

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0533.01 Gregg Fraser x4325

SENATE BILL 20-135

SENATE SPONSORSHIP

Sonnenberg and Donovan,

HOUSE SPONSORSHIP

Roberts and Wilson,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING THE ADOPTION OF STATUTORY CHANGES RELATED TO
102 CONSERVATION EASEMENTS THAT WERE RECOMMENDED BY THE
103 CONSERVATION EASEMENT WORKING GROUP CONVENED IN
104 ACCORDANCE WITH HOUSE BILL 19-1264.

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 working group was convened over the 2019 interim pursuant to House Bill 19-1264 to develop proposed statutes to address certain issues affecting the creation, valuation, tax treatment, and stewardship of

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.

conservation easements in the state. The bill implements the recommendations of the working group as follows:

- ! **Section 1** of the bill modifies the method of calculating the amount of the state income tax credit that may be claimed for the donation of a conservation easement. The section also clarifies the manner in which certain business entities claim the credit.
- ! **Section 2** requires the state to provide compensation for certain taxpayers who were denied state income tax credits for conservation easements donated between 2000 and 2013 if the federal internal revenue service allowed a federal income tax deduction for the same donation. The amount of the compensation is based upon the amount of the 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. The amount of compensation is reduced by any amount that was allowed to be claimed against Colorado income tax or otherwise reinstated to the claimant of the compensation. Where a tax credit was transferred to another taxpayer as transferee, the bill provides a process for all parties to the transaction to submit a mutual application for compensation or, if there is objection, a process to resolve disputes about the distribution of compensation. The total amount of compensation to be paid to all claimants is limited to the amount of unused conservation easement tax credits that could have been claimed between 2013 and 2019 under an existing statutory cap amount, but were not claimed. If the unclaimed amounts are not sufficient to satisfy all claims, then any unsatisfied claims would be paid in future years. The cap for each future year would be reduced by the amount of claims paid; except that the total amount of claims paid in a year could not exceed 50% of the amount of the cap for that year.
- ! **Section 3** requires the director of the division of conservation to designate an ombudsman to assist in resolving certain disputes related to conservation easements.
- ! Section 3 also addresses the abandonment of conservation easements, which occurs when the holder of an easement no longer fulfills its stewardship obligations with respect to the easement. The division of conservation is required to investigate potential abandoned easements, make findings regarding each easement, and report its findings to the conservation easement oversight commission

(commission). The commission then conducts a public hearing on the easement and, if it determines that an easement is abandoned, appoints a receiver to monitor the easement. Receivership for an abandoned easement is limited to 5 years, during which time the commission reviews the easement and attempts to identify options to reform the easement, have it assigned to another holder, or extinguish the easement. A stewardship account is established to provide for the cost of carrying out the stewardship obligations resulting from abandoned easements. A specified amount of money is appropriated to the stewardship account for the 2020-21 fiscal year, with a corresponding reduction in the amount of conservation easement tax credits that can be claimed for one year.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-522, **amend**
3 (4)(a)(II.5) and (4)(b); and **add** (4)(a)(II.7) as follows:

4 **39-22-522. Credit against tax - conservation easements.**

5 (4) (a) (II.5) For a conservation easement in gross created in accordance
6 with article 30.5 of title 38 that is donated on or after January 1, 2015,
7 BUT PRIOR TO JANUARY 1, 2020, to a governmental entity or a charitable
8 organization described in section 38-30.5-104 (2), the credit provided for
9 in subsection (2) of this section shall be an amount equal to seventy-five
10 percent of the first one hundred thousand dollars of the fair market value
11 of the donated portion of such conservation easement in gross when
12 created, and fifty percent of all amounts of the donation in excess of one
13 hundred thousand dollars; except that in no case shall the credit exceed
14 five million dollars per donation. Credits shall be issued in increments of
15 no more than one million five hundred thousand dollars per year. Credits
16 for easements donated in a prior year shall be eligible for tax credit
17 certificates in subsequent years in order of application and before new

1 applications and those credit applications, if any, on the wait list.

2 (II.7) FOR A CONSERVATION EASEMENT IN GROSS CREATED IN
3 ACCORDANCE WITH ARTICLE 30.5 OF TITLE 38 THAT IS DONATED ON OR
4 AFTER JANUARY 1, 2020, TO A GOVERNMENTAL ENTITY OR A CHARITABLE
5 ORGANIZATION DESCRIBED IN SECTION 38-30.5-104 (2), THE CREDIT
6 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION SHALL BE AN AMOUNT
7 EQUAL TO NINETY PERCENT, UNLESS THE TAXPAYER ELECTS TO RECEIVE
8 A LOWER PERCENTAGE, OF THE FAIR MARKET VALUE OF THE DONATED
9 PORTION OF SUCH CONSERVATION EASEMENT IN GROSS WHEN CREATED;
10 EXCEPT THAT IN NO CASE SHALL THE CREDIT EXCEED FIVE MILLION
11 DOLLARS PER DONATION. CREDITS SHALL BE ISSUED IN INCREMENTS OF NO
12 MORE THAN ONE MILLION FIVE HUNDRED THOUSAND DOLLARS PER YEAR.
13 CREDITS FOR EASEMENTS DONATED IN A PRIOR YEAR SHALL BE ELIGIBLE
14 FOR TAX CREDIT CERTIFICATES IN SUBSEQUENT YEARS IN ORDER OF
15 APPLICATION AND BEFORE NEW APPLICATIONS AND THOSE CREDIT
16 APPLICATIONS, IF ANY, ON THE WAIT LIST.

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

1 thousand dollars, and, if any refund is claimed pursuant to ~~subparagraph~~
2 ~~(I) of paragraph (b) of subsection (5)~~ SUBSECTION (5)(b)(I) of this section,
3 the aggregate amount of the refund and the credit claimed by such
4 partners, members, and shareholders shall not exceed twenty thousand
5 dollars for that income tax year. For income tax years commencing on or
6 after January 1, 2003, but prior to January 1, 2007, the total aggregate
7 amount of the credit allocated to such owners, partners, members, and
8 shareholders shall not exceed two hundred sixty thousand dollars, and, if
9 any refund is claimed pursuant to ~~subparagraph (I) of paragraph (b) of~~
10 ~~subsection (5)~~ SUBSECTION (5)(b)(I) of this section, the aggregate amount
11 of the refund and the credit claimed by such owners, partners, members,
12 and shareholders shall not exceed fifty thousand dollars for that income
13 tax year. For income tax years commencing on or after January 1, 2007,
14 the total aggregate amount of the credit allocated to such owners,
15 partners, members, and shareholders shall not exceed three hundred
16 seventy-five thousand dollars, and, if any refund is claimed pursuant to
17 ~~subparagraph (I) of paragraph (b) of subsection (5)~~ SUBSECTION (5)(b)(I)
18 of this section, the aggregate amount of the refund and the credit claimed
19 by such owners, partners, members, and shareholders shall not exceed
20 fifty thousand dollars for that income tax year. FOR INCOME TAX YEARS
21 COMMENCING ON OR AFTER JANUARY 1, 2015, THE TOTAL AGGREGATE
22 AMOUNT OF THE CREDIT ALLOWED TO SUCH OWNERS, PARTNERS,
23 MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED FIVE MILLION
24 DOLLARS, WHICH SHALL BE ISSUED IN INCREMENTS OF NO MORE THAN ONE
25 MILLION FIVE HUNDRED THOUSAND DOLLARS PER YEAR, AND, IF ANY
26 REFUND IS CLAIMED PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION,
27 THE AGGREGATE AMOUNT OF THE REFUND AND CREDIT CLAIMED BY SUCH

1 OWNERS, PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED
2 FIFTY THOUSAND DOLLARS FOR THAT INCOME TAX YEAR.

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

5 **39-22-522.7. Conservation easement tax credits - compensation**
6 **- legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS
7 AND DECLARES THAT:

8 (a) IT IS THE INTENT OF THIS SECTION TO PROVIDE COMPENSATION
9 THAT WILL REPAIR DAMAGES CAUSED BY THE DEPARTMENT OF REVENUES
10 ARBITRARY DISALLOWANCE OF COLORADO CONSERVATION EASEMENT TAX
11 CREDITS TO LANDOWNERS WHO IN GOOD FAITH CONVEYED CONSERVATION
12 EASEMENTS TO QUALIFIED CONSERVATION EASEMENT HOLDERS BETWEEN
13 JANUARY 1, 2000, AND DECEMBER 31, 2013;

14 (b) THE ARBITRARY DISALLOWANCE OF CONSERVATION EASEMENT
15 TAX CREDITS CAUSED MORE THAN ONE HUNDRED FORTY-FOUR MILLION
16 DOLLARS IN FINANCIAL HARM TO LANDOWNERS ACROSS COLORADO;

17 (c) STATE REPRESENTATIVE KIMMI LEWIS FROM HOUSE DISTRICT
18 64, WHO PASSED AWAY IN DECEMBER 2019, WORKED TIRELESSLY DURING
19 HER CAREER AS A LEGISLATOR TO PROVIDE HELP TO LANDOWNERS WHO
20 HAD CONSERVATION EASEMENT CREDITS ARBITRARILY DISALLOWED; AND

21 (d) RESOLUTION OF THIS HARM THROUGH THE PAYMENT OF
22 COMPENSATION WILL END THE NEARLY TWO-DECADES-LONG CONFLICT
23 OVER COLORADO'S CONSERVATION EASEMENT TAX CREDIT PROGRAM,
24 RESTORE THE INTEGRITY OF THE PROGRAM, AND ALLOW THE PROGRAM TO
25 MOVE FORWARD TO CONTINUE THE GOOD WORK OF CONSERVING
26 COLORADO'S INCREASINGLY LIMITED OPEN SPACE AND NATURAL
27 RESOURCES.

1 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE
2 SHALL PROVIDE COMPENSATION FOR EACH PERPETUAL CONSERVATION
3 EASEMENT IN GROSS DONATED IN GOOD FAITH BETWEEN JANUARY 1, 2000,
4 AND DECEMBER 31, 2013, FOR WHICH A TAX CREDIT WAS CLAIMED
5 PURSUANT TO SECTION 39-22-522 AND WAS DENIED IN WHOLE OR IN PART
6 IF A FEDERAL CONSERVATION EASEMENT TAX DEDUCTION WAS ACCEPTED
7 BY THE FEDERAL INTERNAL REVENUE SERVICE FOR THE SAME DONATION.
8 FOR PURPOSES OF THIS SECTION:

9 (a) THE AMOUNT OF COMPENSATION DUE FOR EACH DONATION
10 SHALL BE EQUAL TO THE FULL AMOUNT OF THE CREDIT THAT COULD HAVE
11 BEEN CLAIMED FOR THE DONATION PURSUANT TO THE APPLICABLE LAW IN
12 EFFECT AT THE TIME OF THE DONATION;

13 (b) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE FAIR
14 MARKET VALUE OF THE CONSERVATION EASEMENT CONTRIBUTION
15 ACCEPTED BY THE INTERNAL REVENUE SERVICE AS REFLECTED ON IRS
16 FORM 8283 OR AMENDED BY A SUBSEQUENT FEDERAL APPEAL PROCESS,
17 FEDERAL COURT, OR UNITED STATES TAX COURT RULING; AND

18 (c) THE AMOUNT OF ANY COMPENSATION ALLOWED SHALL BE
19 DECREASED BY ANY AMOUNT OF CREDIT THAT WAS ALLOWED TO BE
20 CLAIMED AGAINST THE TAXES IMPOSED BY THIS ARTICLE 22 OR OTHERWISE
21 REINSTATED.

22 (3) CLAIMS FOR COMPENSATION SHALL BE GRANTED IN THE ORDER
23 RECEIVED. A CLAIMANT MAY ELECT TO RECEIVE COMPENSATION AS A
24 CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE 22, AS A REFUND TO
25 THE CLAIMANT, OR A COMBINATION OF A CREDIT AND A REFUND. IF A
26 PERSON ELIGIBLE TO RECEIVE COMPENSATION IS NO LONGER LIVING, THE
27 COMPENSATION SHALL BE PAID TO THE APPROPRIATE ESTATE, HEIR,

1 SUCCESSOR, OR ASSIGN.

2 (4) (a) COMPENSATION IS TO BE PAID FROM THE UNCLAIMED
3 AMOUNT OF CONSERVATION EASEMENT TAX CREDIT CERTIFICATES THAT
4 COULD HAVE BEEN ISSUED PURSUANT TO SECTION 39-22-522 (2.5)
5 BETWEEN JANUARY 1, 2013, AND DECEMBER 31, 2019;

6 (b) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION,
7 THE TOTAL AMOUNT OF COMPENSATION PROVIDED TO ALL CLAIMANTS
8 SHALL NOT EXCEED THE DIFFERENCE BETWEEN THE MAXIMUM AMOUNT OF
9 CONSERVATION EASEMENT TAX CREDIT CERTIFICATES THAT COULD HAVE
10 BEEN ISSUED PURSUANT TO SECTION 39-22-522 (2.5) BETWEEN JANUARY
11 1, 2013, AND DECEMBER 31, 2019, AND THE AMOUNT OF CREDITS
12 ACTUALLY CLAIMED FOR THAT PERIOD.

13 (c) IF THE AMOUNT OF COMPENSATION REQUIRED TO BE PROVIDED
14 BY THIS SECTION EXCEEDS THE AMOUNT ALLOWED PURSUANT TO
15 SUBSECTION (4)(b) OF THIS SECTION, ADDITIONAL COMPENSATION SHALL
16 BE ALLOWED EACH CALENDAR YEAR IN A TOTAL AMOUNT NOT TO EXCEED
17 FIFTY PERCENT OF THE MAXIMUM AMOUNT OF CONSERVATION EASEMENT
18 TAX CREDIT CERTIFICATES THAT MAY BE ISSUED IN THAT YEAR PURSUANT
19 TO SECTION 39-22-522 (2.5). NOTWITHSTANDING THE PROVISIONS OF
20 SECTION 39-22-522 (2.5), IF ADDITIONAL COMPENSATION IS ALLOWED IN
21 ANY CALENDAR YEAR PURSUANT TO THIS SUBSECTION (4)(c), THE AMOUNT
22 OF TAX CREDIT CERTIFICATES THAT MAY BE ISSUED IN THAT YEAR
23 PURSUANT TO SECTION 39-22-522 (2.5) IS REDUCED BY THE AMOUNT OF
24 SUCH ADDITIONAL COMPENSATION.

25 (5) BY SEPTEMBER 30, 2020, THE DEPARTMENT OF REVENUE
26 SHALL ATTEMPT TO NOTIFY EACH TAXPAYER WITH A TAX CREDIT DENIED
27 IN WHOLE OR IN PART FOR A CONSERVATION EASEMENT DONATED

1 BETWEEN JANUARY 1, 2000, AND DECEMBER 31, 2013, THAT THE
2 TAXPAYER MAY BE ELIGIBLE TO APPLY FOR COMPENSATION FROM THE
3 STATE. THE NOTICE MUST OUTLINE THE PROCESS FOR APPLYING FOR
4 COMPENSATION, DESCRIBE THE CRITERIA USED TO DETERMINE THE
5 COMPENSATION, AND DESCRIBE ANY RELEVANT DEADLINES.

6 (6) A TAXPAYER WHO RECEIVES A NOTICE SENT PURSUANT TO
7 SUBSECTION (5) OF THIS SECTION MUST FILE A CLAIM FOR COMPENSATION
8 ON OR BEFORE DECEMBER 31, 2022. AN APPLICATION FOR COMPENSATION
9 MUST BE SUBMITTED USING A FORM AND PROCESS CREATED BY THE
10 DEPARTMENT OF REVENUE AND APPROVED BY THE WORKING GROUP
11 CONVENED IN ACCORDANCE WITH SECTION 12-15-106 (14.5). THE
12 APPLICATION MUST BE ACCOMPANIED BY THE FOLLOWING:

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

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

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

24 (7) IF MORE THAN ONE PERSON OR ENTITY HAS A CLAIM TO
25 COMPENSATION RELATED TO A PARTICULAR DONATION OF A
26 CONSERVATION EASEMENT, CLAIMANTS MAY WORK TOGETHER TO
27 COORDINATE THE APPROPRIATE DISTRIBUTION OF COMPENSATION.

1 (8) IF A TAXPAYER TRANSFERRED ALL OR A PORTION OF A TAX
2 CREDIT FOR A CONSERVATION EASEMENT DONATION THAT QUALIFIES FOR
3 COMPENSATION PURSUANT TO THIS SECTION TO ANOTHER TAXPAYER AS
4 TRANSFEREE PURSUANT TO SECTION 39-22-522 (7), THEN THE TRANSFEREE
5 MAY CLAIM COMPENSATION FOR THE PORTION OF THE CREDIT THAT WAS
6 TRANSFERRED AND THE TAXPAYER MAY CLAIM COMPENSATION FOR ANY
7 PORTION OF THE CREDIT THAT WAS NOT TRANSFERRED. THE TRANSFEROR
8 AND ANY TRANSFEREES MAY SUBMIT CLAIMS FOR COMPENSATION
9 PURSUANT TO THIS SECTION INDIVIDUALLY OR MUTUALLY AS A GROUP IF
10 THEY AGREE UPON THE TERMS FOR PAYING THE COMPENSATION BEING
11 CLAIMED. APPLICANTS MUST ATTEMPT TO NOTIFY ANY OTHER TAXPAYER
12 OR TRANSFEREE THAT WAS A PARTY TO THE TRANSFER THAT AN
13 APPLICATION IS BEING MADE TO CLAIM COMPENSATION PURSUANT TO THIS
14 SECTION. ANY PARTY WHO RECEIVES SUCH NOTICE HAS NINETY DAYS
15 FROM RECEIPT OF THE NOTICE TO FILE AN OBJECTION TO THE CLAIM FOR
16 COMPENSATION. AN OBJECTION SHALL BE SUBMITTED IN THE FORM OF AN
17 APPLICATION FOR COMPENSATION AND SHALL SET FORTH THE PROPOSED
18 ALTERNATIVE AMOUNT OR DISTRIBUTION OF COMPENSATION. IN NO EVENT
19 SHALL THE AMOUNT OF COMPENSATION PROVIDED TO A TRANSFEREE
20 EXCEED THE AMOUNT PAID BY THE TRANSFEREE FOR THE CREDIT, LESS
21 ANY AMOUNT THAT WAS REINSTATED, REIMBURSED, OR OTHERWISE
22 ALLOWED TO THE TRANSFEREE AS A RESULT OF A SETTLEMENT,
23 LITIGATION, OR OTHER MEANS THAT PROVIDED COMPENSATION TO THE
24 TRANSFEREE. IN NO EVENT SHALL THE TOTAL AMOUNT OF COMPENSATION
25 PROVIDED TO ALL CLAIMANTS RELATED TO A PARTICULAR CONSERVATION
26 EASEMENT DONATION EXCEED THE AMOUNT OF COMPENSATION THAT
27 WOULD BE PAYABLE TO A SINGLE CLAIMANT PURSUANT TO SUBSECTION (2)

1 OF THIS SECTION.

2 (9) IF AN OBJECTION TO A CLAIM FOR COMPENSATION IS FILED
3 PURSUANT TO SUBSECTION (8) OF THIS SECTION, THE DEPARTMENT OF
4 REVENUE SHALL REFER THE MATTER TO THE OMBUDSMAN DESIGNATED
5 PURSUANT TO SECTION 12-15-108 FOR FINAL RESOLUTION OF ANY
6 DISPUTES RELATED TO AMOUNTS TO BE PAID PURSUANT TO THIS SECTION.

7 (10) THE DEPARTMENT OF REVENUE SHALL ISSUE COMPENSATION
8 PURSUANT TO THIS SECTION IN THE FORM REQUESTED BY AN APPLICANT NO
9 LATER THAN THIRTY DAYS FOLLOWING:

10 (a) RECEIPT OF AN APPLICATION FROM A TAXPAYER WHO DID NOT
11 TRANSFER A CREDIT;

12 (b) RECEIPT OF A MUTUAL APPLICATION FROM ALL PARTIES TO A
13 CREDIT TRANSFER TRANSACTION;

14 (c) THE EXPIRATION OF THE DEADLINE TO FILE AN OBJECTION TO
15 A CLAIM PURSUANT TO SUBSECTION (8) OF THIS SECTION IF NO OBJECTION
16 WAS FILED WITHIN THE DEADLINE; OR

17 (d) THE FINAL RESOLUTION OF A DISPUTED CLAIM FOR
18 COMPENSATION PURSUANT TO SUBSECTION (9) OF THIS SECTION.

19 **SECTION 3.** In Colorado Revised Statutes, **add** 12-15-108 and
20 12-15-109 as follows:

21 **12-15-108. Disputed compensation claims - ombudsman.**

22 (1) THE DIRECTOR OF THE DIVISION SHALL DESIGNATE A PERSON TO SERVE
23 AS AN OMBUDSMAN TO MEDIATE OR OTHERWISE ASSIST CLAIMANTS OF
24 COMPENSATION IF AN OBJECTION TO A CLAIM FOR COMPENSATION HAS
25 BEEN REFERRED TO THE OMBUDSMAN PURSUANT TO SECTION 39-22-522.7
26 (8). THE OMBUDSMAN MAY BE AN EMPLOYEE OF THE DIVISION OR
27 ANOTHER PROFESSIONAL WITH KNOWLEDGE OF CONSERVATION EASEMENT

1 TRANSACTIONS. IF THE PARTIES ARE UNABLE TO RESOLVE THEIR
2 OBJECTIONS TO A CLAIM FOR COMPENSATION WITH THE ASSISTANCE OF
3 THE OMBUDSMAN, THE OMBUDSMAN MAY REFER THE MATTER TO AN
4 ARBITRATOR, AT THE EXPENSE OF THE DEPARTMENT OF REVENUE, TO
5 COME TO A FINAL RESOLUTION OF THE DISPUTE. UPON FINAL RESOLUTION
6 OF THE DISPUTE, THE OMBUDSMAN SHALL NOTIFY THE DEPARTMENT OF
7 REVENUE OF THE TERMS OF THE RESOLUTION AND THE DEPARTMENT OF
8 REVENUE SHALL PROVIDE THE COMPENSATION IN ACCORDANCE WITH SUCH
9 TERMS AND SECTION 39-22-522.7.

10 **12-15-109. Administration of abandoned conservation**
11 **easements.** (1) THE DIVISION SHALL OPEN AN INVESTIGATION PROMPTLY
12 UPON BEING NOTIFIED OF OR BECOMING AWARE OF THE POTENTIAL
13 ABANDONMENT OF A CONSERVATION EASEMENT IN THE STATE. WITHIN
14 TEN BUSINESS DAYS FOLLOWING THE OPENING OF THE INVESTIGATION, THE
15 DIVISION SHALL NOTIFY THE LANDOWNER AND EASEMENT HOLDER OF
16 RECORD BY CERTIFIED MAIL OF THE INVESTIGATION. THE NOTICE SHALL BE
17 SENT TO EACH AFFECTED LANDOWNER AND EASEMENT HOLDER AT THEIR
18 LAST KNOWN ADDRESS. THE NOTICE MUST INCLUDE A SUMMARY OF THE
19 BASIS FOR THE INVESTIGATION, A DETAILED EXPLANATION OF THE PROCESS
20 BY WHICH THE INVESTIGATION WILL BE CONDUCTED, AN OUTLINE OF
21 POSSIBLE OUTCOMES FROM THE INVESTIGATION, AND CONTACT
22 INFORMATION FOR THE APPROPRIATE OFFICIALS IN THE DIVISION TO WHOM
23 QUESTIONS ABOUT THE INVESTIGATION MAY BE DIRECTED.

24 (2) AFTER CONDUCTING AN INVESTIGATION PURSUANT TO
25 SUBSECTION (1) OF THIS SECTION, THE DIVISION MAY MAKE A FINDING
26 THAT A CONSERVATION EASEMENT IS ABANDONED IF THE DIVISION
27 DETERMINES THAT THE EASEMENT IS HELD BY AN ENTITY THAT:

1 (a) IS NONFUNCTIONING BUT NOT LEGALLY DISSOLVED;
2 (b) IS FUNCTIONING BUT HAS SUBMITTED A WRITTEN STATEMENT
3 TO THE DIVISION PROVIDING THAT THE ENTITY IS UNABLE OR UNWILLING
4 TO CONTINUE TO FULFILL THE PERPETUAL STEWARDSHIP OBLIGATIONS OF
5 AN EASEMENT HOLDER; OR

6 (c) HAS NOT COMPLETED ITS ANNUAL MONITORING OBLIGATIONS
7 FOR THREE CONSECUTIVE YEARS.

8 (3) IF THE DIVISION FINDS THAT A CONSERVATION EASEMENT IS
9 ABANDONED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE DIVISION
10 SHALL PREPARE A REPORT FOR THE COMMISSION OUTLINING THE DIVISION'S
11 FINDINGS AND MAKING A RECOMMENDATION TO THE COMMISSION TO ISSUE
12 AN ABANDONMENT DECLARATION. THE COMMISSION SHALL REVIEW THE
13 REPORT AND MAKE A DETERMINATION AT A PUBLIC HEARING OF WHETHER
14 OR NOT AN EASEMENT HOLDER HAS ABANDONED THE CONSERVATION
15 EASEMENT. THE DIVISION SHALL PROVIDE NOTICE OF THE PUBLIC HEARING
16 AND MAKE THE REPORT AVAILABLE PRIOR TO THE HEARING TO ANY
17 LANDOWNER OR EASEMENT HOLDER WITH AN INTEREST IN THE EASEMENT.
18 LANDOWNERS AND EASEMENT HOLDERS HAVE THE RIGHT TO ATTEND AND
19 PARTICIPATE IN THE HEARING WHERE THE REPORT IS REVIEWED. IF THE
20 COMMISSION DETERMINES THAT AN EASEMENT HOLDER HAS ABANDONED
21 A CONSERVATION EASEMENT, THE COMMISSION SHALL, IN CONSULTATION
22 WITH THE DEPARTMENT OF LAW, ISSUE AN ABANDONMENT DECLARATION
23 AND APPOINT A RECEIVER FOR THE EASEMENT. THE RECEIVER MUST BE
24 EITHER THE COMMISSION OR THE BOARD OF COUNTY COMMISSIONERS FOR
25 THE COUNTY IN WHICH THE ABANDONED EASEMENT EXISTS. THE
26 LANDOWNER, IN CONSULTATION WITH THE COMMISSION, MAY DETERMINE
27 WHETHER THE COMMISSION OR THE BOARD OF COUNTY COMMISSIONERS

1 WILL BE THE RECEIVER.

2 (4) WITHIN TEN BUSINESS DAYS OF ISSUING AN ABANDONMENT
3 DECLARATION FOR A CONSERVATION EASEMENT PURSUANT TO
4 SUBSECTION (3) OF THIS SECTION, THE DIVISION SHALL SEND A NOTICE BY
5 CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF EACH AFFECTED
6 LANDOWNER AND EASEMENT HOLDER OF RECORD SETTING FORTH THE
7 FOLLOWING:

8 (a) THE BASIS FOR THE DECLARATION THAT THE EASEMENT HAS
9 BEEN ABANDONED;

10 (b) THE PROCESS AND TIMELINES ASSOCIATED WITH THE
11 RECEIVERSHIP PROCESS FOR THE EASEMENT;

12 (c) THE OPTIONS AVAILABLE TO A LANDOWNER, INCLUDING THE
13 POTENTIAL FOR EXTINGUISHING THE EASEMENT PURSUANT TO SECTION
14 38-30.5-107;

15 (d) A LIST OF ALL ENTITIES CERTIFIED TO HOLD CONSERVATION
16 EASEMENTS IN THE STATE, INCLUDING LAND TRUSTS, GOVERNMENT
17 AGENCIES, MUNICIPALITIES, AND COUNTIES;

18 (e) CONTACT INFORMATION FOR THE APPROPRIATE OFFICIALS TO
19 CONTACT WITH QUESTIONS REGARDING THE RECEIVERSHIP; AND

20 (f) INSTRUCTIONS FOR A LANDOWNER TO COMPLETE AN ONLINE
21 SURVEY ON THE DIVISION'S WEBSITE TO IDENTIFY AND RANK IN ORDER OF
22 PREFERENCE WHICH CERTIFIED HOLDERS THE LANDOWNER WOULD PREFER
23 HAVING THE EASEMENT TRANSFERRED TO AFTER IT IS OUT OF
24 RECEIVERSHIP.

25 (5) AN ABANDONED CONSERVATION EASEMENT SHALL BE PLACED
26 IN RECEIVERSHIP NO LATER THAN NINETY DAYS FOLLOWING THE ISSUANCE
27 OF AN ABANDONMENT DECLARATION PURSUANT TO SUBSECTION (3) OF

1 THIS SECTION. THE COMMISSION SHALL CONSULT WITH THE DEPARTMENT
2 OF LAW TO ENSURE THAT THE RECEIVER HAS BEEN PROPERLY AND
3 LEGALLY ESTABLISHED AND THAT ALL DUE PROCESS REQUIREMENTS FOR
4 PLACING THE ABANDONED CONSERVATION EASEMENT INTO RECEIVERSHIP
5 HAVE BEEN MET. ABANDONED CONSERVATION EASEMENTS SHALL BE
6 PLACED INTO RECEIVERSHIP FOR A PERIOD NOT TO EXCEED FIVE YEARS.

7 (6) ONCE IN RECEIVERSHIP, ANNUAL MONITORING OBLIGATIONS
8 FOR AN ABANDONED CONSERVATION EASEMENT ARE THE RESPONSIBILITY
9 OF THE RECEIVER. THE RECEIVER IS RESPONSIBLE FOR DETERMINING, IN
10 CONSULTATION WITH THE COMMISSION, WHETHER THE TERMS OF AN
11 ABANDONED CONSERVATION EASEMENT HELD IN RECEIVERSHIP HAVE
12 BEEN VIOLATED AND REFERRING ANY VIOLATIONS TO THE PROPER
13 ENFORCEMENT AGENCY FOR REMEDY.

14 (7) A STEWARDSHIP ACCOUNT IS ESTABLISHED WITHIN THE
15 CONSERVATION CASH FUND CREATED PURSUANT TO SECTION 12-15-107 TO
16 PROVIDE FOR THE ANNUAL COST OF PERFORMING MONITORING
17 OBLIGATIONS FOR CONSERVATION EASEMENTS HELD IN RECEIVERSHIP
18 PURSUANT TO THIS SECTION OR THE ONGOING COST OF CERTIFIED HOLDERS
19 CARRYING OUT THEIR STEWARDSHIP OBLIGATIONS IMPOSED BY ACCEPTING
20 THE ASSIGNMENT OF ABANDONED EASEMENTS PURSUANT TO SUBSECTION
21 (11) OF THIS SECTION. THE COMMISSION SHALL ENTER INTO MONITORING
22 CONTRACTS WITH WILLING CERTIFIED CONSERVATION EASEMENT
23 HOLDERS, COUNTIES ACTING AS RECEIVERS, OR OTHER PROFESSIONALS
24 WITH EXPERIENCE MONITORING CONSERVATION EASEMENTS TO MONITOR
25 ANY CONSERVATION EASEMENTS THAT ARE BEING HELD IN RECEIVERSHIP.
26 MONITORING CONTRACTS SHALL BE RENEWED ON AN ANNUAL BASIS.
27 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AMOUNT OF TAX

1 CREDIT CERTIFICATES THAT MAY BE ISSUED PURSUANT TO SECTION
2 39-22-522 (2.5) IN THE 2020 CALENDAR YEAR IS REDUCED BY FIVE
3 MILLION DOLLARS. THE GENERAL ASSEMBLY SHALL APPROPRIATE FIVE
4 MILLION DOLLARS FROM THE GENERAL FUND TO THE STEWARDSHIP
5 ACCOUNT FOR THE 2020-2021 FISCAL YEAR. MONEY IN THE STEWARDSHIP
6 ACCOUNT SHALL BE ANNUALLY APPROPRIATED TO THE DIVISION TO
7 PROVIDE FOR CONTRACTING WITH CERTIFIED EASEMENT HOLDERS,
8 COUNTIES ACTING AS RECEIVERS, OR OTHER PROFESSIONALS WITH
9 EXPERIENCE MONITORING CONSERVATION EASEMENTS AS PROVIDED FOR
10 IN THE ANNUAL MONITORING CONTRACTS.

11 (8) (a) THE COMMISSION SHALL BE RESPONSIBLE FOR
12 SYSTEMATICALLY REVIEWING EACH CONSERVATION EASEMENT HELD IN
13 RECEIVERSHIP PURSUANT TO THIS SECTION. THE REVIEW SHALL SEEK TO
14 IDENTIFY OPTIONS FOR REFORMS, IF ANY, TO EACH CONSERVATION
15 EASEMENT THAT WOULD ENABLE THE EASEMENT TO BE ASSIGNED TO
16 ANOTHER CERTIFIED EASEMENT HOLDER AND IDENTIFY CERTIFIED
17 HOLDERS WILLING TO TAKE ASSIGNMENT OF THE EASEMENT. THE
18 COMMISSION SHALL ISSUE A FINAL REPORT WITH THE CONCLUSION OF ITS
19 REVIEW NO LATER THAN ONE YEAR AFTER THE EASEMENT WAS PLACED IN
20 RECEIVERSHIP. THE REPORT SHALL ASSIGN EACH CONSERVATION
21 EASEMENT HELD IN RECEIVERSHIP INTO ONE OF THE FOLLOWING THREE
22 CATEGORIES:

23 (I) EASEMENTS THAT CAN BE ASSIGNED WITHOUT REFORMATION
24 OR AMENDMENT;

25 (II) EASEMENTS THAT CAN BE ASSIGNED WITH REFORMATION
26 THROUGH AMENDMENT; OR

27 (III) EASEMENTS THAT CANNOT BE REFORMED IN A MANNER THAT

1 WOULD ALLOW FOR ASSIGNMENT.

2 (b) THE COMMISSION MAY REASSIGN A CONSERVATION EASEMENT
3 THAT HAS BEEN PLACED IN A CATEGORY PURSUANT TO SUBSECTION (8)(a)
4 OF THIS SECTION TO A DIFFERENT CATEGORY AT ANY TIME IF NEW
5 INFORMATION BECOMES AVAILABLE TO WARRANT THE REASSIGNMENT.

6 (9) WITH THE EXPRESSED WRITTEN CONSENT OF THE OWNER OF
7 LAND SUBJECT TO A CONSERVATION EASEMENT ASSIGNED TO THE
8 CATEGORY DESCRIBED IN SUBSECTION (8)(a)(III) OF THIS SECTION, THE
9 COMMISSION MAY SUBMIT THE EASEMENT TO THE DEPARTMENT OF LAW OR
10 TO A SPECIAL MASTER AS PROVIDED BY LAW TO COMMENCE PROCEEDINGS
11 TO TERMINATE, RELEASE, EXTINGUISH, OR ABANDON THE EASEMENT IN
12 ACCORDANCE WITH SECTION 38-30.5-107.

13 (10) THE DIVISION AND THE COMMISSION HAVE FOUR YEARS
14 FOLLOWING THE ISSUANCE OF A REPORT PURSUANT TO SUBSECTION (8)(a)
15 OF THIS SECTION REGARDING A CONSERVATION EASEMENT HELD IN
16 RECEIVERSHIP TO RESOLVE AND REMOVE THE EASEMENT FROM
17 RECEIVERSHIP EITHER BY ASSIGNING THE EASEMENT TO ANOTHER
18 CERTIFIED EASEMENT HOLDER OR BY TERMINATING, RELEASING, OR
19 EXTINGUISHING THE EASEMENT PURSUANT TO SUBSECTION (9) OF THIS
20 SECTION. THE DIVISION AND THE COMMISSION MUST CONSULT WITH THE
21 OWNER OF THE LAND SUBJECT TO THE EASEMENT, AND ONLY WITH THE
22 LANDOWNER'S EXPRESS WRITTEN CONSENT WILL THE SUBJECT PROPERTY
23 BE REASSIGNED TO A NEW CONSERVATION EASEMENT HOLDER. IF A
24 DISPUTE ARISES BETWEEN A LANDOWNER AND THE DIVISION OR THE
25 COMMISSION OVER THE ASSIGNMENT OF A CONSERVATION EASEMENT, THE
26 MATTER SHALL BE REFERRED TO THE OMBUDSMAN DESIGNATED PURSUANT
27 TO SECTION 12-15-108. IF THE OMBUDSMAN PROCESS FAILS, THE MATTER

1 SHALL BE REFERRED TO AN ARBITRATOR AT THE DIVISION'S EXPENSE FOR
2 FINAL RESOLUTION.

3 (11) A CERTIFIED HOLDER THAT ACCEPTS THE ASSIGNMENT OF AN
4 ABANDONED CONSERVATION EASEMENT THAT WAS HELD IN RECEIVERSHIP
5 PURSUANT TO THIS SECTION SHALL BE ENTITLED TO RECEIVE A PORTION OF
6 THE MONEY FROM THE STEWARDSHIP ACCOUNT CREATED IN SUBSECTION
7 (7) OF THIS SECTION FOR CARRYING OUT ITS FUTURE ONGOING
8 STEWARDSHIP OBLIGATIONS IMPOSED BY ACCEPTING THE ASSIGNMENT.
9 THE AMOUNT OF THE STEWARDSHIP ACCOUNT TO BE PROVIDED SHALL BE
10 DETERMINED THROUGH MUTUAL AGREEMENT BETWEEN THE CERTIFIED
11 HOLDER AND THE DIVISION.

12 **SECTION 4. 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 (August
15 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part will not take effect
19 unless approved by the people at the general election to be held in
20 November 2020 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.