

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

March 12, 2020

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

SB20-135 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 4, line 7, strike "NINETY" and substitute
2 "SEVENTY-FIVE".

3 Page 6, strike lines 3 through 27.

4 Strike pages 7 through 10.

5 Page 11, strike lines 1 through 18 and substitute:

6 "SECTION 2. In Colorado Revised Statutes, add 39-22-522.7 as
7 follows:

8 **39-22-522.7. Conservation easement tax credits - credit for
9 previously denied claims - rules - legislative declaration - definition.**

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

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

18 (b) STATE REPRESENTATIVE KIMMI LEWIS FROM HOUSE DISTRICT
19 64, WHO PASSED AWAY IN DECEMBER 2019, WORKED TIRELESSLY DURING
20 HER CAREER AS A LEGISLATOR TO PROVIDE HELP TO LANDOWNERS WHO

1 HAD CONSERVATION EASEMENT CREDITS ARBITRARILY DISALLOWED; AND
2 (c) RESOLUTION OF THIS HARM BY ALLOWING A LANDOWNER TO
3 CLAIM A TAX CREDIT FOR A CONSERVATION EASEMENT DONATION THAT
4 WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE AND
5 CONVEYED IN GOOD FAITH SUBJECT TO SUBSECTION (5) OF THIS SECTION,
6 BUT ULTIMATELY DENIED BY THE STATE WILL END THE NEARLY
7 TWO-DECADES-LONG CONFLICT OVER COLORADO'S CONSERVATION
8 EASEMENT TAX CREDIT PROGRAM, RESTORE THE INTEGRITY OF THE
9 PROGRAM, AND ALLOW THE PROGRAM TO MOVE FORWARD TO CONTINUE
10 THE GOOD WORK OF CONSERVING COLORADO'S INCREASINGLY LIMITED
11 OPEN SPACE AND NATURAL RESOURCES.

12 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
13 LANDOWNER SHALL BE ALLOWED TO CLAIM A TAX CREDIT WITH RESPECT
14 TO THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 FOR EACH PERPETUAL
15 CONSERVATION EASEMENT IN GROSS DONATED IN GOOD FAITH BETWEEN
16 JANUARY 1, 2000, AND DECEMBER 31, 2013, FOR WHICH A TAX CREDIT
17 WAS CLAIMED PURSUANT TO SECTION 39-22-522 AND WAS DENIED IN
18 WHOLE OR IN PART IF A FEDERAL CONSERVATION EASEMENT TAX
19 DEDUCTION WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE
20 FOR THE SAME DONATION. FOR PURPOSES OF THIS SECTION:

21 (a) THE AMOUNT OF THE CREDIT ALLOWED FOR EACH DONATION
22 SHALL BE EQUAL TO THE FULL AMOUNT OF THE CREDIT THAT COULD HAVE
23 BEEN CLAIMED FOR THE DONATION PURSUANT TO THE APPLICABLE LAW IN
24 EFFECT AT THE TIME OF THE DONATION;

25 (b) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE FAIR
26 MARKET VALUE OF THE CONSERVATION EASEMENT CONTRIBUTION
27 ACCEPTED BY THE INTERNAL REVENUE SERVICE AS REFLECTED ON THE
28 FEDERAL INCOME TAX FORM 8283 OR AMENDED BY A SUBSEQUENT
29 FEDERAL APPEAL PROCESS, FEDERAL COURT, OR UNITED STATES TAX
30 COURT RULING; AND

31 (c) THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS
32 SECTION SHALL BE DECREASED BY ANY AMOUNT OF CREDIT THAT WAS
33 OTHERWISE ALLOWED TO BE CLAIMED AGAINST THE TAXES IMPOSED BY
34 THIS ARTICLE 22 OR OTHERWISE REINSTATED, AND BY ANY AMOUNT THAT
35 WAS REIMBURSED OR OTHERWISE ALLOWED TO THE TRANSFEREE AS A
36 RESULT OF A SETTLEMENT, LITIGATION, OR OTHER MEANS THAT PROVIDED
37 COMPENSATION TO THE TRANSFEREE.

38 (3) BY AUGUST 15, 2020, THE DEPARTMENT OF REVENUE SHALL
39 MAKE INFORMATION READILY AVAILABLE ONLINE FOR TAXPAYERS WHO
40 HAD A TAX CREDIT DENIED IN WHOLE OR IN PART FOR A CONSERVATION
41 EASEMENT DONATED BETWEEN JANUARY 1, 2000, AND DECEMBER 31,

1 2013, THAT THE TAXPAYER MAY BE ELIGIBLE TO APPLY FOR A CREDIT
2 PURSUANT TO THIS SECTION. THE ONLINE INFORMATION MUST OUTLINE
3 THE PROCESS FOR APPLYING FOR A CREDIT AND THE CRITERIA USED TO
4 DETERMINE THE AMOUNT OF THE CREDIT.

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

12 (a) A COPY OF THE FEDERAL INCOME TAX FORM 8283 USED TO
13 SUBSTANTIATE A FEDERAL DEDUCTION FOR THE DONATED CONSERVATION
14 EASEMENT;

15 (b) IF THE ORIGINAL AMOUNT OF DEDUCTION CLAIMED ON THE
16 FEDERAL INCOME TAX FORM 8283 WAS ADJUSTED, DOCUMENTATION
17 CONFIRMING THE AMOUNT ULTIMATELY ALLOWED BY THE INTERNAL
18 REVENUE SERVICE, A FEDERAL COURT, OR THE UNITED STATES TAX COURT
19 AND CLAIMED BY MEANS OF AN ADJUSTED FEDERAL TAX RETURN
20 ACCEPTED BY THE INTERNAL REVENUE SERVICE; AND

21 (c) DOCUMENTATION CONFIRMING SETTLEMENT OF THE CREDIT
22 AMOUNT ALLOWED BY THE DEPARTMENT OF REVENUE.

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

29 (b) AS USED IN THIS SECTION, "GOOD FAITH" MEANS THAT A
30 PERSON OR ENTITY HONESTLY RELIED UPON A LICENSED PROFESSIONAL TO
31 ESTABLISH THE VALUE OF A CONSERVATION EASEMENT, DID NOT
32 KNOWINGLY MISREPRESENT THE VALUE OF THE CONSERVATION
33 EASEMENT, AND FOLLOWED THE APPLICABLE LAWS AND REGULATIONS SET
34 FORTH IN STATUTE, DEPARTMENT OF REVENUE RULES, AND THE FEDERAL
35 INTERNAL REVENUE CODE AND FEDERAL DEPARTMENT OF TREASURY
36 REGULATIONS IN EFFECT AT THE TIME OF THE CONVEYANCE OF THE
37 CONSERVATION EASEMENT.

38 (6) (a) THE DIVISION OF CONSERVATION SHALL ISSUE A
39 CERTIFICATE FOR THE CLAIMS RECEIVED IN THE ORDER SUBMITTED NO
40 LATER THAN NINETY DAYS AFTER AN APPLICATION IS RECEIVED UNLESS A
41 DISPUTE ARISES PURSUANT TO SUBSECTION (10) OF THIS SECTION. CREDITS

1 ISSUED PURSUANT TO THIS SECTION COUNT AGAINST THE AGGREGATE
2 ANNUAL CAP FOR ALL CONSERVATION EASEMENT TAX CREDITS SET FORTH
3 IN SECTION 39-22-522 (2.5) AND THE AGGREGATE AMOUNT OF CREDITS
4 ISSUED PURSUANT TO THIS SECTION AND SECTION 39-22-522 SHALL NOT
5 EXCEED THE AGGREGATE ANNUAL CAP.

6 (b) EXCEPT AS PROVIDED IN SUBSECTION (6)(c) OF THIS SECTION,
7 THE DIVISION OF CONSERVATION SHALL ISSUE CERTIFICATES UP TO THE
8 FOLLOWING PERCENTAGES OF THE AGGREGATE ANNUAL CAP SET FORTH IN
9 SECTION 39-22-522 (2.5) AS FOLLOWS:

10 (I) FIFTY PERCENT OF THE ANNUAL CAP IN THE FIRST CALENDAR
11 YEAR;

12 (II) FORTY PERCENT OF THE ANNUAL CAP IN THE SECOND
13 CALENDAR YEAR; AND

14 (III) THIRTY PERCENT OF THE ANNUAL CAP IN THE THIRD
15 CALENDAR YEAR AND EACH SUBSEQUENT YEAR THEREAFTER UNTIL THE
16 OBLIGATION IS FULLY SATISFIED.

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

28 (d) ANY CLAIMS FOR A TAX CREDIT MADE PURSUANT TO THIS
29 SECTION THAT EXCEED THE AMOUNT ALLOWED FOR A SPECIFIED
30 CALENDAR YEAR SHALL BE PLACED ON A WAIT LIST IN THE ORDER
31 SUBMITTED AND A CERTIFICATE SHALL BE ISSUED FOR THE USE OF THE
32 CREDIT IN THE NEXT YEAR FOR WHICH THE DIVISION HAS NOT ISSUED
33 CREDIT CERTIFICATES IN EXCESS OF THE AMOUNTS ALLOWED PURSUANT
34 TO THIS SECTION.

35 (7) IF A PERSON ELIGIBLE TO RECEIVE A CREDIT PURSUANT TO THIS
36 SECTION IS NO LONGER LIVING, THE CREDIT MAY BE CLAIMED BY THE
37 APPROPRIATE ESTATE, HEIR, SUCCESSOR, OR ASSIGN.

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

1 (9) IF A TAXPAYER TRANSFERRED ALL OR A PORTION OF A TAX
2 CREDIT FOR A CONSERVATION EASEMENT DONATION THAT QUALIFIES FOR
3 A CREDIT PURSUANT TO THIS SECTION TO ANOTHER TAXPAYER AS
4 TRANSFEREE PURSUANT TO SECTION 39-22-522 (7), THEN THE TRANSFEREE
5 MAY CLAIM A CREDIT PURSUANT TO THIS SECTION. THE TRANSFEROR AND
6 ANY TRANSFEREES MAY SUBMIT CLAIMS FOR CREDITS PURSUANT TO THIS
7 SECTION INDIVIDUALLY OR MUTUALLY AS A GROUP IF THEY AGREE UPON
8 THE TERMS FOR DIVIDING THE CREDIT. APPLICANTS MUST ATTEMPT TO
9 NOTIFY ANY OTHER TAXPAYER OR TRANSFEREE THAT WAS A PARTY TO THE
10 TRANSFER THAT AN APPLICATION IS BEING MADE TO CLAIM A CREDIT
11 PURSUANT TO THIS SECTION. ANY PARTY WHO RECEIVES SUCH NOTICE HAS
12 NINETY DAYS FROM RECEIPT OF THE NOTICE TO FILE AN OBJECTION TO THE
13 CLAIM FOR THE CREDIT. AN OBJECTION SHALL BE SUBMITTED IN THE FORM
14 OF AN APPLICATION FOR A CREDIT AND SHALL SET FORTH THE PROPOSED
15 ALTERNATIVE AMOUNT OR DISTRIBUTION OF THE CREDIT. IN NO EVENT
16 SHALL THE AMOUNT OF COMPENSATION PROVIDED TO A TRANSFEREE
17 EXCEED THE AMOUNT PAID BY THE TRANSFEREE FOR THE CREDIT, LESS
18 ANY AMOUNT THAT WAS REINSTATED, REIMBURSED, OR OTHERWISE
19 ALLOWED TO THE TRANSFEREE AS A RESULT OF A SETTLEMENT,
20 LITIGATION, OR OTHER MEANS THAT PROVIDED COMPENSATION TO THE
21 TRANSFEREE UNLESS OTHERWISE MUTUALLY AGREE UPON BY THE PARTIES.
22 (10) IF AN OBJECTION TO A CLAIM FOR A CREDIT IS FILED
23 PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE DIVISION OF
24 CONSERVATION SHALL REFER THE MATTER TO THE OMBUDSMAN
25 DESIGNATED PURSUANT TO SECTION 12-15-108 FOR FINAL RESOLUTION OF
26 ANY DISPUTES RELATED TO AMOUNTS TO BE ALLOWED PURSUANT TO THIS
27 SECTION.
28 (11) CREDITS ALLOWED PURSUANT TO THIS SECTION ARE NOT
29 REFUNDABLE, BUT MAY BE TRANSFERRED OR CARRIED FORWARD IN THE
30 SAME MANNER AS CREDITS ALLOWED PURSUANT TO SECTION 39-22-522
31 (4)(a) FOR A PERIOD OF TIME BEGINNING AT THE TIME OF THE ISSUANCE OF
32 THE CREDIT."

33 Page 11, line 21, strike "**compensation**" and substitute "**credit**".

34 Page 11, strike line 24 and substitute "TAX CREDITS IF AN OBJECTION TO
35 A CLAIM FOR A TAX CREDIT HAS".

36 Page 11, line 26, strike "(8)." and substitute "(10)."

37 Page 12, line 2, strike "COMPENSATION" and substitute "A TAX CREDIT".

1 Page 12, line 8, strike "PROVIDE THE COMPENSATION" and substitute
2 "ALLOW THE TAX CREDIT TO BE CLAIMED".

3 Page 18, after line 11 insert:

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

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