

CHAPTER 211

TAXATION

SENATE BILL 24-126

BY SENATOR(S) Will and Winter F., Pelton R., Roberts, Bridges, Cutter, Fields, Gardner, Hansen, Kirkmeyer, Kolker, Liston, Lundeen, Marchman, Priola, Rodriguez, Smallwood, Zenzinger, Fenberg;
also REPRESENTATIVE(S) Lukens and Lynch, Armagost, Hartsook, Martinez, Velasco, Amabile, Bird, Boesenecker, Brown, Daugherty, Duran, English, Hamrick, Jodeh, Joseph, Lieder, Lindstedt, Marvin, Mauro, McCormick, McLachlan, Ricks, Snyder, Soper, Story, Taggart, Weinberg, Young, McCluskie.

AN ACT

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

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

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

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

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

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

(d) The benefits of conservation are unique and wide-ranging. Conservation has contributed significantly to the protection of wildlife habitat, critical wetlands, urban open space, and working farms and ranches.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

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

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

~~(a) One member representing the great outdoors Colorado program, appointed by and serving as an advisory, nonvoting member at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;~~ ONE VOTING MEMBER REPRESENTING THE GREAT OUTDOORS COLORADO TRUST FUND, APPOINTED BY AND SERVING AT THE PLEASURE OF THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;

~~(d) Three~~ **FOUR** voting members appointed by the governor as follows:

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

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

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

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

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

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

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

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

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

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

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

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

38-30.5-103. Nature of conservation easements in gross. (7) A CONSERVATION EASEMENT IN GROSS IS A REAL PROPERTY INTEREST AS DEFINED IN SECTION 38-30.5-102 THAT IS TO BE CREATED, ADMINISTERED, STEWARDED, ENFORCED, MODIFIED, AND TERMINATED PURSUANT TO THIS ARTICLE 30.5 AND, AS APPLICABLE, SECTION 39-22-522.

SECTION 7. In Colorado Revised Statutes, 39-22-522, **amend** (2)(a), (2)(b), (2.5), (4)(a)(II.7), (4)(b)(II)(D), (5)(b)(II), (5)(b)(III), and (7.5)(a); and **add** (4)(a)(II.8), (4)(b)(II)(E), (13), (14), and (15) as follows:

39-22-522. Credit against tax - conservation easements - definitions. (2) (a) For income tax years commencing on or after January 1, 2000, but prior to January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, BUT BEFORE JANUARY 1, 2032, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the

value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38. ~~C.R.S.~~ upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2). ~~C.R.S.~~ The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(b) For income tax years commencing on or after January 1, 2014, BUT BEFORE JANUARY 1, 2032, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, BUT BEFORE JANUARY 1, 2032, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38. ~~C.R.S.~~ upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2). ~~C.R.S.~~ The credit shall only be allowed for a donation that meets the requirements of section 170 of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in accordance with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(2.5) Notwithstanding any other provision of this section and the requirements of section 12-15-106, for income tax years commencing on or after January 1, 2011, a taxpayer conveying a conservation easement and claiming a credit pursuant to this section shall, in addition to any other requirements of this section and the requirements of section 12-15-106, submit a claim for the credit to the division of conservation in the department of regulatory agencies. ~~The division shall issue a certificate for the claims received in the order submitted.~~ THE DIVISION MUST PRIORITIZE TAX CREDIT APPLICATIONS IN THE ORDER RECEIVED. THE DIVISION MUST ASSIGN EACH APPLICATION WITH THE DATE AND TIME RECEIVED BASED ON THE ORDER IN WHICH A COMPLETED APPLICATION WAS SUBMITTED PURSUANT TO SECTION 12-15-106 (5). INCOMPLETE APPLICATIONS DO NOT GET PRIORITY IN THE REVIEW PROCESS. DISAPPROVED APPLICATIONS LOSE THEIR PRIORITY IN THE REVIEW PROCESS. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, ~~and~~ forty-five million dollars for each of the 2014 TO 2024 calendar year ~~thereafter~~ YEARS, AND FIFTY MILLION DOLLARS FOR EACH OF THE 2025 TO 2031 CALENDAR YEARS, any claims that exceed the amount allowed for a specified calendar year ~~shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in the next year for which the division has not issued credit certificates in excess of the amounts specified in this subsection (2.5). except that no more than fifteen million dollars in claims shall be placed on the wait list in any given calendar year.~~ The division shall not issue credit certificates that exceed twenty-two million dollars in each of the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, ~~and~~ forty-five million dollars for each of the 2014 TO 2024 calendar year ~~thereafter~~ YEARS, AND FIFTY MILLION DOLLARS FOR EACH OF THE 2025 THROUGH 2031 CALENDAR YEARS. No claim for a credit is allowed for any income tax year

commencing on or after January 1, 2011, unless a certificate has been issued by the division. If all other requirements under section 12-15-106 and this section are met, the right to claim the credit is vested in the taxpayer at the time a THE credit certificate is issued. IN THE CASE OF A TAX CREDIT CERTIFICATE ISSUED TO A TAXPAYER WHO FILES AN INCOME TAX RETURN FOR A TAX YEAR OTHER THAN A CALENDAR YEAR, THE CREDIT MUST BE USED IN THE INCOME TAX YEAR THAT BEGINS DURING THE CALENDAR YEAR FOR WHICH THE TAX CREDIT CERTIFICATE IS ISSUED.

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

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

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

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

(b) (II) (D) For income tax years commencing on or after January 1, 2015, BUT BEFORE JANUARY 1, 2027, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed five million dollars, and, if any refund is claimed pursuant to subsection (5)(b)(I) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.

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

(5) (b) (II) (A) BEFORE JANUARY 1, 2027, a taxpayer may elect to claim a refund pursuant to ~~subparagraph (1) of this paragraph (b)~~ SUBSECTION (5)(b)(I) OF THIS SECTION only if, based on the financial report prepared by the controller in

accordance with section 24-77-106.5, ~~C.R.S.~~, the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.

(B) THIS SUBSECTION (5)(b)(II) IS REPEALED, EFFECTIVE DECEMBER 31, 2031.

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

(7.5) (a) For income tax years commencing on or after January 1, 2021, in lieu of a credit with respect to the income taxes imposed by this article 22, there is allowed a transferable expense amount to each qualified entity that donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38 upon real property the qualified entity owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2). A transferable expense amount shall be treated in all manners as a tax credit for purposes of this section, including provisions governing the amount, valuation, and transfer of a tax credit; except that the transferable expense amount may only be transferred to a transferee to be claimed by the transferee as a credit pursuant to this section. A qualified entity may transfer a transferable expense amount to be claimed as a credit by a transferee pursuant to this section regardless of whether the qualified entity receives value in exchange for the transfer.

(13) ANY TRANSFEREE WHO IS SUBJECT TO THE TAX ON INSURANCE PREMIUMS ESTABLISHED BY SECTIONS 10-3-209, 10-5-111, AND 10-6-128, AND WHO IS THEREFORE EXEMPT FROM THE PAYMENT OF INCOME TAX AND WHO IS OTHERWISE ELIGIBLE TO CLAIM A TAX CREDIT PURSUANT TO THIS SECTION MAY CLAIM THE TAX CREDIT AND CARRY THE TAX CREDIT FORWARD AGAINST THE INSURANCE PREMIUM TAX TO THE SAME EXTENT AS THE TRANSFEREE WOULD HAVE BEEN ABLE TO CLAIM OR CARRY FORWARD THE TAX CREDIT AGAINST INCOME TAX. ALL OTHER PROVISIONS OF THIS SECTION WITH RESPECT TO THE TAX CREDIT, INCLUDING THE AMOUNT AND

ALLOCATION OF THE TAX CREDIT AND THE YEARS FOR WHICH THE TAX CREDIT MAY BE CLAIMED SHALL APPLY TO A TAX CREDIT CLAIMED PURSUANT TO THIS SECTION.

(14) FOR ANY CONSERVATION EASEMENT GRANTED ON OR AFTER JANUARY 1, 2025, THE CONSERVATION EASEMENT MAY INCLUDE A PROVISION PROVIDING THAT IF TECHNOLOGICAL OR LEGAL CHANGES ALLOW AN EXPANDED USE OF WIND AND SOLAR POWER GENERATION, TRANSMISSION, AND STORAGE TO BE COMPATIBLE WITH THE PROTECTION OF CONSERVATION VALUES CONSIDERED AS A WHOLE AND PURSUANT TO SECTION 170(h) OF THE INTERNAL REVENUE CODE AND ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH SECTION, THEN THE HOLDER OF THE CONSERVATION EASEMENT MAY, IN ITS SOLE DISCRETION, APPROVE EXPANDED WIND AND SOLAR POWER GENERATION, TRANSMISSION, OR STORAGE THAT IS COMPATIBLE WITH AND DOES NOT DIMINISH OR IMPAIR CONSERVATION VALUES.

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

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

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

Approved: May 20, 2024