

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0743.01 Gregg Fraser

HOUSE BILL 10-1197

HOUSE SPONSORSHIP

Ferrandino,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING A DECREASE IN THE MAXIMUM AMOUNT OF A STATE**
102 **INCOME TAX CREDIT THAT MAY BE CLAIMED FOR THE DONATION**
103 **OF A CONSERVATION EASEMENT IN GROSS, AND MAKING AN**
104 **APPROPRIATION THEREFOR.**

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>.)

Taxpayers are currently allowed to claim a state income tax credit for donating a conservation easement. The amount of the credit is equal

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.*

SENATE
3rd Reading Unam ended
March 29, 2010

SENATE
Am ended 2nd Reading
March 26, 2010

HOUSE
3rd Reading Unam ended
February 12, 2010

HOUSE
Am ended 2nd Reading
February 10, 2010

to 50% of the fair market value of the easement, with a cap of \$375,000. The bill reduces the amount of the cap to \$135,000 for donations made on or after January 1, 2011.

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

2 **SECTION 1.** 39-1-102 (1.6) (a) (III), Colorado Revised Statutes,
3 is amended to read:

4 **39-1-102. Definitions.** As used in articles 1 to 13 of this title,
5 unless the context otherwise requires:

6 (1.6) (a) "Agricultural land", whether used by the owner of the
7 land or a lessee, means one of the following:

8 (III) A parcel of land that consists of at least eighty acres, or of
9 less than eighty acres if such parcel does not contain any residential
10 improvements, and that is subject to a perpetual conservation easement,
11 if such land was classified by the assessor as agricultural land under
12 subparagraph (I) or (II) of this paragraph (a) at the time such easement
13 was granted, if the grant of the easement was to a qualified organization,
14 if the easement was granted exclusively for conservation purposes, and
15 if all current and contemplated future uses of the land are described in the
16 conservation easement. "Agricultural land" under this subparagraph (III)
17 does not include any portion of such land that is actually used for
18 nonagricultural commercial or NONAGRICULTURAL residential purposes.

19 **SECTION 2.** 39-1-103 (5) (a), Colorado Revised Statutes, is
20 amended to read:

21 **39-1-103. Actual value determined - when.** (5) (a) All real and
22 personal property shall be appraised and the actual value thereof for
23 property tax purposes determined by the assessor of the county wherein
24 such property is located. The actual value of such property, other than

1 agricultural lands exclusive of building improvements thereon and other
2 than residential real property and other than producing mines and lands
3 or leaseholds producing oil or gas, shall be that value determined by
4 appropriate consideration of the cost approach, the market approach, and
5 the income approach to appraisal. The assessor shall consider and
6 document all elements of such approaches that are applicable prior to a
7 determination of actual value. Despite any orders of the state board of
8 equalization, no assessor shall arbitrarily increase the valuations for
9 assessment of all parcels represented within the abstract of a county or
10 within a class or subclass of parcels on that abstract by a common
11 multiple in response to the order of said board. If an assessor is required,
12 pursuant to the order of said board, to increase or decrease valuations for
13 assessment, such changes shall be made only upon individual valuations
14 for assessment of each and every parcel, using each of the approaches to
15 appraisal specified in this paragraph (a), if applicable. The actual value
16 of agricultural lands, exclusive of building improvements thereon, shall
17 be determined by consideration of the earning or productive capacity of
18 such lands during a reasonable period of time, capitalized at a rate of
19 thirteen percent. Land that is valued as agricultural and that becomes
20 subject to a perpetual conservation easement shall continue to be valued
21 as agricultural notwithstanding its dedication for conservation purposes;
22 except that, if any portion of such land is actually used for nonagricultural
23 commercial or NONAGRICULTURAL residential purposes, that portion shall
24 be valued according to such use. NOTHING IN THIS SUBSECTION (5) SHALL
25 BE CONSTRUED TO REQUIRE OR PERMIT THE RECLASSIFICATION OF
26 AGRICULTURAL LAND OR IMPROVEMENTS, INCLUDING RESIDENTIAL
27 PROPERTY, DUE SOLELY TO SUBJECTING THE LAND TO A PERPETUAL

1 CONSERVATION EASEMENT. The actual value of residential real property
2 shall be determined solely by consideration of the market approach to
3 appraisal. A gross rent multiplier may be considered as a unit of
4 comparison within the market approach to appraisal. The valuation for
5 assessment of producing mines and of lands or leaseholds producing oil
6 or gas shall be determined pursuant to articles 6 and 7 of this title.

7 **SECTION 3.** Part 1 of article 21 of title 39, Colorado Revised
8 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
9 read:

10 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
11 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
12 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1197,
13 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
14 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
15 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
16 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

17 **SECTION 4.** 39-22-522, Colorado Revised Statutes, is amended
18 BY THE ADDITION OF A NEW SUBSECTION to read:

19 **39-22-522. Credit against tax - conservation easements.**
20 (2.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR
21 INCOME TAX YEARS COMMENCING DURING THE 2011, 2012, AND 2013
22 CALENDAR YEARS, A TAXPAYER CONVEYING A CONSERVATION EASEMENT
23 IN 2011, 2012, OR 2013 AND CLAIMING A CREDIT PURSUANT TO THIS
24 SECTION SHALL, IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS
25 SECTION, SUBMIT A CLAIM FOR THE CREDIT TO THE DIVISION OF REAL
26 ESTATE IN THE DEPARTMENT OF REGULATORY AGENCIES. THE DIVISION
27 SHALL ISSUE A CERTIFICATE FOR THE CLAIMS RECEIVED IN THE ORDER

1 SUBMITTED. AFTER CERTIFICATES HAVE BEEN ISSUED FOR CREDITS THAT
2 EXCEED AN AGGREGATE OF TWENTY-SIX MILLION DOLLARS FOR ALL
3 TAXPAYERS FOR INCOME TAX YEARS COMMENCING IN EACH OF THE 2011,
4 2012, AND 2013 CALENDAR YEARS, ANY CLAIMS THAT EXCEED THE
5 AMOUNT ALLOWED FOR A SPECIFIED CALENDAR YEAR SHALL BE PLACED
6 ON A WAIT LIST IN THE ORDER SUBMITTED AND A CERTIFICATE SHALL BE
7 ISSUED FOR USE OF THE CREDIT IN 2012 OR 2013. THE DIVISION SHALL NOT
8 ISSUE CREDIT CERTIFICATES THAT EXCEED TWENTY-SIX MILLION DOLLARS
9 FOR EACH INCOME TAX YEAR COMMENCING IN THE 2011, 2012, AND 2013
10 CALENDAR YEARS. NO CLAIM FOR A CREDIT SHALL BE ALLOWED FOR ANY
11 INCOME TAX YEAR COMMENCING DURING THE 2011, 2012, OR 2013
12 CALENDAR YEARS UNLESS A CERTIFICATE HAS BEEN ISSUED BY THE
13 DIVISION. THE RIGHT TO CLAIM THE CREDIT SHALL BE VESTED IN THE
14 TAXPAYER AT THE TIME A CREDIT CERTIFICATE IS ISSUED. THE DIVISION
15 MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
16 C.R.S., FOR THE ISSUANCE OF CERTIFICATES IN ACCORDANCE WITH THIS
17 SUBSECTION (2.5).

18 **SECTION 5.** Part 7 of article 61 of title 12, Colorado Revised
19 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
20 read:

21 **12-61-722. Conservation easement tax credit certificates.**

22 (1) THE DIVISION SHALL RECEIVE CLAIMS FROM AND ISSUE CERTIFICATES
23 TO CERTIFIED CONSERVATION EASEMENT HOLDERS FOR INCOME TAX
24 CREDITS FOR CONSERVATION EASEMENTS DONATED DURING THE 2011,
25 2012, AND 2013 CALENDAR YEARS IN ACCORDANCE WITH THE PROVISIONS
26 OF SECTION 39-22-522 (2.5), C.R.S. NOTHING IN THIS SECTION SHALL BE
27 CONSTRUED TO RESTRICT OR LIMIT THE AUTHORITY OF THE DIVISION TO

1 ENFORCE THE PROVISIONS OF THIS PART 7. THE DIVISION MAY
2 PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.,
3 FOR THE ISSUANCE OF THE CERTIFICATES. IN PROMULGATING ANY SUCH
4 RULES, THE DIVISION MAY INCLUDE BUT SHALL NOT BE LIMITED TO
5 PROVISIONS GOVERNING THE FOLLOWING:

6 (a) THE REVIEW OF THE TAX CREDIT CERTIFICATE;

7 (b) THE ADMINISTRATION AND FINANCING OF THE CERTIFICATION
8 PROCESS;

9 (c) THE NOTIFICATION TO THE PUBLIC REGARDING THE AGGREGATE
10 AMOUNT OF CERTIFICATES THAT HAVE BEEN ISSUED AND THAT ARE ON THE
11 WAIT LIST;

12 (d) THE NOTIFICATION TO THE TAXPAYER, THE ENTITY TO WHICH
13 THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE
14 REGARDING THE CERTIFICATES ISSUED; AND

15 (e) ANY OTHER MATTERS RELATED TO ADMINISTERING THE
16 PROVISIONS OF SECTION 39-22-522 (2.5), C.R.S.

17 **SECTION 6. Appropriation.** In addition to any other
18 appropriation, there is hereby appropriated, out of any moneys in the
19 conservation easement holder certification fund created in section
20 12-61-720 (3), Colorado Revised Statutes, not otherwise appropriated, to
21 the department of regulatory agencies, for allocation to the division of
22 real estate, for the fiscal year beginning July 1, 2010, the sum of nine
23 thousand twenty-eight dollars (\$9,028) cash funds and 0.2 FTE, or so
24 much thereof as may be necessary, for the implementation of this act.

25 **SECTION 7. Act subject to petition - effective date.** This act
26 shall take effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part shall not take effect
5 unless approved by the people at the general election to be held in
6 November 2010 and shall take effect on the date of the official
7 declaration of the vote thereon by the governor.