A BILL FOR AN ACT

CONCERNING CONSERVATION EASEMENT TRANSPARENCY.

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://leg.colorado.gov.)

A conservation easement is an agreement in which a property owner agrees to limit the use of his or her land in perpetuity in order to protect one or more specified conservation purposes. The instruments creating the conservation easement are recorded in the public records affecting the ownership of the property. The conservation easement is held by a third party, which monitors the use of the land and ensures that the terms of the agreement are upheld.

Prior to creating a conservation easement, section 1 of the bill
requires the property owner to sign a disclosure form acknowledging certain specified consequences and risks of creating the easement on his or her land.

Section 3 requires the commissioner of agriculture to work with local government officials to create a database of conservation easements in the state. The database includes specified information about the easements and a corresponding map displaying each easement in the state relative to county boundaries. Local government officials and the commissioner of agriculture are authorized to enter into contracts to assist in gathering information for the database. The bill specifies the sources of information that may be used to create the database. The commissioner of agriculture is required to annually update the information in the database and make the information and corresponding map available to the public at no charge on the department of agriculture's website.

When a conservation easement agreement, amendment, or transfer is recorded with a county clerk and recorder, section 2 requires a complete copy of the agreement, amendment, or transfer to be submitted to the commissioner of agriculture and the county tax assessor of the county in which the easement is located. The commissioner of agriculture is required to create a tracking form with specified information for each conservation easement agreement, amendment, or transfer submitted. The tracking forms are made available on the department of agriculture's website and can be used by the commissioner of agriculture to create and maintain the database of conservation easements.

For any state income tax credit claimed for a donation of a conservation easement that is disallowed, section 3 also allows a landowner to elect to either extinguish the conservation easement for which the credit was claimed or receive an equitable relief payment from the state. If a landowner elects to extinguish the conservation easement, the bill requires the department of revenue to reimburse the taxpayer for all reasonable costs incurred by the landowner in establishing the conservation easement donation as well any federal or state income tax liability incurred by the taxpayer. The attorney general is required to assist landowners with executing any documents required to seek a court order to extinguish a conservation easement.

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

SECTION 1. In Colorado Revised Statutes, 38-30.5-103, amend (6) as follows:


(6) On and after January 1, 2020, prior to creating a conservation easement, the property owner shall give written notice to the commissioner of agriculture of the proposed creation of the easement and shall sign a disclosure form acknowledging certain specified consequences and risks of creating the easement on his or her land.
easement in gross, the owner of the property who is granting the conservation easement shall execute a disclosure form that includes, but is not limited to, an acknowledgment that the conservation easement is being granted in perpetuity specifically acknowledging the consequences and risks of creating the conservation easement.

The division of conservation in cooperation with the conservation easement oversight commission shall develop the disclosure form and publish the approved form on its website. The signed disclosure form must be submitted to the division of conservation as part of the tax credit application. The disclosure form shall be prepared by the proposed holder of the conservation easement and shall include the following warnings in bold with each initialed individually by the grantor and grantee of the conservation easement:

(a) Approximately fourteen to eighteen percent of all conservation easements created in Colorado have been disallowed in the past and some continue to be disallowed;

(b) The appraised value of a conservation easement ultimately accepted as valid is almost always lower than the amount included in an initial appraisal provided to a landowner;

(c) The creation of the conservation easement reduces the value of the property interest retained by the property owner;

(d) The creation of the conservation easement makes it more difficult to obtain a loan or other financing secured by the property subject to the conservation easement;

(e) The creation of the conservation easement results in the loss of an interest in the owner's property;

(f) The conservation easement is binding on future owners
OF THE LAND;

(g) THE PROPERTY OWNER CAN BE HELD LIABLE TO REPAY THE
AMOUNT OF ANY TAX CREDIT CLAIMED IMPROPERLY FOR THE
CONSERVATION EASEMENT FOR A PERIOD OF FOUR YEARS AFTER THE
OWNER OR A TRANSFEE OF THE CREDIT FIRST CLAIMS THE CREDIT, EVEN
IF THE OWNER HAS NO KNOWLEDGE OF WHEN THE TRANSFEE FIRST
CLAIMS THE CREDIT;

(h) THE LANDOWNER CAN BE HELD LIABLE FOR MONEY DAMAGES
FOR INJURIES TO THE INTERESTS OF THE HOLDER OF THE CONSERVATION
EASEMENT;

(i) THE CONSERVATION EASEMENT COULD POTENTIALLY BE
TRANSFERRED BY THE HOLDER OF THE CONSERVATION EASEMENT TO
ANOTHER HOLDER;

(j) IF THE HOLDER OF THE CONSERVATION EASEMENT PURCHASES
THE UNDERLYING PROPERTY INTEREST IN THE PROPERTY, THE HOLDER HAS
THE RIGHT TO RELEASE, TERMINATE, EXTINGUISH, OR ABANDON THE
CONSERVATION EASEMENT BY MERGER; AND

(k) A CONSERVATION EASEMENT LASTS IN PERPETUITY, AND IT IS
HIGHLY UNLIKELY THAT A LANDOWNER CAN HAVE A CONSERVATION
EASEMENT RELEASED, TERMINATED, OR EXTINGUISHED FROM HIS OR HER
PROPERTY WITHOUT TAKING LEGAL ACTION AND OBTAINING A COURT
ORDER.

SECTION 2. In Colorado Revised Statutes, amend 38-30.5-106
as follows:

38-30.5-106. Recordation upon public records. (1) Instruments
creating, assigning, or otherwise transferring conservation easements in
gross must be recorded upon the public records affecting the ownership
of real property in order to be valid and shall be subject in all respects to the laws relating to such recordation.

(2) When a conservation easement agreement, amendment, or transfer is recorded with the county clerk and recorder, the county clerk and recorder shall submit a complete copy of the recorded conservation easement agreement, amendment, or transfer to the commissioner of agriculture and the county tax assessor of the county where the conservation easement is filed by facsimile or e-mail within thirty days of the date of recording. For each conservation easement agreement, amendment, or transfer submitted to the commissioner of agriculture, the commissioner shall prepare a tracking form. Each tracking form must use a lettering and numbering method that allows the forms to be identified and indexed by the county in which the conservation easement is located. The forms shall be public information and the commissioner of agriculture shall make the completed forms available on the website of the department of agriculture under a tab or other existing web page related to the topic of conservation. The commissioner of agriculture may use the tracking forms to assist in the creation and maintenance of the statewide database of conservation easements pursuant to section 39-22-522 (12). For each conservation easement agreement, amendment, or transfer submitted, the following information must be disclosed on the tracking form:

(a) The date the conservation easement agreement, amendment, or transfer was executed and the date it was
SUBMITTED FOR RECORDING;

(b) THE NAMES AND ADDRESSES OF THE GRANTOR AND GRANTEE
OF THE CONSERVATION EASEMENT;

(c) A LEGAL DESCRIPTION OF THE PROPERTY;

(d) THE NUMBER OF ACRES BEING CONSERVED;

(e) THE CONSERVATION PURPOSES OF THE CONSERVATION
EASEMENT; AND

(f) THE RECEPTION NUMBER FOR THE CONSERVATION EASEMENT.

SECTION 3. In Colorado Revised Statutes, 39-22-522, add (12)
and (13) as follows:

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

(12) (a) THE COMMISSIONER OF AGRICULTURE SHALL WORK WITH THE
APPROPRIATE PUBLIC OFFICIALS IN EACH COUNTY OR CITY AND COUNTY TO
CREATE A DATABASE OF THE CONSERVATION EASEMENTS IN GROSS THAT
HAVE BEEN CREATED WITH RESPECT TO ANY LAND, WATER AREA,
AIRSPACE ABOVE THE LAND OR WATER, OR WATER RIGHTS BENEFICIALLY
USED UPON THAT LAND OR WATER AREA WITHIN THE STATE SINCE
JANUARY 1, 1998. FOR EACH CONSERVATION EASEMENT, THE DATABASE
SHALL INCLUDE INFORMATION REGARDING:

(I) THE LOCATION AND ACREAGE OF EACH CONSERVATION
EASEMENT, DELINEATED BY COUNTY;

(II) THE NAMES AND ADDRESSES OF ANY GRANTORS OF THE
CONSERVATION EASEMENT AND THE NAMES AND ADDRESSES OF ANY
HOLDERS OF THE CONSERVATION EASEMENT SINCE ITS CREATION;

(III) WHETHER THE HOLDER OF THE CONSERVATION EASEMENT IS
A CERTIFIED ORGANIZATION PURSUANT TO SECTION 12-15-104;

(IV) THE CONSERVATION PURPOSES OF THE CONSERVATION
(V) Any deeds, contracts, or other instruments creating, assigning, transferring, conveying, terminating, or otherwise affecting the conservation easement and the reception number for each instrument; and

(VI) The amount of any income tax credits claimed or allowed for the conservation easement and the amount of any such credits that were transferred to another taxpayer pursuant to subsection (7) of this section.

(b) The database must include a separate geographic information system database and corresponding map displaying the boundaries of each conservation easement in the state relative to county boundaries and other relevant mapping information.

(c) The appropriate public officials in each county or city and county may enter into contracts with qualified independent persons or entities at the local level to assist in gathering information to create the database required by this subsection (12). Any such contracts shall be awarded to a reliable and responsible bidder, after public advertisement once in a newspaper of general circulation in the county. The person or entity shall not have participated in the creation, promotion, valuation, or sale or otherwise have received a financial benefit from a conservation easement. The department of agriculture may provide, in its discretion, reasonable reimbursement to a county for its cost in providing or contracting to provide information for the database.
(d) The Commissioner of Agriculture may contract with a qualified independent person or entity to assist in gathering information for counties that are unable or unwilling to assist in gathering information to create the database. The person or entity shall not have participated in the creation, promotion, valuation, or sale or otherwise have received a financial benefit from a conservation easement.

(e) Any person or entity gathering information for the database may use public records, available reports, work papers, interviews with landowners and conservation easement holders, and any other appropriate means to complete the database. Public entities, including the Department of Regulatory Agencies, the Division of Conservation, the Conservation Easement Oversight Commission, the Department of Revenue, the Department of Natural Resources, the Division of Parks and Wildlife, COMap, and local governments shall cooperate and provide information and input into the preparation of the database.

(f) The person or entity creating the database shall:

(I) Use and incorporate, to the extent feasible, any existing public or private records, studies, databases, software, maps, or other available sources of information in order to reduce costs, increase efficiencies, and avoid duplication of work in creating the database; and

(II) Contact and work with entities that may have information relevant to the database or an interest in using the database including the Colorado Natural Heritage Program and
THE GEOSPATIAL CENTROID AT COLORADO STATE UNIVERSITY AND THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND.

(g) The commissioner of agriculture shall annually update the information in the database for any new conservation easements, amendments, or transfers that are created and make the information available to the public on the website of the department of agriculture. The geographic information system database and map created as part of the database pursuant to subsection (12)(b) of this section must be made available at no charge on the website of the department of agriculture in a format that can be readily accessed and navigated by the general public. Any data used to create the database and map must be made publicly available for download. The database and map must be updated annually to reflect any new conservation easements or other changes in the data used to create the database and map.

(h) Nothing in this section allows the public sharing of protected federal tax information that is protected pursuant to 26 U.S.C. sec. 6103, by the commissioner of agriculture, the person or entity creating the database, the department of revenue, or any other entity.

(13) For any tax credit claimed pursuant to this section that is disallowed either in whole or in part, a landowner may elect to either extinguish the conservation easement for which the credit was claimed or receive an equitable relief payment from the state. If a landowner elects to extinguish the conservation easement, the department of revenue shall
REIMBURSE THE TAXPAYER FOR ALL REASONABLE COSTS INCURRED BY THE LANDOWNER IN ESTABLISHING THE CONSERVATION EASEMENT DONATION AS WELL AS ANY FEDERAL OR STATE INCOME TAX LIABILITY INCLUDING ANY PENALTIES AND INTEREST ASSESSED AGAINST THE TAXPAYER. THE ATTORNEY GENERAL SHALL ASSIST LANDOWNERS WITH EXECUTING ANY DOCUMENTS REQUIRED TO SEEK A COURT ORDER TO EXTINGUISH A CONSERVATION EASEMENT PURSUANT TO THIS SUBSECTION (13).

SECTION 4. In Colorado Revised Statutes, 39-21-113, **add** (25) as follows:


SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.