

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-1168.01 Rebecca Bayetti x4348

HOUSE BILL 24-1453

HOUSE SPONSORSHIP

Ricks,

SENATE SPONSORSHIP

Coleman and Kolker,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

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

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 relocates the "Colorado Loans for Increasing Main Street Business Economic Recovery Act" and renames it the "Colorado Loans for Increasing Main Street Business Economic Resiliency Act" (CLIMBER Act). Specifically, the bill moves the administration of the CLIMBER Act loan program and insurance premium tax credits from the

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.

department of the treasury (department) to the office of economic development (office) and transfers the associated powers, duties, and functions of the administration of the CLIMBER Act from the department to the office. Along with this relocation, the bill makes the following changes to the CLIMBER Act:

- For the small business recovery and resiliency loan program, removes the requirement that at least 90% of the money in any prior tranche be invested in small business loans before the office can provide another tranche to a loan program or to the Colorado credit reserve;
- Allows the office to accept and expend gifts, grants, donations, and federal funds to support the CLIMBER Act and credits this money to the existing small business recovery and resiliency fund; and
- Removes the future repeal of the CLIMBER Act and other future repeal dates located within the individual provisions of the CLIMBER Act.

The bill also makes a conforming amendment and repeals the provisions of law where the CLIMBER Act was previously codified.

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

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

4 **PART 6**

5 **COLORADO LOANS FOR INCREASING MAIN STREET**
6 **BUSINESS ECONOMIC RESILIENCY ACT**

7 **24-48.5-601. [Formerly 24-36-201] Short title.** The short title of
8 this ~~part 2~~ PART 6 is the "Colorado Loans for Increasing Main Street
9 Business Economic ~~Recovery~~ RESILIENCY Act" or "CLIMBER Act".

10 **24-48.5-602. [Formerly 24-36-202] Legislative declaration.**

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

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

14 (b) Small businesses in Colorado make up a disproportionately

1 larger share of the economy of the state compared to the United States as
2 a whole;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) The loan program, if successful, has the potential to help small
27 businesses survive the crisis caused by THE COVID-19 pandemic, and to

1 protect jobs across the state, AND SUPPORT RESILIENCY FOR SMALL
2 BUSINESSES AS NEW CHALLENGES EMERGE, which in turn will generate
3 and sustain tax revenues to both the state and local governments;

4 (c) Preserving jobs with small businesses will also reduce public
5 expenditures on safety net programs and other forms of assistance needed
6 by those who have become unemployed as a result of the crisis caused by
7 COVID-19;

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

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

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

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

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

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

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

1 therefore:

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

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

8 **24-48.5-603. [Formerly 24-36-203] Definitions.** As used in this
9 ~~part 2~~ PART 6, unless the context otherwise requires:

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

12 (2) "Contract" means a contract entered into by the ~~state treasurer~~
13 OFFICE OF ECONOMIC DEVELOPMENT in accordance with ~~section~~
14 ~~24-36-205 (1)~~ SECTION 24-48.5-605 (1).

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

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

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

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

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

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

25 (5) "Loan program" means ~~a~~ THE small business recovery AND
26 RESILIENCY loan program established in accordance with ~~section~~
27 ~~24-36-205~~ SECTION 24-48.5-605.

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

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

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

10 (9) "Premium tax liability" means the liability imposed by section
11 10-3-209 or 10-6-128, or, in the case of a repeal or reduction by the state
12 of the liability imposed by section 10-3-209 or 10-6-128, any other tax
13 liability imposed upon an insurance company by the state.

14 (10) "Qualified taxpayer" means an insurance company authorized
15 to do business in Colorado that has premium tax liability owing to the
16 state and that purchases a tax credit under this ~~part 2~~ PART 6. "Qualified
17 taxpayer" also includes an insurance company that receives or assumes a
18 tax credit transferred in accordance with ~~section 24-36-206 (7)(e) or~~
19 ~~24-36-207 (6)~~; SECTION 24-48.5-606 (7)(e) OR 24-48.5-607 (6), or that
20 receives or assumes a tax credit as an affiliate of a qualified taxpayer or
21 transferee. For purposes of this ~~subsection (10)~~ PART 6, "affiliate" has the
22 same meaning as set forth in section 10-3-801 (1).

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

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

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

5 **24-48.5-604. [Formerly 24-36-204] Small business recovery and**
6 **resiliency loan program oversight board - creation - report.** (1) The
7 small business recovery AND RESILIENCY loan program oversight board
8 is hereby created in the ~~department~~ DIVISION OF BUSINESS FUNDING AND
9 INCENTIVES WITHIN THE OFFICE to help establish and oversee the terms
10 and conditions of a contract or contracts through which the ~~treasurer~~
11 OFFICE may provide first loss capital to a loan program or the Colorado
12 credit reserve. This section does not prohibit a loan program manager of
13 a specific loan program or the Colorado credit reserve from establishing
14 a separate investment advisory committee for that loan program.

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

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

17 (II) The director of the minority business office created in section
18 24-49.5-102, on behalf of the office of economic development, or the
19 director's designee;

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

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

23 (V) One member appointed by the governor.

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

26 (c) The members appointed pursuant to subsection (2)(a) of this
27 section must have substantial private sector experience in commercial

1 banking or capital market activities and must have obtained
2 executive-level positions in these industries.

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

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

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

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

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

24 (7) The oversight board is a state public body subject to part 4 of
25 article 6 of this title 24. In addition to any other requirements, the
26 oversight board shall hold meetings open to the public, publish the agenda
27 for each meeting in advance, keep and publish minutes from each

1 meeting, provide advanced notification of meeting times to banking trade
2 associations and other groups that request notification, and receive
3 written and public testimony at each meeting.

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

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

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

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

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

27 (e) Regularly reviewing progress in achieving the targets

1 established pursuant to subsection (8)(d) of this section and making
2 adjustments to a loan program to help achieve the targets if needed; and

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

10 (9) The oversight board shall consult with small businesses in
11 establishing the criteria for eligible borrowers pursuant to ~~section~~
12 ~~24-36-203 (4)~~ SECTION 24-48.5-603 (4).

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

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

18 (12) (a) The oversight board shall submit a written report on the
19 implementation of the loan program to the joint budget committee. The
20 oversight board shall submit its first report on or before November 30,
21 2020, and shall submit the report each six months thereafter for a period
22 of two years. After the report submitted November 30, 2022, the
23 oversight board shall submit the report annually, on or before November
24 30 of each year. The oversight board shall also submit the report once
25 each year in fiscal years 2020-21 and 2021-22 to the business affairs and
26 labor committee of the house of representatives ~~or any successor~~
27 ~~committee~~, and the business, labor, and technology committee of the

1 senate, or any successor ~~committee~~ COMMITTEES. Notwithstanding the
2 requirement in section 24-1-136 (11)(a)(I), the requirement to submit the
3 report required in this subsection (11) continues until this section is
4 repealed.

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

7 (I) The number and size of loans made;

8 (II) The geographic distribution of loans made;

9 (III) The distribution of loans made by business sector;

10 (IV) The demographics of the owners of the businesses receiving
11 loans, including the number of businesses owned by women, minorities,
12 and veterans;

13 (V) The number of loans made to rural businesses;

14 (VI) The size of the businesses receiving loans;

15 (VII) The number of people employed by the businesses receiving
16 loans;

17 (VIII) Distributions or revenue received by the state from the
18 program;

19 (IX) The financial performance of the fund;

20 (X) The default rates for loans made by the program;

21 (XI) Borrower interest rates on the loans and an explanation of
22 how the rates comply with the requirements of ~~section 24-36-205~~
23 ~~(4)(b)(v)~~ SECTION 24-48.5-605 (4)(b)(V); and

24 (XII) Any other information requested by the chair of the joint
25 budget committee, OR BY the business affairs and labor committee of the
26 house of representatives ~~or any successor committee~~, or the business,
27 labor, and technology committee of the senate, or any successor

1 ~~committee~~ COMMITTEES.

2 (c) The oversight board shall make a presentation to a joint
3 meeting of the business affairs and labor committee of the house of
4 representatives and the business, labor, and technology committee of the
5 senate, or any successor committees, at least once each fiscal year or more
6 often if requested by the chairs of the committees.

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

8 **24-48.5-605. [Formerly 24-36-205] Small business recovery and**
9 **resiliency loan program - creation - requirements - oversight.**

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

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

24 (2) The ~~state treasurer~~ OFFICE may contract with the Colorado
25 housing and finance authority created in part 7 of article 4 of title 29 or
26 with a bank, nonprofit organization, nondepository community
27 development financial institution, business development corporation,

1 certified public accountant firm, or fund manager to administer a loan
2 program. If the ~~state treasurer~~ OFFICE contracts with an entity other than
3 the Colorado housing and finance authority to administer a loan program,
4 the ~~state treasurer~~ OFFICE shall use an open and competitive process to
5 select the entity. The ~~state treasurer~~ OFFICE shall consult with ~~the director~~
6 ~~of the office of economic development and~~ the oversight board in
7 selecting and contracting with a loan program manager.

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

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

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

23 (b) The money provided under this subsection (3) must be
24 provided in tranches of ten million dollars or less. ~~up to a maximum~~
25 ~~amount of fifty million dollars in all tranches combined across fiscal~~
26 ~~years. 2020-21 through 2023-24. The state treasurer shall not provide a~~
27 ~~tranche to a loan program or to the Colorado credit reserve until at least~~

1 ~~ninety percent of the money in any prior tranche has been invested in~~
2 ~~small business loans in accordance with subsection (4) of this section, as~~
3 ~~determined by the oversight board and certified by the loan program~~
4 ~~manager. Money provided to the Colorado credit reserve is considered~~
5 ~~invested in small business loans for the purposes of this subsection (3)(b)~~
6 ~~once it is paid to the Colorado housing and finance authority.~~

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

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

22 (b) Except for money contributed to the Colorado credit reserve,
23 once the money in a tranche is matched in accordance with subsection
24 (4)(a) of this section, it must be used to make loans or purchase
25 participation interest in loans for working capital, including the purchase
26 of equipment, to eligible borrowers, or other activities that accomplish the
27 same purpose. The oversight board shall consult with lending industry

1 leaders and representatives of small businesses with regard to subsections
2 (4)(b)(I) to (4)(b)(VI) of this section. Each loan must be subject to the
3 following terms:

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

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

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

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

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

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

25 (c) (I) ~~In order to~~ TO ensure geographic equity, each tranche of
26 loan funding must be subject to an initial period of time in which a
27 portion of the money is allocated to each county on a basis proportional

1 to the county's share of small businesses relative to the state, the county's
2 share of small business employees relative to the state, the county's share
3 of small business personal property relative to the state, or other similar
4 metrics as determined by the oversight board, or based on a formula
5 established under subsection (4)(c)(IV) of this section. The money
6 allocated to each county must be reserved for applications from eligible
7 borrowers located in that county for the initial period of time. For the
8 purposes of this subsection (4)(c), an eligible borrower is considered to
9 be located in the county in which it has its principal place of business, as
10 reflected in its most recent filing with the secretary of state or subject to
11 such other documentation as the oversight board establishes. The
12 oversight board shall determine the amount of time in which the money
13 in each tranche is subject to a geographic restriction under this subsection
14 (4)(c)(I).

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

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

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

26 (d) (I) A loan program manager shall make every effort to achieve
27 benchmarks published by the oversight board pursuant to ~~section~~

1 ~~24-36-204 (8)(d)~~ SECTION 24-48.5-604 (8)(d) for the percentage of loans
2 supported by the program that are made to businesses owned by socially
3 and economically disadvantaged individuals, including businesses owned
4 by women, minorities, and veterans, and to businesses located in rural
5 counties. A loan program manager shall consult with the minority
6 business office within the office of the governor and the division of
7 business funding and incentives within the office ~~of economic~~
8 ~~development~~ to develop an outreach strategy for marketing the loan
9 program to businesses owned by women, minorities, and veterans and
10 businesses located in rural counties.

11 (II) For money contributed to the Colorado credit reserve, the
12 oversight board may waive the requirements of this subsection (4)(d) or
13 may establish alternative benchmarks for the percentage of loans
14 supported by the program that are made to businesses owned by socially
15 and economically disadvantaged individuals, including businesses owned
16 by women, minorities, and veterans, and to businesses located in rural
17 counties.

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

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

27 (6) Distributions or revenue paid to the state pursuant to a contract

1 under this section ~~shall~~ MUST be deposited in the small business recovery
2 AND RESILIENCY fund. ~~except that, if such distributions or revenue are~~
3 ~~paid after the small business recovery fund is repealed, the money shall~~
4 ~~be paid to the state treasurer, who shall credit the money to the general~~
5 ~~fund~~

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

13 **24-48.5-606. [Formerly 24-36-206] Small business recovery tax**
14 **credits - authorization to issue - terms - report.** (1) A qualified
15 taxpayer may purchase small business recovery tax credits from the
16 department in accordance with this section and may apply the tax credits
17 against its premium tax liability in accordance with ~~section 24-36-207~~
18 SECTION 24-48.5-607.

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

23 (b) The department is authorized to issue tax credit certificates to
24 qualified taxpayers equal to the lesser of a combined total face value of
25 up to twenty-eight million dollars or combined total sales proceeds of up
26 to twenty-one million dollars in fiscal years 2021-22 and 2022-23.

27 (c) The department may contract with an independent third party

1 to conduct or consult on a bidding process among qualified taxpayers to
2 purchase the tax credits.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (d) Any penalties or other remedies for noncompliance;

19 (e) The procedures to be used for transferring or assuming the tax
20 credits in accordance with subsection (7)(e) of this section or ~~section~~
21 ~~24-36-207 (6)~~ SECTION 24-48.5-607 (6), or between affiliates; ~~as defined~~
22 ~~in section 10-3-801 (1)~~

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

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

26 (7) (a) The department shall not issue a tax credit certificate to any
27 qualified taxpayer that fails to provide the tax credit sale proceeds within

1 the time SPECIFIED BY the department. ~~specifies~~

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

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

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

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

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

26 (9) (a) The department shall provide a report to the division of
27 insurance in the department of regulatory agencies for each fiscal year in

1 which it issues tax credit certificates pursuant to this ~~part 2~~ PART 6 within
2 thirty days after the issuance of the credits. The report must include:

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

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

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

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

15 **24-48.5-607. [Formerly 24-36-207] Use of small business**
16 **recovery tax credits - carry over.** (1) For a tax credit certificate issued
17 in fiscal year 2020-21:

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

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

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

1 fiscal year 2022-23:

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

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

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

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

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

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

26 (4) A qualified taxpayer claiming a credit under this ~~part 2~~ PART
27 6 shall submit the tax credit certificate with its tax return.

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

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

17 **24-48.5-608. [Formerly 24-36-208] Small business recovery and**
18 **resiliency fund.** (1) The small business recovery AND RESILIENCY fund
19 is hereby created in the state treasury. The fund consists of:

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

22 (b) Distributions, revenue, or money returned to the state from a
23 loan program established pursuant to ~~section 24-36-205~~ SECTION
24 24-48.5-605 and deposited in the fund; ~~and~~

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

27 (d) ANY GIFTS, GRANTS, DONATIONS, OR FEDERAL FUNDS RECEIVED

1 PURSUANT TO SUBSECTION (7) OF THIS SECTION.

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

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

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

12 ~~(5) The state treasurer shall transfer all unexpended and~~
13 ~~unencumbered money in the fund at the end of the fiscal year on June 30,~~
14 ~~2037, to the general fund.~~

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

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

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

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

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

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

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

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

23 (4) WHENEVER THE DEPARTMENT OR THE STATE TREASURER IS
24 REFERRED TO OR DESIGNATED BY A CONTRACT OR OTHER DOCUMENT IN
25 CONNECTION WITH THE POWERS, DUTIES, AND FUNCTIONS TRANSFERRED
26 TO THE OFFICE PURSUANT TO THIS SECTION, SUCH REFERENCE OR
27 DESIGNATION WILL BE DEEMED TO APPLY TO THE OFFICE, AS APPLICABLE.

1 ALL CONTRACTS ENTERED INTO BY THE DEPARTMENT OR THE STATE
2 TREASURER PRIOR TO SEPTEMBER 1, 2024, IN CONNECTION WITH THE
3 SMALL BUSINESS RECOVERY AND RESILIENCY LOAN PROGRAM ARE HEREBY
4 VALIDATED, WITH THE OFFICE SUCCEEDING TO ALL THE RIGHTS AND
5 OBLIGATIONS OF SUCH CONTRACTS. ANY APPROPRIATIONS OF MONEY
6 FROM PRIOR FISCAL YEARS OPEN TO SATISFY OBLIGATIONS INCURRED
7 PURSUANT TO SUCH CONTRACTS ARE TRANSFERRED AND APPROPRIATED
8 TO THE OFFICE FOR THE PAYMENT OF SUCH OBLIGATIONS.

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

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

19 **SECTION 2. Repeal of provisions being relocated in this act.**
20 In Colorado Revised Statutes, **repeal** 24-36-201, 24-36-202, 24-36-203,
21 24-36-204, 24-36-205, 24-36-206, 24-36-207, and 24-36-208.

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

25 **24-36-209. Office of economic development.** ~~The office of~~
26 ~~economic development shall assist the state treasurer and the department~~
27 ~~in implementing this part 2.~~

1 **24-36-210. Repeal of part.** ~~This part 2 is repealed, effective~~
2 ~~December 31, 2040.~~

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

5 **24-75-402. Cash funds - limit on uncommitted reserves -**
6 **reduction in the amount of fees - exclusions - definitions - repeal.**

7 (5) Notwithstanding any provision of this section to the contrary, the
8 following cash funds are excluded from the limitations specified in this
9 section:

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

12 **SECTION 5. Effective date.** This act takes effect on September
13 1, 2024.

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