

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0821.01 Gregg Fraser x4325

HOUSE BILL 20-1146

HOUSE SPONSORSHIP

Neville,

SENATE SPONSORSHIP

(None),

House Committees

Rural Affairs & Agriculture
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CONSERVATION EASEMENT TRANSPARENCY.

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 conservation easement is an agreement in which a property owner agrees to limit the use of his or her land in perpetuity in order to protect one or more specified conservation purposes. The instruments creating the conservation easement are recorded in the public records affecting the ownership of the property. The conservation easement is held by a third party, which monitors the use of the land and ensures that the terms of the agreement are upheld.

Prior to creating a conservation easement, **section 1** of the bill

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.

requires the property owner to sign a disclosure form acknowledging certain specified consequences and risks of creating the easement on his or her land.

Section 3 requires the commissioner of agriculture to work with local government officials to create a database of conservation easements in the state. The database includes specified information about the easements and a corresponding map displaying each easement in the state relative to county boundaries. Local government officials and the commissioner of agriculture are authorized to enter into contracts to assist in gathering information for the database. The bill specifies the sources of information that may be used to create the database. The commissioner of agriculture is required to annually update the information in the database and make the information and corresponding map available to the public at no charge on the department of agriculture's website.

When a conservation easement agreement, amendment, or transfer is recorded with a county clerk and recorder, **section 2** requires a complete copy of the agreement, amendment, or transfer to be submitted to the commissioner of agriculture and the county tax assessor of the county in which the easement is located. The commissioner of agriculture is required to create a tracking form with specified information for each conservation easement agreement, amendment, or transfer submitted. The tracking forms are made available on the department of agriculture's website and can be used by the commissioner of agriculture to create and maintain the database of conservation easements.

For any state income tax credit claimed for a donation of a conservation easement that is disallowed, section 3 also allows a landowner to elect to either extinguish the conservation easement for which the credit was claimed or receive an equitable relief payment from the state. If a landowner elects to extinguish the conservation easement, the bill requires the department of revenue to reimburse the taxpayer for all reasonable costs incurred by the landowner in establishing the conservation easement donation as well any federal or state income tax liability incurred by the taxpayer. The attorney general is required to assist landowners with executing any documents required to seek a court order to extinguish a conservation easement.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-30.5-103, **amend**
3 (6) as follows:

4 **38-30.5-103. Nature of conservation easements in gross.**

5 (6) On and after January 1, 2020, prior to creating a conservation

1 easement in gross, the owner of the property who is granting the
2 conservation easement shall execute a disclosure form ~~that includes, but~~
3 ~~is not limited to, an acknowledgment that the conservation easement is~~
4 ~~being granted in perpetuity~~ SPECIFICALLY ACKNOWLEDGING THE
5 CONSEQUENCES AND RISKS OF CREATING THE CONSERVATION EASEMENT.
6 The division of conservation in cooperation with the conservation
7 easement oversight commission shall develop the disclosure form and
8 publish the approved form on its website. The signed disclosure form
9 must be submitted to the division of conservation as part of the tax credit
10 application. THE DISCLOSURE FORM SHALL BE PREPARED BY THE
11 PROPOSED HOLDER OF THE CONSERVATION EASEMENT AND SHALL INCLUDE
12 THE FOLLOWING WARNINGS IN BOLD WITH EACH INITIALED INDIVIDUALLY
13 BY THE GRANTOR AND GRANTEE OF THE CONSERVATION EASEMENT:

14 (a) APPROXIMATELY FOURTEEN TO EIGHTEEN PERCENT OF ALL
15 CONSERVATION EASEMENTS CREATED IN COLORADO HAVE BEEN
16 DISALLOWED IN THE PAST AND SOME CONTINUE TO BE DISALLOWED;

17 (b) THE APPRAISED VALUE OF A CONSERVATION EASEMENT
18 ULTIMATELY ACCEPTED AS VALID IS ALMOST ALWAYS LOWER THAN THE
19 AMOUNT INCLUDED IN AN INITIAL APPRAISAL PROVIDED TO A LANDOWNER;

20 (c) THE CREATION OF THE CONSERVATION EASEMENT REDUCES THE
21 VALUE OF THE PROPERTY INTEREST RETAINED BY THE PROPERTY OWNER;

22 (d) THE CREATION OF THE CONSERVATION EASEMENT MAKES IT
23 MORE DIFFICULT TO OBTAIN A LOAN OR OTHER FINANCING SECURED BY
24 THE PROPERTY SUBJECT TO THE CONSERVATION EASEMENT;

25 (e) THE CREATION OF THE CONSERVATION EASEMENT RESULTS IN
26 THE LOSS OF AN INTEREST IN THE OWNER'S PROPERTY;

27 (f) THE CONSERVATION EASEMENT IS BINDING ON FUTURE OWNERS

1 OF THE LAND;

2 (g) THE PROPERTY OWNER CAN BE HELD LIABLE TO REPAY THE
3 AMOUNT OF ANY TAX CREDIT CLAIMED IMPROPERLY FOR THE
4 CONSERVATION EASEMENT FOR A PERIOD OF FOUR YEARS AFTER THE
5 OWNER OR A TRANSFEREE OF THE CREDIT FIRST CLAIMS THE CREDIT, EVEN
6 IF THE OWNER HAS NO KNOWLEDGE OF WHEN THE TRANSFEREE FIRST
7 CLAIMS THE CREDIT;

8 (h) THE LANDOWNER CAN BE HELD LIABLE FOR MONEY DAMAGES
9 FOR INJURIES TO THE INTERESTS OF THE HOLDER OF THE CONSERVATION
10 EASEMENT;

11 (i) THE CONSERVATION EASEMENT COULD POTENTIALLY BE
12 TRANSFERRED BY THE HOLDER OF THE CONSERVATION EASEMENT TO
13 ANOTHER HOLDER;

14 (j) IF THE HOLDER OF THE CONSERVATION EASEMENT PURCHASES
15 THE UNDERLYING PROPERTY INTEREST IN THE PROPERTY, THE HOLDER HAS
16 THE RIGHT TO RELEASE, TERMINATE, EXTINGUISH, OR ABANDON THE
17 CONSERVATION EASEMENT BY MERGER; AND

18 (k) A CONSERVATION EASEMENT LASTS IN PERPETUITY, AND IT IS
19 HIGHLY UNLIKELY THAT A LANDOWNER CAN HAVE A CONSERVATION
20 EASEMENT RELEASED, TERMINATED, OR EXTINGUISHED FROM HIS OR HER
21 PROPERTY WITHOUT TAKING LEGAL ACTION AND OBTAINING A COURT
22 ORDER.

23 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-30.5-106
24 as follows:

25 **38-30.5-106. Recordation upon public records.** (1) Instruments
26 creating, assigning, or otherwise transferring conservation easements in
27 gross must be recorded upon the public records affecting the ownership

1 of real property in order to be valid and shall be subject in all respects to
2 the laws relating to such recordation.

3 (2) WHEN A CONSERVATION EASEMENT AGREEMENT, AMENDMENT,
4 OR TRANSFER IS RECORDED WITH THE COUNTY CLERK AND RECORDER, THE
5 COUNTY CLERK AND RECORDER SHALL SUBMIT A COMPLETE COPY OF THE
6 RECORDED CONSERVATION EASEMENT AGREEMENT, AMENDMENT, OR
7 TRANSFER TO THE COMMISSIONER OF AGRICULTURE AND THE COUNTY TAX
8 ASSESSOR OF THE COUNTY WHERE THE CONSERVATION EASEMENT IS FILED
9 BY FACSIMILE OR E-MAIL WITHIN THIRTY DAYS OF THE DATE OF
10 RECORDING. FOR EACH CONSERVATION EASEMENT AGREEMENT,
11 AMENDMENT, OR TRANSFER SUBMITTED TO THE COMMISSIONER OF
12 AGRICULTURE, THE COMMISSIONER SHALL PREPARE A TRACKING FORM.
13 EACH TRACKING FORM MUST USE A LETTERING AND NUMBERING METHOD
14 THAT ALLOWS THE FORMS TO BE IDENTIFIED AND INDEXED BY THE COUNTY
15 IN WHICH THE CONSERVATION EASEMENT IS LOCATED. THE FORMS SHALL
16 BE PUBLIC INFORMATION AND THE COMMISSIONER OF AGRICULTURE SHALL
17 MAKE THE COMPLETED FORMS AVAILABLE ON THE WEBSITE OF THE
18 DEPARTMENT OF AGRICULTURE UNDER A TAB OR OTHER EXISTING WEB
19 PAGE RELATED TO THE TOPIC OF CONSERVATION. THE COMMISSIONER OF
20 AGRICULTURE MAY USE THE TRACKING FORMS TO ASSIST IN THE CREATION
21 AND MAINTENANCE OF THE STATEWIDE DATABASE OF CONSERVATION
22 EASEMENTS PURSUANT TO SECTION 39-22-522 (12). FOR EACH
23 CONSERVATION EASEMENT AGREEMENT, AMENDMENT, OR TRANSFER
24 SUBMITTED, THE FOLLOWING INFORMATION MUST BE DISCLOSED ON THE
25 TRACKING FORM:

26 (a) THE DATE THE CONSERVATION EASEMENT AGREEMENT,
27 AMENDMENT, OR TRANSFER WAS EXECUTED AND THE DATE IT WAS

- 1 SUBMITTED FOR RECORDING;
- 2 (b) THE NAMES AND ADDRESSES OF THE GRANTOR AND GRANTEE
- 3 OF THE CONSERVATION EASEMENT;
- 4 (c) A LEGAL DESCRIPTION OF THE PROPERTY;
- 5 (d) THE NUMBER OF ACRES BEING CONSERVED;
- 6 (e) THE CONSERVATION PURPOSES OF THE CONSERVATION
- 7 EASEMENT; AND
- 8 (f) THE RECEPTION NUMBER FOR THE CONSERVATION EASEMENT.

9 **SECTION 3.** In Colorado Revised Statutes, 39-22-522, **add** (12)

10 and (13) as follows:

11 **39-22-522. Credit against tax - conservation easements.**

12 (12) (a) THE COMMISSIONER OF AGRICULTURE SHALL WORK WITH THE

13 APPROPRIATE PUBLIC OFFICIALS IN EACH COUNTY OR CITY AND COUNTY TO

14 CREATE A DATABASE OF THE CONSERVATION EASEMENTS IN GROSS THAT

15 HAVE BEEN CREATED WITH RESPECT TO ANY LAND, WATER AREA,

16 AIRSPACE ABOVE THE LAND OR WATER, OR WATER RIGHTS BENEFICIALLY

17 USED UPON THAT LAND OR WATER AREA WITHIN THE STATE SINCE

18 JANUARY 1, 1998. FOR EACH CONSERVATION EASEMENT, THE DATABASE

19 SHALL INCLUDE INFORMATION REGARDING:

20 (I) THE LOCATION AND ACREAGE OF EACH CONSERVATION

21 EASEMENT, DELINEATED BY COUNTY;

22 (II) THE NAMES AND ADDRESSES OF ANY GRANTORS OF THE

23 CONSERVATION EASEMENT AND THE NAMES AND ADDRESSES OF ANY

24 HOLDERS OF THE CONSERVATION EASEMENT SINCE ITS CREATION;

25 (III) WHETHER THE HOLDER OF THE CONSERVATION EASEMENT IS

26 A CERTIFIED ORGANIZATION PURSUANT TO SECTION 12-15-104;

27 (IV) THE CONSERVATION PURPOSES OF THE CONSERVATION

1 EASEMENT;

2 (V) ANY DEEDS, CONTRACTS, OR OTHER INSTRUMENTS CREATING,
3 ASSIGNING, TRANSFERRING, CONVEYING, TERMINATING, OR OTHERWISE
4 AFFECTING THE CONSERVATION EASEMENT AND THE RECEPTION NUMBER
5 FOR EACH INSTRUMENT; AND

6 (VI) THE AMOUNT OF ANY INCOME TAX CREDITS CLAIMED OR
7 ALLOWED FOR THE CONSERVATION EASEMENT AND THE AMOUNT OF ANY
8 SUCH CREDITS THAT WERE TRANSFERRED TO ANOTHER TAXPAYER
9 PURSUANT TO SUBSECTION (7) OF THIS SECTION.

10 (b) THE DATABASE MUST INCLUDE A SEPARATE GEOGRAPHIC
11 INFORMATION SYSTEM DATABASE AND CORRESPONDING MAP DISPLAYING
12 THE BOUNDARIES OF EACH CONSERVATION EASEMENT IN THE STATE
13 RELATIVE TO COUNTY BOUNDARIES AND OTHER RELEVANT MAPPING
14 INFORMATION.

15 (c) THE APPROPRIATE PUBLIC OFFICIALS IN EACH COUNTY OR CITY
16 AND COUNTY MAY ENTER INTO CONTRACTS WITH QUALIFIED INDEPENDENT
17 PERSONS OR ENTITIES AT THE LOCAL LEVEL TO ASSIST IN GATHERING
18 INFORMATION TO CREATE THE DATABASE REQUIRED BY THIS SUBSECTION
19 (12). ANY SUCH CONTRACTS SHALL BE AWARDED TO A RELIABLE AND
20 RESPONSIBLE BIDDER, AFTER PUBLIC ADVERTISEMENT ONCE IN A
21 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY. THE PERSON OR
22 ENTITY SHALL NOT HAVE PARTICIPATED IN THE CREATION, PROMOTION,
23 VALUATION, OR SALE OR OTHERWISE HAVE RECEIVED A FINANCIAL
24 BENEFIT FROM A CONSERVATION EASEMENT. THE DEPARTMENT OF
25 AGRICULTURE MAY PROVIDE, IN ITS DISCRETION, REASONABLE
26 REIMBURSEMENT TO A COUNTY FOR ITS COST IN PROVIDING OR
27 CONTRACTING TO PROVIDE INFORMATION FOR THE DATABASE.

1 (d) THE COMMISSIONER OF AGRICULTURE MAY CONTRACT WITH A
2 QUALIFIED INDEPENDENT PERSON OR ENTITY TO ASSIST IN GATHERING
3 INFORMATION FOR COUNTIES THAT ARE UNABLE OR UNWILLING TO ASSIST
4 IN GATHERING INFORMATION TO CREATE THE DATABASE. THE PERSON OR
5 ENTITY SHALL NOT HAVE PARTICIPATED IN THE CREATION, PROMOTION,
6 VALUATION, OR SALE OR OTHERWISE HAVE RECEIVED A FINANCIAL
7 BENEFIT FROM A CONSERVATION EASEMENT.

8 (e) ANY PERSON OR ENTITY GATHERING INFORMATION FOR THE
9 DATABASE MAY USE PUBLIC RECORDS, AVAILABLE REPORTS, WORK
10 PAPERS, INTERVIEWS WITH LANDOWNERS AND CONSERVATION EASEMENT
11 HOLDERS, AND ANY OTHER APPROPRIATE MEANS TO COMPLETE THE
12 DATABASE. PUBLIC ENTITIES, INCLUDING THE DEPARTMENT OF
13 REGULATORY AGENCIES, THE DIVISION OF CONSERVATION, THE
14 CONSERVATION EASEMENT OVERSIGHT COMMISSION, THE DEPARTMENT OF
15 REVENUE, THE DEPARTMENT OF NATURAL RESOURCES, THE DIVISION OF
16 PARKS AND WILDLIFE, COMAP, AND LOCAL GOVERNMENTS SHALL
17 COOPERATE AND PROVIDE INFORMATION AND INPUT INTO THE
18 PREPARATION OF THE DATABASE.

19 (f) THE PERSON OR ENTITY CREATING THE DATABASE SHALL:

20 (I) USE AND INCORPORATE, TO THE EXTENT FEASIBLE, ANY
21 EXISTING PUBLIC OR PRIVATE RECORDS, STUDIES, DATABASES, SOFTWARE,
22 MAPS, OR OTHER AVAILABLE SOURCES OF INFORMATION IN ORDER TO
23 REDUCE COSTS, INCREASE EFFICIENCIES, AND AVOID DUPLICATION OF
24 WORK IN CREATING THE DATABASE; AND

25 (II) CONTACT AND WORK WITH ENTITIES THAT MAY HAVE
26 INFORMATION RELEVANT TO THE DATABASE OR AN INTEREST IN USING THE
27 DATABASE INCLUDING THE COLORADO NATURAL HERITAGE PROGRAM AND

1 THE GEOSPATIAL CENTROID AT COLORADO STATE UNIVERSITY AND THE
2 STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND.

3 (g) THE COMMISSIONER OF AGRICULTURE SHALL ANNUALLY
4 UPDATE THE INFORMATION IN THE DATABASE FOR ANY NEW
5 CONSERVATION EASEMENTS, AMENDMENTS, OR TRANSFERS THAT ARE
6 CREATED AND MAKE THE INFORMATION AVAILABLE TO THE PUBLIC ON THE
7 WEBSITE OF THE DEPARTMENT OF AGRICULTURE. THE GEOGRAPHIC
8 INFORMATION SYSTEM DATABASE AND MAP CREATED AS PART OF THE
9 DATABASE PURSUANT TO SUBSECTION (12)(b) OF THIS SECTION MUST BE
10 MADE AVAILABLE AT NO CHARGE ON THE WEBSITE OF THE DEPARTMENT
11 OF AGRICULTURE IN A FORMAT THAT CAN BE READILY ACCESSED AND
12 NAVIGATED BY THE GENERAL PUBLIC. ANY DATA USED TO CREATE THE
13 DATABASE AND MAP MUST BE MADE PUBLICLY AVAILABLE FOR
14 DOWNLOAD. THE DATABASE AND MAP MUST BE UPDATED ANNUALLY TO
15 REFLECT ANY NEW CONSERVATION EASEMENTS OR OTHER CHANGES IN THE
16 DATA USED TO CREATE THE DATABASE AND MAP.

17 (h) NOTHING IN THIS SECTION ALLOWS THE PUBLIC SHARING OF
18 PROTECTED FEDERAL TAX INFORMATION THAT IS PROTECTED PURSUANT
19 TO 26 U.S.C. SEC. 6103, BY THE COMMISSIONER OF AGRICULTURE, THE
20 PERSON OR ENTITY CREATING THE DATABASE, THE DEPARTMENT OF
21 REVENUE, OR ANY OTHER ENTITY.

22 (13) FOR ANY TAX CREDIT CLAIMED PURSUANT TO THIS SECTION
23 THAT IS DISALLOWED EITHER IN WHOLE OR IN PART, A LANDOWNER MAY
24 ELECT TO EITHER EXTINGUISH THE CONSERVATION EASEMENT FOR WHICH
25 THE CREDIT WAS CLAIMED OR RECEIVE AN EQUITABLE RELIEF PAYMENT
26 FROM THE STATE. IF A LANDOWNER ELECTS TO EXTINGUISH THE
27 CONSERVATION EASEMENT, THE DEPARTMENT OF REVENUE SHALL

1 REIMBURSE THE TAXPAYER FOR ALL REASONABLE COSTS INCURRED BY THE
2 LANDOWNER IN ESTABLISHING THE CONSERVATION EASEMENT DONATION
3 AS WELL AS ANY FEDERAL OR STATE INCOME TAX LIABILITY INCLUDING
4 ANY PENALTIES AND INTEREST ASSESSED AGAINST THE TAXPAYER. THE
5 ATTORNEY GENERAL SHALL ASSIST LANDOWNERS WITH EXECUTING ANY
6 DOCUMENTS REQUIRED TO SEEK A COURT ORDER TO EXTINGUISH A
7 CONSERVATION EASEMENT PURSUANT TO THIS SUBSECTION (13).

8 **SECTION 4.** In Colorado Revised Statutes, 39-21-113, **add** (25)
9 as follows:

10 **39-21-113. Reports and returns - rule.** (25) NOTWITHSTANDING
11 THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR OF THE
12 DEPARTMENT OF REVENUE SHALL PROVIDE INFORMATION TO THE
13 COMMISSIONER OF AGRICULTURE AS REQUIRED PURSUANT TO SECTION
14 39-22-522 (12).

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