

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0301.01 Gregg Fraser x4325

SENATE BILL 21-033

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Finance

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 by creating a new state income tax credit (new credit) for 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. 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. 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 original credits. New credits allowed count against a portion of the existing cap on the total amount of original conservation easement credits that may be claimed each year. 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 DEPARTMENT OF
10 REVENUE'S DISALLOWANCE OF COLORADO CONSERVATION EASEMENT TAX
11 CREDITS TO LANDOWNERS WHO IN GOOD FAITH, SUBJECT TO SUBSECTION
12 (5) OF THIS SECTION, CONVEYED CONSERVATION EASEMENTS TO

1 QUALIFIED CONSERVATION EASEMENT HOLDERS BETWEEN JANUARY 1,
2 2000, AND DECEMBER 31, 2013;

3 (b) STATE REPRESENTATIVE KIMMI LEWIS FROM HOUSE DISTRICT
4 64, WHO PASSED AWAY IN DECEMBER 2019, WORKED TIRELESSLY DURING
5 HER CAREER AS A LEGISLATOR TO PROVIDE HELP TO LANDOWNERS WHO
6 HAD CONSERVATION EASEMENT CREDITS ARBITRARILY DISALLOWED; AND

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

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

26 (a) THE AMOUNT OF THE CREDIT ALLOWED FOR EACH DONATION
27 SHALL BE EQUAL TO THE FULL AMOUNT OF THE CREDIT THAT COULD HAVE

1 BEEN CLAIMED FOR THE DONATION PURSUANT TO THE APPLICABLE LAW IN
2 EFFECT AT THE TIME OF THE DONATION;

3 (b) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE FAIR
4 MARKET VALUE OF THE CONSERVATION EASEMENT CONTRIBUTION
5 ACCEPTED BY THE INTERNAL REVENUE SERVICE AS REFLECTED ON THE
6 FEDERAL INCOME TAX FORM 8283 OR AMENDED BY A SUBSEQUENT
7 FEDERAL APPEAL PROCESS, FEDERAL COURT, OR UNITED STATES TAX
8 COURT RULING; AND

9 (c) THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS
10 SECTION SHALL BE DECREASED BY ANY AMOUNT OF CREDIT THAT WAS
11 OTHERWISE ALLOWED TO BE CLAIMED AGAINST THE TAXES IMPOSED BY
12 THIS ARTICLE 22 OR OTHERWISE REINSTATED, AND BY ANY AMOUNT THAT
13 WAS REIMBURSED OR OTHERWISE ALLOWED TO THE TRANSFEREE AS A
14 RESULT OF A SETTLEMENT, LITIGATION, OR OTHER MEANS THAT PROVIDED
15 COMPENSATION TO THE TRANSFEREE.

16 (3) BY AUGUST 15, 2021, THE DEPARTMENT OF REVENUE SHALL
17 MAKE INFORMATION READILY AVAILABLE ONLINE FOR TAXPAYERS WHO
18 HAD A TAX CREDIT DENIED IN WHOLE OR IN PART FOR A CONSERVATION
19 EASEMENT DONATED BETWEEN JANUARY 1, 2000, AND DECEMBER 31,
20 2013, THAT THE TAXPAYER MAY BE ELIGIBLE TO APPLY FOR A CREDIT
21 PURSUANT TO THIS SECTION. THE ONLINE INFORMATION MUST OUTLINE
22 THE PROCESS FOR APPLYING FOR A CREDIT AND THE CRITERIA USED TO
23 DETERMINE THE AMOUNT OF THE CREDIT.

24 (4) A TAXPAYER MUST SUBMIT A CLAIM FOR A CREDIT TO THE
25 DIVISION OF CONSERVATION IN THE DEPARTMENT OF REGULATORY
26 AGENCIES NO LATER THAN SEPTEMBER 30, 2022. THE CLAIM MUST BE
27 SUBMITTED USING A FORM AND PROCESS CREATED BY THE DIVISION AND

1 IN COORDINATION WITH THE WORKING GROUP CONVENED IN ACCORDANCE
2 WITH SECTION 12-15-106 (14.5). THE CLAIM MUST BE ACCOMPANIED BY
3 THE FOLLOWING:

4 (a) A COPY OF THE FEDERAL INCOME TAX FORM 8283 USED TO
5 SUBSTANTIATE A FEDERAL DEDUCTION FOR THE DONATED CONSERVATION
6 EASEMENT;

7 (b) IF THE ORIGINAL AMOUNT OF DEDUCTION CLAIMED ON THE
8 FEDERAL INCOME TAX FORM 8283 WAS ADJUSTED, DOCUMENTATION
9 CONFIRMING THE AMOUNT ULTIMATELY ALLOWED BY THE INTERNAL
10 REVENUE SERVICE, A FEDERAL COURT, OR THE UNITED STATES TAX COURT
11 AND CLAIMED BY MEANS OF AN ADJUSTED FEDERAL TAX RETURN
12 ACCEPTED BY THE INTERNAL REVENUE SERVICE; AND

13 (c) DOCUMENTATION CONFIRMING SETTLEMENT OF THE CREDIT
14 AMOUNT ALLOWED BY THE DEPARTMENT OF REVENUE.

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

21 (b) AS USED IN THIS SECTION, "GOOD FAITH" MEANS THAT A
22 PERSON OR ENTITY HONESTLY RELIED UPON A LICENSED PROFESSIONAL TO
23 ESTABLISH THE VALUE OF A CONSERVATION EASEMENT, DID NOT
24 KNOWINGLY MISREPRESENT THE VALUE OF THE CONSERVATION
25 EASEMENT, AND FOLLOWED THE APPLICABLE LAWS AND REGULATIONS SET
26 FORTH IN STATUTE, DEPARTMENT OF REVENUE RULES, AND THE FEDERAL
27 INTERNAL REVENUE CODE AND FEDERAL DEPARTMENT OF TREASURY

1 REGULATIONS IN EFFECT AT THE TIME OF THE CONVEYANCE OF THE
2 CONSERVATION EASEMENT.

3 (6) (a) THE DIVISION OF CONSERVATION SHALL ISSUE A
4 CERTIFICATE FOR THE CLAIMS RECEIVED IN THE ORDER SUBMITTED NO
5 LATER THAN NINETY DAYS AFTER AN APPLICATION IS RECEIVED UNLESS A
6 DISPUTE ARISES PURSUANT TO SUBSECTION (10) OF THIS SECTION. CREDITS
7 ISSUED PURSUANT TO THIS SECTION COUNT AGAINST THE AGGREGATE
8 ANNUAL CAP FOR ALL CONSERVATION EASEMENT TAX CREDITS SET FORTH
9 IN SECTION 39-22-522 (2.5) AND THE AGGREGATE AMOUNT OF CREDITS
10 ISSUED PURSUANT TO THIS SECTION AND SECTION 39-22-522 SHALL NOT
11 EXCEED THE AGGREGATE ANNUAL CAP.

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

16 (I) FIFTY PERCENT OF THE ANNUAL CAP IN THE FIRST CALENDAR
17 YEAR;

18 (II) FORTY PERCENT OF THE ANNUAL CAP IN THE SECOND
19 CALENDAR YEAR; AND

20 (III) THIRTY PERCENT OF THE ANNUAL CAP IN THE THIRD
21 CALENDAR YEAR AND EACH SUBSEQUENT YEAR THEREAFTER UNTIL THE
22 OBLIGATION IS FULLY SATISFIED.

23 (c) IF THE TOTAL AMOUNT OF CREDITS ENCUMBERED AND THE
24 TOTAL AMOUNT OF CREDITS PROJECTED TO BE ENCUMBERED PURSUANT TO
25 THIS SECTION AND SECTION 39-22-522 (2.5) IS LESS THAN FORTY-FIVE
26 MILLION DOLLARS AT THE END OF A CALENDAR YEAR, ADDITIONAL
27 CERTIFICATES MAY BE ISSUED PURSUANT TO THIS SECTION AS LONG AS THE

1 TOTAL AMOUNT OF CREDITS ISSUED PURSUANT TO THIS SECTION AND
2 SECTION 39-22-522(2.5) DOES NOT EXCEED FORTY-FIVE MILLION DOLLARS
3 FOR THE CALENDAR YEAR. AT SUCH TIME AS ALL VALID CLAIMS MADE
4 PURSUANT TO SUBSECTION (4) OF THIS SECTION HAVE BEEN SATISFIED, THE
5 FULL AMOUNT NOT USED FOR CREDITS UP TO FORTY-FIVE MILLION
6 DOLLARS SHALL BE ELIGIBLE FOR USE FOR NEW CONSERVATION
7 EASEMENTS.

8 (d) ANY CLAIMS FOR A TAX CREDIT MADE PURSUANT TO THIS
9 SECTION THAT EXCEED THE AMOUNT ALLOWED FOR A SPECIFIED
10 CALENDAR YEAR SHALL BE PLACED ON A WAIT LIST IN THE ORDER
11 SUBMITTED AND A CERTIFICATE SHALL BE ISSUED FOR THE USE OF THE
12 CREDIT IN THE NEXT YEAR FOR WHICH THE DIVISION HAS NOT ISSUED
13 CREDIT CERTIFICATES IN EXCESS OF THE AMOUNTS ALLOWED PURSUANT
14 TO THIS SECTION.

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

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

22 (9) IF A TAXPAYER TRANSFERRED ALL OR A PORTION OF A TAX
23 CREDIT FOR A CONSERVATION EASEMENT DONATION THAT QUALIFIES FOR
24 A CREDIT PURSUANT TO THIS SECTION TO ANOTHER TAXPAYER AS
25 TRANSFEREE PURSUANT TO SECTION 39-22-522 (7), THEN THE TRANSFEREE
26 MAY CLAIM A CREDIT PURSUANT TO THIS SECTION. THE TRANSFEROR AND
27 ANY TRANSFEREES MAY SUBMIT CLAIMS FOR CREDITS PURSUANT TO THIS

1 SECTION INDIVIDUALLY OR MUTUALLY AS A GROUP IF THEY AGREE UPON
2 THE TERMS FOR DIVIDING THE CREDIT. APPLICANTS MUST ATTEMPT TO
3 NOTIFY ANY OTHER TAXPAYER OR TRANSFEREE THAT WAS A PARTY TO THE
4 TRANSFER THAT AN APPLICATION IS BEING MADE TO CLAIM A CREDIT
5 PURSUANT TO THIS SECTION. ANY PARTY WHO RECEIVES SUCH NOTICE HAS
6 NINETY DAYS FROM RECEIPT OF THE NOTICE TO FILE AN OBJECTION TO THE
7 CLAIM FOR THE CREDIT. AN OBJECTION SHALL BE SUBMITTED IN THE FORM
8 OF AN APPLICATION FOR A CREDIT AND SHALL SET FORTH THE PROPOSED
9 ALTERNATIVE AMOUNT OR DISTRIBUTION OF THE CREDIT. IN NO EVENT
10 SHALL THE AMOUNT OF COMPENSATION PROVIDED TO A TRANSFEREE
11 EXCEED THE AMOUNT PAID BY THE TRANSFEREE FOR THE CREDIT, LESS
12 ANY AMOUNT THAT WAS REINSTATED, REIMBURSED, OR OTHERWISE
13 ALLOWED TO THE TRANSFEREE AS A RESULT OF A SETTLEMENT,
14 LITIGATION, OR OTHER MEANS THAT PROVIDED COMPENSATION TO THE
15 TRANSFEREE UNLESS OTHERWISE MUTUALLY AGREED UPON BY THE
16 PARTIES.

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

23 (11) CREDITS ALLOWED PURSUANT TO THIS SECTION ARE NOT
24 REFUNDABLE, BUT MAY BE TRANSFERRED OR CARRIED FORWARD IN THE
25 SAME MANNER AS CREDITS ALLOWED PURSUANT TO SECTION 39-22-522
26 (4)(a) FOR A PERIOD OF TIME BEGINNING AT THE TIME OF THE ISSUANCE OF
27 THE CREDIT.

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

3 **12-15-108. Disputed credit claims - ombudsman.** THE DIRECTOR
4 OF THE DIVISION SHALL DESIGNATE A PERSON TO SERVE AS AN
5 OMBUDSMAN TO MEDIATE OR OTHERWISE ASSIST CLAIMANTS OF TAX
6 CREDITS IF AN OBJECTION TO A CLAIM FOR A TAX CREDIT HAS BEEN
7 REFERRED TO THE OMBUDSMAN PURSUANT TO SECTION 39-22-522.7 (10).
8 THE OMBUDSMAN MAY BE AN EMPLOYEE OF THE DIVISION OR ANOTHER
9 PROFESSIONAL WITH KNOWLEDGE OF CONSERVATION EASEMENT
10 TRANSACTIONS. IF THE PARTIES ARE UNABLE TO RESOLVE THEIR
11 OBJECTIONS TO A CLAIM FOR A TAX CREDIT WITH THE ASSISTANCE OF THE
12 OMBUDSMAN, THE OMBUDSMAN MAY REFER THE MATTER TO AN
13 ARBITRATOR, AT THE EXPENSE OF THE DEPARTMENT OF REVENUE, TO
14 COME TO A FINAL RESOLUTION OF THE DISPUTE. UPON FINAL RESOLUTION
15 OF THE DISPUTE, THE OMBUDSMAN SHALL NOTIFY THE DEPARTMENT OF
16 REVENUE OF THE TERMS OF THE RESOLUTION AND THE DEPARTMENT OF
17 REVENUE SHALL ALLOW THE TAX CREDIT TO BE CLAIMED IN ACCORDANCE
18 WITH SUCH TERMS AND SECTION 39-22-522.7.

19 **SECTION 3. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly; except
22 that, if a referendum petition is filed pursuant to section 1 (3) of article V
23 of the state constitution against this act or an item, section, or part of this
24 act within such period, then the act, item, section, or part will not take
25 effect unless approved by the people at the general election to be held in
26 November 2022 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.