



State of Colorado

July 29, 2010

Senator Brandon Shaffer, President of the Senate
Representative Terrance Carroll, Speaker of the House of Representatives
Senator Mike Kopp, Minority Leader of the Senate
Representative Mike May, Minority Leader of the House of Representatives
State Capitol Building
Denver, Colorado 80203

Dear President Shaffer, Speaker Carroll, Senator Kopp, and Representative May:

As you may recall, Senate Bill 06-079 established a process for the post-enactment review of legislation. House Bill 08-1353, concerning the implementation of additional requirements to verify the validity of a state income tax credit claimed by a taxpayer for donating a conservation easement in the state, required a post-enactment review and took effect July 1, 2008.

To facilitate the post-enactment review of the legislation, we contacted the Department of Regulatory Agencies and the Division of Real Estate within that department to notify them of the requirements of the post-enactment review and to request they provide information to us for use in the review. Specifically, we requested responses to the following questions that are set out in section 2-2-1201 (2), C.R.S., the post-enactment review statute adopted in Senate Bill 06-079:

- Whether the bill has been implemented, in whole or in part;
- If the bill has been implemented in whole or in part, how the bill has been implemented, including whether the bill has been implemented in the most efficient and cost-effective manner;
- If the bill has been implemented in part, the reasons why the bill has not been implemented in whole;
- The extent to which the desired results or benefits of the bill, as specified in the legislative declaration of the bill, are being achieved;
- Whether there have been any unintended consequences or problems caused by the implementation of the bill;
- Whether the implementation of the bill has been impeded by any existing state or federal statutes, rules, procedures, or practices;
- Whether any administrative or statutory changes are necessary to improve the implementation of the bill;
- Whether the actual costs of implementing the bill have been within the estimated costs, if any, set forth in the fiscal note for the bill;
- Whether any increase in state funding is necessary to improve the implementation of the bill.

The purpose of this letter is to provide to you the information received by the entities affected by

House Bill 08-1353 regarding their implementation of the legislation.

Attached for your review is the following information, with an indication of the pages on which the information can be located:

- (1) A copy of House Bill 08-1353; pages 1-14
- (2) The response received from the Division of Real Estate within the Department of Regulatory Agencies; pages 15-24

We do want to bring to your attention one issue identified in the response from the Division of Real Estate regarding unintended consequences of the amount of the fee associated with applications from entities seeking certification as conservation easement holders. Part of the funding for the certification program is generated from the fees collected on certification applications. Given the pool of applicants for certification was smaller than originally expected, the certification fee was increased by House Bill 09-1014. The Division believes this higher fee may have the unintended consequence of preventing new organizations from seeking certification or it may cause smaller organizations to withdraw from state certification. In addition, as a result of the small pool of licensees, the certification program is not as financially stable as other regulatory programs within the Division of Real Estate. (For more details, see the Division of Real Estate's response 5. on pages 21-22 of this report.)

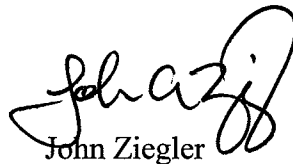
The Division has offered that allowing greater flexibility in the funding of the certification program would allow for a more consistent and stable source of revenue. The Division believes the increased flexibility could be accomplished with a statutory change that combines into a single fund the two separate funds House Bill 08-1353 established for the administration of the certification program. (For more details, see the Division of Real Estate's response 7. on page 22 of this report.)

If you have any questions regarding the post-enactment review of House Bill 08-1353, please feel free to contact us.

Sincerely,



Charles W. Pike
Director, Office of Legislative Legal Services
303-866-2045



John Ziegler
Staff Director, Joint Budget Committee
303-866-2061



Mike Mauer
Director, Legislative Council
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CHAPTER 448

TAXATION

HOUSE BILL 08-1353

BY REPRESENTATIVE(S) Madden, Buescher, Curry, Roberts, Borodkin, Butcher, Carroll T., Fischer, Hodge, Kefalas, Kerr A., Kerr J., Levy, Liston, Marshall, Massey, May M., McFadyen, McGihon, Merrifield, Pommer, Romanoff, Rose, Scanlan, Solano, Stafford, Witwer, and King;
also SENATOR(S) Isgar, Peury, Bacon, Boyd, Gibbs, Groff, Keller, Shaffer, Tapia, Taylor, Tupa, and Veiga.

AN ACT

CONCERNING THE IMPLEMENTATION OF ADDITIONAL REQUIREMENTS TO VERIFY THE VALIDITY OF A STATE INCOME TAX CREDIT CLAIMED BY A TAXPAYER FOR DONATING A CONSERVATION EASEMENT IN THE STATE, REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

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

(a) Colorado's conservation easement tax credit program was designed to give landowners an incentive to preserve their land for conservation and other values that would be eliminated or compromised by development;

(b) Some promoters have abused the tax credit program to obtain a financial benefit for themselves and their clients by submitting easements that misrepresent a property's conservation or financial values.

(2) The general assembly determines that, pursuant to section 9 of this act, it is appropriate for the legislative service agencies to conduct a post-enactment review of this act two years after its enactment in accordance with section 2-2-1201, C.R.S., and report their findings relating to the implementation of this act to the general assembly. It is the intent of the general assembly that desired results and benefits of this act are as follows:

(a) To address abuses of the conservation easement tax credit program while continuing to allow legitimate participants and the state of Colorado to continue to

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

benefit from the program;

(b) To have the division of real estate review appraisals of conservation easements and affidavits of appraisers submitted to the division and maintain the information in an electronic database;

(c) To have the division of real estate investigate the activities of appraisers of conservation easements to ensure that the appraisers are complying with the uniform standards of professional appraisal practice and other requirements of law;

(d) To establish and administer a program to certify conservation easement holders to identify fraudulent or unqualified organizations and prevent them from holding conservation easements for which tax credits are claimed in the state;

(e) To establish a conservation easement oversight commission to advise the division of real estate and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification; and

(f) To ensure that the division of real estate and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law.

SECTION 2. 12-61-702, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

(2.3) "COMMISSION" MEANS THE CONSERVATION EASEMENT OVERSIGHT COMMISSION CREATED IN SECTION 12-61-721 (1).

SECTION 3. Part 7 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-61-719. Conservation easement appraisals. (1) ANY APPRAISER WHO CONDUCTS AN APPRAISAL FOR A CONSERVATION EASEMENT SHALL SUBMIT A COPY OF THE COMPLETED APPRAISAL TO THE DIVISION WITHIN THIRTY DAYS FOLLOWING THE COMPLETION OF THE APPRAISAL. FOR PURPOSES OF THIS SECTION, "COMPLETION OF THE APPRAISAL" SHALL MEAN THAT THE CERTIFICATION PAGE, AS DEFINED IN THE UNIFORM STANDARDS FOR PROFESSIONAL APPRAISAL PRACTICE, PROMULGATED BY THE APPRAISAL STANDARDS BOARD, SHALL HAVE BEEN SIGNED BY THE APPRAISER AND THE APPRAISAL HAS BEEN DELIVERED TO THE CLIENT OF THE APPRAISER. THE APPRAISAL SHALL BE ACCOMPANIED BY AN AFFIDAVIT FROM THE APPRAISER THAT INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) A STATEMENT SPECIFYING THE VALUE OF THE UNENCUMBERED PROPERTY AND THE TOTAL VALUE OF THE CONSERVATION EASEMENT IN GROSS ALONG WITH DETAILS OF WHAT METHODS THE APPRAISER USED TO DETERMINE THESE VALUES;

(b) IF THE APPRAISAL SEPARATELY ALLOCATES THE VALUES OF SAND AND

GRAVEL, MINERALS, WATER, OR IMPROVEMENTS, A STATEMENT OF THE SEPARATE VALUE OF THE SAND AND GRAVEL, MINERALS, WATER, OR IMPROVEMENTS BEFORE AND AFTER THE CONSERVATION EASEMENT IN GROSS IS GRANTED;

(c) AN ACKNOWLEDGMENT SPECIFYING WHETHER A SUBDIVISION ANALYSIS WAS USED TO ESTABLISH THE CONSERVATION VALUE IN THE APPRAISAL;

(d) A STATEMENT CLARIFYING WHETHER OR NOT THE LANDOWNER OR A FAMILY MEMBER AS DEFINED IN SECTION 267 (c) (4) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, OWNS OTHER PROPERTY CONTIGUOUS TO THE PROPERTY ENCUMBERED BY THE APPRAISED CONSERVATION EASEMENT OR OWNS OTHER PROPERTY, OF WHICH THE VALUE MAY BE INCREASED BY THE DONATION OF THE PROPERTY ENCUMBERED BY THE APPRAISED CONSERVATION EASEMENT, WHETHER CONTIGUOUS OR NOT, OWNED BY THE LANDOWNER OR RELATED PERSON AS DEFINED IN SECTION 267 (b) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(e) A STATEMENT SPECIFYING HOW THE APPRAISER SATISFIES THE QUALIFIED APPRAISER AND LICENSING REQUIREMENTS SET FORTH IN SECTION 39-22-522 (3.3);

(f) A STATEMENT VERIFYING THE DATE AND METHOD BY WHICH THE APPRAISER HAS MET ANY SPECIFIED CLASSROOM EDUCATION REQUIREMENTS ESTABLISHED BY THE BOARD FOR CONSERVATION EASEMENT APPRAISALS PURSUANT TO SUBSECTION (7) OF THIS SECTION; AND

(g) A STATEMENT SPECIFYING THE NUMBER OF PREVIOUS CONSERVATION EASEMENT APPRAISALS CONDUCTED BY THE APPRAISER.

(2) AN AFFIDAVIT SUBMITTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE IN A FORM APPROVED BY THE BOARD. THE BOARD SHALL HAVE THE AUTHORITY TO PROMULGATE RULES CONCERNING THE FORM AND CONTENT OF THE AFFIDAVIT. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S. A COPY OF THE AFFIDAVIT AND THE COMPLETED APPRAISAL SHALL BE PROVIDED TO THE LANDOWNER.

(3) THE DIVISION SHALL REVIEW THE INFORMATION SUBMITTED IN ACCORDANCE WITH THIS SECTION TO ENSURE THAT IT IS COMPLETE AND SHALL RECORD AND MAINTAIN THE INFORMATION SUBMITTED AS PART OF THE AFFIDAVIT IN AN ELECTRONIC DATABASE. THE DIVISION SHALL HAVE THE AUTHORITY TO SHARE THE INFORMATION WITH THE DEPARTMENT OF REVENUE. NOTWITHSTANDING THE PROVISIONS OF PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., THE DIVISION'S CUSTODIAN OF RECORDS SHALL DENY THE RIGHT OF INSPECTION OF ANY APPRAISAL, AFFIDAVIT, OR OTHER RECORD RELATED TO INFORMATION SUBMITTED IN ACCORDANCE WITH THE PROVISION OF THIS SECTION UNLESS AND UNTIL SUCH TIME AS THE DIVISION FILES A NOTICE OF CHARGES RELATED TO THE INFORMATION.

(4) THE BOARD IN ITS DISCRETION MAY, OR UPON RECEIVING A WRITTEN COMPLAINT FROM ANY PERSON SHALL, INVESTIGATE THE ACTIVITIES OF ANY APPRAISER WHO SUBMITS ANY INFORMATION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. THE INVESTIGATION SHALL CONSIDER WHETHER THE APPRAISER COMPLIED WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

AND ANY OTHER PROVISION OF LAW. IN CONDUCTING THE INVESTIGATION, THE DIVISION SHALL HAVE THE AUTHORITY TO CONSULT WITH THE COMMISSION.

(5) IF THE BOARD DETERMINES THAT A MATERIAL VIOLATION OF THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE OR A SUBSTANTIAL MISSTATEMENT OF VALUE HAS OCCURRED IN ANY APPRAISAL SUBMITTED IN ACCORDANCE WITH THIS SECTION, THE BOARD SHALL NOTIFY THE DEPARTMENT OF REVENUE REGARDING THE APPRAISAL AND PROVIDE THE DEPARTMENT WITH A COPY OF THE APPRAISAL AND A SUMMARY OF THE DIVISION'S FINDINGS.

(6) IF AN APPRAISER FAILS TO FILE AN APPRAISAL, AFFIDAVIT, OR OTHER INFORMATION AS REQUIRED BY THIS SECTION, THE BOARD SHALL HAVE THE AUTHORITY TO TAKE DISCIPLINARY ACTION AS PROVIDED IN SECTION 12-61-710.

(7) THE BOARD SHALL HAVE THE AUTHORITY TO ESTABLISH CLASSROOM EDUCATION AND EXPERIENCE REQUIREMENTS FOR AN APPRAISER WHO PREPARES AN APPRAISAL FOR A CONSERVATION EASEMENT PURSUANT TO SECTION 39-22-522, C.R.S. SUCH REQUIREMENTS SHALL BE ESTABLISHED TO ENSURE THAT APPRAISERS HAVE A SUFFICIENT AMOUNT OF TRAINING AND EXPERTISE TO ACCURATELY PREPARE APPRAISALS THAT COMPLY WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE AND ANY OTHER PROVISION OF LAW RELATED TO THE APPRAISAL OF CONSERVATION EASEMENTS. A CREDIT FOR A CONSERVATION EASEMENT SHALL NOT BE ALLOWED UNLESS THE APPRAISER WHO PREPARED THE APPRAISAL OF THE EASEMENT MET ALL REQUIREMENTS ESTABLISHED IN ACCORDANCE WITH THIS SUBSECTION (7) IN EFFECT AT THE TIME THE APPRAISAL WAS COMPLETED.

(8) ANY APPRAISER WHO SUBMITS A COPY OF AN APPRAISAL TO THE DIVISION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION SHALL PAY THE DIVISION A FEE AS PRESCRIBED BY THE DIVISION. THE FEE SHALL COVER THE COSTS OF THE DIVISION IN ADMINISTERING THE REQUIREMENTS OF THIS SECTION. THE STATE TREASURER SHALL CREDIT THE FEES TO THE CONSERVATION EASEMENT APPRAISAL REVIEW FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED TO THE DIVISION FOR THE PURPOSES OF IMPLEMENTING AND ADMINISTERING THIS SECTION AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR. THE FUND SHALL BE MAINTAINED IN ACCORDANCE WITH SECTION 24-75-402, C.R.S.; EXCEPT THAT IN NO EVENT SHALL THE FEE EXCEED THE AMOUNT OF SIX HUNDRED DOLLARS FOR EACH APPRAISAL SUBMITTED. ON OR BEFORE JANUARY 1, 2009, AND ON OR BEFORE EACH JANUARY 1 THEREAFTER, THE DIVISION SHALL CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT OF THE FEE PRESCRIBED BY THE DIVISION PURSUANT TO THIS SUBSECTION (8).

12-61-720. Certification of conservation easement holders - rules - repeal.

(1) THE DIVISION SHALL, IN CONSULTATION WITH THE COMMISSION CREATED IN SECTION 12-61-721, ESTABLISH AND ADMINISTER A CERTIFICATION PROGRAM FOR QUALIFIED ORGANIZATIONS UNDER SECTION 170 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT HOLD CONSERVATION EASEMENTS FOR WHICH A TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S. THE PURPOSE OF THE PROGRAM SHALL BE TO:

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

(b) IDENTIFY FRAUDULENT OR UNQUALIFIED APPLICANTS AS DEFINED BY THE RULES OF THE DIVISION TO PREVENT THEM FROM BECOMING CERTIFIED BY THE PROGRAM.

(2) THE CERTIFICATION PROGRAM SHALL BE ESTABLISHED AND COMMENCE ACCEPTING APPLICATIONS FOR CERTIFICATION NO LATER THAN JANUARY 1, 2009. THE DIVISION SHALL CONDUCT A REVIEW OF EACH APPLICATION AND CONSIDER THE RECOMMENDATIONS OF THE COMMISSION BEFORE MAKING A FINAL DETERMINATION TO GRANT OR DENY CERTIFICATION. IN REVIEWING AN APPLICATION AND IN GRANTING CERTIFICATION, THE DIVISION AND THE COMMISSION MAY CONSIDER:

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

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

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

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

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

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

(3) AT THE TIME OF SUBMISSION OF AN APPLICATION, THE APPLICANT SHALL PAY THE DIVISION A FEE AS PRESCRIBED BY THE DIVISION. THE FEE SHALL COVER THE COSTS OF THE DIVISION AND THE COMMISSION IN ADMINISTERING THE CERTIFICATION PROGRAM FOR ENTITIES THAT HOLD CONSERVATION EASEMENTS FOR WHICH TAX CREDITS ARE CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S. THE STATE TREASURER SHALL CREDIT FEES COLLECTED PURSUANT TO THIS SUBSECTION (3) TO THE CONSERVATION EASEMENT HOLDER CERTIFICATION FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED TO THE DIVISION FOR THE PURPOSES OF IMPLEMENTING AND ADMINISTERING THIS SECTION AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR. THE FUND SHALL BE MAINTAINED IN ACCORDANCE WITH SECTION 24-75-402, C.R.S.; EXCEPT THAT IN NO EVENT SHALL THE FEE EXCEED THE AMOUNT OF FIVE THOUSAND EIGHT HUNDRED TEN DOLLARS

FOR EACH APPLICATION SUBMITTED. ON OR BEFORE JANUARY 1, 2009, AND ON OR BEFORE EACH JANUARY 1 THEREAFTER, THE DIVISION SHALL CERTIFY TO THE GENERAL ASSEMBLY THE AMOUNT OF THE FEE PRESCRIBED BY THE DIVISION PURSUANT TO THIS SUBSECTION (3).

(4) THE CERTIFICATION PROGRAM SHALL APPLY TO:

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

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

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

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

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

(7) THE DIVISION SHALL IMPLEMENT THE CERTIFICATION PROGRAM IN A MANNER THAT EITHER COMMENCES ACCEPTING APPLICATIONS FOR CERTIFICATION:

(a) AT THE SAME TIME FOR ALL TYPES OF ENTITIES THAT HOLD CONSERVATION EASEMENTS; OR

(b) DURING THE FIRST YEAR OF THE PROGRAM FOR ENTITIES DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION AND DURING THE SECOND YEAR OF THE PROGRAM FOR ENTITIES DESCRIBED IN PARAGRAPHS (b) AND (c) OF SUBSECTION (4) OF THIS SECTION, AND OTHER ENTITIES.

(8) BEGINNING ONE YEAR AFTER THE DIVISION COMMENCES ACCEPTING APPLICATIONS TO CERTIFY THE TYPE OF ENTITY THAT HOLDS A CONSERVATION EASEMENT IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (7) OF THIS SECTION, A TAX CREDIT MAY BE CLAIMED FOR THE EASEMENT PURSUANT TO SECTION 39-22-522, C.R.S., ONLY IF THE ENTITY HAS BEEN CERTIFIED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AT THE TIME THE DONATION OF THE EASEMENT IS MADE. THE DIVISION SHALL MAKE INFORMATION AVAILABLE TO THE PUBLIC CONCERNING THE DATE THAT IT COMMENCES ACCEPTING APPLICATIONS FOR ENTITIES THAT HOLD CONSERVATION EASEMENTS AND THE REQUIREMENTS OF THIS SUBSECTION (8).

(9) CERTIFICATION GRANTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE EFFECTIVE FOR A THREE-YEAR PERIOD.

(10) THE DIVISION SHALL MAINTAIN AND UPDATE AN ONLINE LIST THAT CAN BE ACCESSED BY THE PUBLIC OF THE ORGANIZATIONS THAT HAVE APPLIED FOR CERTIFICATION AND WHETHER EACH HAS BEEN CERTIFIED, REJECTED FOR CERTIFICATION, OR HAD ITS CERTIFICATION REVOKED OR SUSPENDED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(11) THE DIVISION SHALL HAVE THE AUTHORITY TO INVESTIGATE THE ACTIVITIES OF ANY ENTITY THAT IS REQUIRED TO BE CERTIFIED PURSUANT TO THIS SECTION AND TO IMPOSE DISCIPLINE FOR NONCOMPLIANCE, INCLUDING BUT NOT LIMITED TO THE SUSPENSION OR REVOCATION OF A CERTIFICATION OR THE IMPOSITION OF FINES. THE DIVISION SHALL HAVE THE AUTHORITY TO PROMULGATE RULES FOR THE CERTIFICATION PROGRAM AND DISCIPLINE AUTHORIZED BY THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(12) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

(a) AFFECT ANY TAX CREDIT THAT WAS CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S., PRIOR TO THE TIME CERTIFICATION WAS REQUIRED BY THIS SECTION; OR

(b) REQUIRE THE CERTIFICATION OF AN ENTITY THAT HOLDS A CONSERVATION EASEMENT FOR WHICH A TAX CREDIT IS NOT CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S.

(13) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2018.

12-61-721. Conservation easement oversight commission - created - repeal.

(1) THERE IS HEREBY CREATED IN THE DIVISION A CONSERVATION EASEMENT OVERSIGHT COMMISSION CONSISTING OF NINE MEMBERS AS FOLLOWS:

(a) ONE MEMBER REPRESENTING THE GREAT OUTDOORS COLORADO PROGRAM SHALL BE APPOINTED BY AND SERVE AT THE PLEASURE OF THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND ESTABLISHED IN ARTICLE XXVII OF THE STATE CONSTITUTION;

(b) ONE MEMBER REPRESENTING THE DEPARTMENT OF NATURAL RESOURCES

SHALL BE APPOINTED BY AND SERVE AT THE PLEASURE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT;

(c) ONE MEMBER REPRESENTING THE DEPARTMENT OF AGRICULTURE SHALL BE APPOINTED BY AND SERVE AT THE PLEASURE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT;

(d) SIX MEMBERS APPOINTED BY THE GOVERNOR AS FOLLOWS WITH AT LEAST ONE MEMBER WITH THE FOLLOWING QUALIFICATIONS OR REPRESENTING THE FOLLOWING INTERESTS:

(I) A LOCAL LAND TRUST;

(II) A STATEWIDE OR NATIONAL LAND TRUST;

(III) A LOCAL GOVERNMENT OPEN SPACE OR LAND CONSERVATION AGENCY;

(IV) AN HISTORIC PRESERVATION ORGANIZATION WITH EXPERIENCE IN EASEMENTS ON PROPERTIES OF HISTORICAL SIGNIFICANCE;

(V) A CERTIFIED GENERAL APPRAISER WITH EXPERIENCE IN CONSERVATION EASEMENTS WHO MEETS ANY CLASSROOM EDUCATION AND EXPERIENCE REQUIREMENTS ESTABLISHED BY THE BOARD IN ACCORDANCE WITH SECTION 12-61-719; AND

(VI) A LANDOWNER THAT HAS DONATED A CONSERVATION EASEMENT IN COLORADO.

(2) IN MAKING APPOINTMENTS TO THE COMMISSION, THE GOVERNOR SHALL CONSULT WITH THE THREE MEMBERS OF THE COMMISSION APPOINTED PURSUANT TO PARAGRAPHS (a) TO (c) OF SUBSECTION (1) OF THIS SECTION AND WITH APPROPRIATE ORGANIZATIONS REPRESENTING THE PARTICULAR INTEREST OR AREA OF EXPERTISE THAT THE APPOINTEE REPRESENTS. NOT MORE THAN THREE OF THE GOVERNOR'S APPOINTEES SERVING AT THE SAME TIME SHALL BE FROM THE SAME POLITICAL PARTY. IN MAKING THE INITIAL APPOINTMENTS, THE GOVERNOR SHALL APPOINT THREE MEMBERS FOR TERMS OF TWO YEARS. ALL OTHER APPOINTMENTS BY THE GOVERNOR SHALL BE FOR A TERM OF THREE YEARS. NO MEMBER SHALL SERVE MORE THAN TWO CONSECUTIVE TERMS. IN THE EVENT OF A VACANCY BY DEATH, RESIGNATION, REMOVAL, OR OTHERWISE, THE GOVERNOR SHALL APPOINT A MEMBER TO FILL THE UNEXPIRED TERM. THE GOVERNOR SHALL HAVE THE AUTHORITY TO REMOVE ANY MEMBER FOR MISCONDUCT, NEGLIGENCE OF DUTY, OR INCOMPETENCE.

(3) THE COMMISSION SHALL ADVISE THE DIVISION AND THE DEPARTMENT OF REVENUE REGARDING CONSERVATION EASEMENTS FOR WHICH A STATE INCOME TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S. AT THE REQUEST OF THE DIVISION OR THE DEPARTMENT, THE COMMISSION SHALL REVIEW CONSERVATION EASEMENT TRANSACTIONS, APPLICATIONS, AND OTHER DOCUMENTS AND ADVISE THE DIVISION AND THE DEPARTMENT REGARDING CONSERVATION VALUES, THE CAPACITY OF CONSERVATION EASEMENT HOLDERS, AND THE INTEGRITY AND ACCURACY OF CONSERVATION EASEMENT TRANSACTIONS RELATED TO THE TAX CREDITS.

(4) THE COMMISSION SHALL MEET NOT LESS THAN ONCE EACH QUARTER TO REVIEW APPLICATIONS FOR CONSERVATION EASEMENT HOLDER CERTIFICATION SUBMITTED IN ACCORDANCE WITH SECTION 12-61-720 AND TO REVIEW ANY OTHER ISSUES REFERRED TO THE COMMISSION BY THE DIVISION, THE DEPARTMENT OF REVENUE, OR ANY OTHER STATE ENTITY. THE DIVISION SHALL CONVENE THE MEETINGS OF THE COMMISSION AND PROVIDE STAFF SUPPORT AS REQUESTED BY THE COMMISSION. A MAJORITY OF THE MEMBERS OF THE COMMISSION SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ALL BUSINESS, AND ACTIONS OF THE COMMISSION SHALL REQUIRE A VOTE OF A MAJORITY OF SUCH MEMBERS PRESENT IN FAVOR OF THE ACTION TAKEN.

(5) ON OR BEFORE JANUARY 1, 2009, THE COMMISSION SHALL ESTABLISH A CONFLICT OF INTEREST POLICY TO ENSURE THAT ANY MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM PERFORMING ANY ACT THAT CONFLICTS WITH A PRIVATE PECUNIARY INTEREST OF THE MEMBER OR FROM PARTICIPATING IN THE DELIBERATION OR DECISION- MAKING PROCESS FOR CERTIFICATION FOR AN APPLICANT REPRESENTED BY SUCH MEMBER.

(6) EACH MEMBER OF THE COMMISSION SHALL RECEIVE THE SAME COMPENSATION AND REIMBURSEMENT OF EXPENSES AS THOSE PROVIDED FOR MEMBERS OF BOARDS AND COMMISSIONS IN THE DIVISION OF REGISTRATIONS PURSUANT TO SECTION 24-34-102 (13), C.R.S. PAYMENT FOR ALL SUCH PER DIEM COMPENSATION AND EXPENSES SHALL BE MADE OUT OF ANNUAL APPROPRIATIONS FROM THE CONSERVATION EASEMENT HOLDER CERTIFICATION FUND CREATED IN SECTION 12-61-720 (3).

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2018. PRIOR TO SUCH REPEAL, THE COMMISSION SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

SECTION 4. The introductory portion to 24-33-112 (1) and 24-33-112 (1) (b), (1) (d) (II), and (2), Colorado Revised Statutes, are amended, and the said 24-33-112 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-33-112. Conservation easement holders - submission of information.

(1) Any organization that accepts a donation of a conservation easement in gross for which a state income tax credit is claimed in accordance with the provisions of section 39-22-522, C.R.S., shall submit the following information to the department of revenue ~~the department of agriculture, and the department of natural resources~~ AND THE DIVISION OF REAL ESTATE IN THE DEPARTMENT OF REGULATORY AGENCIES:

(b) The number of acres subject to each conservation easement held in Colorado, EXCEPT PROPERTIES FOR WHICH THE SOLE CONSERVATION PURPOSE IS HISTORIC PRESERVATION;

(c.5) THE DATE ON WHICH THE ORGANIZATION RECEIVED CERTIFICATION PURSUANT TO SECTION 12-61-720, C.R.S.; AND

(d) A signed statement from the organization acknowledging that:

(II) The organization has adequate resources and policies in place to provide

annual monitoring of each conservation easement held by the organization in Colorado, EXCEPT FOR ANY CONSERVATION EASEMENT GRANTED TO A LOCAL GOVERNMENT THAT DID NOT INVOLVE A CHARITABLE DONATION.

(2) An organization that accepts a conservation easement in THE any calendar year commencing ~~on or~~ after January 1, 2008, shall submit the information required by subsection (1) of this section prior to accepting the easement, but in no event later than April 15 of that calendar year. An organization shall not accept any donation of a conservation easement in gross for which a credit is claimed unless the organization has submitted the information required by this subsection (2) with the department of revenue, the department of agriculture, and the department of natural resources. The department of natural resources and the department of agriculture shall make the information available to the public upon request.

SECTION 5. 24-33-112, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

24-33-112. Conservation easement holders - submission of information.

(3) AN ORGANIZATION THAT ACCEPTS A CONSERVATION EASEMENT IN ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2009, SHALL SUBMIT THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS SECTION PRIOR TO ACCEPTING THE EASEMENT, BUT IN NO EVENT LATER THAN APRIL 15 OF THAT CALENDAR YEAR. AN ORGANIZATION SHALL NOT ACCEPT ANY DONATION OF A CONSERVATION EASEMENT IN GROSS FOR WHICH A CREDIT IS CLAIMED UNLESS THE ORGANIZATION HAS SUBMITTED THE INFORMATION REQUIRED BY THIS SUBSECTION (3) WITH THE DEPARTMENT OF REVENUE AND THE DIVISION OF REAL ESTATE. THE DEPARTMENT OF REVENUE AND THE DIVISION OF REAL ESTATE SHALL MAKE THE INFORMATION AVAILABLE TO THE PUBLIC UPON REQUEST.

(4) FEDERAL AGENCIES THAT ACCEPT CONSERVATION EASEMENTS FOR WHICH A STATE INCOME TAX CREDIT IS CLAIMED ARE EXEMPT FROM THE SUBMISSION OF INFORMATION REQUIRED IN SUBSECTION (1) OF THIS SECTION AND, IN ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2008, SHALL BE EXEMPT FROM THE FILING REQUIREMENTS OF SUBSECTIONS (2) AND (3) OF THIS SECTION. CONSERVATION EASEMENTS ACCEPTED BY FEDERAL AGENCIES MAY RECEIVE THE STATE TAX CREDIT WITHOUT THE FEDERAL AGENCY HAVING FILED THE INFORMATION REQUIRED BY THIS SECTION.

SECTION 6. 24-34-104 (49), Colorado Revised Statutes, is amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (49) The following agencies, functions, or both, shall terminate on July 1, 2018:

(a) The environmental management system permit program, created in article 6.6 of title 25, C.R.S.;

(b) THE CONSERVATION EASEMENT OVERSIGHT COMMISSION, CREATED IN SECTION 12-61-721, C.R.S.

SECTION 7. 39-21-113, Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW SUBSECTION to read:

39-21-113. Reports and returns. (17) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE EXECUTIVE DIRECTOR MAY REQUIRE THAT SUCH DETAILED INFORMATION REGARDING A CLAIM FOR A CREDIT FOR THE DONATION OF A CONSERVATION EASEMENT IN GROSS PURSUANT TO SECTION 39-22-522 AND ANY APPRAISAL SUBMITTED IN SUPPORT OF THE CREDIT CLAIMED BE GIVEN TO THE DIVISION OF REAL ESTATE IN THE DEPARTMENT OF REGULATORY AGENCIES AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION CREATED PURSUANT TO SECTION 12-61-721 (1), C.R.S., AS THE EXECUTIVE DIRECTOR DETERMINES IS NECESSARY IN THE PERFORMANCE OF THE DEPARTMENT'S FUNCTIONS RELATING TO THE CREDIT. THE EXECUTIVE DIRECTOR MAY PROVIDE COPIES OF ANY APPRAISAL AND MAY FILE A COMPLAINT REGARDING ANY APPRAISAL AS AUTHORIZED PURSUANT TO SECTION 39-22-522 (3.3). NOTWITHSTANDING THE PROVISIONS OF PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., IN ORDER TO PROTECT THE CONFIDENTIAL FINANCIAL INFORMATION OF A TAXPAYER, THE EXECUTIVE DIRECTOR SHALL DENY THE RIGHT TO INSPECT ANY INFORMATION OR APPRAISAL REQUIRED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBSECTION (16).

SECTION 8. 39-22-522 (3)(b), (3)(e), the introductory portion to 39-22-522 (3)(f), and 39-22-522 (3)(f)(I), (3.3), and (3.5), Colorado Revised Statutes, are amended, and the said 39-22-522 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

39-22-522. Credit against tax - conservation easements. (3) In order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income tax return AND WHETHER THE DONATION WAS MADE IN ORDER TO GET A PERMIT OR OTHER APPROVAL FROM A LOCAL OR OTHER GOVERNING AUTHORITY;

(e) A sworn affidavit from the appraiser that includes: COPY OF THE APPRAISAL AND ACCOMPANYING AFFIDAVIT FROM THE APPRAISER SUBMITTED TO THE DIVISION OF REAL ESTATE IN THE DEPARTMENT OF REGULATORY AGENCIES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 12-61-719, C.R.S.

~~(f) A statement specifying the value of the unencumbered property and the total value of the conservation easement in gross;~~

~~(H) If the appraisal separately allocates the values of sand and gravel, minerals, water, or improvements, a statement of the separate value of the sand and gravel, minerals, water, or improvements before and after the conservation easement in gross is granted;~~

~~(HH) An acknowledgment specifying whether a subdivision analysis was the primary methodology used in the appraisal; and~~

~~(IV) A statement specifying how the appraiser satisfies qualified appraiser and licensing requirements set forth in subsection (3.3) of this section; and~~

(f) IF THE HOLDER OF THE CONSERVATION EASEMENT IS AN ORGANIZATION TO WHICH THE CERTIFICATION PROGRAM IN SECTION 12-61-720, C.R.S., APPLIES, a sworn affidavit from the holder of the conservation easement in gross that includes the following:

~~(I) A copy of the information filed by the holder AN ACKNOWLEDGMENT THAT THE HOLDER HAS FILED THE INFORMATION with the department of revenue the department of agriculture, and the department of natural resources AND THE DIVISION OF REAL ESTATE in accordance with section 24-33-112, C.R.S.;~~

(3.3) The appraisal for a conservation easement in gross for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f) (11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards for professional appraisal practice promulgated by the appraisal standards board OF THE APPRAISAL FOUNDATION AND ANY OTHER PROVISION OF LAW. The appraiser shall hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. THE APPRAISER SHALL ALSO MEET ANY EDUCATION AND EXPERIENCE REQUIREMENTS ESTABLISHED BY THE BOARD OF REAL ESTATE APPRAISERS IN ACCORDANCE WITH SECTION 12-61-719 (7), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.

(3.5) (a) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown AND IN CONSULTATION WITH THE DIVISION OF REAL ESTATE AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION CREATED IN SECTION 12-61-721 (1), C.R.S., to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, RECEIVES NOTICE OF SUCH A VALUATION MISSTATEMENT FROM THE DIVISION OF REAL ESTATE, OR RECEIVES NOTICE FROM THE DIVISION OF REAL ESTATE THAT AN ENFORCEMENT ACTION HAS BEEN TAKEN BY THE BOARD OF REAL ESTATE APPRAISERS AGAINST THE APPRAISER, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer. THE SECOND APPRAISAL SHALL BE CONDUCTED BY A CERTIFIED GENERAL APPRAISER IN GOOD STANDING AND NOT AFFILIATED WITH THE FIRST APPRAISER THAT MEETS QUALIFICATIONS

ESTABLISHED BY THE DIVISION OF REAL ESTATE. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

(b) IN CONSULTATION WITH THE DIVISION OF REAL ESTATE AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION CREATED IN SECTION 12-61-721 (1), C.R.S., THE EXECUTIVE DIRECTOR SHALL DEVELOP AND IMPLEMENT A SEPARATE PROCESS FOR THE REVIEW BY THE DEPARTMENT OF REVENUE OF GROSS CONSERVATION EASEMENTS. THE REVIEW PROCESS SHALL BE CONSISTENT WITH THE STATUTORY OBLIGATIONS OF THE DIVISION AND THE COMMISSION AND SHALL ADDRESS GROSS CONSERVATION EASEMENTS FOR WHICH THE DEPARTMENT OF REVENUE HAS BEEN INFORMED THAT AN AUDIT IS BEING PERFORMED BY THE INTERNAL REVENUE SERVICE. THE EXECUTIVE DIRECTOR SHALL SHARE INFORMATION USED IN THE REVIEW OF GROSS CONSERVATION EASEMENTS WITH THE DIVISION. NOTWITHSTANDING PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., IN ORDER TO PROTECT THE CONFIDENTIAL FINANCIAL INFORMATION OF A TAXPAYER, THE DIVISION AND THE COMMISSION SHALL DENY THE RIGHT TO INSPECT ANY INFORMATION PROVIDED BY THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH THIS PARAGRAPH (b). ON OR BEFORE JANUARY 1, 2009, THE EXECUTIVE DIRECTOR SHALL REPORT TO THE GENERAL ASSEMBLY ON THE STATUS OF THE DEVELOPMENT AND IMPLEMENTATION OF THE PROCESS REQUIRED BY THIS PARAGRAPH (b).

(3.7) IF THE GAIN ON THE SALE OF A CONSERVATION EASEMENT IN GROSS FOR WHICH A CREDIT IS CLAIMED PURSUANT TO THIS SECTION WOULD NOT HAVE BEEN A LONG-TERM CAPITAL GAIN, AS DEFINED UNDER THE INTERNAL REVENUE CODE, IF, AT THE TIME OF THE DONATION, THE TAXPAYER HAD SOLD THE CONSERVATION EASEMENT AT ITS FAIR MARKET VALUE, THEN THE VALUE OF THE CONSERVATION EASEMENT IN GROSS FOR THE PURPOSE OF CALCULATING THE AMOUNT OF THE CREDIT SHALL BE REDUCED TO THE TAXPAYER'S TAX BASIS IN THE CONSERVATION EASEMENT IN GROSS. THE TAX BASIS OF A TAXPAYER IN A CONSERVATION EASEMENT SHALL BE DETERMINED AND ALLOCATED PURSUANT TO SECTIONS 170 (e) AND 170 (h) OF THE INTERNAL REVENUE CODE, AS AMENDED, AND ANY FEDERAL REGULATIONS PROMULGATED IN CONNECTION WITH SUCH SECTIONS. THIS SUBSECTION (3.7) SHALL BE APPLIED IN A MANNER THAT IS CONSISTENT WITH THE TAX TREATMENT OF QUALIFIED CONSERVATION CONTRIBUTIONS UNDER THE INTERNAL REVENUE CODE AND THE FEDERAL REGULATIONS PROMULGATED UNDER THE INTERNAL REVENUE CODE.

SECTION 9. Appropriation - adjustments to the 2008 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the conservation easement appraisal review fund created in section 12-61-719 (8), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of real estate, to review conservation easement appraisals, for the fiscal year beginning July 1, 2008, the sum of two hundred thirty-six thousand nine hundred thirty-seven dollars (\$236,937) and 1.8 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the conservation easement holder certification fund created in section 12-61-720 (3), Colorado Revised Statutes, not otherwise appropriated, to the

department of regulatory agencies, for allocation to the division of real estate, to implement and administer a conservation easement holder certification program, for the fiscal year beginning July 1, 2008, the sum of two hundred thirty-six thousand nine hundred thirty-seven dollars (\$236,937) and 1.8 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for allocation to the taxation business group division, for the review of gross conservation easements, for the fiscal year beginning July 1, 2008, the sum of ninety-two thousand eight hundred eighteen dollars (\$92,818) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(4) For the implementation of this act, the general fund appropriation to the controlled maintenance trust fund made in section 23 of the annual general appropriation act, for the fiscal year beginning July 1, 2008, shall be decreased by ninety-two thousand eight hundred eighteen dollars (\$92,818);

SECTION 10. Accountability. Two years after this act becomes law and in accordance with section 2-2-1201, Colorado Revised Statutes, the legislative service agencies of the Colorado General Assembly shall conduct a post-enactment review of the implementation of this act utilizing the information contained in the legislative declaration set forth in section 1 of this act.

SECTION 11. Effective date. This act shall take effect July 1, 2008.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2008



Dora

Department of Regulatory Agencies

Division of Real Estate
Marcia Waters
Acting Director

Bill Ritter, Jr. July 19, 2010
Governor

Barbara J. Kelley
Executive
Director

Office of Legislative Legal Services
Attn: Matt Dawkins
091 State Capitol Building
Denver, CO 80203

RE: Post Enactment of HB08-1353

Dear Mr. Dawkins:

Attached is the Division of Real Estate's response to the questions set forth in section 2-2-1201 (2), C.R.S. for HB08-1353. Should you need any further information or clarifications during your review please feel free to call me.

My apologies for the late response to these questions.

Sincerely,

Hollis Glenn
Conservation Easement Program Manager
Division of Real Estate
303-894-2317

CC: Accountability Section, Office of Legislative Council Staff

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2010 Post-enactment Review

HB10-1353: Conservation Easement Oversight Program



Dora
Department of Regulatory Agencies

Department of Regulatory Agencies

Division of Real Estate

**Marcia Waters
Acting Director**

**Hollis Glenn
Conservation Easement Program Manager**

I. Background

First established in 2000, Colorado's Gross Conservation Easement Tax Credit continues to be an effective tool in preserving the state's agricultural, open space and wildlife habitat. In recent years the General Assembly has increased the amount of the tax credit to \$375,000 and has made the tax credit transferable. As a result of the increase in amount allowed and the transferability of the tax credit, more farming and ranching families were able to benefit from a conservation easement donation on their land. Accordingly, the number of acres protected under conservation easements grew at an accelerated pace beginning in the middle of the decade.

Unfortunately, the state did not have the proper oversight in place to address the large number of overvalued and questionable conservation easement donations that claimed a tax credit. Dozens of conservation easements from 2003-2007 were based on overvalued appraisals that were not credible or compliant with state and federal regulations. As a result, the state paid millions of dollars in tax credits on overvalued conservation easement donations. The problem gained the attention of the Department of Revenue, the IRS, and the General Assembly. In 2008, the need for regulatory oversight became apparent. Consequently, HB08-1353 became effective on July 1, 2008. This bill established a regulatory program to address the abuse within the Gross Conservation Easement Tax Credit.

HB08-1353 established a number of regulatory tools. Highlights of the bill include:

- Organizations that hold a conservation easement involving a tax credit must be certified by the Division of Real Estate;
- Appraisals for a conservation easement must be submitted to the Division of Real Estate for review;
- Establishment of the Conservation Easement Oversight Commission to advise the Division of Real Estate and the Department of Revenue regarding conservation easements; and
- Allow the Department of Revenue and the Division of Real Estate to share information regarding conservation easement donations.

Since its enactment, the Division of Real Estate and the Department of Revenue have spent a great deal of time and effort implementing the requirements of HB08-1353. As a result, HB08-1353 has been successful in addressing the abusive behavior and has increased professionalism and stability in the Gross Conservation Easement Tax Credit. The following is the response by the Department of Regulatory Agencies: Division of Real Estate to the post-enactment review questions set forth in § 2-2-1201 (2), C.R.S.

II. Post-enactment Questions and Response from the Department of Regulatory Agencies: Division of Real Estate.

1. *Whether the bill has been implemented in whole or in part.*

Yes, the bill has been implemented in whole.

2. *If the Bill has been implemented in whole or in part, how has the bill been implemented, including whether the bill has been implemented in the most efficient and cost effective manner.*

The Division of Real Estate formed a Conservation Easement Program (the Program) immediately after the bill passed. The three primary requirements of the Program are 1) a certification program to certify land trusts and local governments that hold (facilitate) a conservation easement project involving a tax credit; 2) review appraisals for gross misstatements of value and violations of appraisal statutes; and 3) provide staff support for the Conservation Easement Oversight Commission (the Commission) and share relevant information with the Department of Revenue.

1) State certification: The Division of Real Estate designed an extensive process to certify organizations that hold conservation easements. This process consists of an extensive application, project review, and formal evaluation by the Division of Real Estate and the Commission. The certification process identifies minimum qualifications that an organization must meet in order to be certified by the state to hold a conservation easement involving a state tax credit.

2) Appraisal Review: The Division of Real Estate developed an expedited review process in which staff investigators, with appraisal and conservation easement experience, review conservation easement appraisals for compliance with appraisal law. Through this review process, the Division of Real Estate can identify and address problematic conservation easement appraisals before a tax credit is claimed.

3) Support for the Commission and communication with the Department of Revenue: The Division of Real Estate provides the necessary program support to the Commission including regular updates on important information, providing meeting agendas and other documentation, and management of the Commission's travel expenses and per diem.

The Division of Real Estate and Department of Revenue developed procedures in which information between the two offices can be shared in accordance with HB08-1353 and existing state statutes that protect taxpayer information.

The Division of Real Estate has taken the proper steps to ensure these aspects of the Program have been implemented in the most efficient and cost effective manner. Within the last two years, the Division of Real Estate has taken steps to minimize the Program's cost and keep the fees as low as possible. Efficiency measures taken to ensure a cost effective manner included:

- i. Minimal staff (2.6 FTEs)
- ii. Commission meetings held via conference call to reduce travel and per diem expenses;
- iii. Use of electronic documents to reduce paper and storage; and

iv. Minimal use of legal services and IT expenditures.

3. *If the bill has implemented in part, the reasons why the bill has not been implemented in whole.*

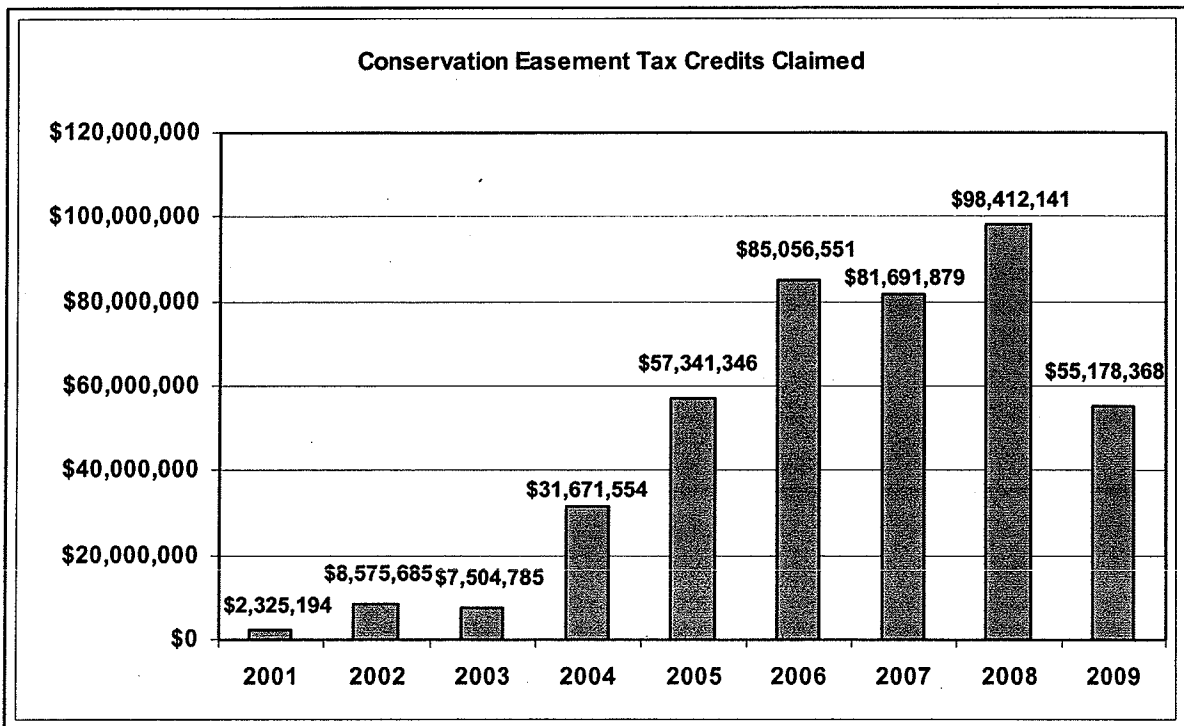
Not applicable. The bill has been implemented in whole.

4. *The extent to which the desired results of the bill, as specified in the legislative declaration of the bill, are being achieved.*

Within the declaration of the bill, the General Assembly's desired results and benefits and the subsequent response from the Division of Real Estate are as follows:

- a. **"To address abuses of the conservation easement tax credit program while continuing to allow legitimate participants and the State of Colorado to continue to benefit from the program."**

The ability of the bill to address abuses can be seen by examining the Department of Revenue's annual reports where the Gross Conservation Easement Tax Credit is reported for each fiscal year. Ultimately, Colorado experienced a dramatic drop in claimed tax credits after HB08-1353 passed.



Figures from the Department of Revenue's annual reports

The systemic abuse of the Gross Conservation Easement Tax Credit largely existed from 2005-2008. In that time, Colorado saw the total amount of tax credits claimed increased dramatically from \$57 million in 2005 to \$98 million in 2008. While a small portion of the increase can be attributed to a 2007 increase in the maximum tax credit allowed for each donation, a large portion of this increase represents the systemic abuse facilitated by promoters and appraisers.

After implementation of HB08-1353, the total amount of tax credits decreased to \$55 million in 2009. Accordingly, there was a 43% decrease in claimed tax credits in the year following the bill's passage. A major reason for the decrease can be attributed to the new regulatory environment created by HB08-1353. Two facts point to this conclusion:

- 1) Non-profit organizations that are not certified made up 31% of the \$98 million in tax credits reported in 2008. However they made up less than 1% of the \$55 million in tax credits reported in 2009. Hence, the drop in claimed tax credits can be attributed to their absence.
- 2) The Division of Real Estate's review of conservation easement appraisals done after 2008 has revealed a dramatic decrease in the number of overvalued and questionable conservation easements.

While there still continues to be isolated problems with conservation easement donations, the systemic abuse of the Gross Conservation Easement Tax Credit has been eliminated. Had the bill not passed and had the abusive behavior continued, it is reasonable to believe that the state would have continued to experience \$98 million dollars in tax credits claimed in 2009 and again in 2010.

b. "To have the Division of Real Estate review appraisals of conservation easements and maintain the information in an electronic database."

To date, the Division of Real Estate has received over 526 appraisals and has developed an efficient review process in which problematic appraisals are quickly identified and handled in a reasonable and appropriate manner. Through an electronic database, the Division of Real Estate is able to maintain accurate information on all conservation easements appraisals done within the last two years.

This database has been particularly beneficial in tracking donations before a tax credit claim is submitted to the Department of Revenue. In addition, the Division of Real Estate and Department of Revenue will be able to use this database to track and monitor tax credits in accordance with HB10-1197, which recently passed and placed an annual cap on the Gross

Conservation Easement Tax Credit beginning in 2011 to help with the state's budget shortfall.

- c. **“To have the Division of Real Estate investigate the activities of appraisers of conservation easements to ensure that the appraisers are in compliance with established standards and state law.”**

The Division of Real Estate has conducted the necessary investigations into activities of the conservation easement appraisers. To date, the Division of Real Estate has received 12 public complaints regarding conservation easement appraisals. In general, the investigations and appraisal reviews have shown a significant improvement in the quality of the appraisals. The number of appraisals with questionable value has dropped to a manageable level for the Division of Real Estate and the Department of Revenue and do not effect the Gross Conservation Easement Tax Credit as before.

- d. **“To establish a program to certify conservation easement holders.”**

The Division of Real Estate designed a broad certification application and review process for land trusts and local governments to become certified. The Division of Real Estate established 25 standards that all applicants must demonstrate in order to be certified by the state. The process for an organization to become certified is extensive. It consists of a random inspection of conservation easements projects already held, examination of financial records, and determination of stewardship capabilities.

The Division of Real Estate and the Commission determines whether an applicant meets the minimum qualifications for certification. Aspects of an organization were reviewed and given 1 of 4 levels of assessment: Strong Response, Area For Improvement, Concern and Critical Concern. With this approach, the Division of Real Estate is able to identify not only unqualified organizations but also areas in which organizations could improve upon; thus fulfilling the goal to “encourage professionalism and stability” sought by the legislative intent of HB08-1353.

The Division of Real Estate has received 46 applications for certification: 31 applications from land trusts and 15 applications from local governments. To date, 29 of the applicants have been certified. The Division of Real Estate will complete the review of the remaining 17 applicants by the end of 2010.

Two organizations were denied certification. However, those organizations have subsequently reapplied and were granted certification on the conditional basis that the Division of Real Estate will examine future conservation easements held by those organizations to ensure compliance with the Program.

As a result of the certification process, many organizations have begun adopting and updating policies to comply with the minimum qualifications established by the Division of Real Estate. Policies and procedures implemented since the inception of the certification program have resulted in the Division seeing increased professionalism, stability and quality of conservation easement transactions.

- e. **“To establish a Conservation Easement Oversight Commission to advise the Division of Real Estate and the Department of Revenue.”**

The Commission was established from the outset of the Program. The nine-member Commission represents various aspects of the conservation community including an appraiser, a landowner, a local and statewide land trust, a local government, Great Outdoors Colorado, Department of Agriculture, and the Department of Natural Resources.

The Commission has met at least once every quarter for the last two years and has advised the Division of Real Estate and the Department of Revenue on various matters such as: certification of conservation easement holders, easements under audit by the Department of Revenue, and implementation of the new tax credit cap created by HB10-1197. The Commission continues to be a useful tool for the Division of Real Estate and the Department of Revenue in addressing concerns related to conservation easements.

- f. **“To ensure that the Division of Real Estate and the Department of Revenue are sharing relevant information concerning conservation easement appraisals.”**

Over the last two years, the Division of Real Estate and the Department of Revenue has developed a productive relationship. Staff members from both offices communicate on a weekly basis regarding specific conservation easement appraisals. Both offices share relevant information regarding conservation easement appraisals while keeping specific taxpayer information private.

The Division of Real Estate informs the Department of Revenue regarding any determination by the Board of Real Estate Appraisers regarding appraisal law violations. Likewise, the Department of Revenue consults with the Division of Real Estate in their attempt to resolve disputes regarding a conservation easement tax credit claim.

5. ***Whether there have been any unintended consequences or problems caused by implementation of the bill.***

Initially, a funding problem arose with the Program due to the relatively small pool of applications for certification. Part of the funding for the Program comes

from the fees collected for certification applications. The fiscal note originally estimated 95 land trusts and local governments would apply for state certification and the fee for certification was set accordingly. Unfortunately, this was an overestimation of applications which subsequently created a deficiency in the Program's funding.

However, the problem was quickly rectified the following legislative session with HB09-1014, which provided a more accurate estimation of applications and increased the fee for certification to properly fund the Program.

Nevertheless, the Program is now financed by a smaller pool of 46 applicants and the certification fee is larger than initially contemplated. This has created two unintended consequences. First, the larger than expected fee may become an entry barrier for new organizations and may also cause smaller organizations to withdraw from state certification altogether. Second, because funding of the Program is based on such a small pool of licensees, the Program is not as financially stable as other regulatory programs within the Division of Real Estate.

While adequate financing may continue to be an issue for the Program, there are some administrative changes that would help secure a stable source of funding for the Program. See response to question #7 below.

6. *Whether the implementation of the bill has been impeded by existing state or federal statutes, rules, procedures or practices.*

While there are minor procedural obstacles to various aspects of the bill, there are no substantive impediments for the Division of Real Estate caused by existing state or federal statutes, rules, procedures or practices.

7. *Whether any administrative or statutory changes are necessary to improve the implementation of the bill.*

There are two revenue sources established for the Division of Real Estate to implement the requirements of HB08-1353. Currently these sources of revenue go into two separate funds established by the bill: The Conservation Easement Appraisal Review Fund and the Conservation Easement Holder Certification Fund.

As such, greater flexibility in funding the program would be achieved if the two funds were combined into one fund in which all aspects of the Program can be accomplished. This would allow a more consistent and stable source of revenue should the state see a drop in the number of certified land trusts and local governments as described above.

8. *Whether the actual costs of implementing the bill have been within the estimated costs, if any, set forth in the fiscal note for the bill.*

The actual costs of implementing the bill for the Division of Real Estate have been within the estimated costs in the fiscal note. With the economic downturn affecting the state and our licensees, the Division of Real Estate made a conscious effort to keep the expenditures of the Program to a minimum. See response to question #1.

9. *Whether any increase in state funding is necessary to improve the implementation of the bill.*

The Division's funding is derived from fees collected from applications and not from the General Fund. As a result, an increase in state funding is not necessary to improve the Division of Real Estate's implementation of the bill.

III. Conclusion

Despite the challenges of the last two years, the Division of Real Estate and the Department of Revenue have successfully implemented HB08-1353 in whole. The regulatory efforts set forth in the bill, and subsequently executed by both agencies, have brought professionalism and stability to the Gross Conservation Easement Tax Credit. The abusive practices that beset the tax credit from 2003-2008 have been addressed through new regulation of the conservation easement holders, appraisal review by the state, and increased cooperation between the Division of Real Estate and the Department of Revenue.

Should you have any further questions please call:

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