

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0505.01 Megan McCall x4215

HOUSE BILL 22-1149

HOUSE SPONSORSHIP

Lynch and Bird,

SENATE SPONSORSHIP

Rankin and Hansen,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXPANSION OF THE ADVANCED INDUSTRY**
102 **INVESTMENT TAX CREDIT, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

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 extends the advanced industry investment tax credit for an additional 5 years, increases the annual maximum amount of the tax credit from \$750,000 to \$4 million and increases the tax credit from 30% to 35% of a qualified investment in rural or economically distressed areas.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-48.5-112, **amend**
3 (1)(e) introductory portion, (2)(c), (2)(d), (3)(a), (3)(b), and (6); and **add**
4 (1.5) as follows:

5 **24-48.5-112. Advanced industry investment tax credit -**
6 **administration - legislative declaration - definitions - repeal.** (1) As
7 used in this section, unless the context otherwise requires:

8 (e) "Qualified investment" means an investment made at any time
9 on or after July 1, 2014, but before ~~January 1, 2023~~ JANUARY 1, 2024, in
10 an equity security that meets all of the following requirements:

11 (1.5) IN ACCORDANCE WITH SECTION 39-21-304 (1), WHICH
12 REQUIRES EACH BILL THAT EXTENDS AN EXPIRING TAX EXPENDITURE TO
13 INCLUDE A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A
14 STATUTORY LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY HEREBY
15 FINDS AND DECLARES THAT:

16 (a) THE GENERAL LEGISLATIVE PURPOSES OF THE TAX CREDIT
17 ALLOWED BY THIS SECTION ARE:

- 18 (I) TO INDUCE CERTAIN DESIGNATED BEHAVIOR BY TAXPAYERS;
19 (II) TO IMPROVE INDUSTRY COMPETITIVENESS; AND
20 (III) TO PROVIDE TAX RELIEF FOR CERTAIN BUSINESSES OR
21 INDIVIDUALS;

22 (b) THE SPECIFIC LEGISLATIVE PURPOSE OF THE TAX CREDIT
23 ALLOWED BY THIS SECTION IS TO ENCOURAGE INVESTMENT IN SMALL
24 BUSINESSES LOCATED IN COLORADO IN ADVANCED INDUSTRIES, AND IN
25 PARTICULAR IN SMALL BUSINESSES IN ADVANCED INDUSTRIES LOCATED IN
26 A RURAL AREA OR ECONOMICALLY DISTRESSED AREA OF THE STATE; AND

1 (c) THE STATEMENT REQUIRED BY AN APPLICANT ON THE
2 APPLICATION FOR AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT SET
3 FORTH IN SUBSECTION (2)(e) OF THIS SECTION, AND THE REPORTS THAT
4 THE OFFICE IS REQUIRED TO SUBMIT PURSUANT TO SUBSECTION (6) OF THIS
5 SECTION, WILL ALLOW THE GENERAL ASSEMBLY AND THE STATE AUDITOR
6 TO MEASURE THE EFFECTIVENESS OF THE TAX EXPENDITURE.

7 (2) (c) A business may request the office to determine whether it
8 is a qualified small business. Upon receiving the request or upon receipt
9 of an application for an advanced industry investment tax credit from a
10 qualified investor, the office shall determine whether the business that is
11 named in the application or written request is a qualified small business.
12 After determining the qualifications, the office shall certify the qualified
13 small business as being eligible to receive qualified investments for
14 purposes of this section. The certification for a qualified small business
15 that is certified after July 1, 2014, is valid until ~~January 1, 2023~~ JANUARY
16 1, 2024, except that the certification is revoked if the business no longer
17 meets the qualifications. A business shall notify the office within thirty
18 business days from the date that it no longer meets the qualifications. If
19 the certification is revoked, the office may assess a penalty against the
20 business that is equal to the amount of the advanced industry investment
21 tax credits authorized after the date that the business no longer meets the
22 qualifications. The state treasurer shall deposit the penalty into the state
23 general fund. If the certification is revoked, subsequent investments in the
24 business do not qualify for a tax credit. All tax credits issued before the
25 revocation of the certification remain valid. The office shall not deny any
26 application for a tax credit on the basis of the revocation of the
27 certification if the investment was made before the date of the revocation.

1 (d) As part of the application for an advanced industry investment
2 tax credit, the applicant and the qualified small business that receives the
3 investment must each provide written authorization to permit the
4 department of revenue to provide tax information to the office for the
5 purpose of determining if there are any misrepresentations on the
6 application. The authorization is limited to disclosure of income tax
7 information for the latest two years for which returns were filed with the
8 department of revenue preceding the date the application is filed and for
9 all tax years through the year in which the investment was made for
10 which a return was not filed as of the date of the application. The
11 applicant must also provide in the written authorization income tax
12 information for all tax years in which the applicant actually claims a tax
13 credit or carries forward a tax credit on a return filed with the department
14 of revenue. An applicant ~~with an individual ownership interest as a~~
15 ~~co-owner of a business and that may be entitled to a pro rata share of the~~
16 ~~tax credit pursuant to section 39-22-532 (5), C.R.S. THAT IS A~~
17 ~~PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR SIMILAR~~
18 ~~PASS-THROUGH ENTITY AND THAT MAY ALLOCATE THE CREDIT AMONG THE~~
19 ~~PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT QUALIFIED~~
20 ~~INVESTORS PURSUANT TO SECTION 39-22-532 (7) must provide a written~~
21 ~~authorization with content similar to the authorization, and in the same~~
22 ~~manner, as any other applicant is required to provide. If an applicant or~~
23 ~~qualified small business fails to comply with this paragraph (d)~~
24 ~~SUBSECTION (2)(d), an applicant is ineligible for a tax credit.~~

25 (3) (a) Subject to the limitations set forth in ~~paragraph (b) of this~~
26 ~~subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION, the office shall
27 authorize an advanced industry investment tax credit for each qualified

1 investor who makes a qualified investment in a qualified small business.
2 The amount of the tax credit is twenty-five percent of the amount of the
3 qualified investment or ~~thirty~~ THIRTY-FIVE percent of the qualified
4 investment if the qualified small business is located in a rural area or
5 economically distressed area of the state as determined by the office. The
6 office shall issue a tax credit certificate to the qualified investor for each
7 qualified investment stating the amount of the tax credit that is authorized
8 for purposes of section 39-22-532. ~~C.R.S.~~ A tax credit certificate is
9 nontransferable. The office shall certify to the department of revenue the
10 name of each qualified investor who receives a tax credit certificate, the
11 amount of the tax credit, and other relevant information relating to the tax
12 credit.

13 (b) (I) The total amount of the advanced industry investment tax
14 credits shall not exceed three hundred seventy-five thousand dollars for
15 the 2014 calendar year; ~~and~~ seven hundred fifty thousand dollars for each
16 calendar year from 2015 through 2022; AND FOUR MILLION DOLLARS FOR
17 EACH CALENDAR YEAR FROM 2023 THROUGH 2023; except that, if the total
18 amount of the credits for 2018 or a later calendar year THROUGH 2022 is
19 less than the maximum amount, then the maximum amount for the next
20 year is increased by an amount equal to the remaining, unused tax credits
21 from the prior year. The office shall authorize the tax credits in the order
22 that applications are received by the office and shall deny any application
23 received after the limit has been met. The office may partially authorize
24 the last tax credit that is awarded up to the limit.

25 (II) The total amount of the tax credit for each qualified
26 investment shall not exceed ~~fifty~~ ONE HUNDRED thousand dollars. A
27 qualified investor may not claim more than one tax credit per qualified

1 small business, but may be eligible for a tax credit for qualified
2 investments in different qualified small businesses in the same or a
3 different year.

4 (6) On November 1, 2017, the office shall submit a first report to
5 the finance and the business, labor, and economic and workforce
6 development committees of the house of representatives; to the business,
7 labor, and technology and the finance committees of the senate, or any
8 successor committees; and to the joint budget committee summarizing all
9 of the tax certificates issued since July 1, 2014. At a minimum, the report
10 must include the amount of the capital invested by qualified investors and
11 the tax credit that each qualified investor received, a description of the
12 qualified businesses that received the qualified investment, a projection
13 of the number of new employees hired by the qualified small businesses
14 as a result of the qualified investment, the geographic distribution of the
15 jobs, and any other economic impacts that resulted from the qualified
16 investment. Notwithstanding section 24-1-136 (11), the office shall
17 submit a second report on November 1, 2022, AND A THIRD REPORT ON
18 NOVEMBER 1, 2023, to the same legislative committees summarizing, FOR
19 THE SECOND REPORT, all of the tax certificates issued after January 1,
20 2018, AND, FOR THE THIRD REPORT, ALL OF THE TAX CERTIFICATES ISSUED
21 AFTER JANUARY 1, 2022. The second report AND THIRD REPORTS must
22 include the same information as the first report.

23 **SECTION 2.** In Colorado Revised Statutes, 39-22-532, **repeal**
24 **(5); and add (7) as follows:**

25 **39-22-532. Advanced industry investment tax credit -**
26 **definitions. (5) Individuals who are co-owners of a business, including**
27 **partners in a partnership and shareholders of an S corporation, may each**

1 ~~claim only their individual pro rata shares of the Colorado innovation~~
2 ~~investment tax credit allowed under this section based on their ownership~~
3 ~~interests. The total of the tax credits allowed to all such owners may not~~
4 ~~exceed the amount that would have been allowed to a sole owner.~~

5 (7) IF A QUALIFIED INVESTOR RECEIVING A CREDIT ALLOWED IN
6 THIS SECTION IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S
7 CORPORATION, OR SIMILAR PASS-THROUGH ENTITY, THE QUALIFIED
8 INVESTOR MAY ALLOCATE THE CREDIT AMONG ITS PARTNERS,
9 SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT QUALIFIED INVESTORS
10 IN ANY MANNER AGREED TO BY SUCH PARTNERS, SHAREHOLDERS,
11 MEMBERS, OR OTHER CONSTITUENT QUALIFIED INVESTORS. THE QUALIFIED
12 INVESTOR SHALL CERTIFY TO THE COLORADO OFFICE OF ECONOMIC
13 DEVELOPMENT THE AMOUNT OF THE CREDIT ALLOCATED TO EACH
14 PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT QUALIFIED
15 INVESTOR, AND THE OFFICE SHALL ISSUE CREDIT CERTIFICATES IN THE
16 APPROPRIATE AMOUNTS TO EACH PARTNER, SHAREHOLDER, MEMBER, OR
17 OTHER CONSTITUENT QUALIFIED INVESTOR. EACH PARTNER,
18 SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT QUALIFIED INVESTOR
19 SHALL BE ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY
20 RESTRICTIONS SET FORTH IN THIS SECTION AND SECTION 24-48.5-112.

21 **SECTION 3. Appropriation.** For the 2022-23 state fiscal year,
22 \$90,000 is appropriated to the office of the governor for use by economic
23 development programs. This appropriation is from the general fund and
24 is based on an assumption that the office will require an additional 0.8
25 FTE. To implement this act, the office may use this appropriation for
26 advanced industries.

27 **SECTION 4. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly; except
3 that, if a referendum petition is filed pursuant to section 1 (3) of article V
4 of the state constitution against this act or an item, section, or part of this
5 act within such period, then the act, item, section, or part will not take
6 effect unless approved by the people at the general election to be held in
7 November 2022 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor.