

An Act

HOUSE BILL 24-1453

BY REPRESENTATIVE(S) Ricks, Bacon, Duran, English, Epps, Hamrick, Joseph, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Titone, Velasco, Vigil, Woodrow, McCluskie;
also SENATOR(S) Coleman and Kolker, Bridges, Cutter, Exum, Jaquez Lewis, Michaelson Jenet, Priola, Sullivan.

CONCERNING THE RELOCATION OF THE CLIMBER ACT FROM THE DEPARTMENT OF THE TREASURY TO THE OFFICE OF ECONOMIC DEVELOPMENT.

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

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** part 6 of article 48.5 of title 24 as follows:

PART 6

COLORADO LOANS FOR INCREASING MAIN STREET BUSINESS ECONOMIC RESILIENCY ACT

24-48.5-601. [Formerly 24-36-201] Short title. The short title of this ~~part 2~~ PART 6 is the "Colorado Loans for Increasing Main Street Business Economic ~~Recovery~~ RESILIENCY Act" or "CLIMBER Act".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

24-48.5-602. [Formerly 24-36-202] Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) There are nearly one hundred forty thousand small businesses with employees in Colorado;

(b) Small businesses in Colorado make up a disproportionately larger share of the economy of the state compared to the United States as a whole;

(c) Small businesses collectively employed over one million Coloradans before the public health crisis caused by COVID-19 began;

(d) The COVID-19 pandemic has harmed public health and economic conditions across the entire world, including the state of Colorado, across metropolitan regions, small towns, and rural communities, and has had a particularly deep negative financial impact on small businesses, their employees, and their home communities;

(e) The wide-ranging AND CONTINUING health and economic impacts of the COVID-19 pandemic are unprecedented in recent history and create unique challenges for the state;

(f) The health, safety, and welfare of the people of the state depend on the recovery of the state's economy, including the small businesses that make up a significant share of that economy;

(g) On March 27, 2020, the president of the United States signed the federal "Coronavirus Aid, Relief, and Economic Security Act", also known as the "CARES Act", Pub.L. 116-136, to provide necessary federal funding for COVID-19 response and recovery;

(h) The CARES Act, along with other federal laws and programs, provided many critical resources for small businesses, but those resources are not expected to be sufficient to sustain the large and diverse small business community in the state as it recovers ~~over the next few years~~ from the COVID-19 crisis AND THE RESULTING ONGOING ECONOMIC HARDSHIPS;

(i) The governor's council on economic stabilization and growth, made up of volunteers from the private, public, and philanthropic sectors

with diverse backgrounds from across Colorado, has recommended that the state seed the establishment of a fund of over one hundred million dollars to stimulate loans from lending institutions doing business in Colorado to Colorado small businesses to support the state's recovery and resiliency from the effects of the COVID-19 pandemic;

(j) There is a well-functioning network of respected lending institutions across the state who are committed to the health of Colorado's economy and want to contribute their expertise and community relationships to support the success of Colorado's small business community;

(k) The state will rely on those lending institutions as essential partners in a small business recovery loan program; and

(l) Authorizing the creation of a small business recovery AND RESILIENCY loan program seeded by money provided by the state will support Colorado small businesses affected by the COVID-19 crisis, and assist in the overall economic recovery of the state, AND SUPPORT RESILIENCY FOR SMALL BUSINESSES AS NEW CHALLENGES EMERGE.

(2) The general assembly further finds and declares that:

(a) While the loan program authorized by this ~~part 2~~ PART 6 will be predominately capitalized by private sector investments, the limited use of state money obtained through the sale of insurance premium tax credits that will result in future state tax expenditures incurred for the purpose of supporting the program will, under the current economic conditions, result in the formation of more private capital at better terms for small business borrowers than would otherwise be available;

(b) The loan program, if successful, has the potential to help small businesses survive the crisis caused by THE COVID-19 pandemic, and to protect jobs across the state, AND SUPPORT RESILIENCY FOR SMALL BUSINESSES AS NEW CHALLENGES EMERGE, which in turn will generate and sustain tax revenues to both the state and local governments;

(c) Preserving jobs with small businesses will also reduce public expenditures on safety net programs and other forms of assistance needed by those who have become unemployed as a result of the crisis caused by

COVID-19;

(d) The state money contributed to the loan program therefore serves an important and discrete public purpose in securing the state's economic and overall recovery from the crisis caused by COVID-19 AND IN ENSURING THE STATE'S RESILIENCY AMONG SMALL BUSINESSES AS NEW CHALLENGES EMERGE; and

(e) Supporting the state's recovery from the crisis caused by COVID-19 AND ENSURING THE STATE'S RESILIENCY AMONG SMALL BUSINESSES AS NEW CHALLENGES EMERGE is the primary purpose of the loan program and outweighs any benefit to private individuals or entities.

(3) The general assembly further finds and declares that:

(a) The insurance premium tax credits authorized by this ~~part 2~~ PART 6 as a method to provide money to the loan program are available only to insurance companies that incur premium tax liability in the state;

(b) The tax credits can only be used by an insurance company to offset tax liability actually incurred by the insurance company;

(c) The tax credits are not refundable and do not impose an obligation of payment in any future year upon the state;

(d) The use of proceeds from the sale of insurance premium tax credits to seed the loan program allows the state to accomplish this important public purpose through the use of future tax expenditures and therefore:

(I) Does not require the state to borrow money, extend or pledge the state's credit, or obligate the state to make future payments from state revenues; and

(II) Does not otherwise create any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever for purposes of section 20 (4)(a) of article X of the state constitution.

24-48.5-603. [Formerly 24-36-203] Definitions. As used in this ~~part 2~~ PART 6, unless the context otherwise requires:

(1) "Colorado credit reserve" means the Colorado credit reserve program described in section 24-46-104 (1)(n).

(2) "Contract" means a contract entered into by the ~~state treasurer~~ OFFICE OF ECONOMIC DEVELOPMENT in accordance with ~~section 24-36-205~~ (H) SECTION 24-48.5-605 (1).

(3) "Department" means the department of the treasury.

(4) "Eligible borrower" means a business that, as determined by the oversight board:

(a) Has its principal place of business in the state;

(b) Has at least one but fewer than one hundred employees;

(c) Can demonstrate that it had at least one year of positive cash flow as determined by the oversight board; and

(d) Can demonstrate that it has a current debt-service coverage ratio of at least one-to-one or a higher level as determined by the oversight board.

(5) "Loan program" means ~~a~~ THE small business recovery AND RESILIENCY loan program established in accordance with ~~section 24-36-205~~ SECTION 24-48.5-605.

(6) "Loan program manager" means an entity the ~~state treasurer~~ OFFICE OF ECONOMIC DEVELOPMENT contracts with to establish and administer the loan program in accordance with ~~section 24-36-205 (2)~~ SECTION 24-48.5-605 (2).

(7) "Office" ~~of economic development~~ means the Colorado office of economic development created in section 24-48.5-101.

(8) "Oversight board" means the small business recovery AND RESILIENCY loan program oversight board created in ~~section 24-36-204~~ SECTION 24-48.5-604.

(9) "Premium tax liability" means the liability imposed by section 10-3-209 or 10-6-128, or, in the case of a repeal or reduction by the state of

the liability imposed by section 10-3-209 or 10-6-128, any other tax liability imposed upon an insurance company by the state.

(10) "Qualified taxpayer" means an insurance company authorized to do business in Colorado that has premium tax liability owing to the state and that purchases a tax credit under this ~~part 2~~ PART 6. "Qualified taxpayer" also includes an insurance company that receives or assumes a tax credit transferred in accordance with ~~section 24-36-206 (7)(c) or 24-36-207 (6)~~; SECTION 24-48.5-606 (7)(e) OR 24-48.5-607 (6), or that receives or assumes a tax credit as an affiliate of a qualified taxpayer or transferee. For purposes of this ~~subsection (10)~~ PART 6, "affiliate" has the same meaning as set forth in section 10-3-801 (1).

(11) "Small business recovery AND RESILIENCY fund" or "fund" means the small business recovery AND RESILIENCY fund established in ~~section 24-36-208~~ SECTION 24-48.5-608.

(12) "Small business recovery tax credit" or "tax credit" means the tax credit created in ~~section 24-36-206~~ SECTION 24-48.5-606.

(13) "Tax credit sale proceeds" or "sale proceeds" means the money or other liquid asset acceptable to the state treasurer that a qualified taxpayer pays to the department AND that is deposited in the small business recovery AND RESILIENCY fund.

24-48.5-604. [Formerly 24-36-204] Small business recovery and resiliency loan program oversight board - creation - report. (1) The small business recovery AND RESILIENCY loan program oversight board is hereby created in the ~~department~~ DIVISION OF BUSINESS FUNDING AND INCENTIVES WITHIN THE OFFICE to help establish and oversee the terms and conditions of a contract or contracts through which the ~~treasurer~~ OFFICE may provide first loss capital to a loan program or the Colorado credit reserve. This section does not prohibit a loan program manager of a specific loan program or the Colorado credit reserve from establishing a separate investment advisory committee for that loan program.

(2) (a) The oversight board consists of five members, as follows:

(I) The state treasurer or the state treasurer's designee;

(II) The director of the minority business office created in section 24-49.5-102, on behalf of the office of economic development, or the director's designee;

(III) One member appointed by the speaker of the house of representatives;

(IV) One member appointed by the president of the senate; and

(V) One member appointed by the governor.

(b) The appointing authorities shall make their initial appointments to the oversight board no later than July 31, 2020.

(c) The members appointed pursuant to subsection (2)(a) of this section must have substantial private sector experience in commercial banking or capital market activities and must have obtained executive-level positions in these industries.

(d) The chair of the governor's council on economic stabilization and growth and the co-chairs of the council's financial services committee shall consult with and provide recommendations on initial appointments to the appointing authorities.

(3) Each member of the oversight board who is appointed pursuant to subsection (2) of this section serves at the pleasure of the official who appointed the member. The term of appointment is three years. An appointed member may serve multiple terms. In the event of a vacancy in an appointed position on the oversight board, a new member ~~shall~~ MUST be appointed in the same manner as provided in subsections (2)(a)(III) to (2)(a)(V) of this section for the unexpired portion of the term.

(4) Each member of the oversight board serves without compensation but is entitled to reimbursement for actual, reasonable, and necessary expenses incurred in the performance of ~~his or her~~ THE MEMBER'S duties ~~as a member of~~ ON the oversight board.

(5) The state treasurer, or the state treasurer's designee, ~~shall serve~~ SERVES as the chair of the oversight board.

(6) The oversight board shall meet at least once every quarter. The chair may call such additional meetings as are necessary for the oversight board to complete its duties.

(7) The oversight board is a state public body subject to part 4 of article 6 of this title 24. In addition to any other requirements, the oversight board shall hold meetings open to the public, publish the agenda for each meeting in advance, keep and publish minutes from each meeting, provide advanced notification of meeting times to banking trade associations and other groups that request notification, and receive written and public testimony at each meeting.

(8) The oversight board's activities with regard to a contract or contracts for the provision of state money for a loan program established in accordance with ~~section 24-36-205~~ SECTION 24-48.5-605 include, at a minimum:

(a) Consulting with the ~~state treasurer~~ OFFICE AND THE DIVISION OF BUSINESS FUNDING AND INCENTIVES WITHIN THE OFFICE on the selection of a loan program manager;

(b) In consultation with lending industry leaders and representatives of small businesses, determining specific terms applicable to a loan program as required in ~~section 24-36-205~~ SECTION 24-48.5-605, which terms must be designed in good faith to procure the participation of lending institutions and be consistent with regulatory requirements and underwriting criteria, including the duration of the geographic restriction of money in a loan program;

(c) Providing guidance and input throughout the implementation of a loan program;

(d) Establishing and publishing targets for the percentage of loans supported by a loan program that are made to businesses owned by women, minorities, and veterans and to businesses located in rural counties. In establishing the targets required by this subsection (8)(d), the oversight board shall consult with the minority business office within the office of the governor and WITH the division of business funding and incentives within the office. ~~of economic development~~

(e) Regularly reviewing progress in achieving the targets established pursuant to subsection (8)(d) of this section and making adjustments to a loan program to help achieve the targets if needed; and

(f) Providing such additional oversight and creating policies and procedures as may be necessary to ensure that the program complies with the requirements of this ~~part 2~~ PART 6 and fulfills its ~~purpose~~ PURPOSES of supporting the state's recovery from the COVID-19 pandemic by assisting Colorado small businesses in recovering from the crisis caused by COVID-19 AND OF ENSURING RESILIENCY AMONG SMALL BUSINESSES AS NEW CHALLENGES EMERGE.

(9) The oversight board shall consult with small businesses in establishing the criteria for eligible borrowers pursuant to ~~section 24-36-203~~ (4) SECTION 24-48.5-603 (4).

(10) The oversight board shall adopt a conflict of interest policy for its members ~~in order~~ to prevent those who serve on the board from profiting or otherwise benefiting from eligible loans.

(11) A member of the oversight board may assist in raising money or investments for a loan program without compensation.

(12) (a) The oversight board shall submit a written report on the implementation of the loan program to the joint budget committee. The oversight board shall submit its first report on or before November 30, 2020, and shall submit the report each six months thereafter for a period of two years. After the report submitted November 30, 2022, the oversight board shall submit the report annually, on or before November 30 of each year. The oversight board shall also submit the report once each year in fiscal years 2020-21 and 2021-22 to the business affairs and labor committee of the house of representatives ~~or any successor committee~~; and the business, labor, and technology committee of the senate, or any successor ~~committee~~ COMMITTEES. Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the requirement to submit the report required in this subsection (11) continues until this section is repealed.

(b) The report must include, at a minimum, information on the following:

- (I) The number and size of loans made;
 - (II) The geographic distribution of loans made;
 - (III) The distribution of loans made by business sector;
 - (IV) The demographics of the owners of the businesses receiving loans, including the number of businesses owned by women, minorities, and veterans;
 - (V) The number of loans made to rural businesses;
 - (VI) The size of the businesses receiving loans;
 - (VII) The number of people employed by the businesses receiving loans;
 - (VIII) Distributions or revenue received by the state from the program;
 - (IX) The financial performance of the fund;
 - (X) The default rates for loans made by the program;
 - (XI) Borrower interest rates on the loans and an explanation of how the rates comply with the requirements of ~~section 24-36-205 (4)(b)(V)~~ SECTION 24-48.5-605 (4)(b)(V); and
 - (XII) Any other information requested by the chair of the joint budget committee, OR BY the business affairs and labor committee of the house of representatives ~~or any successor committee~~, or the business, labor, and technology committee of the senate, or any successor ~~committee~~ COMMITTEES.
- (c) The oversight board shall make a presentation to a joint meeting of the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or any successor committees, at least once each fiscal year or more often if requested by the chairs of the committees.

(13) ~~This section is repealed, effective June 30, 2029.~~

24-48.5-605. [Formerly 24-36-205] Small business recovery and resiliency loan program - creation - requirements - oversight.

(1) (a) The ~~state treasurer~~ OFFICE is authorized to enter into a contract or contracts to establish a small business recovery AND RESILIENCY loan program in accordance with this ~~part 2~~ PART 6.

(b) The purpose of the loan program is to support the state's recovery from the economic crisis caused by COVID-19 through leveraging private investment to support Colorado small businesses recovering from the crisis caused by COVID-19 by making loans, acquiring participation interest in loans, leveraging private small business lending through the Colorado credit reserve program, or other activities that accomplish the same purpose. THE LOAN PROGRAM IS ALSO DESIGNED TO SUPPORT RESILIENCY FOR SMALL BUSINESSES AS NEW CHALLENGES EMERGE. The loan program ~~shall~~ MAY only make loans directly if federal or state bank regulators prohibit the banking industry from originating loans for the loan program.

(2) The ~~state treasurer~~ OFFICE may contract with the Colorado housing and finance authority created in part 7 of article 4 of title 29 or with a bank, nonprofit organization, nondepository community development financial institution, business development corporation, certified public accountant firm, or fund manager to administer a loan program. If the ~~state treasurer~~ OFFICE contracts with an entity other than the Colorado housing and finance authority to administer a loan program, the ~~state treasurer~~ OFFICE shall use an open and competitive process to select the entity. The ~~state treasurer~~ OFFICE shall consult with ~~the director of the office of economic development~~ and the oversight board in selecting and contracting with a loan program manager.

(3) (a) Notwithstanding any restriction on the investment of state money set forth in section 24-36-113 or in any other provision of law, subject to the availability of money in the small business recovery AND RESILIENCY fund and the requirements of this ~~part 2~~ PART 6, THE OFFICE MAY PROVIDE FIRST LOSS CAPITAL TO A LOAN PROGRAM OR PROGRAMS OR TO THE COLORADO CREDIT RESERVE FROM THE SMALL BUSINESS RECOVERY AND RESILIENCY FUND.

~~(I) In fiscal year 2020-21, the state treasurer may provide up to thirty million dollars in first loss capital to a loan program or programs or to the Colorado credit reserve from the small business recovery fund; and~~

~~(II) Subject to the limitations in subsection (3)(b) of this section, in fiscal years 2021-22, 2022-23, and 2023-24, the state treasurer may provide up to a total of forty million dollars in first loss capital to a loan program or programs or to the Colorado credit reserve from the small business recovery fund.~~

~~(b) The money provided under this subsection (3) must be provided in tranches of ten million dollars or less. up to a maximum amount of fifty million dollars in all tranches combined across fiscal years. 2020-21 through 2023-24. The state treasurer shall not provide a tranche to a loan program or to the Colorado credit reserve until at least ninety percent of the money in any prior tranche has been invested in small business loans in accordance with subsection (4) of this section, as determined by the oversight board and certified by the loan program manager. Money provided to the Colorado credit reserve is considered invested in small business loans for the purposes of this subsection (3)(b) once it is paid to the Colorado housing and finance authority.~~

~~(4) Any contract for the administration of a loan program must include the following terms in order to receive money provided by the state treasurer OFFICE pursuant to subsection (3) of this section:~~

~~(a) Except for money contributed to the Colorado credit reserve, the money FROM THE SMALL BUSINESS RECOVERY AND RESILIENCY FUND provided by the state treasurer OFFICE in a single tranche shall MAY not be committed pursuant to a contract relating to a loan program until money is committed pursuant to a contract relating to a loan program from other sources at a ratio of at least four dollars from other sources for each one dollar provided by the state FROM THE SMALL BUSINESS RECOVERY AND RESILIENCY FUND. If a loan program manager does not secure sufficient investments from other sources to meet this requirement within the time allowed by a contract, the money provided by the state shall MUST be returned to the small business recovery AND RESILIENCY fund.~~

~~(b) Except for money contributed to the Colorado credit reserve, once the money in a tranche is matched in accordance with subsection (4)(a)~~

of this section, it must be used to make loans or purchase participation interest in loans for working capital, including the purchase of equipment, to eligible borrowers, or other activities that accomplish the same purpose. The oversight board shall consult with lending industry leaders and representatives of small businesses with regard to subsections (4)(b)(I) to (4)(b)(VI) of this section. Each loan must be subject to the following terms:

(I) The loan must be in an amount of at least ten thousand dollars but not more than five hundred thousand dollars, as determined by the oversight board;

(II) The loan must have a maximum initial maturity of up to ten years, based on the need of the eligible borrower, with no penalty for prepayment, as determined by the oversight board. The originating lender may extend the term for purposes of restructuring the loan;

(III) The principal must be amortized over the term of the loan or a longer period, as determined by the oversight board;

(IV) Principal and interest payments may be deferred for up to one year, as determined by the oversight board, with the unpaid interest being capitalized. Deferrals must be limited to circumstances of hardship created by the COVID-19 pandemic OR BASED ON ONGOING ECONOMIC CONDITIONS.

(V) The loan must carry an interest rate that is lower than would otherwise be available on a risk-adjusted basis from a commercial lender or that bears terms that are not otherwise available from a commercial lender, as determined by the oversight board; and

(VI) The eligible borrower may provide a personal guarantee, collateral, or other security as determined by the oversight board, which may be subordinate to existing debt.

(c) (I) ~~In order to~~ To ensure geographic equity, each tranche of loan funding must be subject to an initial period of time in which a portion of the money is allocated to each county on a basis proportional to the county's share of small businesses relative to the state, the county's share of small business employees relative to the state, the county's share of small business personal property relative to the state, or other similar metrics as determined by the oversight board, or based on a formula established under subsection

(4)(c)(IV) of this section. The money allocated to each county must be reserved for applications from eligible borrowers located in that county for the initial period of time. For the purposes of this subsection (4)(c), an eligible borrower is considered to be located in the county in which it has its principal place of business, as reflected in its most recent filing with the secretary of state or subject to such other documentation as the oversight board establishes. The oversight board shall determine the amount of time in which the money in each tranche is subject to a geographic restriction under this subsection (4)(c)(I).

(II) Once the time period established by the oversight board under subsection (4)(c)(I) of this section has passed, all money remaining in the tranche is available to eligible borrowers on a statewide basis.

(III) For money contributed to the Colorado credit reserve, the oversight board may waive the requirements of this subsection (4)(c) or establish alternative geographic distribution requirements or targets.

(IV) For any tranche of loan funding, the oversight board may, in its discretion, establish an alternative formula for the allocation of funds MONEY to counties for purposes of subsection (4)(c)(I) of this section that accounts for how affected each county has been by the COVID-19 pandemic and its impacts OR BASED ON ONGOING ECONOMIC CONDITIONS.

(d) (I) A loan program manager shall make every effort to achieve benchmarks published by the oversight board pursuant to ~~section 24-36-204~~ (8)(d) SECTION 24-48.5-604 (8)(d) for the percentage of loans supported by the program that are made to businesses owned by socially and economically disadvantaged individuals, including businesses owned by women, minorities, and veterans, and to businesses located in rural counties. A loan program manager shall consult with the minority business office within the office of the governor and the division of business funding and incentives within the office of ~~economic development~~ to develop an outreach strategy for marketing the loan program to businesses owned by women, minorities, and veterans and businesses located in rural counties.

(II) For money contributed to the Colorado credit reserve, the oversight board may waive the requirements of this subsection (4)(d) or may establish alternative benchmarks for the percentage of loans supported by the program that are made to businesses owned by socially and

economically disadvantaged individuals, including businesses owned by women, minorities, and veterans, and to businesses located in rural counties.

(e) A loan program manager shall work with the division of business funding and incentives within the office of economic development to align the program with other access to capital programs in the state.

(5) If the money in a tranche is not fully invested in small business loans as determined by the oversight board in the time period allowed under a contract, the portion of the unused money provided by the state ~~shall~~ MUST be returned to the small business recovery AND RESILIENCY fund.

(6) Distributions or revenue paid to the state pursuant to a contract under this section ~~shall~~ MUST be deposited in the small business recovery AND RESILIENCY fund. ~~except that, if such distributions or revenue are paid after the small business recovery fund is repealed, the money shall be paid to the state treasurer, who shall credit the money to the general fund~~

(7) The loan program manager shall report on the implementation of the loan program to the oversight board at least quarterly, within one month after the end of each calendar quarter, or more often if requested by the oversight board. The ~~reports~~ REPORT must include the information necessary to allow the OVERSIGHT board to provide the reports required in ~~section 24-36-204 (12)~~ SECTION 24-48.5-604 (12), and any additional information requested by the board.

24-48.5-606. [Formerly 24-36-206] Small business recovery tax credits - authorization to issue - terms - report. (1) A qualified taxpayer may purchase small business recovery tax credits from the department in accordance with this section and may apply the tax credits against its premium tax liability in accordance with ~~section 24-36-207~~ SECTION 24-48.5-607.

(2) (a) The department is authorized to issue tax credit certificates to qualified taxpayers equal to the lesser of a total face value of up to forty million dollars or total sales proceeds of up to thirty million five hundred thousand dollars in fiscal year 2020-21.

(b) The department is authorized to issue tax credit certificates to qualified taxpayers equal to the lesser of a combined total face value of up

to twenty-eight million dollars or combined total sales proceeds of up to twenty-one million dollars in fiscal years 2021-22 and 2022-23.

(c) The department may contract with an independent third party to conduct or consult on a bidding process among qualified taxpayers to purchase the tax credits.

(d) The department shall consult with insurance companies in advance of issuing any tax credits in accordance with this section.

(3) An insurance company authorized to do business in Colorado seeking to purchase tax credits must apply to the department in the manner prescribed by the department.

(4) Using procedures adopted by the department or, if applicable, by an independent third party, each insurance company that submits an application shall make a timely and irrevocable offer, contingent only upon the department's issuance to the insurance company of the tax credit certificates, to make a specified purchase payment amount to the department on dates specified by the department. The offer must include all of the following:

(a) The requested amount of tax credits, which must not be less than any minimum amount established in procedures by the department or, if applicable, the independent third party;

(b) The qualified taxpayer's proposed tax credit purchase amount for each tax credit dollar requested. The minimum proposed tax credit purchase amount must be either:

(I) The percentage of the requested dollar amount of tax credits that the department ~~and~~ OR, if applicable, the independent third party determines to be consistent with market conditions as of the offer date; or

(II) If no amount is established by the department or THE independent third party pursuant to subsection (4)(b)(I) of this section, seventy-five percent of the requested dollar amount of tax credits; and

(c) Any other information THAT the department or, if applicable, THE independent third party requires.

(5) The department shall provide written notice to each insurance company that submits an application indicating whether or not the insurance company has been approved as a purchaser of tax credits and, if so, the amount of tax credits allocated and the date by which payment of the tax credit sale proceeds must be made.

(6) On receipt of payment of the sale proceeds, the department shall issue to each qualified taxpayer a tax credit certificate. The tax credit certificate must state all of the following:

(a) The total amount of premium tax credits that the qualified taxpayer may claim;

(b) The amount that the qualified taxpayer has paid or agreed to pay in return for the issuance of the tax credit certificates and the date of the payment;

(c) The dates on which the tax credits will be available for use by the qualified taxpayer;

(d) Any penalties or other remedies for noncompliance;

(e) The procedures to be used for transferring or assuming the tax credits in accordance with subsection (7)(e) of this section or ~~section 24-36-207 (6)~~ SECTION 24-48.5-607 (6), or between affiliates; ~~as defined in section 10-3-801 (1)~~

(f) The serial number of the tax credit certificate; and

(g) Any other requirements deemed necessary by the department as a condition of issuing the tax credit certificate.

(7) (a) The department shall not issue a tax credit certificate to any qualified taxpayer that fails to provide the tax credit sale proceeds within the time SPECIFIED BY the department. ~~specifies~~

(b) A qualified taxpayer that fails to provide the tax credit sale proceeds within the time SPECIFIED BY the department ~~specifies~~ is subject to a penalty equal to ten percent of the amount of the purchase price that remains unpaid. The penalty must be paid to the department within thirty

days after demand.

(c) The department may offer to reallocate the defaulted tax credits among other qualified taxpayers so that the result after reallocation is the same as if the initial allocation had been performed without considering the tax credit allocation to the defaulting qualified taxpayer.

(d) If the reallocation of tax credits under subsection (7)(c) of this section results in the payment by another qualified taxpayer of the amount of tax credit sale proceeds not paid by the defaulting qualified taxpayer, the department may waive the penalty imposed under subsection (7)(b) of this section.

(e) A qualified taxpayer that fails to pay the tax credit sale proceeds within the time specified BY THE DEPARTMENT may avoid the imposition of the penalty by transferring the allocation of tax credits to a new or existing qualified taxpayer within thirty days after the due date of the defaulted installment. Any transferee of an allocation of tax credits of a defaulting qualified taxpayer under this subsection (7) shall agree to pay the tax credit sale proceeds within five days after the date of the transfer.

(8) The tax credit sale proceeds provided by a qualifying taxpayer in return for a tax credit certificate must be deposited in the small business recovery AND RESILIENCY fund.

(9) (a) The department shall provide a report to the division of insurance in the department of regulatory agencies for each fiscal year in which it issues tax credit certificates pursuant to this ~~part 2~~ PART 6 within thirty days after the issuance of the credits. The report must include:

(I) The name and identifying number issued by the national association of insurance commissioners, or any successor organization, of each qualified taxpayer to which the department issued a tax credit certificate;

(II) The total amount of the tax credit allocated to the qualified taxpayer; and

(III) The serial number of the tax credit certificate issued to the qualified taxpayer.

(b) The department shall maintain records of each tax credit certificate issued, transferred, or assumed that are sufficient to allow the division of insurance in the department of regulatory agencies to verify the issuance and ownership of the credit.

24-48.5-607. [Formerly 24-36-207] Use of small business recovery tax credits - carry over. (1) For a tax credit certificate issued in fiscal year 2020-21:

(a) The qualified taxpayer may claim up to fifty percent of the credit against premium tax liability incurred for a taxable year that begins on or after January 1, 2025; except that a taxpayer may not reduce its estimated tax payments in proportion to such credit prior to July 1, 2025; and

(b) The qualified taxpayer may claim the remaining amount of the credit against premium tax liability incurred for a taxable year that begins on or after January 1, 2026; except that a taxpayer may not reduce its estimated tax payments in proportion to such credit prior to July 1, 2026.

(2) For a tax credit certificate issued in fiscal year 2021-22 or fiscal year 2022-23:

(a) The qualified taxpayer may claim up to fifty percent of the credit against premium tax liability incurred for a taxable year that begins on or after January 1, 2023; except that a taxpayer may not reduce its estimated tax payments in proportion to such credit prior to July 1, 2023; and

(b) The qualified taxpayer may claim the remaining amount of the credit against premium tax liability incurred for a taxable year that begins on or after January 1, 2024; except that a taxpayer may not reduce the taxpayer's estimated tax payments in proportion to such credit prior to July 1, 2024.

(3) (a) The total credit to be applied by a qualified taxpayer in any one year must not exceed the premium tax liability of the qualified taxpayer for the taxable year. If the qualified taxpayer cannot use the entire amount of the tax credit for the taxable year in which the taxpayer is eligible for the credit, the excess may be carried over to succeeding taxable years and used as a credit against the premium tax liability of the taxpayer for those taxable years; except that:

(I) For a credit issued in fiscal year 2020-21, the credit may not be carried over to any taxable year that begins after December 31, 2031; and

(II) For a credit issued in fiscal year 2021-22 or 2022-23, the credit may not be carried over to any taxable year that begins after December 31, 2029.

(b) Any amount of the credit that is not timely claimed expires and is not refundable.

(4) A qualified taxpayer claiming a credit under this ~~part 2~~ PART 6 shall submit the tax credit certificate with its tax return.

(5) A qualified taxpayer claiming a tax credit under this ~~part 2~~ shall PART 6 WILL not be required to pay any additional or retaliatory tax as a result of claiming the credit.

(6) If a qualified taxpayer holding an unclaimed tax credit is part of a merger, acquisition, or line of business divestiture transaction, the tax credit may be transferred to and assumed by the resulting entity if the resulting entity is an insurance company authorized to do business in Colorado that has premium tax liability. The qualified taxpayer that originally purchased the credit and the resulting entity shall notify the department in writing of the transfer or assumption of the credit in accordance with procedures adopted by the department. The department shall provide a copy of the notice to the division of insurance in the department of regulatory agencies and shall maintain a record of the transfer or assumption of the tax credit. The transfer or assumption of the tax credit does not affect the time schedule for claiming the tax credit as provided in this section.

24-48.5-608. [Formerly 24-36-208] Small business recovery and resiliency fund. (1) The small business recovery AND RESILIENCY fund is hereby created in the state treasury. The fund consists of:

(a) Tax credit sale proceeds received from qualified taxpayers and deposited in the fund pursuant to ~~section 24-36-205~~ SECTION 24-48.5-605;

(b) Distributions, revenue, or money returned to the state from a loan program established pursuant to ~~section 24-36-205~~ SECTION

24-48.5-605 and deposited in the fund; and

(c) Any other money that the general assembly may appropriate or transfer to the fund; AND

(d) ANY GIFTS, GRANTS, DONATIONS, OR FEDERAL FUNDS RECEIVED PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(2) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the small business recovery AND RESILIENCY fund to the fund.

(3) Money in the fund is continuously appropriated to the ~~department~~ OFFICE for the purposes specified in this ~~part 2~~ PART 6. The ~~department~~ OFFICE may expend money in the fund to pay for its direct and indirect costs in implementing and administering this ~~part 2~~ PART 6.

(4) ~~Beginning in fiscal year 2027-28, the state treasurer shall credit any unexpended and unencumbered money remaining in the fund at the end of a fiscal year to the general fund.~~

(5) ~~The state treasurer shall transfer all unexpended and unencumbered money in the fund at the end of the fiscal year on June 30, 2037, to the general fund.~~

(6) ~~This section is repealed, effective July 1, 2037.~~

(7) THE OFFICE MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS PART 6. THE OFFICE MAY ACCEPT AND EXPEND ANY FEDERAL MONEY MADE AVAILABLE FOR ANY PURPOSE CONSISTENT WITH THE PROVISIONS OF THIS PART 6. THE OFFICE SHALL TRANSMIT ALL MONEY RECEIVED THROUGH GIFTS, GRANTS, DONATIONS, OR FEDERAL MONEY TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE SMALL BUSINESS RECOVERY AND RESILIENCY FUND.

24-48.5-609. Transfer of functions - continuity of existence.

(1) ON SEPTEMBER 1, 2024, THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT IN CONNECTION WITH THE SMALL BUSINESS RECOVERY AND RESILIENCY LOAN PROGRAM PURSUANT TO THE FORMER PART 2 OF ARTICLE

36 OF THIS TITLE 24 ARE TRANSFERRED TO THE OFFICE PURSUANT TO THIS SECTION.

(2) (a) ON AND AFTER SEPTEMBER 1, 2024, THE OFFICERS AND EMPLOYEES OF THE DEPARTMENT WHOSE POWERS, DUTIES, AND FUNCTIONS CONCERN THE SMALL BUSINESS RECOVERY AND RESILIENCY LOAN PROGRAM AND WHOSE EMPLOYMENT IS DEEMED NECESSARY TO CARRY OUT THE SMALL BUSINESS RECOVERY AND RESILIENCY LOAN PROGRAM ARE TRANSFERRED TO THE DIVISION OF BUSINESS FUNDING AND INCENTIVES WITHIN THE OFFICE AND BECOME EMPLOYEES THEREOF.

(b) ANY EMPLOYEES WHO ARE TRANSFERRED TO THE OFFICE PURSUANT TO THIS SUBSECTION (2) AND WHO ARE CLASSIFIED EMPLOYEES IN THE STATE PERSONNEL SYSTEM SHALL RETAIN ALL RIGHTS TO THE PERSONNEL SYSTEM AND RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THE STATE, AND THEIR SERVICES SHALL BE DEEMED TO HAVE BEEN CONTINUOUS. ALL TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH STATE PERSONNEL SYSTEM LAWS AND REGULATIONS.

(3) ON OR BEFORE SEPTEMBER 1, 2024, ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF THE DEPARTMENT PERTAINING TO THE POWERS, DUTIES, AND FUNCTIONS TRANSFERRED TO THE OFFICE ARE TRANSFERRED TO AND BECOME THE PROPERTY OF THE OFFICE.

(4) WHENEVER THE DEPARTMENT OR THE STATE TREASURER IS REFERRED TO OR DESIGNATED BY A CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE POWERS, DUTIES, AND FUNCTIONS TRANSFERRED TO THE OFFICE PURSUANT TO THIS SECTION, SUCH REFERENCE OR DESIGNATION WILL BE DEEMED TO APPLY TO THE OFFICE, AS APPLICABLE. ALL CONTRACTS ENTERED INTO BY THE DEPARTMENT OR THE STATE TREASURER PRIOR TO SEPTEMBER 1, 2024, IN CONNECTION WITH THE SMALL BUSINESS RECOVERY AND RESILIENCY LOAN PROGRAM ARE HEREBY VALIDATED, WITH THE OFFICE SUCCEEDING TO ALL THE RIGHTS AND OBLIGATIONS OF SUCH CONTRACTS. ANY APPROPRIATIONS OF MONEY FROM PRIOR FISCAL YEARS OPEN TO SATISFY OBLIGATIONS INCURRED PURSUANT TO SUCH CONTRACTS ARE TRANSFERRED AND APPROPRIATED TO THE OFFICE FOR THE PAYMENT OF SUCH OBLIGATIONS.

(5) ALL POLICIES AND GUIDELINES OF THE DEPARTMENT IN CONNECTION WITH THE POWERS, DUTIES, AND FUNCTIONS TRANSFERRED TO THE OFFICE PURSUANT TO THIS SECTION CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, REPEALED, OR NULLIFIED PURSUANT TO LAW.

(6) THE RELOCATION OF THE CLIMBER ACT FROM THE DEPARTMENT TO THE OFFICE PURSUANT TO THIS PART 6 DOES NOT AFFECT THE VALIDITY OF ANY AGREEMENTS ENTERED INTO BY OR TAX CREDIT CERTIFICATES ISSUED BY THE STATE TREASURER OR THE DEPARTMENT PURSUANT TO THE AUTHORITY CONTAINED IN PART 2 OF ARTICLE 36 OF TITLE 24 AS IT EXISTED PRIOR TO SEPTEMBER 1, 2024.

SECTION 2. Repeal of provisions being relocated in this act. In Colorado Revised Statutes, **repeal** 24-36-201, 24-36-202, 24-36-203, 24-36-204, 24-36-205, 24-36-206, 24-36-207, and 24-36-208.

SECTION 3. Repeal of provisions not being relocated in this act. In Colorado Revised Statutes, **repeal** 24-36-209 and 24-36-210 as follows:

24-36-209. Office of economic development. ~~The office of economic development shall assist the state treasurer and the department in implementing this part 2.~~

24-36-210. Repeal of part. ~~This part 2 is repealed, effective December 31, 2040.~~

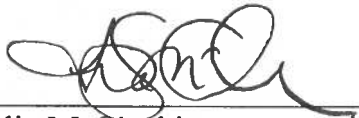
SECTION 4. In Colorado Revised Statutes, 24-75-402, **amend** (5)(qq) as follows:

24-75-402. Cash funds - limit on uncommitted reserves - reduction in the amount of fees - exclusions - definitions - repeal. (5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:

(qq) The small business recovery AND RESILIENCY fund created in ~~section 24-36-208~~ SECTION 24-48.5-608;

SECTION 5. Effective date. This act takes effect on September 1, 2024.

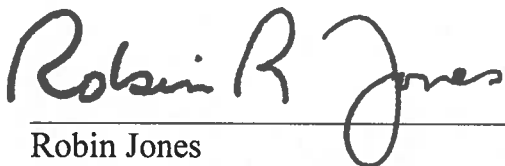
SECTION 6. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.



Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Steve Fenberg
PRESIDENT OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED Monday June 3rd 2024 at 1:00 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO