

# **ARTICLE 21**

## **CONSERVATION TRUST FUNDS**

**Section:**

**29-21-101. Conservation trust funds - definitions.**

**29-21-102. Certification - monitoring - enforcement - rules.**

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**29-21-101. Conservation trust funds - definitions.**

(1) As used in this article, unless the context otherwise requires:

(a) "County" includes a city and county.

(a.5) "Division" means the division of local government in the department of local affairs.

(b) "Eligible entity" means a county, municipality, or special district which has created a conservation trust fund pursuant to this section and which has certified to the department of local affairs that it has created such fund.

(c) "Interests in land and water" means any and all rights and interests in land or water, or both, including fee interests and less than full fee interests such as future interests, developmental rights, easements, covenants, and contractual rights. Every interest in land or water may be in perpetuity or for a fixed term and shall be deemed to run with the land or water to which it pertains for the benefit of the citizens of this state.

(d) "Municipality" means a statutory or home rule city or town or a territorial charter city.

(e) "New conservation sites" means interests in land and water, acquired after establishment of a conservation trust fund pursuant to this section, for park or recreation purposes, for all types of open space, including but not limited to floodplains, greenbelts, agricultural lands, or scenic areas, or for any scientific, historic, scenic, recreational, aesthetic, or similar purpose.

(f) "Population" means the current population estimate prepared by the division of planning pursuant to section 24-32-204, C.R.S.

(g) "Special district" means:

(I) A special district organized under article 1 of title 32, C.R.S., which provides park or recreation facilities or programs pursuant to the district's service plan, which facilities or programs are open to public use; or

(II) A school district which owned or operated as a successor in interest to a previously established park and recreation district a system of public recreation and playgrounds prior to January 1, 1987, and who, prior to said date, collected moneys and separately accounted for and devoted such moneys exclusively to the operation of a system of public recreation and playgrounds.

(1.5) School districts which are special districts, as defined in paragraph (g) of subsection (1) of this section, are deemed to have been authorized to create conservation trust funds pursuant to this section, and any moneys, collected and separately accounted for and devoted exclusively to the operation of a system of public recreation and playgrounds prior to January 1, 1987, are deemed to be conservation

trust funds. Nothing in this section shall be construed to entitle school districts which are special districts to the receipt of state conservation trust funds prior to April 22, 1987.

(2) (a) (I) There is hereby created in the division the conservation trust fund.

(II) Each county share shall be apportioned according to that percentage which the population of each county is to the total population of all counties, and, within each county, each municipality's share shall be apportioned according to the percentage which the population within each municipality is to the total population of the county in which such municipality is located. Each special district's share shall be determined as follows:

(A) The special district's share relating to the unincorporated area of the county in which all or part of such special district is located shall be apportioned according to one-half of the percentage which the population of the special district's unincorporated area is to the total population of the unincorporated area of the county.

(B) The special district's share relating to the incorporated area of the county in which all or part of such special district is located shall be one-half of the percentage which the population of the special district's incorporated area is to the total population of the municipality in which the special district's incorporated area is located. The population of any area which is located within a municipality or a city and county and has been excluded from a special district shall not be counted as part of the special district's population, even if the excluded area remains within the district for the purpose of paying outstanding debt.

(C) No special district which has been ordered dissolved shall receive any conservation trust fund money.

(b) (I) The division shall annually determine the eligible entities and shall distribute eligible entity shares as soon as possible after receiving distributions from the lottery fund pursuant to section 24-35-210 (10), C.R.S., in the following manner:

(A) To each eligible county, its share, less the share of all eligible municipalities and special districts located within the county;

(B) To each eligible municipality, its share of the county share, less the shares of any eligible special districts located within the municipality;

(C) To each eligible special district, its proportionate share of the county and municipal share; and

(D) To each eligible county, municipality, and special district, its proportionate share of any ineligible county share, less the shares of any eligible municipalities and special districts within the ineligible county.

(II) All moneys received from the state by any eligible entity pursuant to this section shall be accounted for separately from any other source of moneys available to the entity for the acquisition of new conservation sites or recreational facilities as defined in this article. No moneys received from the state by any eligible entity pursuant to this section shall be used to acquire real property through condemnation by eminent domain.

(c) In the event that an eligible municipality's share is less than twenty dollars, such amount shall be distributed to the eligible county for the benefit of such municipalities as determined by the board of county commissioners.

(3) The division may utilize the fund to recover its direct and indirect costs in the administration of moneys pursuant to this section.

(4) All moneys received from the state by each eligible entity pursuant to this section shall be deposited in its conservation trust fund and shall be expended only for the acquisition, development, and maintenance of new conservation sites or for capital improvements or maintenance for recreational purposes on any public site. An eligible entity shall not deposit any other moneys in its conservation trust fund. All interest earned on the investment of moneys in a local conservation trust fund shall be credited to the fund and shall be expended only for purposes authorized by this article.

(5) In the utilization of moneys received pursuant to this section, each eligible entity may cooperate or contract with any other government or political subdivision, including a conservation district established in accordance with the provisions of article 70 of title 35, C.R.S., or a local noxious weed control program, pursuant to part 2 of article 1 of this title. Subject to the separate accounting requirement of subparagraph (II) of paragraph (b) of subsection (2) of this section, such cooperation may include the sharing of moneys held by any such entities in their respective conservation trust funds for joint expenditures for the acquisition, development, and maintenance of new conservation sites, as defined in paragraph (e) of subsection (1) of this section in accordance with the provisions of article XXVII of the state constitution.

(6) On forms supplied by the division, each eligible entity shall annually submit to the division a statement showing the total amount of state moneys in its local conservation trust fund, the amount of any state moneys encumbered or expended from such fund since the previous year's report, and the purpose of the encumbrance or expenditure.

**Source:** L. 74: Entire section added, p. 432, § 2, effective July 1. L. 77: (2)(a), (2)(b), (4), and (5) amended and (2)(c) and (6) added, pp. 1425, 1426, §§ 1, 3, 2, 4, effective June 19. L. 82: (1)(b), (2)(a), (2)(b), (4), (5), and (6) amended and (1)(g) added, pp. 385, 386, §§ 5, 6, 7, effective April 30. L. 87: (1)(g) amended and (1.5) added, p. 1200, § 1, effective April 22; (1)(g)(II) amended, p. 1589, § 68, effective July 10. L. 89: IP(2)(b) amended, p. 1053, § 2, effective April 7. L. 2004: (1)(a.5) added and (2)(a)(I), (2)(b), (3), (4), (5), and (6) amended, pp. 1886, 1887, §§ 3, 4, 2, effective July 1. L. 2010: (5) amended, (SB 10-098), ch. 183, p. 658, § 2, effective April 29.

**Editor's note:** Section 4 of chapter 384, Session Laws of Colorado 2004 (Senate Bill 04-176), specified that the introductory portion to subsection (6) was amended; however, subsection (6) does not contain an introductory portion, and for clarity of the legislative intent, the entire subsection is set out with the amendments made in said bill.

**Cross references:** (1) For the transfer of moneys from the state lottery fund to the conservation trust fund, see § 24-35-210 (4.1)(a).

(2) For the legislative declaration in the 2010 act amending subsection (5), see section 1 of chapter 183 and section 194 of chapter 419, Session Laws of Colorado 2010.

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## **29-21-102. Certification - monitoring - enforcement - rules.**

(1) The treasurer of a municipality or special district, the chief financial officer, or the official custodian of the conservation trust fund of an eligible entity shall annually review and certify to the division that the eligible entity's self-reported conservation trust fund expenditures comply with the requirements of this article and of rules promulgated pursuant to this article.

(2) The division may require eligible entities to file such annual reports as it deems necessary, and shall review the annual reports submitted pursuant to this article. The review may be conducted by the division's own permanent staff, through a personal services contract, or by delegating responsibility to an independent third party. If the division determines that an eligible entity has violated this article, the division shall take such enforcement measures as it deems necessary to ensure compliance with this article.

(3) By September 1, 2004, the director of the division shall promulgate rules as necessary to carry out this article, including:

(a) Procedures necessary to allow the division or its agents to monitor eligible entities' compliance with the requirements of this article and of rules promulgated pursuant to this article, including annual reporting and entry and inspection of records regarding accounting and expenditures of revenues from the conservation trust fund;

(b) Procedures necessary to allow the division to enforce eligible entities' compliance with this article, including penalties, forfeiture of shares previously distributed, issuance of an order after a hearing held pursuant to section 24-4-105, C.R.S., to repay to a state or local conservation trust fund specific revenues from a conservation trust fund that were expended for purposes that are not authorized by this article, and, if the eligible entity fails to timely comply with the order, issuance of an order to the treasurer holding moneys of the eligible entity that were generated pursuant to the taxing authority of the eligible entity to prohibit the release of any such moneys until the eligible entity complies with the order, and the ability to treat a noncompliant eligible entity as though it were an ineligible entity; and

(c) Guidance regarding allowable expenditures of conservation trust fund revenues to facilitate eligible entities' compliance with this article.

(4) The division shall afford to any eligible entity written notice and an opportunity for a hearing before taking any enforcement action pursuant to this article.

**Source:** L. 2004: Entire section added, p. 1885, § 1, effective July 1.

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