

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

May 2, 2018
Date

Committee on State, Veterans, & Military Affairs.

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

HB18-1291 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

1 Amend reengrossed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **add with amended**
4 **and relocated provisions** article 82 to title 35 as follows:

5 **ARTICLE 82**
6 **Conservation Easements**

7 **35-82-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 FINDS, DETERMINES, AND DECLARES THAT:

9 (a) COLORADO'S CONSERVATION EASEMENT PROGRAM IS AN
10 IMPORTANT PRESERVATION TOOL USED TO BALANCE ECONOMIC NEEDS
11 WITH NATURAL RESOURCES SUCH AS LAND AND WATER PRESERVATION.
12 COLORADO'S CONSERVATION EASEMENT TAX CREDIT AND THE FEDERAL
13 TAX DEDUCTION HAVE ALLOWED MANY FARMERS AND RANCHERS THE
14 OPPORTUNITY TO DONATE THEIR DEVELOPMENT RIGHTS TO PRESERVE A
15 LEGACY OF OPEN SPACES IN COLORADO FOR WILDLIFE, AGRICULTURE, AND
16 RANCHING.

17 (b) CITIZENS THROUGHOUT COLORADO BELIEVE GOOD, SOUND
18 CONSERVATION PRACTICES ARE IMPORTANT TO COLORADO'S QUALITY OF
19 LIFE, AGRICULTURE, AND NATURAL HERITAGE;

20 (c) COLORADO'S CONSERVATION EASEMENT TAX CREDIT PROGRAM
21 WAS DESIGNED TO GIVE LANDOWNERS AN INCENTIVE TO CONSERVE AND
22 PRESERVE THEIR LAND IN A PREDOMINANTLY NATURAL, SCENIC, OR OPEN
23 CONDITION;

24 (d) AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO OVERSEE

1 THE CERTIFICATION OF CONSERVATION EASEMENT HOLDERS AND THE
2 CERTIFICATION OF CONSERVATION EASEMENT TAX CREDITS WILL KEEP A
3 FIREWALL BETWEEN PROFESSIONAL EVALUATION AND PROFESSIONAL
4 DISCIPLINE, WHILE ENSURING THAT THIS PROGRAM ALLOWS LANDOWNERS
5 TO EXERCISE THEIR PRIVATE PROPERTY RIGHTS AND PROTECTING
6 TAXPAYERS FROM THE FRAUD AND ABUSE THAT EXISTED IN THE PROGRAM
7 PRIOR TO 2009;

8 (e) IN RECOGNITION OF THE FRAUD AND ABUSE THAT HAS EXISTED
9 IN THE PROGRAM, IT IS APPROPRIATE TO ALLOW AN EASEMENT TO BE
10 EXTINGUISHED IF THE VALUE OF THE EASEMENT IS REDUCED OR
11 ELIMINATED BY THE STATE IN CONNECTION WITH CLAIMING A TAX CREDIT
12 FOR THE EASEMENT AND THE CREDIT IS DISALLOWED OR ANY AMOUNT
13 ALLOWED IS NOT CLAIMED OR IS REPAID BY A LANDOWNER;

14 (f) AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO
15 ADMINISTER THE CONSERVATION EASEMENT TAX CREDIT PROGRAM WILL:

16 (I) ALLOW THE DEPARTMENT TO CERTIFY CONSERVATION
17 EASEMENT HOLDERS TO IDENTIFY FRAUDULENT OR UNQUALIFIED
18 ORGANIZATIONS AND PREVENT THEM FROM HOLDING CONSERVATION
19 EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED IN THE STATE;

20 (II) ALLOW THE CONSERVATION EASEMENT OVERSIGHT
21 COMMISSION TO ADVISE THE DEPARTMENT OF AGRICULTURE AND THE
22 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR
23 WHICH A TAX CREDIT IS CLAIMED AND TO REVIEW APPLICATIONS FOR
24 CONSERVATION EASEMENT HOLDER CERTIFICATION; AND

25 (III) ENSURE THAT THE DEPARTMENT OF AGRICULTURE AND THE
26 DEPARTMENT OF REVENUE ARE SHARING RELEVANT INFORMATION
27 CONCERNING CONSERVATION EASEMENT APPRAISALS IN ORDER TO ENSURE
28 COMPLIANCE WITH ACCEPTED APPRAISAL PRACTICES AND OTHER
29 PROVISIONS OF LAW.

30 **35-82-102. Definitions.** AS USED IN THIS ARTICLE 82, UNLESS THE
31 CONTEXT OTHERWISE REQUIRES:

32 (1) "COMMISSION" MEANS THE CONSERVATION EASEMENT
33 OVERSIGHT COMMISSION CREATED IN SECTION 35-82-104.

34 (2) "COMMISSIONER" MEANS THE COMMISSIONER OF
35 AGRICULTURE.

36 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

37 **35-82-103. Duties of commissioner.** (1) THE COMMISSIONER IS
38 AUTHORIZED BY THIS SECTION TO EMPLOY SUCH DEPUTIES, CLERKS, AND
39 ASSISTANTS AS ARE NECESSARY TO DISCHARGE THE DUTIES IMPOSED BY
40 THIS ARTICLE 82 AND TO DELEGATE ANY DUTY IMPOSED UPON THE
41 COMMISSIONER BY THIS ARTICLE 82 TO AN EMPLOYEE OF THE DEPARTMENT

1 AS THE COMMISSIONER DEEMS APPROPRIATE.

2 (2) IT IS THE DUTY OF THE DEPARTMENT AND THE COMMISSIONER
3 OF AGRICULTURE, PERSONALLY OR HIS OR HER DESIGNEE, TO AID IN THE
4 ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE 82 AND TO
5 ADMINISTER, IN CONSULTATION WITH THE COMMISSION, THE
6 CERTIFICATION OF CONSERVATION EASEMENT HOLDERS AND ISSUANCE OF
7 TAX CREDIT CERTIFICATES AS PROVIDED IN THIS ARTICLE 82.

8 **35-82-104. Conservation easement oversight commission -**
9 **created - repeal. [Similar to 12-61-725]** (1) THERE IS HEREBY CREATED
10 IN THE DEPARTMENT A CONSERVATION EASEMENT OVERSIGHT
11 COMMISSION. THE COMMISSION SHALL EXERCISE ITS POWERS AND
12 PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF
13 TRANSFERRED THERETO BY A **TYPE 2** TRANSFER, AS DEFINED IN THE
14 "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24.
15 THE COMMISSION CONSISTS OF EIGHT MEMBERS AS FOLLOWS:

16 (a) ONE MEMBER REPRESENTING THE GREAT OUTDOORS
17 COLORADO PROGRAM, APPOINTED BY AND SERVING AS AN ADVISORY,
18 NONVOTING MEMBER AT THE PLEASURE OF THE STATE BOARD OF THE
19 GREAT OUTDOORS COLORADO TRUST FUND ESTABLISHED IN ARTICLE
20 XXVII OF THE STATE CONSTITUTION;

21 (b) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
22 NATURAL RESOURCES, APPOINTED BY AND SERVING AT THE PLEASURE OF
23 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES;

24 (c) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
25 AGRICULTURE, APPOINTED BY AND SERVING AT THE PLEASURE OF THE
26 COMMISSIONER;

27 (d) THREE VOTING MEMBERS APPOINTED BY THE GOVERNOR AS
28 FOLLOWS:

29 (I) TWO VOTING MEMBERS WHO ARE REPRESENTATIVES OF
30 CERTIFIED CONSERVATION EASEMENT HOLDERS; AND

31 (II) ONE VOTING MEMBER WHO IS COMPETENT AND QUALIFIED TO
32 ANALYZE THE CONSERVATION PURPOSE OF CONSERVATION EASEMENTS;
33 AND

34 (e) TWO VOTING MEMBERS OF THE GENERAL PUBLIC, ONE
35 APPOINTED BY THE PRESIDENT OF THE SENATE TO SERVE AT THE PLEASURE
36 OF THE PRESIDENT AND ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF
37 REPRESENTATIVES TO SERVE AT THE PLEASURE OF THE SPEAKER.

38 (2) IN MAKING APPOINTMENTS TO THE COMMISSION, THE
39 GOVERNOR SHALL CONSULT WITH THE THREE MEMBERS OF THE
40 COMMISSION APPOINTED PURSUANT TO SUBSECTIONS (1)(a) TO (1)(c) OF
41 THIS SECTION AND WITH APPROPRIATE ORGANIZATIONS REPRESENTING THE

1 PARTICULAR INTEREST OR AREA OF EXPERTISE THAT THE APPOINTEES IN
2 SUBSECTIONS (1)(d)(I) AND (1)(d)(II) OF THIS SECTION REPRESENT. NOT
3 MORE THAN TWO OF THE GOVERNOR'S APPOINTEES SERVING AT THE SAME
4 TIME SHALL BE FROM THE SAME POLITICAL PARTY. IN MAKING THE INITIAL
5 APPOINTMENTS, THE GOVERNOR SHALL APPOINT ONE MEMBER FOR A TERM
6 OF TWO YEARS. ALL OTHER APPOINTMENTS BY THE GOVERNOR ARE FOR
7 TERMS OF THREE YEARS. NO MEMBER SHALL SERVE MORE THAN TWO
8 CONSECUTIVE TERMS. IN THE EVENT OF A VACANCY BY DEATH,
9 RESIGNATION, REMOVAL, OR OTHERWISE, THE GOVERNOR SHALL APPOINT
10 A MEMBER TO FILL THE UNEXPIRED TERM. THE GOVERNOR MAY REMOVE
11 ANY MEMBER FOR MISCONDUCT, NEGLECT OF DUTY, OR INCOMPETENCE.

12 (3) (a) AT THE REQUEST OF THE DEPARTMENT OR THE
13 DEPARTMENT OF REVENUE, THE COMMISSION SHALL ADVISE THE
14 DEPARTMENT AND THE DEPARTMENT OF REVENUE REGARDING
15 CONSERVATION EASEMENTS FOR WHICH A STATE INCOME TAX CREDIT IS
16 CLAIMED PURSUANT TO SECTION 39-22-522.

17 (b) THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT
18 TAX CREDIT CERTIFICATE APPLICATIONS AND REQUESTS FOR OPTIONAL
19 PRELIMINARY ADVISORY OPINIONS IN ACCORDANCE WITH SECTION
20 35-82-107.

21 (4) THE COMMISSION SHALL MEET AT LEAST QUARTERLY. THE
22 DEPARTMENT SHALL CONVENE THE MEETINGS OF THE COMMISSION AND
23 PROVIDE STAFF SUPPORT AS REQUESTED BY THE COMMISSION. A MAJORITY
24 OF THE VOTING MEMBERS OF THE COMMISSION CONSTITUTES A QUORUM
25 FOR THE TRANSACTION OF ALL BUSINESS, AND ACTIONS OF THE
26 COMMISSION REQUIRE A VOTE OF A MAJORITY OF THE VOTING MEMBERS
27 PRESENT IN FAVOR OF THE ACTION TAKEN. THE COMMISSION MAY
28 DELEGATE TO THE COMMISSIONER THE AUTHORITY TO ACT ON BEHALF OF
29 THE COMMISSION ON OCCASIONS AND IN CIRCUMSTANCES THAT THE
30 COMMISSION DEEMS NECESSARY FOR THE EFFICIENT AND EFFECTIVE
31 ADMINISTRATION AND EXECUTION OF THE COMMISSION'S RESPONSIBILITIES
32 UNDER THIS ARTICLE 82.

33 (5) THE COMMISSION SHALL ESTABLISH A CONFLICT-OF-INTEREST
34 POLICY TO ENSURE THAT ANY MEMBER OF THE COMMISSION IS
35 DISQUALIFIED FROM PERFORMING AN ACT THAT CONFLICTS WITH A
36 PRIVATE PECUNIARY INTEREST OF THE MEMBER OR FROM PARTICIPATING
37 IN THE DELIBERATION OR DECISION-MAKING PROCESS FOR CERTIFICATION
38 FOR AN APPLICANT REPRESENTED BY THE MEMBER.

39 (6) THE COMMISSION SHALL ADVISE AND MAKE
40 RECOMMENDATIONS TO THE COMMISSIONER REGARDING THE
41 CERTIFICATION OF CONSERVATION EASEMENT HOLDERS IN ACCORDANCE

1 WITH SECTION 35-82-105.

2 (7) COMMISSION MEMBERS ARE IMMUNE FROM LIABILITY IN
3 ACCORDANCE WITH THE PROVISIONS OF THE "COLORADO GOVERNMENTAL
4 IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

5 (8) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.
6 PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES
7 SHALL REVIEW THE COMMISSION AS PROVIDED IN SECTION 24-34-104.

8 **35-82-105. Certification of conservation easement holders -**
9 **rules - definition - repeal. [Similar to 12-61-724.]** (1) THE

10 DEPARTMENT SHALL, IN CONSULTATION WITH THE COMMISSION CREATED
11 IN SECTION 35-82-104, ESTABLISH AND ADMINISTER A CERTIFICATION
12 PROGRAM FOR QUALIFIED ORGANIZATIONS UNDER SECTION 170(h) OF THE
13 FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT HOLD
14 CONSERVATION EASEMENTS FOR WHICH A TAX CREDIT IS CLAIMED
15 PURSUANT TO SECTION 39-22-522. THE PURPOSES OF THE PROGRAM ARE
16 TO:

17 (a) ESTABLISH MINIMUM QUALIFICATIONS FOR CERTIFYING
18 ORGANIZATIONS THAT HOLD CONSERVATION EASEMENTS TO ENCOURAGE
19 PROFESSIONALISM AND STABILITY; AND

20 (b) IDENTIFY FRAUDULENT OR UNQUALIFIED APPLICANTS, AS
21 DETERMINED UNDER THE RULES OF THE DEPARTMENT, TO PREVENT THEM
22 FROM BECOMING CERTIFIED BY THE PROGRAM.

23 (2) THE DEPARTMENT SHALL ESTABLISH AND ACCEPT
24 APPLICATIONS FOR CERTIFICATION. THE DEPARTMENT SHALL CONDUCT A
25 REVIEW OF EACH APPLICATION AND CONSIDER THE RECOMMENDATIONS OF
26 THE COMMISSION BEFORE MAKING A FINAL DETERMINATION TO GRANT OR
27 DENY CERTIFICATION. IN REVIEWING AN APPLICATION AND IN GRANTING
28 CERTIFICATION, THE DEPARTMENT AND THE COMMISSION MAY CONSIDER:

29 (a) THE APPLICANT'S PROCESS FOR REVIEWING, SELECTING, AND
30 APPROVING A POTENTIAL CONSERVATION EASEMENT;

31 (b) THE APPLICANT'S STEWARDSHIP PRACTICES AND CAPACITY,
32 INCLUDING THE ABILITY TO MAINTAIN, MONITOR, AND DEFEND THE
33 PURPOSES OF THE EASEMENT;

34 (c) AN AUDIT OF THE APPLICANT'S FINANCIAL RECORDS;

35 (d) THE APPLICANT'S SYSTEM OF GOVERNANCE AND ETHICS
36 REGARDING CONFLICTS OF INTEREST AND TRANSACTIONS WITH RELATED
37 PARTIES AS DESCRIBED IN SECTION 267 (b) OF THE FEDERAL "INTERNAL
38 REVENUE CODE OF 1986", AS AMENDED, DONORS, BOARD MEMBERS, AND
39 INSIDERS. FOR PURPOSES OF THIS SUBSECTION (2)(d), "INSIDERS" MEANS
40 BOARD AND STAFF MEMBERS, SUBSTANTIAL CONTRIBUTORS, PARTIES
41 RELATED TO THOSE ABOVE, THOSE WHO HAVE AN ABILITY TO INFLUENCE

1 DECISIONS OF THE ORGANIZATION, AND THOSE WITH ACCESS TO
2 INFORMATION NOT AVAILABLE TO THE GENERAL PUBLIC.

3 (e) ANY OTHER INFORMATION DEEMED RELEVANT BY THE
4 DEPARTMENT OR THE COMMISSION; AND

5 (f) THE UNIQUE CIRCUMSTANCES OF THE DIFFERENT ENTITIES TO
6 WHICH THIS CERTIFICATION APPLIES AS SET FORTH IN SUBSECTION (4) OF
7 THIS SECTION.

8 (3) AT THE TIME OF SUBMISSION OF AN APPLICATION, AND EACH
9 YEAR THE ENTITY IS CERTIFIED PURSUANT TO THIS SECTION, THE
10 APPLICANT SHALL PAY THE DEPARTMENT A FEE, AS PRESCRIBED BY THE
11 DEPARTMENT, TO COVER THE COSTS OF THE DEPARTMENT AND THE
12 COMMISSION IN ADMINISTERING THE CERTIFICATION PROGRAM FOR
13 ENTITIES THAT HOLD CONSERVATION EASEMENTS FOR WHICH TAX CREDITS
14 ARE CLAIMED PURSUANT TO SECTION 39-22-522. THE DEPARTMENT SHALL
15 HAVE THE AUTHORITY TO ACCEPT AND EXPEND GIFTS, GRANTS, AND
16 DONATIONS FOR THE PURPOSES OF THIS SECTION. THE STATE TREASURER
17 SHALL CREDIT FEES, GIFTS, GRANTS, AND DONATIONS COLLECTED
18 PURSUANT TO THIS SUBSECTION (3) TO THE CONSERVATION CASH FUND
19 CREATED IN SECTION 35-82-108. ON OR BEFORE EACH JANUARY 1, THE
20 DEPARTMENT SHALL CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT
21 OF THE FEE PRESCRIBED BY THE DEPARTMENT PURSUANT TO THIS
22 SUBSECTION (3).

23 (4) THE CERTIFICATION PROGRAM APPLIES TO:

24 (a) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY WITH
25 CONSERVATION VALUES CONSISTING OF RECREATION OR EDUCATION,
26 PROTECTION OF ENVIRONMENTAL SYSTEMS, OR PRESERVATION OF OPEN
27 SPACE;

28 (b) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY FOR
29 HISTORIC PRESERVATION; AND

30 (c) THE STATE AND ANY MUNICIPALITY, COUNTY, CITY AND
31 COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE
32 STATE THAT HOLDS AN EASEMENT.

33 (5) THE CERTIFICATION PROGRAM SHALL CONTAIN A PROVISION
34 ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION OF AN
35 ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
36 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
37 CONSERVATION INDUSTRY.

38 (6) THE COMMISSION SHALL MEET AT LEAST QUARTERLY AND
39 MAKE RECOMMENDATIONS TO THE DEPARTMENT REGARDING THE
40 CERTIFICATION PROGRAM. THE DEPARTMENT IS AUTHORIZED TO
41 DETERMINE WHETHER AN APPLICANT FOR CERTIFICATION POSSESSES THE

1 NECESSARY QUALIFICATIONS FOR CERTIFICATION REQUIRED BY THE RULES
2 ADOPTED BY THE DEPARTMENT. IF THE DEPARTMENT DETERMINES THAT
3 AN APPLICANT DOES NOT POSSESS THE APPLICABLE QUALIFICATIONS FOR
4 CERTIFICATION OR THAT THE APPLICANT HAS VIOLATED ANY PROVISION OF
5 THIS ARTICLE 82, THE RULES PROMULGATED BY THE DEPARTMENT, OR ANY
6 DEPARTMENT ORDER, THE DEPARTMENT MAY DENY THE APPLICANT A
7 CERTIFICATION OR DENY THE RENEWAL OF A CERTIFICATION, AND, IN SUCH
8 INSTANCE, THE DEPARTMENT SHALL PROVIDE THE APPLICANT WITH A
9 STATEMENT IN WRITING SETTING FORTH THE BASIS OF THE DEPARTMENT'S
10 DETERMINATION. THE APPLICANT MAY REQUEST A HEARING ON THE
11 DETERMINATION AS PROVIDED IN SECTION 24-4-104 (9). THE DEPARTMENT
12 SHALL NOTIFY SUCCESSFUL APPLICANTS IN WRITING. AN APPLICANT THAT
13 IS NOT CERTIFIED MAY REAPPLY FOR CERTIFICATION IN ACCORDANCE WITH
14 PROCEDURES ESTABLISHED BY THE DEPARTMENT.

15 (7) THE DEPARTMENT SHALL PROMULGATE RULES TO EFFECTUATE
16 THE DUTIES OF THE COMMISSION PURSUANT TO ARTICLE 4 OF TITLE 24.
17 SUCH RULES SHALL SPECIFICALLY ADDRESS THE FOLLOWING:

18 (a) ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION
19 OF AN ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
20 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
21 CONSERVATION INDUSTRY;

22 (b) A STREAMLINED AND LOWER-COST PROCESS FOR
23 CONSERVATION EASEMENT HOLDERS THAT DO NOT INTEND TO ACCEPT
24 NEW DONATIONS OF CONSERVATION EASEMENTS FOR WHICH TAX CREDITS
25 WOULD BE CLAIMED THAT FOCUSES ON THE HOLDER'S STEWARDSHIP
26 CAPABILITIES;

27 (c) THE FEES CHARGED PURSUANT TO SUBSECTION (3) OF THIS
28 SECTION OR SECTION 35-82-107 (6), SPECIFICALLY ENSURING THAT THE
29 FEES ARE ADEQUATE TO PAY FOR ADMINISTRATIVE COSTS BUT NOT SO
30 HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF CONSERVATION
31 EASEMENTS IN THE STATE; AND

32 (d) THE ADOPTION OF BEST PRACTICES, PROCESSES, AND
33 PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW
34 CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE,
35 PROCESS, OR PROCEDURE DEEMING QUALIFIED CONSERVATION EASEMENT
36 APPRAISALS APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT
37 REVIEWS AS CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT
38 TAX CREDIT.

39 (8) A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE
40 APPLICATION MAY BE SUBMITTED PURSUANT TO SECTION 35-82-107 ONLY
41 IF THE ENTITY HAS BEEN CERTIFIED IN ACCORDANCE WITH THIS SECTION AT

1 THE TIME THE DONATION OF THE EASEMENT IS MADE. THE DEPARTMENT
2 SHALL MAKE INFORMATION AVAILABLE TO THE PUBLIC CONCERNING THE
3 DATE THAT IT COMMENCES ACCEPTING APPLICATIONS FOR ENTITIES THAT
4 HOLD CONSERVATION EASEMENTS AND THE REQUIREMENTS OF THIS
5 SUBSECTION (8).

6 (9) THE DEPARTMENT SHALL MAINTAIN AND UPDATE AN ONLINE
7 LIST, ACCESSIBLE TO THE PUBLIC, OF THE ORGANIZATIONS THAT HAVE
8 APPLIED FOR CERTIFICATION AND WHETHER EACH HAS BEEN CERTIFIED,
9 REJECTED FOR CERTIFICATION, OR HAD ITS CERTIFICATION REVOKED OR
10 SUSPENDED IN ACCORDANCE WITH THIS SECTION.

11 (10) THE DEPARTMENT MAY INVESTIGATE THE ACTIVITIES OF ANY
12 ENTITY THAT IS REQUIRED TO BE CERTIFIED PURSUANT TO THIS SECTION
13 AND TO IMPOSE DISCIPLINE FOR NONCOMPLIANCE, INCLUDING THE
14 SUSPENSION OR REVOCATION OF A CERTIFICATION OR THE IMPOSITION OF
15 FINES. THE DEPARTMENT MAY PROMULGATE RULES IN ACCORDANCE WITH
16 ARTICLE 4 OF TITLE 24 FOR THE CERTIFICATION PROGRAM AND DISCIPLINE
17 AUTHORIZED BY THIS SECTION.

18 (11) THE DEPARTMENT MAY SUBPOENA PERSONS AND DOCUMENTS,
19 WHICH SUBPOENAS MAY BE ENFORCED BY A COURT OF COMPETENT
20 JURISDICTION IF NOT OBEYED, FOR PURPOSES OF CONDUCTING
21 INVESTIGATIONS PURSUANT TO SUBSECTION (10) OF THIS SECTION.

22 (12) NOTHING IN THIS SECTION:

23 (a) AFFECTS ANY TAX CREDIT THAT WAS CLAIMED PURSUANT TO
24 SECTION 39-22-522 BEFORE CERTIFICATION WAS REQUIRED BY THIS
25 SECTION; OR

26 (b) REQUIRES THE CERTIFICATION OF AN ENTITY THAT HOLDS A
27 CONSERVATION EASEMENT FOR WHICH A TAX CREDIT IS NOT CLAIMED
28 PURSUANT TO SECTION 39-22-522.

29 (13) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.
30 PRIOR TO THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES
31 SHALL REVIEW THE CERTIFICATION REQUIREMENT AS PROVIDED FOR IN
32 SECTION 24-34-104.

33 **35-82-106. Conservation easement tax credit certificates -**
34 **rules. [Similar to 12-61-726.]** (1) THE DEPARTMENT SHALL RECEIVE TAX
35 CREDIT CERTIFICATE APPLICATIONS FROM AND ISSUE CERTIFICATES TO
36 LANDOWNERS FOR INCOME TAX CREDITS FOR CONSERVATION EASEMENTS
37 DONATED ON OR AFTER JANUARY 1, 2011, IN ACCORDANCE WITH SECTION
38 39-22-522 (2.5) AND THIS ARTICLE 82. NOTHING IN THIS SECTION
39 RESTRICTS OR LIMITS THE AUTHORITY OF THE DEPARTMENT TO ENFORCE
40 THIS ARTICLE 82. THE DEPARTMENT MAY PROMULGATE RULES IN
41 ACCORDANCE WITH ARTICLE 4 OF TITLE 24 FOR THE ISSUANCE OF THE

1 CERTIFICATES. IN PROMULGATING RULES, THE DEPARTMENT MAY INCLUDE
2 PROVISIONS GOVERNING:

3 (a) THE REVIEW OF THE TAX CREDIT CERTIFICATE APPLICATION
4 PURSUANT TO THIS ARTICLE 82;

5 (b) THE ADMINISTRATION AND FINANCING OF THE CERTIFICATION
6 PROCESS;

7 (c) THE NOTIFICATION TO THE PUBLIC REGARDING THE AGGREGATE
8 AMOUNT OF TAX CREDIT CERTIFICATES THAT HAVE BEEN ISSUED AND THAT
9 ARE ON THE WAIT LIST PURSUANT TO SECTION 39-25-522 (2.5);

10 (d) THE NOTIFICATION TO THE LANDOWNER, THE ENTITY TO WHICH
11 THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE
12 REGARDING THE TAX CREDIT CERTIFICATES ISSUED; AND

13 (e) ANY OTHER MATTERS RELATED TO ADMINISTERING SECTION
14 39-22-522 (2.5) OR THIS ARTICLE 82.

15 (2) THE DEPARTMENT SHALL APPLY THE AMOUNT CLAIMED IN A
16 COMPLETED TAX CREDIT CERTIFICATE APPLICATION AGAINST THE ANNUAL
17 TAX CREDIT LIMIT IN THE ORDER THAT COMPLETED APPLICATIONS ARE
18 RECEIVED. THE DEPARTMENT SHALL APPLY CLAIMED TAX CREDIT
19 AMOUNTS THAT EXCEED THE ANNUAL LIMIT IN ANY YEAR AGAINST THE
20 LIMIT FOR THE NEXT AVAILABLE YEAR AND ISSUE TAX CREDIT
21 CERTIFICATES FOR USE IN THE YEAR IN WHICH THE AMOUNT WAS APPLIED
22 TO THE ANNUAL LIMIT.

23 (3) THE DEPARTMENT SHALL NOT ISSUE TAX CREDIT CERTIFICATES
24 THAT IN AGGREGATE EXCEED THE LIMIT SET FORTH IN SECTION 39-22-522
25 (2.5) DURING A PARTICULAR CALENDAR YEAR.

26 **35-82-107. Conservation easement tax credit certificate**
27 **application process - report - definitions - rules. [Similar to section**
28 **12-61-727.]** (1) FOR PURPOSES OF THIS SECTION:

29 (a) "APPLICATION" MEANS AN APPLICATION FOR A TAX CREDIT
30 CERTIFICATE SUBMITTED PURSUANT TO SECTION 35-82-106 OR THIS
31 SECTION.

32 (b) "CONSERVATION PURPOSE" MEANS CONSERVATION PURPOSE AS
33 DEFINED IN SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE
34 OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED
35 IN CONNECTION WITH SUCH SECTION.

36 (c) "CREDIBILITY" MEANS THE RESULTS ARE WORTHY OF BELIEF
37 AND ARE SUPPORTED BY RELEVANT EVIDENCE AND LOGIC TO THE DEGREE
38 NECESSARY FOR THE INTENDED USE.

39 (d) "DEFICIENCY" MEANS NONCOMPLIANCE WITH A REQUIREMENT
40 FOR OBTAINING A TAX CREDIT CERTIFICATE THAT, UNLESS SUCH
41 NONCOMPLIANCE IS REMEDIED, IS GROUNDS FOR THE DENIAL OF A TAX

1 CREDIT CERTIFICATE APPLICATION SUBMITTED PURSUANT TO THIS
2 SECTION.

3 (e) "LANDOWNER" MEANS THE RECORD OWNER OF THE SURFACE
4 OF THE LAND AND, IF APPLICABLE, OWNER OF THE WATER OR WATER
5 RIGHTS BENEFICIALLY USED THEREON WHO CREATES A CONSERVATION
6 EASEMENT IN GROSS PURSUANT TO SECTION 38-30.5-104.

7 (f) "TAX CREDIT CERTIFICATE" MEANS THE CONSERVATION
8 EASEMENT TAX CREDIT CERTIFICATE ISSUED PURSUANT TO SECTION
9 35-82-106 AND THIS SECTION.

10 (2) (a) THE DEPARTMENT SHALL ESTABLISH AND ADMINISTER A
11 PROCESS BY WHICH A LANDOWNER SEEKING TO CLAIM AN INCOME TAX
12 CREDIT FOR ANY CONSERVATION EASEMENT DONATION MADE ON OR AFTER
13 JANUARY 1, 2014, MUST APPLY FOR A TAX CREDIT CERTIFICATE AS
14 REQUIRED BY SECTION 39-22-522 (2.5) AND (2.7). THE PURPOSE OF THE
15 APPLICATION PROCESS IS TO DETERMINE WHETHER A CONSERVATION
16 EASEMENT DONATION FOR WHICH A TAX CREDIT WILL BE CLAIMED:

17 (I) IS A CONTRIBUTION OF A QUALIFIED REAL PROPERTY INTEREST
18 TO A QUALIFIED ORGANIZATION TO BE USED EXCLUSIVELY FOR A
19 CONSERVATION PURPOSE;

20 (II) IS SUBSTANTIATED WITH A QUALIFIED APPRAISAL PREPARED BY
21 A QUALIFIED APPRAISER IN ACCORDANCE WITH THE UNIFORM STANDARDS
22 OF PROFESSIONAL APPRAISAL PRACTICE; AND

23 (III) COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

24 (b) THE LANDOWNER HAS THE BURDEN OF PROOF REGARDING
25 COMPLIANCE WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS.

26 (3) FOR THE PURPOSE OF REVIEWING APPLICATIONS AND MAKING
27 DETERMINATIONS REGARDING THE ISSUANCE OF TAX CREDIT
28 CERTIFICATES, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT
29 CERTIFICATE TO BE ISSUED:

30 (a) DEPARTMENT STAFF SHALL REVIEW EACH APPLICATION AND
31 ADVISE AND MAKE RECOMMENDATIONS TO THE COMMISSIONER AND THE
32 COMMISSION REGARDING THE APPLICATION;

33 (b) THE COMMISSIONER HAS AUTHORITY AND RESPONSIBILITY TO
34 DETERMINE THE CREDIBILITY OF THE APPRAISAL. IN DETERMINING
35 CREDIBILITY, THE COMMISSIONER SHALL CONSIDER, AT A MINIMUM,
36 COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

37 (I) THE APPRAISAL FOR A CONSERVATION EASEMENT DONATION
38 FOR WHICH A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522
39 IS A QUALIFIED APPRAISAL FROM A QUALIFIED APPRAISER, AS DEFINED IN
40 SECTION 170(f) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
41 AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN

1 CONNECTION WITH SUCH SECTION;

2 (II) THE APPRAISAL CONFORMS WITH THE UNIFORM STANDARDS OF
3 PROFESSIONAL APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL
4 STANDARDS BOARD OF THE APPRAISAL FOUNDATION AND ANY OTHER
5 PROVISION OF LAW;

6 (III) THE APPRAISER HOLDS A VALID LICENSE AS A CERTIFIED
7 GENERAL APPRAISER IN ACCORDANCE WITH PART 7 OF TITLE 12; AND

8 (IV) THE APPRAISER MEETS ANY EDUCATION AND EXPERIENCE
9 REQUIREMENTS ESTABLISHED BY THE BOARD OF REAL ESTATE APPRAISERS
10 IN ACCORDANCE WITH SECTION 12-61-704 (1)(k).

11 (c) THE COMMISSIONER HAS THE AUTHORITY AND RESPONSIBILITY
12 TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF SECTION
13 35-82-105.

14 (d) THE COMMISSION HAS THE AUTHORITY AND RESPONSIBILITY TO
15 DETERMINE WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH
16 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522 IS A
17 QUALIFIED CONSERVATION CONTRIBUTION AS DEFINED IN SECTION 170 (h)
18 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
19 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
20 SECTION.

21 (4) THE DEPARTMENT OF REVENUE IS NOT AUTHORIZED TO
22 DISALLOW A CONSERVATION EASEMENT TAX CREDIT BASED ON ANY
23 REQUIREMENTS THAT ARE UNDER THE JURISDICTION OF THE DEPARTMENT,
24 THE COMMISSIONER, OR THE COMMISSION PURSUANT TO THIS SECTION.

25 (5) A COMPLETE TAX CREDIT CERTIFICATE APPLICATION MUST BE
26 MADE BY THE LANDOWNER TO THE DEPARTMENT AND MUST INCLUDE:

27 (a) A COPY OF THE FINAL CONSERVATION EASEMENT APPRAISAL;
28 (b) A COPY OF THE RECORDED DEED GRANTING THE
29 CONSERVATION EASEMENT;

30 (c) DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE
31 OF THE EASEMENT;

32 (d) ANY OTHER INFORMATION OR DOCUMENTATION THE
33 COMMISSIONER OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL
34 DETERMINATION REGARDING THE APPLICATION; AND

35 (e) THE FEE REQUIRED PURSUANT TO SUBSECTION (6) OF THIS
36 SECTION.

37 (6) A LANDOWNER SUBMITTING AN APPLICATION FOR A TAX
38 CREDIT CERTIFICATE PURSUANT TO THIS SECTION OR AN APPLICATION FOR
39 AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO SUBSECTION
40 (14) OF THIS SECTION SHALL PAY THE DEPARTMENT A FEE AS PRESCRIBED
41 BY THE DEPARTMENT. THE APPLICATION FEE FOR AN OPTIONAL

1 PRELIMINARY ADVISORY OPINION MAY BE A DIFFERENT DOLLAR AMOUNT
2 THAN THE APPLICATION FEE FOR A TAX CREDIT CERTIFICATE. THE FEES
3 MUST BE ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE
4 DEPARTMENT AND THE COMMISSION IN ADMINISTERING THE
5 REQUIREMENTS OF THIS SECTION, BUT NOT SO HIGH AS TO ACT AS A
6 DISINCENTIVE TO THE CREATION OF CONSERVATION EASEMENTS IN THE
7 STATE. THE STATE TREASURER SHALL CREDIT THE FEES COLLECTED
8 PURSUANT TO THIS SUBSECTION (6) TO THE CONSERVATION CASH FUND
9 CREATED IN SECTION 35-82-108. ON OR BEFORE EACH JANUARY 1, THE
10 DEPARTMENT SHALL CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT
11 OF ANY FEES PRESCRIBED BY THE DEPARTMENT PURSUANT TO THIS
12 SUBSECTION (6).

13 (7) (a) IF, DURING THE REVIEW OF AN APPLICATION FOR A TAX
14 CREDIT CERTIFICATE, THE COMMISSIONER OR THE COMMISSION IDENTIFIES
15 ANY POTENTIAL DEFICIENCIES, THE COMMISSIONER OR COMMISSION SHALL
16 DOCUMENT THE POTENTIAL DEFICIENCIES IN A LETTER SENT TO THE
17 LANDOWNER BY FIRST CLASS MAIL. THE DEPARTMENT SHALL SEND
18 LETTERS DOCUMENTING POTENTIAL DEFICIENCIES TO LANDOWNERS IN A
19 TIMELY MANNER SO THAT THE NUMBER OF DAYS BETWEEN THE DATE A
20 COMPLETED APPLICATION IS RECEIVED BY THE DEPARTMENT AND THE
21 MAILING DATE OF THE DEPARTMENT'S LETTER TO THE LANDOWNER DOES
22 NOT EXCEED ONE HUNDRED TWENTY DAYS.

23 (b) THE LANDOWNER HAS SIXTY DAYS AFTER THE MAILING DATE
24 OF THE DEPARTMENT'S LETTER TO ADDRESS THE POTENTIAL DEFICIENCIES
25 IDENTIFIED BY THE COMMISSIONER AND THE COMMISSION AND PROVIDE
26 ADDITIONAL INFORMATION OR DOCUMENTATION THAT THE COMMISSIONER
27 OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL
28 DETERMINATION REGARDING THE APPLICATION.

29 (c) THE COMMISSIONER AND THE COMMISSION HAVE NINETY DAYS
30 AFTER THE DATE OF RECEIPT OF ANY ADDITIONAL INFORMATION OR
31 DOCUMENTATION PROVIDED BY THE LANDOWNER TO REVIEW THE
32 INFORMATION AND DOCUMENTATION AND MAKE A FINAL DETERMINATION
33 REGARDING THE APPLICATION.

34 (d) THE DEADLINES PRESCRIBED BY THIS SUBSECTION (7) MAY BE
35 EXTENDED UPON MUTUAL AGREEMENT BETWEEN THE COMMISSIONER AND
36 THE COMMISSION AND THE LANDOWNER.

37 (8) THE COMMISSIONER OR THE COMMISSION MAY DENY AN
38 APPLICATION IF THE LANDOWNER:

39 (a) HAS NOT DEMONSTRATED TO THE SATISFACTION OF THE
40 COMMISSIONER OR THE COMMISSION THAT THE APPLICATION COMPLIES
41 WITH ANY REQUIREMENT OF THIS ARTICLE 82;

1 (b) DOES NOT PROVIDE THE INFORMATION AND DOCUMENTATION
2 REQUIRED PURSUANT TO THIS ARTICLE 82; OR

3 (c) FAILS TO TIMELY RESPOND TO ANY WRITTEN REQUEST OR
4 NOTICE FROM THE DEPARTMENT, THE COMMISSIONER, OR THE
5 COMMISSION.

6 (9) IF THE COMMISSIONER REASONABLY BELIEVES THAT ANY
7 APPRAISAL SUBMITTED IN ACCORDANCE WITH THIS SECTION IS NOT
8 CREDIBLE, THE COMMISSIONER, AFTER CONSULTATION WITH THE
9 COMMISSION, MAY REQUEST THAT THE LANDOWNER, AT THE
10 LANDOWNER'S EXPENSE, OBTAIN EITHER A SECOND APPRAISAL OR A
11 REVIEW OF THE APPRAISAL SUBMITTED WITH THE APPLICATION FROM AN
12 APPRAISER WHO MEETS THE REQUIREMENTS OF PART 7 OF TITLE 12 AND IS
13 IN GOOD STANDING WITH THE BOARD BEFORE MAKING A FINAL
14 DETERMINATION REGARDING THE APPLICATION.

15 (10) IF THE COMMISSIONER AND THE COMMISSION DO NOT
16 IDENTIFY ANY POTENTIAL DEFICIENCIES WITH AN APPLICATION, THE
17 COMMISSIONER AND THE COMMISSION SHALL APPROVE THE APPLICATION,
18 AND THE DEPARTMENT SHALL ISSUE A TAX CREDIT CERTIFICATE TO THE
19 LANDOWNER PURSUANT TO SECTION 35-82-106 IN A TIMELY MANNER SO
20 THAT THE NUMBER OF DAYS BETWEEN THE DATE A COMPLETED
21 APPLICATION IS RECEIVED BY THE DEPARTMENT AND THE DATE THE TAX
22 CREDIT CERTIFICATE IS ISSUED DOES NOT EXCEED ONE HUNDRED TWENTY
23 DAYS. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE LANDOWNER MAY
24 CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY OTHER APPLICABLE
25 PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

26 (11) (a) IF ALL POTENTIAL DEFICIENCIES THAT HAVE BEEN
27 IDENTIFIED ARE SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
28 COMMISSIONER AND THE COMMISSION, THE COMMISSIONER AND THE
29 COMMISSION SHALL APPROVE THE APPLICATION, AND THE DEPARTMENT
30 SHALL ISSUE A TAX CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT
31 TO SECTION 35-85-106. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE
32 LANDOWNER MAY CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY
33 OTHER APPLICABLE PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

34 (b) IF ANY POTENTIAL DEFICIENCIES THAT HAVE BEEN IDENTIFIED
35 ARE NOT SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
36 COMMISSIONER AND THE COMMISSION, THE DEPARTMENT SHALL ISSUE A
37 WRITTEN DENIAL OF THE APPLICATION TO THE LANDOWNER DOCUMENTING
38 THOSE DEFICIENCIES THAT WERE THE SPECIFIC BASIS FOR THE DENIAL. THE
39 DEPARTMENT SHALL DATE THE WRITTEN DENIAL AND SEND IT BY FIRST
40 CLASS MAIL TO THE LANDOWNER AT THE ADDRESS PROVIDED BY THE
41 LANDOWNER ON THE APPLICATION. THE COMMISSIONER MAY ACT ON

1 BEHALF OF THE COMMISSION FOR PURPOSES OF ADMINISTERING THE
2 PROCESS FOR ISSUING APPROVALS AND DENIALS OF APPLICATIONS AND FOR
3 ADMINISTERING SUBSECTION (12) OF THIS SECTION.

4 (12) (a) THE LANDOWNER MAY APPEAL TO THE COMMISSIONER
5 EITHER THE COMMISSIONER'S OR THE COMMISSION'S DENIAL OF AN
6 APPLICATION, IN WRITING, WITHIN THIRTY DAYS AFTER THE ISSUANCE OF
7 THE DENIAL. THIS WRITTEN APPEAL CONSTITUTES A REQUEST FOR AN
8 ADMINISTRATIVE HEARING.

9 (b) IF THE LANDOWNER FAILS TO APPEAL THE DENIAL OF AN
10 APPLICATION WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL,
11 THE DENIAL BECOMES FINAL, AND THE DEPARTMENT SHALL NOT ISSUE A
12 TAX CREDIT CERTIFICATE TO THE LANDOWNER.

13 (c) ADMINISTRATIVE HEARINGS MUST BE CONDUCTED IN
14 ACCORDANCE WITH SECTION 24-4-105. AT THE DISCRETION OF THE
15 COMMISSIONER, HEARINGS MAY BE CONDUCTED BY AN AUTHORIZED
16 REPRESENTATIVE OF THE COMMISSIONER OR THE COMMISSION OR AN
17 ADMINISTRATIVE LAW JUDGE FROM THE OFFICE OF ADMINISTRATIVE
18 COURTS IN THE DEPARTMENT OF PERSONNEL. ALL HEARINGS MUST BE
19 HELD IN THE COUNTY WHERE THE DEPARTMENT IS LOCATED UNLESS THE
20 COMMISSIONER DESIGNATES OTHERWISE. THE DECISION OF THE
21 COMMISSIONER OR THE COMMISSION IS SUBJECT TO JUDICIAL REVIEW BY
22 THE COURT OF APPEALS AND IS SUBJECT TO SECTION 24-4-106.

23 (d) IN CONDUCTING SETTLEMENT DISCUSSIONS WITH A
24 LANDOWNER, THE COMMISSIONER AND THE COMMISSION MAY
25 COMPROMISE ON ANY OF THE DEFICIENCIES IDENTIFIED IN THE
26 APPLICATION AND SUPPORTING DOCUMENTATION, INCLUDING THE DOLLAR
27 AMOUNT OF THE TAX CREDIT CERTIFICATE TO BE ISSUED. THE
28 COMMISSIONER SHALL PLACE ON FILE IN THE DEPARTMENT A RECORD OF
29 ANY COMPROMISE AND THE REASONS FOR THE COMPROMISE.

30 (e) THE COMMISSIONER MAY PROMULGATE RULES PURSUANT TO
31 ARTICLE 4 OF TITLE 24 TO EFFECTUATE THE PURPOSES OF THIS SUBSECTION
32 (12).

33 (13) (a) COMMENCING WITH THE 2014 CALENDAR YEAR, AND FOR
34 EACH CALENDAR YEAR THEREAFTER, THE DEPARTMENT SHALL CREATE A
35 REPORT, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC, CONTAINING
36 THE FOLLOWING AGGREGATE INFORMATION:

37 (I) THE TOTAL NUMBER OF TAX CREDIT CERTIFICATE APPLICATIONS
38 RECEIVED, APPROVED, AND DENIED IN ACCORDANCE WITH THIS SECTION,
39 ALONG WITH AVERAGE PROCESSING TIMES;

40 (II) FOR APPLICATIONS APPROVED IN ACCORDANCE WITH THIS
41 SECTION:

1 (A) THE TOTAL ACREAGE UNDER EASEMENT SUMMARIZED BY THE
2 ALLOWABLE CONSERVATION PURPOSES AS DEFINED IN SECTION 170 (h) OF
3 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
4 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
5 SECTION;

6 (B) THE TOTAL APPRAISED VALUE OF THE EASEMENTS;

7 (C) THE TOTAL DONATED VALUE OF THE EASEMENTS; AND

8 (D) THE TOTAL DOLLAR AMOUNT OF TAX CREDIT CERTIFICATES
9 ISSUED.

10 (b) THE DEPARTMENT MAY INCLUDE ADDITIONAL
11 EASEMENT-SPECIFIC INFORMATION IN THE PUBLIC REPORT THAT,
12 NOTWITHSTANDING THIS ARTICLE 82 OR ANY OTHER LAW TO THE
13 CONTRARY, WOULD OTHERWISE BE PUBLICLY AVAILABLE.

14 (c) THE COMMISSIONER IS AUTHORIZED TO SHARE PUBLICLY
15 AVAILABLE INFORMATION REGARDING CONSERVATION EASEMENTS WITH
16 A THIRD-PARTY VENDOR FOR THE PURPOSE OF DEVELOPING AND
17 MAINTAINING A REGISTRY OF CONSERVATION EASEMENTS IN THE STATE
18 WITH A CORRESPONDING MAP DISPLAYING THE BOUNDARIES OF EACH
19 EASEMENT IN THE STATE RELATIVE TO COUNTY BOUNDARIES AND OTHER
20 RELEVANT MAPPING INFORMATION. PRIOR TO SHARING THE INFORMATION,
21 THE COMMISSIONER SHALL CONSULT WITH THE COMMISSION REGARDING
22 THE APPROPRIATE TYPES OF INFORMATION AND THE METHODS USED FOR
23 COLLECTING THE INFORMATION. THE DEPARTMENT OF REGULATORY
24 AGENCIES SHALL ANNUALLY REPORT ON THE INFORMATION CONTAINED IN
25 THE REGISTRY AS A PART OF ITS PRESENTATION TO ITS COMMITTEE OF
26 REFERENCE AT A HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF
27 THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND
28 TRANSPARENT (SMART) GOVERNMENT ACT". THE INFORMATION TO BE
29 SHARED SHALL INCLUDE THE FOLLOWING:

30 (I) ANY DEEDS, CONTRACTS, OR OTHER INSTRUMENTS CREATING,
31 ASSIGNING, TRANSFERRING, CONVEYING, TERMINATING, OR OTHERWISE
32 AFFECTING THE EASEMENT, INCLUDING THE RECEPTION NUMBERS ON ALL
33 INSTRUMENTS;

34 (II) THE LOCATION AND ACREAGE OF EACH EASEMENT,
35 DELINEATED BY COUNTY;

36 (III) THE NAMES AND ADDRESSES OF ANY GRANTORS OF THE
37 EASEMENT AND THE NAMES AND ADDRESSES OF ANY HOLDERS OF THE
38 EASEMENT SINCE ITS CREATION;

39 (IV) WHETHER THE HOLDER OF THE EASEMENT IS A CERTIFIED
40 ORGANIZATION PURSUANT TO SECTION 12-61-724;

41 (V) THE CONSERVATION PURPOSES OF THE EASEMENT; AND

1 (VI) THE AMOUNT OF ANY INCOME TAX CREDITS CLAIMED OR
2 ALLOWED FOR THE EASEMENT AND THE AMOUNT OF ANY SUCH CREDITS
3 THAT WERE TRANSFERRED TO ANOTHER TAXPAYER PURSUANT TO SECTION
4 39-22-522.

5 (14) (a) IN ADDITION TO THE TAX CREDIT CERTIFICATE
6 APPLICATION PROCESS SET FORTH IN THIS SECTION, A LANDOWNER MAY
7 SUBMIT A PROPOSED CONSERVATION EASEMENT DONATION TO THE
8 DEPARTMENT TO OBTAIN AN OPTIONAL PRELIMINARY ADVISORY OPINION
9 REGARDING THE TRANSACTION. THE OPINION MAY ADDRESS THE
10 PROPOSED DEED OF CONSERVATION EASEMENT, APPRAISAL,
11 CONSERVATION PURPOSE, OR OTHER RELEVANT ASPECT OF THE
12 TRANSACTION.

13 (b) THE DEPARTMENT, THE COMMISSIONER, AND THE COMMISSION
14 SHALL REVIEW THE INFORMATION AND DOCUMENTATION PROVIDED IN A
15 MANNER CONSISTENT WITH THE SCOPE OF THEIR AUTHORITY AND
16 RESPONSIBILITIES FOR REVIEWING TAX CREDIT CERTIFICATE APPLICATIONS
17 AS OUTLINED IN SUBSECTION (3) OF THIS SECTION AND ISSUE EITHER A
18 FAVORABLE OPINION OR A NONFAVORABLE OPINION.

19 (c) THE COMMISSIONER OR THE COMMISSION MAY REQUEST THAT
20 THE LANDOWNER SUBMIT ADDITIONAL INFORMATION OR DOCUMENTATION
21 THAT THE COMMISSIONER OR THE COMMISSION DEEMS NECESSARY TO
22 COMPLETE THE REVIEW AND ISSUE AN OPINION.

23 (d) A NONFAVORABLE OPINION SHALL SET FORTH ANY POTENTIAL
24 DEFICIENCIES IDENTIFIED BY THE COMMISSIONER OR THE COMMISSION AND
25 THAT FALL WITHIN THE SCOPE OF THE DIRECTOR'S AND THE COMMISSION'S
26 REVIEW OF THE CONSERVATION EASEMENT TRANSACTION. THE
27 PRELIMINARY OPINION IS ADVISORY ONLY AND IS NOT BINDING FOR ANY
28 PURPOSE UPON THE DEPARTMENT, THE COMMISSIONER, THE COMMISSION,
29 OR THE DEPARTMENT OF REVENUE.

30 (15) THE DEPARTMENT MAY PROMULGATE RULES TO EFFECTUATE
31 THE PURPOSE, IMPLEMENTATION, AND ADMINISTRATION OF THIS SECTION
32 PURSUANT TO ARTICLE 4 OF TITLE 24. THE AUTHORITY TO PROMULGATE
33 RULES INCLUDES THE AUTHORITY TO DEFINE FURTHER IN RULE THE
34 ADMINISTRATIVE PROCESSES AND REQUIREMENTS, INCLUDING
35 APPLICATION PROCESSING AND REVIEW TIME FRAMES, FOR OBTAINING AND
36 ISSUING AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO
37 SUBSECTION (14) OF THIS SECTION.

38 (16) NOTWITHSTANDING THE "COLORADO OPEN RECORDS ACT",
39 PART 2 OF ARTICLE 72 OF TITLE 24, THE DEPARTMENT, THE COMMISSIONER,
40 AND THE COMMISSION SHALL DENY THE RIGHT OF PUBLIC INSPECTION OF
41 ANY DOCUMENTATION OR OTHER RECORD RELATED TO INFORMATION

1 OBTAINED AS PART OF AN INDIVIDUAL LANDOWNER'S APPLICATION FOR A
2 TAX CREDIT CERTIFICATE OR AN OPTIONAL PRELIMINARY ADVISORY
3 OPINION PURSUANT TO THE REQUIREMENTS OF THIS SECTION, INCLUDING
4 DOCUMENTATION OR OTHER RECORDS RELATED TO ADMINISTRATIVE
5 HEARINGS AND SETTLEMENT DISCUSSIONS HELD PURSUANT TO SUBSECTION
6 (12) OF THIS SECTION. THE DEPARTMENT, THE COMMISSIONER, AND THE
7 COMMISSION MAY SHARE DOCUMENTATION OR OTHER RECORDS RELATED
8 TO INFORMATION OBTAINED PURSUANT TO THIS SECTION WITH THE
9 DEPARTMENT OF REVENUE.

10 (17) NOTHING IN THIS SECTION AFFECTS ANY TAX CREDIT THAT IS
11 CLAIMED OR USED PURSUANT TO SECTION 39-22-522 FOR CONSERVATION
12 EASEMENT DONATIONS OCCURRING PRIOR TO JANUARY 1, 2014.

13 **35-82-108. Conservation cash fund - repeal.** (1) THERE IS
14 HEREBY CREATED IN THE STATE TREASURY THE CONSERVATION CASH
15 FUND, WHICH CONSISTS OF ANY MONEYS TRANSFERRED PURSUANT TO
16 SECTION 35-82-105 AND 35-82-107 AND ANY GIFTS, GRANTS, AND
17 DONATIONS PROVIDED TO CARRY OUT THE PURPOSES OF THIS ARTICLE 82.
18 ALL MONEY IN THE FUND SHALL BE USED AS PROVIDED IN THIS ARTICLE 82.
19 INTEREST EARNED ON THE FUND SHALL REMAIN IN THE FUND AND SHALL
20 NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY
21 OTHER FUND.

22 (2) ON JULY 1, 2018, THE STATE TREASURER SHALL TRANSFER TO
23 THE CONSERVATION CASH FUND ANY MONEYS IN THE DIVISION OF REAL
24 ESTATE CASH FUND CREATED IN SECTION 12-61-111.5 THAT ARE
25 ATTRIBUTABLE TO ANY FEES, GIFTS, GRANTS, OR DONATIONS CREDITED TO
26 THE DIVISION OF REAL ESTATE CASH FUND IN ACCORDANCE WITH SECTION
27 12-61-724 (3) OR SECTION 12-61-727 THAT ARE IN THE FUND
28 IMMEDIATELY PRIOR TO THE REPEAL OF SECTIONS 12-61-724 AND
29 12-61-727. THIS SUBSECTION (2) IS REPEALED EFFECTIVE JULY 1, 2019.

30 **SECTION 2.** In Colorado Revised Statutes, 12-61-111.5, **repeal**
31 (2)(b)(II)(A) as follows:

32 **12-61-111.5. Fee adjustments - cash fund created - repeal.**
33 (2) (b) (II) (A) ~~On June 30, 2017, the state treasurer shall transfer to the~~
34 ~~division of real estate cash fund all unexpended and unencumbered~~
35 ~~money that remained in the HOA information and resource center cash~~
36 ~~fund created in section 12-61-406.5, the conservation easement holder~~
37 ~~certification fund created in section 12-61-724, the conservation easement~~
38 ~~tax credit certificate review fund created in section 12-61-727, and the~~
39 ~~mortgage company and loan originator licensing cash fund created in~~
40 ~~section 12-61-908 immediately prior to the repeal of those funds.~~

41 **SECTION 3.** In Colorado Revised Statutes, 12-61-702, **repeal** (5)

1 as follows:

2 **12-61-702. Definitions.** As used in this part 7, unless the context
3 otherwise requires:

4 (5) "~~Commission~~" means ~~the conservation easement oversight~~
5 ~~commission created in section 12-61-725 (1).~~

6 **SECTION 4.** In Colorado Revised Statutes, 12-61-704, **amend**
7 (1)(k) as follows:

8 **12-61-704. Powers and duties of the board - rules.** (1) In
9 addition to all other powers and duties imposed upon it by law, the board
10 has the following powers and duties:

11 (k) To establish classroom education and experience requirements
12 for an appraiser who prepares an appraisal for a conservation easement
13 for which a tax credit is claimed pursuant to section 39-22-522. ~~C.R.S.~~
14 The requirements must ensure that appraisers have a sufficient amount of
15 training and expertise to accurately prepare appraisals that comply with
16 the uniform standards of professional appraisal practice and any other
17 provision of law related to the appraisal of conservation easements for
18 which a tax credit is claimed. A tax credit certificate for a conservation
19 easement shall not be given in accordance with ~~sections 12-61-726 and~~
20 ~~12-61-727~~ 35-82-106 AND 35-82-107 unless the appraiser who prepared
21 the appraisal of the easement met all requirements established in
22 accordance with this ~~paragraph (k)~~ SUBSECTION (1)(k) in effect at the time
23 the ~~appraisal was completed~~ ASSIGNMENT IS PERFORMED.

24 **SECTION 5.** In Colorado Revised Statutes, 39-21-113, **amend**
25 (17) as follows:

26 **39-21-113. Reports and returns - rule.** (17) Notwithstanding
27 any other provision of this section, the executive director may require that
28 such detailed information regarding a claim for a credit for the donation
29 of a conservation easement in gross pursuant to section 39-22-522 and
30 any appraisal submitted in support of the credit claimed be given to the
31 ~~division of real estate in the department of regulatory agencies~~
32 DEPARTMENT OF AGRICULTURE and the conservation easement oversight
33 commission created pursuant to ~~section 12-61-725 (1), C.R.S.,~~ SECTION
34 35-82-104 as the executive director determines is necessary in the
35 performance of the department's functions relating to the credit. The
36 executive director may provide copies of any appraisal and may file a
37 complaint regarding any appraisal as authorized pursuant to section
38 39-22-522 (3.3). Notwithstanding ~~the provisions of part 2 of article 72 of~~
39 title 24, ~~C.R.S.,~~ in order to protect the confidential financial information
40 of a taxpayer, the executive director shall deny the right to inspect any
41 information or appraisal required in accordance with ~~the provisions of~~

1 this subsection (17).

2 **SECTION 6.** In Colorado Revised Statutes, 39-22-522, **amend**
3 (2)(b), (2.5), (2.7), (3)(f) introductory portion, (3.5)(a)(I), (3.5)(a)(II),
4 (3.5)(b), (3.6)(a)(I), (3.6)(b), and (7)(g); **repeal** (8); and **add** (3.5)(c) as
5 follows:

6 **39-22-522. Credit against tax - conservation easements.**

7 (2) (b) For income tax years commencing on or after January 1, 2014,
8 BUT PRIOR TO JANUARY 1, 2019, AND FOR INCOME TAX YEARS
9 COMMENCING ON OR AFTER JANUARY 1, 2022, and, with regard to any
10 credit over the amount of one hundred thousand dollars, for income tax
11 years commencing on or after January 1, 2003, subject to ~~the provisions~~
12 ~~of~~ subsections (4) and (6) of this section, there shall be allowed a credit
13 with respect to the income taxes imposed by this ~~article~~ ARTICLE 22 to
14 each taxpayer who donates during the taxable year all or part of the value
15 of a perpetual conservation easement in gross created pursuant to article
16 30.5 of title 38 ~~C.R.S.~~, upon real property the taxpayer owns to a
17 governmental entity or a charitable organization described in section
18 38-30.5-104 (2). ~~C.R.S.~~ The credit shall only be allowed for a donation
19 that meets the requirements of section 170 of the federal "Internal
20 Revenue Code of 1986", as amended, and any federal regulations
21 promulgated in accordance with such section. The amount of the credit
22 shall not include the value of any portion of an easement on real property
23 located in another state.

24 (2.5) Notwithstanding any other provision of this section and the
25 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 35-82-107, for
26 income tax years commencing on or after January 1, 2011, a taxpayer
27 conveying a conservation easement and claiming a credit pursuant to this
28 section shall, in addition to any other requirements of this section and the
29 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 35-82-107, submit a
30 claim for the credit to the ~~division of real estate in the department of~~
31 ~~regulatory agencies~~ DEPARTMENT OF AGRICULTURE. The ~~division~~
32 DEPARTMENT OF AGRICULTURE shall issue a certificate for the claims
33 received in the order submitted. After certificates have been issued for
34 credits that exceed an aggregate of twenty-two million dollars for all
35 taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars
36 for the 2013 calendar year, and forty-five million dollars for each
37 calendar year thereafter, any claims that exceed the amount allowed for
38 a specified calendar year shall be placed on a wait list in the order
39 submitted and a certificate shall be issued for use of the credit in the next
40 year for which the ~~division~~ DEPARTMENT OF AGRICULTURE has not issued
41 credit certificates in excess of the amounts specified in this subsection

1 (2.5); except that no more than fifteen million dollars in claims shall be
2 placed on the wait list in any given calendar year. The ~~division~~
3 DEPARTMENT OF AGRICULTURE shall not issue credit certificates that
4 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
5 years, thirty-four million dollars for the 2013 calendar year, and forty-five
6 million dollars for each calendar year thereafter. No claim for a credit is
7 allowed for any income tax year commencing on or after January 1, 2011,
8 unless a certificate has been issued by the ~~division~~ DEPARTMENT OF
9 AGRICULTURE. If all other requirements under ~~section 12-61-727, C.R.S.~~,
10 SECTION 35-82-107 and this section are met, the right to claim the credit
11 is vested in the taxpayer at the time a credit certificate is issued.

12 (2.7) Notwithstanding any other provision, for income tax years
13 commencing on or after January 1, 2014, no claim for a credit shall be
14 allowed unless a tax credit certificate is issued by the ~~division of real~~
15 ~~estate~~ DEPARTMENT OF AGRICULTURE in accordance with ~~sections~~
16 ~~12-61-726 and 12-61-727, C.R.S.~~, SECTIONS 35-82-106 AND 35-82-107
17 and the taxpayer files the tax credit certificate with the income tax return
18 filed with the department of revenue.

19 (3) For conservation easements donated prior to January 1, 2014,
20 in order for any taxpayer to qualify for the credit provided for in
21 subsection (2) of this section, the taxpayer shall submit the following in
22 a form approved by the executive director to the department of revenue
23 at the same time as the taxpayer files a return for the taxable year in
24 which the credit is claimed:

25 (f) If the holder of the conservation easement is an organization
26 to which the certification program in ~~section 12-61-724~~ SECTION
27 35-82-105 applies, a sworn affidavit from the holder of the conservation
28 easement in gross that includes the following:

29 (3.5) (a) For conservation easements donated prior to January 1,
30 2014:

31 (I) The executive director shall have the authority, pursuant to
32 subsection (8) of this section, to require additional information from the
33 taxpayer or transferee regarding the appraisal value of the easement, the
34 amount of the credit, and the validity of the credit. In resolving disputes
35 regarding the validity or the amount of a credit allowed pursuant to
36 subsection (2) of this section, including the value of the conservation
37 easement for which the credit is granted, the executive director shall have
38 the authority, for good cause shown and in consultation with the ~~division~~
39 ~~of real estate~~ DEPARTMENT OF AGRICULTURE and the conservation
40 easement oversight commission created in ~~section 12-61-725 (1), C.R.S.~~,
41 SUBSECTION 35-82-104 (1) to review and accept or reject, in whole or in

1 part, the appraisal value of the easement, the amount of the credit, and the
2 validity of the credit based upon the internal revenue code and federal
3 regulations in effect at the time of the donation. If the executive director
4 reasonably believes that the appraisal represents a gross valuation
5 misstatement, receives notice of such a valuation misstatement from the
6 division of real estate, or receives notice from the division of real estate
7 that an enforcement action has been taken by the board of real estate
8 appraisers against the appraiser, the executive director shall have the
9 authority to require the taxpayer to provide a second appraisal at the
10 expense of the taxpayer. The second appraisal shall be conducted by a
11 certified general appraiser in good standing and not affiliated with the
12 first appraiser that meets qualifications established by the division of real
13 estate. In the event the executive director rejects, in whole or in part, the
14 appraisal value of the easement, the amount of the credit, or the validity
15 of the credit, the procedures described in sections 39-21-103, 39-21-104,
16 39-21-104.5, and 39-21-105 shall apply.

17 (II) In consultation with the ~~division of real estate~~ DEPARTMENT
18 OF AGRICULTURE and the conservation easement oversight commission
19 created in ~~section 12-61-725 (1), C.R.S.~~ SECTION 35-82-104 (1), the
20 executive director shall develop and implement a separate process for the
21 review by the department of revenue of gross conservation easements.
22 The review process shall be consistent with the statutory obligations of
23 the ~~division~~ DEPARTMENT OF AGRICULTURE and the commission and shall
24 address gross conservation easements for which the department of
25 revenue has been informed that an audit is being performed by the
26 internal revenue service. The executive director shall share information
27 used in the review of gross conservation easements with the ~~division~~
28 DEPARTMENT OF AGRICULTURE. Notwithstanding part 2 of article 72 of
29 title 24, ~~C.R.S.~~, in order to protect the confidential financial information
30 of a taxpayer, the ~~division~~ DEPARTMENT OF AGRICULTURE and the
31 commission shall deny the right to inspect any information provided by
32 the executive director in accordance with this ~~subparagraph (II)~~
33 SUBSECTION (3.5)(a)(II).

34 (b) For conservation easements donated on or after January 1,
35 2014, and subject to the restrictions of ~~section 12-61-727 (4), C.R.S.~~
36 SECTION 35-82-107 (4), the executive director shall have the authority,
37 pursuant to subsection (8) of this section, to require additional
38 information from the taxpayer or transferee regarding the amount of the
39 credit and the validity of the credit. In resolving disputes regarding the
40 validity or the amount of a credit allowed pursuant to subsection (2) of
41 this section, the executive director shall have the authority, for good cause

1 shown, to review and accept or reject, in whole or in part, the amount of
2 the credit and the validity of the credit based upon the internal revenue
3 code and federal regulations in effect at the time of the donation, except
4 those requirements for which authority is granted to the ~~division of real~~
5 ~~estate, the director of the division of real estate~~ DEPARTMENT OF
6 AGRICULTURE, THE COMMISSIONER OF AGRICULTURE, or the conservation
7 easement oversight commission pursuant to ~~section 12-61-727, C.R.S.~~
8 SECTION 35-82-107.

9 (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
10 FOR ANY CONSERVATION EASEMENT IN GROSS DONATED FOR ANY TAX
11 YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, FOR WHICH A CREDIT
12 CLAIMED PURSUANT TO THIS SECTION WAS SUBSEQUENTLY DENIED IN
13 WHOLE OR IN PART BECAUSE THE APPRAISED VALUE OF THE EASEMENT
14 WAS DETERMINED BY THE STATE TO BE TOO HIGH, THE TAXPAYER MAY
15 ELECT IN ANY SUBSEQUENT TAX YEAR TO AMEND THE RETURN FOR SUCH
16 TAX YEAR AND NOT CLAIM THE CREDIT. UPON AMENDING A RETURN AND
17 REPAYING TO THE STATE THE AMOUNT, IF ANY, ALLOWED BY THE STATE
18 AND CLAIMED BY THE TAXPAYER FOR SUCH TAX YEAR, THE TAXPAYER
19 SHALL BE ENTITLED TO REPAYMENT FROM THE STATE OF THE FULL
20 AMOUNT OF ANY INTEREST OR PENALTIES PAID BY OR ON BEHALF OF THE
21 TAXPAYER TO THE STATE IN CONNECTION WITH THE DENIAL OF THE
22 ORIGINAL CLAIM FOR THE CREDIT.

23 (3.6) For conservation easements donated on or after January 1,
24 2014, in order for any taxpayer to qualify for the credit provided for in
25 subsection (2) of this section, the taxpayer must submit the following in
26 a form, approved by the executive director, to the department of revenue
27 at the same time as the taxpayer files a return for the taxable year in
28 which the credit is claimed:

29 (a) (I) A tax credit certificate issued under ~~section 12-61-727,~~
30 ~~C.R.S.~~ SECTION 35-82-107; and

31 (b) Notwithstanding any other provisions of law, the executive
32 director retains the authority to administer all issues related to the claim
33 or use of a tax credit for the donation of a conservation easement that are
34 not granted to the ~~director of the division of real estate~~ DEPARTMENT OF
35 AGRICULTURE, THE COMMISSIONER OF AGRICULTURE, or the conservation
36 easement oversight commission under ~~section 12-61-727, C.R.S.~~ SECTION
37 35-82-107.

38 (7) For income tax years commencing on or after January 1, 2000,
39 a taxpayer may transfer all or a portion of a tax credit granted pursuant to
40 subsection (2) of this section to another taxpayer for such other taxpayer,
41 as transferee, to apply as a credit against the taxes imposed by this article

1 subject to the following limitations:

2 (g) A transferee of a tax credit shall purchase the credit prior to
3 the due date imposed by this article, ~~not~~ including any extensions, for
4 filing the transferee's income tax return;

5 ~~(8) On or before August 1, 2011, the conservation easement~~
6 ~~oversight commission created in section 12-61-725 (1), C.R.S., shall~~
7 ~~review conservation easements for which a tax credit is claimed pursuant~~
8 ~~to sections 39-22-522 (3.5)(a) and 12-61-725 (3), C.R.S., and for which~~
9 ~~a notice of deficiency, notice of rejection of refund claim, or notice of~~
10 ~~disallowance issued on or before May 1, 2011, but for which a final~~
11 ~~determination has not been issued before May 19, 2011, and for which the~~
12 ~~commission has not already reviewed the credit. For each conservation~~
13 ~~easement tax credit claim so reviewed, the commission shall issue an~~
14 ~~initial recommendation to the executive director on whether each credit~~
15 ~~claimed by a taxpayer who is eligible to waive a hearing and appeal a~~
16 ~~notice of deficiency, notice of rejection of refund claim, or notice of~~
17 ~~disallowance may be denied or accepted. No other information shall be~~
18 ~~required of the commission on or before such date.~~

19 **SECTION 7.** In Colorado Revised Statutes, **add** 29-20-110 as
20 follows:

21 **29-20-110. Conservation easements - public hearing.** (1) ON
22 AND AFTER THE EFFECTIVE DATE OF THIS SECTION, PRIOR TO CREATING,
23 MODIFYING THE TERMS OF, OR TRANSFERRING A CONSERVATION
24 EASEMENT IN GROSS PURSUANT TO ARTICLE 30.5 OF TITLE 38, THE
25 GOVERNING BODY OF A LOCAL GOVERNMENT WITHIN WHICH THE
26 PROPERTY IS LOCATED SHALL HOLD A PUBLIC HEARING REGARDING THE
27 CREATION, MODIFICATION, OR TRANSFER OF THE EASEMENT AS PROVIDED
28 IN THIS SECTION. IF THE PROPERTY IS LOCATED ENTIRELY WITHIN THE
29 UNINCORPORATED PORTION OF ONE OR MORE COUNTIES, THE BOARD OF
30 COUNTY COMMISSIONERS OF THE COUNTY WITH THE GREATEST PORTION
31 OF THE PROPERTY SHALL HOLD THE HEARING. IF THE PROPERTY IS
32 LOCATED IN WHOLE OR IN PART WITHIN ONE OR MORE MUNICIPALITIES, THE
33 GOVERNING BODY OF THE MUNICIPALITY WITH THE GREATEST PORTION OF
34 THE PROPERTY SHALL HOLD THE HEARING.

35 (2) AT LEAST FOURTEEN DAYS' NOTICE OF THE TIME AND PLACE OF
36 A HEARING REQUIRED BY THIS SECTION SHALL BE GIVEN BY AT LEAST ONE
37 PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE
38 LOCAL GOVERNMENT. THE NOTICE SHALL DISCLOSE THE LOCATION,
39 ACREAGE, NAME OF THE GRANTOR, NAME OF THE HOLDER, AND
40 CONSERVATION PURPOSES OF THE CONSERVATION EASEMENT AND SPECIFY
41 THE AMOUNT OF ANY PUBLIC MONEY USED OR TAX CREDITS THAT WILL BE

1 CLAIMED IN CONNECTION WITH THE EASEMENT. THE GRANTOR AND
2 HOLDER OF THE CONSERVATION EASEMENT SHALL BE ALLOWED TO
3 PRESENT INFORMATION ABOUT THE CONSERVATION EASEMENT AND PUBLIC
4 TESTIMONY SHALL BE ALLOWED AT THE HEARING. THE PURPOSE OF THE
5 HEARING IS TO PROVIDE PUBLIC NOTICE REGARDING THE EASEMENT, AND
6 THE GOVERNING BODY OF THE LOCAL GOVERNMENT NEED NOT TAKE ANY
7 SPECIFIC ACTION WITH RESPECT TO THE PROPOSED CREATION,
8 MODIFICATION, OR TRANSFER. IF A LOCAL GOVERNMENT HAS AN EXISTING
9 APPROVAL PROCESS FOR CONSERVATION EASEMENTS, THE HEARING
10 REQUIRED BY THIS SECTION MAY BE CONDUCTED IN CONJUNCTION WITH
11 ANY OTHER HEARING REQUIRED BY PROCESS AS LONG AS THE HEARING
12 OTHERWISE MEETS THE REQUIREMENTS OF THIS SECTION.

13 **SECTION 8.** In Colorado Revised Statutes, **amend** 38-30.5-107
14 as follows:

15 **38-30.5-107. Release - termination.** (1) Conservation easements
16 in gross may, in whole or in part, be released, terminated, extinguished,
17 or abandoned by merger with the underlying fee interest in the servient
18 land or water rights or in any other manner in which easements may be
19 lawfully terminated, released, extinguished, or abandoned. FOR
20 EASEMENTS CREATED ON OR AFTER JANUARY 1, 2019, IF A CONSERVATION
21 EASEMENT IS ORPHANED OR NEGLECTED, THE LANDOWNER MAY PETITION
22 THE DISTRICT COURT OF THE COUNTY IN WHICH THE PROPERTY IS SITUATED
23 TO REQUEST A TRANSFER OF THE EASEMENT TO ANOTHER HOLDER OR FOR
24 AN ORDER THAT THE ABANDONMENT OR NEGLECT OF THE CONSERVATION
25 EASEMENT HAS RESULTED IN CIRCUMSTANCES WHICH MAKE THE
26 CONTINUED USE OF THE PROPERTY FOR CONSERVATION PURPOSES
27 IMPOSSIBLE OR IMPRACTICABLE. THE PETITION TO THE DISTRICT COURT
28 SHALL ALSO BE SERVED ON THE ATTORNEY GENERAL AND THE ATTORNEY
29 GENERAL SHALL BE ENTITLED TO BE HEARD.

30 (2) IN ADDITION TO THE METHODS SET FORTH IN SUBSECTION (1)
31 OF THIS SECTION, A COURT EXERCISING ITS EQUITABLE JURISDICTION MAY
32 TERMINATE A CONSERVATION EASEMENT IN GROSS CREATED FOR THE
33 PURPOSE OF CLAIMING A STATE INCOME TAX CREDIT PURSUANT TO
34 SECTION 39-22-522, IF:

35 (a) THE STATE HAS REJECTED THE CLAIM FOR THE CREDIT OR THE
36 TAXPAYER HAS ELECTED NOT TO CLAIM THE CREDIT PURSUANT TO SECTION
37 39-22-522 (5)(c);

38 (b) THE EASEMENT HAS BEEN APPRAISED TO HAVE NO VALUE OR
39 NO MORE THAN A NOMINAL DOLLAR VALUE; AND

40 (c) THE HOLDER OF THE EASEMENT EITHER PROVIDED NO
41 COMPENSATION FOR THE EASEMENT OR HAS BEEN REIMBURSED IN WHOLE

1 FOR ANY COMPENSATION PROVIDED.

2 **SECTION 9.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (14)(a)(II); and **add** (26)(a)(VIII) and (26)(a)(IX) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (14) (a) The following agencies, functions, or both,
7 are scheduled for repeal on July 1, 2018:

8 (II) ~~The conservation easement oversight commission created in~~
9 ~~section 12-61-725, C.R.S.;~~

10 (26) (a) The following agencies, functions, or both, are scheduled
11 for repeal on September 1, 2025:

12 (VIII) THE CONSERVATION EASEMENT OVERSIGHT COMMISSION
13 CREATED IN SECTION 35-82-104; AND

14 (IX) THE CERTIFICATION OF CONSERVATION EASEMENT HOLDERS
15 BY THE CONSERVATION EASEMENT OVERSIGHT COMMISSION AS PROVIDED
16 FOR IN SECTION 35-82-106.

17 **SECTION 10. Repeal of relocated provisions in this act.** In
18 Colorado Revised Statutes, **repeal** 12-61-724, 12-61-725, 12-61-726, and
19 12-61-727.

20 **SECTION 12. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in
28 November 2018 and, in such case, will take effect on the date of the
29 official declaration of the vote thereon by the governor."

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