

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

INTRODUCED

LLS NO. 11-0279.01 Gregg Fraser

HOUSE BILL 11-1208

HOUSE SPONSORSHIP

McKinley,

SENATE SPONSORSHIP

(None),

House Committees
Finance

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.** 38-30.5-107, Colorado Revised Statutes, is
3 amended to read:

4 **38-30.5-107. Release - termination.** Conservation easements in
5 gross may, in whole or in part, be released, terminated, extinguished, or
6 abandoned by merger with the underlying fee interest in the servient land
7 or water rights or in any other manner in which easements may be
8 lawfully terminated, released, extinguished, or abandoned. IF A
9 COLORADO STATE INCOME TAX CREDIT HAS BEEN ALLOWED FOR A
10 CONSERVATION EASEMENT PURSUANT TO SECTION 39-22-522, C.R.S., THE
11 AMOUNT OF SUCH CREDIT SHALL BE REPAID TO THE STATE GENERAL FUND

1 IN FULL BEFORE ANY SUCH RELEASE, TERMINATION, EXTINGUISHMENT, OR
2 ABANDONMENT BY MERGER WITH AN UNDERLYING FEE INTEREST MAY
3 BECOME EFFECTIVE.

4 **SECTION 2.** 38-30.5-108, Colorado Revised Statutes, is
5 amended BY THE ADDITION OF THE FOLLOWING NEW
6 SUBSECTIONS to read:

7 **38-30.5-108. Enforcement - remedies.** (4) IN ADDITION TO ANY
8 OTHER PROTECTIONS AFFORDED TO THE OWNER OF PROPERTY BY LAW,
9 ANY ACTION OF OR PERMITTED BY A GOVERNMENTAL ENTITY THAT
10 INTERFERES WITH THE CONSERVATION PURPOSE OF A CONSERVATION
11 EASEMENT, INCLUDING ACTIVITIES ON PROPERTY NEAR OR IN THE
12 AIRSPACE ABOVE A PROPERTY FOR WHICH A CONSERVATION EASEMENT
13 HAS BEEN GRANTED, SHALL CONSTITUTE A TAKING OF OR DAMAGE TO ALL
14 OR A PORTION OF THE VALUE OF THE EASEMENT AND SHALL BE
15 COMPENSABLE AS OTHERWISE PROVIDED BY LAW. FOR PURPOSES OF THIS
16 SUBSECTION (4), ROUTINE WILDLIFE AND HABITAT MANAGEMENT
17 ACTIVITIES, ROUTINE EXPLORATION AND MAINTENANCE OF
18 INFRASTRUCTURE SUCH AS OIL AND GAS PIPELINES, ROUTINE
19 AGRICULTURAL PURPOSES SUCH AS CROP DUSTING, AND THE USE OF
20 AIRSPACE BY AIRCRAFT ORDINARILY USED FOR EMERGENCY PURPOSES
21 SUCH AS SEARCH AND RESCUE SHALL NOT CONSTITUTE INTERFERENCE
22 WITH THE CONSERVATION PURPOSE OF A CONSERVATION EASEMENT.

23 (5) IF LAND SUBJECT TO A CONSERVATION EASEMENT IS
24 CONDEMNED, THE AMOUNT OF COMPENSATION TO BE AWARDED SHALL
25 INCLUDE AN AMOUNT EQUAL TO THE AMOUNT OF ANY INCOME TAX CREDIT
26 ALLOWED FOR THE EASEMENT PURSUANT TO SECTION 39-22-522, C.R.S.
27 SUCH AMOUNT SHALL BE PAID TO THE STATE GENERAL FUND, WITH ANY

1 REMAINING COMPENSATION AWARDED TO BE APPORTIONED BETWEEN THE
2 GRANTOR AND GRANTEE OF THE CONSERVATION EASEMENT.

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

6 **39-22-522. Credit against tax - conservation easements.**

7 (3.5) (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO
8 THE CONTRARY, FOR ANY CONSERVATION EASEMENT IN GROSS DONATED
9 PRIOR TO JANUARY 1, 2008, FOR WHICH A CREDIT IS CLAIMED, THE CREDIT
10 SHALL BE ALLOWED AND THE EXECUTIVE DIRECTOR SHALL NEITHER
11 CONTEST NOR REQUIRE ADDITIONAL INFORMATION REGARDING THE
12 APPRAISAL VALUE OF THE EASEMENT, THE AMOUNT OF THE CREDIT, OR THE
13 VALIDITY OF THE CREDIT ALLOWED PURSUANT TO SUBSECTION (2) OF THIS
14 SECTION UNLESS:

15 (I) PRIOR TO APRIL 1, 2011, THE EXECUTIVE DIRECTOR HAS
16 PRODUCED SUFFICIENT VALID EVIDENCE TO SUPPORT CLEAR AND
17 CONVINCING PROOF OF A REJECTION BASED UPON OVERVALUATION OF THE
18 EASEMENT, WHICH EVIDENCE AND SUFFICIENCY HAS BEEN CONFIRMED IN
19 WRITING BY THE STATE ATTORNEY GENERAL AND, PRIOR TO SUCH DATE,
20 A FORMAL REJECTION TOGETHER WITH THE WRITTEN CONFIRMATION OF
21 THE ATTORNEY GENERAL HAS BEEN MAILED TO THE DONOR AT THE
22 DONOR'S LAST KNOWN ADDRESS; OR

23 (II) THE VALUATION IS SUPPORTED SOLELY BY AN APPRAISAL FROM
24 AN APPRAISER CONVICTED OF FRAUD OR ANOTHER CRIMINAL ACT OF
25 MISREPRESENTATION PRIOR TO APRIL 1, 2011, IN CONNECTION WITH THE
26 PREPARATION OF THE APPRAISAL.

27 (d) IN THE EVENT THAT THE ATTORNEY GENERAL CONFIRMS THE

1 EVIDENCE TO SUPPORT A REJECTION BASED UPON OVERVALUATION OF AN
2 EASEMENT TO BE CLEAR AND CONVINCING IN ACCORDANCE WITH THE
3 PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (C) OF THIS SUBSECTION
4 (3.5), AND THE DONOR ELECTS TO PROTEST THE DISALLOWANCE OF THE
5 TAX CREDIT AND PREVAILS IN THE SUBSEQUENT HEARING OR LITIGATION,
6 THE STATE SHALL REIMBURSE THE DONOR OF THE CONSERVATION
7 EASEMENT WITHIN THIRTY DAYS AFTER THE FINAL ORDER FOR ALL COSTS
8 AND ATTORNEY FEES INCURRED BY THE DONOR REASONABLY RELATED TO
9 THE ALLOWANCE OF SAID TAX CREDIT.

10 **SECTION 4. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.