

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0394.01 Gregg Fraser x4325

HOUSE BILL 18-1291

HOUSE SPONSORSHIP

Winter and Thurlow,

SENATE SPONSORSHIP

Sonnenberg,

House Committees

Transportation & Energy
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE CONSERVATION EASEMENT**
102 **OVERSIGHT COMMISSION, AND, IN CONNECTION THEREWITH,**
103 **IMPLEMENTING THE RECOMMENDATIONS OF THE 2017 SUNSET**
104 **REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.**

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/>.)

Sunset Process - House Transportation and Energy Committee. The bill implements the recommendations of the department of regulatory agencies in its sunset review of the conservation easement

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.

oversight commission by extending the repeal date of the commission for 7 years until 2025 (*Recommendation 2*). The bill modifies the composition of the commission and reduces the number of members on the commission from in 7 to 5 members in accordance with *Recommendation 3*; except that it retains the current member representing the great outdoors Colorado program and adds one member of the general public rather than two.

The commission is currently a **type 2** entity, which means its powers, duties, and functions belong to the executive director of the department of regulatory agencies. The bill changes the commission to a **type 1** entity, allowing the commission to exercise its powers, duties, and functions independently.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 11 to article
3 61 of title 12 as follows:

4 **PART 11**

5 **CONSERVATION EASEMENTS**

6 **12-61-1101. Legislative declaration.** (1) **THE GENERAL**
7 **ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:**

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

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

19 (c) **COLORADO'S CONSERVATION EASEMENT TAX CREDIT PROGRAM**

1 WAS DESIGNED TO GIVE LANDOWNERS AN INCENTIVE TO CONSERVE AND
2 PRESERVE THEIR LAND IN A PREDOMINANTLY NATURAL, SCENIC, OR OPEN
3 CONDITION;

4 (d) CREATING A DIVISION OF CONSERVATION WITHIN THE
5 DEPARTMENT OF REGULATORY AGENCIES WILL KEEP A FIREWALL BETWEEN
6 PROFESSIONAL EVALUATION AND PROFESSIONAL DISCIPLINE, WHILE
7 CREATING A DIVISION TO ENSURE THIS PROGRAM ALLOWS LANDOWNERS
8 TO EXERCISE THEIR PRIVATE PROPERTY RIGHTS WHILE PROTECTING
9 TAXPAYERS FROM THE FRAUD AND ABUSE THAT EXISTED IN THE PROGRAM
10 PRIOR TO 2009;

11 (e) ESTABLISHING THE DIVISION OF CONSERVATION TO ADMINISTER
12 THE CONSERVATION EASEMENT TAX CREDIT PROGRAM WILL:

13 (I) ALLOW THE DIVISION TO CONTINUE TO CERTIFY CONSERVATION
14 EASEMENT HOLDERS TO IDENTIFY FRAUDULENT OR UNQUALIFIED
15 ORGANIZATIONS AND PREVENT THEM FROM HOLDING CONSERVATION
16 EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED IN THE STATE;

17 (II) ALLOW THE CONSERVATION EASEMENT OVERSIGHT
18 COMMISSION TO ADVISE THE DIVISION OF CONSERVATION AND THE
19 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR
20 WHICH A TAX CREDIT IS CLAIMED AND TO REVIEW APPLICATIONS FOR
21 CONSERVATION EASEMENT HOLDER CERTIFICATION; AND

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

27 **12-61-1102. Division of conservation - director. (1) THE**

1 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES IS
2 AUTHORIZED BY THIS SECTION TO EMPLOY, SUBJECT TO THE PROVISIONS
3 OF THE STATE PERSONNEL SYSTEM LAWS OF THE STATE, A DIRECTOR OF
4 THE DIVISION OF CONSERVATION, REFERRED TO IN THIS PART 11 AS THE
5 "DIVISION", WHO IN TURN SHALL EMPLOY SUCH DEPUTIES, CLERKS, AND
6 ASSISTANTS AS ARE NECESSARY TO DISCHARGE THE DUTIES IMPOSED BY
7 THIS PART 11. THE DIVISION OF CONSERVATION, WHICH IS A DIVISION IN
8 THE DEPARTMENT OF REGULATORY AGENCIES, AND THE DIRECTOR OF THE
9 DIVISION SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND
10 FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF
11 THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.

12 (2) IT IS THE DUTY OF THE DIRECTOR, PERSONALLY OR HIS OR HER
13 DESIGNEE, TO AID IN THE ADMINISTRATION AND ENFORCEMENT OF THIS
14 PART 11 AND TO ADMINISTER, IN CONSULTATION WITH THE CONSERVATION
15 EASEMENT OVERSIGHT COMMISSION, THE CERTIFICATION OF
16 CONSERVATION EASEMENT HOLDERS AND ISSUANCE OF TAX CREDIT
17 CERTIFICATES AS PROVIDED IN THIS PART 11.

18 **12-61-1103. Conservation easement oversight commission -**
19 **created - repeal.** (1) THERE IS HEREBY CREATED IN THE DIVISION A
20 CONSERVATION EASEMENT OVERSIGHT COMMISSION. THE COMMISSION
21 SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS
22 UNDER THE DIVISION AS IF TRANSFERRED THERETO BY A **TYPE 2** TRANSFER,
23 AS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968",
24 ARTICLE 1 OF TITLE 24. THE COMMISSION CONSISTS OF EIGHT MEMBERS AS
25 FOLLOWS:

26 (a) ONE MEMBER REPRESENTING THE GREAT OUTDOORS
27 COLORADO PROGRAM, APPOINTED BY AND SERVING AS AN ADVISORY,

1 NONVOTING MEMBER AT THE PLEASURE OF THE STATE BOARD OF THE
2 GREAT OUTDOORS COLORADO TRUST FUND ESTABLISHED IN ARTICLE
3 XXVII OF THE STATE CONSTITUTION;

4 (b) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
5 NATURAL RESOURCES, APPOINTED BY AND SERVING AT THE PLEASURE OF
6 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES;

7 (c) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
8 AGRICULTURE, APPOINTED BY AND SERVING AT THE PLEASURE OF THE
9 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AND

10 (d) FIVE VOTING MEMBERS APPOINTED BY THE GOVERNOR AS
11 FOLLOWS:

12 (I) TWO VOTING REPRESENTATIVES OF CERTIFIED CONSERVATION
13 EASEMENT HOLDERS;

14 (II) A VOTING INDIVIDUAL WHO IS COMPETENT AND QUALIFIED TO
15 ANALYZE THE CONSERVATION PURPOSE OF CONSERVATION EASEMENTS;
16 AND

17 (III) TWO VOTING MEMBERS OF THE GENERAL PUBLIC.

18 (2) IN MAKING APPOINTMENTS TO THE COMMISSION, THE
19 GOVERNOR SHALL CONSULT WITH THE THREE MEMBERS OF THE
20 COMMISSION APPOINTED PURSUANT TO SUBSECTIONS (1)(a) THROUGH
21 (1)(c) OF THIS SECTION AND WITH APPROPRIATE ORGANIZATIONS
22 REPRESENTING THE PARTICULAR INTEREST OR AREA OF EXPERTISE THAT
23 THE APPOINTEES IN SUBSECTIONS (1)(d)(I) AND (1)(d)(II) OF THIS SECTION
24 REPRESENT. NOT MORE THAN THREE OF THE GOVERNOR'S APPOINTEES
25 SERVING AT THE SAME TIME SHALL BE FROM THE SAME POLITICAL PARTY.
26 IN MAKING THE INITIAL APPOINTMENTS, THE GOVERNOR SHALL APPOINT
27 THREE MEMBERS FOR TERMS OF TWO YEARS. ALL OTHER APPOINTMENTS

1 BY THE GOVERNOR ARE FOR TERMS OF THREE YEARS. NO MEMBER SHALL
2 SERVE MORE THAN TWO CONSECUTIVE TERMS. IN THE EVENT OF A
3 VACANCY BY DEATH, RESIGNATION, REMOVAL, OR OTHERWISE, THE
4 GOVERNOR SHALL APPOINT A MEMBER TO FILL THE UNEXPIRED TERM. THE
5 GOVERNOR MAY REMOVE ANY MEMBER FOR MISCONDUCT, NEGLECT OF
6 DUTY, OR INCOMPETENCE.

7 (3) (a) AT THE REQUEST OF THE DIVISION OR THE DEPARTMENT OF
8 REVENUE, THE COMMISSION SHALL ADVISE THE DIVISION AND THE
9 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR
10 WHICH A STATE INCOME TAX CREDIT IS CLAIMED PURSUANT TO SECTION
11 39-22-522.

12 (b) THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT
13 TAX CREDIT CERTIFICATE APPLICATIONS AND REQUESTS FOR OPTIONAL
14 PRELIMINARY ADVISORY OPINIONS IN ACCORDANCE WITH SECTION
15 12-61-1106.

16 (4) THE COMMISSION SHALL MEET AT LEAST QUARTERLY. THE
17 DIVISION SHALL CONVENE THE MEETINGS OF THE COMMISSION AND
18 PROVIDE STAFF SUPPORT AS REQUESTED BY THE COMMISSION. A MAJORITY
19 OF THE VOTING MEMBERS OF THE COMMISSION CONSTITUTES A QUORUM
20 FOR THE TRANSACTION OF ALL BUSINESS, AND ACTIONS OF THE
21 COMMISSION REQUIRE A VOTE OF A MAJORITY OF THE VOTING MEMBERS
22 PRESENT IN FAVOR OF THE ACTION TAKEN. THE COMMISSION MAY
23 DELEGATE TO THE DIRECTOR THE AUTHORITY TO ACT ON BEHALF OF THE
24 COMMISSION ON OCCASIONS AND IN CIRCUMSTANCES THAT THE
25 COMMISSION DEEMS NECESSARY FOR THE EFFICIENT AND EFFECTIVE
26 ADMINISTRATION AND EXECUTION OF THE COMMISSION'S RESPONSIBILITIES
27 UNDER THIS PART 11.

1 (5) THE COMMISSION SHALL ESTABLISH A CONFLICT-OF-INTEREST
2 POLICY TO ENSURE THAT ANY MEMBER OF THE COMMISSION IS
3 DISQUALIFIED FROM PERFORMING AN ACT THAT CONFLICTS WITH A
4 PRIVATE PECUNIARY INTEREST OF THE MEMBER OR FROM PARTICIPATING
5 IN THE DELIBERATION OR DECISION-MAKING PROCESS FOR CERTIFICATION
6 FOR AN APPLICANT REPRESENTED BY THE MEMBER.

7 (6) THE COMMISSION SHALL ADVISE AND MAKE
8 RECOMMENDATIONS TO THE DIRECTOR REGARDING THE CERTIFICATION OF
9 CONSERVATION EASEMENT HOLDERS IN ACCORDANCE WITH SECTION
10 12-61-1104.

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

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

17 **12-61-1104. Certification of conservation easement holders -**
18 **rules - definition - repeal.** (1) THE DIVISION SHALL, IN CONSULTATION
19 WITH THE COMMISSION CREATED IN SECTION 12-61-1103, ESTABLISH AND
20 ADMINISTER A CERTIFICATION PROGRAM FOR QUALIFIED ORGANIZATIONS
21 UNDER SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF
22 1986", AS AMENDED, THAT HOLD CONSERVATION EASEMENTS FOR WHICH
23 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522. THE
24 PURPOSES OF THE PROGRAM ARE TO:

25 (a) ESTABLISH MINIMUM QUALIFICATIONS FOR CERTIFYING
26 ORGANIZATIONS THAT HOLD CONSERVATION EASEMENTS TO ENCOURAGE
27 PROFESSIONALISM AND STABILITY; AND

1 (b) IDENTIFY FRAUDULENT OR UNQUALIFIED APPLICANTS, AS
2 DETERMINED UNDER THE RULES OF THE DIVISION, TO PREVENT THEM FROM
3 BECOMING CERTIFIED BY THE PROGRAM.

4 (2) THE DIVISION SHALL ESTABLISH AND ACCEPT APPLICATIONS
5 FOR CERTIFICATION. THE DIVISION SHALL CONDUCT A REVIEW OF EACH
6 APPLICATION AND CONSIDER THE RECOMMENDATIONS OF THE COMMISSION
7 BEFORE MAKING A FINAL DETERMINATION TO GRANT OR DENY
8 CERTIFICATION. IN REVIEWING AN APPLICATION AND IN GRANTING
9 CERTIFICATION, THE DIVISION AND THE COMMISSION MAY CONSIDER:

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

12 (b) THE APPLICANT'S STEWARDSHIP PRACTICES AND CAPACITY,
13 INCLUDING THE ABILITY TO MAINTAIN, MONITOR, AND DEFEND THE
14 PURPOSES OF THE EASEMENT;

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

16 (d) THE APPLICANT'S SYSTEM OF GOVERNANCE AND ETHICS
17 REGARDING CONFLICTS OF INTEREST AND TRANSACTIONS WITH RELATED
18 PARTIES AS DESCRIBED IN SECTION 267 (b) OF THE FEDERAL "INTERNAL
19 REVENUE CODE OF 1986", AS AMENDED, DONORS, BOARD MEMBERS, AND
20 INSIDERS. FOR PURPOSES OF THIS SUBSECTION (2)(d), "INSIDERS" MEANS
21 BOARD AND STAFF MEMBERS, SUBSTANTIAL CONTRIBUTORS, PARTIES
22 RELATED TO THOSE ABOVE, THOSE WHO HAVE AN ABILITY TO INFLUENCE
23 DECISIONS OF THE ORGANIZATION, AND THOSE WITH ACCESS TO
24 INFORMATION NOT AVAILABLE TO THE GENERAL PUBLIC.

25 (e) ANY OTHER INFORMATION DEEMED RELEVANT BY THE DIVISION
26 OR THE COMMISSION; AND

27 (f) THE UNIQUE CIRCUMSTANCES OF THE DIFFERENT ENTITIES TO

1 WHICH THIS CERTIFICATION APPLIES AS SET FORTH IN SUBSECTION (4) OF
2 THIS SECTION.

3 (3) AT THE TIME OF SUBMISSION OF AN APPLICATION, AND EACH
4 YEAR THE ENTITY IS CERTIFIED PURSUANT TO THIS SECTION, THE
5 APPLICANT SHALL PAY THE DIVISION A FEE, AS PRESCRIBED BY THE
6 DIVISION, TO COVER THE COSTS OF THE DIVISION AND THE COMMISSION IN
7 ADMINISTERING THE CERTIFICATION PROGRAM FOR ENTITIES THAT HOLD
8 CONSERVATION EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED
9 PURSUANT TO SECTION 39-22-522. THE DIVISION SHALL HAVE THE
10 AUTHORITY TO ACCEPT AND EXPEND GIFTS, GRANTS, AND DONATIONS FOR
11 THE PURPOSES OF THIS SECTION. THE STATE TREASURER SHALL CREDIT
12 FEES, GIFTS, GRANTS, AND DONATIONS COLLECTED PURSUANT TO THIS
13 SUBSECTION (3) TO THE CONSERVATION CASH FUND CREATED IN SECTION
14 12-61-1107. ON OR BEFORE EACH JANUARY 1, THE DIVISION SHALL
15 CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT OF THE FEE
16 PRESCRIBED BY THE DIVISION PURSUANT TO THIS SUBSECTION (3).

17 (4) THE CERTIFICATION PROGRAM APPLIES TO:

18 (a) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY WITH
19 CONSERVATION VALUES CONSISTING OF RECREATION OR EDUCATION,
20 PROTECTION OF ENVIRONMENTAL SYSTEMS, OR PRESERVATION OF OPEN
21 SPACE;

22 (b) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY FOR
23 HISTORIC PRESERVATION; AND

24 (c) THE STATE AND ANY MUNICIPALITY, COUNTY, CITY AND
25 COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE
26 STATE THAT HOLDS AN EASEMENT.

27 (5) THE CERTIFICATION PROGRAM SHALL CONTAIN A PROVISION

1 ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION OF AN
2 ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
3 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
4 CONSERVATION INDUSTRY.

5 (6) THE COMMISSION SHALL MEET AT LEAST QUARTERLY AND
6 MAKE RECOMMENDATIONS TO THE DIVISION REGARDING THE
7 CERTIFICATION PROGRAM. THE DIVISION IS AUTHORIZED TO DETERMINE
8 WHETHER AN APPLICANT FOR CERTIFICATION POSSESSES THE NECESSARY
9 QUALIFICATIONS FOR CERTIFICATION REQUIRED BY THE RULES ADOPTED
10 BY THE DIVISION. IF THE DIVISION DETERMINES THAT AN APPLICANT DOES
11 NOT POSSESS THE APPLICABLE QUALIFICATIONS FOR CERTIFICATION OR
12 THAT THE APPLICANT HAS VIOLATED ANY PROVISION OF THIS PART 11, THE
13 RULES PROMULGATED BY THE DIVISION, OR ANY DIVISION ORDER, THE
14 DIVISION MAY DENY THE APPLICANT A CERTIFICATION OR DENY THE
15 RENEWAL OF A CERTIFICATION, AND, IN SUCH INSTANCE, THE DIVISION
16 SHALL PROVIDE THE APPLICANT WITH A STATEMENT IN WRITING SETTING
17 FORTH THE BASIS OF THE DIVISION'S DETERMINATION. THE APPLICANT MAY
18 REQUEST A HEARING ON THE DETERMINATION AS PROVIDED IN SECTION
19 24-4-104 (9). THE DIVISION SHALL NOTIFY SUCCESSFUL APPLICANTS IN
20 WRITING. AN APPLICANT THAT IS NOT CERTIFIED MAY REAPPLY FOR
21 CERTIFICATION IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE
22 DIVISION.

23 (7) THE DIVISION SHALL PROMULGATE RULES TO EFFECTUATE THE
24 DUTIES OF THE COMMISSION PURSUANT TO ARTICLE 4 OF TITLE 24. SUCH
25 RULES SHALL SPECIFICALLY ADDRESS THE FOLLOWING:

26 (a) ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION
27 OF AN ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND

1 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
2 CONSERVATION INDUSTRY;

3 (b) A STREAMLINED AND LOWER-COST PROCESS FOR
4 CONSERVATION EASEMENT HOLDERS THAT DO NOT INTEND TO ACCEPT
5 NEW DONATIONS OF CONSERVATION EASEMENTS FOR WHICH TAX CREDITS
6 WOULD BE CLAIMED THAT FOCUSES ON THE HOLDER'S STEWARDSHIP
7 CAPABILITIES;

8 (c) THE FEES CHARGED PURSUANT TO SUBSECTION (3) OF THIS
9 SECTION OR SECTION 12-61-1106 (6), SPECIFICALLY ENSURING THAT THE
10 FEES ARE ADEQUATE TO PAY FOR ADMINISTRATIVE COSTS BUT NOT SO
11 HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF CONSERVATION
12 EASEMENTS IN THE STATE; AND

13 (d) THE ADOPTION OF BEST PRACTICES, PROCESSES, AND
14 PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW
15 CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE,
16 PROCESS, OR PROCEDURE DEEMING QUALIFIED CONSERVATION EASEMENT
17 APPRAISALS APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT
18 REVIEWS AS CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT
19 TAX CREDIT.

20 (8) A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE
21 APPLICATION MAY BE SUBMITTED PURSUANT TO SECTION 12-61-1106
22 ONLY IF THE ENTITY HAS BEEN CERTIFIED IN ACCORDANCE WITH THIS
23 SECTION AT THE TIME THE DONATION OF THE EASEMENT IS MADE. THE
24 DIVISION SHALL MAKE INFORMATION AVAILABLE TO THE PUBLIC
25 CONCERNING THE DATE THAT IT COMMENCES ACCEPTING APPLICATIONS
26 FOR ENTITIES THAT HOLD CONSERVATION EASEMENTS AND THE
27 REQUIREMENTS OF THIS SUBSECTION (8).

1 (9) THE DIVISION SHALL MAINTAIN AND UPDATE AN ONLINE LIST,
2 ACCESSIBLE TO THE PUBLIC, OF THE ORGANIZATIONS THAT HAVE APPLIED
3 FOR CERTIFICATION AND WHETHER EACH HAS BEEN CERTIFIED, REJECTED
4 FOR CERTIFICATION, OR HAD ITS CERTIFICATION REVOKED OR SUSPENDED
5 IN ACCORDANCE WITH THIS SECTION.

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

13 (11) THE DIVISION MAY SUBPOENA PERSONS AND DOCUMENTS,
14 WHICH SUBPOENAS MAY BE ENFORCED BY A COURT OF COMPETENT
15 JURISDICTION IF NOT OBEYED, FOR PURPOSES OF CONDUCTING
16 INVESTIGATIONS PURSUANT TO SUBSECTION (10) OF THIS SECTION.

17 (12) NOTHING IN THIS SECTION:

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

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

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

1 **12-61-1105. Conservation easement tax credit certificates -**

2 **rules.** (1) THE DIVISION SHALL RECEIVE TAX CREDIT CERTIFICATE
3 APPLICATIONS FROM AND ISSUE CERTIFICATES TO LANDOWNERS FOR
4 INCOME TAX CREDITS FOR CONSERVATION EASEMENTS DONATED ON OR
5 AFTER JANUARY 1, 2011, IN ACCORDANCE WITH SECTION 39-22-522 (2.5)
6 AND THIS PART 11. NOTHING IN THIS SECTION RESTRICTS OR LIMITS THE
7 AUTHORITY OF THE DIVISION TO ENFORCE THIS PART 11. THE DIVISION
8 MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24
9 FOR THE ISSUANCE OF THE CERTIFICATES. IN PROMULGATING RULES, THE
10 DIVISION MAY INCLUDE PROVISIONS GOVERNING:

11 (a) THE REVIEW OF THE TAX CREDIT CERTIFICATE APPLICATION
12 PURSUANT TO THIS PART 11;

13 (b) THE ADMINISTRATION AND FINANCING OF THE CERTIFICATION
14 PROCESS;

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

18 (d) THE NOTIFICATION TO THE LANDOWNER, THE ENTITY TO WHICH
19 THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE
20 REGARDING THE TAX CREDIT CERTIFICATES ISSUED; AND

21 (e) ANY OTHER MATTERS RELATED TO ADMINISTERING SECTION
22 39-22-522 (2.5) OR THIS PART 11.

23 (2) THE DIVISION SHALL APPLY THE AMOUNT CLAIMED IN A
24 COMPLETED TAX CREDIT CERTIFICATE APPLICATION AGAINST THE ANNUAL
25 TAX CREDIT LIMIT IN THE ORDER THAT COMPLETED APPLICATIONS ARE
26 RECEIVED. THE DIVISION SHALL APPLY CLAIMED TAX CREDIT AMOUNTS
27 THAT EXCEED THE ANNUAL LIMIT IN ANY YEAR AGAINST THE LIMIT FOR

1 THE NEXT AVAILABLE YEAR AND ISSUE TAX CREDIT CERTIFICATES FOR USE
2 IN THE YEAR IN WHICH THE AMOUNT WAS APPLIED TO THE ANNUAL LIMIT.

3 (3) THE DIVISION SHALL NOT ISSUE TAX CREDIT CERTIFICATES
4 THAT IN AGGREGATE EXCEED THE LIMIT SET FORTH IN SECTION 39-22-522
5 (2.5) DURING A PARTICULAR CALENDAR YEAR.

6 **12-61-1106. Conservation easement tax credit certificate**
7 **application process - definitions - rules.** (1) FOR PURPOSES OF THIS
8 SECTION:

9 (a) "APPLICATION" MEANS AN APPLICATION FOR A TAX CREDIT
10 CERTIFICATE SUBMITTED PURSUANT TO SECTION 12-61-1105 OR THIS
11 SECTION.

12 (b) "CONSERVATION PURPOSE" MEANS CONSERVATION PURPOSE AS
13 DEFINED IN SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE
14 OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED
15 IN CONNECTION WITH SUCH SECTION.

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

19 (d) "DEFICIENCY" MEANS NONCOMPLIANCE WITH A REQUIREMENT
20 FOR OBTAINING A TAX CREDIT CERTIFICATE THAT, UNLESS SUCH
21 NONCOMPLIANCE IS REMEDIED, IS GROUNDS FOR THE DENIAL OF A TAX
22 CREDIT CERTIFICATE APPLICATION SUBMITTED PURSUANT TO THIS
23 SECTION.

24 (e) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF
25 CONSERVATION OR HIS OR HER DESIGNEE.

26 (f) "LANDOWNER" MEANS THE RECORD OWNER OF THE SURFACE OF
27 THE LAND AND, IF APPLICABLE, OWNER OF THE WATER OR WATER RIGHTS

1 BENEFICIALLY USED THEREON WHO CREATES A CONSERVATION EASEMENT
2 IN GROSS PURSUANT TO SECTION 38-30.5-104.

3 (g) "TAX CREDIT CERTIFICATE" MEANS THE CONSERVATION
4 EASEMENT TAX CREDIT CERTIFICATE ISSUED PURSUANT TO SECTION
5 12-61-1105 AND THIS SECTION.

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

13 (I) IS A CONTRIBUTION OF A QUALIFIED REAL PROPERTY INTEREST
14 TO A QUALIFIED ORGANIZATION TO BE USED EXCLUSIVELY FOR A
15 CONSERVATION PURPOSE;

16 (II) IS SUBSTANTIATED WITH A QUALIFIED APPRAISAL PREPARED BY
17 A QUALIFIED APPRAISER IN ACCORDANCE WITH THE UNIFORM STANDARDS
18 OF PROFESSIONAL APPRAISAL PRACTICE; AND

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

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

22 (3) FOR THE PURPOSE OF REVIEWING APPLICATIONS AND MAKING
23 DETERMINATIONS REGARDING THE ISSUANCE OF TAX CREDIT
24 CERTIFICATES, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT
25 CERTIFICATE TO BE ISSUED:

26 (a) DIVISION STAFF SHALL REVIEW EACH APPLICATION AND ADVISE
27 AND MAKE RECOMMENDATIONS TO THE DIRECTOR AND THE COMMISSION

1 REGARDING THE APPLICATION;

2 (b) THE DIRECTOR HAS AUTHORITY AND RESPONSIBILITY TO
3 DETERMINE THE CREDIBILITY OF THE APPRAISAL. IN DETERMINING
4 CREDIBILITY, THE DIRECTOR SHALL CONSIDER, AT A MINIMUM,
5 COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

6 (I) THE APPRAISAL FOR A CONSERVATION EASEMENT DONATION
7 FOR WHICH A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522
8 IS A QUALIFIED APPRAISAL FROM A QUALIFIED APPRAISER, AS DEFINED IN
9 SECTION 170 (f) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
10 AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN
11 CONNECTION WITH SUCH SECTION;

12 (II) THE APPRAISAL CONFORMS WITH THE UNIFORM STANDARDS OF
13 PROFESSIONAL APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL
14 STANDARDS BOARD OF THE APPRAISAL FOUNDATION AND ANY OTHER
15 PROVISION OF LAW;

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

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

21 (c) THE DIRECTOR HAS THE AUTHORITY AND RESPONSIBILITY TO
22 DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF SECTION
23 12-61-1104.

24 (d) THE COMMISSION HAS THE AUTHORITY AND RESPONSIBILITY TO
25 DETERMINE WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH
26 A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522 IS A
27 QUALIFIED CONSERVATION CONTRIBUTION AS DEFINED IN SECTION 170 (h)

1 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
2 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
3 SECTION.

4 (4) THE DEPARTMENT OF REVENUE IS NOT AUTHORIZED TO
5 DISALLOW A CONSERVATION EASEMENT TAX CREDIT BASED ON ANY
6 REQUIREMENTS THAT ARE UNDER THE JURISDICTION OF THE DIVISION, THE
7 DIRECTOR, OR THE COMMISSION PURSUANT TO THIS SECTION.

8 (5) A COMPLETE TAX CREDIT CERTIFICATE APPLICATION MUST BE
9 MADE BY THE LANDOWNER TO THE DIVISION AND MUST INCLUDE:

10 (a) A COPY OF THE FINAL CONSERVATION EASEMENT APPRAISAL;

11 (b) A COPY OF THE RECORDED DEED GRANTING THE
12 CONSERVATION EASEMENT;

13 (c) DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE
14 OF THE EASEMENT;

15 (d) ANY OTHER INFORMATION OR DOCUMENTATION THE DIRECTOR
16 OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL
17 DETERMINATION REGARDING THE APPLICATION; AND

18 (e) THE FEE REQUIRED PURSUANT TO SUBSECTION (6) OF THIS
19 SECTION.

20 (6) A LANDOWNER SUBMITTING AN APPLICATION FOR A TAX
21 CREDIT CERTIFICATE PURSUANT TO THIS SECTION OR AN APPLICATION FOR
22 AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO SUBSECTION
23 (14) OF THIS SECTION SHALL PAY THE DIVISION A FEE AS PRESCRIBED BY
24 THE DIVISION. THE APPLICATION FEE FOR AN OPTIONAL PRELIMINARY
25 ADVISORY OPINION MAY BE A DIFFERENT DOLLAR AMOUNT THAN THE
26 APPLICATION FEE FOR A TAX CREDIT CERTIFICATE. THE FEES MUST BE
27 ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE DIVISION AND

1 THE COMMISSION IN ADMINISTERING THE REQUIREMENTS OF THIS SECTION,
2 BUT NOT SO HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF
3 CONSERVATION EASEMENTS IN THE STATE. THE STATE TREASURER SHALL
4 CREDIT THE FEES COLLECTED PURSUANT TO THIS SUBSECTION (6) TO THE
5 CONSERVATION CASH FUND CREATED IN SECTION 12-61-1107. ON OR
6 BEFORE JANUARY 1, 2014, AND ON OR BEFORE EACH JANUARY 1
7 THEREAFTER, THE DIVISION SHALL CERTIFY TO THE GENERAL ASSEMBLY
8 THE AMOUNT OF ANY FEES PRESCRIBED BY THE DIVISION PURSUANT TO
9 THIS SUBSECTION (6).

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

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

26 (c) THE DIRECTOR AND THE COMMISSION HAVE NINETY DAYS
27 AFTER THE DATE OF RECEIPT OF ANY ADDITIONAL INFORMATION OR

1 DOCUMENTATION PROVIDED BY THE LANDOWNER TO REVIEW THE
2 INFORMATION AND DOCUMENTATION AND MAKE A FINAL DETERMINATION
3 REGARDING THE APPLICATION.

4 (d) THE DEADLINES PRESCRIBED BY THIS SUBSECTION (7) MAY BE
5 EXTENDED UPON MUTUAL AGREEMENT BETWEEN THE DIRECTOR AND THE
6 COMMISSION AND THE LANDOWNER.

7 (8) THE DIRECTOR OR THE COMMISSION MAY DENY AN
8 APPLICATION IF THE LANDOWNER:

9 (a) HAS NOT DEMONSTRATED TO THE SATISFACTION OF THE
10 DIRECTOR OR THE COMMISSION THAT THE APPLICATION COMPLIES WITH
11 ANY REQUIREMENT OF THIS PART 11;

12 (b) DOES NOT PROVIDE THE INFORMATION AND DOCUMENTATION
13 REQUIRED PURSUANT TO THIS PART 11; OR

14 (c) FAILS TO TIMELY RESPOND TO ANY WRITTEN REQUEST OR
15 NOTICE FROM THE DIVISION, THE DIRECTOR, OR THE COMMISSION.

16 (9) IF THE DIRECTOR REASONABLY BELIEVES THAT ANY APPRAISAL
17 SUBMITTED IN ACCORDANCE WITH THIS SECTION IS NOT CREDIBLE, THE
18 DIRECTOR, AFTER CONSULTATION WITH THE COMMISSION, MAY REQUEST
19 THAT THE LANDOWNER, AT THE LANDOWNER'S EXPENSE, OBTAIN EITHER
20 A SECOND APPRAISAL OR A REVIEW OF THE APPRAISAL SUBMITTED WITH
21 THE APPLICATION FROM AN APPRAISER WHO MEETS THE REQUIREMENTS OF
22 PART 7 OF THIS TITLE 12 AND IS IN GOOD STANDING WITH THE BOARD
23 BEFORE MAKING A FINAL DETERMINATION REGARDING THE APPLICATION.

24 (10) IF THE DIRECTOR AND THE COMMISSION DO NOT IDENTIFY ANY
25 POTENTIAL DEFICIENCIES WITH AN APPLICATION, THE DIRECTOR AND THE
26 COMMISSION SHALL APPROVE THE APPLICATION, AND THE DIVISION SHALL
27 ISSUE A TAX CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT TO

1 SECTION 12-61-1105 IN A TIMELY MANNER SO THAT THE NUMBER OF DAYS
2 BETWEEN THE DATE A COMPLETED APPLICATION IS RECEIVED BY THE
3 DIVISION AND THE DATE THE TAX CREDIT CERTIFICATE IS ISSUED DOES NOT
4 EXCEED ONE HUNDRED TWENTY DAYS. ONCE A TAX CREDIT CERTIFICATE
5 IS ISSUED, THE LANDOWNER MAY CLAIM AND USE THE TAX CREDIT SUBJECT
6 TO ANY OTHER APPLICABLE PROCEDURES AND REQUIREMENTS UNDER
7 TITLE 39.

8 (11) (a) IF ALL POTENTIAL DEFICIENCIES THAT HAVE BEEN
9 IDENTIFIED ARE SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
10 DIRECTOR AND THE COMMISSION, THE DIRECTOR AND THE COMMISSION
11 SHALL APPROVE THE APPLICATION, AND THE DIVISION SHALL ISSUE A TAX
12 CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT TO SECTION
13 12-61-1105. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE LANDOWNER
14 MAY CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY OTHER APPLICABLE
15 PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

16 (b) IF ANY POTENTIAL DEFICIENCIES THAT HAVE BEEN IDENTIFIED
17 ARE NOT SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
18 DIRECTOR AND THE COMMISSION, THE DIVISION SHALL ISSUE A WRITTEN
19 DENIAL OF THE APPLICATION TO THE LANDOWNER DOCUMENTING THOSE
20 DEFICIENCIES THAT WERE THE SPECIFIC BASIS FOR THE DENIAL. THE
21 DIVISION SHALL DATE THE WRITTEN DENIAL AND SEND IT BY FIRST CLASS
22 MAIL TO THE LANDOWNER AT THE ADDRESS PROVIDED BY THE
23 LANDOWNER ON THE APPLICATION. THE DIRECTOR MAY ACT ON BEHALF OF
24 THE COMMISSION FOR PURPOSES OF ADMINISTERING THE PROCESS FOR
25 ISSUING APPROVALS AND DENIALS OF APPLICATIONS AND FOR
26 ADMINISTERING SUBSECTION (12) OF THIS SECTION.

27 (12) (a) THE LANDOWNER MAY APPEAL TO THE DIRECTOR EITHER

1 THE DIRECTOR'S OR THE COMMISSION'S DENIAL OF AN APPLICATION, IN
2 WRITING, WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL. THIS
3 WRITTEN APPEAL CONSTITUTES A REQUEST FOR AN ADMINISTRATIVE
4 HEARING.

5 (b) IF THE LANDOWNER FAILS TO APPEAL THE DENIAL OF AN
6 APPLICATION WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL,
7 THE DENIAL BECOMES FINAL, AND THE DIVISION SHALL NOT ISSUE A TAX
8 CREDIT CERTIFICATE TO THE LANDOWNER.

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

19 (d) IN CONDUCTING SETTLEMENT DISCUSSIONS WITH A
20 LANDOWNER, THE DIRECTOR AND THE COMMISSION MAY COMPROMISE ON
21 ANY OF THE DEFICIENCIES IDENTIFIED IN THE APPLICATION AND
22 SUPPORTING DOCUMENTATION, INCLUDING THE DOLLAR AMOUNT OF THE
23 TAX CREDIT CERTIFICATE TO BE ISSUED. THE DIRECTOR SHALL PLACE ON
24 FILE IN THE DIVISION A RECORD OF ANY COMPROMISE AND THE REASONS
25 FOR THE COMPROMISE.

26 (e) THE DIRECTOR MAY PROMULGATE RULES PURSUANT TO
27 ARTICLE 4 OF TITLE 24 TO EFFECTUATE THE PURPOSES OF THIS SUBSECTION

1 (12).

2 (13) (a) COMMENCING WITH THE 2014 CALENDAR YEAR, AND FOR
3 EACH CALENDAR YEAR THEREAFTER, THE DIVISION SHALL CREATE A
4 REPORT, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC, CONTAINING
5 THE FOLLOWING AGGREGATE INFORMATION:

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

9 (II) FOR APPLICATIONS APPROVED IN ACCORDANCE WITH THIS
10 SECTION:

11 (A) THE TOTAL ACREAGE UNDER EASEMENT SUMMARIZED BY THE
12 ALLOWABLE CONSERVATION PURPOSES AS DEFINED IN SECTION 170 (h) OF
13 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND
14 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
15 SECTION;

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

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

18 (D) THE TOTAL DOLLAR AMOUNT OF TAX CREDIT CERTIFICATES
19 ISSUED.

20 (b) THE DIVISION MAY INCLUDE ADDITIONAL EASEMENT-SPECIFIC
21 INFORMATION IN THE PUBLIC REPORT THAT, NOTWITHSTANDING THE
22 PROVISIONS OF THIS PART 11 OR ANY OTHER LAW TO THE CONTRARY,
23 WOULD OTHERWISE BE PUBLICLY AVAILABLE.

24 (14) (a) IN ADDITION TO THE TAX CREDIT CERTIFICATE
25 APPLICATION PROCESS SET FORTH IN THIS SECTION, A LANDOWNER MAY
26 SUBMIT A PROPOSED CONSERVATION EASEMENT DONATION TO THE
27 DIVISION TO OBTAIN AN OPTIONAL PRELIMINARY ADVISORY OPINION

1 REGARDING THE TRANSACTION. THE OPINION MAY ADDRESS THE
2 PROPOSED DEED OF CONSERVATION EASEMENT, APPRAISAL,
3 CONSERVATION PURPOSE, OR OTHER RELEVANT ASPECT OF THE
4 TRANSACTION.

5 (b) THE DIVISION, THE DIRECTOR, AND THE COMMISSION SHALL
6 REVIEW THE INFORMATION AND DOCUMENTATION PROVIDED IN A MANNER
7 CONSISTENT WITH THE SCOPE OF THEIR AUTHORITY AND RESPONSIBILITIES
8 FOR REVIEWING TAX CREDIT CERTIFICATE APPLICATIONS AS OUTLINED IN
9 SUBSECTION (3) OF THIS SECTION AND ISSUE EITHER A FAVORABLE OPINION
10 OR A NONFAVORABLE OPINION.

11 (c) THE DIRECTOR OR THE COMMISSION MAY REQUEST THAT THE
12 LANDOWNER SUBMIT ADDITIONAL INFORMATION OR DOCUMENTATION
13 THAT THE DIRECTOR OR THE COMMISSION DEEMS NECESSARY TO
14 COMPLETE THE REVIEW AND ISSUE AN OPINION.

15 (d) A NONFAVORABLE OPINION SHALL SET FORTH ANY POTENTIAL
16 DEFICIENCIES IDENTIFIED BY THE DIRECTOR OR THE COMMISSION AND
17 THAT FALL WITHIN THE SCOPE OF THE DIRECTOR'S AND THE COMMISSION'S
18 REVIEW OF THE CONSERVATION EASEMENT TRANSACTION. THE
19 PRELIMINARY OPINION IS ADVISORY ONLY AND IS NOT BINDING FOR ANY
20 PURPOSE UPON THE DIVISION, THE DIRECTOR, THE COMMISSION, OR THE
21 DEPARTMENT OF REVENUE.

22 (15) THE DIVISION MAY PROMULGATE RULES TO EFFECTUATE THE
23 PURPOSE, IMPLEMENTATION, AND ADMINISTRATION OF THIS SECTION
24 PURSUANT TO ARTICLE 4 OF TITLE 24. THE AUTHORITY TO PROMULGATE
25 RULES INCLUDES THE AUTHORITY TO DEFINE FURTHER IN RULE THE
26 ADMINISTRATIVE PROCESSES AND REQUIREMENTS, INCLUDING
27 APPLICATION PROCESSING AND REVIEW TIME FRAMES, FOR OBTAINING AND

1 ISSUING AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO
2 SUBSECTION (14) OF THIS SECTION.

3 (16) NOTWITHSTANDING THE PROVISIONS OF THE "COLORADO
4 OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, THE DIVISION,
5 THE DIRECTOR, AND THE COMMISSION SHALL DENY THE RIGHT OF PUBLIC
6 INSPECTION OF ANY DOCUMENTATION OR OTHER RECORD RELATED TO
7 INFORMATION OBTAINED AS PART OF AN INDIVIDUAL LANDOWNER'S
8 APPLICATION FOR A TAX CREDIT CERTIFICATE OR AN OPTIONAL
9 PRELIMINARY ADVISORY OPINION PURSUANT TO THE REQUIREMENTS OF
10 THIS SECTION, INCLUDING DOCUMENTATION OR OTHER RECORDS RELATED
11 TO ADMINISTRATIVE HEARINGS AND SETTLEMENT DISCUSSIONS HELD
12 PURSUANT TO SUBSECTION (12) OF THIS SECTION. THE DIVISION, THE
13 DIRECTOR, AND THE COMMISSION MAY SHARE DOCUMENTATION OR OTHER
14 RECORDS RELATED TO INFORMATION OBTAINED PURSUANT TO THIS
15 SECTION WITH THE DEPARTMENT OF REVENUE.

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

19 **12-61-1107. Conservation cash fund - repeal.** (1) THERE IS
20 HEREBY CREATED IN THE STATE TREASURY THE CONSERVATION CASH
21 FUND, WHICH CONSISTS OF ANY MONEYS TRANSFERRED PURSUANT TO
22 SECTION 12-61-1104 AND 12-61-1106 AND ANY GIFTS, GRANTS, AND
23 DONATIONS PROVIDED TO CARRY OUT THE PURPOSES OF THIS PART 11. ALL
24 MONEY IN THE FUND SHALL BE USED AS PROVIDED IN THIS PART 11.
25 INTEREST EARNED ON THE FUND SHALL REMAIN IN THE FUND AND SHALL
26 NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY
27 OTHER FUND.

1 (2) ON JULY 1, 2018, THE STATE TREASURER SHALL TRANSFER TO
2 THE CONSERVATION CASH FUND ANY MONEYS IN THE DIVISION OF REAL
3 ESTATE CASH FUND CREATED IN THE SECTION 12-61-111.5 THAT ARE
4 ATTRIBUTABLE TO ANY FEES, GIFTS, GRANTS, OR DONATIONS CREDITED TO
5 THE DIVISION OF REAL ESTATE CASH FUND IN ACCORDANCE WITH SECTION
6 12-61-724 (3) OR SECTION 12-61-727 THAT ARE IN THE FUND
7 IMMEDIATELY PRIOR TO THE REPEAL OF SECTIONS 12-61-724 AND
8 12-61-727. THIS SUBSECTION (2) IS REPEALED EFFECTIVE JULY 1, 2019.

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

11 **12-61-111.5. Fee adjustments - cash fund created - repeal.**

12 (2) (b) (II) (A) ~~On June 30, 2017, the state treasurer shall transfer to the~~
13 ~~division of real estate cash fund all unexpended and unencumbered~~
14 ~~money that remained in the HOA information and resource center cash~~
15 ~~fund created in section 12-61-406.5, the conservation easement holder~~
16 ~~certification fund created in section 12-61-724, the conservation easement~~
17 ~~tax credit certificate review fund created in section 12-61-727, and the~~
18 ~~mortgage company and loan originator licensing cash fund created in~~
19 ~~section 12-61-908 immediately prior to the repeal of those funds.~~

20 **SECTION 3.** In Colorado Revised Statutes, 12-61-702, **repeal** (5)
21 as follows:

22 **12-61-702. Definitions.** As used in this part 7, unless the context
23 otherwise requires:

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

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

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

4 (k) To establish classroom education and experience requirements
5 for an appraiser who prepares an appraisal for a conservation easement
6 for which a tax credit is claimed pursuant to section 39-22-522. ~~C.R.S.~~
7 The requirements must ensure that appraisers have a sufficient amount of
8 training and expertise to accurately prepare appraisals that comply with
9 the uniform standards of professional appraisal practice and any other
10 provision of law related to the appraisal of conservation easements for
11 which a tax credit is claimed. A tax credit certificate for a conservation
12 easement shall not be given in accordance with ~~sections 12-61-726 and~~
13 ~~12-61-727~~ SECTIONS 12-61-1105 AND 12-61-1106 unless the appraiser
14 who prepared the appraisal of the easement met all requirements
15 established in accordance with this ~~paragraph (k)~~ SUBSECTION (1)(k) in
16 effect at the time the ~~appraisal was completed~~ ASSIGNMENT IS
17 PERFORMED.

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

20 **39-21-113. Reports and returns - rule.** (17) Notwithstanding
21 any other provision of this section, the executive director may require that
22 such detailed information regarding a claim for a credit for the donation
23 of a conservation easement in gross pursuant to section 39-22-522 and
24 any appraisal submitted in support of the credit claimed be given to the
25 division of ~~real estate~~ CONSERVATION in the department of regulatory
26 agencies and the conservation easement oversight commission created
27 pursuant to ~~section 12-61-725 (1), C.R.S.,~~ SECTION 12-61-1103 as the

1 executive director determines is necessary in the performance of the
2 department's functions relating to the credit. The executive director may
3 provide copies of any appraisal and may file a complaint regarding any
4 appraisal as authorized pursuant to section 39-22-522 (3.3).
5 Notwithstanding ~~the provisions of~~ part 2 of article 72 of title 24, ~~C.R.S.~~,
6 in order to protect the confidential financial information of a taxpayer, the
7 executive director shall deny the right to inspect any information or
8 appraisal required in accordance with ~~the provisions of~~ this subsection
9 (17).

10 **SECTION 6.** In Colorado Revised Statutes, 39-22-522, **amend**
11 (2.5), (2.7), (3)(f) introductory portion, (3.5)(a)(I), (3.5)(a)(II), (3.5)(b),
12 (3.6)(a)(I), (3.6)(b), and (7)(g) as follows:

13 **39-22-522. Credit against tax - conservation easements.**
14 (2.5) Notwithstanding any other provision of this section and the
15 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106, for
16 income tax years commencing on or after January 1, 2011, a taxpayer
17 conveying a conservation easement and claiming a credit pursuant to this
18 section shall, in addition to any other requirements of this section and the
19 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106, submit
20 a claim for the credit to the division of ~~real estate~~ CONSERVATION in the
21 department of regulatory agencies. The division shall issue a certificate
22 for the claims received in the order submitted. After certificates have
23 been issued for credits that exceed an aggregate of twenty-two million
24 dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four
25 million dollars for the 2013 calendar year, and forty-five million dollars
26 for each calendar year thereafter, any claims that exceed the amount
27 allowed for a specified calendar year shall be placed on a wait list in the

1 order submitted and a certificate shall be issued for use of the credit in the
2 next year for which the division has not issued credit certificates in excess
3 of the amounts specified in this subsection (2.5); except that no more than
4 fifteen million dollars in claims shall be placed on the wait list in any
5 given calendar year. The division shall not issue credit certificates that
6 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
7 years, thirty-four million dollars for the 2013 calendar year, and forty-five
8 million dollars for each calendar year thereafter. No claim for a credit is
9 allowed for any income tax year commencing on or after January 1, 2011,
10 unless a certificate has been issued by the division. If all other
11 requirements under ~~section 12-61-727, C.R.S.~~, SECTION 12-61-1106 and
12 this section are met, the right to claim the credit is vested in the taxpayer
13 at the time a credit certificate is issued.

14 (2.7) Notwithstanding any other provision, for income tax years
15 commencing on or after January 1, 2014, no claim for a credit shall be
16 allowed unless a tax credit certificate is issued by the division of ~~real~~
17 ~~estate~~ CONSERVATION in accordance with ~~sections 12-61-726 and~~
18 ~~12-61-727, C.R.S.~~, SECTIONS 12-61-1105 AND 12-61-1106 and the
19 taxpayer files the tax credit certificate with the income tax return filed
20 with the department of revenue.

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

27 (f) If the holder of the conservation easement is an organization

1 to which the certification program in ~~section 12-61-724~~ SECTION
2 12-61-1104 applies, a sworn affidavit from the holder of the conservation
3 easement in gross that includes the following:

4 (3.5) (a) For conservation easements donated prior to January 1,
5 2014:

6 (I) The executive director shall have the authority, pursuant to
7 subsection (8) of this section, to require additional information from the
8 taxpayer or transferee regarding the appraisal value of the easement, the
9 amount of the credit, and the validity of the credit. In resolving disputes
10 regarding the validity or the amount of a credit allowed pursuant to
11 subsection (2) of this section, including the value of the conservation
12 easement for which the credit is granted, the executive director shall have
13 the authority, for good cause shown and in consultation with the division
14 of ~~real estate~~ CONSERVATION and the conservation easement oversight
15 commission created in ~~section 12-61-725 (1), C.R.S.~~, SUBSECTION
16 12-61-1103 (1) to review and accept or reject, in whole or in part, the
17 appraisal value of the easement, the amount of the credit, and the validity
18 of the credit based upon the internal revenue code and federal regulations
19 in effect at the time of the donation. If the executive director reasonably
20 believes that the appraisal represents a gross valuation misstatement,
21 receives notice of such a valuation misstatement from the division of real
22 estate, or receives notice from the division of real estate that an
23 enforcement action has been taken by the board of real estate appraisers
24 against the appraiser, the executive director shall have the authority to
25 require the taxpayer to provide a second appraisal at the expense of the
26 taxpayer. The second appraisal shall be conducted by a certified general
27 appraiser in good standing and not affiliated with the first appraiser that

1 meets qualifications established by the division of real estate. In the event
2 the executive director rejects, in whole or in part, the appraisal value of
3 the easement, the amount of the credit, or the validity of the credit, the
4 procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and
5 39-21-105 shall apply.

6 (II) In consultation with the division of ~~real estate~~ CONSERVATION
7 and the conservation easement oversight commission created in ~~section~~
8 ~~12-61-725 (1), C.R.S.~~ SECTION 12-61-1103 (1), the executive director
9 shall develop and implement a separate process for the review by the
10 department of revenue of gross conservation easements. The review
11 process shall be consistent with the statutory obligations of the division
12 and the commission and shall address gross conservation easements for
13 which the department of revenue has been informed that an audit is being
14 performed by the internal revenue service. The executive director shall
15 share information used in the review of gross conservation easements
16 with the division. Notwithstanding part 2 of article 72 of title 24, ~~C.R.S.~~,
17 in order to protect the confidential financial information of a taxpayer, the
18 division and the commission shall deny the right to inspect any
19 information provided by the executive director in accordance with this
20 ~~subparagraph (H)~~ SUBSECTION (3.5)(a)(II).

21 (b) For conservation easements donated on or after January 1,
22 2014, and subject to the restrictions of ~~section 12-61-727 (4), C.R.S.~~
23 SECTION 12-61-1106 (4), the executive director shall have the authority,
24 pursuant to subsection (8) of this section, to require additional
25 information from the taxpayer or transferee regarding the amount of the
26 credit and the validity of the credit. In resolving disputes regarding the
27 validity or the amount of a credit allowed pursuant to subsection (2) of

1 this section, the executive director shall have the authority, for good cause
2 shown, to review and accept or reject, in whole or in part, the amount of
3 the credit and the validity of the credit based upon the internal revenue
4 code and federal regulations in effect at the time of the donation, except
5 those requirements for which authority is granted to the division of real
6 estate CONSERVATION, the director of the division of real estate
7 CONSERVATION, or the conservation easement oversight commission
8 pursuant to ~~section 12-61-727, C.R.S.~~ SECTION 12-61-1106.

9 (3.6) For conservation easements donated on or after January 1,
10 2014, in order for any taxpayer to qualify for the credit provided for in
11 subsection (2) of this section, the taxpayer must submit the following in
12 a form, approved by the executive director, to the department of revenue
13 at the same time as the taxpayer files a return for the taxable year in
14 which the credit is claimed:

15 (a) (I) A tax credit certificate issued under ~~section 12-61-727,~~
16 ~~C.R.S.~~ SECTION 12-61-1106; and

17 (b) Notwithstanding any other provisions of law, the executive
18 director retains the authority to administer all issues related to the claim
19 or use of a tax credit for the donation of a conservation easement that are
20 not granted to the director of the division of real estate CONSERVATION or
21 the conservation easement oversight commission under ~~section~~
22 ~~12-61-727, C.R.S.~~ SECTION 12-61-1106.

23 (7) For income tax years commencing on or after January 1, 2000,
24 a taxpayer may transfer all or a portion of a tax credit granted pursuant to
25 subsection (2) of this section to another taxpayer for such other taxpayer,
26 as transferee, to apply as a credit against the taxes imposed by this article
27 subject to the following limitations:

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

4 **SECTION 7.** In Colorado Revised Statutes, 39-22-522.5, **repeal**
5 (8) as follows:

6 **39-22-522.5. Conservation easement tax credits - dispute**
7 **resolution - legislative declaration.** (8) ~~On or before August 1, 2011,~~
8 ~~the conservation easement oversight commission created in section~~
9 ~~12-61-725 (1), C.R.S., shall review conservation easements for which a~~
10 ~~tax credit is claimed pursuant to sections 39-22-522 (3.5)(a) and~~
11 ~~12-61-725 (3), C.R.S., and for which a notice of deficiency, notice of~~
12 ~~rejection of refund claim, or notice of disallowance issued on or before~~
13 ~~May 1, 2011, but for which a final determination has not been issued~~
14 ~~before May 19, 2011, and for which the commission has not already~~
15 ~~reviewed the credit. For each conservation easement tax credit claim so~~
16 ~~reviewed, the commission shall issue an initial recommendation to the~~
17 ~~executive director on whether each credit claimed by a taxpayer who is~~
18 ~~eligible to waive a hearing and appeal a notice of deficiency, notice of~~
19 ~~rejection of refund claim, or notice of disallowance may be denied or~~
20 ~~accepted. No other information shall be required of the commission on or~~
21 ~~before such date.~~

22 **SECTION 8.** In Colorado Revised Statutes, 24-1-122, **add** (2)(1)
23 as follows:

24 **24-1-122. Department of regulatory agencies - creation.**

25 (2) The department of regulatory agencies shall consist of the following
26 divisions:

27 (1) DIVISION OF CONSERVATION, THE HEAD OF WHICH IS THE

1 DIRECTOR OF THE DIVISION, THE DIVISION OF CONSERVATION AND THE
2 DIRECTOR OF THE DIVISION, CREATED BY PART 11 OF ARTICLE 61 OF TITLE
3 12, SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND
4 FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF
5 THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.
6 THE CONSERVATION EASEMENT OVERSIGHT COMMISSION, CREATED BY
7 SECTION 12-61-1103, AND ITS POWERS, DUTIES, AND FUNCTIONS ARE
8 TRANSFERRED BY A **TYPE 2** TRANSFER TO THE DEPARTMENT OF
9 REGULATORY AGENCIES AND ALLOCATED TO THE DIVISION OF
10 CONSERVATION.

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

13 **24-34-104. General assembly review of regulatory agencies**
14 **and functions for repeal, continuation, or reestablishment - legislative**
15 **declaration - repeal.** (14) (a) The following agencies, functions, or both,
16 are scheduled for repeal on July 1, 2018:

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

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

21 (VIII) THE CONSERVATION EASEMENT OVERSIGHT COMMISSION
22 CREATED IN SECTION 12-61-1103.

23 **SECTION 10.** In Colorado Revised Statutes, **repeal** 12-61-724,
24 12-61-725, 12-61-726, and 12-61-727.

25 **SECTION 11. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.