

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.*

HOUSE
Amended 2nd Reading
April 16, 2007

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, THE DEPARTMENT OF AGRICULTURE, AND THE
2 DEPARTMENT OF NATURAL 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, THE DEPARTMENT OF AGRICULTURE, AND THE
27 DEPARTMENT OF NATURAL RESOURCES. THE DEPARTMENT OF NATURAL

1 RESOURCES AND THE DEPARTMENT OF AGRICULTURE SHALL MAKE THE
2 INFORMATION AVAILABLE TO THE PUBLIC UPON REQUEST.

3 **SECTION 2.** 35-1-104 (1), Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 **35-1-104. Functions, powers, and duties.** (1) The department
6 has and shall exercise the following functions, powers, and duties:

7 (ee) TO RECEIVE SUBMISSIONS OF INFORMATION AS SPECIFIED IN
8 SECTION 24-33-112, C.R.S., FROM ORGANIZATIONS THAT ACCEPT
9 DONATIONS OF CONSERVATION EASEMENTS IN GROSS FOR WHICH A STATE
10 INCOME TAX CREDIT IS CLAIMED AND TO MAKE THE INFORMATION
11 AVAILABLE TO THE PUBLIC UPON REQUEST.

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

16 **39-22-522. Credit against tax - conservation easements.** (3) In
17 order for any taxpayer to qualify for the credit provided for in subsection
18 (2) of this section, the taxpayer shall ~~file with~~ SUBMIT THE FOLLOWING IN
19 A FORM APPROVED BY THE EXECUTIVE DIRECTOR TO the department of
20 revenue at the same time as the taxpayer files a return for the taxable year
21 in which the credit is claimed:

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

25 (b) A STATEMENT THAT REFLECTS THE INFORMATION INCLUDED IN
26 THE NONCASH CHARITABLE CONTRIBUTIONS FORM USED TO CLAIM A
27 DEDUCTION FOR A CONSERVATION EASEMENT IN GROSS ON A FEDERAL

1 INCOME TAX RETURN;

2 (c) A STATEMENT TO BE MADE AVAILABLE TO THE PUBLIC BY THE
3 DEPARTMENT OF REVENUE THAT INCLUDES A SUMMARY OF THE
4 CONSERVATION PURPOSES AS DEFINED IN SECTION 170 (h) OF THE
5 INTERNAL REVENUE CODE THAT ARE PROTECTED BY THE EASEMENT; THE
6 COUNTY, TOWNSHIP, AND RANGE WHERE THE EASEMENT IS LOCATED; THE
7 NUMBER OF ACRES SUBJECT TO THE EASEMENT; THE AMOUNT OF THE TAX
8 CREDIT CLAIMED; AND THE NAME OF THE ORGANIZATION HOLDING THE
9 EASEMENT;

10 (d) A summary of a qualified appraisal ~~as defined in 26 CFR~~
11 ~~1.170A-13 (c) (4) (1998)~~ THAT MEETS THE REQUIREMENTS SET FORTH IN
12 SUBSECTION (3.3) OF THIS SECTION; however, if requested by the
13 department OF REVENUE, the taxpayer shall submit the appraisal itself.

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

15 (I) A STATEMENT SPECIFYING THE VALUE OF THE UNENCUMBERED
16 PROPERTY AND THE TOTAL VALUE OF THE CONSERVATION EASEMENT IN
17 GROSS;

18 (II) IF THE APPRAISAL SEPARATELY ALLOCATES THE VALUES OF
19 SAND AND GRAVEL, MINERALS, WATER, OR IMPROVEMENTS, A STATEMENT
20 OF THE SEPARATE VALUE OF THE SAND AND GRAVEL, MINERALS, WATER,
21 OR IMPROVEMENTS BEFORE AND AFTER THE CONSERVATION EASEMENT IN
22 GROSS IS GRANTED;

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

25 (IV) A STATEMENT SPECIFYING HOW THE APPRAISER SATISFIES
26 QUALIFIED APPRAISER AND LICENSING REQUIREMENTS SET FORTH IN
27 SUBSECTION (3.3) OF THIS SECTION; AND

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

3 (I) A COPY OF THE INFORMATION FILED BY THE HOLDER WITH THE
4 DEPARTMENT OF REVENUE, THE DEPARTMENT OF AGRICULTURE, AND THE
5 DEPARTMENT OF NATURAL RESOURCES IN ACCORDANCE WITH SECTION
6 24-33-112, C.R.S.;

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

9 (III) AN ACKNOWLEDGMENT THAT THE HOLDER HAS REVIEWED
10 THE COMPLETED COLORADO GROSS CONSERVATION EASEMENT CREDIT
11 SCHEDULE TO BE FILED BY THE TAXPAYER AND THAT THE PROPERTY IS
12 ACCURATELY DESCRIBED IN THE SCHEDULE.

13 (3.3) THE APPRAISAL FOR A CONSERVATION EASEMENT IN GROSS
14 FOR WHICH A CREDIT IS CLAIMED SHALL BE A QUALIFIED APPRAISAL FROM
15 A QUALIFIED APPRAISER, AS THOSE TERMS ARE DEFINED IN SECTION 170 (f)
16 (11) OF THE INTERNAL REVENUE CODE. THE APPRAISAL SHALL BE IN
17 CONFORMANCE WITH THE UNIFORM STANDARDS FOR PROFESSIONAL
18 APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL STANDARDS
19 BOARD. THE APPRAISER SHALL HOLD A VALID LICENSE AS A CERTIFIED
20 GENERAL APPRAISER IN ACCORDANCE WITH THE PROVISIONS OF PART 7 OF
21 ARTICLE 61 OF TITLE 12, C.R.S. IF THERE IS A FINAL DETERMINATION,
22 OTHER THAN BY SETTLEMENT OF THE TAXPAYER, THAT AN APPRAISAL
23 SUBMITTED IN CONNECTION WITH A CLAIM FOR A CREDIT PURSUANT TO
24 THIS SECTION IS A SUBSTANTIAL OR GROSS VALUATION MISSTATEMENT AS
25 SUCH MISSTATEMENTS ARE DEFINED IN SECTION 1219 OF THE FEDERAL
26 "PENSION PROTECTION ACT OF 2006", PUB.L. 109-280, THE DEPARTMENT
27 SHALL SUBMIT A COMPLAINT REGARDING THE MISSTATEMENT TO THE

1 BOARD OF REAL ESTATE APPRAISERS FOR DISCIPLINARY ACTION IN
2 ACCORDANCE WITH THE PROVISIONS OF PART 7 OF ARTICLE 61 OF TITLE 12,
3 C.R.S.

4 (3.5) The executive director of the ~~department of revenue~~ shall
5 have the authority, pursuant to subsection (8) of this section, to require
6 additional information from the taxpayer or transferee regarding the
7 appraisal value of the easement, the amount of the credit, and the validity
8 of the credit. In resolving disputes regarding the validity or the amount
9 of a credit allowed pursuant to subsection (2) of this section, including the
10 value of the conservation easement for which the credit is granted, the
11 executive director shall have the authority, for good cause shown, to
12 review and accept or reject, in whole or in part, the appraisal value of the
13 easement, the amount of the credit, and the validity of the credit based
14 upon the internal revenue code and federal regulations in effect at the
15 time of the donation. IF THE EXECUTIVE DIRECTOR REASONABLY BELIEVES
16 THAT THE APPRAISAL REPRESENTS A GROSS VALUATION MISSTATEMENT,
17 THE EXECUTIVE DIRECTOR SHALL HAVE THE AUTHORITY TO REQUIRE THE
18 TAXPAYER TO PROVIDE A SECOND APPRAISAL AT THE EXPENSE OF THE
19 TAXPAYER. In the event the executive director rejects, in whole or in part,
20 the appraisal value of the easement, the amount of the credit, or the
21 validity of the credit, the procedures described in sections 39-21-103,
22 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

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

1 (i) The donor of an easement for which a tax credit is claimed or
2 the transferor of a tax credit transferred pursuant to this subsection (7)
3 shall be the tax matters representative in all matters with respect to the
4 credit. The tax matters representative shall be responsible for
5 representing and binding the transferees with respect to all issues
6 affecting the credit, including, but not limited to, the charitable
7 contribution deduction, the appraisal, notifications and correspondence
8 from and with the department of revenue, audit examinations,
9 assessments or refunds, settlement agreements, and the statute of
10 limitations. THE TRANSFEREE SHALL BE SUBJECT TO THE SAME STATUTE
11 OF LIMITATIONS WITH RESPECT TO THE CREDIT AS THE TRANSFEROR OF THE
12 CREDIT.

13 (10) ON OR BEFORE JULY 1, 2008, THE DEPARTMENT OF REVENUE
14 SHALL CREATE A REPORT, WHICH SHALL BE MADE AVAILABLE TO THE
15 PUBLIC, ON THE CREDITS CLAIMED IN THE PREVIOUS YEAR IN ACCORDANCE
16 WITH THIS SECTION. FOR EACH CREDIT CLAIMED FOR A CONSERVATION
17 EASEMENT IN GROSS, THE REPORT SHALL SUMMARIZE BY COUNTY WHERE
18 THE EASEMENT IS LOCATED, THE ACRES UNDER EASEMENT, THE APPRAISED
19 VALUE OF THE EASEMENT, THE DONATED VALUE OF THE EASEMENT, AND
20 THE NAME OF ANY HOLDERS OF THE EASEMENT. THE REPORT SHALL BE
21 UPDATED ANNUALLY TO REFLECT THE SAME INFORMATION FOR ANY
22 ADDITIONAL CREDITS THAT HAVE BEEN GRANTED SINCE THE PREVIOUS
23 REPORT.

24 (11) ON OR BEFORE DECEMBER 31, 2007, THE DEPARTMENT OF
25 REVENUE SHALL CREATE A REPORT, WHICH SHALL BE MADE AVAILABLE TO
26 THE PUBLIC, WITH AS MUCH OF THE INFORMATION SPECIFIED IN
27 PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION AS IS AVAILABLE TO

1 THE DEPARTMENT, SUMMARIZED BY COUNTY, FOR EACH TAX CREDIT
2 CLAIMED FOR A CONSERVATION EASEMENT IN GROSS FOR TAX YEARS
3 COMMENCING ON OR AFTER JANUARY 1, 2000.

4 **SECTION 4. Effective date - applicability.** (1) This act shall
5 take effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly that is
7 allowed for submitting a referendum petition pursuant to article V,
8 section 1 (3) of the state constitution, (August 8, 2007, if adjournment
9 sine die is on May 9, 2007); except that, if a referendum petition is filed
10 against this act or an item, section, or part of this act within such period,
11 then the act, item, section, or part, if approved by the people, shall take
12 effect on the date of the official declaration of the vote thereon by
13 proclamation of the governor.

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