

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 07-0523.01 Gregg Fraser

HOUSE BILL 07-1361

HOUSE SPONSORSHIP

Madden, Curry, and Garcia

SENATE SPONSORSHIP

Isgar,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE IMPLEMENTATION OF ADDITIONAL REQUIREMENTS
102 TO VERIFY THE VALIDITY OF A STATE INCOME TAX CREDIT
103 CLAIMED BY A TAXPAYER FOR DONATING A CONSERVATION
104 EASEMENT IN THE STATE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires an organization that accepts a conservation easement in gross for which a state income tax credit is claimed to submit specified information to the department of revenue (department) and the department of natural resources about the organization and the easements

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

it holds. Requires the information to be made available to the public.

Requires a taxpayer who claims a state income tax credit for donating a conservation easement to file a statement with the department reflecting the specific nature, location, and value of the easement and the amount of the credit claimed. Requires specified information about the easement to be made available to the public.

Requires an affidavit from an appraiser that specifies the value of a conservation easement for which a credit is claimed, the property subject to the easement, and certain information regarding the manner in which the appraisal was conducted. Requires an affidavit containing specified information from the holder of the easement to be filed with the department.

Requires the appraisal of a conservation easement to be a qualified appraisal from a qualified appraiser in accordance with specified provisions of federal law. Requires the appraiser to hold a valid license in the state as a certified general appraiser and requires the appraisal to be in conformance with the uniform standards for professional appraisal practice. Requires the department to report substantial and gross violations in appraising conservation easements to the state board of real estate appraisers.

Authorizes the department to require a second appraisal if an appraisal of a conservation easement represents a gross valuation misstatement. Clarifies that the transferee of a credit shall be subject to the same statute of limitations as the transferor of the credit. Requires the department to create specified public reports on the nature, location, and value of conservation easements for which credits are granted, the amount of credits granted, and other information related to the easements and credits.

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

2 **SECTION 1.** Part 1 of article 33 of title 24, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **24-33-112. Conservation easement holders - submission of**
6 **information.** (1) ANY ORGANIZATION THAT ACCEPTS A DONATION OF A
7 CONSERVATION EASEMENT IN GROSS FOR WHICH A STATE INCOME TAX
8 CREDIT IS CLAIMED IN ACCORDANCE WITH THE PROVISIONS OF SECTION
9 39-22-522, C.R.S., SHALL SUBMIT THE FOLLOWING INFORMATION TO THE

1 DEPARTMENT OF REVENUE AND THE DEPARTMENT OF NATURAL
2 RESOURCES:

3 (a) THE NUMBER OF CONSERVATION EASEMENTS HELD BY THE
4 ORGANIZATION IN COLORADO;

5 (b) THE NUMBER OF ACRES SUBJECT TO EACH CONSERVATION
6 EASEMENT HELD IN COLORADO;

7 (c) THE NAMES OF THE BOARD MEMBERS IF THE ORGANIZATION IS
8 A PRIVATE NONPROFIT ORGANIZATION OR THE NAMES OF THE ELECTED OR
9 APPOINTED OFFICIALS IF THE ORGANIZATION IS A PUBLIC ENTITY; AND

10 (d) A SIGNED STATEMENT FROM THE ORGANIZATION
11 ACKNOWLEDGING THAT:

12 (I) THE ORGANIZATION HAS A COMMITMENT TO PROTECT THE
13 CONSERVATION PURPOSE OF THE DONATION AND HAS THE RESOURCES TO
14 ENFORCE THE RESTRICTIONS; AND

15 (II) THE ORGANIZATION HAS ADEQUATE RESOURCES AND POLICIES
16 IN PLACE TO PROVIDE ANNUAL MONITORING OF EACH CONSERVATION
17 EASEMENT HELD BY THE ORGANIZATION IN COLORADO.

18 (2) AN ORGANIZATION THAT ACCEPTS A CONSERVATION EASEMENT
19 IN ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2008,
20 SHALL SUBMIT THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS
21 SECTION PRIOR TO ACCEPTING THE EASEMENT, BUT IN NO EVENT LATER
22 THAN APRIL 15 OF THAT CALENDAR YEAR. AN ORGANIZATION SHALL NOT
23 ACCEPT ANY DONATION OF A CONSERVATION EASEMENT IN GROSS FOR
24 WHICH A CREDIT IS CLAIMED UNLESS THE ORGANIZATION HAS SUBMITTED
25 THE INFORMATION REQUIRED BY THIS SUBSECTION (2) WITH THE
26 DEPARTMENT OF REVENUE AND THE DEPARTMENT OF NATURAL
27 RESOURCES. THE DEPARTMENT OF NATURAL RESOURCES SHALL MAKE THE

1 INFORMATION AVAILABLE TO THE PUBLIC UPON REQUEST.

2 **SECTION 2.** 39-22-522 (3), (3.5), and (7) (i), Colorado Revised
3 Statutes, are amended, and the said 39-22-522 is further amended BY
4 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
5 read:

6 **39-22-522. Credit against tax - conservation easements.** (3) In
7 order for any taxpayer to qualify for the credit provided for in subsection
8 (2) of this section, the taxpayer shall ~~file with~~ SUBMIT THE FOLLOWING IN
9 A FORM APPROVED BY THE EXECUTIVE DIRECTOR TO the department of
10 revenue at the same time as the taxpayer files a return for the taxable year
11 in which the credit is claimed:

12 (a) A STATEMENT INDICATING WHETHER A DEDUCTION WAS
13 CLAIMED ON THE TAXPAYER'S FEDERAL INCOME TAX RETURN FOR A
14 CONSERVATION EASEMENT IN GROSS;

15 (b) A STATEMENT THAT REFLECTS THE INFORMATION INCLUDED IN
16 THE NONCASH CHARITABLE CONTRIBUTIONS FORM USED TO CLAIM A
17 DEDUCTION FOR A CONSERVATION EASEMENT IN GROSS ON A FEDERAL
18 INCOME TAX RETURN;

19 (c) A STATEMENT TO BE MADE AVAILABLE TO THE PUBLIC BY THE
20 DEPARTMENT OF REVENUE THAT INCLUDES A SUMMARY OF THE
21 CONSERVATION PURPOSES AS DEFINED IN SECTION 170 (h) OF THE
22 INTERNAL REVENUE CODE THAT ARE PROTECTED BY THE EASEMENT; THE
23 COUNTY, TOWNSHIP, AND RANGE WHERE THE EASEMENT IS LOCATED; THE
24 NUMBER OF ACRES SUBJECT TO THE EASEMENT; THE AMOUNT OF THE TAX
25 CREDIT CLAIMED; AND THE NAME OF THE ORGANIZATION HOLDING THE
26 EASEMENT;

27 (d) A summary of a qualified appraisal ~~as defined in 26 CFR~~

1 ~~1.170A-13 (c) (4) (1998)~~ THAT MEETS THE REQUIREMENTS SET FORTH IN
2 SUBSECTION (3.3) OF THIS SECTION; however, if requested by the
3 department OF REVENUE, the taxpayer shall submit the appraisal itself.

4 (e) A SWORN AFFIDAVIT FROM THE APPRAISER THAT INCLUDES:

5 (I) A STATEMENT SPECIFYING THE VALUE OF THE UNENCUMBERED
6 PROPERTY AND THE TOTAL VALUE OF THE CONSERVATION EASEMENT IN
7 GROSS;

8 (II) IF THE APPRAISAL SEPARATELY ALLOCATES THE VALUES OF
9 SAND AND GRAVEL, MINERALS, WATER, OR IMPROVEMENTS, A STATEMENT
10 OF THE SEPARATE VALUE OF THE SAND AND GRAVEL, MINERALS, WATER,
11 OR IMPROVEMENTS BEFORE AND AFTER THE CONSERVATION EASEMENT IN
12 GROSS IS GRANTED;

13 (III) AN ACKNOWLEDGMENT SPECIFYING WHETHER A SUBDIVISION
14 ANALYSIS WAS THE PRIMARY METHODOLOGY USED IN THE APPRAISAL; AND

15 (IV) A STATEMENT SPECIFYING HOW THE APPRAISER SATISFIES
16 QUALIFIED APPRAISER AND LICENSING REQUIREMENTS SET FORTH IN
17 SUBSECTION (3.3) OF THIS SECTION; AND

18 (f) A SWORN AFFIDAVIT FROM THE HOLDER OF THE CONSERVATION
19 EASEMENT IN GROSS THAT INCLUDES THE FOLLOWING:

20 (I) A COPY OF THE INFORMATION FILED BY THE HOLDER WITH THE
21 DEPARTMENT OF REVENUE AND THE DEPARTMENT OF NATURAL
22 RESOURCES IN ACCORDANCE WITH SECTION 24-33-112, C.R.S.;

23 (II) AN ACKNOWLEDGMENT OF WHETHER THE TRANSACTION IS
24 PART OF A SERIES OF TRANSACTIONS BY THE SAME DONOR; AND

25 (III) AN ACKNOWLEDGMENT THAT THE HOLDER HAS REVIEWED
26 THE COMPLETED COLORADO GROSS CONSERVATION EASEMENT CREDIT
27 SCHEDULE FILED BY THE TAXPAYER AND THAT THE PROPERTY IS

1 ACCURATELY DESCRIBED IN THE SCHEDULE.

2 (3.3) THE APPRAISAL FOR A CONSERVATION EASEMENT IN GROSS
3 FOR WHICH A CREDIT IS CLAIMED SHALL BE A QUALIFIED APPRAISAL FROM
4 A QUALIFIED APPRAISER, AS THOSE TERMS ARE DEFINED IN SECTION 170 (f)
5 (11) OF THE INTERNAL REVENUE CODE. THE APPRAISAL SHALL BE IN
6 CONFORMANCE WITH THE UNIFORM STANDARDS FOR PROFESSIONAL
7 APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL STANDARDS
8 BOARD. THE APPRAISER SHALL HOLD A VALID LICENSE AS A CERTIFIED
9 GENERAL APPRAISER IN ACCORDANCE WITH THE PROVISIONS OF PART 7 OF
10 ARTICLE 61 OF TITLE 12, C.R.S. IF THERE IS A FINAL DETERMINATION,
11 OTHER THAN BY SETTLEMENT OF THE TAXPAYER, THAT AN APPRAISAL
12 SUBMITTED IN CONNECTION WITH A CLAIM FOR A CREDIT PURSUANT TO
13 THIS SECTION IS A SUBSTANTIAL OR GROSS VIOLATION AS SUCH
14 VIOLATIONS ARE DEFINED IN SECTION 1219 OF THE FEDERAL "PENSION
15 PROTECTION ACT OF 2006", PUB.L. 109-280, THE DEPARTMENT SHALL
16 SUBMIT A COMPLAINT REGARDING THE VIOLATION TO THE BOARD OF REAL
17 ESTATE APPRAISERS FOR DISCIPLINARY ACTION IN ACCORDANCE WITH THE
18 PROVISIONS OF PART 7 OF ARTICLE 61 OF TITLE 12, C.R.S.

19 (3.5) The executive director of ~~the department of revenue~~ shall
20 have the authority, pursuant to subsection (8) of this section, to require
21 additional information from the taxpayer or transferee regarding the
22 appraisal value of the easement, the amount of the credit, and the validity
23 of the credit. In resolving disputes regarding the validity or the amount
24 of a credit allowed pursuant to subsection (2) of this section, including the
25 value of the conservation easement for which the credit is granted, the
26 executive director shall have the authority, for good cause shown, to
27 review and accept or reject, in whole or in part, the appraisal value of the

1 easement, the amount of the credit, and the validity of the credit based
2 upon the internal revenue code and federal regulations in effect at the
3 time of the donation. IF THE EXECUTIVE DIRECTOR REASONABLY BELIEVES
4 THAT THE APPRAISAL REPRESENTS A GROSS VALUATION MISSTATEMENT,
5 THE EXECUTIVE DIRECTOR SHALL HAVE THE AUTHORITY TO REQUIRE THE
6 TAXPAYER TO PROVIDE A SECOND APPRAISAL AT THE EXPENSE OF THE
7 TAXPAYER. In the event the executive director rejects, in whole or in part,
8 the appraisal value of the easement, the amount of the credit, or the
9 validity of the credit, the procedures described in sections 39-21-103,
10 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

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

16 (i) The donor of an easement for which a tax credit is claimed or
17 the transferor of a tax credit transferred pursuant to this subsection (7)
18 shall be the tax matters representative in all matters with respect to the
19 credit. The tax matters representative shall be responsible for
20 representing and binding the transferees with respect to all issues
21 affecting the credit, including, but not limited to, the charitable
22 contribution deduction, the appraisal, notifications and correspondence
23 from and with the department of revenue, audit examinations,
24 assessments or refunds, settlement agreements, and the statute of
25 limitations. THE TRANSFEREE SHALL BE SUBJECT TO THE SAME STATUTE
26 OF LIMITATIONS WITH RESPECT TO THE CREDIT AS THE TRANSFEROR OF THE
27 CREDIT.

1 (10) ON OR BEFORE JULY 1, 2008, THE DEPARTMENT OF REVENUE
2 SHALL CREATE A REPORT, WHICH SHALL BE MADE AVAILABLE TO THE
3 PUBLIC, ON THE CREDITS CLAIMED IN THE PREVIOUS YEAR IN ACCORDANCE
4 WITH THIS SECTION. FOR EACH CREDIT CLAIMED FOR A CONSERVATION
5 EASEMENT IN GROSS, THE REPORT SHALL SUMMARIZE BY COUNTY WHERE
6 THE EASEMENT IS LOCATED, THE ACRES UNDER EASEMENT, THE APPRAISED
7 VALUE OF THE EASEMENT, THE DONATED VALUE OF THE EASEMENT, AND
8 THE NAME OF ANY HOLDERS OF THE EASEMENT. THE REPORT SHALL BE
9 UPDATED ANNUALLY TO REFLECT THE SAME INFORMATION FOR ANY
10 ADDITIONAL CREDITS THAT HAVE BEEN GRANTED SINCE THE PREVIOUS
11 REPORT.

12 (11) ON OR BEFORE DECEMBER 31, 2007, THE DEPARTMENT OF
13 REVENUE SHALL CREATE A REPORT, WHICH SHALL BE MADE AVAILABLE TO
14 THE PUBLIC, WITH AS MUCH OF THE INFORMATION SPECIFIED IN
15 PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION AS IS AVAILABLE TO
16 THE DEPARTMENT, SUMMARIZED BY COUNTY, FOR EACH TAX CREDIT
17 CLAIMED FOR A CONSERVATION EASEMENT IN GROSS FOR TAX YEARS
18 COMMENCING ON OR AFTER JANUARY 1, 2000.

19 **SECTION 3. Effective date - applicability.** (1) This act shall
20 take effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly that is
22 allowed for submitting a referendum petition pursuant to article V,
23 section 1 (3) of the state constitution, (August 8, 2007, if adjournment
24 sine die is on May 9, 2007); except that, if a referendum petition is filed
25 against this act or an item, section, or part of this act within such period,
26 then the act, item, section, or part, if approved by the people, shall take
27 effect on the date of the official declaration of the vote thereon by

1 proclamation of the governor.

2 (2) The provisions of this act shall apply to credits for
3 conservation easements in gross claimed on or after the applicable
4 effective date of this act.