

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 18-0795.01 Bob Lackner x4350

HOUSE BILL 18-1195

HOUSE SPONSORSHIP

Pabon and Bridges,

SENATE SPONSORSHIP

Tate, Gardner, Scott

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A CREDIT AGAINST THE STATE INCOME**
102 **TAX TO PROMOTE CONTRIBUTIONS TO NONPROFIT**
103 **ORGANIZATIONS ENGAGED IN THE DEVELOPMENT OF**
104 **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

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

HOUSE
3rd Reading Unamended
May 7, 2018

HOUSE
Amended 2nd Reading
May 4, 2018

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.

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

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

4 **39-22-539. Credit for the donation of money or securities to**
5 **eligible developers that create affordable housing - rules - legislative**
6 **declaration - definitions - repeal.** (1) THE GENERAL ASSEMBLY FINDS,
7 DETERMINES, AND DECLARES THAT:

8 (a) SINCE 2000, THE STATE'S NEED FOR AFFORDABLE HOUSING IN
9 ALL GEOGRAPHIC REGIONS HAS GROWN EXPONENTIALLY. AMONG OTHER
10 EFFECTS, THE IMMENSE DEMAND FOR AFFORDABLE HOUSING IS A HUGE
11 IMPEDIMENT TO ECONOMIC GROWTH AND OPPORTUNITY WITHIN THE STATE
12 AND THE ABILITY OF THE STATE TO PROVIDE A HIGH-QUALITY LIFE FOR ALL
13 ITS RESIDENTS AND TO DEVELOP, ATTRACT, AND MAINTAIN A
14 HIGH-QUALITY WORKFORCE.

15 (b) BY ENACTING THE TAX CREDIT CREATED IN THIS SECTION, THE
16 GENERAL ASSEMBLY INTENDS TO PROVIDE CERTAIN FINANCIAL INCENTIVES
17 TO ENCOURAGE THE DONATION OF MONEY AND SECURITIES TO ELIGIBLE
18 DEVELOPERS WHOSE MISSION IS CONCENTRATED ON CONSTRUCTING
19 AFFORDABLE HOUSING FOR HOME OWNERSHIP FOR THE PURPOSE OF
20 EXPANDING THE SUPPLY OF SUCH HOUSING ACROSS THE STATE.

21 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
22 REQUIRES:

23 (a) "AFFORDABLE HOUSING" MEANS HOUSING THAT IS DESIGNED

1 TO BE AFFORDABLE FOR HOUSEHOLDS WITH AN INCOME THAT IS ONE
2 HUNDRED TWENTY PERCENT OR LESS OF THE AREA MEDIAN INCOME FOR
3 HOME OWNERSHIP.

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

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

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

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

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

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

22 (I) IS EITHER ORGANIZED UNDER 26 U.S.C. SEC. 501 (c)(3) OR IS A
23 HOUSING AUTHORITY;

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

25 (III) DEMONSTRATES A THREE-YEAR HISTORY OF DEVELOPING
26 HOUSING SOLD TO PERSONS IN HOUSEHOLDS WITH AN INCOME THAT IS ONE
27 HUNDRED TWENTY PERCENT OR LESS OF THE AREA MEDIAN INCOME FOR

1 HOME OWNERSHIP;

2 (IV) DEMONSTRATES THE SALE OF AT LEAST ONE SINGLE FAMILY
3 RESIDENTIAL HOME IN THE MOST RECENT THREE-YEAR PERIOD;

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

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

10 (h) "ELIGIBLE PROJECT" MEANS THE DEVELOPMENT OF NEW
11 RESIDENTIAL HOUSING FOR HOME OWNERSHIP CONSISTING OF ONE OR
12 MORE RESIDENTIAL UNITS CONSTRUCTED FOR SALE TO A BUYER WHOSE
13 MEDIAN INCOME IS UP TO ONE HUNDRED TWENTY PERCENT OF THE AREA
14 MEDIAN INCOME AND WHO SHALL OCCUPY, ESTABLISH, AND USE THE
15 PROPERTY AS THE BUYER'S PRINCIPAL RESIDENCE AND WHICH UNIT IS TO
16 BE PRESERVED AS AFFORDABLE HOUSING FOR A MINIMUM OF FIFTEEN
17 YEARS BY MEANS OF A RECORDED DEED RESTRICTION, OR ALTERNATIVELY
18 PRESERVED AS AFFORDABLE HOUSING BY MEANS OF A LONG-TERM LAND
19 LEASE, EITHER OF WHICH MUST BE IN A FORM ACCEPTABLE TO THE
20 AUTHORITY.

21 (i) "SECURITIES" MEANS ANY PUBLICLY TRADED SECURITIES,
22 INCLUDING STOCKS, MUTUAL FUNDS, MUNICIPAL AND CORPORATE BONDS,
23 AND TREASURY BILLS, NOTES, AND BONDS.

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

26 (3) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
27 JANUARY 1, 2019, BUT PRIOR TO JANUARY 1, 2023, THERE SHALL BE

1 ALLOWED FOR ANY TAXPAYER A CREDIT AGAINST THE INCOME TAXES
2 IMPOSED BY THIS ARTICLE 22 FOR A DONATION THE TAXPAYER MAKES TO
3 AN ELIGIBLE DEVELOPER TO BE USED SOLELY FOR THE COSTS ASSOCIATED
4 WITH AN ELIGIBLE PROJECT.

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

12 (c) IN ORDER TO BE DESIGNATED AS AN ELIGIBLE DEVELOPER
13 AUTHORIZED TO ACCEPT DONATIONS UNDER THIS SECTION, AN ELIGIBLE
14 DEVELOPER MUST SATISFY SUCH FURTHER CRITERIA AS CREATED AND
15 EVALUATED AND AS MAY BE AMENDED BY THE AUTHORITY IN ADDITION
16 TO SATISFYING THE REQUIREMENTS OF THIS SECTION. FAILURE TO COMPLY
17 WITH THE REQUIREMENTS OF THIS SECTION OR SUCH ADDITIONAL CRITERIA
18 AS CREATED AND EVALUATED AND AS MAY BE AMENDED BY THE
19 AUTHORITY MAY CAUSE AN ELIGIBLE DEVELOPER TO BE DEEMED
20 INELIGIBLE FOR ANY ADDITIONAL CERTIFICATION OF TAX CREDITS UNDER
21 THIS SECTION.

22 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
23 THE AGGREGATE AMOUNT OF TAX CREDITS CERTIFIED UNDER SUBSECTION
24 (6) OF THIS SECTION SHALL NOT EXCEED ONE MILLION FIVE HUNDRED
25 THOUSAND DOLLARS FOR EACH TAX YEAR BEGINNING JANUARY 1, 2019,
26 BUT PRIOR TO THE TAX YEAR BEGINNING JANUARY 1, 2023.

27 (5) (a) IF THE AMOUNT OF THE CREDIT ALLOWED PURSUANT TO

1 THIS SECTION EXCEEDS THE AMOUNT OF THE INCOME TAX OTHERWISE DUE
2 ON THE TAXPAYER'S INCOME IN THE INCOME TAX YEAR FOR WHICH THE
3 CREDIT IS BEING CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN
4 OFFSET AGAINST INCOME TAXES IN SUCH INCOME TAX YEAR IS NOT
5 ALLOWED AS A REFUND BUT MAY BE CARRIED FORWARD AND APPLIED
6 AGAINST THE INCOME TAX DUE IN EACH OF THE FIVE SUCCEEDING INCOME
7 TAX YEARS, BUT MUST FIRST BE APPLIED AGAINST THE INCOME TAX DUE
8 FOR THE EARLIEST OF THE INCOME TAX YEARS POSSIBLE.

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

11 (6) IN ORDER TO CLAIM THE CREDIT MADE AVAILABLE BY THIS
12 SECTION, THE DONATION THE TAXPAYER PROVIDES TO OBTAIN THE CREDIT
13 MUST BE ACCEPTED BY THE ELIGIBLE DEVELOPER TO WHOM IT HAS BEEN
14 GIVEN AND CERTIFIED BY THE AUTHORITY. UPON RECEIPT OF A DONATION
15 OF SECURITIES, AN ELIGIBLE DEVELOPER SHALL LIQUIDATE THE SECURITIES
16 AND PROVIDE THIRD PARTY DOCUMENTATION OF THE DOLLAR VALUE OF
17 THE SECURITIES TO THE TAXPAYER AND TO THE AUTHORITY. THE
18 AUTHORITY SHALL CERTIFY EACH DONATION TO ENSURE THAT IT IS BEING
19 MADE TO AN ELIGIBLE DEVELOPER TO BE USED SOLELY FOR THE COSTS
20 ASSOCIATED WITH AN ELIGIBLE PROJECT. THE AUTHORITY COMPLETES
21 CERTIFICATION BY PROVIDING A CERTIFICATE TO THE TAXPAYER IN A
22 FORMAT ACCEPTABLE TO THE DEPARTMENT EVIDENCING THAT THE
23 REQUIREMENTS OF THIS SECTION PERTAINING TO CERTIFICATION ARE MET.
24 THE CERTIFICATE MUST STATE THE EFFECTIVE DATE OF THE DONATION.
25 THE RISK OF TAX CREDIT RECAPTURE UNDER THIS SECTION SHALL BE
26 DISCLOSED BY THE ELIGIBLE DEVELOPER AND ACKNOWLEDGED BY THE
27 TAXPAYER IN WRITING PRIOR TO THE CERTIFICATION OF TAX CREDITS

1 UNDER THIS SECTION. THE AUTHORITY MAY CHARGE AND COLLECT
2 ADMINISTRATIVE FEES FROM ELIGIBLE DEVELOPERS TO RECOVER PROGRAM
3 ADMINISTRATION COSTS AND EXPENSES.

4 (7) (a) A TAXPAYER CLAIMING THE CREDIT ALLOWED BY THIS
5 SECTION SHALL SUBMIT, MAINTAIN, AND RECORD ANY INFORMATION THAT
6 THE DEPARTMENT MAY REQUIRE BY RULE REGARDING THE TAXPAYER'S
7 DONATION TO THE ELIGIBLE DEVELOPER, INCLUDING THE CERTIFICATE
8 RECEIVED FROM THE AUTHORITY EVIDENCING THAT THE DONATION HAS
9 BEEN RECEIVED AND SATISFIES THE REQUIREMENTS OF THIS SECTION. A
10 TAXPAYER SHALL ELECTRONICALLY FILE WITH THE DEPARTMENT THE
11 CERTIFICATE THE TAXPAYER RECEIVES FROM THE AUTHORITY.

12 (b) THE ELIGIBLE DEVELOPER RECEIVING THE DONATION SHALL
13 SUBMIT AND MAINTAIN SUCH RECORDS AS REQUIRED BY THE DEPARTMENT
14 OR THE AUTHORITY TO DEMONSTRATE COMPLIANCE WITH THE
15 REQUIREMENTS OF THIS SECTION OR TO DOCUMENT THAT DONATIONS ARE
16 BEING MADE UNDER THIS SECTION TO PROMOTE THE CONSTRUCTION OF
17 AFFORDABLE HOUSING FOR HOME OWNERSHIP THAT WILL FACILITATE THE
18 PURPOSES OF THIS SECTION. THE DEPARTMENT AND THE AUTHORITY MAY
19 AT ANY TIME, UPON REASONABLE DEMAND, INSPECT THE BOOKS,
20 ACCOUNTS, AND RECORDS OF ANY ELIGIBLE DEVELOPER THAT HAS
21 RECEIVED A DONATION UNDER THIS SECTION FOR THE PURPOSE OF
22 VERIFYING COMPLIANCE, ELIGIBILITY, ELIGIBLE PROJECT COMPLETION, OR
23 DONATION USE AND APPLICATION.

24 (8) THE DEPARTMENT MAY RECAPTURE TAX CREDITS PROVIDED TO
25 A TAXPAYER IF THE ELIGIBLE DEVELOPER IS UNABLE TO DOCUMENT OR
26 VALIDATE COMPLETION, AS EVIDENCED BY A RECORDED DEED
27 RESTRICTION, OR CERTIFICATE OF OCCUPANCY USED IN CONNECTION WITH

1 A LONG-TERM LAND LEASE, OF THE ELIGIBLE PROJECT WITHIN THREE
2 YEARS OF THE CERTIFICATION OF THE DONATION.

3 (9) NOT LATER THAN JANUARY 15 OF EACH YEAR IMMEDIATELY
4 FOLLOWING THE YEAR IN WHICH THE AUTHORITY CERTIFIES A TAX CREDIT
5 IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION, THE AUTHORITY
6 SHALL PROVIDE THE DEPARTMENT WITH AN ELECTRONIC REPORT ON THE
7 TAXPAYERS WHO HAVE RECEIVED A CREDIT ALLOWED BY THIS SECTION
8 FOR THE CALENDAR YEAR THAT CONFORMS TO THE INCOME TAX YEAR FOR
9 WHICH THE CREDIT IS ALLOWED. THE REPORT MUST INCLUDE THE
10 FOLLOWING INFORMATION:

- 11 (a) THE NAME OF THE TAXPAYER;
- 12 (b) THE TAXPAYER'S SOCIAL SECURITY NUMBER OR FEDERAL
13 EMPLOYEE IDENTIFICATION NUMBER; AND
- 14 (c) THE AMOUNT OF THE CREDIT ALLOWED BY THIS SECTION THAT
15 IS ALLOCATED TO THE TAXPAYER.

16 (10) THE DEPARTMENT SHALL PROMULGATE, IN ACCORDANCE
17 WITH ARTICLE 4 OF TITLE 24, ANY RULES NECESSARY TO FACILITATE THE
18 EFFECTIVE IMPLEMENTATION OF THIS SECTION.

19 (11) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
20 TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION FOR A
21 DONATION FOR WHICH THE TAXPAYER IS CLAIMING ANY OTHER STATE TAX
22 CREDIT OR DEDUCTION.

23 (12) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2030.

24 **SECTION 2.** In Colorado Revised Statutes, 39-22-622, **amend**
25 (4)(a)(V) and (VI); and **add** (4)(a)(VII) as follows:

26 **39-22-622. Refunds.** (4) (a) The provisions of subsection (2) of
27 this section shall not apply:

1 (V) Because the taxpayer claimed an enterprise zone tax credit
2 pursuant to article 30 of this title 39 and the department of revenue is
3 awaiting confirmation from the Colorado office of economic
4 development that the taxpayer is eligible for such credit; ~~or~~

5 (VI) To any return where there is a suspicion of identity theft or
6 other refund-related fraud; OR

7 (VII) BECAUSE OF A TAX CREDIT ALLOWED IN SECTION 39-22-539.

8 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.