

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0596.01 Zach Blaes x4348

HOUSE BILL 23-1081

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House Committees

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A BILL FOR AN ACT

101 **CONCERNING THE EXPANSION OF THE TAX CREDIT FOR CONVERSION**
102 **COSTS FOR EMPLOYEE BUSINESS 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>.)

Under current law, a qualified business is allowed a tax credit in the amount of 50% of the costs to convert the qualified business to a form of employee ownership. The tax credit is capped at \$25,000 for converting a qualified business to a worker-owned cooperative or employee ownership trust, and capped at \$100,000 for converting a qualified business to an employee stock ownership plan.

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

SENATE
3rd Reading Unamended
May 5, 2023

SENATE
2nd Reading Unamended
May 4, 2023

HOUSE
3rd Reading Unamended
April 21, 2023

HOUSE
Amended 2nd Reading
April 19, 2023

The bill:

- Increases the cap for converting a qualified business to a worker-owned cooperative or employee ownership trust from \$25,000 to \$40,000, and increases the cap for converting a qualified business to an employee stock ownership plan from \$100,000 to \$150,000;
- Expands the tax credit to include 50% of the costs of a qualified employee-owned business expanding its employee ownership by at least 20%, not to exceed \$25,000;
- Expands the tax credit to include 50% of the costs of a qualified business converting to or expanding an alternate equity structure, not to exceed \$25,000. An alternate equity structure is a form of employee ownership where an employer grants to employees an employee stock ownership plan, LLC membership, phantom stock, profit interest, profit sharing, restricted stock, stock appreciation right, stock option, or synthetic equity.
- Specifies that a qualified business or qualified employee-owned business may apply for and claim only one credit for the conversion or expansion costs per tax year.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-542, **amend**
3 (2), (3)(a), (3)(b), (4), (5)(a)(III), (6)(a), (7), (8), (10), and (11)
4 introductory portion; and **add** (3)(a.5), (3)(d), (5)(a)(V), and (5)(a)(VI) as
5 follows:

6 **39-22-542. Tax credit for conversion costs for employee**
7 **business ownership - definitions - declaration - repeal.**

8 (2) **Definitions.** As used in this section, unless the context otherwise
9 requires:

10 (a) (I) "ALTERNATE EQUITY STRUCTURE" MEANS A MECHANISM
11 UNDER WHICH AN EMPLOYER GRANTS TO EMPLOYEES A FORM OF
12 EMPLOYEE OWNERSHIP, INCLUDING BUT NOT LIMITED TO AN EMPLOYEE
13 STOCK PURCHASE PLAN, LLC MEMBERSHIP, PHANTOM STOCK, PROFIT

1 INTEREST, RESTRICTED STOCK, STOCK APPRECIATION RIGHT, STOCK
2 OPTION, OR SYNTHETIC EQUITY. AN ALTERNATE EQUITY STRUCTURE MUST
3 AT A MINIMUM:

4 (A) GRANT RIGHTS TO OR BE OFFERED TO AT LEAST TWENTY
5 PERCENT OF AN EMPLOYER'S ELIGIBLE WORKERS, OR GRANT RIGHTS TO OR
6 BE OFFERED TO AT LEAST TWENTY PERCENT OF ELIGIBLE WORKERS OF AN
7 EMPLOYER THAT IS OWNED BY OR OPERATED FOR THE BENEFIT OF ELIGIBLE
8 WORKERS IN A BROAD-BASED EMPLOYEE OWNERSHIP TRANSITION. FOR
9 PURPOSES OF THIS SUBSECTION (2)(a)(I), "ELIGIBLE WORKERS" MEANS ALL
10 FULL-TIME EMPLOYEES, REGULAR EMPLOYEES, NON-SEASONAL
11 EMPLOYEES, NON-MANAGERIAL EMPLOYEES, AND CONTRACT LABOR.

12 (B) HAVE THE PARTICIPATION OF AT LEAST TWENTY PERCENT OF
13 AN EMPLOYER'S ELIGIBLE WORKERS;

14 (C) ALLOCATE AT LEAST TWENTY PERCENT OF THE FULLY DILUTED
15 SECURITIES OR RIGHTS TO A SYNTHETIC INTEREST IN SECURITIES TO
16 PARTICIPATING ELIGIBLE WORKERS, OR ALLOCATE TWENTY PERCENT OF
17 NET PROFIT FROM OPERATIONS TO PARTICIPATING ELIGIBLE WORKERS; AND

18 (D) GRANT TO PARTICIPATING ELIGIBLE WORKERS INFORMATIONAL
19 RIGHTS, DECISION-MAKING RIGHTS, AND NON-FINANCIAL RIGHTS THAT ARE
20 EQUAL TO OR GREATER THAN THE RIGHTS THAT ARE GRANTED TO HOLDERS
21 OF THE EMPLOYER'S COMMON STOCK OR HOLDERS OF THE EMPLOYER'S
22 RESIDUAL MEMBERSHIP INTEREST.

23 (II) THE OFFICE SHALL DEVELOP GUIDELINES THAT CLARIFY THE
24 TYPES OF EMPLOYEE OWNERSHIP GRANTS THAT QUALIFY AS AN
25 ALTERNATE EQUITY STRUCTURE. THE OFFICE MAY PERIODICALLY UPDATE
26 ANY GUIDELINES ISSUED PURSUANT TO THIS SUBSECTION (2)(a)(II).

27 (a) (b) "Colorado office of economic development" or "office"

1 means the Colorado office of economic development created in section
2 24-48.5-101.

3 ~~(b)~~ (c) "Conversion costs" means professional services, including
4 accounting, legal, and business advisory services, as detailed in the
5 guidelines issued by the office, for the transition of a business to
6 employee ownership trust, an employee stock ownership plan, or a
7 worker-owned cooperative. "Conversion costs" include costs to audit the
8 cost certification as required in subsection (7)(b) of this section.

9 ~~(e)~~ (d) "Department" means the Colorado department of revenue.

10 ~~(d)~~ (e) "Employee ownership trust" means an indirect form of
11 employee ownership in which a trust holds a controlling stake in a
12 qualified business and benefits all employees on an equal basis.

13 ~~(e)~~ (f) "Employee stock ownership plan" has the same meaning as
14 set forth in section 4975 (e)(7) of the internal revenue code, as amended.

15 (g) "EXPANSION COSTS" MEANS PROFESSIONAL SERVICES,
16 INCLUDING ACCOUNTING, LEGAL, AND BUSINESS ADVISORY SERVICES, AS
17 DETAILED IN THE GUIDELINES ISSUED BY THE OFFICE, FOR THE EXPANSION
18 OF A QUALIFIED EMPLOYEE-OWNED BUSINESS'S EMPLOYEE OWNERSHIP
19 TRUST, EMPLOYEE STOCK OWNERSHIP PLAN, WORKER-OWNED
20 COOPERATIVE, OR ALTERNATE EQUITY STRUCTURE. EXPANSION COSTS
21 INCLUDE COSTS TO AUDIT THE COST CERTIFICATION AS REQUIRED IN
22 SUBSECTION (7)(b) OF THIS SECTION.

23 ~~(f)~~ (h) "Owner" means the owner of a qualified business before a
24 conversion occurs.

25 ~~(g)~~ (i) "Qualified business" means a taxpayer subject to tax under
26 this article 22, including but not limited to a C corporation, S corporation,
27 limited liability company, partnership, limited liability partnership, a sole

1 proprietorship, or other similar pass-through entity, that is not owned in
2 whole or in part by an employee ownership trust, that does not have an
3 employee stock ownership plan, ~~or~~ that is not, in whole or in part, a
4 worker-owned cooperative, OR DOES NOT HAVE AN ALTERNATE EQUITY
5 STRUCTURE, and that is approved by the office for the tax incentives in
6 this section.

7 (j) "QUALIFIED EMPLOYEE-OWNED BUSINESS" MEANS A TAXPAYER
8 THAT IS SUBJECT TO TAX UNDER THIS ARTICLE 22, INCLUDING BUT NOT
9 LIMITED TO A C CORPORATION, S CORPORATION, LIMITED LIABILITY
10 COMPANY, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, SOLE
11 PROPRIETORSHIP, OR OTHER SIMILAR PASS-THROUGH ENTITY, THAT:

12 (I) IS OWNED IN WHOLE OR IN PART BY AN EMPLOYEE OWNERSHIP
13 TRUST;

14 (II) HAS ITS CORPORATE HEADQUARTERS LOCATED IN THIS STATE.
15 FOR PURPOSES OF THIS SUBSECTION (2)(j), "CORPORATE HEADQUARTERS"
16 MEANS THE SOLE LOCATION WITHIN A REGIONAL OR NATIONAL AREA
17 WHERE THE TAXPAYER'S STAFF MEMBERS OR EMPLOYEES ARE DOMICILED
18 AND EMPLOYED, AND WHERE THE MAJORITY OF THE TAXPAYER'S
19 FINANCIAL, PERSONNEL, LEGAL, PLANNING, OR OTHER BUSINESS
20 FUNCTIONS ARE CONDUCTED ON A REGIONAL OR NATIONAL BASIS.

21 (III) HAS AN EMPLOYEE STOCK OWNERSHIP PLAN, IS IN WHOLE OR
22 IN PART A WORKER-OWNED COOPERATIVE, OR HAS AN ALTERNATE EQUITY
23 STRUCTURE; AND

24 (IV) IS APPROVED BY THE OFFICE FOR THE TAX INCENTIVES IN THIS
25 SECTION.

26 (k) "SECURITIES" HAS THE SAME MEANING AS THE TERM
27 "SECURITY" SET FORTH IN 15 U.S.C. SEC. 77b (a)(1).

1 ~~(h)~~ (l) "Worker-owned cooperative" has the same meaning as set
2 forth in section 1042 (c)(2) of the internal revenue code, as amended.

3 (3) (a) Subject to certification by the office pursuant to this
4 section, for income tax years commencing on or after January 1, 2022, but
5 prior to January 1, 2027, ~~there shall be~~ A QUALIFIED BUSINESS IS allowed
6 a credit with respect to the income taxes imposed pursuant to this article
7 22 as follows:

8 (I) Up to fifty percent of the conversion costs, not to exceed
9 ~~twenty-five~~ FORTY thousand dollars, incurred by a qualified business for
10 converting the qualified business to a worker-owned cooperative or an
11 employee ownership trust; ~~or~~

12 (II) Up to fifty percent of the conversion costs, not to exceed ~~one~~
13 ~~hundred~~ ONE HUNDRED FIFTY thousand dollars, incurred by a qualified
14 business for converting the qualified business to an employee stock
15 ownership plan; OR

16 (III) UP TO FIFTY PERCENT OF THE CONVERSION COSTS, NOT TO
17 EXCEED TWENTY-FIVE THOUSAND DOLLARS, INCURRED BY A QUALIFIED
18 BUSINESS FOR CONVERTING THE QUALIFIED BUSINESS TO AN ALTERNATE
19 EQUITY STRUCTURE.

20 (a.5) (I) SUBJECT TO CERTIFICATION BY THE OFFICE PURSUANT TO
21 THIS SECTION, FOR THE INCOME TAX YEARS COMMENCING ON OR AFTER
22 JANUARY 1, 2024, BUT PRIOR TO JANUARY 1, 2027, A QUALIFIED
23 EMPLOYEE-OWNED BUSINESS IS ALLOWED A CREDIT WITH RESPECT TO THE
24 INCOME TAXES IMPOSED PURSUANT TO THIS ARTICLE 22 OF UP TO FIFTY
25 PERCENT OF THE EXPANSION COSTS, NOT TO EXCEED TWENTY-FIVE
26 THOUSAND DOLLARS, INCURRED TO EXPAND A QUALIFIED
27 EMPLOYEE-OWNED BUSINESS'S EMPLOYEE OWNERSHIP TRUST, EMPLOYEE

1 STOCK OWNERSHIP PLAN, WORKER-OWNED COOPERATIVE, OR ALTERNATE
2 EQUITY STRUCTURE.

3 (II) TO BE ELIGIBLE FOR THE CREDIT ALLOWED PURSUANT TO THIS
4 SUBSECTION (3), A QUALIFIED EMPLOYEE-OWNED BUSINESS MUST EXPAND
5 ITS EMPLOYEE OWNERSHIP TRUST, EMPLOYEE STOCK OWNERSHIP PLAN,
6 WORKER-OWNED COOPERATIVE, OR ALTERNATE EQUITY STRUCTURE BY AN
7 INCREMENT OF AT LEAST TWENTY PERCENT OF THE TOTAL OWNERSHIP OF
8 THE ENTIRE QUALIFIED EMPLOYEE-OWNED BUSINESS.

9 (b) (I) In the case of a qualified business OR QUALIFIED
10 EMPLOYEE-OWNED BUSINESS that is a C corporation, the credit is allowed
11 to the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS.

12 (II) In the case of a qualified business OR QUALIFIED
13 EMPLOYEE-OWNED BUSINESS that is a partnership or an S corporation, the
14 credit is allowed to the owner OF THE BUSINESS.

15 (d) A QUALIFIED BUSINESS OR QUALIFIED EMPLOYEE-OWNED
16 BUSINESS MAY APPLY FOR AND CLAIM ONLY ONE TAX CREDIT FOR THE
17 CONVERSION OR EXPANSION COSTS INCURRED PER TAX YEAR.

18 (4) A business shall submit an application to the office for the
19 issuance of a credit certificate for the credit allowed in this section by the
20 deadlines established in the office's guidelines. The application must
21 include information, as set forth in the office's guidelines, regarding the
22 type of conversion OR EXPANSION the business intends to undertake, a list
23 of the expected conversion OR EXPANSION costs, and an estimated
24 amount, as calculated by the business, of the expected conversion OR
25 EXPANSION costs.

26 (5) (a) The office shall develop guidelines for the administration
27 of this section, including, but not limited to:

1 (III) Detailed guidelines regarding conversion costs; and
2 (V) DETAILED GUIDELINES REGARDING EXPANSION COSTS; AND
3 (VI) GUIDELINES AND STANDARDS FOR CERTIFYING A BUSINESS AS
4 A QUALIFIED EMPLOYEE-OWNED BUSINESS.

5 (6) (a) (I) After the office provides the written report required in
6 subsection (5)(b) of this section, a reservation of tax credits is permitted
7 for the tax credit allowed in this section. If the office determines that the
8 application filed under subsection (4) of this section is complete, the
9 office shall determine whether the business is a qualified business OR A
10 QUALIFIED EMPLOYEE-OWNED BUSINESS, review the list of the expected
11 conversion OR EXPANSION costs, and review the estimated conversion OR
12 EXPANSION costs as calculated by the business. If the office approves the
13 business as a qualified business OR A QUALIFIED EMPLOYEE-OWNED
14 BUSINESS, the list of expected conversion OR EXPANSION costs, and the
15 estimated conversion OR EXPANSION costs, the office may reserve for the
16 benefit of the qualified business, THE QUALIFIED EMPLOYEE-OWNED
17 BUSINESS, or the owner OF THE BUSINESS an allocation of a tax credit
18 subject to the limitation specified in subsection (3)(b) of this section. The
19 office shall notify the qualified business OR THE QUALIFIED
20 EMPLOYEE-OWNED BUSINESS in writing of the amount of the reservation.
21 The reservation of a tax credit does not entitle the qualified business, THE
22 QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS
23 to an issuance of a tax credit certificate until the qualified business OR
24 QUALIFIED EMPLOYEE-OWNED BUSINESS complies with all of the other
25 requirements specified in this section for the issuance of the tax credit
26 certificate.

27 (II) A business may apply for a staged conversion OR STAGED

1 EXPANSION. If the office receives an application for a staged conversion
2 OR STAGED EXPANSION, and the office determines the requirements set
3 forth in subsection (6)(a)(I) of this section have been met, the office shall
4 reserve tax credits for all stages of the qualified business's conversion OR
5 THE QUALIFIED EMPLOYEE-OWNED BUSINESS'S EXPANSION in the year the
6 application is filed. The office may certify the staged conversion costs OR
7 STAGED EXPANSION COSTS and issue tax credit certificates under
8 subsection (7)(b)(II) of this section when the costs are incurred.

9 (7) (a) Any qualified business OR QUALIFIED EMPLOYEE-OWNED
10 BUSINESS with respect to which the office has made a reservation of tax
11 credits under subsection (6) of this section shall incur not less than twenty
12 percent of the estimated conversion OR EXPANSION costs not later than
13 eighteen months after the date of the written notice from the office to the
14 qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS granting the
15 reservation of tax credits. The qualified business OR QUALIFIED
16 EMPLOYEE-OWNED BUSINESS shall submit evidence of compliance with
17 the provisions of this subsection (7)(a). If the office determines that a
18 qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS has failed
19 to comply with the requirements of this subsection (7)(a), the office may
20 rescind the written notice it previously gave the business or the owner
21 approving the reservation of tax credits and, if so, the total amount of tax
22 credits made available for the calendar year for which reservations may
23 be granted must be increased by the amount of the tax credits rescinded.
24 The office shall promptly notify any qualified business, ANY QUALIFIED
25 EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS whose
26 reservation of tax credits has been rescinded and, upon receipt of the
27 notice, the qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS

1 may submit a new application.

2 (b) (I) Following the completion of the conversion OR EXPANSION,
3 the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS
4 shall notify the office that the conversion OR EXPANSION has been
5 completed and shall provide the office with a cost certification of the
6 estimated conversion OR EXPANSION costs. The cost certification must be
7 audited by a licensed certified public accountant that is not affiliated with
8 the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS.
9 The office shall review the cost certification, and within ninety days after
10 receipt of the cost certification, the office shall certify the conversion OR
11 EXPANSION costs and issue a tax credit certificate in the amounts allowed
12 in subsection (3) of this section. The office shall promptly notify the
13 qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS of any
14 disallowed conversion OR EXPANSION costs.

15 (II) If a conversion OR EXPANSION is a staged conversion OR
16 STAGED EXPANSION as set forth in subsection (6)(a)(II) of this section, and
17 the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS
18 meets the requirements in this subsection (7), the office shall issue pro
19 rata tax credit certificates to a THE qualified business, QUALIFIED
20 EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS based on the
21 percent of the conversion OR EXPANSION completed during each tax year.

22 (c) Notwithstanding subsection (7)(b) of this section, the total
23 amount of the tax credit certificate issued to a qualified business, A
24 QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS
25 shall not exceed the amount of the tax credit reservation under subsection
26 (6)(a) of this section.

27 (d) If the amount of certified costs incurred by the qualified

1 business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS would result in
2 a THE qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the
3 owner OF THE BUSINESS being issued an amount of tax credits that
4 exceeds the amount of tax credits reserved for the business under
5 subsection (6)(a) of this section, the qualified business OR THE QUALIFIED
6 EMPLOYEE-OWNED BUSINESS may apply to the office for the issuance of
7 an amount of tax credits that equals the excess. The qualified business OR
8 THE QUALIFIED EMPLOYEE-OWNED BUSINESS must submit its application
9 for issuance of such excess tax credits on a form prescribed by the office.
10 Unless the office is concerned THAT the application it received under this
11 subsection (7)(d) is fraudulent, the office shall automatically approve the
12 application, which it shall issue by means of a separate certificate, subject
13 only to the availability of tax credits and the provisions concerning
14 priority provided in subsection (6)(a) of this section.

15 (8) If the credit allowed under this section exceeds the income
16 taxes due on the INCOME OF THE qualified business's BUSINESS, QUALIFIED
17 EMPLOYEE-OWNED BUSINESS, or ~~the owner's income~~ OWNER OF THE
18 BUSINESS, the amount of the credit not used to offset income taxes must
19 be refunded to the qualified business, QUALIFIED EMPLOYEE-OWNED
20 BUSINESS, or ~~the~~ owner OF THE BUSINESS.

21 (10) To claim the income tax credit allowed in this section, the
22 qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or ~~the~~ owner
23 OF THE BUSINESS shall attach a copy of the credit certificate to its state
24 income tax return. No tax credit is allowed under this section unless the
25 qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or ~~the~~ owner
26 OF THE BUSINESS provides the copy of the credit certificate with its filed
27 state income tax return. The amount of the credit that the qualified

1 business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS may claim under
2 this section is the amount stated on the tax credit certificate.

3 (11) The office shall, in a sufficiently timely manner to allow the
4 department to process returns claiming the income tax credit allowed in
5 this section, provide the department with an electronic report of each
6 qualified business, ~~or the~~ QUALIFIED EMPLOYEE-OWNED BUSINESS, AND
7 owner OF A BUSINESS that the office approved for the income tax credit
8 allowed in this section for the preceding calendar year that includes the
9 following information:

10 **SECTION 2. Act subject to petition - effective date -**
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
12 the expiration of the ninety-day period after final adjournment of the
13 general assembly; except that, if a referendum petition is filed pursuant
14 to section 1 (3) of article V of the state constitution against this act or an
15 item, section, or part of this act within such period, then the act, item,
16 section, or part will not take effect unless approved by the people at the
17 general election to be held in November 2024 and, in such case, will take
18 effect on the date of the official declaration of the vote thereon by the
19 governor.

20 (2) This act applies to income tax years commencing on or after
21 January 1, 2024.