

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0443.01 Gregg Fraser x4325

SENATE BILL 15-130

SENATE SPONSORSHIP

Kefalas,

HOUSE SPONSORSHIP

(None),

Senate Committees

Finance

House Committees

A BILL FOR AN ACT

101 CONCERNING A CREDIT AGAINST THE STATE INCOME TAX ALLOWED TO
102 A TAXPAYER WHO PURCHASED A CONSERVATION EASEMENT TAX
103 CREDIT FROM A SELLER WHERE THE UNDERLYING CREDIT HAS
104 BEEN DENIED BY THE DEPARTMENT OF REVENUE.

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>.)

Current law allows a landowner to claim a tax credit for a portion of the value of a conservation easement donated by the landowner. In the alternative, the landowner is allowed to transfer all or a portion of this

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.

credit to a transferee. The transferee typically pays an amount that is less than the amount of the credit transferred and then claims the full amount of the transferred credit on the transferee's tax return.

A number of the underlying conservation easement transactions entered into prior to 2014 were challenged and claims for credits rejected in whole or in part by the department of revenue. If the credit was transferred, neither the original landowner nor the transferee was allowed to claim the credit.

The bill allows a transferee of a conservation easement credit claimed prior to 2014 to claim a credit for its good-faith loss incurred if the transferee's claim for the transferred credit was denied. The transferee is allowed to claim 20% of the total amount of the good-faith loss each year over a period of 7 years, commencing with the 2016 tax year.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) In creating a conservation easement tax credit program, the
5 goal of the general assembly was to support the preservation of habitat,
6 open space, scenic views, agriculture, and outdoor recreation throughout
7 the state and, as of 2014, over one million acres of land have been
8 protected;

9 (b) Between 2003 and 2007, after creating a conservation
10 easement program that allowed landowners to sell their state income tax
11 credits to transferees, the state did not anticipate the volume and
12 complexity of transactions that would result from the program and did not
13 provide adequate expertise and staffing to review underlying conservation
14 easement transactions in a timely manner, resulting in a large number of
15 unresolved claims;

16 (c) Although the program has now been modified to approve
17 conservation easement transactions before credits are claimed or sold,
18 many credit buyers relied on the original program in good faith as a

1 means to support land preservation while reducing their tax liability;

2 (d) Credit buyers were disproportionately harmed by the original
3 program because they lost the money paid to the landowner for the credit
4 and then had to pay their own tax liability in full, often with interest and
5 other penalties resulting from the denial of the claim for the transferred
6 credit;

7 (e) Because the law only allowed the department of revenue to
8 work with the original landowners in disputes regarding underlying
9 conservation easements, credit buyers had limited means to protect their
10 interests in these transactions;

11 (f) Tax credit purchasers reasonably relied on the state to ensure
12 that state was performing its due diligence to review conservation
13 easement transactions in a timely manner and to protect taxpayers; and

14 (g) The purpose of this act is to address the inequities caused to
15 credit buyers because the state did not exercise due diligence to
16 adequately implement, administer, and oversee the original conservation
17 easement tax credit program, particularly between 2003 and 2007.

18 **SECTION 2.** In Colorado Revised Statutes, **add** 39-22-522.7 as
19 follows:

20 **39-22-522.7. Credit for transferees of conservation easement**
21 **tax credits - definitions - repeal.** (1) FOR A CONSERVATION EASEMENT
22 TAX CREDIT TRANSFERRED PRIOR TO JANUARY 1, 2014, PURSUANT TO THE
23 PROVISIONS OF SECTION 39-22-522 (7), THE TRANSFEREE MAY ELECT TO
24 CLAIM A CREDIT AGAINST THE TAXES IMPOSED PURSUANT TO THE
25 PROVISIONS OF THIS ARTICLE FOR ANY GOOD-FAITH LOSS INCURRED BY THE
26 TRANSFEREE AS A RESULT OF HAVING ALL OR A PORTION OF A CLAIM FOR
27 THE TRANSFERRED CREDIT DENIED.

1 (2) FOR PURPOSES OF THIS SECTION:

2 (a) "CLAIMED IN GOOD FAITH" MEANS, AT THE TIME THE
3 TRANSFEREE ENTERED INTO A TRANSACTION AND MADE PAYMENT FOR THE
4 TRANSFER OF A TAX CREDIT PURSUANT TO SECTION 39-22-522 (7), THE
5 TRANSFEREE HAD NO ACTUAL KNOWLEDGE THAT ANY IRREGULARITY
6 EXISTED WITH RESPECT TO THE VALUATION OR ANY OTHER ASPECT OF THE
7 UNDERLYING CONSERVATION EASEMENT TRANSACTION.

8 (b) "GOOD-FAITH LOSS" MEANS THE AMOUNT CLAIMED IN GOOD
9 FAITH BY A TRANSFEREE TO SETTLE AN INCOME TAX LIABILITY USING A
10 TRANSFERRED CREDIT, PLUS ANY INTEREST AND PENALTIES IMPOSED, LESS
11 THE AMOUNT OF ANY DISCOUNT ALLOWED WHEN THE TRANSFEREE
12 ORIGINALLY PURCHASED THE CREDIT.

13 (3) THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION IS
14 EQUAL TO TWENTY PERCENT OF THE TRANSFEREE'S GOOD-FAITH LOSS.
15 THIS AMOUNT MAY BE CLAIMED IN EACH OF FIVE CONSECUTIVE TAX YEARS
16 BEGINNING WITH THE 2016 TAX YEAR. A TRANSFEREE MUST CLAIM THE
17 CREDIT DURING THE 2016 TAX YEAR IN ORDER TO BE ABLE TO CLAIM THE
18 CREDIT IN ANY SUBSEQUENT YEAR. NO CREDIT SHALL BE CLAIMED FOR A
19 TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2021. THE TOTAL
20 AMOUNT OF CREDITS CLAIMED BY A TRANSFEREE FOR ALL TAX YEARS
21 SHALL NOT EXCEED THE AMOUNT OF THE TRANSFEREE'S GOOD-FAITH LOSS.

22 (4) IF THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION
23 EXCEEDS THE AMOUNT OF INCOME TAXES OTHERWISE DUE ON THE
24 TAXPAYER'S INCOME IN THE INCOME TAX YEAR FOR WHICH THE CREDIT IS
25 BEING CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET
26 AGAINST INCOME TAXES IN THE CURRENT INCOME TAX YEAR MAY BE
27 CARRIED FORWARD AND USED AS A CREDIT AGAINST SUBSEQUENT YEARS'

1 INCOME TAX LIABILITY FOR A PERIOD NOT TO EXCEED SEVEN YEARS AND
2 SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.
3 ANY REMAINING CREDIT SHALL NOT BE REFUNDED OR CREDITED TO THE
4 TAXPAYER.

5 (5) THE DEPARTMENT OF REVENUE SHALL PUBLISH INFORMATION
6 REGARDING THE AVAILABILITY OF THIS CREDIT ON ITS WEB SITE AND MAKE
7 A REASONABLE ATTEMPT TO PROVIDE NOTICE BY REGULAR OR ELECTRONIC
8 MAIL TO ANY TRANSFEREES WHO POTENTIALLY QUALIFY FOR THE CREDIT
9 AT THE DEPARTMENT'S ADDRESS OF RECORD FOR THE TRANSFEREE.

10 (6) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2030.

11 **SECTION 3. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2016 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.