

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

REENGROSSED

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

LLS NO. 01-0854.01 Kristen Forrestal

HOUSE BILL 01-1353

HOUSE SPONSORSHIP

Kester,

SENATE SPONSORSHIP

Dennis, and Teck

House Committees

Agriculture, Livestock, & Natural Resources
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE MANAGEMENT OF NATURAL AREAS BY THE NATURAL**
102 **AREAS COUNCIL.**

Bill Summary

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

Authorizes the Colorado natural areas council ("council") to administer the natural areas program ("program") within the department of natural resources. Staffs the council with personnel from the department of natural resources, the division of parks and outdoor recreation, and the division of wildlife. Requires the council to provide written commentary to the executive director of the department of natural resources on land acquisitions proposed by the division of parks and outdoor recreation, the state land board, and the wildlife commission.

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
3rd Reading Unamended
April 17, 2001

HOUSE
Amended 2nd Reading
April 16, 2001

Deletes the powers and duties of the board of parks and outdoor recreation to administer the program.

Adds the protection of important watershed areas to the list of benefits provided by natural areas identified by the program.

Creates a tax credit for taxpayers who enter into management agreements with the council to preserve natural areas. Limits the total amount of the tax credits in any given year to \$3,000,000. Limits each individual taxpayer to a tax credit of \$50,000. Allows any remaining value of the tax credit not used to offset income taxes in a given year to be carried forward and claimed in subsequent years for the duration of the agreement. Authorizes the council to promulgate rules to determine the value of each tax credit.

Requires taxpayers to apply for a management agreement with the council by October 1 of the year prior to the year the taxpayer wishes to claim the credit. Requires the council to evaluate and respond to each application by December 31 of the year the application is filed.

Prohibits claiming an additional tax credit for land where a perpetual conservation easement exists in gross and the owner has already claimed a tax credit.

Defines relevant terms.

Makes conforming amendments.

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

2 **SECTION 1.** 33-33-103 (2), (3), (5), and (6), Colorado Revised
3 Statutes, are amended to read:

4 **33-33-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (2) ~~"Board" means the board of parks and outdoor recreation.~~

7 (3) ~~"Council" means the Colorado natural areas council created as
8 an advisory council to the board of parks and outdoor recreation by
9 section 33-33-106.~~

10 (5) ~~"Director" means the director of the division of parks and
11 outdoor recreation.~~

12 (6) ~~"Division" means the division of parks and outdoor recreation.~~

13 **SECTION 2.** 33-33-104 (1), the introductory portion to

1 33-33-104 (2), and 33-33-104 (2) (c) and (2) (d), Colorado Revised
2 Statutes, are amended, and the said 33-33-104 (2) is further amended BY
3 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

4 **33-33-104. Colorado natural areas program.** (1) There is
5 hereby established a statewide Colorado natural areas program to
6 implement the intent and provisions of this article. The program shall be
7 administered by the ~~board through the division with the advice of the~~
8 council. THE COUNCIL SHALL BE STAFFED BY PERSONNEL FROM THE
9 OFFICE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL
10 RESOURCES AND ITS DIVISIONS.

11 (2) The program shall identify and protect certain natural areas in
12 this state ~~which~~ THAT provide, among other benefits, the following
13 benefits:

14 (c) Provide habitat for rare or endangered animal or plant species
15 OR SPECIES OF CONCERN;

16 (d) Serve as outdoor classrooms and laboratories for scientific
17 study by students of all ages; ~~or~~

18 (f) PROTECT IMPORTANT WATERSHED AREAS; OR

19 (g) PREVENT REMOVAL OF OR DEVELOPMENT ON SOIL CLASSIFIED
20 AS PRIME OR UNIQUE.

21 **SECTION 3.** The introductory portion to 33-33-105 (1) and
22 33-33-105 (1) (d), (1) (f), (1) (i), (1) (j), and (2), Colorado Revised
23 Statutes, are amended, and the said 33-33-105 (1) is further amended BY
24 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

25 **33-33-105. Powers and duties of the council.** (1) The ~~board,~~
26 ~~through the division and with the advice of the~~ council shall administer
27 the program in accordance with the provisions of this article and shall

1 have the following additional powers and duties:

2 (d) To seek and approve ~~upon recommendation by the council~~, the
3 designation of natural areas under the provisions of section 33-33-108
4 and, when necessary, to acquire by gift, devise, or grant the fee or other
5 interest in real property or accept, under the provisions of section
6 33-33-108, the designation of real property for inclusion in the system;
7 except that the ~~board~~ COUNCIL shall not have the power of eminent
8 domain for such purposes;

9 (f) To administer and enforce the provisions of this article and
10 rules and regulations adopted pursuant thereto, including the provisions
11 of the articles of a designated natural area; except that the ~~board~~ COUNCIL
12 shall have no regulatory jurisdiction under this article over lands or
13 interests therein ~~which~~ THAT are not part of the system;

14 (i) To accept and disburse moneys and grants made available to
15 the ~~board~~ COUNCIL under the provisions of any federal law for the
16 purposes of this article; ~~and~~

17 (j) To notify, ninety days prior to the final designation action, the
18 board of county commissioners in the county in which any designation is
19 being considered. At the request of the board of county commissioners,
20 the ~~board~~ COUNCIL shall hold a public hearing in said county for the
21 purpose of evaluating any local concerns regarding the proposed
22 designation.

23 (k) TO PROVIDE WRITTEN COMMENTARY TO THE EXECUTIVE
24 DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES CONCERNING
25 LAND ACQUISITIONS PROPOSED BY THE DIVISION OF PARKS AND OUTDOOR
26 RECREATION, THE WILDLIFE COMMISSION, AND THE STATE LAND BOARD;
27 AND

1 (1) TO AWARD TAX CREDITS FOR MANAGEMENT AGREEMENTS
2 PURSUANT TO SECTION 39-22-127, C.R.S.

3 (2) It shall not be a permitted function of the ~~board~~ COUNCIL under
4 this article to make or pursue direct or indirect objection or opposition
5 before any governing body to any application for development of private
6 lands.

7 **SECTION 4.** 33-33-106 (1), Colorado Revised Statutes, is
8 amended to read:

9 **33-33-106. Colorado natural areas council.** (1) There is hereby
10 created, IN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
11 OF NATURAL RESOURCES, the Colorado natural areas council. ~~as an~~
12 ~~advisory council to the board.~~ The council shall ~~advise the board on the~~
13 ~~administration of~~ ADMINISTER the program and shall approve the registry
14 and ~~recommend the~~ designation of natural areas. ~~by the board.~~

15 **SECTION 5. Repeal.** 33-33-107, Colorado Revised Statutes, is
16 repealed as follows:

17 **33-33-107. Responsibilities of the council.** ~~(1) The council shall~~
18 ~~have the following responsibilities:~~

19 ~~(a) To establish procedures for the conduct of council business;~~

20 ~~(b) To review the inventory and to approve the registry;~~

21 ~~(c) To review and make recommendations on the board's criteria~~
22 ~~for and selection of natural areas to be included in the registry and the~~
23 ~~system; except that no area shall be included in the registry without~~
24 ~~permission of the owner of the land;~~

25 ~~(d) To advise the board of the promulgation of rules for the~~
26 ~~registry and for the designation, management, protection, and use of~~
27 ~~designated natural areas;~~

1 ~~(e) To seek and recommend the designation of natural areas by the~~
2 ~~board as part of the system, as provided in section 33-33-108;~~

3 ~~(f) To review and make recommendations regarding scientific~~
4 ~~research, educational use, interpretive programs, and public information~~
5 ~~pertaining to designated natural areas;~~

6 ~~(g) To review and make recommendations regarding the~~
7 ~~negotiation and enforcement of the articles of a designated natural area;~~

8 ~~(h) To advise the board on the disbursement of funds for the~~
9 ~~purposes of this article; and~~

10 ~~(i) To review and make recommendations on board reports made~~
11 ~~to the governor on the status of the program.~~

12 **SECTION 6.** 33-33-108 (1), the introductory portion to
13 33-33-108 (2), and 33-33-108 (2) (c), (3), and (4), Colorado Revised
14 Statutes, are amended to read:

15 **33-33-108. Designation of a natural area.** (1) A natural area
16 ~~which~~ THAT has been found by the ~~board~~ COUNCIL, pursuant to its criteria,
17 to be desirable for inclusion within the system and which inclusion has
18 been approved by the owner of the land shall become a designated natural
19 area when articles of designation have been filed with the ~~board~~ COUNCIL
20 by the owner of the land or by a governmental agency having ownership
21 or control of the land and such articles have been accepted by the ~~board~~
22 ~~with the advice and recommendation of the council.~~

23 (2) Articles of designation filed with the ~~board~~ COUNCIL under the
24 provisions of subsection (1) of this section shall:

25 (c) Define the respective rights and duties of the owner and the
26 ~~board~~ COUNCIL;

27 (3) The ~~board~~ COUNCIL may, with the approval or upon the request

1 of the owner of an interest therein, ~~and with the approval of the council,~~
2 amend the articles of a designated natural area.

3 (4) A notice of the designation shall be certified by the ~~board~~
4 COUNCIL to the county clerk and recorder in the county or counties in
5 which the designated natural area is located for filing in the same manner
6 as any document affecting real property.

7 **SECTION 7.** 33-33-110, Colorado Revised Statutes, is amended
8 to read:

9 **33-33-110. Public entities urged to encourage designation of**
10 **natural areas.** State agencies, counties, municipalities, institutions of
11 higher education, and all other entities and institutions of the state and its
12 political subdivisions are empowered and urged to recommend to the
13 ~~board~~ COUNCIL natural areas within their jurisdictions for inclusion in the
14 system.

15 **SECTION 8.** 33-33-111, Colorado Revised Statutes, is amended
16 to read:

17 **33-33-111. Periodic evaluation to be made by council.** The
18 ~~board~~ COUNCIL shall make an evaluation of each designated natural area
19 every three years, or more often as it deems necessary, to determine
20 whether it is being administered in accordance with the conditions and
21 provisions of the articles of designation. If such conditions and provisions
22 are not continuing to be met, the ~~board~~ COUNCIL may remove the area
23 from the system.

24 **SECTION 9.** 33-33-113, Colorado Revised Statutes, is amended
25 to read:

26 **33-33-113. Legislative review - termination.** (1) The council
27 shall be terminated on July 1, ~~2004~~ 2008, unless the general assembly

1 votes to renew the legislative mandate of this article. Absent a vote to
2 renew the legislative mandate of this article, the council shall cease all
3 operations within a twelve-month period after July 1, ~~2004~~ 2008. IF THE
4 COUNCIL CEASES OPERATION, THE OFFICE OF THE EXECUTIVE DIRECTOR OF
5 THE DEPARTMENT OF NATURAL RESOURCES SHALL CONTINUE TO REPORT
6 ANY VIOLATIONS OF MANAGEMENT AGREEMENTS CONTAINING TAX CREDITS
7 UNDER SECTION 39-22-127 (4) (b), C.R.S., FOR THE LIFE OF ANY SUCH
8 AGREEMENT.

9 (2) Prior to said termination, such ~~advisory committee~~ COUNCIL
10 shall be reviewed as provided for in section 2-3-1203, C.R.S.

11 **SECTION 10. Repeal.** 2-3-1203 (3) (q), Colorado Revised
12 Statutes, is repealed as follows:

13 **2-3-1203. Sunset review of advisory committees.** (3) The
14 following dates are the dates for which the statutory authorization for the
15 designated advisory committees is scheduled for repeal:

16 (q) ~~July 1, 2004: The Colorado natural areas council, an advisory~~
17 ~~council to the board of parks and outdoor recreation, appointed pursuant~~
18 ~~to section 33-33-106, C.R.S.;~~

19 **SECTION 11.** 2-3-1203 (3), Colorado Revised Statutes, is
20 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

21 **2-3-1203. Sunset review of advisory committees.** (3) The
22 following dates are the dates for which the statutory authorization for the
23 designated advisory committees is scheduled for repeal:

24 (u.5) JULY 1, 2008: THE COLORADO NATURAL AREAS COUNCIL
25 APPOINTED PURSUANT TO SECTION 33-33-106, C.R.S.;

26 **SECTION 12.** Part 1 of article 22 of title 39, Colorado Revised
27 Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

1 **39-22-127. Tax credit - management agreements to preserve**

2 **natural areas - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (a) "COUNCIL" MEANS THE COLORADO NATURAL AREAS COUNCIL
5 CREATED BY SECTION 33-33-106, C.R.S.

6 (b) "NATURAL AREA" MEANS AN AREA OF PROPERTY DESIGNATED
7 AS SUCH BY THE COUNCIL PURSUANT TO SECTION 33-33-108, C.R.S.

8 (c) "TAXPAYER" MEANS A RESIDENT INDIVIDUAL SUBJECT TO THE
9 PROVISIONS OF PART 1 OF THIS ARTICLE.

10 (2) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,
11 2003, BUT PRIOR TO JANUARY 1, 2009, THERE SHALL BE ALLOWED A CREDIT
12 WITH RESPECT TO THE INCOME TAXES IMPOSED BY THIS ARTICLE TO EACH
13 TAXPAYER WHO OWNS REAL PROPERTY THAT HAS BEEN DESIGNATED AS A
14 NATURAL AREA AND WHO ENTERS INTO A MANAGEMENT AGREEMENT WITH
15 THE COUNCIL TO PRESERVE THE NATURAL AREA FOR AT LEAST TWELVE
16 YEARS. ON OR BEFORE JANUARY 1, 2009, THE COUNCIL SHALL REPORT TO
17 THE GENERAL ASSEMBLY AND THE GOVERNOR ON THE EFFECT, IF ANY, THE
18 AVAILABILITY OF THE TAX CREDIT HAS HAD ON THE PRESERVATION OF
19 NATURAL AREAS. ANY MANAGEMENT AGREEMENT, TOGETHER WITH THE
20 CORRESPONDING TAX CREDIT, AGREED UPON BY THE COUNCIL AND A
21 LANDOWNER ON OR BEFORE JANUARY 1, 2009, SHALL BE HONORED FOR
22 THE LIFE OF THE AGREEMENT.

23 (3) (a) IN ORDER FOR ANY TAXPAYER TO QUALIFY FOR THE CREDIT
24 ALLOWED BY SUBSECTION (2) OF THIS SECTION FOR EACH NATURAL AREA
25 FOR WHICH THE CREDIT IS CLAIMED, THE TAXPAYER SHALL FILE WITH THE
26 COUNCIL AN APPLICATION TO ENTER INTO A MANAGEMENT AGREEMENT FOR
27 THE PURPOSE OF PRESERVING THE NATURAL OR AREAS. SUCH NATURAL

1 AREA OR AREAS SHALL BE DIRECTLY OWNED BY THE TAXPAYER IN ORDER
2 FOR THE TAXPAYER TO QUALIFY FOR A TAX CREDIT.

3 (b) THE CRITERIA TO BE UTILIZED TO DETERMINE WHETHER AN
4 AREA OF REAL PROPERTY SHALL BE DESIGNATED AS A NATURAL AREA
5 SHALL BE DETERMINED BY RULES OF THE COUNCIL ADOPTED PURSUANT TO
6 SECTION 33-33-105, C.R.S. THE COUNCIL SHALL ALSO ADOPT RULES
7 SETTING FORTH THE INFORMATION REQUIRED TO BE INCLUDED IN ANY
8 APPLICATION UNDER THIS SUBSECTION (3).

9 (4) (a) THE AGGREGATE AMOUNT OF TAX CREDITS THAT MAY BE
10 CLAIMED BY ALL TAXPAYERS WHO HAVE ENTERED INTO MANAGEMENT
11 AGREEMENTS WITH THE COUNCIL FOR A GIVEN INCOME TAX YEAR SHALL BE
12 NO MORE THAN THREE MILLION DOLLARS.

13 (b) ANY MATERIAL VIOLATIONS OF A MANAGEMENT AGREEMENT BY
14 THE TAXPAYER DURING THE LIFE OF THE AGREEMENT SHALL RESULT IN THE
15 VOIDANCE OF THE AGREEMENT. THE TAXPAYER MUST THEN REPAY ONE
16 HUNDRED PERCENT OF THE VALUE OF THE TAX CREDIT CLAIMED TO THE
17 DEPARTMENT OF REVENUE. THE TAXPAYER SHALL REPORT THE RECAPTURE
18 REQUIRED BY THIS SECTION BY INCREASING THE TAXPAYER'S INCOME TAX
19 LIABILITY FOR THE YEAR IN WHICH THE VIOLATION OCCURS BY THE TOTAL
20 AMOUNT OF THE TOTAL CREDIT CLAIMED. THE COUNCIL OR THE OFFICE OF
21 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES
22 SHALL NOTIFY THE DEPARTMENT OF REVENUE OF ANY VIOLATION. CREDITS
23 REPAYED PURSUANT TO THIS PARAGRAPH (b) SHALL BE DEPOSITED IN THE
24 STATE'S GENERAL FUND. FOR THE PURPOSES OF THIS SECTION, MATERIAL
25 VIOLATION DOES NOT MEAN TERMINATION OF THE AGREEMENT FOR
26 CONVERSION TO A CONSERVATION EASEMENT, IF THE AGREEMENT HAS
27 BEEN IN EFFECT FOR AT LEAST FOUR YEARS.

1 (5) (a) FOR ANY GIVEN INCOME TAX YEAR, A TAXPAYER SHALL
2 SUBMIT AN APPLICATION TO ENTER INTO A MANAGEMENT AGREEMENT IN
3 ACCORDANCE WITH THE RULES PROMULGATED BY THE COUNCIL. IN THE
4 APPLICATION, A TAXPAYER SHALL SUBMIT A PROPOSAL FOR THE DURATION
5 OF THE AGREEMENT AND THE DOLLAR VALUE OF THE TAX CREDITS TO BE
6 PROVIDED UNDER THE AGREEMENT. THE COUNCIL SHALL DEVELOP A
7 COMPETITIVE PROCESS TO EXAMINE APPLICATIONS AND WILL SELECT THOSE
8 THAT BEST MEET ITS CRITERIA AND PROVIDE THE PUBLIC WITH THE
9 GREATEST ENVIRONMENTAL BENEFIT. AN INDIVIDUAL LANDOWNER MAY
10 RECEIVE ONE MANAGEMENT AGREEMENT TAX CREDIT WORTH NO MORE
11 THAN FIFTY THOUSAND DOLLARS FOR THE LIFE OF THE AGREEMENT.

12 (b) THE TAX CREDIT SHALL BE APPLIED AGAINST THE INCOME TAX
13 DUE IN THE EARLIEST YEAR POSSIBLE. IF THE AGGREGATE AMOUNT OF THE
14 CREDIT ALLOWED BY SUBSECTION (2) OF THIS SECTION EXCEEDS THE
15 AMOUNT OF INCOME TAX DUE ON THE INCOME OF THE TAXPAYER FOR THE
16 TAXABLE YEAR, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET
17 AGAINST INCOME TAXES IN SAID INCOME TAX YEAR MAY BE CARRIED
18 FORWARD AGAINST SUBSEQUENT YEARS' TAX LIABILITY FOR THE DURATION
19 OF THE MANAGEMENT AGREEMENT AND SHALL BE APPLIED AGAINST THE
20 INCOME TAX DUE FOR THE EARLIEST INCOME TAX YEARS POSSIBLE. ANY
21 AMOUNT OF THE CREDIT THAT IS NOT USED DURING THE MANAGEMENT
22 AGREEMENT MAY BE CARRIED FORWARD FOR AN ADDITIONAL FIVE YEARS.

23 (6) (a) A TAXPAYER APPLYING FOR A MANAGEMENT AGREEMENT
24 SHALL FILE AN APPLICATION WITH THE COUNCIL NO LATER THAN OCTOBER 1
25 OF THE CALENDAR YEAR PRIOR TO THE YEAR IN WHICH THE AGREEMENT
26 WOULD TAKE EFFECT IF APPROVED BY THE COUNCIL. SUCH APPLICATION
27 SHALL SPECIFY THE LEGAL DESCRIPTION OF THE NATURAL AREA BEING

1 PRESERVED, THE NAMES OF THE OWNERS OF THE NATURAL AREA, AND SUCH
2 OTHER INFORMATION AS THE COUNCIL SHALL REQUIRE.

3 (b) THE MINIMUM AMOUNT OF TIME THAT A MANAGEMENT
4 AGREEMENT MAY SPECIFY THAT A NATURAL AREA SHALL BE PRESERVED IS
5 TWELVE YEARS.

6 (c) NO LATER THAN DECEMBER 31 OF THE CALENDAR YEAR IN
7 WHICH AN APPLICATION FOR A MANAGEMENT AGREEMENT IS FILED, THE
8 COUNCIL SHALL NOTIFY EACH TAXPAYER OF THE COUNCIL'S
9 DETERMINATION.

10 (d) TO QUALIFY FOR THE CREDIT PROVIDED BY THIS SECTION, THE
11 TAXPAYER SHALL SUBMIT A CERTIFICATION FORM WITH EACH INCOME TAX
12 RETURN. SUCH FORM SHALL BE OBTAINED FROM THE COUNCIL CREATED BY
13 SECTION 33-33-103 (3), C.R.S.

14 (7) A TAXPAYER MAY NOT CLAIM THE CREDIT ALLOWED BY
15 SUBSECTION (2) OF THIS SECTION FOR ANY PARCEL THAT:

16 (a) THE TAXPAYER OWNS; AND

17 (b) ON WHICH A PERPETUAL CONSERVATION EASEMENT IN GROSS
18 HAS BEEN CREATED PURSUANT TO ARTICLE 30.5 OF TITLE 38, C.R.S., TO A
19 GOVERNMENTAL ENTITY OR CHARITABLE ORGANIZATION DESCRIBED IN
20 SECTION 38-30.5-104 (2), C.R.S.; AND

21 (c) FOR WHICH A CREDIT HAS BEEN CLAIMED PURSUANT TO SECTION
22 39-22-522.

23 **SECTION 13. No appropriation.** The general assembly has
24 determined that this act can be implemented within existing
25 appropriations, and therefore no separate appropriation of state moneys
26 is necessary to carry out the purposes of this act.

27 **SECTION 14. Effective date.** This act shall take effect at 12:01

1 a.m. on the day following the expiration of the ninety-day period after
2 final adjournment of the general assembly that is allowed for submitting
3 a referendum petition pursuant to article V, section 1 (3) of the state
4 constitution; except that, if a referendum petition is filed against this act
5 or an item, section, or part of this act within such period, then the act,
6 item, section, or part, if approved by the people, shall take effect on the
7 date of the official declaration of the vote thereon by proclamation of the
8 governor.