A BILL FOR AN ACT

CONCERNING THE CREATION OF A CREDIT AGAINST THE STATE INCOME TAX TO PROMOTE CONTRIBUTIONS TO NONPROFIT ORGANIZATIONS ENGAGED IN THE DEVELOPMENT OF AFFORDABLE HOUSING FOR HOME OWNERSHIP.

Bill Summary

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

For income tax years commencing on or after January 1, 2019, but prior to January 1, 2030, the bill creates a state income tax credit for a donation of cash or securities a taxpayer makes to an eligible developer.
to be used solely for the costs associated with an eligible project.

The bill defines "eligible developer" to mean, in part, a nonprofit community-based home ownership development organization that satisfies specified requirements relating to its background in the field of housing development and is developing or plans to develop the eligible project that is or will be receiving the donations for which the tax credits may be claimed. The bill defines "eligible project" to mean the development of new residential housing for home ownership consisting of one or more residential units constructed for sale to a buyer whose median income is 120% or less of the area median income and for which each unit sold is to be preserved as affordable housing by means of a specified deed restriction. In order to be designated as an eligible developer authorized to accept donations, a nonprofit community-based home ownership development organization must satisfy certain criteria as created and evaluated by the Colorado housing and finance authority (authority).

The amount of the credit allowed by the bill is 50% of the amount of the money or the value of the securities donated to the eligible developer as documented in a form and manner acceptable to the department of revenue (department); except that the aggregate amount of the credit awarded to any one taxpayer under the bill is limited to $250,000 in any one income tax year.

The aggregate amount of tax credits certified is limited to $20 million for each of the January 1, 2020, through the January 1, 2029, tax years.

If the amount of the credit allowed exceeds the amount of the taxpayer's income tax liability in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in such income tax year is not allowed as a refund but may be carried forward and applied against the income tax due in each of the 5 succeeding income tax years, but must first be applied against the income tax due for the earliest of the income tax years possible.

A tax credit allowed by the bill is neither transferable nor assignable to any other taxpayer.

In order to claim the credit, the donation the taxpayer provides to obtain the credit must be accepted by the eligible developer to whom it has been given and certified by the authority. The authority is required to certify each donation. The authority completes certification by providing a certificate to the taxpayer in a format acceptable to the department evidencing that the certification requirements of the bill have been met. The authority is permitted to charge and collect an administrative fee from each applicant to recover program administration costs and expenses.

A taxpayer claiming the credit must submit, maintain, and record any information that the department may require by rule regarding the
taxpayer's donation to the eligible developer, including the certificate received from the authority. A taxpayer is required to electronically file with the department the certificate the taxpayer receives from the authority.

The tax credit is repealed, effective July 1, 2040.

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

SECTION 1. In Colorado Revised Statutes, add 39-22-539 as follows:

39-22-539. Credit for the donation of money or securities to eligible developers that create affordable housing - rules - legislative declaration - definitions - repeal. (1) The general assembly finds, determines, and declares that:

(a) Since 2000, the state's need for affordable housing in all geographic regions has grown exponentially. Among other effects, the immense demand for affordable housing is a huge impediment to economic growth and opportunity within the state and the ability of the state to provide a high-quality life for all its residents and to develop, attract, and maintain a high-quality workforce.

(b) By enacting the tax credit created in this section, the general assembly intends to provide certain financial incentives to encourage the donation of money and securities to eligible developers whose mission is concentrated on constructing affordable housing for home ownership for the purpose of expanding the supply of such housing across the state.

(2) As used in this section, unless the context otherwise requires:

(a) "Affordable housing" means housing that is designed
TO BE AFFORDABLE FOR HOUSEHOLDS WITH AN INCOME THAT IS ONE HUNDRED TWENTY PERCENT OR LESS OF THE AREA MEDIAN INCOME FOR HOME OWNERSHIP.

(b) "AREA MEDIAN INCOME" MEANS HOUSEHOLD INCOME THAT IS ADJUSTED FOR A FAMILY SIZE THAT IS DETERMINED IN ACCORDANCE WITH GUIDELINES OR OTHER STANDARDS PROMULGATED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(c) "AUTHORITY" MEANS THE COLORADO HOUSING AND FINANCE AUTHORITY CREATED IN SECTION 29-4-704 (1).

(d) "CERTIFICATE" MEANS A DOCUMENT ISSUED BY THE AUTHORITY IN A FORMAT ACCEPTABLE TO THE DEPARTMENT EVIDENCING A DONATION RECEIVED TO SUPPORT AN ELIGIBLE PROJECT.

(e) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE OR ANY SUCCESSOR ENTITY.

(f) "DONATION" MEANS CASH OR SECURITIES DONATED BY A TAXPAYER TO AN ELIGIBLE DEVELOPER THAT ARE USED SOLELY FOR OR ASSOCIATED WITH AN ELIGIBLE PROJECT IN ORDER TO OBTAIN THE CREDIT ALLOWED BY THIS SECTION.

(g) "ELIGIBLE DEVELOPER" MEANS A NONPROFIT COMMUNITY-BASED HOME OWNERSHIP DEVELOPMENT ORGANIZATION THAT:

(I) IS ORGANIZED UNDER 26 U.S.C. SEC. 501 (c)(3);

(II) IS OPERATING IN GOOD STANDING IN THE STATE;

(III) HAS A THREE-YEAR HISTORY OF DEVELOPING HOUSING SOLD TO PERSONS IN HOUSEHOLDS WITH AN INCOME THAT IS ONE HUNDRED TWENTY PERCENT OR LESS OF THE AREA MEDIAN INCOME FOR HOME OWNERSHIP;
(IV) HAS SOLD AT LEAST ONE SINGLE FAMILY RESIDENTIAL HOME
OVER THE MOST RECENT THREE-YEAR PERIOD;

(V) IS GOVERNED BY THE BYLAWS, WHICH STATE AMONG THE
ORGANIZATION'S PURPOSES THE DEVELOPMENT OF AFFORDABLE HOUSING;

AND

(VI) IS DEVELOPING OR PLANS TO DEVELOP AN ELIGIBLE PROJECT
THAT IS OR WILL BE RECEIVING THE DONATIONS FOR WHICH TAX CREDITS
MAY BE CLAIMED UNDER THIS SECTION.

(h) "ELIGIBLE PROJECT" MEANS THE DEVELOPMENT OF NEW
RESIDENTIAL HOUSING FOR HOME OWNERSHIP CONSISTING OF ONE OR
MORE RESIDENTIAL UNITS CONSTRUCTED FOR SALE TO A BUYER WHOSE
MEDIAN INCOME IS UP TO ONE HUNDRED TWENTY PERCENT OF THE AREA
MEDIAN INCOME AND FOR WHICH EACH UNIT SOLD IS TO BE PRESERVED AS
AFFORDABLE HOUSING FOR A MINIMUM OF FIFTEEN YEARS BY MEANS OF A
DEED RESTRICTION.

(i) "TAXPAYER" MEANS A PERSON MAKING A DONATION WHO FILES
AN INCOME TAX RETURN UNDER THIS ARTICLE 22.

(3) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
JANUARY 1, 2019, BUT PRIOR TO JANUARY 1, 2030, THERE SHALL BE
ALLOWED FOR ANY TAXPAYER A CREDIT AGAINST THE INCOME TAXES
IMPOSED BY THIS ARTICLE 22 FOR A DONATION THE TAXPAYER MAKES TO
AN ELIGIBLE DEVELOPER TO BE USED SOLELY FOR THE COSTS ASSOCIATED
WITH AN ELIGIBLE PROJECT.

(b) THE AMOUNT OF THE CREDIT ALLOWED BY THIS SECTION IS
FIFTY PERCENT OF THE AMOUNT OF THE MONEY OR THE VALUE OF THE
SECURITIES DONATED TO THE ELIGIBLE DEVELOPER AS DOCUMENTED IN A
FORM AND MANNER ACCEPTABLE TO THE DEPARTMENT; EXCEPT THAT THE
AGGREGATE AMOUNT OF THE CREDIT AWARDED TO ANY ONE TAXPAYER UNDER THIS SECTION SHALL NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS IN ANY ONE INCOME TAX YEAR.

(c) IN ORDER TO BE DESIGNATED AS AN ELIGIBLE DEVELOPER AUTHORIZED TO ACCEPT DONATIONS UNDER THIS SECTION, AN ELIGIBLE DEVELOPER MUST SATISFY SUCH FURTHER CRITERIA AS CREATED AND EVALUATED BY THE AUTHORITY IN ADDITION TO SATISFYING THE REQUIREMENTS OF THIS SECTION.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE AGGREGATE AMOUNT OF TAX CREDITS CERTIFIED UNDER SUBSECTION (6) OF THIS SECTION SHALL NOT EXCEED TWENTY MILLION DOLLARS FOR EACH TAX YEAR BEGINNING JANUARY 1, 2020, THROUGH THE TAX YEAR BEGINNING JANUARY 1, 2029.


(b) A TAX CREDIT ALLOWED BY THIS SECTION IS NEITHER TRANSFERABLE NOR ASSIGNABLE TO ANY OTHER TAXPAYER.

(6) IN ORDER TO CLAIM THE CREDIT MADE AVAILABLE BY THIS SECTION, THE DONATION THE TAXPAYER PROVIDES TO OBTAIN THE CREDIT MUST BE ACCEPTED BY THE ELIGIBLE DEVELOPER TO WHOM IT HAS BEEN
given and certified by the authority. The authority shall certify each donation to ensure that it is being made to an eligible developer to be used solely for the costs associated with an eligible project. The authority completes certification by providing a certificate to the taxpayer in a format acceptable to the department evidencing that the requirements of this section pertaining to certification have been met. The certificate must state the effective date of the donation. The authority may charge and collect an administrative fee from each applicant to recover program administration costs and expenses.

(7) (a) A taxpayer claiming the credit allowed by this section shall submit, maintain, and record any information that the department may require by rule regarding the taxpayer’s donation to the eligible developer, including the certificate received from the authority evidencing that the donation has been received and satisfies the requirements of this section. A taxpayer shall electronically file with the department the certificate the taxpayer receives from the authority.

(b) The eligible developer receiving the donation shall submit and maintain such records as required by the department that ensure that donations are being made under this section to promote the construction of affordable housing for home ownership that will facilitate the purposes of this section.

(8) The department may recapture tax credits provided to a taxpayer if the authority is unable to document or validate completion of the eligible project within five years of the
EFFECTIVE DATE OF THE DONATION BEING CERTIFIED.

(9) The department shall promulgate, in accordance with Article 4 of title 24, any rules necessary to facilitate the effective implementation of this section.

(10) Notwithstanding any other provision of law, a taxpayer shall not claim a credit under this section for a donation for which the taxpayer is claiming any other state tax credit or deduction.

(11) This section is repealed, effective July 1, 2040.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.