

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

State, Veterans, & Military Affairs
Finance
Appropriations

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.*

HOUSE
3rd Reading Unamended
April 27, 2018

HOUSE
Amended 2nd Reading
April 24, 2018

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 with amended**
3 **and relocated provisions article 82 to title 35 as follows:**

4 **ARTICLE 82**

5 **Conservation Easements**

6 **35-82-101. Legislative declaration. (1) THE GENERAL ASSEMBLY**
7 **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) AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO OVERSEE
5 THE CERTIFICATION OF CONSERVATION EASEMENT HOLDERS AND THE
6 CERTIFICATION OF CONSERVATION EASEMENT TAX CREDITS WILL KEEP A
7 FIREWALL BETWEEN PROFESSIONAL EVALUATION AND PROFESSIONAL
8 DISCIPLINE, WHILE ENSURING THAT THIS PROGRAM ALLOWS LANDOWNERS
9 TO EXERCISE THEIR PRIVATE PROPERTY RIGHTS AND PROTECTING
10 TAXPAYERS FROM THE FRAUD AND ABUSE THAT EXISTED IN THE PROGRAM
11 PRIOR TO 2009;

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

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

20 (I) ALLOW THE DEPARTMENT TO CERTIFY CONSERVATION
21 EASEMENT HOLDERS TO IDENTIFY FRAUDULENT OR UNQUALIFIED
22 ORGANIZATIONS AND PREVENT THEM FROM HOLDING CONSERVATION
23 EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED IN THE STATE;

24 (II) ALLOW THE CONSERVATION EASEMENT OVERSIGHT
25 COMMISSION TO ADVISE THE DEPARTMENT OF AGRICULTURE AND THE
26 DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR
27 WHICH A TAX CREDIT IS CLAIMED AND TO REVIEW APPLICATIONS FOR

1 CONSERVATION EASEMENT HOLDER CERTIFICATION; AND

2 (III) ENSURE THAT THE DEPARTMENT OF AGRICULTURE AND THE
3 DEPARTMENT OF REVENUE ARE SHARING RELEVANT INFORMATION
4 CONCERNING CONSERVATION EASEMENT APPRAISALS IN ORDER TO ENSURE
5 COMPLIANCE WITH ACCEPTED APPRAISAL PRACTICES AND OTHER
6 PROVISIONS OF LAW.

7 **35-82-102. Definitions.** AS USED IN THIS ARTICLE 82, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

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

11 (2) "COMMISSIONER" MEANS THE COMMISSIONER OF
12 AGRICULTURE.

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

14 **35-82-103. Duties of commissioner.** (1) THE COMMISSIONER IS
15 AUTHORIZED BY THIS SECTION TO EMPLOY SUCH DEPUTIES, CLERKS, AND
16 ASSISTANTS AS ARE NECESSARY TO DISCHARGE THE DUTIES IMPOSED BY
17 THIS ARTICLE 82 AND TO DELEGATE ANY DUTY IMPOSED UPON THE
18 COMMISSIONER BY THIS ARTICLE 82 TO AN EMPLOYEE OF THE DEPARTMENT
19 AS THE COMMISSIONER DEEMS APPROPRIATE.

20 (2) IT IS THE DUTY OF THE DEPARTMENT AND THE COMMISSIONER
21 OF AGRICULTURE, PERSONALLY OR HIS OR HER DESIGNEE, TO AID IN THE
22 ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE 82 AND TO
23 ADMINISTER, IN CONSULTATION WITH THE COMMISSION, THE
24 CERTIFICATION OF CONSERVATION EASEMENT HOLDERS AND ISSUANCE OF
25 TAX CREDIT CERTIFICATES AS PROVIDED IN THIS ARTICLE 82.

26 **35-82-104. Conservation easement oversight commission -**
27 **created - repeal. [Similar to 12-61-725]** (1) THERE IS HEREBY CREATED

1 IN THE DEPARTMENT A CONSERVATION EASEMENT OVERSIGHT
2 COMMISSION. THE COMMISSION SHALL EXERCISE ITS POWERS AND
3 PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF
4 TRANSFERRED THERETO BY A **TYPE 2** TRANSFER, AS DEFINED IN THE
5 "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24.

6 THE COMMISSION CONSISTS OF EIGHT MEMBERS AS FOLLOWS:

7 (a) ONE MEMBER REPRESENTING THE GREAT OUTDOORS
8 COLORADO PROGRAM, APPOINTED BY AND SERVING AS AN ADVISORY,
9 NONVOTING MEMBER AT THE PLEASURE OF THE STATE BOARD OF THE
10 GREAT OUTDOORS COLORADO TRUST FUND ESTABLISHED IN ARTICLE
11 XXVII OF THE STATE CONSTITUTION;

12 (b) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
13 NATURAL RESOURCES, APPOINTED BY AND SERVING AT THE PLEASURE OF
14 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES;

15 (c) ONE VOTING MEMBER REPRESENTING THE DEPARTMENT OF
16 AGRICULTURE, APPOINTED BY AND SERVING AT THE PLEASURE OF THE
17 COMMISSIONER;

18 (d) THREE VOTING MEMBERS APPOINTED BY THE GOVERNOR AS
19 FOLLOWS:

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

22 (II) ONE VOTING MEMBER WHO IS COMPETENT AND QUALIFIED TO
23 ANALYZE THE CONSERVATION PURPOSE OF CONSERVATION EASEMENTS;
24 AND

25 (e) TWO VOTING MEMBERS OF THE GENERAL PUBLIC, ONE
26 APPOINTED BY THE PRESIDENT OF THE SENATE TO SERVE AT THE PLEASURE
27 OF THE PRESIDENT AND ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF

1 REPRESENTATIVES TO SERVE AT THE PLEASURE OF THE SPEAKER.

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

17 (3) (a) AT THE REQUEST OF THE DEPARTMENT OR THE
18 DEPARTMENT OF REVENUE, THE COMMISSION SHALL ADVISE THE
19 DEPARTMENT AND THE DEPARTMENT OF REVENUE REGARDING
20 CONSERVATION EASEMENTS FOR WHICH A STATE INCOME TAX CREDIT IS
21 CLAIMED PURSUANT TO SECTION 39-22-522.

22 (b) THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT
23 TAX CREDIT CERTIFICATE APPLICATIONS AND REQUESTS FOR OPTIONAL
24 PRELIMINARY ADVISORY OPINIONS IN ACCORDANCE WITH SECTION
25 35-82-107.

26 (4) THE COMMISSION SHALL MEET AT LEAST QUARTERLY. THE
27 DEPARTMENT SHALL CONVENE THE MEETINGS OF THE COMMISSION AND

1 PROVIDE STAFF SUPPORT AS REQUESTED BY THE COMMISSION. A MAJORITY
2 OF THE VOTING MEMBERS OF THE COMMISSION CONSTITUTES A QUORUM
3 FOR THE TRANSACTION OF ALL BUSINESS, AND ACTIONS OF THE
4 COMMISSION REQUIRE A VOTE OF A MAJORITY OF THE VOTING MEMBERS
5 PRESENT IN FAVOR OF THE ACTION TAKEN. THE COMMISSION MAY
6 DELEGATE TO THE COMMISSIONER THE AUTHORITY TO ACT ON BEHALF OF
7 THE COMMISSION ON OCCASIONS AND IN CIRCUMSTANCES THAT THE
8 COMMISSION DEEMS NECESSARY FOR THE EFFICIENT AND EFFECTIVE
9 ADMINISTRATION AND EXECUTION OF THE COMMISSION'S RESPONSIBILITIES
10 UNDER THIS ARTICLE 82.

11 (5) THE COMMISSION SHALL ESTABLISH A CONFLICT-OF-INTEREST
12 POLICY TO ENSURE THAT ANY MEMBER OF THE COMMISSION IS
13 DISQUALIFIED FROM PERFORMING AN ACT THAT CONFLICTS WITH A
14 PRIVATE PECUNIARY INTEREST OF THE MEMBER OR FROM PARTICIPATING
15 IN THE DELIBERATION OR DECISION-MAKING PROCESS FOR CERTIFICATION
16 FOR AN APPLICANT REPRESENTED BY THE MEMBER.

17 (6) THE COMMISSION SHALL ADVISE AND MAKE
18 RECOMMENDATIONS TO THE COMMISSIONER REGARDING THE
19 CERTIFICATION OF CONSERVATION EASEMENT HOLDERS IN ACCORDANCE
20 WITH SECTION 35-82-105.

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

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

27 **35-82-105. Certification of conservation easement holders -**

1 rules - definition - repeal. [Similar to 12-61-724.] (1) THE
2 DEPARTMENT SHALL, IN CONSULTATION WITH THE COMMISSION CREATED
3 IN SECTION 35-82-104, ESTABLISH AND ADMINISTER A CERTIFICATION
4 PROGRAM FOR QUALIFIED ORGANIZATIONS UNDER SECTION 170(h) OF THE
5 FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT HOLD
6 CONSERVATION EASEMENTS FOR WHICH A TAX CREDIT IS CLAIMED
7 PURSUANT TO SECTION 39-22-522. THE PURPOSES OF THE PROGRAM ARE
8 TO:

9 (a) ESTABLISH MINIMUM QUALIFICATIONS FOR CERTIFYING
10 ORGANIZATIONS THAT HOLD CONSERVATION EASEMENTS TO ENCOURAGE
11 PROFESSIONALISM AND STABILITY; AND

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

15 (2) THE DEPARTMENT SHALL ESTABLISH AND ACCEPT
16 APPLICATIONS FOR CERTIFICATION. THE DEPARTMENT SHALL CONDUCT A
17 REVIEW OF EACH APPLICATION AND CONSIDER THE RECOMMENDATIONS OF
18 THE COMMISSION BEFORE MAKING A FINAL DETERMINATION TO GRANT OR
19 DENY CERTIFICATION. IN REVIEWING AN APPLICATION AND IN GRANTING
20 CERTIFICATION, THE DEPARTMENT AND THE COMMISSION MAY CONSIDER:

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

23 (b) THE APPLICANT'S STEWARDSHIP PRACTICES AND CAPACITY,
24 INCLUDING THE ABILITY TO MAINTAIN, MONITOR, AND DEFEND THE
25 PURPOSES OF THE EASEMENT;

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

27 (d) THE APPLICANT'S SYSTEM OF GOVERNANCE AND ETHICS

1 REGARDING CONFLICTS OF INTEREST AND TRANSACTIONS WITH RELATED
2 PARTIES AS DESCRIBED IN SECTION 267 (b) OF THE FEDERAL "INTERNAL
3 REVENUE CODE OF 1986", AS AMENDED, DONORS, BOARD MEMBERS, AND
4 INSIDERS. FOR PURPOSES OF THIS SUBSECTION (2)(d), "INSIDERS" MEANS
5 BOARD AND STAFF MEMBERS, SUBSTANTIAL CONTRIBUTORS, PARTIES
6 RELATED TO THOSE ABOVE, THOSE WHO HAVE AN ABILITY TO INFLUENCE
7 DECISIONS OF THE ORGANIZATION, AND THOSE WITH ACCESS TO
8 INFORMATION NOT AVAILABLE TO THE GENERAL PUBLIC.

9 (e) ANY OTHER INFORMATION DEEMED RELEVANT BY THE
10 DEPARTMENT OR THE COMMISSION; AND

11 (f) THE UNIQUE CIRCUMSTANCES OF THE DIFFERENT ENTITIES TO
12 WHICH THIS CERTIFICATION APPLIES AS SET FORTH IN SUBSECTION (4) OF
13 THIS SECTION.

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

1 SUBSECTION (3).

2 (4) THE CERTIFICATION PROGRAM APPLIES TO:

3 (a) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY WITH
4 CONSERVATION VALUES CONSISTING OF RECREATION OR EDUCATION,
5 PROTECTION OF ENVIRONMENTAL SYSTEMS, OR PRESERVATION OF OPEN
6 SPACE;

7 (b) NONPROFIT ENTITIES HOLDING EASEMENTS ON PROPERTY FOR
8 HISTORIC PRESERVATION; AND

9 (c) THE STATE AND ANY MUNICIPALITY, COUNTY, CITY AND
10 COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE
11 STATE THAT HOLDS AN EASEMENT.

12 (5) THE CERTIFICATION PROGRAM SHALL CONTAIN A PROVISION
13 ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION OF AN
14 ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
15 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
16 CONSERVATION INDUSTRY.

17 (6) THE COMMISSION SHALL MEET AT LEAST QUARTERLY AND
18 MAKE RECOMMENDATIONS TO THE DEPARTMENT REGARDING THE
19 CERTIFICATION PROGRAM. THE DEPARTMENT IS AUTHORIZED TO
20 DETERMINE WHETHER AN APPLICANT FOR CERTIFICATION POSSESSES THE
21 NECESSARY QUALIFICATIONS FOR CERTIFICATION REQUIRED BY THE RULES
22 ADOPTED BY THE DEPARTMENT. IF THE DEPARTMENT DETERMINES THAT
23 AN APPLICANT DOES NOT POSSESS THE APPLICABLE QUALIFICATIONS FOR
24 CERTIFICATION OR THAT THE APPLICANT HAS VIOLATED ANY PROVISION OF
25 THIS ARTICLE 82, THE RULES PROMULGATED BY THE DEPARTMENT, OR ANY
26 DEPARTMENT ORDER, THE DEPARTMENT MAY DENY THE APPLICANT A
27 CERTIFICATION OR DENY THE RENEWAL OF A CERTIFICATION, AND, IN SUCH

1 INSTANCE, THE DEPARTMENT SHALL PROVIDE THE APPLICANT WITH A
2 STATEMENT IN WRITING SETTING FORTH THE BASIS OF THE DEPARTMENT'S
3 DETERMINATION. THE APPLICANT MAY REQUEST A HEARING ON THE
4 DETERMINATION AS PROVIDED IN SECTION 24-4-104 (9). THE DEPARTMENT
5 SHALL NOTIFY SUCCESSFUL APPLICANTS IN WRITING. AN APPLICANT THAT
6 IS NOT CERTIFIED MAY REAPPLY FOR CERTIFICATION IN ACCORDANCE WITH
7 PROCEDURES ESTABLISHED BY THE DEPARTMENT.

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

11 (a) ALLOWING FOR THE EXPEDITED OR AUTOMATIC CERTIFICATION
12 OF AN ENTITY THAT IS CURRENTLY ACCREDITED BY NATIONAL LAND
13 CONSERVATION ORGANIZATIONS THAT ARE BROADLY ACCEPTED BY THE
14 CONSERVATION INDUSTRY;

15 (b) A STREAMLINED AND LOWER-COST PROCESS FOR
16 CONSERVATION EASEMENT HOLDERS THAT DO NOT INTEND TO ACCEPT
17 NEW DONATIONS OF CONSERVATION EASEMENTS FOR WHICH TAX CREDITS
18 WOULD BE CLAIMED THAT FOCUSES ON THE HOLDER'S STEWARDSHIP
19 CAPABILITIES;

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

25 (d) THE ADOPTION OF BEST PRACTICES, PROCESSES, AND
26 PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW
27 CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE,

1 PROCESS, OR PROCEDURE DEEMING QUALIFIED CONSERVATION EASEMENT
2 APPRAISALS APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT
3 REVIEWS AS CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT
4 TAX CREDIT.

5 (8) A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE
6 APPLICATION MAY BE SUBMITTED PURSUANT TO SECTION 35-82-107 ONLY
7 IF THE ENTITY HAS BEEN CERTIFIED IN ACCORDANCE WITH THIS SECTION AT
8 THE TIME THE DONATION OF THE EASEMENT IS MADE. THE DEPARTMENT
9 SHALL MAKE INFORMATION AVAILABLE TO THE PUBLIC CONCERNING THE
10 DATE THAT IT COMMENCES ACCEPTING APPLICATIONS FOR ENTITIES THAT
11 HOLD CONSERVATION EASEMENTS AND THE REQUIREMENTS OF THIS
12 SUBSECTION (8).

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

18 (10) THE DEPARTMENT MAY INVESTIGATE THE ACTIVITIES OF ANY
19 ENTITY THAT IS REQUIRED TO BE CERTIFIED PURSUANT TO THIS SECTION
20 AND TO IMPOSE DISCIPLINE FOR NONCOMPLIANCE, INCLUDING THE
21 SUSPENSION OR REVOCATION OF A CERTIFICATION OR THE IMPOSITION OF
22 FINES. THE DEPARTMENT MAY PROMULGATE RULES IN ACCORDANCE WITH
23 ARTICLE 4 OF TITLE 24 FOR THE CERTIFICATION PROGRAM AND DISCIPLINE
24 AUTHORIZED BY THIS SECTION.

25 (11) THE DEPARTMENT MAY SUBPOENA PERSONS AND DOCUMENTS,
26 WHICH SUBPOENAS MAY BE ENFORCED BY A COURT OF COMPETENT
27 JURISDICTION IF NOT OBEYED, FOR PURPOSES OF CONDUCTING

1 INVESTIGATIONS PURSUANT TO SUBSECTION (10) OF THIS SECTION.

2 (12) NOTHING IN THIS SECTION:

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

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

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

13 **35-82-106. Conservation easement tax credit certificates -**
14 **rules. [Similar to 12-61-726.] (1) THE DEPARTMENT SHALL RECEIVE TAX**
15 **CREDIT CERTIFICATE APPLICATIONS FROM AND ISSUE CERTIFICATES TO**
16 **LANDOWNERS FOR INCOME TAX CREDITS FOR CONSERVATION EASEMENTS**
17 **DONATED ON OR AFTER JANUARY 1, 2011, IN ACCORDANCE WITH SECTION**
18 **39-22-522 (2.5) AND THIS ARTICLE 82. NOTHING IN THIS SECTION**
19 **RESTRICTS OR LIMITS THE AUTHORITY OF THE DEPARTMENT TO ENFORCE**
20 **THIS ARTICLE 82. THE DEPARTMENT MAY PROMULGATE RULES IN**
21 **ACCORDANCE WITH ARTICLE 4 OF TITLE 24 FOR THE ISSUANCE OF THE**
22 **CERTIFICATES. IN PROMULGATING RULES, THE DEPARTMENT MAY INCLUDE**
23 **PROVISIONS GOVERNING:**

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

26 (b) THE ADMINISTRATION AND FINANCING OF THE CERTIFICATION
27 PROCESS;

1 (c) THE NOTIFICATION TO THE PUBLIC REGARDING THE AGGREGATE
2 AMOUNT OF TAX CREDIT CERTIFICATES THAT HAVE BEEN ISSUED AND THAT
3 ARE ON THE WAIT LIST PURSUANT TO SECTION 39-25-522 (2.5):

4 (d) THE NOTIFICATION TO THE LANDOWNER, THE ENTITY TO WHICH
5 THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE
6 REGARDING THE TAX CREDIT CERTIFICATES ISSUED; AND

7 (e) ANY OTHER MATTERS RELATED TO ADMINISTERING SECTION
8 39-22-522 (2.5) OR THIS ARTICLE 82.

9 (2) THE DEPARTMENT SHALL APPLY THE AMOUNT CLAIMED IN A
10 COMPLETED TAX CREDIT CERTIFICATE APPLICATION AGAINST THE ANNUAL
11 TAX CREDIT LIMIT IN THE ORDER THAT COMPLETED APPLICATIONS ARE
12 RECEIVED. THE DEPARTMENT SHALL APPLY CLAIMED TAX CREDIT
13 AMOUNTS THAT EXCEED THE ANNUAL LIMIT IN ANY YEAR AGAINST THE
14 LIMIT FOR THE NEXT AVAILABLE YEAR AND ISSUE TAX CREDIT
15 CERTIFICATES FOR USE IN THE YEAR IN WHICH THE AMOUNT WAS APPLIED
16 TO THE ANNUAL LIMIT.

17 (3) THE DEPARTMENT SHALL NOT ISSUE TAX CREDIT CERTIFICATES
18 THAT IN AGGREGATE EXCEED THE LIMIT SET FORTH IN SECTION 39-22-522
19 (2.5) DURING A PARTICULAR CALENDAR YEAR.

20 **35-82-107. Conservation easement tax credit certificate**
21 **application process - report - definitions - rules. [Similar to section**
22 **12-61-727.] (1) FOR PURPOSES OF THIS SECTION:**

23 (a) "APPLICATION" MEANS AN APPLICATION FOR A TAX CREDIT
24 CERTIFICATE SUBMITTED PURSUANT TO SECTION 35-82-106 OR THIS
25 SECTION.

26 (b) "CONSERVATION PURPOSE" MEANS CONSERVATION PURPOSE AS
27 DEFINED IN SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE

1 OF 1986", AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED
2 IN CONNECTION WITH SUCH SECTION.

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

6 (d) "DEFICIENCY" MEANS NONCOMPLIANCE WITH A REQUIREMENT
7 FOR OBTAINING A TAX CREDIT CERTIFICATE THAT, UNLESS SUCH
8 NONCOMPLIANCE IS REMEDIED, IS GROUNDS FOR THE DENIAL OF A TAX
9 CREDIT CERTIFICATE APPLICATION SUBMITTED PURSUANT TO THIS
10 SECTION.

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

15 (f) "TAX CREDIT CERTIFICATE" MEANS THE CONSERVATION
16 EASEMENT TAX CREDIT CERTIFICATE ISSUED PURSUANT TO SECTION
17 35-82-106 AND THIS SECTION.

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

25 (I) IS A CONTRIBUTION OF A QUALIFIED REAL PROPERTY INTEREST
26 TO A QUALIFIED ORGANIZATION TO BE USED EXCLUSIVELY FOR A
27 CONSERVATION PURPOSE;

1 (II) IS SUBSTANTIATED WITH A QUALIFIED APPRAISAL PREPARED BY
2 A QUALIFIED APPRAISER IN ACCORDANCE WITH THE UNIFORM STANDARDS
3 OF PROFESSIONAL APPRAISAL PRACTICE; AND

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

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

7 (3) FOR THE PURPOSE OF REVIEWING APPLICATIONS AND MAKING
8 DETERMINATIONS REGARDING THE ISSUANCE OF TAX CREDIT
9 CERTIFICATES, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT
10 CERTIFICATE TO BE ISSUED:

11 (a) DEPARTMENT STAFF SHALL REVIEW EACH APPLICATION AND
12 ADVISE AND MAKE RECOMMENDATIONS TO THE COMMISSIONER AND THE
13 COMMISSION REGARDING THE APPLICATION;

14 (b) THE COMMISSIONER HAS AUTHORITY AND RESPONSIBILITY TO
15 DETERMINE THE CREDIBILITY OF THE APPRAISAL. IN DETERMINING
16 CREDIBILITY, THE COMMISSIONER SHALL CONSIDER, AT A MINIMUM,
17 COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

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

24 (II) THE APPRAISAL CONFORMS WITH THE UNIFORM STANDARDS OF
25 PROFESSIONAL APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL
26 STANDARDS BOARD OF THE APPRAISAL FOUNDATION AND ANY OTHER
27 PROVISION OF LAW;

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

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

6 (c) THE COMMISSIONER HAS THE AUTHORITY AND RESPONSIBILITY
7 TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF SECTION
8 35-82-105.

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

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

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

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

23 (b) A COPY OF THE RECORDED DEED GRANTING THE
24 CONSERVATION EASEMENT;

25 (c) DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE
26 OF THE EASEMENT;

27 (d) ANY OTHER INFORMATION OR DOCUMENTATION THE

1 COMMISSIONER OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL
2 DETERMINATION REGARDING THE APPLICATION; AND

3 (e) THE FEE REQUIRED PURSUANT TO SUBSECTION (6) OF THIS
4 SECTION.

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

22 (7) (a) IF, DURING THE REVIEW OF AN APPLICATION FOR A TAX
23 CREDIT CERTIFICATE, THE COMMISSIONER OR THE COMMISSION IDENTIFIES
24 ANY POTENTIAL DEFICIENCIES, THE COMMISSIONER OR COMMISSION SHALL
25 DOCUMENT THE POTENTIAL DEFICIENCIES IN A LETTER SENT TO THE
26 LANDOWNER BY FIRST CLASS MAIL. THE DEPARTMENT SHALL SEND
27 LETTERS DOCUMENTING POTENTIAL DEFICIENCIES TO LANDOWNERS IN A

1 TIMELY MANNER SO THAT THE NUMBER OF DAYS BETWEEN THE DATE A
2 COMPLETED APPLICATION IS RECEIVED BY THE DEPARTMENT AND THE
3 MAILING DATE OF THE DEPARTMENT'S LETTER TO THE LANDOWNER DOES
4 NOT EXCEED ONE HUNDRED TWENTY DAYS.

5 (b) THE LANDOWNER HAS SIXTY DAYS AFTER THE MAILING DATE
6 OF THE DEPARTMENT'S LETTER TO ADDRESS THE POTENTIAL DEFICIENCIES
7 IDENTIFIED BY THE COMMISSIONER AND THE COMMISSION AND PROVIDE
8 ADDITIONAL INFORMATION OR DOCUMENTATION THAT THE COMMISSIONER
9 OR THE COMMISSION DEEMS NECESSARY TO MAKE A FINAL
10 DETERMINATION REGARDING THE APPLICATION.

11 (c) THE COMMISSIONER AND THE COMMISSION HAVE NINETY DAYS
12 AFTER THE DATE OF RECEIPT OF ANY ADDITIONAL INFORMATION OR
13 DOCUMENTATION PROVIDED BY THE LANDOWNER TO REVIEW THE
14 INFORMATION AND DOCUMENTATION AND MAKE A FINAL DETERMINATION
15 REGARDING THE APPLICATION.

16 (d) THE DEADLINES PRESCRIBED BY THIS SUBSECTION (7) MAY BE
17 EXTENDED UPON MUTUAL AGREEMENT BETWEEN THE COMMISSIONER AND
18 THE COMMISSION AND THE LANDOWNER.

19 (8) THE COMMISSIONER OR THE COMMISSION MAY DENY AN
20 APPLICATION IF THE LANDOWNER:

21 (a) HAS NOT DEMONSTRATED TO THE SATISFACTION OF THE
22 COMMISSIONER OR THE COMMISSION THAT THE APPLICATION COMPLIES
23 WITH ANY REQUIREMENT OF THIS ARTICLE 82;

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

26 (c) FAILS TO TIMELY RESPOND TO ANY WRITTEN REQUEST OR
27 NOTICE FROM THE DEPARTMENT, THE COMMISSIONER, OR THE

1 COMMISSION.

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

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

22 (11) (a) IF ALL POTENTIAL DEFICIENCIES THAT HAVE BEEN
23 IDENTIFIED ARE SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
24 COMMISSIONER AND THE COMMISSION, THE COMMISSIONER AND THE
25 COMMISSION SHALL APPROVE THE APPLICATION, AND THE DEPARTMENT
26 SHALL ISSUE A TAX CREDIT CERTIFICATE TO THE LANDOWNER PURSUANT
27 TO SECTION 35-85-106. ONCE A TAX CREDIT CERTIFICATE IS ISSUED, THE

1 LANDOWNER MAY CLAIM AND USE THE TAX CREDIT SUBJECT TO ANY
2 OTHER APPLICABLE PROCEDURES AND REQUIREMENTS UNDER TITLE 39.

3 (b) IF ANY POTENTIAL DEFICIENCIES THAT HAVE BEEN IDENTIFIED
4 ARE NOT SUBSEQUENTLY ADDRESSED TO THE SATISFACTION OF THE
5 COMMISSIONER AND THE COMMISSION, THE DEPARTMENT SHALL ISSUE A
6 WRITTEN DENIAL OF THE APPLICATION TO THE LANDOWNER DOCUMENTING
7 THOSE DEFICIENCIES THAT WERE THE SPECIFIC BASIS FOR THE DENIAL. THE
8 DEPARTMENT SHALL DATE THE WRITTEN DENIAL AND SEND IT BY FIRST
9 CLASS MAIL TO THE LANDOWNER AT THE ADDRESS PROVIDED BY THE
10 LANDOWNER ON THE APPLICATION. THE COMMISSIONER MAY ACT ON
11 BEHALF OF THE COMMISSION FOR PURPOSES OF ADMINISTERING THE
12 PROCESS FOR ISSUING APPROVALS AND DENIALS OF APPLICATIONS AND FOR
13 ADMINISTERING SUBSECTION (12) OF THIS SECTION.

14 (12) (a) THE LANDOWNER MAY APPEAL TO THE COMMISSIONER
15 EITHER THE COMMISSIONER'S OR THE COMMISSION'S DENIAL OF AN
16 APPLICATION, IN WRITING, WITHIN THIRTY DAYS AFTER THE ISSUANCE OF
17 THE DENIAL. THIS WRITTEN APPEAL CONSTITUTES A REQUEST FOR AN
18 ADMINISTRATIVE HEARING.

19 (b) IF THE LANDOWNER FAILS TO APPEAL THE DENIAL OF AN
20 APPLICATION WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE DENIAL,
21 THE DENIAL BECOMES FINAL, AND THE DEPARTMENT SHALL NOT ISSUE A
22 TAX CREDIT CERTIFICATE TO THE LANDOWNER.

23 (c) ADMINISTRATIVE HEARINGS MUST BE CONDUCTED IN
24 ACCORDANCE WITH SECTION 24-4-105. AT THE DISCRETION OF THE
25 COMMISSIONER, HEARINGS MAY BE CONDUCTED BY AN AUTHORIZED
26 REPRESENTATIVE OF THE COMMISSIONER OR THE COMMISSION OR AN
27 ADMINISTRATIVE LAW JUDGE FROM THE OFFICE OF ADMINISTRATIVE

1 COURTS IN THE DEPARTMENT OF PERSONNEL. ALL HEARINGS MUST BE
2 HELD IN THE COUNTY WHERE THE DEPARTMENT IS LOCATED UNLESS THE
3 COMMISSIONER DESIGNATES OTHERWISE. THE DECISION OF THE
4 COMMISSIONER OR THE COMMISSION IS SUBJECT TO JUDICIAL REVIEW BY
5 THE COURT OF APPEALS AND IS SUBJECT TO SECTION 24-4-106.

6 (d) IN CONDUCTING SETTLEMENT DISCUSSIONS WITH A
7 LANDOWNER, THE COMMISSIONER AND THE COMMISSION MAY
8 COMPROMISE ON ANY OF THE DEFICIENCIES IDENTIFIED IN THE
9 APPLICATION AND SUPPORTING DOCUMENTATION, INCLUDING THE DOLLAR
10 AMOUNT OF THE TAX CREDIT CERTIFICATE TO BE ISSUED. THE
11 COMMISSIONER SHALL PLACE ON FILE IN THE DEPARTMENT A RECORD OF
12 ANY COMPROMISE AND THE REASONS FOR THE COMPROMISE.

13 (e) THE COMMISSIONER MAY PROMULGATE RULES PURSUANT TO
14 ARTICLE 4 OF TITLE 24 TO EFFECTUATE THE PURPOSES OF THIS SUBSECTION
15 (12).

16 (13) (a) COMMENCING WITH THE 2014 CALENDAR YEAR, AND FOR
17 EACH CALENDAR YEAR THEREAFTER, THE DEPARTMENT SHALL CREATE A
18 REPORT, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC, CONTAINING
19 THE FOLLOWING AGGREGATE INFORMATION:

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

23 (II) FOR APPLICATIONS APPROVED IN ACCORDANCE WITH THIS
24 SECTION:

25 (A) THE TOTAL ACREAGE UNDER EASEMENT SUMMARIZED BY THE
26 ALLOWABLE CONSERVATION PURPOSES AS DEFINED IN SECTION 170 (h) OF
27 THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND

1 ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH
2 SECTION:

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

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

5 (D) THE TOTAL DOLLAR AMOUNT OF TAX CREDIT CERTIFICATES
6 ISSUED.

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

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

27 (I) ANY DEEDS, CONTRACTS, OR OTHER INSTRUMENTS CREATING,

1 ASSIGNING, TRANSFERRING, CONVEYING, TERMINATING, OR OTHERWISE
2 AFFECTING THE EASEMENT, INCLUDING THE RECEPTION NUMBERS ON ALL
3 INSTRUMENTS:

4 (II) THE LOCATION AND ACREAGE OF EACH EASEMENT,
5 DELINEATED BY COUNTY:

6 (III) THE NAMES AND ADDRESSES OF ANY GRANTORS OF THE
7 EASEMENT AND THE NAMES AND ADDRESSES OF ANY HOLDERS OF THE
8 EASEMENT SINCE ITS CREATION:

9 (IV) WHETHER THE HOLDER OF THE EASEMENT IS A CERTIFIED
10 ORGANIZATION PURSUANT TO SECTION 12-61-724:

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

12 (VI) THE AMOUNT OF ANY INCOME TAX CREDITS CLAIMED OR
13 ALLOWED FOR THE EASEMENT AND THE AMOUNT OF ANY SUCH CREDITS
14 THAT WERE TRANSFERRED TO ANOTHER TAXPAYER PURSUANT TO SECTION
15 39-22-522.

16 (14) (a) IN ADDITION TO THE TAX CREDIT CERTIFICATE
17 APPLICATION PROCESS SET FORTH IN THIS SECTION, A LANDOWNER MAY
18 SUBMIT A PROPOSED CONSERVATION EASEMENT DONATION TO THE
19 DEPARTMENT TO OBTAIN AN OPTIONAL PRELIMINARY ADVISORY OPINION
20 REGARDING THE TRANSACTION. THE OPINION MAY ADDRESS THE
21 PROPOSED DEED OF CONSERVATION EASEMENT, APPRAISAL,
22 CONSERVATION PURPOSE, OR OTHER RELEVANT ASPECT OF THE
23 TRANSACTION.

24 (b) THE DEPARTMENT, THE COMMISSIONER, AND THE COMMISSION
25 SHALL REVIEW THE INFORMATION AND DOCUMENTATION PROVIDED IN A
26 MANNER CONSISTENT WITH THE SCOPE OF THEIR AUTHORITY AND
27 RESPONSIBILITIES FOR REVIEWING TAX CREDIT CERTIFICATE APPLICATIONS

1 AS OUTLINED IN SUBSECTION (3) OF THIS SECTION AND ISSUE EITHER A
2 FAVORABLE OPINION OR A NONFAVORABLE OPINION.

3 (c) THE COMMISSIONER OR THE COMMISSION MAY REQUEST THAT
4 THE LANDOWNER SUBMIT ADDITIONAL INFORMATION OR DOCUMENTATION
5 THAT THE COMMISSIONER OR THE COMMISSION DEEMS NECESSARY TO
6 COMPLETE THE REVIEW AND ISSUE AN OPINION.

7 (d) A NONFAVORABLE OPINION SHALL SET FORTH ANY POTENTIAL
8 DEFICIENCIES IDENTIFIED BY THE COMMISSIONER OR THE COMMISSION AND
9 THAT FALL WITHIN THE SCOPE OF THE DIRECTOR'S AND THE COMMISSION'S
10 REVIEW OF THE CONSERVATION EASEMENT TRANSACTION. THE
11 PRELIMINARY OPINION IS ADVISORY ONLY AND IS NOT BINDING FOR ANY
12 PURPOSE UPON THE DEPARTMENT, THE COMMISSIONER, THE COMMISSION,
13 OR THE DEPARTMENT OF REVENUE.

14 (15) THE DEPARTMENT MAY PROMULGATE RULES TO EFFECTUATE
15 THE PURPOSE, IMPLEMENTATION, AND ADMINISTRATION OF THIS SECTION
16 PURSUANT TO ARTICLE 4 OF TITLE 24. THE AUTHORITY TO PROMULGATE
17 RULES INCLUDES THE AUTHORITY TO DEFINE FURTHER IN RULE THE
18 ADMINISTRATIVE PROCESSES AND REQUIREMENTS, INCLUDING
19 APPLICATION PROCESSING AND REVIEW TIME FRAMES, FOR OBTAINING AND
20 ISSUING AN OPTIONAL PRELIMINARY ADVISORY OPINION PURSUANT TO
21 SUBSECTION (14) OF THIS SECTION.

22 (16) NOTWITHSTANDING THE "COLORADO OPEN RECORDS ACT",
23 PART 2 OF ARTICLE 72 OF TITLE 24, THE DEPARTMENT, THE COMMISSIONER,
24 AND THE COMMISSION SHALL DENY THE RIGHT OF PUBLIC INSPECTION OF
25 ANY DOCUMENTATION OR OTHER RECORD RELATED TO INFORMATION
26 OBTAINED AS PART OF AN INDIVIDUAL LANDOWNER'S APPLICATION FOR A
27 TAX CREDIT CERTIFICATE OR AN OPTIONAL PRELIMINARY ADVISORY

1 OPINION PURSUANT TO THE REQUIREMENTS OF THIS SECTION, INCLUDING
2 DOCUMENTATION OR OTHER RECORDS RELATED TO ADMINISTRATIVE
3 HEARINGS AND SETTLEMENT DISCUSSIONS HELD PURSUANT TO SUBSECTION
4 (12) OF THIS SECTION. THE DEPARTMENT, THE COMMISSIONER, AND THE
5 COMMISSION MAY SHARE DOCUMENTATION OR OTHER RECORDS RELATED
6 TO INFORMATION OBTAINED PURSUANT TO THIS SECTION WITH THE
7 DEPARTMENT OF REVENUE.

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

11 **35-82-108. Conservation cash fund - repeal.** (1) THERE IS
12 HEREBY CREATED IN THE STATE TREASURY THE CONSERVATION CASH
13 FUND, WHICH CONSISTS OF ANY MONEYS TRANSFERRED PURSUANT TO
14 SECTION 35-82-105 AND 35-82-107 AND ANY GIFTS, GRANTS, AND
15 DONATIONS PROVIDED TO CARRY OUT THE PURPOSES OF THIS ARTICLE 82.
16 ALL MONEY IN THE FUND SHALL BE USED AS PROVIDED IN THIS ARTICLE 82.
17 INTEREST EARNED ON THE FUND SHALL REMAIN IN THE FUND AND SHALL
18 NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY
19 OTHER FUND.

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

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

3 **12-61-111.5. Fee adjustments - cash fund created - repeal.**
4 (2) (b) (II) (A) On June 30, 2017, the state treasurer shall transfer to the
5 division of real estate cash fund all unexpended and unencumbered
6 money that remained in the HOA information and resource center cash
7 fund created in section 12-61-406.5, the conservation easement holder
8 certification fund created in section 12-61-724, the conservation easement
9 tax credit certificate review fund created in section 12-61-727, and the
10 mortgage company and loan originator licensing cash fund created in
11 section 12-61-908 immediately prior to the repeal of those funds.

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

14 **12-61-702. Definitions.** As used in this part 7, unless the context
15 otherwise requires:

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

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

20 **12-61-704. Powers and duties of the board - rules.** (1) In
21 addition to all other powers and duties imposed upon it by law, the board
22 has the following powers and duties:

23 (k) To establish classroom education and experience requirements
24 for an appraiser who prepares an appraisal for a conservation easement
25 for which a tax credit is claimed pursuant to section 39-22-522. C.R.S.
26 The requirements must ensure that appraisers have a sufficient amount of
27 training and expertise to accurately prepare appraisals that comply with

1 the uniform standards of professional appraisal practice and any other
2 provision of law related to the appraisal of conservation easements for
3 which a tax credit is claimed. A tax credit certificate for a conservation
4 easement shall not be given in accordance with sections 12-61-726 and
5 12-61-727 35-82-106 AND 35-82-107 unless the appraiser who prepared
6 the appraisal of the easement met all requirements established in
7 accordance with this paragraph (k) SUBSECTION (1)(k) in effect at the time
8 the appraisal was completed ASSIGNMENT IS PERFORMED.

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

11 **39-21-113. Reports and returns - rule. (17)** Notwithstanding
12 any other provision of this section, the executive director may require that
13 such detailed information regarding a claim for a credit for the donation
14 of a conservation easement in gross pursuant to section 39-22-522 and
15 any appraisal submitted in support of the credit claimed be given to the
16 division of real estate in the department of regulatory agencies
17 DEPARTMENT OF AGRICULTURE and the conservation easement oversight
18 commission created pursuant to section 12-61-725 (1), C.R.S., SECTION
19 35-82-104 as the executive director determines is necessary in the
20 performance of the department's functions relating to the credit. The
21 executive director may provide copies of any appraisal and may file a
22 complaint regarding any appraisal as authorized pursuant to section
23 39-22-522 (3.3). Notwithstanding the provisions of part 2 of article 72 of
24 title 24, C.R.S., in order to protect the confidential financial information
25 of a taxpayer, the executive director shall deny the right to inspect any
26 information or appraisal required in accordance with the provisions of
27 this subsection (17).

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

5 **39-22-522. Credit against tax - conservation easements.**
6 (2) (b) For income tax years commencing on or after January 1, 2014,
7 BUT PRIOR TO JANUARY 1, 2019, AND FOR INCOME TAX YEARS
8 COMMENCING ON OR AFTER JANUARY 1, 2022, and, with regard to any
9 credit over the amount of one hundred thousand dollars, for income tax
10 years commencing on or after January 1, 2003, subject to the provisions
11 of subsections (4) and (6) of this section, there shall be allowed a credit
12 with respect to the income taxes imposed by this ~~article~~ ARTICLE 22 to
13 each taxpayer who donates during the taxable year all or part of the value
14 of a perpetual conservation easement in gross created pursuant to article
15 30.5 of title 38 C.R.S., upon real property the taxpayer owns to a
16 governmental entity or a charitable organization described in section
17 38-30.5-104 (2). ~~C.R.S.~~ The credit shall only be allowed for a donation
18 that meets the requirements of section 170 of the federal "Internal
19 Revenue Code of 1986", as amended, and any federal regulations
20 promulgated in accordance with such section. The amount of the credit
21 shall not include the value of any portion of an easement on real property
22 located in another state.

23 (2.5) Notwithstanding any other provision of this section and the
24 requirements of ~~section 12-61-727, C.R.S.~~ SECTION 35-82-107, for
25 income tax years commencing on or after January 1, 2011, a taxpayer
26 conveying a conservation easement and claiming a credit pursuant to this
27 section shall, in addition to any other requirements of this section and the

1 requirements of section 12-61-727, C.R.S. SECTION 35-82-107, submit a
2 claim for the credit to the division of real estate in the department of
3 regulatory agencies DEPARTMENT OF AGRICULTURE. The division
4 DEPARTMENT OF AGRICULTURE shall issue a certificate for the claims
5 received in the order submitted. After certificates have been issued for
6 credits that exceed an aggregate of twenty-two million dollars for all
7 taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars
8 for the 2013 calendar year, and forty-five million dollars for each
9 calendar year thereafter, any claims that exceed the amount allowed for
10 a specified calendar year shall be placed on a wait list in the order
11 submitted and a certificate shall be issued for use of the credit in the next
12 year for which the division DEPARTMENT OF AGRICULTURE has not issued
13 credit certificates in excess of the amounts specified in this subsection
14 (2.5); except that no more than fifteen million dollars in claims shall be
15 placed on the wait list in any given calendar year. The division
16 DEPARTMENT OF AGRICULTURE shall not issue credit certificates that
17 exceed twenty-two million dollars in each of the 2011 and 2012 calendar
18 years, thirty-four million dollars for the 2013 calendar year, and forty-five
19 million dollars for each calendar year thereafter. No claim for a credit is
20 allowed for any income tax year commencing on or after January 1, 2011,
21 unless a certificate has been issued by the division DEPARTMENT OF
22 AGRICULTURE. If all other requirements under section 12-61-727, C.R.S.,
23 SECTION 35-82-107 and this section are met, the right to claim the credit
24 is vested in the taxpayer at the time a credit certificate is issued.

25 (2.7) Notwithstanding any other provision, for income tax years
26 commencing on or after January 1, 2014, no claim for a credit shall be
27 allowed unless a tax credit certificate is issued by the division of real

1 estate DEPARTMENT OF AGRICULTURE in accordance with sections
2 12-61-726 and 12-61-727, C.R.S., SECTIONS 35-82-106 AND 35-82-107
3 and the taxpayer files the tax credit certificate with the income tax return
4 filed with the department of revenue.

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

11 (f) If the holder of the conservation easement is an organization
12 to which the certification program in section 12-61-724 SECTION
13 35-82-105 applies, a sworn affidavit from the holder of the conservation
14 easement in gross that includes the following:

15 (3.5) (a) For conservation easements donated prior to January 1,
16 2014:

17 (I) The executive director shall have the authority, pursuant to
18 subsection (8) of this section, to require additional information from the
19 taxpayer or transferee regarding the appraisal value of the easement, the
20 amount of the credit, and the validity of the credit. In resolving disputes
21 regarding the validity or the amount of a credit allowed pursuant to
22 subsection (2) of this section, including the value of the conservation
23 easement for which the credit is granted, the executive director shall have
24 the authority, for good cause shown and in consultation with the division
25 of real estate DEPARTMENT OF AGRICULTURE and the conservation
26 easement oversight commission created in section 12-61-725 (1), C.R.S.,
27 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~~

1 DEPARTMENT OF AGRICULTURE. Notwithstanding part 2 of article 72 of
2 title 24, C.R.S., in order to protect the confidential financial information
3 of a taxpayer, the ~~division~~ DEPARTMENT OF AGRICULTURE and the
4 commission shall deny the right to inspect any information provided by
5 the executive director in accordance with this subparagraph (H)
6 SUBSECTION (3.5)(a)(II).

7 (b) For conservation easements donated on or after January 1,
8 2014, and subject to the restrictions of section 12-61-727 (4), C.R.S.
9 SECTION 35-82-107 (4), the executive director shall have the authority,
10 pursuant to subsection (8) of this section, to require additional
11 information from the taxpayer or transferee regarding the amount of the
12 credit and the validity of the credit. In resolving disputes regarding the
13 validity or the amount of a credit allowed pursuant to subsection (2) of
14 this section, the executive director shall have the authority, for good cause
15 shown, to review and accept or reject, in whole or in part, the amount of
16 the credit and the validity of the credit based upon the internal revenue
17 code and federal regulations in effect at the time of the donation, except
18 those requirements for which authority is granted to the ~~division of real~~
19 estate, the ~~director of the division of real estate~~ DEPARTMENT OF
20 AGRICULTURE, THE COMMISSIONER OF AGRICULTURE, or the conservation
21 easement oversight commission pursuant to section 12-61-727, C.R.S.
22 SECTION 35-82-107.

23 (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
24 FOR ANY CONSERVATION EASEMENT IN GROSS DONATED FOR ANY TAX
25 YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, FOR WHICH A CREDIT
26 CLAIMED PURSUANT TO THIS SECTION WAS SUBSEQUENTLY DENIED IN
27 WHOLE OR IN PART BECAUSE THE APPRAISED VALUE OF THE EASEMENT

1 WAS DETERMINED BY THE STATE TO BE TOO HIGH, THE TAXPAYER MAY
2 ELECT IN ANY SUBSEQUENT TAX YEAR TO AMEND THE RETURN FOR SUCH
3 TAX YEAR AND NOT CLAIM THE CREDIT. UPON AMENDING A RETURN AND
4 REPAYING TO THE STATE THE AMOUNT, IF ANY, ALLOWED BY THE STATE
5 AND CLAIMED BY THE TAXPAYER FOR SUCH TAX YEAR, THE TAXPAYER
6 SHALL BE ENTITLED TO REPAYMENT FROM THE STATE OF THE FULL
7 AMOUNT OF ANY INTEREST OR PENALTIES PAID BY OR ON BEHALF OF THE
8 TAXPAYER TO THE STATE IN CONNECTION WITH THE DENIAL OF THE
9 ORIGINAL CLAIM FOR THE CREDIT.

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

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

18 (b) Notwithstanding any other provisions of law, the executive
19 director retains the authority to administer all issues related to the claim
20 or use of a tax credit for the donation of a conservation easement that are
21 not granted to the ~~director of the division of real estate~~ DEPARTMENT OF
22 AGRICULTURE, THE COMMISSIONER OF AGRICULTURE, or the conservation
23 easement oversight commission under section 12-61-727, ~~C.R.S.~~ SECTION
24 35-82-107.

25 (7) For income tax years commencing on or after January 1, 2000,
26 a taxpayer may transfer all or a portion of a tax credit granted pursuant to
27 subsection (2) of this section to another taxpayer for such other taxpayer.

1 as transferee, to apply as a credit against the taxes imposed by this article
2 subject to the following limitations:

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

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

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

22 **29-20-110. Conservation easements - public hearing.** (1) **ON**
23 **AND AFTER THE EFFECTIVE DATE OF THIS SECTION, PRIOR TO CREATING,**
24 **MODIFYING THE TERMS OF, OR TRANSFERRING A CONSERVATION**
25 **EASEMENT IN GROSS PURSUANT TO ARTICLE 30.5 OF TITLE 38, THE**
26 **GOVERNING BODY OF A LOCAL GOVERNMENT WITHIN WHICH THE**
27 **PROPERTY IS LOCATED SHALL HOLD A PUBLIC HEARING REGARDING THE**

1 CREATION, MODIFICATION, OR TRANSFER OF THE EASEMENT AS PROVIDED
2 IN THIS SECTION. IF THE PROPERTY IS LOCATED ENTIRELY WITHIN THE
3 UNINCORPORATED PORTION OF ONE OR MORE COUNTIES, THE BOARD OF
4 COUNTY COMMISSIONERS OF THE COUNTY WITH THE GREATEST PORTION
5 OF THE PROPERTY SHALL HOLD THE HEARING. IF THE PROPERTY IS
6 LOCATED IN WHOLE OR IN PART WITHIN ONE OR MORE MUNICIPALITIES, THE
7 GOVERNING BODY OF THE MUNICIPALITY WITH THE GREATEST PORTION OF
8 THE PROPERTY SHALL HOLD THE HEARING.

9 (2) AT LEAST FOURTEEN DAYS' NOTICE OF THE TIME AND PLACE OF
10 A HEARING REQUIRED BY THIS SECTION SHALL BE GIVEN BY AT LEAST ONE
11 PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE
12 LOCAL GOVERNMENT. THE NOTICE SHALL DISCLOSE THE LOCATION,
13 ACREAGE, NAME OF THE GRANTOR, NAME OF THE HOLDER, AND
14 CONSERVATION PURPOSES OF THE CONSERVATION EASEMENT AND SPECIFY
15 THE AMOUNT OF ANY PUBLIC MONEY USED OR TAX CREDITS THAT WILL BE
16 CLAIMED IN CONNECTION WITH THE EASEMENT. THE GRANTOR AND
17 HOLDER OF THE CONSERVATION EASEMENT SHALL BE ALLOWED TO
18 PRESENT INFORMATION ABOUT THE CONSERVATION EASEMENT AND PUBLIC
19 TESTIMONY SHALL BE ALLOWED AT THE HEARING. THE PURPOSE OF THE
20 HEARING IS TO PROVIDE PUBLIC NOTICE REGARDING THE EASEMENT, AND
21 THE GOVERNING BODY OF THE LOCAL GOVERNMENT NEED NOT TAKE ANY
22 SPECIFIC ACTION WITH RESPECT TO THE PROPOSED CREATION,
23 MODIFICATION, OR TRANSFER. IF A LOCAL GOVERNMENT HAS AN EXISTING
24 APPROVAL PROCESS FOR CONSERVATION EASEMENTS, THE HEARING
25 REQUIRED BY THIS SECTION MAY BE CONDUCTED IN CONJUNCTION WITH
26 ANY OTHER HEARING REQUIRED BY PROCESS AS LONG AS THE HEARING
27 OTHERWISE MEETS THE REQUIREMENTS OF THIS SECTION.

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

3 **38-30.5-107. Release - termination. (1) Conservation easements**
4 in gross may, in whole or in part, be released, terminated, extinguished,
5 or abandoned by merger with the underlying fee interest in the servient
6 land or water rights or in any other manner in which easements may be
7 lawfully terminated, released, extinguished, or abandoned. FOR
8 EASEMENTS CREATED ON OR AFTER JANUARY 1, 2019, IF A CONSERVATION
9 EASEMENT IS ORPHANED OR NEGLECTED, THE LANDOWNER MAY PETITION
10 THE DISTRICT COURT OF THE COUNTY IN WHICH THE PROPERTY IS SITUATED
11 TO REQUEST A TRANSFER OF THE EASEMENT TO ANOTHER HOLDER OR FOR
12 AN ORDER THAT THE ABANDONMENT OR NEGLECT OF THE CONSERVATION
13 EASEMENT HAS RESULTED IN CIRCUMSTANCES WHICH MAKE THE
14 CONTINUED USE OF THE PROPERTY FOR CONSERVATION PURPOSES
15 IMPOSSIBLE OR IMPRACTICABLE. THE PETITION TO THE DISTRICT COURT
16 SHALL ALSO BE SERVED ON THE ATTORNEY GENERAL AND THE ATTORNEY
17 GENERAL SHALL BE ENTITLED TO BE HEARD.

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

23 (a) THE STATE HAS REJECTED THE CLAIM FOR THE CREDIT OR THE
24 TAXPAYER HAS ELECTED NOT TO CLAIM THE CREDIT PURSUANT TO SECTION
25 39-22-522 (5)(c);

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

1 (c) THE HOLDER OF THE EASEMENT EITHER PROVIDED NO
2 COMPENSATION FOR THE EASEMENT OR HAS BEEN REIMBURSED IN WHOLE
3 FOR ANY COMPENSATION PROVIDED.

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

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

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

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

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

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

19 **SECTION 10. Repeal of relocated provisions in this act.** In
20 Colorado Revised Statutes, **repeal** 12-61-724, 12-61-725, 12-61-726, and
21 12-61-727.

22 **SECTION 11. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2018 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.