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SENATE BILL 200

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE  
INCOME TAX ACT, THE CORPORATE INCOME AND FRANCHISE TAX ACT AND  
THE LAND CONSERVATION INCENTIVES ACT TO PROVIDE FOR THE REFUND  
OF THE INCOME TAX CREDIT AND THE CORPORATE INCOME TAX CREDIT  
THAT MAY BE CLAIMED FOR CERTAIN CONVEYANCES OF REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Income Tax Act is enacted  
to read:

"~~[NEW MATERIAL]~~ TAX CREDIT--CONVEYANCES OF LAND OR  
INTERESTS IN LAND FOR CONSERVATION PURPOSES.--

A. There shall be allowed a refundable tax credit  
against the tax liability imposed by the Income Tax Act for  
conveyances of land or interests in land for conservation  
purposes as defined by 26 C.F.R. Section 1.170A-14 that are

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1 made as an unconditional donation in perpetuity to a public or  
2 private conservation agency on or after January 1, 2012.

3 B. The amount of the tax credit claimed per  
4 conveyance shall not exceed two hundred fifty thousand dollars  
5 (\$250,000), or an amount equal to fifty percent of the fair  
6 market value of land or interest in land that is donated,  
7 whichever is less. Taxpayers who co-own the land or interest  
8 in land that is donated may claim the pro rata share of the tax  
9 credit allowed pursuant to this section based on their  
10 ownership interest in the land or interest in land that is  
11 donated.

12 C. A taxpayer may claim only one tax credit every  
13 fifth taxable year.

14 D. Qualified donations shall include the conveyance  
15 in perpetuity of a fee interest in land encumbered by a  
16 conservation easement or an interest in land that qualifies as  
17 a charitable contribution deduction under Section 170(h) of the  
18 Internal Revenue Code. The use and protection of the lands, or  
19 interests in land, for conservation purposes as defined by 26  
20 C.F.R. Section 1.170A-14 shall be assured in perpetuity.  
21 Dedications of land or an interest in land for open space for  
22 the purpose of fulfilling density requirements to obtain  
23 subdivision or building permits shall not be considered as  
24 qualified donations pursuant to the Land Conservation  
25 Incentives Act.

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1           E. The taxpayer must be listed on the deed  
2 conveying the land or interest in land to be eligible for the  
3 tax credit. Unless the taxpayer inherited the land or interest  
4 in land, the taxpayer shall have owned the land or interest in  
5 land for a minimum of five years prior to conveying the land or  
6 interest in land to the public or private conservation agency.

7           F. To be eligible for treatment as qualified  
8 donations under this section, land or interests in lands must  
9 be certified by the secretary of energy, minerals and natural  
10 resources as fulfilling a conservation purpose as defined by 26  
11 C.F.R. Section 1.170A-14.

12           G. A taxpayer may apply for certification of  
13 eligibility for the tax credit provided by this section from  
14 the energy, minerals and natural resources department. An  
15 application for the tax credit shall include all taxpayers who  
16 owned the land or interest in land that was donated and  
17 identify each taxpayer's ownership interest. If the energy,  
18 minerals and natural resources department determines that the  
19 application meets the requirements of Subsections A through E  
20 of this section and that the land or interest in land conveyed  
21 will not adversely affect the property rights of contiguous  
22 landowners, it shall issue a certificate of eligibility to the  
23 taxpayer. The energy, minerals and natural resources  
24 department may issue rules governing the procedure for  
25 administering the provisions of this subsection.

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1           H. To receive a tax credit pursuant to this  
2 section, a person shall apply to the taxation and revenue  
3 department on forms and in the manner prescribed by the  
4 taxation and revenue department. The application shall include  
5 a certificate of eligibility issued by the energy, minerals and  
6 natural resources department pursuant to Subsection G of this  
7 section and a "qualified appraisal" prepared by a "qualified  
8 appraiser", as those terms are defined under applicable federal  
9 laws and regulations governing charitable contributions. The  
10 fair market value of qualified donations made pursuant to this  
11 section shall be substantiated by a qualified appraisal. The  
12 taxation and revenue department may review appraisals to  
13 determine if the appraisal is a qualified appraisal. If the  
14 taxation and revenue department determines that all of the  
15 requirements of this section have been complied with, the  
16 taxation and revenue department shall issue to the applicant a  
17 document granting the tax credit. The document shall be  
18 numbered for identification and declare its date of issuance  
19 and the amount of the tax credit allowed for the qualified  
20 donation made pursuant to this section.

21           I. The tax credit represented by a document issued  
22 pursuant to Subsection H of this section shall be refunded to  
23 the taxpayer. The tax credit shall not be sold, exchanged or  
24 otherwise transferred.

25           J. If a charitable deduction is claimed on the

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1 taxpayer's federal income tax for any contribution for which  
2 the tax credit provided by this section is claimed, the  
3 taxpayer's itemized deductions for New Mexico income tax shall  
4 be reduced by the amount of the deduction for the contribution  
5 in order to determine the New Mexico taxable income of the  
6 taxpayer.

7 K. For the purposes of this section, "taxpayer"  
8 means "taxpayer" as defined in Subsection Z of Section 7-2-2  
9 NMSA 1978.

10 L. As used in this section, "conservation  
11 easement", "interest in land", "land" and "public or private  
12 conservation agency" have the meanings as defined in Section  
13 75-9-3 NMSA 1978.

14 M. This section applies to tax credits claimed  
15 pursuant to the Land Conservation Incentives Act for donations  
16 made on or after January 1, 2012."

17 SECTION 2. A new section of the Corporate Income and  
18 Franchise Tax Act is enacted to read:

19 "[NEW MATERIAL] TAX CREDIT--CONVEYANCES OF LAND OR  
20 INTERESTS IN LAND FOR CONSERVATION PURPOSES.--

21 A. There shall be allowed a refundable tax credit  
22 against the tax liability imposed by the Corporate Income and  
23 Franchise Tax Act for conveyances of land or interests in land  
24 for conservation purposes as defined by 26 C.F.R. Section  
25 1.170A-14 that are made as an unconditional donation in

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1 perpetuity to a public or private conservation agency on or  
2 after January 1, 2012.

3 B. The amount of the tax credit claimed per  
4 conveyance shall not exceed two hundred fifty thousand dollars  
5 (\$250,000), or an amount equal to fifty percent of the fair  
6 market value of land or interest in land that is donated,  
7 whichever is less. Taxpayers that co-own the land or interest  
8 in land that is donated may claim the pro rata share of the tax  
9 credit allowed pursuant to this section based on their  
10 ownership interest in the land or interest in land that is  
11 donated.

12 C. A taxpayer may claim only one tax credit every  
13 fifth taxable year.

14 D. Qualified donations shall include the conveyance  
15 in perpetuity of a fee interest in land encumbered by a  
16 conservation easement or an interest in land that qualifies as  
17 a charitable contribution deduction under Section 170(h) of the  
18 Internal Revenue Code. The use and protection of the lands, or  
19 interests in land, for conservation purposes as defined by 26  
20 C.F.R. Section 1.170A-14 shall be assured in perpetuity.  
21 Dedications of land or an interest in land for open space for  
22 the purpose of fulfilling density requirements to obtain  
23 subdivision or building permits shall not be considered as  
24 qualified donations pursuant to the Land Conservation  
25 Incentives Act.

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1           E. The taxpayer shall be listed on the deed  
2 conveying the land or interest in land to be eligible for the  
3 tax credit. Unless the taxpayer inherited the land or interest  
4 in land, the taxpayer shall have owned the land or interest in  
5 land for a minimum of five years prior to conveying the land or  
6 interest in land to the public or private conservation agency.

7           F. To be eligible for treatment as qualified  
8 donations under this section, land or interests in lands must  
9 be certified by the secretary of energy, minerals and natural  
10 resources as fulfilling a conservation purpose as defined by 26  
11 C.F.R. Section 1.170A-14.

12           G. A taxpayer may apply for certification of  
13 eligibility for the tax credit provided by this section from  
14 the energy, minerals and natural resources department. An  
15 application for the tax credit shall include all taxpayers that  
16 owned the land or interest in land that was donated and  
17 identify each taxpayer's ownership interest. If the energy,  
18 minerals and natural resources department determines that the  
19 application meets the requirements of Subsections A through E  
20 of this section and that the land or interest in land conveyed  
21 will not adversely affect the property rights of contiguous  
22 landowners, it shall issue a certificate of eligibility to the  
23 taxpayer. The energy, minerals and natural resources  
24 department may issue rules governing the procedure for  
25 administering the provisions of this subsection.

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1           H. To receive a tax credit pursuant to this  
2 section, a person shall apply to the taxation and revenue  
3 department on forms and in the manner prescribed by the  
4 taxation and revenue department. The application shall include  
5 a certificate of eligibility issued by the energy, minerals and  
6 natural resources department pursuant to Subsection G of this  
7 section and a "qualified appraisal" prepared by a "qualified  
8 appraiser", as those terms are defined under applicable federal  
9 laws and regulations governing charitable contributions. The  
10 fair market value of qualified donations made pursuant to this  
11 section shall be substantiated by a qualified appraisal. The  
12 taxation and revenue department may review appraisals to  
13 determine if the appraisal is a qualified appraisal. If the  
14 taxation and revenue department determines that all of the  
15 requirements of this section have been complied with, the  
16 taxation and revenue department shall issue to the applicant a  
17 document granting the tax credit. The document shall be  
18 numbered for identification and declare its date of issuance  
19 and the amount of the tax credit allowed for the qualified  
20 donation made pursuant to this section.

21           I. The tax credit represented by a document issued  
22 pursuant to Subsection H of this section shall be refunded to  
23 the taxpayer. The tax credit shall not be sold, exchanged or  
24 otherwise transferred.

25           J. If a charitable deduction is claimed on the

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1 taxpayer's federal income tax for any contribution for which  
2 the tax credit provided by this section is claimed, the  
3 taxpayer's itemized deductions for New Mexico income tax shall  
4 be reduced by the amount of the deduction for the contribution  
5 in order to determine the New Mexico taxable income of the  
6 taxpayer.

7 K. As used in this section, "taxpayer" means  
8 "taxpayer" as defined in Subsection P of Section 7-2A-2 NMSA  
9 1978.

10 L. As used in this section, "conservation  
11 easement", "interest in land", "land" and "public or private  
12 conservation agency" have the meanings as defined in Section  
13 75-9-3 NMSA 1978.

14 M. This section applies to tax credits claimed  
15 pursuant to the Land Conservation Incentives Act for donations  
16 made on or after January 1, 2012."

17 SECTION 3. Section 7-2-18.10 NMSA 1978 (being Laws 2003,  
18 Chapter 331, Section 7, as amended) is amended to read:

19 "7-2-18.10. TAX CREDIT--CERTAIN CONVEYANCES OF REAL  
20 PROPERTY.--

21 A. There shall be allowed as a credit against the  
22 tax liability imposed by the Income Tax Act, an amount equal to  
23 fifty percent of the fair market value of land or interest in  
24 land that is conveyed for the purpose of open space, natural  
25 resource or biodiversity conservation, agricultural

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1 preservation or watershed or historic preservation as an  
2 unconditional donation in perpetuity by the landowner or  
3 taxpayer to a public or private conservation agency eligible to  
4 hold the land and interests therein for conservation or  
5 preservation purposes. The fair market value of qualified  
6 donations made pursuant to this section shall be substantiated  
7 by a "qualified appraisal" prepared by a "qualified appraiser",  
8 as those terms are defined under applicable federal laws and  
9 regulations governing charitable contributions.

10 B. The amount of the credit that may be claimed by  
11 a taxpayer shall not exceed one hundred thousand dollars  
12 (\$100,000) for a conveyance made prior to January 1, 2008 and  
13 shall not exceed two hundred fifty thousand dollars (\$250,000)  
14 for a conveyance made on or after that date. In addition, in a  
15 taxable year, the credit used may not exceed the amount of  
16 individual income tax otherwise due. A portion of the credit  
17 that is unused in a taxable year may be carried over for a  
18 maximum of twenty consecutive taxable years following the  
19 taxable year in which the credit originated until fully  
20 expended. A taxpayer may claim only one tax credit per taxable  
21 year.

22 C. Qualified donations shall include the conveyance  
23 in perpetuity of a fee interest in real property or a less-  
24 than-fee interest in real property, such as a conservation  
25 restriction, preservation restriction, agricultural

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1 preservation restriction or watershed preservation restriction,  
2 pursuant to the Land Use Easement Act and provided that the  
3 less-than-fee interest qualifies as a charitable contribution  
4 deduction under Section 170(h) of the Internal Revenue Code.  
5 Dedications of land for open space for the purpose of  
6 fulfilling density requirements to obtain subdivision or  
7 building permits shall not be considered as qualified donations  
8 pursuant to the Land Conservation Incentives Act.

9 D. Qualified donations shall be eligible for the  
10 tax credit if the donations are made to the state of New  
11 Mexico, a political subdivision thereof or a charitable  
12 organization described in Section 501(c)(3) of the Internal  
13 Revenue Code and that meets the requirements of Section  
14 170(h)(3) of that code.

15 E. To be eligible for treatment as qualified  
16 donations under this section, land or interests in lands must  
17 be certified by the secretary of energy, minerals and natural  
18 resources as fulfilling the purposes as set forth in Section  
19 75-9-2 NMSA 1978. The use and protection of the lands, or  
20 interests therein, for open space, natural area protection,  
21 biodiversity habitat conservation, land preservation,  
22 agricultural preservation, historic preservation or similar use  
23 or purpose of the property shall be assured in perpetuity.

24 F. A taxpayer may apply for certification of  
25 eligibility for the tax credit provided by this section from

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1 the energy, minerals and natural resources department. If the  
2 energy, minerals and natural resources department determines  
3 that the application meets the requirements of this section and  
4 that the property conveyed will not adversely affect the  
5 property rights of contiguous landowners, it shall issue a  
6 certificate of eligibility to the taxpayer, which shall include  
7 a calculation of the maximum amount of tax credit for which the  
8 taxpayer would be eligible. The energy, minerals and natural  
9 resources department may issue rules governing the procedure  
10 for administering the provisions of this subsection.

11 G. To receive a credit pursuant to this section, a  
12 person shall apply to the taxation and revenue department on  
13 forms and in the manner prescribed by the department. The  
14 application shall include a certificate of eligibility issued  
15 by the energy, minerals and natural resources department  
16 pursuant to Subsection F of this section. If all of the  
17 requirements of this section have been complied with, the  
18 taxation and revenue department shall issue to the applicant a  
19 document granting the tax credit. The document shall be  
20 numbered for identification and declare its date of issuance  
21 and the amount of the tax credit allowed for the qualified  
22 donation made pursuant to this section.

23 H. The tax credit represented by a document issued  
24 pursuant to Subsection G of this section for a conveyance made  
25 on or after January 1, 2008, or an increment of that tax

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1 credit, may be sold, exchanged or otherwise transferred and may  
2 be carried forward for a period of twenty taxable years  
3 following the taxable year in which the credit originated until  
4 fully expended. A tax credit or increment of a tax credit may  
5 only be transferred once. The credit may be transferred to any  
6 taxpayer. A taxpayer to whom a credit has been transferred may  
7 use the credit for the taxable year in which the transfer  
8 occurred, and unused amounts may be carried forward to  
9 succeeding taxable years, but in no event may the transferred  
10 credit be used more than twenty years after it was originally  
11 issued.

12 I. A tax credit issued pursuant to this section  
13 shall be transferred through a qualified intermediary. The  
14 qualified intermediary shall, by means of a sworn notarized  
15 statement, notify the taxation and revenue department of the  
16 transfer and of the date of the transfer within ten days of the  
17 transfer. Credits shall only be transferred in increments of  
18 ten thousand dollars (\$10,000) or more. The qualified  
19 intermediary shall keep an account of the credits and have the  
20 authority to issue sub-numbers registered with the taxation and  
21 revenue department and traceable to the original credit.

22 J. If a charitable deduction is claimed on the  
23 taxpayer's federal income tax for any contribution for which  
24 the credit provided by this section is claimed, the taxpayer's  
25 itemized deductions for New Mexico income tax shall be reduced

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1 by the amount of the deduction for the contribution in order to  
2 determine the New Mexico taxable income of the taxpayer.

3 K. For the purposes of this section:

4 (1) "qualified intermediary" does not include  
5 a person who has been previously convicted of a felony, who has  
6 had a professional license revoked, who is engaged in the  
7 practice defined in Section 61-28B-3 NMSA 1978 and who is  
8 identified in Section 61-29-2 NMSA 1978, and does not include  
9 any entity owned wholly or in part or employing any of the  
10 foregoing persons; and

11 (2) "taxpayer" means a citizen or resident of  
12 the United States, a domestic partnership, a limited liability  
13 company, a domestic corporation, an estate, including a foreign  
14 estate, or a trust.

15 L. This section applies to tax credits claimed  
16 pursuant to the Land Conservation Incentives Act for donations  
17 made before January 1, 2012."

18 SECTION 4. Section 7-2A-8.9 NMSA 1978 (being Laws 2003,  
19 Chapter 331, Section 8, as amended) is amended to read:

20 "7-2A-8.9. TAX CREDIT--CERTAIN CONVEYANCES OF REAL  
21 PROPERTY.--

22 A. There shall be allowed as a credit against the  
23 tax liability imposed by the Corporate Income and Franchise Tax  
24 Act an amount equal to fifty percent of the fair market value  
25 of land or interest in land that is conveyed for the purpose of

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1 open space, natural resource or biodiversity conservation,  
2 agricultural preservation or watershed or historic preservation  
3 as an unconditional donation in perpetuity by the landowner or  
4 taxpayer to a public or private conservation agency eligible to  
5 hold the land and interests therein for conservation or  
6 preservation purposes. The fair market value of qualified  
7 donations made pursuant to this section shall be substantiated  
8 by a "qualified appraisal" prepared by a "qualified appraiser",  
9 as those terms are defined under applicable federal laws and  
10 regulations governing charitable contributions.

11 B. The amount of the credit that may be claimed by  
12 a taxpayer shall not exceed one hundred thousand dollars  
13 (\$100,000) for a conveyance made prior to January 1, 2008 and  
14 shall not exceed two hundred fifty thousand dollars (\$250,000)  
15 for a conveyance made on or after that date. In addition, in a  
16 taxable year, the credit used may not exceed the amount of  
17 corporate income tax otherwise due. A portion of the credit  
18 that is unused in a taxable year may be carried over for a  
19 maximum of twenty consecutive taxable years following the  
20 taxable year in which the credit originated until fully  
21 expended. A taxpayer may claim only one tax credit per taxable  
22 year.

23 C. Qualified donations shall include the conveyance  
24 in perpetuity of a fee interest in real property or a less-  
25 than-fee interest in real property, such as a conservation

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1 restriction, preservation restriction, agricultural  
2 preservation restriction or watershed preservation restriction,  
3 pursuant to the Land Use Easement Act; provided that the less-  
4 than-fee interest qualifies as a charitable contribution  
5 deduction under Section 170(h) of the Internal Revenue Code.  
6 Dedications of land for open space for the purpose of  
7 fulfilling density requirements to obtain subdivision or  
8 building permits shall not be considered as qualified donations  
9 pursuant to the Land Conservation Incentives Act.

10 D. Qualified donations shall be eligible for the  
11 tax credit if the donations are made to the state of New  
12 Mexico, a political subdivision thereof or a charitable  
13 organization described in Section 501(c)(3) of the Internal  
14 Revenue Code and that meets the requirements of Section  
15 170(h)(3) of that code.

16 E. To be eligible for treatment as qualified  
17 donations under this section, land or interests in lands must  
18 be certified by the secretary of energy, minerals and natural  
19 resources as fulfilling the purposes as set forth in Section  
20 [~~5-9-2~~] 75-9-2 NMSA 1978. The use and protection of the lands,  
21 or interests therein, for open space, natural area protection,  
22 biodiversity habitat conservation, land preservation,  
23 agricultural preservation, historic preservation or similar use  
24 or purpose of the property shall be assured in perpetuity.

25 F. A taxpayer may apply for certification of

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1 eligibility for the tax credit provided by this section from  
2 the energy, minerals and natural resources department. If the  
3 energy, minerals and natural resources department determines  
4 that the application meets the requirements of this section and  
5 that the property conveyed will not adversely affect the  
6 property rights of contiguous landowners, it shall issue a  
7 certificate of eligibility to the taxpayer, which shall include  
8 a calculation of the maximum amount of tax credit for which the  
9 taxpayer would be eligible. The energy, minerals and natural  
10 resources department may issue rules governing the procedure  
11 for administering the provisions of this subsection.

12 G. To receive a credit pursuant to this section, a  
13 person shall apply to the taxation and revenue department on  
14 forms and in the manner prescribed by the department. The  
15 application shall include a certificate of eligibility issued  
16 by the energy, minerals and natural resources department  
17 pursuant to Subsection F of this section. If all of the  
18 requirements of this section have been complied with, the  
19 taxation and revenue department shall issue to the applicant a  
20 document granting the tax credit. The document shall be  
21 numbered for identification and declare its date of issuance  
22 and the amount of the tax credit allowed for the qualified  
23 donation made pursuant to this section.

24 H. The tax credit represented by a document issued  
25 pursuant to Subsection G of this section for a conveyance made

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1 on or after January 1, 2008, or an increment of that tax  
2 credit, may be sold, exchanged or otherwise transferred and may  
3 be carried forward for a period of twenty taxable years  
4 following the taxable year in which the credit originated until  
5 fully expended. A tax credit or increment of a tax credit may  
6 only be transferred once. The credit may be transferred to any  
7 taxpayer. A taxpayer to whom a credit has been transferred may  
8 use the credit for the taxable year in which the transfer  
9 occurred, and unused amounts may be carried forward to  
10 succeeding taxable years, but in no event may the transferred  
11 credit be used more than twenty years after it was originally  
12 issued.

13 I. A tax credit issued pursuant to this section  
14 shall be transferred through a qualified intermediary. The  
15 qualified intermediary shall, by means of a sworn notarized  
16 statement, notify the taxation and revenue department of the  
17 transfer and of the date of the transfer within ten days of the  
18 transfer. Credits shall only be transferred in increments of  
19 ten thousand dollars (\$10,000) or more. The qualified  
20 intermediary shall keep an account of the credits and have the  
21 authority to issue sub-numbers registered with the taxation and  
22 revenue department and traceable to the original credit.

23 J. If a charitable deduction is claimed on the  
24 taxpayer's federal income tax for any contribution for which  
25 the credit provided by this section is claimed, the taxpayer's

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1 itemized deductions for New Mexico income tax shall be reduced  
2 by the amount of the deduction for the contribution in order to  
3 determine the New Mexico taxable income of the taxpayer.

4 K. For the purposes of this section:

5 (1) "qualified intermediary" does not include  
6 a person who has been previously convicted of a felony, who has  
7 had a professional license revoked, who is engaged in the  
8 practice defined in Section 61-28B-3 NMSA 1978 and who is  
9 identified in Section 61-29-2 NMSA 1978, and does not include  
10 any entity owned wholly or in part or employing any of the  
11 foregoing persons; and

12 (2) "taxpayer" means a citizen or resident of  
13 the United States, a domestic partnership, a limited liability  
14 company, a domestic corporation, an estate, including a foreign  
15 estate, or a trust.

16 L. This section applies to tax credits claimed  
17 pursuant to the Land Conservation Incentives Act for donations  
18 made before January 1, 2012."

19 SECTION 5. Section 75-9-2 NMSA 1978 (being Laws 2003,  
20 Chapter 331, Section 2) is amended to read:

21 "75-9-2. PURPOSE.--The purpose of the Land Conservation  
22 Incentives Act is to encourage private landowners to be  
23 stewards of lands that are important habitat areas or contain  
24 significant natural, open space and historic resources by  
25 providing private landowners with incentives that encourage the

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1 protection of private lands for open space, natural resources,  
2 biodiversity conservation, outdoor recreation, farmland and  
3 forest land preservation, historic preservation and land  
4 conservation purposes that meet the requirements for  
5 conservation purposes as defined by 26 C.F.R. Section  
6 1.170A-14."

7 SECTION 6. Section 75-9-3 NMSA 1978 (being Laws 2003,  
8 Chapter 331, Section 3) is amended to read:

9 "75-9-3. DEFINITIONS.--As used in the Land Conservation  
10 Incentives Act:

11 A. "conservation easement" means a public or  
12 private conservation agency's nonpossessory interest in real  
13 property imposing any limitation or affirmative obligation, the  
14 purpose of which includes retaining or protecting natural or  
15 open space values of real property; assuring the availability  
16 of real property for agricultural, forest, recreation or open  
17 space use; protecting natural resources; or preserving the  
18 historical, architectural, archaeological or cultural  
19 significance of real property;

20 [~~A.~~] B. "interest in [~~real property~~] land" means a  
21 right in real property, including access, improvements, water  
22 rights, fee simple interest, easement, [~~and~~] land use easement,  
23 conservation easement, partial interest, mineral right,  
24 remainder or future interest or other interest or right in real  
25 property. The interest shall comply with the requirements of

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1 [the] Section 170(h) of the Internal Revenue Code of 1986;  
2 [~~partial interest, mineral right, remainder or future interest~~  
3 ~~or other interest or right in real property;~~

4 B.] C. "land" means real property, including rights  
5 of way, easements, privileges and all other rights or interests  
6 of a land or description relating to or connected with real  
7 property; and

8 [G.] D. "public or private conservation agency"  
9 means a governmental body, including the state of New Mexico or  
10 a political subdivision, or a private not-for-profit charitable  
11 corporation or trust authorized to do business in New Mexico  
12 that is organized and operated for natural resources, land  
13 conservation or historic preservation purposes and that has  
14 tax-exempt status as a public charity under the federal  
15 Internal Revenue Code of 1986, and the power to acquire, hold  
16 or maintain land or interests in land. A private not-for-  
17 profit charitable corporation or trust shall be a charitable  
18 organization described in Section 501(c)(3) of the Internal  
19 Revenue Code of 1986 and that meets the requirements of Section  
20 170(h)(3) of that code."

21 SECTION 7. Section 75-9-4 NMSA 1978 (being Laws 2003,  
22 Chapter 331, Section 4) is amended to read:

23 "75-9-4. ADMINISTRATION.--

24 A. The Land Conservation Incentives Act shall be  
25 administered by the secretary of energy, minerals and natural

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1 resources [~~in consultation with the committee established~~  
2 ~~pursuant to the Natural Lands Protection Act~~].

3 B. The secretary of energy, minerals and natural  
4 resources may promulgate rules as may be deemed necessary to  
5 certify eligible projects for treatment in fulfillment of the  
6 purposes of [~~this~~] the Land Conservation Incentives Act. The  
7 secretary of taxation and revenue, in consultation with the  
8 secretary of energy, minerals and natural resources, shall  
9 promulgate rules as may be deemed necessary to administer the  
10 tax incentives provided for in the Land Conservation Incentives  
11 Act and shall coordinate the preparation of the report to the  
12 legislature showing the fiscal impact on the treasury of the  
13 credits claimed pursuant to that act."

14 SECTION 8. Section 75-9-5 NMSA 1978 (being Laws 2003,  
15 Chapter 331, Section 5) is amended to read:

16 "75-9-5. APPLICABILITY AND LIMITATIONS.--

17 A. The tax credits provided by the Land  
18 Conservation Incentives Act apply to transfers of land or  
19 interests [~~therein~~] in land in taxable years beginning on or  
20 after January 1, 2004 and all taxable years thereafter.

21 B. A taxpayer claiming a tax credit pursuant to the  
22 Land Conservation Incentives Act may not claim a credit  
23 pursuant to a similar law for costs related to the same  
24 project.

25 C. A tax credit that is claimed pursuant to the

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1 Land Conservation Incentives Act from the donation of land or  
2 an interest in land made by a pass-through tax entity, such as  
3 a trust, estate, partnership, limited liability corporation or  
4 partnership, limited partnership, S corporation or other  
5 fiduciary, shall be used either by an entity in the event it is  
6 the taxpayer on behalf of the entity or by the member, manager,  
7 partner, shareholder or beneficiary, as the case may be, in  
8 proportion to ~~[his]~~ the member's, manager's, partner's,  
9 shareholder's or beneficiary's interest in the entity in the  
10 event that income, deductions and tax liability pass through  
11 the entity to the member, manager, partner, shareholder or  
12 beneficiary. Tax credits may not be claimed by both the entity  
13 and the member, manager, partner, shareholder or beneficiary  
14 for the same donation.

15 D. A taxpayer is not eligible for a tax credit  
16 provided by the Land Conservation Incentives Act if the  
17 taxpayer is or has been a subsidiary, partner, manager, member,  
18 shareholder or beneficiary of a domestic partnership, limited  
19 liability company, domestic corporation or pass-through entity  
20 that owns or has owned the donated land or interest in land in  
21 the five years preceding the date that the taxpayer conveyed  
22 the land or interest in land to the public or private  
23 conservation agency."

24 **SECTION 9. APPLICABILITY.**--The amendments in Sections 5  
25 through 8 of this act apply to tax credits claimed pursuant to  
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underscored material = new  
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1 the Land Conservation Incentives Act for donations made on or  
2 after January 1, 2012."

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