

**The Southwestern Water Conservation District
West Building, 841 E. 2nd Ave.
Durango, CO 81301**

**NOTICE IS HEREBY GIVEN
A Special Board Meeting of the
Southwestern Water Conservation District
will be held on**

**Thursday, March 25, 2021
9:00 a.m. – 12:00 p.m.**

**Video: [Click here to join Zoom](#)
Phone Number: (346) 248 7799
Meeting ID: 852 4669 2513
Participant ID: 931249**

Posted and Noticed Tuesday, March 23, 2021

Tentative Agenda

*Please text 970-901-1388 if you have difficulty joining the meeting. Please raise your hand to be recognized by the chair. To raise your hand by phone, dial*9. To raise your hand by computer, please use Alt+Y (Windows) or Option+Y (Mac). To mute and unmute by phone, dial *6.*

Except the time indicated for when the meeting is scheduled to begin, the times noted for each agenda item are estimates and subject to change. The Board may address and act on agenda items in any order to accommodate the needs of the Board and the audience. Agenda items can also be added during the meeting at the consensus of the Board.

- 1.0 Call to Order - Roll Call and Verification of Quorum (9:00 a.m.)**
- 2.0 Review & Approve the Agenda (9:02 a.m.)**
- 3.0 Questions/Comments from Audience (9:03 a.m.)**
- 4.0 Old Business (9:05 a.m.)**
 - 4.1 State Legislative Update & Position on Bills
 - 4.2 Proposed Rescheduling Special Board Meeting Dates: April 8 and 22
- 5.0 Executive Session (9:50 a.m.)**
 - 5.1 General Manager Hiring Process— Update on General Manager hiring process and continued deliberations regarding applicants for the position
- 6.0 Summary and Action Items from Executive Session (10:45 a.m.)**
- 7.0 Board Personnel Committee Meeting (10:50 a.m.)**
 - 7.1 Proposed Updates to SWCD Personnel Policies
- 8.0 Adjournment (12:00 p.m.)**

Proposed Upcoming Meetings

Thursday, April 1 - Friday, April 2, 2021	8:00 a.m.	Regular Board Meeting
Thursday, April 8, 2021	9:00 a.m.	Special Board Meeting
Thursday, April 22, 2021	9:00 a.m.	Special Board Meeting

SOUTHWESTERN WATER CONSERVATION DISTRICT TRAVEL EXPENSE FORM

Board Member (or Other) Name: _____

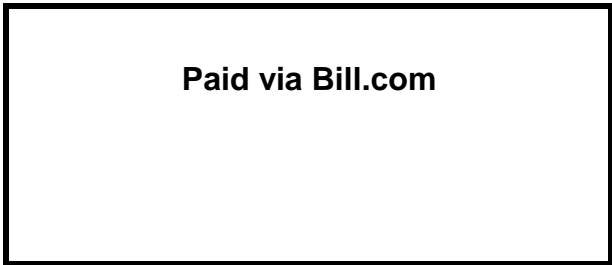
Date: From: _____ through _____

Purpose: _____

	COST
Directors fees per diem _____ days X \$100 =	_____
Mileage: _____ miles X \$0.56 per mile =	_____
Air Fare:	_____
Car Rental:	_____
Parking:	_____
Hotel Expenses:	_____
Total Meals:	_____
Taxi/Shuttle Fares:	_____
Tips:	_____
Miscellaneous:	_____
Registration/Dues:	_____
OTHER (Please describe)	
_____	_____
_____	_____
_____	_____
TOTAL	_____

Board Member Signature _____

Please attach receipts





THE SOUTHWESTERN WATER CONSERVATION DISTRICT

Developing and Conserving the Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
(970) 247-1302

MEMORANDUM

March 22, 2021

To: Southwestern Board of Directors

From: Chris Treese

RE: Colorado legislative report

Requested Actions:

The Colorado legislature introduced the CWCB's annual projects' bill on Friday. It is the only newly introduced bill for action; however, I have another three bills for further direction or input.

After four weeks of negotiations within the State Affairs Committee of the Water Congress, a "consensus revision" has emerged to the Mutual Ditch Shareholders Rights bill. As the consensus amendment completely rewrites the introduced bill, I recommend the board reaffirm its position on HB 1046.

Additionally, I have two other bills – only one newly introduced and neither truly a water bill – on which I request direction. Note, the Board could very reasonably determine these are not priorities for SWCD, especially in this year.

SB21-189 CWCB Construction Fund bill

Donovan

Arndt

SUMMARY: SB 189 is the annual construction fund bill for CWCB projects' authorizations. In addition to a pared-down list of authorized operations expenditures (e.g., weather modification, flood plain mapping), this year's bill allows a transfer of up to \$2,000,000 to the interstate litigation fund. It also authorizes the CWCB to make a loan up to \$3,000,000 to assist the confined aquifer recovery project in the San Luis Valley. Finally, in a much shorter than normal projects' bill, Section 7 conditionally reinstates funding for the water efficiency grant program with \$550,000 annually if the general assembly chooses not to spend 100% of the money in the operational fund on core departmental programs.

ANALYSIS: This is the annual projects bill for CWCB that allows the division to loan and grant funds for water projects as well as use moneys from the operational account to support division operations.

RECOMMENDED POSITION: Support

HB21-1046 Mutual Ditch Rights bill

Arndt & Catlin

Fields & Sonnenberg

SUMMARY: The House Ag. Committee unanimously voted to adopt the sponsors' amendment rewriting the entirety of HB 1046. The strike below (SBEC) amendment resulted from extensive stakeholder outreach and collaboration at the State Affairs Committee of CWC. The resulting SBEC amendment reflects a consensus compromise for a workable bill addressing the most troubling elements of recent water court rulings. The amended bill clarifies that, subject to any decree for the water rights held in the name of a mutual ditch company and that company's Articles of Incorporation and Bylaws:

- When stockholder demand exceeds supply, mutual ditch corporations may limit or otherwise rotate delivery of water ratably among the stockholders;
- When a stockholder is not using some of or all of the available water under the stockholder's shares, the remaining stockholders taking delivery of water through the ditch may use any unused portion of the water that would otherwise have been available to that stockholder's shares, absent certain exceptions; and
- The provision is not intended to prevent a stockholder from changing the use of the water rights represented by the stockholder's shares, create any impediments to changes in use, affect storage water rights, or change the standards for water court approval to change a water right.

ANALYSIS: Perhaps most important in the amendment's language is the provision conditioning the bill "subject to a Mutual Ditch Corporation's articles of incorporation, bylaws, and water court decrees." With this language and the diligent work of the numerous water attorneys (including Southwestern's) working with the sponsors on the compromise amendment, Southwestern can be more comfortable with HB 1046 but remain diligent.

FYI: I reached out last week to MVIC's attorney, John Justus, for their position and his feedback. I sent him a copy of amendment. I hope to hear back from John by the special board meeting.

RECOMMENDED POSITION: I am not recommending a change in Southwestern's current position of **closely Monitor HB 1046**.

SB21-087 Ag. Labor Laws

Danielson

McCormick and Caraveo

SUMMARY: This lengthy and detailed bill removes the historical exemption of agricultural labor from state and local labor and minimum wage laws. It also provides detailed directions and limitations on farm-labor operations including, among others:

- Specifies meal breaks and rest periods,
- Even specifically prohibits use of the short-handled or long-handled hoes,
- Creates an agricultural work advisory committee to study and analyze agricultural wages and working conditions and
- Creates an appeal process and enforcement actions, including minimum penalties, for aggrieved agricultural employees, whistleblowers, and key service providers.

ANALYSIS: This is not directly a water bill, but its potential impact on ag operations in Colorado could have significant effect on Colorado water use including within SWCD. The bill is prejudicial against agriculture and, frankly, offensive in its tone and presumption of guilt of ag operators.

RECOMMENDED POSITION: Oppose (or No Position and remove from updates)

HB21-1233

Conservation Easement Tax Credits

Roberts & Will

Donovan & Winter

SUMMARY: HB 1233 makes numerous changes affecting claims for an income tax credit for the donation of a perpetual conservation easement. The proposed changes are generally favorable and clarifying for potential easement donors.

ANALYSIS: This, too, is not directly a water bill but addresses well-established problems, limitations, disincentives, and ambiguity regarding tax benefits for conservation easement donors. Like SB 087 above, I consider this predominantly an agricultural bill; however, unlike SB 087, I consider this a constructive, incentive-driven bill supportive of agriculture as well as conservation easement programs with SWCD.

RECOMMENDED POSITION: Support (or No Position and remove from updates)

Legislative Commentary & Updates:

March Miracle – almost

Perhaps the biggest and the best news in the past two weeks was the cancellation of the legislature's Monday March 15 session due to a record-setting (Front Range dominant) snowstorm. While western Colorado did not enjoy the bounty the Front Range received, as our east slope friends keep reminding us, what's good for eastern Colorado is good for western Colorado.

Mixed messages

A week after Governor Polis announced a \$1.3 billion infrastructure/stimulus plan and just a few days prior to the Democrats outlining an ambitious transportation funding and construction bill in the General Assembly, the Dept. of Natural Resources wrote the Joint Budget Committee (JBC) detailing its dramatic decline in net revenue collections in the current fiscal year. DNR is rapidly depleting its Operational Fund reserve that supports core programs and expecting to end FY 2020-21 with a fund balance near zero. Without intervention, the Operational Fund is currently projected to experience a significant deficit of \$3.5 million to \$5.7 million by the end of FY 2021-22. DNR is requesting the JBC sponsor legislation this year to reverse \$8.1 million in mandatory transfers that were made from the Operational Fund to DNR-administered Grant Programs in August 2020. Grant programs that will suffer include the CWCB's statewide and basin grant programs, as well as the Native Species Trust Fund. Of course, with DNR's general reliance on

severance tax revenue, the current condition is understandable and not entirely comparable to transportation or capital construction plans, but it highlights the significant challenges the JBC is facing in ending the current year with a balanced budget as well as crafting a 2021-22 fiscal year budget.

Navigable Waters- Clean Water Act

On April 23, 2021, the “Trump rule” on Waters of the US (WOTUS), or Navigable Waters Protection Rule, takes effect as a result of the 10th Circuit ruling that I covered two weeks ago. The new rule decreases the jurisdictional scope of streams and rivers considered to be waters of the United States and therefore subject to federal permits for the discharge of dredge or fill material (§404). I expect a bill to be introduced in the legislature this year to authorize and direct the establishment of a state-run dredge and fill permit program in the department of public health and environment (CDPHE) to protect state waters that will no longer be covered by the new federal rule. The Water Quality Control Commission (WQCC) will adopt rules to govern the new program. The program will be administered by the Water Quality Control Division (WQCD) and entirely cash (fee) funded.

As with nearly every state, Colorado has primacy for §401 water quality-related programs under the Clean Water Act. Also, as with nearly every state, Colorado has never had primacy with respect to §404, “dredge and fill” construction permits. This bill will create a state dredge and fill permit program, but no federal approval will be required as it is with §401 programs. §404 permitting is historically conducted by the US Army Corps of Engineers. §401 programs, for which Colorado has primacy, is overseen by the EPA.

There are many questions and concerns regarding this potential bill. Beth and I will be working closely with the state and water interests to better understand the scope of CDPHE’s proposed program and to ensure a timely, reasonably financed, and balanced state dredge and fill program, if any, is put into place. I am using the SWCD’s comment letter from recent federal WOTUS rulemaking as my primary guidance document. That letter clearly establishes SWCD’s priority is to ensure water storage, diversion and delivery, especially for ag purposes, are clearly defined and generally exempted as they had been prior to the Obama- and Trump-administration rules.

Recreational In-Channel Diversions (RICD)

As discussed at the last meeting, several members of the conservation community are exploring amendments to the Recreational In-Channel Diversions (RICD) statute. The board provided me with initial input and direction at the last meeting. I participated in a ‘brainstorming’ call with proponents. The good news is proponents are wide open to suggestions and receptive to concerns. I shared my personal thoughts on both. As a result of the call, I am newly hopeful a bill will not be hurried for introduction this session, and that a robust stakeholder process will be conducted to both better define the problem and an array of potential solutions. Already the expansion to CWCB of who can hold RICD rights has been dropped.

Healthy Forest Collaboratives

[HB21-1008](#), the forest health-local government consortium bill, moved to the Senate, and assigned to Agriculture and Natural Resources. Our requested amendment remains intact. HB 1008 passed the House with 54 ayes and 9 no's, 2 excused. El Paso County area state reps made up most of the no's, plus one from Chaffee County. No reason for opposition given. Otherwise, strong, bi-partisan support for the bill and for taking a proactive approach at the local level regarding wildfire mitigation and watershed protection. No state fiscal impact due to the voluntary, local opt-in approach taken. Senate sponsors are John Cooke (R-Greeley) and Chris Hansen (D-Denver); both are strong sponsors, and the bi-partisan, dual sponsorship should ensure easy Senate passage.

Water Enterprise Fund

As noted in Laura's status sheets, Senator Coram's SB 034, Water Enterprise Financing bill, lost at first hearing in the Senate Ag. Committee (2-3). Only Senator Sonnenberg (R-Sterling) joined Senator Coram in voting for the bill. Recall that the board adopted and more recently reaffirmed a position of closely monitor this bill with several concerns shared with the sponsor.

Uniform Easements bill

As also noted in Laura's attachment, [SB21-164](#) was killed in first committee. In fact, Senator Gardner (R-Colorado Springs) asked the committee to kill the bill even before testimony was taken.

Health Care

Finally, another topic of perennial legislation that is not directly water-related but clearly has implications for SWCD in its operations and for its regional constituents is health care. Representative Roberts (D- Edwards) and Senator Donovan (D-Vail), along with a broad coalition of democrats, last week introduced [HB21-1232](#) designed to drive down health care costs and, if consumers' expenses aren't reduced, potentially create a state-offered health insurance option. The proposal has two phases. In Phase 1, the state commissioner of insurance would create a standard health insurance plan, specifying services and deductibles. Insurance companies will be encouraged to offer the standardized plan. In the 2023, insurance companies must set a goal of offering the standardized plan at a cost savings of at least 10%. By 2024, the reduction jumps to 20% premium savings for at least one plan in each county. Phase 2: If the health care industry cannot meet the plan and savings goals laid out in Phase 1, a new state-created nonprofit will offer its own insurance plan. This plan would be at least 20% cheaper in each county than the average premium rates offered by private insurers.

This is obviously not a water bill but could have benefits to the Southwestern District as well as other water districts within SWCD. The bill is long and complex, full of conditions, exceptions, side boards, and what-ifs and if-thens. Not surprisingly, the bill faces stiff opposition from the existing health care market and insurance industry. I recommend No Position and no direct involvement of SWCD on this bill, but I will passively monitor it and report on the final version's potential to impact (positive and negative) SWCD operations and budget.



SOUTHWESTERN WATER CONSERVATION DISTRICT

2021 State Legislative Update: [March 22, 2021](#)

Below is a summary of 2021 water-related legislation under consideration by the Colorado General Assembly. These summaries generally apply to the bills as introduced.

Click on the bill number to view the most recent bill language and other information.

The Colorado Water Congress (CWC) State Affairs Committee met on March 15th and March 22nd. **Positions taken on bills are in red text for CWC and green text for SWCD.**

THE FOLLOWING BILLS HAVE NOT YET BEEN CONSIDERED BY SWCD.

[SB21-087](#) **Agricultural Workers' Rights**

SWCD Position: [Discussion](#)
CWC Position: [Discussion](#)
Sponsors: Senate (Danielson), House (McCormick, Caraveo)
Committee of Reference: Senate Business, Labor & Technology; Senate Appropriations

Bill Status: Passed out of Senate Business, Labor & Technology as amended on March 17th and referred to Senate Appropriations.

Title: Concerning agricultural workers' rights.

Summary: This lengthy and detailed bill removes the historical exemption of agricultural labor from state and local labor and minimum wage laws. It also provides detailed directions and limitations on farm-labor operations including, among others:

- Specifies meal breaks and rest periods,
- Even specifically prohibits use of the short-handled or long-handled hoes,
- Creates an agricultural work advisory committee to study and analyze agricultural wages and working conditions and
- Creates an appeal process and enforcement actions, including minimum penalties, for aggrieved agricultural employees, whistleblowers, and key service providers.

Comments:

[SB21-189](#) **Colorado Water Conservation Board Construction Fund Project**

SWCD Position: [Discussion](#)
CWC Position: [Discussion](#)
Sponsors: Senate (Donovan), House (Arndt)
Committee of Reference: Senate Agriculture and Natural Resources

Bill Status: Introduced on March 19th and assigned to Senate Agriculture and Natural Resources.

Title: Concerning the funding of Colorado Water Conservation Board projects, and, in connection therewith, making an appropriation.

Summary: SB 189 is the annual construction fund bill for CWCB projects' authorizations. In addition to a pared-down list of authorized operations expenditures (e.g., weather modification, flood plain mapping), this year's bill allows a transfer of up to \$2,000,000 to the interstate litigation fund. It also authorizes the CWCB to make a loan up to \$3,000,000 to assist the confined aquifer recovery project in the San Luis Valley. Finally, in a much shorter than normal projects' bill, Section 7 conditionally reinstates funding for the water efficiency grant program with \$550,000 annually if the general assembly chooses not to spend 100% of the money in the operational fund on core departmental programs.

Comments:

HB21-1046 Water Share Right Mutual Ditch Corporation

SWCD Position: Monitor

CWC Position: Support

Sponsors: House (Arndt/Catlin), Senate (Fields/Sonnenberg)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed as amended out of House Agriculture, Livestock and Water on March 17th and passed House Second Reading with amendments on March 22nd.

Title: Concerning the use of a water right obtained through a mutual ditch corporation.

Summary: The House Ag. Committee unanimously voted to adopt the sponsors' amendment rewriting the entirety of HB21-1046. The strike below (SBEC) amendment resulted from extensive stakeholder outreach and collaboration at the State Affairs Committee of CWC. The resulting SBEC amendment reflects a consensus compromise for a workable bill addressing the most troubling elements of recent water court rulings. The amended bill clarifies that, subject to the Articles of Incorporation and Bylaws of the corporation:

- When stockholder demand exceeds supply, mutual ditch corporations may limit or otherwise rotate delivery of water ratably among the stockholders;
- When a stockholder is not using some of or all of the available water under the stockholder's shares, the remaining stockholders taking delivery of water through the ditch may use any unused portion of the water that would otherwise have been available to that stockholder's shares, absent certain exceptions; and
- The provision is not intended to prevent a stockholder from changing the use of the water rights represented by the stockholder's shares, create any impediments to changes in use, affect storage water rights, or change the standards for water court approval to change a water right.

Comments:

HB21-1233 Conservation Easement Tax Credit Modifications

SWCD Position: Discussion

CWC Position: Discussion

Sponsors: House (Roberts, Will), Senate (Donovan, Winter)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Introduced on March 19th and scheduled for consideration by the House Agriculture, Livestock, and Water Committee on March 29th.

Title: Concerning modifications to the requirements for claiming an income tax credit for the donation of a perpetual conservation easement.

Summary: HB 1233 makes numerous changes affecting claims for an income tax credit for the donation of a perpetual conservation easement. The proposed changes are generally favorable and clarifying for potential easement donors.

Comments:

THE FOLLOWING BILLS HAVE ALREADY BEEN CONSIDERED BY SWCD.

SB21-034 Water Resources Financing Enterprise (POSTPONED INDEFINITELY)

SWCD Position: Monitor
CWC Position: No Position
Sponsors: Senate (Coram)
Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Postponed indefinitely by the Senate Agriculture and Natural Resources Committee.

Title: Concerning the creation of an enterprise that is exempt from the requirements of section 20 of article X of the state constitution to administer a fee-based water resources financing program.

Summary: This bill creates the water resources financing enterprise. The board of the enterprise would consist of the combined boards of the Colorado Water Resources and Power Development Authority and the Colorado Water Conservation Board. The enterprise will provide financing (including grants and low interest loans) to drinking water suppliers, wastewater treaters, and raw water suppliers. "Raw water suppliers" are limited to those providing raw water for treatment and use as drinking water.

The enterprise would be funded with a \$0.25/1000 gal. fee above 4,000 gal./mo. minimum on drinking water bills. The fee would be collected by drinking water utilities and remitted to the state. As a fee-based enterprise, new revenues collected would not be included in any TABOR calculations for state budget caps. Fees may be adjusted annually for inflation and to address "certain equity concerns."

Although clearly established as an enterprise fund, voters will be asked in November 2022 to authorize the creation of the enterprise.

Comments:

SB21-054 Transfers for Wildfire Mitigation and Response (PASSED & SIGNED BY GOVERNOR)

SWCD Position: Support
CWC Position: Support
Sponsors: Senate (Hansen/Rankin) House (McCluskie)
Committee of Reference: Senate Appropriations

Bill Status: Passed and signed by the governor.

Title: Concerning transfers from the general fund to cash funds to be used to address wildland fires, and, in connection therewith, making an appropriation.

Summary: SB 54 transfers from the General Fund \$13 million to three cash funds for wildfire preparedness and post-fire mitigation.

- Section 1 transfers \$6 million to the forest restoration and wildfire risk mitigation grant program cash fund.
- Section 2 transfers \$3 million from the general fund to the wildfire preparedness fund. The division of homeland security and emergency management will use these funds as
 - State match for federal hazard mitigation assistance grants to local governments that are used to mitigate wildland fire hazards; and
 - To provide local governments that are eligible to receive the federal grants with strategic planning assistance for wildland fire hazard mitigation.
- Section 3 transfers \$4 million to CWCB construction for the watershed restoration program.

Comments:

[SB21-164](#) Uniform Easement Relocation Act (POSTPONED INDEFINITELY)

SWCD Position: Oppose

CWC Position: Oppose

Sponsors: Senate (Gardner)

Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Postponed indefinitely by Senate Agriculture and Natural Resources.

Title: Concerning the "Uniform Easement Relocation Act".

Summary: The bill would enact the "Uniform Easement Relocation Act," drafted by the Uniform Law Commission. The bill sets procedures to relocate most easements. Nearly half of this lengthy bill outlines what must not be done in order to relocate an easement.

Comments:

[HJR21-1002](#) Water Projects Eligibility Lists (PASSED & SIGNED BY THE GOVERNOR)

SWCD Position: Support

CWC Position: Support

Sponsors: House (Arndt), Senate (Donovan)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed and signed by the governor.

Title: Concerning approval of water project revolving fund eligibility lists administered by the Colorado water resources and power development authority.

Summary: See bill text for full fund eligibility lists.

Comments:

HB21-1008 **Forest Health Project Financing**

SWCD Position: Support as amended**CWC Position:** Support**Sponsors:** House (Arndt/Catlin), Senate (Cooke/Hansen)**Committee of Reference:** House Agriculture, Livestock & Water, House Finance**Bill Status:** Passed out of the House and assigned to Senate Agriculture and Natural Resources Committee.**Title:** Concerning increased options for financing forest health projects, and, in connection therewith, financing wildfire mitigation treatments.**Summary:** HB 1008 provides additional options for financing forest health projects by authorizing:

- Creation of special improvement districts by a combination of local governments,
- Special assessments on property specially benefited by the improvement district, including forest health projects,
- Specifically authorizing counties, municipalities, special districts, water conservancy districts, the Colorado River District, and the Southwestern Water Conservation District to participate in and finance forest health projects; and
- A forest improvement district to use sales tax revenue for forest health projects.

The bill also extends the statutory sunset of the Colorado Water Resources Power and Development Authority to issue bonds to fund watershed protection and forest health projects from July 1, 2023, to July 1, 2033.

Comments:

HB21-1043 **Study Underground Water Storage Maximum Beneficial Use**

SWCD Position: Monitor**CWC Position:** Support**Sponsors:** House (Holtorf), Senate (Sonnenberg)**Committee of Reference:** House Agriculture, Livestock & Water**Bill Status:** Passed as amended out of House Agriculture, Livestock and Water Committee and scheduled for House Finance Committee consideration on April 1st.**Title:** Concerning a study of underground water storage to maximize the beneficial use of water within Colorado.**Summary:** This bill directs the CWCB, in consultation with the state engineer, to sponsor a study of underground water storage for later recovery. The study must identify:

- Specific aquifers that are hydrologically and legally available to be used for underground storage and subsequent beneficial use;
- Sources of revenue that could be used to pay for underground storage projects;
- Planned, potential or existing underground storage projects that meet the objectives identified in the study; and
- Recommend legislative changes needed to implement underground storage projects.

The bill directs the study be submitted to the Water Resources Review Committee by August 1, 2022, including recommended legislation to implement the study's recommendations

Comments:

HB21-1105 Low-Income Utility Payment Assistance Contributions

SWCD Position: Support
CWC Position: No action
Sponsors: House (Kennedy), Senate (Hansen)
Committee of Reference: House Finance

Bill Status: Introduced on February 16th and assigned to House Finance Committee.

Title: Concerning utility customers' financial contributions for low-income utility assistance.

Summary: This 17-section bill has several water-related elements. Section 1 removes the low-income energy assistance program (LEAP) from the "tier 2" severance tax operational fund money, something the water community has advocated for years. Later sections provide for voluntary, opt-in charges that a water utility may offer its customers to help finance a water utility bill payment assistance program. Alternatively, HB 1105 allows a water utility to implement its own water utility bill payment assistance program.

Comments:

Monitoring legislation is integral to keeping a finger on the pulse of dynamic water policy in the state. On behalf of its diverse constituents in southwestern Colorado, the Southwestern Water Conservation District (SWCD) tracks state water legislation closely, specifically through participation in the Colorado Water Congress State Affairs Committee. Beth Van Vurst, SWCD General Counsel, and Chris Treese, lobbyist, participate in the State Affairs Committee meetings weekly during the legislative session and ensure the views and priorities of southwestern Colorado are considered as the State legislature enacts new laws affecting water resources.

SWCD staff provides this written summary of water-related legislation, updated throughout the session via email to interested stakeholders and public. To be added to the list, please contact lauras@swwcd.org. We hope that you find the updates beneficial and informative.

Colorado Water Congress 2021 Bill Status Sheet

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
HB21-1008	Forest Health Project Financing	8-Mar	16-Feb	22-Feb Ag	04-Mar F	9-Mar	10-Mar	12-Mar						
HB21-1043	Study Underground Water Storage Maximum Beneficial Use	1-Mar	16-Feb	01-Mar Ag	F									
HB21-1046	Water Share Right Mutual Ditch Corporation	15-Mar	16-Feb	17-Mar Ag										
HB21-1105	Low-income Utility Payment Assistance Contributions		16-Feb	F										
HB21-1168	Historically Underutilized Businesses Local Government Procurement		4-Mar	30-Mar TLG										
HB21-1226	More Robust Check Station Aquatic Nuisance Species		18-Mar	Ag										
HB21-1233	Conservation Easement Tax Credit Modifications		19-Mar	Ag										
SB21-028	Promulgation of Public Health Rules and Orders	1-Mar	16-Feb	02-Mar SVMA										
SB21-034	Water Resource Financing Enterprise		16-Feb	11-Mar Ag										

BILL STATUS	ABBREVIATIONS
Bill scheduled for action at next SA meeting (yellow)	Ag = Agriculture, Livestock & Water
Bill not calendared (no fill)	Ap = Appropriations Committee
Bill Passed, date of action (green)	BLEW = Business, Labor, Economic and Workforce Development Committee
Bill no longer active (gray)	CC = Conference Committee
Bill did not go to second committee or no action required (black)	F = Finance Committee
<u>CWC POSITION</u>	HIE= Health, Insurance, and Environment
Bill scheduled for activity in CWC State Affairs (yellow)	J = Judiciary
Support (green)	TLG = Transportation & Local Government
Oppose (orange)	SVMA = State, Veterans, and Military Affairs Committee
Amend (blue)	EE = Energy & Environment
Monitor, Neutral, No Position	UA = Upon Adjournment
No Motions Made	UR = Upon Recess

Ag = Agriculture and
Natural Resources
Committee

CD = Capital
Development

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0538.01 Kristen Forrestal x4217

SENATE BILL 21-087

SENATE SPONSORSHIP

Danielson, Fields, Pettersen

HOUSE SPONSORSHIP

McCormick and Caraveo, Duran, Kennedy, McLachlan, Sirota, Woodrow, Young

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING AGRICULTURAL WORKERS' RIGHTS.**

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>.)

The bill:

- Removes the exemption of agricultural employers and employees from the Colorado "Labor Peace Act" and authorizes agricultural employees to organize and join labor unions; engage in protected, concerted activity; and engage in collective bargaining;
- Removes the exemption of agricultural labor from state and local minimum wage laws;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- Requires the director of the division of labor standards and statistics to promulgate rules to establish the overtime pay of agricultural employees for hours worked in excess of 40 hours per week or 12 hours in one day;
- Grants agricultural employees meal breaks and rest periods throughout each work period, consistent with protections for other employees;
- Requires agricultural employers to provide agricultural employees with access and transportation to key service providers;
- Authorizes agricultural employees to have visitors at employer-provided housing without interference from other persons;
- Requires agricultural employers to provide overwork and health protections to agricultural employees;
- Prohibits the use of the short-handled or long-handled hoe for agricultural labor except in specific circumstances;
- During a public health emergency, requires an agricultural employer to provide extra protections and increased safety precautions for agricultural employees;
- Creates the agricultural work advisory committee to study and analyze agricultural wages and working conditions; and
- Creates rights, remedies, and enforcement actions for aggrieved agricultural employees, whistleblowers, relators, and key service providers.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 8-2-206 as
 3 follows:

4 **8-2-206. Agricultural employers - agricultural employees -**
 5 **violations - penalties - definitions.** (1) AS USED IN THIS SECTION, UNLESS
 6 THE CONTEXT OTHERWISE REQUIRES:

7 (a) "ADVERSE ACTION" MEANS A DEMOTION, REASSIGNMENT TO A
 8 LOWER-RANKED POSITION OR TO A POSITION WITH A LOWER LEVEL OF
 9 COMPENSATION, DECREASE IN COMPENSATION LEVEL, DENIAL OF
 10 PROMOTION, OR TERMINATION OF EMPLOYMENT; OR OTHER DECISION FOR

1 EMPLOYMENT PURPOSES THAT ADVERSELY AFFECTS AN AGRICULTURAL
2 EMPLOYEE.

3 (b) "AGRICULTURAL EMPLOYEE" MEANS A PERSON EMPLOYED BY
4 AN AGRICULTURAL EMPLOYER.

5 (c) "AGRICULTURAL EMPLOYER" HAS THE SAME MEANING SET
6 FORTH IN SECTION 8-3-104 (1).

7 (d) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

8 (e) "DIVISION" MEANS THE DIVISION OF LABOR STANDARDS AND
9 STATISTICS IN THE DEPARTMENT OF LABOR AND EMPLOYMENT.

10 (f) "RELATOR" MEANS A PERSON OR ENTITY WITH KNOWLEDGE OF
11 A VIOLATION OF LAW WHO COMMENCES AN ACTION ON BEHALF OF THE
12 STATE AND RECEIVES AN AWARD.

13 (g) "REPRESENTATIVE OF AN AGRICULTURAL EMPLOYEE" MEANS
14 A PERSON OR ENTITY DESIGNATED AS AN AGRICULTURAL EMPLOYEE IN A
15 CONFIDENTIAL FORM THAT IS SUBJECT TO REVIEW BY THE DIRECTOR.

16 (2) THE RIGHTS, REMEDIES, AND PENALTIES SPECIFIED IN THIS
17 SECTION ARE IN ADDITION TO ANY RIGHTS, REMEDIES, OR PENALTIES
18 AVAILABLE TO AGRICULTURAL EMPLOYEES UNDER ARTICLE 3 OR 6 OF THIS
19 TITLE 8, PART 2 OF ARTICLE 13.5 OF THIS TITLE 8, OR ARTICLE 14.4 OF THIS
20 TITLE 8.

21 (3) (a) AN AGRICULTURAL EMPLOYER SHALL NOT RETALIATE
22 AGAINST ANY PERSON, INCLUDING AN AGRICULTURAL EMPLOYEE,
23 ASSERTING OR SEEKING RIGHTS PROTECTED UNDER ARTICLE 3 OR 6 OF THIS
24 TITLE 8, PART 2 OF ARTICLE 13.5 OF THIS TITLE 8, OR ARTICLE 14.4 OF THIS
25 TITLE 8, INCLUDING COMPLAINING PUBLICLY OR SUPPORTING AN
26 AGRICULTURAL EMPLOYEE SEEKING OR ASSERTING RIGHTS, REMEDIES, OR
27 PENALTIES UNDER THOSE PROVISIONS OF THIS TITLE 8.

1 (b) THERE IS A REBUTTABLE PRESUMPTION THAT AN
2 AGRICULTURAL EMPLOYER THAT TAKES AN ADVERSE ACTION AGAINST AN
3 AGRICULTURAL EMPLOYEE WITHIN NINETY DAYS AFTER THE
4 AGRICULTURAL EMPLOYEE HAS ASSERTED OR SOUGHT ANY PROTECTED
5 RIGHTS, REMEDIES, OR PENALTIES UNDER ARTICLE 3 OR 6 OF THIS TITLE 8,
6 PART 2 OF ARTICLE 13.5 OF THIS TITLE 8, OR ARTICLE 14.4 OF THIS TITLE 8
7 HAS RETALIATED AGAINST THE AGRICULTURAL EMPLOYEE.

8 (c) AN AGRICULTURAL EMPLOYEE OR OTHER PERSON AGGRIEVED
9 BY RETALIATION BY AN AGRICULTURAL EMPLOYER MAY ASSERT A CLAIM
10 IN DISTRICT COURT FOR INJUNCTIVE AND EQUITABLE REMEDIES AND A
11 PENALTY IN THE AMOUNT OF THE GREATER OF THE ACTUAL DAMAGES OR
12 TEN THOUSAND DOLLARS FOR EACH VIOLATION.

13 (4) THE DIRECTOR MAY COMMENCE AN ACTION IN DISTRICT COURT
14 ON BEHALF OF THE STATE OF COLORADO AGAINST AN AGRICULTURAL
15 EMPLOYER THAT HAS RETALIATED AGAINST AN AGRICULTURAL EMPLOYEE
16 OR OTHER PERSON IN VIOLATION OF THIS SECTION. IN THE ACTION, THE
17 DIRECTOR MAY SEEK AN ORDER IMPOSING RESTITUTION, INJUNCTIVE AND
18 EQUITABLE REMEDIES, AND AN APPROPRIATE PENALTY OF MORE THAN ONE
19 HUNDRED DOLLARS BUT NOT MORE THAN ONE THOUSAND DOLLARS PER
20 VIOLATION.

21 (5) A RELATOR WHO HAS KNOWLEDGE OF A VIOLATION OF THIS
22 SECTION, ARTICLE 3 OR 6 OF THIS TITLE 8, PART 2 OF ARTICLE 13.5 OF THIS
23 TITLE 8, OR ARTICLE 14.4 OF THIS TITLE 8 MAY COMMENCE AN ACTION FOR
24 THE VIOLATION.

25 (6) (a) A RELATOR MAY BRING A CIVIL ACTION FOR A VIOLATION
26 OF THIS SECTION ON BEHALF OF THE STATE. THE ACTION SHALL BE
27 BROUGHT IN THE NAME OF THE STATE. THE ACTION MAY BE DISMISSED

1 ONLY IF THE COURT AND THE ATTORNEY GENERAL GIVE WRITTEN CONSENT
2 TO THE DISMISSAL AND THEIR REASONS FOR CONSENTING.

3 (b) (I) A RELATOR WHO WISHES TO COMMENCE AN ACTION
4 PURSUANT TO THIS SUBSECTION (6) SHALL FIRST FILE A WRITTEN NOTICE
5 OF CLAIM WITH THE DIRECTOR EITHER BY MAIL OR ELECTRONICALLY. IF
6 THE DIRECTOR DOES NOT COMMENCE AN ACTION ON BEHALF OF THE STATE
7 WITHIN SIXTY DAYS AFTER THE RECEIPT OF THE NOTICE OF CLAIM, THE
8 RELATOR MAY COMMENCE THE ACTION ON BEHALF OF THE STATE.

9 (II) A RELATOR MUST SUBMIT ANY PROPOSED SETTLEMENT TO THE
10 DIRECTOR BEFORE AGREEING TO THE TERMS OF ANY SETTLEMENT. THE
11 DIRECTOR MAY PRESENT THE POSITION OF THE DIVISION ON THE PROPOSED
12 SETTLEMENT TO THE COURT.

13 (III) UPON REQUEST OF THE DIRECTOR, THE RELATOR SHALL
14 PROVIDE THE DIRECTOR WITH COPIES OF ALL PLEADINGS FILED IN THE
15 ACTION AND TRANSCRIPTS OF ALL DEPOSITIONS AT THE COST OF THE
16 DIVISION.

17 (IV) THE RELATOR MAY SETTLE A CLAIM IF THE COURT HAS
18 DETERMINED THAT THE SETTLEMENT IS FAIR, ADEQUATE, REASONABLE,
19 AND IN THE PUBLIC INTEREST.

20 (c) THE DIRECTOR MAY INTERVENE ON BEHALF OF THE STATE
21 WITHIN THIRTY DAYS AFTER THE RELATOR HAS COMMENCED THE ACTION
22 OR A LATER DATE UPON A SHOWING OF GOOD CAUSE. IF THE DIRECTOR
23 INTERVENES IN THE ACTION, THE DIRECTOR ASSUMES ALL RESPONSIBILITY
24 FOR LITIGATING THE ACTION AND IS NOT BOUND BY ANY ACT OF THE
25 RELATOR. THE RELATOR MAY REMAIN A PARTY TO THE ACTION. THE
26 DIRECTOR MAY DISMISS OR SETTLE THE ACTION AFTER ALL PERSONS WHO
27 REMAIN A PARTY TO THE ACTION ARE NOTIFIED AND GIVEN AN

1 OPPORTUNITY TO BE HEARD AND THE COURT HAS DETERMINED THAT THE
2 DISMISSAL OR SETTLEMENT IS FAIR, ADEQUATE, REASONABLE, AND IN THE
3 PUBLIC INTEREST.

4 (d) IN ADDITION TO INJUNCTIVE RELIEF, EQUITABLE REMEDIES, AND
5 AN AWARD OF ATTORNEY FEES:

6 (I) IF THE DIRECTOR DOES NOT INTERVENE IN THE ACTION, THE
7 RELATOR IS ENTITLED TO RECEIVE THIRTY-FIVE PERCENT OF THE
8 PENALTIES AWARDED TO THE STATE.

9 (II) IF THE DIRECTOR INTERVENES IN THE ACTION, THE RELATOR IS
10 ENTITLED TO FIFTEEN PERCENT OF THE PENALTIES AWARDED TO THE
11 STATE.

12 **SECTION 2.** In Colorado Revised Statutes, 8-3-104, **amend** the
13 introductory portion, (1), (11), and (12); and **add** (1.5) as follows:

14 **8-3-104. Definitions.** As used in this ~~article~~ ARTICLE 3, unless the
15 context otherwise requires:

16 (1) (a) ~~"All-union agreement" means a contractual provision~~
17 ~~between an employer or group of employers and a collective bargaining~~
18 ~~unit representing some or all of the employees of the employer or group~~
19 ~~of employers providing for any type of union security and compelling an~~
20 ~~employee's financial support or allegiance to a labor organization.~~
21 ~~"All-union agreement" includes, but is not limited to, contractual~~
22 ~~provision for a union shop, a modified union shop, an agency shop~~
23 ~~(meaning a contractual provision which provides for periodic payment of~~
24 ~~a sum in lieu of union dues but does not require union membership), a~~
25 ~~modified agency shop, a prehire agreement, maintenance of dues, or~~
26 ~~maintenance of membership.~~ "AGRICULTURAL EMPLOYER" MEANS A
27 PERSON THAT:

1 (I) REGULARLY ENGAGES THE SERVICES OF ONE OR MORE
2 EMPLOYEES; AND

3 (II) IS ENGAGED IN ANY SERVICE OR ACTIVITY INCLUDED IN
4 SECTION 203 (f) OF THE FEDERAL "FAIR LABOR STANDARDS ACT OF
5 1938", 29 U.S.C. SEC. 201 ET SEQ., AS AMENDED, OR ENGAGED IN
6 "AGRICULTURAL LABOR" AS DEFINED IN SECTION 3121 (g) OF THE FEDERAL
7 "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

8 (b) THE MEANING OF "AGRICULTURAL EMPLOYER" MUST BE
9 LIBERALLY CONSTRUED FOR THE PROTECTION OF PERSONS PROVIDING
10 SERVICES TO AN EMPLOYER.

11 (1.5) "ALL-UNION AGREEMENT" MEANS A CONTRACTUAL
12 PROVISION BETWEEN AN EMPLOYER OR GROUP OF EMPLOYERS AND A
13 COLLECTIVE BARGAINING UNIT REPRESENTING SOME OR ALL OF THE
14 EMPLOYEES OF THE EMPLOYER OR GROUP OF EMPLOYERS PROVIDING FOR
15 ANY TYPE OF UNION SECURITY AND COMPELLING AN EMPLOYEE'S
16 FINANCIAL SUPPORT OR ALLEGIANCE TO A LABOR ORGANIZATION.
17 "ALL-UNION AGREEMENT" INCLUDES, BUT IS NOT LIMITED TO,
18 CONTRACTUAL PROVISION FOR A UNION SHOP, A MODIFIED UNION SHOP, AN
19 AGENCY SHOP (MEANING A CONTRACTUAL PROVISION THAT PROVIDES FOR
20 PERIODIC PAYMENT OF A SUM IN LIEU OF UNION DUES BUT DOES NOT
21 REQUIRE UNION MEMBERSHIP), A MODIFIED AGENCY SHOP, A PREHIRE
22 AGREEMENT, MAINTENANCE OF DUES, OR MAINTENANCE OF MEMBERSHIP.

23 (11) (a) "Employee" includes any person: ~~other than an~~
24 ~~independent contractor, domestic servants employed in and about private~~
25 ~~homes, and farm and ranch labor,~~

26 (I) Working for another for hire in the state of Colorado in a
27 nonexecutive or nonsupervisory capacity, and ~~shall~~ IS not be limited to the

1 employees of a particular employer and ~~shall include~~ INCLUDES any
2 individual whose work has ceased solely as a consequence of or in
3 connection with any current labor dispute or because of any unfair labor
4 practice on the part of an employer; and

5 ~~(b)~~ (II) (A) Who has not refused or failed to return to work upon
6 the final disposition of a labor dispute or a charge of an unfair labor
7 practice by a tribunal having competent jurisdiction of the same or whose
8 jurisdiction was accepted by the employee or ~~his~~ THE EMPLOYEE'S
9 representative;

10 ~~(c)~~ (B) Who has not been found to have committed or to have
11 been a party to any unfair labor practice under this ~~article~~ ARTICLE 3;

12 ~~(d)~~ (C) Who has not obtained regular and substantially equivalent
13 employment elsewhere; or

14 ~~(e)~~ (D) Who has not been absent from ~~his~~ THE PERSON'S
15 employment for a substantial period of time during which reasonable
16 expectancy of settlement has ceased, except by an employer's unlawful
17 refusal to bargain, and whose place has been filled by another engaged in
18 the regular manner for an indefinite or protracted period and not merely
19 for the duration of a strike or lockout. ~~but shall not include any individual
20 employed in the domestic service of a family or person at his home or any
21 individual employed by his parent or spouse or any employee who is
22 subject to the federal "Railway Labor Act".~~

23 (b) "EMPLOYEE" DOES NOT INCLUDE:

24 (I) AN INDEPENDENT CONTRACTOR;

25 (II) DOMESTIC SERVANTS EMPLOYED IN AND ABOUT PRIVATE
26 HOMES;

27 (III) AN INDIVIDUAL EMPLOYED BY THE INDIVIDUAL'S PARENT OR

1 SPOUSE;

2 (IV) AN EMPLOYEE WHO IS SUBJECT TO THE FEDERAL "RAILWAY
3 LABOR ACT", 45 U.S.C. SEC. 151 ET SEQ., AS AMENDED; OR

4 (V) A PARENT, SPOUSE, OR CHILD OF AN AGRICULTURAL
5 EMPLOYER'S IMMEDIATE FAMILY.

6 ~~(f) For purposes of this subsection (11), "farm" means stock,~~
7 ~~dairy, poultry, fur-bearing animal, and truck farms, plantations, ranches,~~
8 ~~nurseries, ranges, greenhouses, orchards, and other structures used for the~~
9 ~~raising of agricultural or horticultural commodities, provided such~~
10 ~~structures are utilized for at least fifty percent of the total output~~
11 ~~produced.~~

12 (12) (a) (I) "Employer" means a person who regularly engages the
13 services of eight or more employees, other than persons within the classes
14 expressly exempted under the terms of subsection (11) of this section. ~~and~~

15 (II) "EMPLOYER" includes:

16 (A) Any person acting on behalf of ~~any such~~ AN employer within
17 the scope of ~~his~~ THE EMPLOYER'S authority, express or implied; ~~The term~~
18 AND

19 (B) AN AGRICULTURAL EMPLOYER.

20 (b) "EMPLOYER" does not include the state or any political
21 subdivision thereof, except where the state or any political subdivision
22 thereof acquires or operates a mass transportation system or any carrier
23 by railroad, express company, or sleeping car company subject to the
24 federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., AS AMENDED, or
25 any labor organization or anyone acting in behalf of such organization
26 other than when ~~he~~ THE EMPLOYER is acting as an employer-in-fact.

27 **SECTION 3.** In Colorado Revised Statutes, **add** 8-6-101.5 as

1 follows:

2 **8-6-101.5. Minimum wage for agricultural workers - rest**
3 **periods - overwork protections - definitions.** (1) (a) ON AND AFTER
4 JANUARY 1, 2022, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS
5 SECTION, THE MINIMUM WAGE REQUIREMENTS OF SECTION 15 OF ARTICLE
6 XVIII OF THE STATE CONSTITUTION, AND ANY MINIMUM WAGE LAWS
7 ENACTED PURSUANT TO THIS ARTICLE 6, APPLY TO AGRICULTURAL
8 WORKERS.

9 (b) STARTING JANUARY 1, 2022, THE COLORADO MINIMUM WAGE
10 FOR AN AGRICULTURAL WORKER PRIMARILY EMPLOYED IN THE RANGE
11 PRODUCTION OF LIVESTOCK IS FIVE HUNDRED FIFTY-THREE DOLLARS AND
12 SIXTY CENTS PER WEEK. ON JANUARY 1, 2023, AND EACH JANUARY 1
13 THEREAFTER, THE MINIMUM WAGE FOR AGRICULTURAL WORKERS
14 PRIMARILY EMPLOYED IN THE RANGE PRODUCTION OF LIVESTOCK IS
15 ADJUSTED ANNUALLY FOR COST OF LIVING INCREASES, AS MEASURED BY
16 THE CONSUMER PRICE INDEX USED FOR COLORADO.

17 (2) (a) AN AGRICULTURAL WORKER IS ENTITLED TO AN
18 UNINTERRUPTED AND DUTY-FREE MEAL PERIOD OF AT LEAST A
19 THIRTY-MINUTE DURATION WHEN THE AGRICULTURAL WORKER'S SHIFT
20 EXCEEDS FIVE CONSECUTIVE HOURS. THE MEAL PERIODS, TO THE EXTENT
21 PRACTICABLE, MUST BE AT LEAST ONE HOUR AFTER THE START, AND ONE
22 HOUR BEFORE THE END, OF THE SHIFT.

23 (b) AN AGRICULTURAL WORKER IS ENTITLED TO AN
24 UNINTERRUPTED AND DUTY-FREE REST PERIOD OF AT LEAST TEN MINUTES
25 WITHIN EACH FOUR HOURS OF WORK.

26 (3) AS USED IN THIS SECTION:

27 (a) "AGRICULTURAL WORKER" HAS THE MEANING SET FORTH IN

1 SECTION 8-13.5-201 (2).

2 (b) "AGRICULTURAL WORKER PRIMARILY EMPLOYED IN THE RANGE
3 PRODUCTION OF LIVESTOCK" MEANS AN AGRICULTURAL WORKER
4 INCLUDED IN THE EXEMPTION IN SECTION 213 (a)(6)(E) OF THE FEDERAL
5 "FAIR LABOR STANDARDS ACT OF 1938 ", 29 U.S.C. SEC. 201 ET SEQ, AS
6 AMENDED.

7 **SECTION 4.** In Colorado Revised Statutes, **add** 8-6-120 as
8 follows:

9 **8-6-120. Overtime wages for agricultural workers - rules -**
10 **definition.** (1) THE DIRECTOR SHALL PROMULGATE RULES TO ESTABLISH
11 THE OVERTIME RATES OF PAY THAT AN EMPLOYER ENGAGED IN
12 AGRICULTURAL EMPLOYMENT MUST PAY EACH EMPLOYEE FOR TIME
13 WORKED IN EXCESS OF ANY OF THE FOLLOWING:

14 (a) FORTY HOURS PER WORK WEEK;

15 (b) TWELVE HOURS PER DAY;

16 (c) TWELVE CONSECUTIVE HOURS OF WORK WITHOUT REGARD TO
17 WHETHER THE START AND END TIME FALL ON THE SAME CALENDAR DAY.

18 (2) AS USED IN THIS SECTION, "AGRICULTURAL EMPLOYMENT" HAS
19 THE MEANING SET FORTH IN SECTION 8-13.5-201 (1).

20 **SECTION 5.** In Colorado Revised Statutes, **add** part 2 to article
21 13.5 of title 8 as follows:

22 PART 2

23 LABOR CONDITIONS FOR AGRICULTURAL WORKERS

24 **8-13.5-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES:

26 (1) "AGRICULTURAL EMPLOYMENT" MEANS EMPLOYMENT IN ANY
27 SERVICE OR ACTIVITY INCLUDED IN SECTION 203 (f) OF THE FEDERAL "FAIR

1 LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201 ET SEQ., AS
2 AMENDED, OR SECTION 3121 (g) OF THE FEDERAL "INTERNAL REVENUE
3 CODE OF 1986", AS AMENDED.

4 (2) "AGRICULTURAL WORKER" OR "WORKER" MEANS A WORKER
5 ENGAGED IN ANY SERVICE OR ACTIVITY INCLUDED IN SECTION 203 (f) OF
6 THE FEDERAL "FAIR LABOR STANDARDS ACT OF 1938", 29 U.S.C. SEC. 201
7 ET SEQ., AS AMENDED, OR SECTION 3121 (g) OF THE FEDERAL "INTERNAL
8 REVENUE CODE OF 1986", AS AMENDED.

9 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
10 EMPLOYMENT.

11 (4) "DIVISION" MEANS THE DIVISION OF LABOR STANDARDS AND
12 STATISTICS IN THE DEPARTMENT.

13 (5) "EMPLOYER" HAS THE MEANING SET FORTH IN SECTION
14 8-13.5-103 (1).

15 (6) "KEY SERVICE PROVIDER" MEANS A HEALTH CARE PROVIDER;
16 A COMMUNITY HEALTH WORKER, INCLUDING A PROMOTORA; AN
17 EDUCATION PROVIDER; AN ATTORNEY; A LEGAL ADVOCATE; A
18 GOVERNMENT OFFICIAL, INCLUDING A CONSULAR REPRESENTATIVE; A
19 MEMBER OF THE CLERGY; AND ANY OTHER SERVICE PROVIDER TO WHICH
20 AN AGRICULTURAL WORKER MAY NEED ACCESS.

21 (7) "NORMAL WORKING HOURS" MEANS A PERIOD DETERMINED BY
22 THE EMPLOYER NOT TO EXCEED EIGHT HOURS WITHIN ANY
23 TWENTY-FOUR-HOUR PERIOD. "NORMAL WORKING HOURS" DOES NOT
24 INCLUDE SATURDAY OR SUNDAY.

25 (8) "WHISTLEBLOWER" MEANS AN AGRICULTURAL WORKER WITH
26 KNOWLEDGE OF AN ALLEGED VIOLATION OF THIS PART 2 OR THE
27 AGRICULTURAL WORKER'S REPRESENTATIVE.

1 **8-13.5-202. Agricultural workers - right of access to key**

2 **service providers.** (1) (a) AN EMPLOYER SHALL NOT INTERFERE WITH AN
3 AGRICULTURAL WORKER'S REASONABLE ACCESS TO KEY SERVICE
4 PROVIDERS OUTSIDE OF NORMAL WORKING HOURS AT ANY LOCATION,
5 INCLUDING THE AGRICULTURAL WORKER'S EMPLOYER-PROVIDED HOUSING.

6 (b) AN EMPLOYER THAT PROVIDES HOUSING AND TRANSPORTATION
7 FOR AGRICULTURAL WORKERS SHALL, AT LEAST ONE DAY PER WEEK,
8 PROVIDE TRANSPORTATION TO THE AGRICULTURAL WORKERS TO A
9 LOCATION WHERE THE WORKERS CAN ACCESS BASIC NECESSITIES,
10 CONDUCT FINANCIAL TRANSACTIONS, AND MEET WITH KEY SERVICE
11 PROVIDERS.

12 (2) NO PERSON OTHER THAN THE AGRICULTURAL WORKER MAY
13 PROHIBIT, BAR, OR INTERFERE WITH, OR ATTEMPT TO PROHIBIT, BAR, OR
14 INTERFERE WITH, THE ACCESS TO OR EGRESS FROM THE RESIDENCE OF ANY
15 AGRICULTURAL WORKER BY ANY PERSON, EITHER BY THE ERECTION OR
16 MAINTENANCE OF ANY PHYSICAL BARRIER, BY PHYSICAL FORCE OR
17 VIOLENCE OR BY THE THREAT OF PHYSICAL FORCE OR VIOLENCE, OR BY
18 ANY ORDER OR NOTICE GIVEN IN ANY MANNER.

19 (3) AN EMPLOYER SHALL POST NOTICE OF AN AGRICULTURAL
20 WORKER'S RIGHTS UNDER THIS PART 2:

21 (a) IN A CONSPICUOUS LOCATION ON THE EMPLOYER'S PREMISES,
22 INCLUDING IN THE AGRICULTURAL WORKER'S EMPLOYER-PROVIDED
23 HOUSING; AND

24 (b) IN ALL PLACES WHERE NOTICES TO EMPLOYEES, INCLUDING
25 AGRICULTURAL WORKERS, ARE CUSTOMARILY POSTED; AND

26 (c) ELECTRONICALLY, INCLUDING BY E-MAIL AND ON AN INTRANET
27 OR INTERNET SITE, IF THE EMPLOYER CUSTOMARILY COMMUNICATES WITH

1 AGRICULTURAL WORKERS BY THESE MEANS.

2 **8-13.5-203. Extreme overwork protections - heat stress**
3 **training - short-handled hoe prohibited.** (1) (a) AN EMPLOYER SHALL
4 PROVIDE EACH AGRICULTURAL WORKER WITH ACCESS TO AT LEAST ONE
5 QUART OF FILTERED, FRESH, COOL WATER PER HOUR OF WORK FOR THE
6 DURATION OF THE WORKER'S SHIFT. THE ACCESS TO WATER MUST BE AS
7 CLOSE TO THE WORK SITE AS PRACTICABLE.

8 (b) AN EMPLOYER SHALL PROVIDE EACH AGRICULTURAL WORKER
9 WITH AN AREA OF OPEN-AIR SHADE THAT IS LARGE ENOUGH FOR WORKERS
10 TO BE SEATED DURING BREAK PERIODS WITHOUT TOUCHING EACH OTHER.

11 (c) WHEN THE OUTSIDE TEMPERATURE REACHES NINETY DEGREES
12 OR HIGHER, AN EMPLOYER SHALL PROVIDE EACH AGRICULTURAL WORKER
13 WHO IS WORKING OUTSIDE WITH A PAID TEN-MINUTE REST PERIOD FOR
14 EVERY TWO HOURS OF WORK.

15 (2) AN EMPLOYER SHALL PROVIDE TRAINING TO AGRICULTURAL
16 WORKERS CONCERNING SIGNS OF HEAT STRESS AND ENCOURAGE WORKERS
17 TO MONITOR THEMSELVES FOR ANY WARNING SIGNS OF HEAT STRESS. THE
18 EMPLOYER SHALL ENCOURAGE AGRICULTURAL WORKERS TO DRINK
19 WATER, TAKE BREAKS AS NEEDED, AND AVOID HEAT STRESS OR
20 OVEREXERTION.

21 (3) THE USE OF A SHORT-HANDLED HOE OR ANY OTHER
22 SHORT-HANDLED, HANDHELD TOOL THAT IS LESS THAN EIGHTEEN INCHES
23 LONG OR A LONG-HANDLED HOE DESIGNED FOR USE WHILE STANDING IS
24 PROHIBITED IN AGRICULTURAL EMPLOYMENT WHEN USED IN A STOOPED,
25 KNEELING, OR SQUATTING POSITION.

26 **8-13.5-204. Enforcement - penalties - relief - rules.** (1) AN
27 AGGRIEVED AGRICULTURAL WORKER, A WHISTLEBLOWER, OR A KEY

1 SERVICE PROVIDER WHO WAS UNABLE TO ACCESS AN AGRICULTURAL
2 WORKER DUE TO A VIOLATION OF THIS PART 2 MAY COMMENCE AN ACTION
3 IN DISTRICT COURT AGAINST AN EMPLOYER FOR A VIOLATION OF THIS PART
4 2.

5 (2) A COURT MAY:

6 (a) ORDER INJUNCTIVE RELIEF TO ENJOIN THE CONTINUANCE OF
7 THE VIOLATION OF THIS PART 2;

8 (b) AWARD THE PLAINTIFF ACTUAL DAMAGES OR TEN THOUSAND
9 DOLLARS, WHICHEVER IS GREATER; AND

10 (c) AWARD THE PLAINTIFF ATTORNEY FEES.

11 (3) AN AGGRIEVED AGRICULTURAL WORKER OR WHISTLEBLOWER
12 IS ENTITLED TO ALL RIGHTS, REMEDIES, AND PENALTIES AFFORDED UNDER
13 SECTION 8-2-206.

14 **8-13.5-205. Agricultural work advisory committee - creation**
15 **- report - repeal.** (1) ON OR BEFORE SEPTEMBER 1, 2021, THE EXECUTIVE
16 DIRECTOR OF THE DEPARTMENT SHALL ESTABLISH THE AGRICULTURAL
17 WORK ADVISORY COMMITTEE, REFERRED TO IN THIS SECTION AS THE
18 "ADVISORY COMMITTEE". THE ADVISORY COMMITTEE CONSISTS OF NINE
19 MEMBERS AS FOLLOWS:

20 (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL
21 APPOINT:

22 (I) TWO MEMBERS WHO HAVE WORKED AS AGRICULTURAL
23 WORKERS; AND

24 (II) TWO MEMBERS WHO ARE ADVOCATES OF WORKERS' RIGHTS;

25 (b) THE COMMISSIONER OF AGRICULTURE SHALL APPOINT:

26 (I) THREE MEMBERS WHO REPRESENT AGRICULTURAL EMPLOYERS;

27 AND

1 (II) TWO REPRESENTATIVES FROM THE MIGRANT FARM WORKER
2 DIVISION OF COLORADO LEGAL SERVICES, OR ITS SUCCESSOR
3 ORGANIZATION.

4 (2) (a) THE INITIAL TERMS OF ONE AGRICULTURAL WORKER, ONE
5 ADVOCATE OF WORKERS' RIGHTS, TWO AGRICULTURAL EMPLOYERS, AND
6 ONE REPRESENTATIVE FROM THE MIGRANT FARM WORKER DIVISION OF
7 COLORADO LEGAL SERVICES IS TWO YEARS. THE INITIAL TERMS OF THE
8 REMAINING MEMBERS IS THREE YEARS. THEREAFTER, THE TERMS OF THE
9 MEMBERS ARE THREE YEARS.

10 (b) IF A MEMBER FAILS TO COMPLETE THE MEMBER'S TERM, THE
11 APPOINTING AUTHORITY SHALL APPOINT A NEW MEMBER TO COMPLETE
12 THE REMAINDER OF THE TERM.

13 (c) MEMBERS SHALL SERVE WITHOUT COMPENSATION FOR THEIR
14 SERVICE; EXCEPT THAT MEMBERS MAY RECEIVE A PER DIEM AS
15 ESTABLISHED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT AND
16 REIMBURSEMENT FOR TRAVEL AND OTHER NECESSARY EXPENSES
17 INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

18 (3) (a) THE ADVISORY COMMITTEE SHALL GATHER AND ANALYZE
19 DATA AND OTHER INFORMATION REGARDING THE WAGES AND WORKING
20 CONDITIONS OF AGRICULTURAL WORKERS AND REPORT ITS FINDINGS AND
21 ANY LEGISLATIVE RECOMMENDATIONS TO THE GENERAL ASSEMBLY.

22 (b) TO THE EXTENT POSSIBLE, THE EXECUTIVE DIRECTOR OF THE
23 DEPARTMENT SHALL ENSURE THAT THE ADVISORY COMMITTEE HAS THE
24 OPPORTUNITY TO MEET WITH APPROPRIATE REPRESENTATIVES FROM THE
25 DEPARTMENT OF LABOR AND EMPLOYMENT, THE DEPARTMENT OF PUBLIC
26 HEALTH AND ENVIRONMENT, THE DEPARTMENT OF AGRICULTURE, AND THE
27 GOVERNOR'S OFFICE FOR PURPOSES OF CONDUCTING ITS WORK PURSUANT

1 TO SUBSECTION (3)(a) OF THIS SECTION.

2 (c) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), ON OR
3 BEFORE JANUARY 1, 2023, AND EACH JANUARY 1 THEREAFTER, THE
4 ADVISORY COMMITTEE SHALL REPORT ITS PROGRESS, FINDINGS, AND
5 LEGISLATIVE RECOMMENDATIONS TO THE AGRICULTURE, LIVESTOCK, AND
6 WATER COMMITTEE AND THE BUSINESS AFFAIRS AND LABOR COMMITTEE
7 OF THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES,
8 AND THE AGRICULTURE AND NATURAL RESOURCES COMMITTEE AND THE
9 BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE, OR
10 THEIR SUCCESSOR COMMITTEES.

11 (4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2031.
12 BEFORE THE REPEAL, THE ADVISORY COMMITTEE IS SCHEDULED FOR
13 REVIEW IN ACCORDANCE WITH SECTION 2-3-1203.

14 **SECTION 6.** In Colorado Revised Statutes, 2-3-1203, **add** (22)
15 as follows:

16 **2-3-1203. Sunset review of advisory committees - legislative**
17 **declaration - definition - repeal.** (22) (a) THE FOLLOWING STATUTORY
18 AUTHORIZATIONS FOR THE DESIGNATED ADVISORY COMMITTEES WILL
19 REPEAL ON SEPTEMBER 1, 2031:

20 (I) THE AGRICULTURAL WORK ADVISORY COMMITTEE CREATED IN
21 SECTION 8-13.5-205.

22 (b) THIS SUBSECTION (22) IS REPEALED, EFFECTIVE SEPTEMBER 1,
23 2033.

24 **SECTION 7.** In Colorado Revised Statutes, 8-14.4-101, **amend**
25 (1), (3)(c), and (3)(d); and **add** (1.5) and (3)(e) as follows:

26 **8-14.4-101. Definitions.** As used in this article 14.4, unless the
27 context otherwise requires:

1 (1) ~~"Department" means the department of labor and employment~~
2 "AGRICULTURAL EMPLOYMENT" HAS THE MEANING SET FORTH IN SECTION
3 8-13.5-201 (1).

4 (1.5) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
5 EMPLOYMENT.

6 (3) "Principal" means:

7 (c) The state of Colorado, local governments, and political
8 subdivisions of the state as defined in section 1-7.5-103 (6); ~~and~~

9 (d) An entity that contracts with five or more independent
10 contractors in the state each year; AND

11 (e) A PERSON OR ENTITY ENGAGED IN AGRICULTURAL
12 EMPLOYMENT.

13 **SECTION 8.** In Colorado Revised Statutes, **add** 8-14.4-109 as
14 follows:

15 **8-14.4-109. Agricultural employers - responsibilities during**
16 **public health emergency - worker safety protections.** (1) DURING A
17 PUBLIC HEALTH EMERGENCY, IN ADDITION TO THE OTHER PROTECTIONS
18 AND RIGHTS AFFORDED TO WORKERS, A PRINCIPAL ENGAGED IN
19 AGRICULTURAL EMPLOYMENT SHALL:

20 (a) PROVIDE EACH WORKER LIVING IN EMPLOYER-PROVIDED
21 HOUSING WITH:

22 (I) AT LEAST ONE HUNDRED SQUARE FEET OF SLEEPING QUARTERS
23 PER WORKER AND ONE HUNDRED TWENTY FEET OF SPACE PER WORKER IN
24 AREAS USED FOR COMBINED PURPOSES SUCH AS MEAL PREPARATION AND
25 EATING; AND

26 (II) SCREENED WINDOWS THAT OPEN TO THE OUTSIDE OR LIVING
27 SPACE THAT HAS AN AIR FILTRATION SYSTEM;

1 (b) ROUTINELY INSPECT EMPLOYER-PROVIDED HOUSING TO
2 ENSURE COMPLIANCE WITH GUIDELINES ISSUED BY THE DEPARTMENT OF
3 PUBLIC HEALTH AND ENVIRONMENT APPLICABLE TO A PUBLIC HEALTH
4 EMERGENCY AND ANY APPLICABLE EXECUTIVE ORDERS ISSUED BY THE
5 GOVERNOR DURING A DISASTER EMERGENCY DECLARED PURSUANT TO
6 SECTION 24-33.5-704 (4);

7 (c) PROVIDE TRAINING TO WORKERS CONCERNING SAFETY
8 PRECAUTIONS AND PROTECTIONS DURING A PUBLIC HEALTH EMERGENCY;
9 AND

10 (d) PROVIDE INFORMATIONAL AND EDUCATIONAL MATERIALS
11 THROUGH POSTERS AND PAMPHLETS WRITTEN IN ENGLISH AND SPANISH
12 AND ANY OTHER RELEVANT LANGUAGES IN EMPLOYER-PROVIDED
13 HOUSING, WORK SITES, AND OTHER PLACES WHERE THE PRINCIPAL
14 USUALLY POSTS INFORMATION FOR THE WORKERS THAT:

15 (I) LISTS THE CONTACT INFORMATION FOR THE MIGRANT FARM
16 WORKER DIVISION OF COLORADO LEGAL SERVICES, OR ITS SUCCESSOR
17 ORGANIZATION, WHERE A WORKER MAY RECEIVE FREE AND CONFIDENTIAL
18 LEGAL SERVICES; AND

19 (II) INFORMS THE WORKERS REGARDING FEDERAL AND STATE
20 GUIDANCE CONCERNING A PUBLIC HEALTH EMERGENCY.

21 **SECTION 9.** In Colorado Revised Statutes, 8-3-108, **amend**
22 (1)(c)(II)(A) and (1)(c)(II)(B) as follows:

23 **8-3-108. What are unfair labor practices.** (1) It is an unfair
24 labor practice for an employer, individually or in concert with others, to:

25 (c) (II) (A) Any agreement as defined in section 8-3-104 ~~(1)~~ (1.5)
26 between an employer and a labor organization in existence on June 29,
27 1977, which has not been voted upon by the employees covered by it

1 may, by written mutual agreement of such employer and labor
2 organization, be ratified and upon such ratification shall be filed with the
3 director. Any agreement as defined in section 8-3-104 ~~(+)~~ (1.5) between
4 an employer and a labor organization in existence on June 29, 1977,
5 which has not been ratified and filed, as provided in this ~~subparagraph (H)~~
6 SUBSECTION (1)(c)(II), shall not be legal, valid, or enforceable during the
7 remaining term of that labor contract unless and until either the employer,
8 the labor organization, or at least twenty percent of the employees
9 covered by such agreement file a petition upon forms provided by the
10 division, demanding an election submitting the question of the all-union
11 agreement to the employees covered by such agreement and said
12 agreement is approved by the affirmative vote of at least a majority of all
13 the employees eligible to vote or three-quarters or more of the employees
14 who actually voted, whichever is greater, by secret ballot in favor of such
15 all-union agreement in an election provided for in this ~~paragraph (c)~~
16 SUBSECTION (1)(c) conducted under the supervision of the director.

17 (B) Upon filing of such instrument of ratification with the
18 director, the director shall certify that such agreement complies with the
19 provisions of section 8-3-104 ~~(+)~~ (1.5) notwithstanding the absence of any
20 other election requirements of this ~~article~~ ARTICLE 3, and by virtue of such
21 ratification and certification, such agreement shall be deemed legal, valid,
22 and enforceable to the extent permitted under the provisions of this ~~article~~
23 ARTICLE 3, subject to the provisions of ~~sub-subparagraph (D) of this~~
24 ~~subparagraph (H)~~ SUBSECTION (1)(c)(II)(D) OF THIS SECTION.

25 **SECTION 10.** In Colorado Revised Statutes, **amend** 8-13.5-101
26 as follows:

27 **8-13.5-101. Short title.** ~~This article shall be known and may be~~

1 ~~cited as~~ THE SHORT TITLE OF THIS PART 1 IS the "Workplace
2 Accommodations for Nursing Mothers Act".

3 **SECTION 11.** In Colorado Revised Statutes, 8-13.5-102, **amend**
4 (2) as follows:

5 **8-13.5-102. Legislative declaration.** (2) The general assembly
6 further declares that the purpose of this ~~article~~ PART 1 is for the state of
7 Colorado to become involved in the national movement to recognize the
8 medical importance of breastfeeding, within the scope of complete
9 pediatric care, and to encourage removal of boundaries placed on nursing
10 mothers in the workplace.

11 **SECTION 12.** In Colorado Revised Statutes, 8-13.5-103, **amend**
12 the introductory portion as follows:

13 **8-13.5-103. Definitions.** As used in this ~~article~~ PART 1, unless the
14 context otherwise requires:

15 **SECTION 13.** In Colorado Revised Statutes, **amend** 44-10-105
16 as follows:

17 **44-10-105. Marijuana employee designation.** An employee of
18 a licensee is not an agricultural worker unless the employee is a ~~farm~~
19 laborer ~~as described in section 8-3-104 (11)~~ AT A FARM, PLANTATION,
20 RANCH, NURSERY, RANGE, GREENHOUSE, ORCHARD, OR OTHER STRUCTURE
21 USED FOR THE RAISING OF AGRICULTURAL OR HORTICULTURAL
22 COMMODITIES, AS LONG AS THE STRUCTURE IS UTILIZED FOR AT LEAST
23 FIFTY PERCENT OF THE TOTAL OUTPUT PRODUCED.

24 **SECTION 14. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, or safety.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0855.01 Jennifer Berman x3286

SENATE BILL 21-189

SENATE SPONSORSHIP

Donovan,

HOUSE SPONSORSHIP

Arndt,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING THE FUNDING OF COLORADO WATER CONSERVATION
102 BOARD PROJECTS, AND, IN CONNECTION THEREWITH, MAKING
103 AN APPROPRIATION.

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>.)

The bill appropriates the following amounts from the Colorado water conservation board (CWCB) construction fund to the CWCB or the division of water resources in the department of natural resources for the following projects:

- Continuation of the satellite monitoring system, \$100,000

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- (section 1 of the bill);
- Continuation of the Colorado floodplain map modernization program, \$500,000 (section 2);
- Continuation of the weather modification permitting program, \$350,000 (section 3); and
- Continuation of technical assistance for federal cost-share programs, \$300,000 (section 4).

Section 5 directs the state treasurer to transfer up to \$2,000,000 from the CWCB construction fund to the litigation fund on July 1, 2021.

Section 6 authorizes the CWCB to make a loan in an amount up to \$3,000,000 from the CWCB construction fund or the severance tax perpetual base fund to the Colorado Rio Grande Restoration Foundation in furtherance of the San Luis valley confined aquifer recovery project.

Section 7 reinstates severance tax funding of the water efficiency grant program by authorizing a transfer of \$550,000 in each state fiscal year commencing on or after July 1, 2021, from the grant program reserve of the severance tax operational fund, which reserve is part of the "tier 2" funding that is used only if the general assembly chooses not to spend 100% of the money in the operational fund on core departmental programs, to the water efficiency grant program cash fund. The reinstated funding is repealed on July 1, 2030, when the water efficiency grant program is scheduled to repeal.

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

2 **SECTION 1. Continuation of the satellite monitoring system**
 3 **- operation and maintenance - appropriation.** (1) For the 2021-22
 4 state fiscal year, \$100,000 is appropriated to the department of natural
 5 resources for use by the division of water resources. This appropriation
 6 is from the Colorado water conservation board construction fund created
 7 in section 37-60-121, C.R.S. To implement this section, the division of
 8 water resources may use this appropriation for renovation of existing
 9 gauging stations; replacement of outdated collection platforms; lysimeter
 10 support, data collection, and maintenance; upgrading of transmission
 11 components of the satellite monitoring system established and operated
 12 pursuant to section 37-80-102 (10), C.R.S.; stream gauge flood hardening
 13 projects; and data collection efforts related to flood forecasting and

1 warning.

2 (2) The money appropriated in subsection (1) of this section
3 remains available for the designated purposes until it is fully expended.

4 **SECTION 2. Continuation of the Colorado floodplain map**
5 **modernization program - appropriation.** (1) For the 2021-22 state
6 fiscal year, \$500,000 is appropriated to the department of natural
7 resources for use by the Colorado water conservation board. This
8 appropriation is from the Colorado water conservation board construction
9 fund created in section 37-60-121, C.R.S. To implement this section, the
10 Colorado water conservation board may use this appropriation to continue
11 to assist with the preparation of revised and improved floodplain studies
12 and maps for communities throughout Colorado and participate in
13 federally sponsored floodplain map modernization activities.

14 (2) The money appropriated in subsection (1) of this section
15 remains available for the designated purposes until it is fully expended.

16 **SECTION 3. Continuation of the weather modification**
17 **permitting program - appropriation.** (1) For the 2021-22 state fiscal
18 year, \$350,000 is appropriated to the department of natural resources for
19 use by the Colorado water conservation board. This appropriation is from
20 the Colorado water conservation board construction fund created in
21 section 37-60-121, C.R.S. To implement this section, the Colorado water
22 conservation board may use this appropriation to continue to assist water
23 conservation districts, water conservancy districts, and other water
24 providers and their fiscal agents with the development of cloud seeding
25 programs that provide benefits to recreation, streams, and reservoirs
26 through snowpack enhancement.

27 (2) The money appropriated in subsection (1) of this section

1 remains available for the designated purposes until it is fully expended.

2 **SECTION 4. Continuation of technical assistance for federal**
3 **cost-share programs.** (1) For the 2021-22 state fiscal year, \$300,000 is
4 appropriated to the department of natural resources for use by the
5 Colorado water conservation board. This appropriation is from the
6 Colorado water conservation board construction fund created in section
7 37-60-121, C.R.S. To implement this section, the Colorado water
8 conservation board may use this appropriation to continue to provide
9 technical assistance for applicants seeking competitive grants from
10 federal water infrastructure, quality, and delivery programs such as the
11 United States department of agriculture's regional conservation
12 partnership program, the Colorado river basin salinity control program,
13 and the Gunnison selenium management program.

14 (2) The money appropriated in subsection (1) of this section
15 remains available for the designated purposes until it is fully expended.

16 **SECTION 5. Restoration of litigation fund cash balance -**
17 **transfer.** On July 1, 2021, the state treasurer shall transfer the sum of
18 \$2,000,000, or so much thereof as may be necessary to restore the balance
19 of the litigation fund to \$2,000,000, from the unreserved cash in the
20 Colorado water conservation board construction fund created in section
21 37-60-121, C.R.S., to the litigation fund created in section 37-60-121
22 (2.5), C.R.S., to assist in addressing legal issues associated with compact
23 compliance or any other litigation activities as specified under section
24 37-60-121, C.R.S.

25 **SECTION 6. San Luis valley confined aquifer recovery**
26 **project loan authorization.** (1) Pursuant to section 39-29-109
27 (2)(a)(I.5), C.R.S., the Colorado water conservation board is hereby

1 authorized to loan, subject to subsection (2) of this section, up to
2 \$3,000,000 from the Colorado water conservation board construction
3 fund created in section 37-60-121, C.R.S., to the Colorado Rio Grande
4 Restoration Foundation to purchase a farm and water rights in order to
5 reduce groundwater pumping to help bring the San Luis valley confined
6 aquifer to sustainable levels.

7 (2) The Colorado water conservation board may make a loan for
8 the project specified in subsection (1) of this section from such money as
9 is or may become available to the severance tax perpetual base fund
10 created in section 39-29-109 (2)(a)(I.5), C.R.S. The loan must be in the
11 amount listed in subsection (1) of this section plus or minus such
12 amounts, if any, as may be justified by reason of ordinary fluctuations in
13 construction costs or as may be justified by reason of change in the plans
14 for the project due to differing or unforeseen site conditions, errors or
15 omissions in the plans and specifications, changes instituted by regulatory
16 agencies, or changes in material quantities beyond contract limits.

17 (3) Pursuant to section 37-60-120 (1), C.R.S., the Colorado water
18 conservation board shall require such terms and conditions in the contract
19 as will ensure repayment of money made available by it. The Colorado
20 water conservation board shall not disburse any money for a loan
21 authorized by subsection (1) of this section unless and until it is satisfied,
22 in its sole discretion, that the recipient of the loan will be able to make
23 repayment pursuant to the terms and conditions established by the
24 Colorado water conservation board and by subsection (1) of this section.

25 **SECTION 7.** In Colorado Revised Statutes, 39-29-109.3,
26 **recreate and reenact, with amendments,** (2)(c) as follows:

27 **39-29-109.3. Severance tax operational fund - core reserve -**

1 **grant program reserve - definitions - repeal.** (2) Subject to the
2 requirements of subsections (3) and (3.5) of this section, if the general
3 assembly chooses not to spend up to one hundred percent of the money
4 in the operational fund on core departmental programs, the state treasurer
5 shall transfer the following amounts:

6 (c) TO THE WATER EFFICIENCY GRANT PROGRAM CASH FUND
7 CREATED IN SECTION 37-60-126 (12), FOR USE IN ACCORDANCE WITH THAT
8 SECTION, ON JULY 1 OF EACH STATE FISCAL YEAR COMMENCING ON OR
9 AFTER JULY 1, 2021, FIVE HUNDRED FIFTY THOUSAND DOLLARS. MONEY
10 TRANSFERRED PURSUANT TO THIS SUBSECTION (2)(c) IS IN ADDITION TO,
11 AND DOES NOT REPLACE, ANY MONEY APPROPRIATED TO THE COLORADO
12 WATER CONSERVATION BOARD PURSUANT TO SUBSECTION (1)(d) OF THIS
13 SECTION. THIS SUBSECTION (2)(c) IS REPEALED, EFFECTIVE JULY 1, 2030.

14 **SECTION 8. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety.

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 21-0262.01 Jery Payne x2157

HOUSE BILL 21-1046

HOUSE SPONSORSHIP

Arndt and Catlin,

SENATE SPONSORSHIP

Fields and Sonnenberg,

House Committees

Agriculture, Livestock, & Water

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF A WATER RIGHT OBTAINED THROUGH A**
102 **MUTUAL DITCH CORPORATION.**

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>.)

For a mutual ditch corporation, the bill creates a presumption, which may be changed by changing the corporation's articles of incorporation or bylaws, that the shares of stock owned by a stockholder in the corporation represent:

- The right to use the water rights appropriated or purchased by the corporation; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 22, 2021

- Corresponding rights to divert and deliver the stockholder's water rights through a ditch, canal, reservoir, or other works.

The bill also authorizes these water rights to be limited to a pro rata amount at times when shareholder demand exceeds available supply. A mutual ditch corporation may operate using traditional ditch operating practices.

The bill clarifies that:

- When a shareholder is not using some of or all of the available water under the shareholder's rights, the right to use the water rights does not include the right to prevent other stockholders from using any portion of the corporation's water rights; and
- The statutes covering ditch and reservoir companies do not prevent a stockholder from changing the use of the stockholder's shares or change the standards for water court approval to change a water right.

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

2 **SECTION 1.** In Colorado Revised Statutes, 7-42-101, **add** (4) as
3 follows:

4 **7-42-101. Additional statements in certificates - mutual ditch**
5 **corporation shares.** (4) (a) SUBJECT TO ANY DECREE FOR THE WATER
6 RIGHTS HELD IN THE NAME OF A MUTUAL DITCH CORPORATION AND TO A
7 MUTUAL DITCH CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS,
8 A MUTUAL DITCH CORPORATION DELIVERING DIRECT FLOW WATER RIGHTS
9 MAY PROVIDE WATER TO ONLY WATER-REQUESTING STOCKHOLDERS,
10 INCLUDING STOCKHOLDERS THAT OWN SHARES FOR WHICH A CHANGE IN
11 USE HAS BEEN ADJUDICATED OR APPROVED. CONSISTENT WITH EACH
12 STOCKHOLDER'S REQUEST AND THE AVAILABLE WATER SUPPLY, A MUTUAL
13 DITCH CORPORATION MAY PROVIDE WATER AT RATES OF FLOW GREATER
14 OR LESS THAN EACH STOCKHOLDER'S PRO-RATA OWNERSHIP OF SHARES IN
15 THE CORPORATION. WHEN TOTAL STOCKHOLDER DEMAND EXCEEDS
16 AVAILABLE WATER SUPPLY, A MUTUAL DITCH CORPORATION SHALL

1 PROVIDE, TO THE EXTENT POSSIBLE, A PRO RATA AMOUNT OF WATER TO
2 ALL STOCKHOLDERS THAT ARE REQUESTING WATER, EITHER
3 SIMULTANEOUSLY OR, IF NECESSARY, BY ROTATING AMONG
4 STOCKHOLDERS IN SECTIONS OR BY OTHER EQUITABLE METHODS AS
5 DETERMINED BY THE CORPORATION.

6 (b) SUBJECT TO SUBSECTION (4)(c)(IV) OF THIS SECTION, IF A
7 WATER COURT DECREE AUTHORIZING THE CHANGE IN USE OF THE WATER
8 RIGHTS REPRESENTED BY MUTUAL DITCH CORPORATION SHARES CONTAINS
9 VOLUMETRIC LIMITS ON THE AMOUNT OF WATER DELIVERABLE TO THE
10 CHANGED SHARES, WATER DIVERTED AND DELIVERED BY THE MUTUAL
11 DITCH CORPORATION ONLY COUNTS AGAINST THE CHANGED
12 STOCKHOLDER'S VOLUMETRIC LIMITS IF THE STOCKHOLDER, OR ITS LESSEE
13 OR DESIGNEE, TAKES DELIVERY IN ACCORDANCE WITH THE CHANGE IN USE
14 DECREE.

15 (c) A COURT SHALL NOT CONSTRUE THIS SUBSECTION (4):

16 (I) (A) TO SUPERSEDE OR ABROGATE THE CONDITIONS OF ANY
17 FINAL WATER COURT DECREE ENTERED BEFORE THE EFFECTIVE DATE OF
18 THIS SUBSECTION (4); OR

19 (B) TO APPLY TO ANY WATER COURT APPLICATION FOR WHICH A
20 TRIAL WAS HELD BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (4) OR
21 TO AN APPEAL OF ANY WATER COURT DECISION OR DECREE RESULTING
22 FROM SUCH A TRIAL;

23 (II) TO IMPEDE OR PREVENT A STOCKHOLDER FROM CHANGING THE
24 TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE WATER
25 RIGHTS REPRESENTED BY THE SHARES IN A MUTUAL DITCH CORPORATION;

26 (III) TO REQUIRE OR PROHIBIT A REDUCTION IN THE FLOW RATE
27 AVAILABLE TO A STOCKHOLDER OR MUTUAL DITCH CORPORATION WHEN

1 THE TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE
2 WATER RIGHTS REPRESENTED BY THE SHARES IS LAWFULLY CHANGED;

3 (IV) (A) TO AMEND OR MODIFY THE STANDARDS IN SECTION
4 37-92-305 FOR WATER COURT APPROVAL OF A CHANGE IN USE; OR

5 (B) TO AMEND OR MODIFY THE COURT'S ABILITY TO ORDER
6 CONDITIONS NECESSARY TO PREVENT AN ENLARGEMENT UPON THE
7 HISTORICAL USE OF WATER RIGHTS FOR WHICH A CHANGE IS SOUGHT OR TO
8 PREVENT A DIMINUTION OF RETURN FLOW HISTORICALLY RESULTING FROM
9 THE USE OF THE CHANGED SHARES TO THE DETRIMENT OF OTHER
10 APPROPRIATORS; OR

11 (V) TO IMPAIR THE ABILITY OF A STOCKHOLDER TO ENTER INTO A
12 PROGRAM IDENTIFIED IN SECTION 37-92-305 (3)(c) OR TO ENTER INTO AN
13 ACQUISITION TRANSACTION PROVIDED FOR IN EITHER SECTION 37-92-102
14 (3) OR 37-83-105.

15 **SECTION 2. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly; except
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V
19 of the state constitution against this act or an item, section, or part of this
20 act within such period, then the act, item, section, or part will not take
21 effect unless approved by the people at the general election to be held in
22 November 2022 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0102.01 Gregg Fraser x4325

HOUSE BILL 21-1233

HOUSE SPONSORSHIP

Roberts and Will,

SENATE SPONSORSHIP

Donovan and Winter,

House Committees

Agriculture, Livestock, & Water

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE REQUIREMENTS FOR CLAIMING**
102 **AN INCOME TAX CREDIT FOR THE DONATION OF A PERPETUAL**
103 **CONSERVATION EASEMENT.**

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>.)

The bill makes the following changes affecting claims for an income tax credit allowed for the donation of a perpetual conservation easement in gross (tax credit):

- Specifies that the division of conservation can be a holder of a conservation easement in gross;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- Eliminates a requirement that amounts deducted for federal income tax purposes for the donation of a conservation easement be added back for purposes of calculating Colorado taxable income;
- Modifies the definition of "taxpayer" to clarify the applicability of the tax credit to donations made by certain nonprofit and governmental entities;
- Modifies the process for filing conservation easement tax credit certificates with income tax returns;
- Eliminates the authority of the executive director of the department of revenue to require additional information regarding the amount and validity of tax credits and to resolve disputes regarding the credits;
- Establishes a process for the department of revenue to track the transfer of and certify the ownership of tax credits;
- Modifies the formula used to calculate the amount of the tax credit;
- Modifies the manner in which the amount of a tax credit is allocated among owners, partners, members, or shareholders of certain legal entities;
- Modifies certain provisions regarding the number of tax credits that may be claimed and the manner of claiming the credits;
- Eliminates the requirement that the donor of an easement is the tax matters representative for purposes of resolving issues and disputes relating to a transferred credit; and
- Eliminates obsolete reporting requirements.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-15-102, **add** (3)
 3 as follows:

4 **12-15-102. Division of conservation - creation - director.**

5 (3) TO AID IN THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE
 6 15, THE DIVISION HAS THE AUTHORITY TO ACCEPT GRANTS FOR AND ACT
 7 AS A HOLDER OF CONSERVATION EASEMENTS IN GROSS.

8 **SECTION 2.** In Colorado Revised Statutes, 38-30.5-104, **amend**
 9 (2) as follows:

10 **38-30.5-104. Creation of conservation easements in gross.**

1 (2) A conservation easement in gross may only be created through a
2 grant to or a reservation by a governmental entity, INCLUDING THE
3 DIVISION OF CONSERVATION CREATED IN SECTION 12-15-102, or a grant to
4 or a reservation by a charitable organization exempt under section 501
5 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, which
6 organization was created at least two years prior to receipt of the
7 conservation easement.

8 **SECTION 3.** In Colorado Revised Statutes, 39-22-104, **amend**
9 (3)(g) as follows:

10 **39-22-104. Income tax imposed on individuals, estates, and**
11 **trusts - single rate - legislative declaration - definitions - repeal.**

12 (3) There shall be added to the federal taxable income:

13 (g) For the income tax years commencing on or after January 1,
14 2000, BUT PRIOR TO JANUARY 1, 2022, an amount equal to the charitable
15 contribution deduction allowed by section 170 of the internal revenue
16 code to the extent such deduction includes a contribution of real property
17 to a charitable organization for a conservation purpose for which an
18 income tax credit is claimed pursuant to section 39-22-522;

19 **SECTION 4.** In Colorado Revised Statutes, 39-22-522, **amend**
20 (1), (2.7), (3.5)(b), (4)(a)(II.5), (4)(b), (6), (7) introductory portion, (7)(i),
21 and (7)(j); **repeal** (7)(d), (10), and (11); and **add** (4)(a)(II.7) as follows:

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

23 (1) For the purposes of this section:

24 (a) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1,
25 2021, "taxpayer" means a resident individual or a domestic or foreign
26 corporation subject to the provisions of part 3 of this article, a
27 partnership, S corporation, or other similar pass-through entity, estate, or

1 trust that donates a conservation easement as an entity, and a partner,
2 member, and subchapter S shareholder of such pass-through entity.

3 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
4 1, 2021, "TAXPAYER" MEANS ANY PERSON OR ENTITY FILING A STATE
5 INCOME TAX RETURN OR A DOMESTIC OR FOREIGN CORPORATION SUBJECT
6 TO THE PROVISIONS OF PART 3 OF THIS ARTICLE 22, A PARTNERSHIP, S
7 CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, ESTATE, TRUST,
8 NONPROFIT ENTITY, OR AN ENTITY THAT HAS AUTHORITY TO CONDUCT
9 WATER ACTIVITIES, AS DEFINED BY SECTION 37-45.1-102 (3) AND CREATED
10 PURSUANT TO ARTICLE 41, 45, 46, 47, 48, OR 50 OF TITLE 37, OR ARTICLE
11 42 OF TITLE 7, THAT CONVEYS A CONSERVATION EASEMENT IN GROSS
12 PURSUANT TO SECTION 38-30.5-104. A DITCH OR RESERVOIR COMPANY
13 FORMED PURSUANT TO ARTICLE 42 OF TITLE 7, OR OTHERWISE, IS ENTITLED
14 TO ACT ON ITS OWN BEHALF IN GRANTING A CONSERVATION EASEMENT
15 AND EARNING AND TRANSFERRING TAX CREDITS UNDER THIS SECTION,
16 WHETHER OR NOT ANY OF ITS SHAREHOLDERS OR MEMBERS ARE
17 GOVERNMENTAL ENTITIES.

18 (2.7) Notwithstanding any other provision, for income tax years
19 commencing on or after January 1, 2014, no claim for a credit shall be
20 allowed unless a tax credit certificate is issued by the division of real
21 estate prior to May 30, 2018, or by the division of conservation on or after
22 May 30, 2018, in accordance with sections 12-15-105 and 12-15-106 and,
23 FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014,
24 BUT PRIOR TO JANUARY 1, 2022, the taxpayer files the tax credit certificate
25 with the income tax return filed with the department of revenue.

26 (3.5) (b) (I) For conservation easements donated on or after
27 January 1, 2014, and subject to the restrictions of section 12-15-106 (4),

1 the executive director shall have the authority, pursuant to subsection (8)
2 of this section, to require additional information from the taxpayer or
3 transferee regarding the amount of ~~the~~ A credit TRANSFERRED PRIOR TO
4 JANUARY 1, 2022, and the validity of the credit. In resolving disputes
5 regarding the validity or the amount of a credit allowed pursuant to
6 subsection (2) of this section, the executive director shall have the
7 authority, for good cause shown, to review and accept or reject, in whole
8 or in part, the amount of the credit and the validity of the credit based
9 upon the internal revenue code and federal regulations in effect at the
10 time of the donation, except those requirements for which authority is
11 granted to the division of conservation, the director of the division of
12 conservation, or the conservation easement oversight commission
13 pursuant to section 12-15-106.

14 (II) FOR CONSERVATION EASEMENTS DONATED ON OR AFTER
15 JANUARY 1, 2014, AND FOR TAX CREDIT CERTIFICATES ISSUED BY THE
16 DIVISION ON OR AFTER JANUARY 1, 2022, THE DIVISION SHALL NOTIFY THE
17 DEPARTMENT OF REVENUE OF THE ISSUANCE OF A TAX CREDIT
18 CERTIFICATE. SUCH NOTICE SHALL PERFECT THE VALIDITY OF THE CREDIT
19 WITH THE DEPARTMENT OF REVENUE FOR THE USE OR TRANSFER OF THE
20 CREDIT BY A TAXPAYER. FOR CONSERVATION EASEMENTS DONATED ON OR
21 AFTER JANUARY 1, 2014, AND TRANSFERRED ON OR AFTER JANUARY 1,
22 2022, THE TRANSFEROR AND TRANSFEREE OF THE TAX CREDIT SHALL
23 JOINTLY FILE A COPY OF A WRITTEN CREDIT TRANSFER NOTICE WITH THE
24 DEPARTMENT OF REVENUE WITHIN THIRTY DAYS AFTER THE TRANSFER.
25 THE DEPARTMENT SHALL DEVELOP A SYSTEM TO TRACK SUCH TRANSFERS
26 OF TAX CREDITS AND TO CONFIRM THE TRANSFER AND OWNERSHIP OF TAX
27 CREDITS TO THE TRANSFEREE'S ACCOUNT. THE DEPARTMENT HAS THIRTY

1 DAYS FROM RECEIPT OF THE WRITTEN TRANSFER NOTICE TO PROVIDE
2 WRITTEN CONFIRMATION OF ACKNOWLEDGMENT AND POSTING TO THE
3 TRANSFEREE'S ACCOUNT OF THE TRANSFER IN THE DEPARTMENT'S
4 TRACKING SYSTEM TO THE TRANSFEROR AND TRANSFEREE. THE
5 DEPARTMENT SHALL NOT ADJUST THE AMOUNT OF TAX CREDITS AS TO THE
6 TRANSFEREE; EXCEPT THAT THE DEPARTMENT RETAINS ANY REMEDIES IT
7 MAY HAVE AGAINST THE TRANSFEROR. THE DEPARTMENT MAY
8 PROMULGATE RULES TO PERMIT VERIFICATION OF THE OWNERSHIP AND
9 AMOUNT OF THE TAX CREDITS; EXCEPT THAT ANY RULES PROMULGATED
10 SHALL NOT UNDULY RESTRICT OR HINDER THE TRANSFER OR USE OF THE
11 TAX CREDITS.

12 (4) (a) (II.5) For a conservation easement in gross created in
13 accordance with article 30.5 of title 38 that is donated on or after January
14 1, 2015, BUT PRIOR TO JANUARY 1, 2021, to a governmental entity or a
15 charitable organization described in section 38-30.5-104 (2), the credit
16 provided for in subsection (2) of this section shall be an amount equal to
17 seventy-five percent of the first one hundred thousand dollars of the fair
18 market value of the donated portion of such conservation easement in
19 gross when created, and fifty percent of all amounts of the donation in
20 excess of one hundred thousand dollars; except that in no case shall the
21 credit exceed five million dollars per donation. Credits shall be issued in
22 increments of no more than one million five hundred thousand dollars per
23 year. Credits for easements donated in a prior year shall be eligible for tax
24 credit certificates in subsequent years in order of application and before
25 new applications and those credit applications, if any, on the wait list.

26 (II.7) FOR A CONSERVATION EASEMENT IN GROSS CREATED IN
27 ACCORDANCE WITH ARTICLE 30.5 OF TITLE 38 THAT IS DONATED ON OR

1 AFTER JANUARY 1, 2021, TO A GOVERNMENTAL ENTITY OR A CHARITABLE
2 ORGANIZATION DESCRIBED IN SECTION 38-30.5-104 (2), THE CREDIT
3 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION IS AN AMOUNT THAT IS
4 DETERMINED BY THE TAXPAYER BUT THAT IS NO MORE THAN NINETY
5 PERCENT OF THE FAIR MARKET VALUE OF THE DONATED PORTION OF SUCH
6 CONSERVATION EASEMENT IN GROSS WHEN CREATED; EXCEPT THAT IN NO
7 CASE SHALL THE CREDIT EXCEED FIVE MILLION DOLLARS PER DONATION.
8 CREDITS SHALL BE ISSUED IN INCREMENTS OF NO MORE THAN ONE MILLION
9 FIVE HUNDRED THOUSAND DOLLARS PER YEAR. CREDITS FOR EASEMENTS
10 DONATED IN A PRIOR YEAR ARE ELIGIBLE FOR TAX CREDIT CERTIFICATES
11 IN SUBSEQUENT YEARS IN ORDER OF APPLICATION AND BEFORE NEW
12 APPLICATIONS AND THOSE CREDIT APPLICATIONS, IF ANY, ON THE WAIT
13 LIST.

14 (b) For income tax years commencing on or after January 1, 2000,
15 in the case of a joint tenancy, tenancy in common, partnership, S
16 corporation, or other similar entity or ownership group that donates a
17 conservation easement as an entity or group, the amount of the credit
18 allowed pursuant to subsection (2) of this section shall MUST be allocated
19 to the entity's owners, partners, members, or shareholders in proportion
20 to the owners', partners', members', or shareholders' distributive shares of
21 income or ownership percentage from such entity or group. For income
22 tax years commencing on or after January 1, 2000, but prior to January 1,
23 2003, the total aggregate amount of the credit allocated to such owners,
24 partners, members, and shareholders shall not exceed one hundred
25 thousand dollars, and, if any refund is claimed pursuant to subparagraph
26 ~~(I) of paragraph (b) of subsection (5)~~ SUBSECTION (5)(b)(I) of this section,
27 the aggregate amount of the refund and the credit claimed by such

1 partners, members, and shareholders shall not exceed twenty thousand
2 dollars for that income tax year. For income tax years commencing on or
3 after January 1, 2003, but prior to January 1, 2007, the total aggregate
4 amount of the credit allocated to such owners, partners, members, and
5 shareholders shall not exceed two hundred sixty thousand dollars, and, if
6 any refund is claimed pursuant to ~~subparagraph (I) of paragraph (b) of~~
7 ~~subsection (5)~~ SUBSECTION (5)(b)(I) of this section, the aggregate amount
8 of the refund and the credit claimed by such owners, partners, members,
9 and shareholders shall not exceed fifty thousand dollars for that income
10 tax year. For income tax years commencing on or after January 1, 2007,
11 AND PRIOR TO JANUARY 1, 2015, the total aggregate amount of the credit
12 allocated to such owners, partners, members, and shareholders shall not
13 exceed three hundred seventy-five thousand dollars, and, if any refund is
14 claimed pursuant to ~~subparagraph (I) of paragraph (b) of subsection (5)~~
15 SUBSECTION (5)(b)(I) of this section, the aggregate amount of the refund
16 and the credit claimed by such owners, partners, members, and
17 shareholders shall not exceed fifty thousand dollars for that income tax
18 year. FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,
19 2015, THE TOTAL AGGREGATE AMOUNT OF THE CREDIT ALLOCATED TO
20 SUCH OWNERS, PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT
21 EXCEED FIVE MILLION DOLLARS, AND, IF ANY REFUND IS CLAIMED
22 PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION, THE AGGREGATE
23 AMOUNT OF THE REFUND AND THE CREDIT CLAIMED BY SUCH OWNERS,
24 PARTNERS, MEMBERS, AND SHAREHOLDERS SHALL NOT EXCEED FIFTY
25 THOUSAND DOLLARS FOR THAT INCOME TAX YEAR.

26 (6) (a) ~~For conservation easements donated prior to January 1,~~
27 ~~2014, a taxpayer may claim only one tax credit under this section per~~

1 ~~income tax year; except that a transferee of a tax credit under subsection~~
2 ~~(7) of this section may claim an unlimited number of credits. A taxpayer~~
3 ~~who has carried forward or elected to receive a refund of part of the tax~~
4 ~~credit in accordance with subsection (5) of this section shall not claim an~~
5 ~~additional tax credit under this section for any income tax year in which~~
6 ~~the taxpayer applies the amount carried forward against income tax due~~
7 ~~or receives a refund. A taxpayer who has transferred a credit to a~~
8 ~~transferee pursuant to subsection (7) of this section shall not claim an~~
9 ~~additional tax credit under this section for any income tax year in which~~
10 ~~the transferee uses such transferred credit.~~

11 (b) For conservation easements donated on or after ~~January 1,~~
12 ~~2014~~ JANUARY 1, 2000, a taxpayer may claim only one tax credit under
13 this section per income tax year; except that a transferee of a tax credit
14 under subsection (7) of this section may claim an unlimited number of
15 credits.

16 (7) For income tax years commencing on or after January 1, 2000,
17 a taxpayer may transfer all or a portion of a tax credit granted pursuant to
18 subsection (2) of this section to ~~another taxpayer~~ A TRANSFEREE for such
19 ~~other taxpayer~~, as transferee to apply as a credit against the taxes imposed
20 by this ~~article~~ ARTICLE 22 subject to the following limitations:

21 (d) For any tax year in which a tax credit is transferred pursuant
22 ~~to this subsection (7), both the taxpayer and the transferee shall file~~
23 ~~written statements with their income tax returns specifying the amount of~~
24 ~~the tax credit that has been transferred. A transferee may not claim a~~
25 ~~credit transferred pursuant to this subsection (7) unless the taxpayer's~~
26 ~~written statement verifies the amount of the tax credit claimed by the~~
27 ~~transferee.~~

1 (i) FOR A DONATION MADE PRIOR TO JANUARY 1, 2014, the donor
2 of an easement for which a tax credit is claimed or the transferor of a tax
3 credit CLAIMED FOR THE DONATION OF THE EASEMENT transferred
4 pursuant to this subsection (7) ~~shall be~~ IS the tax matters representative in
5 all matters with respect to the credit. The tax matters representative ~~shall~~
6 ~~be~~ IS responsible for representing and binding the transferees with respect
7 to all issues affecting the credit, including, but not limited to, the
8 charitable contribution deduction, the appraisal, notifications and
9 correspondence from and with the department of revenue, audit
10 examinations, assessments or refunds, settlement agreements, and the
11 statute of limitations. The transferee ~~shall be~~ IS subject to the same statute
12 of limitations with respect to the credit as the transferor of the credit.

13 (j) FOR A TAX CREDIT CLAIMED FOR THE DONATION OF AN
14 EASEMENT MADE PRIOR TO JANUARY 1, 2014, final resolution of disputes
15 regarding the tax credit between the department of revenue and the tax
16 matters representative, including final determinations, compromises,
17 payment of additional taxes or refunds due, and administrative and
18 judicial decisions, ~~shall be~~ IS binding on transferees.

19 ~~(10) On or before July 1, 2008, the department of revenue shall~~
20 ~~create a report, which shall be made available to the public, on the credits~~
21 ~~claimed in the previous year in accordance with this section. For each~~
22 ~~credit claimed for a conservation easement in gross, the report shall~~
23 ~~summarize by county where the easement is located, the acres under~~
24 ~~easement, the appraised value of the easement, the donated value of the~~
25 ~~easement, and the name of any holders of the easement; except that the~~
26 ~~department shall combine such information for multiple counties where~~
27 ~~necessary to ensure that the information for no fewer than three~~

1 easements is summarized for any county or combination of counties in the
2 report. The report shall be updated annually to reflect the same
3 information for any additional credits that have been granted since the
4 previous report. This report shall not be required for conservation
5 easements donated on or after January 1, 2014.

6 (11) ~~On or before December 31, 2007, the department of revenue~~
7 ~~shall create a report, which shall be made available to the public, with as~~
8 ~~much of the information specified in paragraph (c) of subsection (3) of~~
9 ~~this section as is available to the department, summarized by county, for~~
10 ~~each tax credit claimed for a conservation easement in gross for tax years~~
11 ~~commencing on or after January 1, 2000. This report shall not be required~~
12 ~~for conservation easements donated on or after January 1, 2014.~~

13 **SECTION 5. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2022 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.