

1 YEARS COMMENCING BEFORE JANUARY 1, 2027, AND SHALL NOT EXCEED
2 TWO HUNDRED THOUSAND DOLLARS FOR THAT INCOME TAX YEAR FOR
3 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2027, BUT
4 BEFORE JANUARY 1, 2032. In the case of a partnership, S corporation, or
5 other similar pass-through entity that donates a conservation easement as
6 an entity, if any refund is claimed pursuant to subsection (5)(b)(I) of this
7 section, the aggregate amount of the refund and the credit claimed by the
8 partners, members, or shareholders of the entity shall not exceed the
9 dollar limitation set forth in this subsection (5)(b)(III) for that income tax
10 year. Nothing in this subsection (5)(b)(III) shall limit a taxpayer's ability
11 to claim a credit against taxes due in excess of fifty thousand dollars FOR
12 TAX YEARS COMMENCING BEFORE JANUARY 1, 2027, AND TWO HUNDRED
13 THOUSAND DOLLARS FOR TAX YEARS COMMENCING ON OR AFTER JANUARY
14 1, 2027, BUT BEFORE JANUARY 1, 2032, in accordance with subsection (4)
15 of this section.

16 — ——— —
17 (7.5) (a) For income tax years commencing on or after January 1,
18 2021, BUT BEFORE JANUARY 1, 2032, in lieu of a credit with respect to the
19 income taxes imposed by this article 22, there is allowed a transferable
20 expense amount to each qualified entity that donates during the taxable
21 year all or part of the value of a perpetual conservation easement in gross
22 created pursuant to article 30.5 of title 38 upon real property the qualified
23 entity owns to a governmental entity or a charitable organization
24 described in section 38-30.5-104 (2). A transferable expense amount shall
25 be treated in all manners as a tax credit for purposes of this section,
26 including provisions governing the amount, valuation, and transfer of a
27 tax credit; except that the transferable expense amount may only be

1 transferred to a transferee to be claimed by the transferee as a credit
2 pursuant to this section. A qualified entity may transfer a transferable
3 expense amount to be claimed as a credit by a transferee pursuant to this
4 section regardless of whether the qualified entity receives value in
5 exchange for the transfer.

6 (12) ANY TRANSFEREE WHO IS SUBJECT TO THE TAX ON INSURANCE
7 PREMIUMS ESTABLISHED BY SECTIONS 10-3-209, 10-5-111, AND 10-6-128,
8 AND WHO IS THEREFORE EXEMPT FROM THE PAYMENT OF INCOME TAX AND
9 WHO IS OTHERWISE ELIGIBLE TO CLAIM A TAX CREDIT PURSUANT TO THIS
10 SECTION MAY CLAIM THE TAX CREDIT AND CARRY THE TAX CREDIT
11 FORWARD AGAINST THE INSURANCE PREMIUM TAX ON ITS CALENDAR
12 QUARTER ESTIMATED TAX PAYMENTS MADE IN ACCORDANCE WITH
13 SECTION 10-3-209 TO THE SAME EXTENT AS THE TRANSFEREE WOULD
14 HAVE BEEN ABLE TO CLAIM OR CARRY FORWARD THE TAX CREDIT AGAINST
15 INCOME TAX. ALL OTHER PROVISIONS OF THIS SECTION WITH RESPECT TO
16 THE TAX CREDIT, INCLUDING THE AMOUNT AND ALLOCATION OF THE TAX
17 CREDIT AND THE YEARS FOR WHICH THE TAX CREDIT MAY BE CLAIMED
18 SHALL APPLY TO A TAX CREDIT CLAIMED PURSUANT TO THIS SECTION.

19 (13) TO BE ELIGIBLE FOR THE TAX CREDIT, FOR ANY
20 CONSERVATION EASEMENT GRANTED ON OR AFTER JANUARY 1, 2025, THE
21 CONSERVATION EASEMENT SHALL INCLUDE A PROVISION PROVIDING THAT
22 IF TECHNOLOGICAL OR LEGAL CHANGES ALLOW AN EXPANDED USE OF
23 WIND, SOLAR POWER GENERATION, TRANSMISSION, AND STORAGE TO BE
24 COMPATIBLE WITH THE PROTECTION OF CONSERVATION VALUES
25 CONSIDERED AS A WHOLE AND PURSUANT TO SECTION 170(h) OF THE
26 INTERNAL REVENUE CODE AND ANY FEDERAL REGULATIONS
27 PROMULGATED IN CONNECTION WITH SUCH SECTION, THEN THE HOLDER OF

1 THE CONSERVATION EASEMENT MAY APPROVE EXPANDED WIND OR SOLAR
2 ENERGY FACILITIES THAT ARE COMPATIBLE WITH AND DO NOT DIMINISH OR
3 IMPAIR CONSERVATION VALUES.

4 (14) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2052.

5 **SECTION 8. Appropriation.** For the 2024-25 state fiscal year,
6 \$12,925 is appropriated to the department of regulatory agencies for use
7 by the division of conservation. This appropriation is from the
8 conservation cash fund created in section 12-15-107, C.R.S., and is based
9 on an assumption that the division will require an additional 0.2 FTE. To
10 implement this act, the division may use this appropriation for
11 conservation easement program costs.

12 **SECTION 9. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly; except
15 that, if a referendum petition is filed pursuant to section 1 (3) of article V
16 of the state constitution against this act or an item, section, or part of this
17 act within such period, then the act, item, section, or part will not take
18 effect unless approved by the people at the general election to be held in
19 November 2024 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.