

SB135_L.003

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Finance.

SB20-135 be amended as follows:

1 Amend printed bill, page 4, line 7, strike "NINETY" and substitute
2 "SEVENTY-FIVE".

3 Page 6, strike lines 3 through 27.

4 Strike pages 7 through 10.

5 Page 11, strike lines 1 through 18 and substitute:

6 "SECTION 2. In Colorado Revised Statutes, add 39-22-522.7 as
7 follows:

8 **39-22-522.7. Conservation easement tax credits - credit for**
9 **previously denied claims - rules - legislative declaration - definition.**

10 (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

11 (a) IT IS THE INTENT OF THIS SECTION TO PROVIDE RELIEF THAT
12 WILL REPAIR THE HARM CAUSED BY THE DEPARTMENT OF REVENUE'S
13 DISALLOWANCE OF COLORADO CONSERVATION EASEMENT TAX CREDITS
14 TO LANDOWNERS WHO IN GOOD FAITH, SUBJECT TO SUBSECTION (5) OF
15 THIS SECTION, CONVEYED CONSERVATION EASEMENTS TO QUALIFIED
16 CONSERVATION EASEMENT HOLDERS BETWEEN JANUARY 1, 2000, AND
17 DECEMBER 31, 2013;

18 (b) STATE REPRESENTATIVE KIMMI LEWIS FROM HOUSE DISTRICT
19 64, WHO PASSED AWAY IN DECEMBER 2019, WORKED TIRELESSLY DURING
20 HER CAREER AS A LEGISLATOR TO PROVIDE HELP TO LANDOWNERS WHO
21 HAD CONSERVATION EASEMENT CREDITS ARBITRARILY DISALLOWED; AND

22 (c) RESOLUTION OF THIS HARM BY ALLOWING A LANDOWNER TO
23 CLAIM A TAX CREDIT FOR A CONSERVATION EASEMENT DONATION THAT
24 WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE AND
25 CONVEYED IN GOOD FAITH SUBJECT TO SUBSECTION (5) OF THIS SECTION,
26 BUT ULTIMATELY DENIED BY THE STATE WILL END THE NEARLY
27 TWO-DECADES-LONG CONFLICT OVER COLORADO'S CONSERVATION
28 EASEMENT TAX CREDIT PROGRAM, RESTORE THE INTEGRITY OF THE
29 PROGRAM, AND ALLOW THE PROGRAM TO MOVE FORWARD TO CONTINUE
30 THE GOOD WORK OF CONSERVING COLORADO'S INCREASINGLY LIMITED
31 OPEN SPACE AND NATURAL RESOURCES.

32 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
33 LANDOWNER SHALL BE ALLOWED TO CLAIM A TAX CREDIT WITH RESPECT
34 TO THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 FOR EACH PERPETUAL
35 CONSERVATION EASEMENT IN GROSS DONATED IN GOOD FAITH BETWEEN
36 JANUARY 1, 2000, AND DECEMBER 31, 2013, FOR WHICH A TAX CREDIT
37 WAS CLAIMED PURSUANT TO SECTION 39-22-522 AND WAS DENIED IN

1 WHOLE OR IN PART IF A FEDERAL CONSERVATION EASEMENT TAX
2 DEDUCTION WAS ACCEPTED BY THE FEDERAL INTERNAL REVENUE SERVICE
3 FOR THE SAME DONATION. FOR PURPOSES OF THIS SECTION:

4 (a) THE AMOUNT OF THE CREDIT ALLOWED FOR EACH DONATION
5 SHALL BE EQUAL TO THE FULL AMOUNT OF THE CREDIT THAT COULD HAVE
6 BEEN CLAIMED FOR THE DONATION PURSUANT TO THE APPLICABLE LAW IN
7 EFFECT AT THE TIME OF THE DONATION;

8 (b) THE FAIR MARKET VALUE OF THE DONATION SHALL BE THE FAIR
9 MARKET VALUE OF THE CONSERVATION EASEMENT CONTRIBUTION
10 ACCEPTED BY THE INTERNAL REVENUE SERVICE AS REFLECTED ON THE
11 FEDERAL INCOME TAX FORM 8283 OR AMENDED BY A SUBSEQUENT
12 FEDERAL APPEAL PROCESS, FEDERAL COURT, OR UNITED STATES TAX
13 COURT RULING; AND

14 (c) THE AMOUNT OF ANY CREDIT ALLOWED PURSUANT TO THIS
15 SECTION SHALL BE DECREASED BY ANY AMOUNT OF CREDIT THAT WAS
16 OTHERWISE ALLOWED TO BE CLAIMED AGAINST THE TAXES IMPOSED BY
17 THIS ARTICLE 22 OR OTHERWISE REINSTATED, AND BY ANY AMOUNT THAT
18 WAS REIMBURSED OR OTHERWISE ALLOWED TO THE TRANSFEREE AS A
19 RESULT OF A SETTLEMENT, LITIGATION, OR OTHER MEANS THAT PROVIDED
20 COMPENSATION TO THE TRANSFEREE.

21 (3) BY AUGUST 15, 2020, THE DEPARTMENT OF REVENUE SHALL
22 MAKE INFORMATION READILY AVAILABLE ONLINE FOR TAXPAYERS WHO
23 HAD A TAX CREDIT DENIED IN WHOLE OR IN PART FOR A CONSERVATION
24 EASEMENT DONATED BETWEEN JANUARY 1, 2000, AND DECEMBER 31,
25 2013, THAT THE TAXPAYER MAY BE ELIGIBLE TO APPLY FOR A CREDIT
26 PURSUANT TO THIS SECTION. THE ONLINE INFORMATION MUST OUTLINE
27 THE PROCESS FOR APPLYING FOR A CREDIT AND THE CRITERIA USED TO
28 DETERMINE THE AMOUNT OF THE CREDIT.

29 (4) A TAXPAYER MUST SUBMIT A CLAIM FOR A CREDIT TO THE
30 DIVISION OF CONSERVATION IN THE DEPARTMENT OF REGULATORY
31 AGENCIES NO LATER THAN SEPTEMBER 30, 2021. THE CLAIM MUST BE
32 SUBMITTED USING A FORM AND PROCESS CREATED BY THE DIVISION AND
33 IN CONSULTATION WITH THE WORKING GROUP CONVENED IN ACCORDANCE
34 WITH SECTION 12-15-106 (14.5). THE CLAIM MUST BE ACCOMPANIED BY
35 THE FOLLOWING:

36 (a) A COPY OF THE FEDERAL INCOME TAX FORM 8283 USED TO
37 SUBSTANTIATE A FEDERAL DEDUCTION FOR THE DONATED CONSERVATION
38 EASEMENT;

39 (b) IF THE ORIGINAL AMOUNT OF DEDUCTION CLAIMED ON THE
40 FEDERAL INCOME TAX FORM 8283 WAS ADJUSTED, DOCUMENTATION
41 CONFIRMING THE AMOUNT ULTIMATELY ALLOWED BY THE INTERNAL
42 REVENUE SERVICE, A FEDERAL COURT, OR THE UNITED STATES TAX COURT
43 AND CLAIMED BY MEANS OF AN ADJUSTED FEDERAL TAX RETURN

1 ACCEPTED BY THE INTERNAL REVENUE SERVICE; AND
2 (c) DOCUMENTATION CONFIRMING SETTLEMENT OF THE CREDIT
3 AMOUNT ALLOWED BY THE DEPARTMENT OF REVENUE.
4 (5) (a) THE DIVISION OF CONSERVATION SHALL ESTABLISH A
5 PROCESS BY RULE IN COORDINATION WITH THE WORKING GROUP
6 CONVENED IN ACCORDANCE WITH SECTION 12-15-106 (14.5) FOR
7 DETERMINING WHETHER A LANDOWNER CONVEYED AN EASEMENT IN GOOD
8 FAITH AND OTHERWISE MEETS THE REQUIREMENTS SET FORTH IN THIS
9 SECTION FOR RECEIVING A CREDIT.
10 (b) AS USED IN THIS SECTION, "GOOD FAITH" MEANS THAT A
11 PERSON OR ENTITY HONESTLY RELIED UPON A LICENSED PROFESSIONAL TO
12 ESTABLISH THE VALUE OF A CONSERVATION EASEMENT, DID NOT
13 KNOWINGLY MISREPRESENT THE VALUE OF THE CONSERVATION
14 EASEMENT, AND FOLLOWED THE APPLICABLE LAWS AND REGULATIONS SET
15 FORTH IN STATUTE, DEPARTMENT OF REVENUE RULES, AND THE FEDERAL
16 INTERNAL REVENUE CODE AND FEDERAL DEPARTMENT OF TREASURY
17 REGULATIONS IN EFFECT AT THE TIME OF THE CONVEYANCE OF THE
18 CONSERVATION EASEMENT.
19 (6) (a) THE DIVISION OF CONSERVATION SHALL ISSUE A
20 CERTIFICATE FOR THE CLAIMS RECEIVED IN THE ORDER SUBMITTED NO
21 LATER THAN NINETY DAYS AFTER AN APPLICATION IS RECEIVED UNLESS A
22 DISPUTE ARISES PURSUANT TO SUBSECTION (10) OF THIS SECTION. CREDITS
23 ISSUED PURSUANT TO THIS SECTION COUNT AGAINST THE AGGREGATE
24 ANNUAL CAP FOR ALL CONSERVATION EASEMENT TAX CREDITS SET FORTH
25 IN SECTION 39-22-522 (2.5) AND THE AGGREGATE AMOUNT OF CREDITS
26 ISSUED PURSUANT TO THIS SECTION AND SECTION 39-22-522 SHALL NOT
27 EXCEED THE AGGREGATE ANNUAL CAP.
28 (b) EXCEPT AS PROVIDED IN SUBSECTION (6)(c) OF THIS SECTION,
29 THE DIVISION OF CONSERVATION SHALL ISSUE CERTIFICATES UP TO THE
30 FOLLOWING PERCENTAGES OF THE AGGREGATE ANNUAL CAP SET FORTH IN
31 SECTION 39-22-522 (2.5) AS FOLLOWS:
32 (I) FIFTY PERCENT OF THE ANNUAL CAP IN THE FIRST CALENDAR
33 YEAR;
34 (II) FORTY PERCENT OF THE ANNUAL CAP IN THE SECOND
35 CALENDAR YEAR; AND
36 (III) THIRTY PERCENT OF THE ANNUAL CAP IN THE THIRD
37 CALENDAR YEAR AND EACH SUBSEQUENT YEAR THEREAFTER UNTIL THE
38 OBLIGATION IS FULLY SATISFIED.
39 (c) IF THE TOTAL AMOUNT OF CREDITS ISSUED AND THE TOTAL
40 AMOUNT OF CREDITS PROJECTED TO BE ISSUED PURSUANT TO THIS SECTION
41 AND SECTION 39-22-522 (2.5) IS LESS THAN FORTY-FIVE MILLION DOLLARS
42 AT THE END OF A CALENDAR YEAR, ADDITIONAL CERTIFICATES MAY BE
43 ISSUED PURSUANT TO THIS SECTION AS LONG AS THE TOTAL AMOUNT OF

1 CREDITS ISSUED PURSUANT TO THIS SECTION AND SECTION 39-22-522 (2.5)
2 DOES NOT EXCEED FORTY-FIVE MILLION DOLLARS FOR THE CALENDAR
3 YEAR. AT SUCH TIME AS ALL VALID CLAIMS MADE PURSUANT TO
4 SUBSECTION (4) OF THIS SECTION HAVE BEEN SATISFIED, THE FULL
5 AMOUNT NOT USED FOR CREDITS UP TO FORTY FIVE MILLION DOLLARS
6 SHALL BE ELIGIBLE FOR USE FOR NEW CONSERVATION EASEMENTS.

7 (d) ANY CLAIMS FOR A TAX CREDIT MADE PURSUANT TO THIS
8 SECTION THAT EXCEED THE AMOUNT ALLOWED FOR A SPECIFIED
9 CALENDAR YEAR SHALL BE PLACED ON A WAIT LIST IN THE ORDER
10 SUBMITTED AND A CERTIFICATE SHALL BE ISSUED FOR THE USE OF THE
11 CREDIT IN THE NEXT YEAR FOR WHICH THE DIVISION HAS NOT ISSUED
12 CREDIT CERTIFICATES IN EXCESS OF THE AMOUNTS ALLOWED PURSUANT
13 TO THIS SECTION.

14 (7) IF A PERSON ELIGIBLE TO RECEIVE A CREDIT PURSUANT TO THIS
15 SECTION IS NO LONGER LIVING, THE CREDIT MAY BE CLAIMED BY THE
16 APPROPRIATE ESTATE, HEIR, SUCCESSOR, OR ASSIGN.

17 (8) IF MORE THAN ONE PERSON OR ENTITY HAS A CLAIM TO A
18 CREDIT RELATED TO A PARTICULAR DONATION OF A CONSERVATION
19 EASEMENT, CLAIMANTS MAY WORK TOGETHER TO COORDINATE THE
20 APPROPRIATE DISTRIBUTION OF CREDITS.

21 (9) IF A TAXPAYER TRANSFERRED ALL OR A PORTION OF A TAX
22 CREDIT FOR A CONSERVATION EASEMENT DONATION THAT QUALIFIES FOR
23 A CREDIT PURSUANT TO THIS SECTION TO ANOTHER TAXPAYER AS
24 TRANSFEREE PURSUANT TO SECTION 39-22-522 (7), THEN THE TRANSFEREE
25 MAY CLAIM A CREDIT PURSUANT TO THIS SECTION. THE TRANSFEROR AND
26 ANY TRANSFEREES MAY SUBMIT CLAIMS FOR CREDITS PURSUANT TO THIS
27 SECTION INDIVIDUALLY OR MUTUALLY AS A GROUP IF THEY AGREE UPON
28 THE TERMS FOR DIVIDING THE CREDIT. APPLICANTS MUST ATTEMPT TO
29 NOTIFY ANY OTHER TAXPAYER OR TRANSFEREE THAT WAS A PARTY TO THE
30 TRANSFER THAT AN APPLICATION IS BEING MADE TO CLAIM A CREDIT
31 PURSUANT TO THIS SECTION. ANY PARTY WHO RECEIVES SUCH NOTICE HAS
32 NINETY DAYS FROM RECEIPT OF THE NOTICE TO FILE AN OBJECTION TO THE
33 CLAIM FOR THE CREDIT. AN OBJECTION SHALL BE SUBMITTED IN THE FORM
34 OF AN APPLICATION FOR A CREDIT AND SHALL SET FORTH THE PROPOSED
35 ALTERNATIVE AMOUNT OR DISTRIBUTION OF THE CREDIT. IN NO EVENT
36 SHALL THE AMOUNT OF COMPENSATION PROVIDED TO A TRANSFEREE
37 EXCEED THE AMOUNT PAID BY THE TRANSFEREE FOR THE CREDIT, LESS
38 ANY AMOUNT THAT WAS REINSTATED, REIMBURSED, OR OTHERWISE
39 ALLOWED TO THE TRANSFEREE AS A RESULT OF A SETTLEMENT,
40 LITIGATION, OR OTHER MEANS THAT PROVIDED COMPENSATION TO THE
41 TRANSFEREE UNLESS OTHERWISE MUTUALLY AGREE UPON BY THE PARTIES.

42 (10) IF AN OBJECTION TO A CLAIM FOR A CREDIT IS FILED
43 PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE DIVISION OF

1 CONSERVATION SHALL REFER THE MATTER TO THE OMBUDSMAN
2 DESIGNATED PURSUANT TO SECTION 12-15-108 FOR FINAL RESOLUTION OF
3 ANY DISPUTES RELATED TO AMOUNTS TO BE ALLOWED PURSUANT TO THIS
4 SECTION.

5 (11) CREDITS ALLOWED PURSUANT TO THIS SECTION ARE NOT
6 REFUNDABLE, BUT MAY BE TRANSFERRED OR CARRIED FORWARD IN THE
7 SAME MANNER AS CREDITS ALLOWED PURSUANT TO SECTION 39-22-522
8 (4)(a) FOR A PERIOD OF TIME BEGINNING AT THE TIME OF THE ISSUANCE OF
9 THE CREDIT."

10 Page 11, line 21, strike "**compensation**" and substitute "**credit**".

11 Page 11, strike line 24 and substitute "TAX CREDITS IF AN OBJECTION TO
12 A CLAIM FOR A TAX CREDIT HAS".

13 Page 11, line 26, strike "(8)." and substitute "(10).".

14 Page 12, line 2, strike "COMPENSATION" and substitute "A TAX CREDIT".

15 Page 12, line 8, strike "PROVIDE THE COMPENSATION" and substitute
16 "ALLOW THE TAX CREDIT TO BE CLAIMED".

17 Page 18, after line 11 insert:

18 "(12) THE DIVISION OF CONSERVATION SHALL COORDINATE WITH
19 THE WORKING GROUP CONVENED IN ACCORDANCE WITH SECTION
20 12-15-106 (14.5) AND ADOPT RULES TO ESTABLISH CRITERIA FOR
21 DETERMINING WHETHER AN ENTITY HOLDING A CONSERVATION EASEMENT
22 IS NONFUNCTIONING AND ANY OTHER CRITERIA NECESSARY TO DETERMINE
23 WHETHER A CONSERVATION EASEMENT IS ABANDONED."

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