

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

INTRODUCED

LLS NO. 17-1132.04 Esther van Mourik x4215

HOUSE BILL 17-1356

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A BILL FOR AN ACT

101 **CONCERNING THE TEMPORARY AUTHORITY OF THE COLORADO**
102 **ECONOMIC DEVELOPMENT COMMISSION TO ALLOW CERTAIN**
103 **BUSINESSES TO TREAT SPECIFIC EXISTING INCOME TAX CREDITS**
104 **DIFFERENTLY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows the Colorado economic development commission to allow certain businesses that make a strategic capital investment in the state, subject to a maximum amount, and subject to the requirements of

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

the specified income tax credits, to treat any of the following income tax credits allowed to the business as either carryforwardable for a five-year period or as transferable:

- ! Colorado job growth incentive tax credit;
- ! Enterprise zone income tax credit for investment in certain property;
- ! Income tax credit for new enterprise zone business employees; and
- ! Enterprise zone income tax credit for expenditures for research and experimental activities.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-46-104.3 as
3 follows:

4 **24-46-104.3. Transferable income tax credits for certain**
5 **businesses located in the state - definitions.** (1) AS USED IN THIS
6 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "BUSINESS" MEANS A PERSON DOING BUSINESS IN THE STATE.

8 (b) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
9 REVENUE.

10 (c) "INCOME TAX CREDIT" MEANS THE INCOME TAX CREDITS
11 ALLOWED TO A BUSINESS NO SOONER THAN THE INCOME TAX YEAR
12 COMMENCING JANUARY 1, 2019, IN SECTION 39-22-531, 39-30-104,
13 39-30-105.1, OR 39-30-105.5.

14 (d) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC
15 DEVELOPMENT CREATED IN SECTION 24-48.5-101.

16 (e) "PERIOD" MEANS TEN CONSECUTIVE INCOME TAX YEARS
17 STARTING WITH THE BUSINESS' INCOME TAX YEAR THAT COMMENCES
18 IMMEDIATELY FOLLOWING THE DATE THE BUSINESS RECEIVES
19 PRECERTIFICATION FROM THE COMMISSION AUTHORIZING THE INCOME TAX
20 CREDITS TO BE TREATED DIFFERENTLY PURSUANT TO THIS SECTION.

1 (f) "STRATEGIC CAPITAL INVESTMENT" MEANS A CAPITAL
2 INVESTMENT TOTALING NOT LESS THAN ONE HUNDRED MILLION DOLLARS
3 THAT THE COMMISSION FINDS WILL BE SIGNIFICANT TO THE STATE AND IS
4 EXPECTED TO BE PRODUCTIVE OVER MANY YEARS.

5 (2) (a) (I) SUBJECT TO THE LIMITATIONS SPECIFIED IN SUBSECTION
6 (2)(b) OF THIS SECTION, COMMENCING JULY 1, 2017, THROUGH JUNE 30,
7 2020, IF A BUSINESS INTENDS TO MAKE A STRATEGIC CAPITAL INVESTMENT
8 IN THE STATE, THE COMMISSION MAY ISSUE A WRITTEN PRECERTIFICATION
9 TO THE BUSINESS TO GRANT THE BUSINESS THE AUTHORITY TO TREAT ITS
10 ALLOWED INCOME TAX CREDITS DURING THE BUSINESS' PERIOD
11 DIFFERENTLY AS SPECIFIED IN THIS SECTION. THE STRATEGIC CAPITAL
12 INVESTMENT MUST BE INITIATED AFTER THE ISSUANCE OF THE
13 PRECERTIFICATION AND COMPLETED BEFORE THE END OF THE BUSINESS'
14 PERIOD; EXCEPT THAT, IF A BUSINESS MAKES A STRATEGIC CAPITAL
15 INVESTMENT THAT COULD RESULT IN ALLOWED INCOME TAX CREDITS WITH
16 A TOTAL VALUE GREATER THAN THE PRECERTIFICATION LIMITATIONS SET
17 FORTH IN SUBSECTION (2)(b) OF THIS SECTION, THE COMMISSION MAY
18 ISSUE A SECOND OR THIRD WRITTEN PRECERTIFICATION TO THE SAME
19 BUSINESS IN THE FOLLOWING TWELVE-MONTH INTERVALS FOR THE SAME
20 STRATEGIC CAPITAL INVESTMENT, EVEN IF THE STRATEGIC CAPITAL
21 INVESTMENT HAS ALREADY BEEN INITIATED OR COMPLETED. IF, AFTER
22 PRECERTIFICATION AND DURING THE BUSINESS' PERIOD, THE BUSINESS
23 MEETS THE REQUIREMENTS OF ONE OR MORE OF THE INCOME TAX CREDITS
24 AS SET FORTH IN THE STATUTORY SECTIONS PERTAINING TO EACH CREDIT,
25 THEN ONCE THE INCOME TAX CREDITS ARE ALLOWED, THE CREDITS MAY
26 BE:

27 (A) USED AS AN OFFSET AGAINST THE BUSINESS' INCOME TAXES IN

1 THE INCOME TAX YEAR THAT THE INCOME TAX CREDIT IS ALLOWED;

2 (B) CARRIED FORWARD TO BE USED AGAINST THE BUSINESS'

3 INCOME TAX LIABILITY FOR NO MORE THAN FIVE YEARS, EXCEPT AS

4 PROVIDED IN SUBSECTION (2)(a)(II) OF THIS SECTION, USING THE CARRIED

5 FORWARD INCOME TAX CREDITS IN THE EARLIEST INCOME TAX YEARS

6 POSSIBLE; OR

7 (C) TRANSFERRED DURING THE CARRY-FORWARD PERIOD

8 DESCRIBED IN SUBSECTION (2)(a)(I)(B) OF THIS SECTION AND AS ALLOWED

9 IN SUBSECTION (4) OF THIS SECTION.

10 (II) THE FIVE-YEAR CARRY-FORWARD PERIOD COMMENCES WHEN

11 THE INCOME TAX CREDIT IS ALLOWED AND MAY NOT BE LIMITED BY THE

12 END OF THE BUSINESS' PERIOD DESCRIBED IN THIS SECTION.

13 (III) IF A BUSINESS TREATS ITS ALLOWED INCOME TAX CREDITS

14 DIFFERENTLY AS SPECIFIED IN THIS SECTION, THEN, EXCEPT AS PROVIDED

15 IN SUBSECTION (2)(b)(II) OF THIS SECTION, THE BUSINESS MAY NOT ELECT

16 TO RECEIVE A REFUND AS ALLOWED IN SECTION 39-30-104 (2.6).

17 (b) (I) ALL PRECERTIFICATIONS ISSUED BY THE COMMISSION IN

18 EACH TWELVE-MONTH INTERVAL FROM JULY 1, 2017, THROUGH JUNE 30,

19 2020, MAY NOT EXCEED TEN MILLION DOLLARS OF ESTIMATED TOTAL

20 VALUE OF ALL INCOME TAX CREDITS. ANY PORTION OF THE TEN MILLION

21 DOLLARS NOT PRECERTIFIED IN A TWELVE-MONTH INTERVAL MAY NOT BE

22 CARRIED FORWARD TO THE NEXT TWELVE-MONTH INTERVAL.

23 (II) IF THE ACTUAL VALUE OF THE INCOME TAX CREDITS THAT A

24 BUSINESS IS ALLOWED EXCEEDS THE PRECERTIFICATION'S ESTIMATED

25 VALUE OF THE INCOME TAX CREDITS, THEN THE BUSINESS MAY NOT TREAT

26 THE DIFFERENCE BETWEEN THE ESTIMATED VALUE OF THE INCOME TAX

27 CREDITS AND THE ACTUAL VALUE OF THE INCOME TAX CREDITS

1 DIFFERENTLY AS SPECIFIED IN THIS SECTION. INSTEAD, THE DIFFERENCE
2 MUST BE TREATED AS SPECIFIED IN THE STATUTORY SECTIONS FOR EACH
3 INCOME TAX CREDIT.

4 (3) THE BUSINESS SHALL NOTIFY THE COMMISSION WHEN THE
5 BUSINESS HAS MET THE REQUIREMENTS OF ONE OR MORE OF THE INCOME
6 TAX CREDITS IN THE PERIOD, SHALL PROVIDE THE COMMISSION WITH
7 VERIFIABLE EVIDENCE THAT THE STRATEGIC CAPITAL INVESTMENT WAS
8 MADE, AND SHALL SUBMIT AN AUDITED OPINION FROM AN INDEPENDENT
9 CERTIFIED PUBLIC ACCOUNTANT ATTESTING THAT THE INCOME TAX CREDIT
10 OR INCOME TAX CREDITS HAVE BEEN PROPERLY CALCULATED. IF THE
11 COMMISSION AGREES THAT THE BUSINESS HAS SATISFIED THE TERMS OF
12 THE PRECERTIFICATION, THEN THE OFFICE SHALL NOTIFY THE DEPARTMENT
13 IN WRITING OF THE DIFFERENT TREATMENT OF THE BUSINESS' INCOME TAX
14 CREDITS FOR THE BUSINESS' PERIOD.

15 (4) (a) IF THE BUSINESS CHOOSES TO TRANSFER ITS ALLOWED
16 INCOME TAX CREDITS, THEN THE INCOME TAX CREDITS ARE FREELY
17 TRANSFERABLE AND ASSIGNABLE, SUBJECT TO THE COMMISSION'S
18 APPROVAL PURSUANT TO THIS SECTION, AND SUBJECT TO ANY NOTICE AND
19 VERIFICATION REQUIREMENTS TO BE DETERMINED BY THE OFFICE; EXCEPT
20 THAT THE BUSINESS MAY ONLY TRANSFER THE PORTION OF THE INCOME
21 TAX CREDITS THAT WERE NOT APPLIED AGAINST THE BUSINESS' INCOME
22 TAX IMPOSED BY ARTICLE 22 OF TITLE 39.

23 (b) THE TRANSFEREE MAY USE ALL OR A PORTION OF THE
24 TRANSFERRED INCOME TAX CREDIT AS AN OFFSET AGAINST THE
25 TRANSFEREE'S INCOME TAX IMPOSED BY ARTICLE 22 OF TITLE 39. ANY
26 UNUSED PORTION OF THE TRANSFERRED INCOME TAX CREDIT MAY BE
27 CARRIED FORWARD AND USED AS AN INCOME TAX CREDIT AGAINST THE

1 TRANSFEREE'S SUBSEQUENT YEARS' INCOME TAX LIABILITY FOR AN
2 INTERVAL NOT TO EXCEED THREE ADDITIONAL INCOME TAX YEARS AND
3 SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.
4 THE TRANSFEREE MAY TRANSFER ANY UNUSED PORTION OF THE ACQUIRED
5 INCOME TAX CREDIT TO A SECONDARY TRANSFEREE IN THAT THREE
6 INCOME TAX YEAR INTERVAL, BUT THE SECONDARY TRANSFEREE MAY
7 ONLY OFFSET ITS ACQUIRED INCOME TAX CREDIT AGAINST ITS INCOME TAX
8 IMPOSED BY ARTICLE 22 OF TITLE 39 FOR THE REMAINDER OF THE THREE
9 INCOME TAX YEAR INTERVALS FROM THE DATE OF THE FIRST TRANSFEREE'S
10 ACQUISITION.

11 (c) WITH RESPECT TO THE INCOME TAX CREDIT SET FORTH IN
12 SECTION 39-30-104, IF THE BUSINESS SEEKS A WAIVER OF THE LIMITATION
13 SPECIFIED IN SECTION 39-30-104 (2)(c) AND AS ALLOWED IN SECTION
14 39-30-104 (2)(c)(II), AND THE COMMISSION APPROVES SUCH WAIVER,
15 THEN THE APPROVED WAIVER OF THE LIMITATION APPLIES TO ANY
16 TRANSFEREE OF THE BUSINESS' INCOME TAX CREDIT ALLOWED UNDER
17 SECTION 39-30-104.

18 (d) THE OFFICE SHALL ESTABLISH NOTICE AND VERIFICATION
19 REQUIREMENTS FOR TRANSFERRED INCOME TAX CREDITS.

20 (e) THE TRANSFEROR AND THE TRANSFEREE OF THE INCOME TAX
21 CREDITS SHALL JOINTLY FILE A COPY OF THE WRITTEN TRANSFER
22 AGREEMENT WITH THE OFFICE WITHIN THIRTY DAYS AFTER THE TRANSFER.
23 ANY FILING OF THE WRITTEN TRANSFER AGREEMENT WITH THE OFFICE
24 PERFECTS THE TRANSFER.

25 (f) THE OFFICE SHALL DEVELOP A SYSTEM TO TRACK THE
26 TRANSFERS OF INCOME TAX CREDITS AND TO CERTIFY THE OWNERSHIP OF
27 THE INCOME TAX CREDITS. A CERTIFICATION BY THE OFFICE OF THE

1 OWNERSHIP AND THE AMOUNT OF INCOME TAX CREDITS MAY BE RELIED ON
2 BY THE DEPARTMENT AND THE TRANSFEREE AS BEING ACCURATE TO THE
3 EXTENT THE DATA SUPPLIED BY THE BUSINESS IS ACCURATE, AND THE
4 OFFICE SHALL NOT ADJUST THE AMOUNT OF INCOME TAX CREDITS AS TO
5 THE TRANSFEREE. THE OFFICE, THE DEPARTMENT, AND ANY OTHER STATE
6 AGENCY RETAIN ANY REMEDIES THEY MAY HAVE AGAINST THE BUSINESS
7 AND ANY OTHER TAXPAYER THAT MISREPRESENTS THE VALUE OF THE
8 TRANSFERABLE INCOME TAX CREDIT IN A TRANSFER. THE OFFICE SHALL
9 ESTABLISH POLICIES TO PERMIT VERIFICATION OF THE OWNERSHIP AND
10 AMOUNT OF THE INCOME TAX CREDITS AND SHALL POST THOSE POLICIES
11 ON THE OFFICE'S WEBSITE; EXCEPT THAT THE POLICIES MAY NOT UNDULY
12 RESTRICT OR HINDER THE TRANSFER OF THE TAX CREDITS AS ALLOWED IN
13 THIS SECTION.

14 (g) THE OFFICE SHALL PROVIDE A REPORT TO THE DEPARTMENT
15 SPECIFYING THE OWNERSHIP AND TRANSFERS OF INCOME TAX CREDITS AS
16 ALLOWED IN THIS SECTION. THE REPORT MUST BE PROVIDED ON A
17 SCHEDULE TO BE DETERMINED BY THE DEPARTMENT AND THE OFFICE.

18 (5) THE COMMISSION AND THE OFFICE SHALL POST ON THE OFFICE'S
19 WEBSITE ALL NONCONFIDENTIAL INFORMATION RELATED TO THE
20 PRECERTIFICATION AND APPROVAL OF THE TREATMENT OF THE INCOME
21 TAX CREDITS AS SPECIFIED IN THIS SECTION.

22 (6) THE COMMISSION SHALL INCLUDE INFORMATION REGARDING
23 ANY TRANSFERABILITY AUTHORIZED PURSUANT TO THIS SECTION,
24 INCLUDING THE NAMES OF THE BUSINESSES AND THE AMOUNTS
25 TRANSFERRED, IN ITS ANNUAL REPORT REQUIRED TO BE PRESENTED TO THE
26 GENERAL ASSEMBLY PURSUANT TO SECTION 24-46-104 (2).

27 **SECTION 2.** In Colorado Revised Statutes, 39-22-531, **amend**

1 (6) as follows:

2 **39-22-531. Colorado job growth incentive tax credit - rules -**
3 **definitions - repeal.** (6) EXCEPT AS PROVIDED IN SECTION 24-46-104.3,
4 if the amount of the credit allowed in this section exceeds the amount of
5 income taxes otherwise due on the taxpayer's income in the income tax
6 year for which the credit is being claimed, the amount of the credit not
7 used as an offset against income taxes in the current income tax year may
8 be carried forward and used as a credit against subsequent years' income
9 tax liability for a period not to exceed ten years and shall be applied first
10 to the earliest income tax years possible. Any credit remaining after said
11 period shall not be refunded or credited to the taxpayer.

12 **SECTION 3.** In Colorado Revised Statutes, 39-30-104, **amend**
13 (2.5)(a)(I) and (2.6)(a) introductory portion as follows:

14 **39-30-104. Credit against tax - investment in certain property**
15 **- definitions.** (2.5) (a) (I) Notwithstanding ~~the provisions of section~~
16 ~~39-22-507.5 (7)(b), and except as otherwise provided in subparagraph (H)~~
17 ~~of this paragraph (a) and paragraph (b) of this subsection (2.5)~~ SECTION
18 24-46-104.3 AND SUBSECTIONS (2.5)(a)(II) AND (2.5)(b) OF THIS SECTION,
19 any excess credit allowed pursuant to this section shall be an investment
20 tax credit carryover to each of the twelve income tax years following the
21 unused credit year.

22 (2.6) (a) Except as provided in ~~paragraph (b) of this subsection~~
23 ~~(2.6)~~ SECTION 24-46-104.3 AND SUBSECTION (2.6)(b) OF THIS SECTION and
24 notwithstanding any other provision in this section, in each income tax
25 year commencing on or after January 1, 2015, but before January 1, 2021,
26 a taxpayer who places a new renewable energy investment in service on
27 or after January 1, 2015, but before January 1, 2021, that results in a

1 credit pursuant to subsection (1) of this section may elect to receive a
2 refund of eighty percent of the amount of such credit as specified in this
3 ~~paragraph (a)~~ SUBSECTION (2.6)(a) and forego the remaining twenty
4 percent as a cost of such election. If eighty percent of the amount of the
5 credit in subsection (1) of this section is:

6 **SECTION 4.** In Colorado Revised Statutes, 39-30-105.1, **amend**
7 (4)(a) as follows:

8 **39-30-105.1. Credit for new enterprise zone business**
9 **employees - definitions.** (4) (a) (I) EXCEPT AS PROVIDED IN SECTION
10 24-46-104.3, for any income tax year commencing on or after January 1,
11 2014, if the total amount of the credits claimed by a taxpayer pursuant to
12 ~~the provisions of subparagraph (I) of paragraph (a) of subsection (1),~~
13 ~~paragraph (b) of subsection (1), and paragraph (a) of subsection (3)~~
14 SUBSECTIONS (1)(a)(I), (1)(b), AND (3)(a) of this section exceeds the
15 amount of income taxes due on the income of the taxpayer in the income
16 tax year for which the credits are being claimed, the amount of the credits
17 not used as an offset against income taxes in said income tax year is not
18 allowed as a refund but may be carried forward as a credit against
19 subsequent years' tax liability for a period not exceeding five years and is
20 applied first to the earliest income tax years possible. Any amount of the
21 credit that is not used during said period is not refundable to the taxpayer.

22 (II) EXCEPT AS PROVIDED IN SECTION 24-46-104.3, for any income
23 tax year commencing on or after January 1, 2014, if the total amount of
24 credits claimed by a taxpayer pursuant to ~~subparagraph (II) of paragraph~~
25 ~~(a) of subsection (1) of this section and paragraph (b) of subsection (3)~~
26 SUBSECTIONS (1)(a)(III) AND (3)(b) of this section exceeds the amount of
27 income taxes due on the income of the taxpayer in the income tax year for

1 which the credits are being claimed, the amount of credits not used as an
2 offset against income taxes in said income tax year is not allowed as a
3 refund but may be carried forward as a credit against subsequent years'
4 tax liability for a period not exceeding seven years and is applied first to
5 the earliest income tax years possible. Any amount of the credit that is not
6 used during said period is not refundable to the taxpayer.

7 **SECTION 5.** In Colorado Revised Statutes, 39-30-105.5, **amend**
8 (2) introductory portion as follows:

9 **39-30-105.5. Credit against Colorado income taxes based on**
10 **expenditures for research and experimental activities.** (2) EXCEPT AS
11 PROVIDED IN SECTION 24-46-104.3, in any one tax year, the amount of
12 such credit allowable for deduction from the taxpayer's tax liability shall
13 be the total of:

14 **SECTION 6. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.