

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

PREAMENDED

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

LLS NO. 11-0279.01 Gregg Fraser

HOUSE BILL 11-1208

HOUSE SPONSORSHIP

McKinley,

SENATE SPONSORSHIP

(None),

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A PERPETUAL CONSERVATION EASEMENT IN GROSS**
102 **GRANTED FOR PROPERTY IN COLORADO.**

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://www.leg.state.co.us/billsummaries>.)

Under current law, a state income tax credit is allowed for a portion of the value of a perpetual conservation easement that is granted by a taxpayer on real property located in Colorado. If the easement is terminated for any reason, the bill requires the value of the tax credit to be repaid to the state general fund before the termination is effective. If

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.*

a governmental entity interferes with the conservation purpose of an easement, the bill specifies that this constitutes a taking of or damage to the easement which can be compensated as provided by law. If land subject to a conservation easement is condemned, the state general fund is to be compensated for the value of any tax credit claimed for the easement.

The executive director of the department of revenue (executive director) is authorized to review the appraisal supporting the valuation of an easement and to reject the value of the easement and the amount of the credit claimed in certain circumstances.

The bill restricts the ability of the executive director to contest an appraisal and credit claimed for an easement donated prior to January 1, 2008, unless:

- ! The executive director has produced clear and convincing proof of overvaluation of the easement, confirmed in writing by the state attorney general prior to a specified date; or
- ! The valuation is supported solely by an appraisal from an appraiser convicted of fraud or misrepresentation prior to April 1, 2011, in connection with preparing the appraisal.

If the attorney general confirms the clear and convincing proof of overvaluation of an easement and the donor of the easement subsequently prevails in protesting the disallowance of the tax credit, the bill requires the state to reimburse the donor for all costs and attorney fees incurred by the donor reasonably related to the allowance of the tax credit.

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

2 **SECTION 1.** 39-22-522 (3.5), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF THE FOLLOWING NEW
4 PARAGRAPHS to read:

5 **39-22-522. Credit against tax - conservation easements.**
6 (3.5)(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR
7 ANY CONSERVATION EASEMENT IN GROSS DONATED PRIOR TO JANUARY 1,
8 2008, FOR WHICH A CREDIT IS CLAIMED, THE CREDIT SHALL BE ALLOWED
9 AND THE EXECUTIVE DIRECTOR SHALL NEITHER CONTEST NOR REQUIRE
10 ADDITIONAL INFORMATION REGARDING THE APPRAISAL VALUE OF THE
11 EASEMENT, THE AMOUNT OF THE CREDIT, OR THE VALIDITY OF THE CREDIT

1 ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION UNLESS:

2 (I) PRIOR TO APRIL 1, 2014, THE EXECUTIVE DIRECTOR HAS
3 PRODUCED SUFFICIENT VALID EVIDENCE TO SUPPORT CLEAR AND
4 CONVINCING PROOF OF A REJECTION BASED UPON OVERVALUATION OF THE
5 EASEMENT, WHICH EVIDENCE AND SUFFICIENCY HAS BEEN CONFIRMED IN
6 WRITING BY THE ATTORNEY GENERAL AND, PRIOR TO SUCH DATE, A
7 FORMAL REJECTION TOGETHER WITH THE WRITTEN CONFIRMATION OF THE
8 ATTORNEY GENERAL HAS BEEN MAILED TO THE DONOR AT THE DONOR'S
9 LAST-KNOWN ADDRESS; OR

10 (II) THE VALUATION IS SUPPORTED SOLELY BY AN APPRAISAL FROM
11 AN APPRAISER CONVICTED OF FRAUD OR ANOTHER CRIMINAL ACT OF
12 MISREPRESENTATION PRIOR TO APRIL 1, 2014, IN CONNECTION WITH THE
13 PREPARATION OF THE APPRAISAL.

14 (d) IN THE EVENT THAT THE ATTORNEY GENERAL CONFIRMS THE
15 EVIDENCE TO SUPPORT A REJECTION BASED UPON OVERVALUATION OF AN
16 EASEMENT TO BE CLEAR AND CONVINCING IN ACCORDANCE WITH THE
17 PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION
18 (3.5) AND THE DONOR ELECTS TO PROTEST THE DISALLOWANCE OF THE
19 TAX CREDIT AND PREVAILS IN THE SUBSEQUENT HEARING OR LITIGATION,
20 THE STATE SHALL REIMBURSE THE DONOR OF THE CONSERVATION
21 EASEMENT WITHIN THIRTY DAYS AFTER THE FINAL ORDER FOR ALL COSTS
22 AND ATTORNEY FEES INCURRED BY THE DONOR REASONABLY RELATED TO
23 THE ALLOWANCE OF SAID TAX CREDIT.

24 (e) ADDITIONAL INTEREST AND PENALTIES SHALL CEASE TO
25 ACCRUE ON AND AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (e) FOR
26 ANY DISPUTED CONSERVATION EASEMENT TAX CREDIT SUBJECT TO THIS
27 SUBSECTION (3.5) UNTIL SUCH TIME AS THE EXECUTIVE DIRECTOR ISSUES

1 A FINAL DETERMINATION PURSUANT TO SECTION 39-21-103 OR, IF SUCH
2 DETERMINATION IS APPEALED PURSUANT TO SECTION 39-21-105, UNTIL
3 JUDGMENT HAS BEEN ENTERED AGAINST THE TAXPAYER IN THE APPEAL.

4 (f) PRIOR TO THE ISSUANCE OF A FINAL DETERMINATION PURSUANT
5 TO SECTION 39-21-103 OR THE CONCLUSION OF AN APPEAL OF A NOTICE OF
6 DEFICIENCY PURSUANT TO SECTION 39-21-105 FOR A DISPUTED
7 CONSERVATION EASEMENT TAX CREDIT SUBJECT TO THIS SUBSECTION
8 (3.5), THE EXECUTIVE DIRECTOR SHALL CEASE ALL ACTIONS TO COLLECT
9 ANY AMOUNT OF THE DISPUTED TAXES, INTEREST, OR OTHER CHARGES
10 ASSERTED TO BE OWED.

11 **SECTION 2. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.