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# Chapter 11: Conservation Easements

An \* in the left margin indicates a change in the statute, rule or text since the last publication of the manual.

## I. Introduction

In 2008, Colorado's Appraiser statutes were amended by the passage of HB1353, the Conservation Easement Bill to prevent abuses of the state's popular land-preservation tax credit program.

This new legislation creates a nine-member Conservation Easement Oversight Commission, appointed by the governor, that will meet at least quarterly to review applications for conservation easement holder certification and to review any other issues referred to the commission by any state agency.

Duties of the Commission will be to:

- Advise the Division of Real Estate regarding minimum qualifications for certification of conservation easement holders by reviewing the applicant's process for approving conservation easement, the applicant's stewardship practices, the applicant's financial records, and the applicant's system of governance and ethics.
- Advise the Division of Real Estate on unqualified conservation easement holders.
- Advise the Division of Real Estate and Department of Revenue regarding the efficacy of conservation easement transactions, valuations and capabilities of conservation easement holders.

Under the new law Appraisers must submit all conservation easement appraisals to the Division of Real Estate. All organizations holding conservation easements must be certified by the Division of Real Estate. The Department of Revenue is now authorized to share information with the Division of Real Estate and the Conservation Easement Oversight Commission. The Department of Revenue must review conservation easements when the IRS is conducting an audit.

## II. HB1353 – Legislative declaration

- (1) The general assembly finds, determines, and declares that:
  - (a) Colorado's conservation easement tax credit program was designed to give landowners an incentive to preserve their land for conservation and other values that would be eliminated or compromised by development;
  - (b) Some promoters have abused the tax credit program to obtain a financial benefit for themselves and their clients by submitting easements that misrepresent a property's conservation or financial values.
- (2) The general assembly determines that, pursuant to section 9 of this act, it is appropriate for the legislative service agencies to conduct a post-enactment review of this act two years after its enactment in accordance with section 2-2-1201, C.R.S., and report their findings relating to the

implementation of this act to the general assembly. It is the intent of the general assembly that desired results and benefits of this act are as follows:

- (a) To address abuses of the conservation easement tax credit program while continuing to allow legitimate participants and the state of Colorado to continue to benefit from the program;
- (b) To have the division of real estate review appraisals of conservation easements and affidavits of appraisers submitted to the division and maintain the information in an electronic database;
- (c) To have the division of real estate investigate the activities of appraisers of conservation easements to ensure that the appraisers are complying with the uniform standards of professional appraisal practice and other requirements of law;
- (d) To establish and administer a program to certify conservation easement holders to identify fraudulent or unqualified organizations and prevent them from holding conservation easements for which tax credits are claimed in the state;
- (e) To establish a conservation easement oversight commission to advise the division of real estate and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification; and
- (f) To ensure that the division of real estate and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law.

***Colorado Revised Statutes § 12-61-719. Conservation easement appraisals – fund created.***

- (1) Any appraiser who conducts an appraisal for a conservation easement shall submit a copy of the completed appraisal to the division within thirty days following the completion of the appraisal. For purposes of this section, “completion of the appraisal” shall mean that the certification page, as defined in the uniform standards for professional appraisal practice, promulgated by the appraisal standards board, shall have been signed by the appraiser and the appraisal has been delivered to the client of the appraiser. The appraisal shall be accompanied by an affidavit from the appraiser that includes, but is not limited to, the following:
  - (a) A statement specifying the value of the unencumbered property and the total value of the conservation easement in gross along with details of what methods the appraiser used to determine these values;
  - (b) If the appraisal separately allocates the values of sand and gravel, minerals, water, or improvements, a statement of the separate value of the sand and gravel, minerals, water, or improvements before and after the conservation easement in gross is granted;
  - (c) An acknowledgment specifying whether a subdivision analysis was used to establish the conservation value in the appraisal;
  - (d) A statement clarifying whether or not the landowner or a family member as defined in section 267(c)(4) of the federal “Internal Revenue Code of 1986”, as amended, owns other property contiguous to the property encumbered by the appraised conservation easement or owns other property, of which the value may be increased by the donation of the property encumbered by the appraised conservation easement, whether contiguous or not, owned by the landowner or related person as defined in section 267(b) of the federal “Internal Revenue Code of 1986”, as amended;
  - (e) A statement specifying how the appraiser satisfies the qualified appraiser and licensing requirements set forth in section 39-22-522(3.3);

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- (f) A statement verifying the date and method by which the appraiser has met any specified classroom education requirements established by the board for conservation easement appraisals pursuant to subsection (7) of this section; and
  - (g) A statement specifying the number of previous conservation easement appraisals conducted by the appraiser.
- (2) An affidavit submitted in accordance with the provisions of this section shall be in a form approved by the board. The board shall have the authority to promulgate rules concerning the form and content of the affidavit. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S. A copy of the affidavit and the completed appraisal shall be provided to the landowner.
  - (3) The division shall review the information submitted in accordance with this section to ensure that it is complete and shall record and maintain the information submitted as part of the affidavit in an electronic database. The division shall have the authority to share the information with the department of revenue. Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., the division's custodian of records shall deny the right of inspection of any appraisal, affidavit, or other record related to information submitted in accordance with the provision of this section unless and until such time as the division files a notice of charges related to the information.
  - (4) The board in its discretion may, or upon receiving a written complaint from any person shall, investigate the activities of any appraiser who submits any information in accordance with the provisions of this section. The investigation shall consider whether the appraiser complied with the uniform standards of professional appraisal practice and any other provision of law. In conducting the investigation, the division shall have the authority to consult with the commission.
  - (5) If the board determines that a material violation of the uniform standards of professional appraisal practice or a substantial misstatement of value has occurred in any appraisal submitted in accordance with this section, the board shall notify the department of revenue regarding the appraisal and provide the department with a copy of the appraisal and a summary of the division's findings.
  - (6) If an appraiser fails to file an appraisal, affidavit, or other information as required by this section, the board shall have the authority to take disciplinary action as provided in section 12-61-710.
  - (7) The board shall have the authority to establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement pursuant to section 39-22-522, C.R.S. Such requirements shall be established to ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements. A credit for a conservation easement shall not be allowed unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (7) in effect at the time the appraisal was completed.
  - (8) Any appraiser who submits a copy of an appraisal to the division in accordance with the requirements of this section shall pay the division a fee as prescribed by the division. The fee shall cover the costs of the division in administering the requirements of this section. The state treasurer shall credit the fees to the conservation easement appraisal review fund, which fund is hereby created in the state treasury. Moneys in the fund shall be annually appropriated to the division for the purposes of implementing and administering this section and shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S.; except that in no event shall the fee exceed the amount of six hundred dollars for each appraisal submitted. On or before January 1, 2009, and on or before

each January 1 thereafter, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (8).

**12-61-720. Certification of conservation easement holders – fund created – rules – repeal.**

- (1) The division shall, in consultation with the commission created in section 12-61-721, establish and administer a certification program for qualified organizations under section 170 (h) of the federal “Internal Revenue Code of 1986”, as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. The purpose of the program shall be to:
  - (a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and
  - (b) Identify fraudulent or unqualified applicants as defined by the rules of the division to prevent them from becoming certified by the program.
- (2) The certification program shall be established and commence accepting applications for certification no later than January 1, 2009. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:
  - (a) The applicant's process for reviewing, selecting, and approving a potential conservation easement;
  - (b) The applicant's stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;
  - (c) An audit of the applicant's financial records;
  - (d) The applicant's system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267(b) of the federal “Internal Revenue Code of 1986”, as amended, donors, board members, and insiders. For purposes of this paragraph (d), “insiders” means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.
  - (e) Any other information deemed relevant by the division or the commission; and
  - (f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.
- (3) At the time of submission of an application, the applicant shall pay the division a fee as prescribed by the division. The fee shall cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522, C.R.S. The state treasurer shall credit fees collected pursuant to this subsection (3) to the conservation easement holder certification fund, which fund is hereby created in the state treasury. Moneys in the fund shall be annually appropriated to the division for the purposes of implementing and administering this section and shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S.; except that in no event shall the fee exceed the amount of five thousand eight hundred ten dollars for each application submitted. On or before January 1, 2009, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).
- (4) The certification program shall apply to:

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- (a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;
  - (b) Nonprofit entities holding easements on property for historic preservation; and
  - (c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.
- (5) The certification program may contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.
- (6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division shall have the authority to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 7, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification; and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104(9), C.R.S. The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.
- (7) The division shall implement the certification program in a manner that either commences accepting applications for certification:
- (a) At the same time for all types of entities that hold conservation easements; or
  - (b) During the first year of the program for entities described in paragraph (a) of subsection (4) of this section and during the second year of the program for entities described in paragraphs (b) and (c) of subsection (4) of this section, and other entities.
- (8) Beginning one year after the division commences accepting applications to certify the type of entity that holds a conservation easement in accordance with the provisions of subsection (7) of this section, a tax credit may be claimed for the easement pursuant to section 39-22-522, C.R.S., only if the entity has been certified in accordance with the provisions of this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).
- (9) Certification granted in accordance with the provisions of this section shall be effective for a three-year period.
- (10) The division shall maintain and update an online list that can be accessed by the public of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with the provisions of this section.
- (11) The division shall have the authority to investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including but not limited to the suspension or revocation of a certification or the imposition of fines. The division shall have the authority to promulgate rules for the certification program and discipline authorized by this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.
- (12) Nothing in this section shall be construed to:
- (a) Affect any tax credit that was claimed pursuant to section 39-22-522, C.R.S., prior to the time certification was required by this section; or

- (b) Require the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522, C.R.S.
- (13) This section is repealed, effective July 1, 2018.  
Added by Laws 2008, Ch. 448, § 3, eff. July 1, 2008.

***12-61-721. Conservation easement oversight commission – created – repeal.***

- (1) There is hereby created in the division a conservation easement oversight commission consisting of nine members as follows:
  - (a) One member representing the great outdoors Colorado program shall be appointed by and serve at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;
  - (b) One member representing the department of natural resources shall be appointed by and serve at the pleasure of the executive director of the department;
  - (c) One member representing the department of agriculture shall be appointed by and serve at the pleasure of the executive director of the department;
  - (d) Six members appointed by the governor as follows with at least one member with the following qualifications or representing the following interests:
    - (I) A local land trust;
    - (II) A statewide or national land trust;
    - (III) A local government open space or land conservation agency;
    - (IV) An historic preservation organization with experience in easements on properties of historical significance;
    - (V) A certified general appraiser with experience in conservation easements who meets any classroom education and experience requirements established by the board in accordance with section 12-61-719; and
    - (VI) A landowner that has donated a conservation easement in Colorado.
- (2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to paragraphs (a) to (c) of subsection (1) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointee represents. Not more than three of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint three members for terms of two years. All other appointments by the governor shall be for a term of three years. No member shall serve more than two consecutive terms. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.
- (3) The commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522, C.R.S. At the request of the division or the department, the commission shall review conservation easement transactions, applications, and other documents and advise the division and the department regarding conservation values, the capacity of conservation easement holders, and the integrity and accuracy of conservation easement transactions related to the tax credits.
- (4) The commission shall meet not less than once each quarter to review applications for conservation easement holder certification submitted in accordance with section 12-61-720 and to review any other issues referred to the commission by the division, the department of revenue, or any other state entity. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A majority of the members of the commission shall constitute a quorum for the transaction of all business, and actions of the

commission shall require a vote of a majority of such members present in favor of the action taken.

- (5) On or before January 1, 2009, the commission shall establish a conflict of interest policy to ensure that any member of the commission shall be disqualified from performing any act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by such member.
- (6) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of registrations pursuant to section 24-34-102(13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the conservation easement holder certification fund created in section 12-61-720(3).
- (7) This section is repealed, effective July 1, 2018. Prior to such repeal, the commission shall be reviewed as provided in section 24-34-104, C. R.S.

Added by Laws 2008, Ch. 448, § 3, eff. July 1, 2008.

***24-33-112. Conservation easement holders – submission of information.***

- (1) Any organization that accepts a donation of a conservation easement in gross for which a state income tax credit is claimed in accordance with the provisions of section 39-22-522, C.R.S., shall submit the following information to the department of revenue and the division of real estate in the department of regulatory agencies:
  - (a) The number of conservation easements held by the organization in Colorado;
  - (b) The number of acres subject to each conservation easement held in Colorado, except properties for which the sole conservation purpose is historic preservation;
  - (c) The names of the board members if the organization is a private nonprofit organization or the names of the elected or appointed officials if the organization is a public entity; and
  - (c.5) The date on which the organization received certification pursuant to section 12-61-720, C.R.S.; and
  - (d) A signed statement from the organization acknowledging that:
    - (I) The organization has a commitment to protect the conservation purpose of the donation and has the resources to enforce the restrictions; and
    - (II) The organization has adequate resources and policies in place to provide annual monitoring of each conservation easement held by the organization in Colorado, except for any conservation easement granted to a local government that did not involve a charitable donation.
- (2) An organization that accepts a conservation easement in the calendar year commencing January 1, 2008, shall submit the information required by subsection (1) of this section prior to accepting the easement, but in no event later than April 15 of that calendar year. An organization shall not accept any donation of a conservation easement in gross for which a credit is claimed unless the organization has submitted the information required by this subsection (2) with the department of revenue, the department of agriculture, and the department of natural resources. The department of natural resources and the department of agriculture shall make the information available to the public upon request.
- (3) An organization that accepts a conservation easement in any calendar year commencing on or after January 1, 2009, shall submit the information required by subsection (1) of this section prior to accepting the easement, but in no event later than April 15 of that calendar year. An organization shall not accept any donation of a conservation easement in gross for which a credit is claimed unless the organization has submitted the information required by this subsection (3) with the department of revenue and the division of real estate. The department of

revenue and the division of real estate shall make the information available to the public upon request.

- (4) Federal agencies that accept conservation easements for which a state income tax credit is claimed are exempt from the submission of information required in subsection (1) of this section and, in any calendar year commencing on or after January 1, 2008, shall be exempt from the filing requirements of subsections (2) and (3) of this section. Conservation easements accepted by federal agencies may receive the state tax credit without the federal agency having filed the information required by this section.

Added by Laws 2007, Ch. 290, § 1, eff. Aug. 3, 2007. Amended by Laws 2008, Ch. 448, §§ 4, 5, eff. July 1, 2008.

***39-21-113. Reports and returns.***

- (17) Notwithstanding any other provision of this section, the executive director may require that such detailed information regarding a claim for a credit for the donation of a conservation easement in gross pursuant to section 39-22-522 and any appraisal submitted in support of the credit claimed be given to the division of real estate in the department of regulatory agencies and the conservation easement oversight commission created pursuant to section 12-61-721(1), C.R.S., as the executive director determines is necessary in the performance of the department's functions relating to the credit. The executive director may provide copies of any appraisal and may file a complaint regarding any appraisal as authorized pursuant to section 39-22-522(3.3). Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or appraisal required in accordance with the provisions of this subsection (16).

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

- (1) For purposes of this section, “taxpayer” means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.
- (2) For income tax years commencing on or after January 1, 2000, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104(2), C.R.S. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170(h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.
- (3) In order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:
  - (a) A statement indicating whether a deduction was claimed on the taxpayer's federal income tax return for a conservation easement in gross;
  - (b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income



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- tax return and whether the donation was made in order to get a permit or other approval from a local or other governing authority;
- (c) A statement to be made available to the public by the department of revenue that includes a summary of the conservation purposes as defined in section 170(h) of the internal revenue code that are protected by the easement; the county, township, and range where the easement is located; the number of acres subject to the easement; the amount of the tax credit claimed; and the name of the organization holding the easement;
  - (d) A summary of a qualified appraisal that meets the requirements set forth in subsection (3.3) of this section; however, if requested by the department of revenue, the taxpayer shall submit the appraisal itself;
  - (e) A copy of the appraisal and accompanying affidavit from the appraiser submitted to the division of real estate in the department of regulatory agencies in accordance with the provisions of section 12-61-719, C.R.S.
  - (f) If the holder of the conservation easement is an organization to which the certification program in section 12-61-720, C.R.S., applies, a sworn affidavit from the holder of the conservation easement in gross that includes the following:
    - (I) An acknowledgment that the holder has filed the information with the department of revenue and the division of real estate in accordance with section 24-33-112, C.R.S.;
    - (II) An acknowledgment of whether the transaction is part of a series of transactions by the same donor; and
    - (III) An acknowledgment that the holder has reviewed the completed Colorado gross conservation easement credit schedule to be filed by the taxpayer and that the property is accurately described in the schedule.
- (3.3) The appraisal for a conservation easement in gross for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170(f)(11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards for professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-719(7), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.
- (3.5) (a) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown and in consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-721(1), C.R.S., to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, receives notice of such a valuation

- misstatement from the division of real estate, or receives notice from the division of real estate that an enforcement action has been taken by the board of real estate appraisers against the appraiser, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer. The second appraisal shall be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser that meets qualifications established by the division of real estate. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.
- (b) In consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-721(1), C.R.S., the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this paragraph (b). On or before January 1, 2009, the executive director shall report to the general assembly on the status of the development and implementation of the process required by this paragraph (b).
- (3.7) If the gain on the sale of a conservation easement in gross for which a credit is claimed pursuant to this section would not have been a long-term capital gain, as defined under the internal revenue code, if, at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the conservation easement in gross for the purpose of calculating the amount of the credit shall be reduced to the taxpayer's tax basis in the conservation easement in gross. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170(e) and 170(h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such sections. This subsection (3.7) shall be applied in a manner that is consistent with the tax treatment of qualified conservation contributions under the internal revenue code and the federal regulations promulgated under the internal revenue code.
- (4) (a) (I) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated prior to January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104(2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to one hundred percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and forty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed two hundred sixty thousand dollars per donation.
- (II) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104(2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to fifty percent of the fair market value of the donated portion of such conservation easement in gross when created; except that in no case shall the credit exceed three hundred seventy-five thousand dollars per donation.

- (III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers filing married separate federal returns, exceed the dollar limitations of this paragraph (a).
- (b) For income tax years commencing on or after January 1, 2000, in the case of a joint tenancy, tenancy in common, partnership, S corporation, or other similar entity or ownership group that donates a conservation easement as an entity or group, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's owners, partners, members, or shareholders in proportion to the owners', partners', members', or shareholders' distributive shares of income or ownership percentage from such entity or group. For income tax years commencing on or after January 1, 2000, but prior to January 1, 2003, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed one hundred thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such partners, members, and shareholders shall not exceed twenty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2003, but prior to January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed two hundred sixty thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed three hundred seventy-five thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.
- (5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not used as an offset against income taxes in said income tax year and not refunded pursuant to paragraph (b) of this subsection (5) may be carried forward and applied against the income tax due in each of the twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.
- (b) (I) Subject to the requirements specified in subparagraphs (II) and (III) of this paragraph (b), for income tax years commencing on or after January 1, 2000, if the amount of the tax credit allowed in or carried forward to any tax year pursuant to this section exceeds the amount of income tax due on the income of the taxpayer for the year, the taxpayer may elect to have the amount of the credit not used as an offset against income taxes in said income tax year refunded to the taxpayer.
- (II) A taxpayer may elect to claim a refund pursuant to subparagraph (I) of this paragraph (b) only if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20(7)(a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.

- (III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed fifty thousand dollars for that income tax year. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subparagraph (I) of this paragraph (b), the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subparagraph (III) for that income tax year. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.
- (6) A taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section shall not claim an additional tax credit under this section for any income tax year in which the transferee uses such transferred credit.
- (7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:
- (a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund;
  - (b) The taxpayer may transfer a pro-rated portion of the tax credit to more than one transferee;
  - (c) A transferee may not elect to have any transferred credit refunded pursuant to paragraph (b) of subsection (5) of this section;
  - (d) For any tax year in which a tax credit is transferred pursuant to this subsection (7), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit that has been transferred. A transferee may not claim a credit transferred pursuant to this subsection (7) unless the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.
  - (e) To the extent that a transferee paid value for the transfer of a conservation easement tax credit to such transferee, the transferee shall be deemed to have used the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article, and to such extent the transferee's use of a tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income taxes imposed by this article on the transferee.
  - (f) The transferee shall submit to the department a form approved by the department. The transferee shall also file a copy of the form with the entity to whom the taxpayer donated the conservation easement.
  - (g) A transferee of a tax credit shall purchase the credit prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return.
  - (h) A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, shall survive the death of the individual and may be

claimed or transferred by the decedent's estate. This paragraph (h) shall apply to any tax credit from a donation of a conservation easement made on or after January 1, 2000.

- (i) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee shall be subject to the same statute of limitations with respect to the credit as the transferor of the credit.
- (j) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, shall be binding on transferees.
- (8) The executive director of the department of revenue may promulgate rules for the implementation of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.
- (9) Any taxpayer who claims a credit for the donation of a conservation easement contrary to the provisions of this section shall be liable for such deficiencies, interest, and penalties as may be specified in this article or otherwise provided by law.
- (10) On or before July 1, 2008, the department of revenue shall create a report, which shall be made available to the public, on the credits claimed in the previous year in accordance with this section. For each credit claimed for a conservation easement in gross, the report shall summarize by county where the easement is located, the acres under easement, the appraised value of the easement, the donated value of the easement, and the name of any holders of the easement; except that the department shall combine such information for multiple counties where necessary to ensure that the information for no fewer than three easements is summarized for any county or combination of counties in the report. The report shall be updated annually to reflect the same information for any additional credits that have been granted since the previous report.
- (11) On or before December 31, 2007, the department of revenue shall create a report, which shall be made available to the public, with as much of the information specified in paragraph (c) of subsection (3) of this section as is available to the department, summarized by county, for each tax credit claimed for a conservation easement in gross for tax years commencing on or after January 1, 2000.

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