

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-1033.01 Jessica Herrera x4218

HOUSE BILL 22-1392

HOUSE SPONSORSHIP

Bird and Lindsay,

SENATE SPONSORSHIP

Moreno,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE EXTENSION OF STATE TAX INCENTIVES AFFECTING
102 THE USE OF REAL PROPERTY TO PROMOTE COMMUNITY
103 DEVELOPMENT, AND, IN CONNECTION THEREWITH, EXTENDING
104 THE CONTAMINATED LAND STATE INCOME TAX CREDIT AND
105 PROPERTY TAX EXEMPTION FOR AFFORDABLE HOUSING
106 PROJECTS.

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, an affordable housing developer in Colorado

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.

can qualify for state property tax exemptions for 15 years and federal income tax credits for 30 years. The bill allows affordable housing projects to receive the Colorado state property tax exemptions for an extended period of 15 years to match the period available under federal law.

Under current law, the tax credit for environmental remediation of contaminated land (commonly referred to as the Brownfield credit) allows taxpayers to claim income tax credits for voluntary cleanup of contaminated land, known as brownfield, located in Colorado. Taxpayers can claim a transferable credit equivalent to 40% of the first \$750,000 spent on remediation and 30% of the next \$750,000 spent, for a maximum credit of \$525,000 on remediation costs of \$1.5 million or more. In addition, a "qualified entity", which is a county, municipality, or private nonprofit entity, is allowed an essentially identical transferable expense amount for expenses incurred in performing approved environmental remediation that can be transferred to a taxpayer as an income tax credit. The Colorado department of public health and environment (CDPHE) is authorized to certify a total of \$3 million in both tax credits for each income tax year. The bill:

- Extends the tax credit, which is set to expire on January 1, 2023, to January 1, 2033, for an additional 10 years;
- Increases the annual total cap on tax credits from \$3 million to \$7 million for calendar year 2022 and after;
- Expands the definition of "qualified entity" to include school districts, charter schools, special districts, institutions of higher education, and other quasi-governmental entities;
- Allows a taxpayer whose credit is tied to remediation of a site in a rural community to claim a credit equivalent to 50% of the first \$750,000 spent on remediation and 40% of the next \$750,000 spent;
- Eliminates some restrictions that taxpayers have on the transferability of credits, including a restriction that requires any transfer to occur within the first 2 years of receiving the tax credit and the requirement that the transferee certify that the taxpayer satisfied statutory requirements; and
- Requires a taxpayer and a transferee of a tax credit or transferable expense amount to jointly file a copy of the transfer agreement with CDPHE, specifies that such filing perfects the transfer, and clarifies that the transferee and the department of revenue can rely upon the certification by CDPHE of the ownership and the amount of the tax credit as being accurate.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-3-112, **amend**
3 (3)(c)(II)(A) and (3)(c)(IV)(A) as follows:

4 **39-3-112. Definitions - residential property - orphanage -**
5 **low-income elderly or individuals with disabilities - homeless or**
6 **abused - low-income households - charitable purposes - exemption -**
7 **limitations.** (3) In order for property to be exempt from the levy and
8 collection of property tax pursuant to subsection (2) of this section, the
9 administrator must find, pursuant to section 39-2-117, that:

10 (c) The property is owned:

11 (II) (A) With respect to residential structures specified in
12 ~~sub-subparagraphs (A), (C), and (D) of subparagraph (II) of paragraph (a)~~
13 ~~of this subsection (3)~~, SUBSECTIONS (3)(a)(II)(A), (3)(a)(II)(C), AND
14 (3)(a)(II)(D) OF THIS SECTION during any compliance period, as defined
15 by section 42 (i)(1) of the "Internal Revenue Code of 1986", as amended,
16 INCLUDING ANY EXTENDED USE PERIOD PROVIDED UNDER SECTION 42 OF
17 THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED, by any domestic
18 or foreign limited partnership of which any nonprofit corporation that
19 satisfies the provisions of ~~subparagraph (I) of this paragraph (c)~~
20 SUBSECTION (3)(c)(I) OF THIS SECTION is a general partner and that was
21 formed for the purpose of obtaining, and has been allocated, low-income
22 housing credits pursuant to section 42 of the "Internal Revenue Code of
23 1986", as amended.

24 (IV) (A) With respect to elderly or disabled low-income
25 residential facilities or low-income household residential facilities, during
26 any compliance period, as defined by section 42 (i)(1) of the "Internal

1 Revenue Code of 1986", as amended, INCLUDING ANY EXTENDED USE
2 PERIOD PROVIDED UNDER SECTION 42 OF THE "INTERNAL REVENUE CODE
3 OF 1986", AS AMENDED, by any domestic or foreign limited partnership so
4 long as each of the general partners of such limited partnership is a
5 for-profit corporation, seventy-five percent or more of the outstanding
6 voting stock of which is owned by, and seventy-five percent or more of
7 the members of the board of directors of which is elected by, one or more
8 nonprofit corporations that satisfy the provisions of ~~subparagraph (f) of~~
9 ~~this paragraph (e)~~ SUBSECTION (3)(c)(I) OF THIS SECTION and so long as
10 such limited partnership was formed for the purpose of obtaining, and the
11 structure that is owned by such limited partnership has been allocated,
12 low-income housing credits pursuant to section 42 of the "Internal
13 Revenue Code of 1986", as amended.

14 **SECTION 2.** In Colorado Revised Statutes, 39-22-526, **amend**
15 (1)(a) introductory portion, (1)(b), (1)(c), (1)(d) introductory portion,
16 (1)(d)(III), (1)(d)(VII), (1)(d)(VIII), (2)(a) introductory portion, (2)(b),
17 (2)(c) introductory portion, (2)(c)(II), (2)(c)(VI), (2)(c)(VII), (2)(d), (3),
18 and (4); **repeal** (1)(d)(V), (1)(d)(IX), (1)(d)(X), (2)(c)(IV), and
19 (2)(c)(VIII); and **add** (3.5) as follows:

20 **39-22-526. Credit for environmental remediation of**
21 **contaminated land - legislative declaration - definitions - repeal.**

22 (1) (a) For income tax years commencing on or after January 1, 2014, but
23 prior to ~~January 1, 2023~~ JANUARY 1, 2033, there is allowed a credit
24 against the income taxes imposed by this ~~article~~ ARTICLE 22 for any
25 approved environmental remediation of contaminated property to any
26 taxpayer who meets the following requirements:

27 (b) (I) The tax credit allowed in this section must not exceed forty

1 percent of the first seven hundred fifty thousand dollars expended for the
2 approved remediation, and must not exceed thirty percent of the next
3 seven hundred fifty thousand dollars expended for the approved
4 remediation. FOR INCOME TAX YEARS COMMENCING ON OR AFTER
5 JANUARY 1, 2022, WITH RESPECT TO APPROVED REMEDIATION OF A SITE
6 LOCATED IN A RURAL COMMUNITY, THE AMOUNT OF THE TAX CREDIT
7 SHALL NOT EXCEED FIFTY PERCENT OF THE FIRST SEVEN HUNDRED FIFTY
8 THOUSAND DOLLARS EXPENDED FOR THE APPROVED REMEDIATION, AND
9 MUST NOT EXCEED FORTY PERCENT OF THE NEXT SEVEN HUNDRED FIFTY
10 THOUSAND DOLLARS EXPENDED FOR THE APPROVED REMEDIATION. A tax
11 credit is not allowed for expenditures exceeding one million five hundred
12 thousand dollars on any individual project.

13 (II) AS USED IN THIS SUBSECTION (1)(b) AND SUBSECTION (2)(b)
14 OF THIS SECTION, "RURAL COMMUNITY" MEANS:

15 (A) A MUNICIPALITY WITH A POPULATION OF LESS THAN FIFTY
16 THOUSAND PEOPLE THAT IS NOT LOCATED WITHIN THE DENVER
17 METROPOLITAN AREA; OR

18 (B) THE UNINCORPORATED AREA OF ANY COUNTY THAT IS NOT
19 LOCATED IN THE DENVER METROPOLITAN AREA AND THAT HAS A TOTAL
20 POPULATION OF LESS THAN FIFTY THOUSAND PEOPLE.

21 (III) AS USED IN THIS SUBSECTION (1)(b) AND SUBSECTION (2)(b)
22 OF THIS SECTION, "DENVER METROPOLITAN AREA" MEANS ADAMS,
23 ARAPAHOE, BOULDER, AND JEFFERSON COUNTIES, THE CITY AND COUNTY
24 OF BROOMFIELD, THE CITY AND COUNTY OF DENVER, AND ALL OF
25 DOUGLAS COUNTY OTHER THAN THE TOWN OF CASTLE ROCK AND THE
26 TOWN OF LARKSPUR.

27 (c) ~~A credit must be first applied to taxes due or transferred to~~

1 another taxpayer pursuant to paragraph (d) of this subsection (1) no later
2 than the tax year following the tax year in which the certification is
3 provided to the department pursuant to section 25-16-306 (5)(a), C.R.S.
4 If the credit allowed by this section exceeds the tax otherwise due, the
5 excess credit may be carried forward and claimed on the earliest possible
6 subsequent tax return for a period not to exceed five years.

7 (d) A taxpayer may transfer all or a portion of a tax credit granted
8 pursuant to this subsection (1) to another taxpayer for such other
9 taxpayer, as transferee, to apply as a credit against the taxes imposed by
10 this ~~article~~ ARTICLE 22 subject to the following limitations:

11 (III) ~~For any tax year in which a tax credit is transferred pursuant~~
12 ~~to this paragraph (d), both the taxpayer and the transferee shall file~~
13 ~~written statements with their income tax returns specifying the amount of~~
14 ~~the tax credit transferred. A transferee may only claim a credit transferred~~
15 ~~pursuant to this paragraph (d) if the taxpayer's written statement verifies~~
16 ~~the amount of the tax credit claimed by the transferee.~~ ANY TRANSFEREE
17 OF A TAX CREDIT ISSUED UNDER THIS SECTION MAY USE THE AMOUNT OF
18 THE TAX CREDITS TRANSFERRED TO OFFSET AGAINST ANY OTHER TAX DUE
19 UNDER THIS ARTICLE 22. THE TRANSFEROR AND THE TRANSFEREE OF THE
20 TAX CREDITS SHALL JOINTLY FILE A COPY OF THE WRITTEN TRANSFER
21 AGREEMENT WITH THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND
22 ENVIRONMENT, REFERRED TO IN THIS SECTION AS "CDPHE", WITHIN
23 THIRTY DAYS AFTER THE TRANSFER. ANY FILING OF THE WRITTEN
24 TRANSFER AGREEMENT WITH CDPHE PERFECTS THE TRANSFER, AND
25 CDPHE SHALL DEVELOP A SYSTEM TO TRACK THE TRANSFERS OF TAX
26 CREDITS AND TO CERTIFY THE OWNERSHIP OF TAX CREDITS. A
27 CERTIFICATION BY CDPHE OF THE OWNERSHIP AND THE AMOUNT OF TAX

1 CREDITS MAY BE RELIED ON BY CDPHE AND THE TRANSFEREE AS BEING
2 ACCURATE, AND NEITHER CDPHE NOR THE DEPARTMENT OF REVENUE
3 SHALL ADJUST THE AMOUNT OF TAX CREDITS AS TO THE TRANSFEREE;
4 EXCEPT THAT CDPHE AND THE DEPARTMENT OF REVENUE RETAIN ANY
5 REMEDIES THEY MAY HAVE AGAINST THE OWNER.

6 (V) ~~The transferee shall submit to the department of revenue a~~
7 ~~form approved by the department establishing that the taxpayer has~~
8 ~~satisfied the requirements of this section. The transferee shall also file a~~
9 ~~copy of the form with the department of public health and environment.~~

10 (VII) A tax credit held by an individual either directly or as a
11 result of a ~~donation~~ DISTRIBUTION by a pass-through entity, but not a tax
12 credit held by a transferee unless used by the transferee's estate for taxes
13 owed by the estate, survives the death of the individual and may be
14 claimed or transferred by the decedent's estate.

15 (VIII) The transferor of a tax credit transferred pursuant to this
16 ~~paragraph (d)~~ SUBSECTION (1)(d) is the tax matters representative in all
17 matters with respect to the credit. ~~The tax matters representative is~~
18 ~~responsible for representing and binding the transferees with respect to~~
19 ~~all issues affecting the credit, including the amounts expended for the~~
20 ~~approved remediation, the certificate issued by the department of public~~
21 ~~health and environment, notifications and correspondence from and with~~
22 ~~the department of revenue, audit examinations, assessments or refunds,~~
23 ~~settlement agreements, and the statute of limitations. The transferee is~~
24 subject to the same statute of limitations with respect to the credit as the
25 transferor of the credit.

26 (IX) ~~Final resolution of disputes regarding the tax credit between~~
27 ~~the department of revenue and the tax matters representative, including~~

1 ~~final determinations, compromises, payment of additional taxes or~~
2 ~~refunds due, and administrative and judicial decisions, is binding on~~
3 ~~transferees.~~

4 (X) ~~Any person who has claimed a credit or who may be eligible~~
5 ~~to claim a tax credit either as a taxpayer or a transferee may petition the~~
6 ~~department of revenue to change the tax matters representative's~~
7 ~~designation. The executive director shall promulgate rules specifying the~~
8 ~~procedures for a change to the tax matters representative's designation~~
9 ~~when the executive director determines that the tax matters representative~~
10 ~~is unavailable or unwilling to act as the tax matters representative. If the~~
11 ~~department grants the petition, the new tax matters representative shall~~
12 ~~serve in that capacity on and after the date the department grants the~~
13 ~~petition.~~

14 (2) (a) For income tax years commencing on or after January 1,
15 2014, but prior to ~~January 1, 2023~~ JANUARY 1, 2033, there is allowed to
16 any qualified entity a transferable expense amount for expenses incurred
17 by the qualified entity in performing approved environmental
18 remediation. The transferable expense amount may only be transferred to
19 a taxpayer to be claimed by the taxpayer as a credit pursuant to the
20 provisions of this subsection (2). The transferrable expense amount is
21 allowed to any qualified entity that meets the following requirements:

22 (b) The transferable expense amount allowed in this section must
23 not exceed forty percent of the first seven hundred fifty thousand dollars
24 expended by the qualified entity for the approved remediation, and must
25 not exceed thirty percent of the next seven hundred fifty thousand dollars
26 expended by the qualified entity for the approved remediation. FOR
27 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, WITH

1 RESPECT TO APPROVED REMEDIATION OF A SITE LOCATED IN A RURAL
2 COMMUNITY, THE AMOUNT OF THE TRANSFERABLE EXPENSE SHALL NOT
3 EXCEED FIFTY PERCENT OF THE FIRST SEVEN HUNDRED FIFTY THOUSAND
4 DOLLARS EXPENDED FOR THE APPROVED REMEDIATION, AND MUST NOT
5 EXCEED FORTY PERCENT OF THE NEXT SEVEN HUNDRED FIFTY THOUSAND
6 DOLLARS EXPENDED FOR THE APPROVED REMEDIATION. A transferable
7 expense amount is not allowed for expenditures exceeding one million
8 five hundred thousand dollars on any individual project.

9 (c) A qualified entity may transfer all or a portion of a transferable
10 expense amount allowed pursuant to this subsection (2) to a taxpayer for
11 such taxpayer, as transferee, to apply as a credit against the taxes imposed
12 by this ~~article~~ ARTICLE 22 subject to the following limitations:

13 (II) ~~For any tax year in which a transferable expense amount is~~
14 ~~transferred pursuant to this subsection (2), the qualified entity shall file~~
15 ~~a written statement with the department of revenue on a form approved~~
16 ~~by the department of revenue and the transferee shall file a written~~
17 ~~statement with the transferee's income tax return specifying the amount~~
18 ~~transferred to the transferee to be claimed as a credit. A transferee may~~
19 ~~only claim a credit pursuant to this subsection (2) if the qualified entity's~~
20 ~~written statement verifies the amount of the tax credit claimed by the~~
21 ~~transferee.~~ ANY TRANSFEREE OF A TRANSFERABLE EXPENSE AMOUNT
22 ISSUED UNDER THIS SECTION MAY USE THE AMOUNT OF THE
23 TRANSFERABLE EXPENSE AMOUNT TRANSFERRED TO OFFSET AGAINST ANY
24 OTHER TAX DUE UNDER THIS ARTICLE 22. THE TRANSFEROR AND THE
25 TRANSFEREE OF THE TRANSFERABLE EXPENSE AMOUNT SHALL JOINTLY
26 FILE A COPY OF THE WRITTEN TRANSFER AGREEMENT WITH CDPHE
27 WITHIN THIRTY DAYS AFTER THE TRANSFER. ANY FILING OF THE WRITTEN

1 TRANSFER AGREEMENT WITH CDPHE PERFECTS THE TRANSFER, AND
2 CDPHE SHALL DEVELOP A SYSTEM TO TRACK THE TRANSFERS OF
3 TRANSFERABLE EXPENSE AMOUNTS AND TO CERTIFY THE OWNERSHIP OF
4 TRANSFERABLE EXPENSE AMOUNTS. A CERTIFICATION BY CDPHE OF THE
5 OWNERSHIP AND THE AMOUNT OF TRANSFERABLE EXPENSE MAY BE RELIED
6 ON BY THE DEPARTMENT OF REVENUE AND THE TRANSFEREE AS BEING
7 ACCURATE, AND NEITHER CDPHE NOR THE DEPARTMENT OF REVENUE
8 SHALL ADJUST THE AMOUNT OF TRANSFERABLE EXPENSE AS TO THE
9 TRANSFEREE; EXCEPT THAT CDPHE AND THE DEPARTMENT OF REVENUE
10 RETAIN ANY REMEDIES THEY MAY HAVE AGAINST THE OWNER.

11 (IV) ~~The transferee shall submit to the department of revenue a~~
12 ~~form approved by the department establishing that the transferee has~~
13 ~~satisfied the requirements of this section. The transferee shall also file a~~
14 ~~copy of the form with the department of public health and environment.~~

15 (VI) A ~~tax credit~~ TRANSFERABLE EXPENSE AMOUNT held by a
16 transferee's estate for taxes owed by the estate, survives the death of the
17 transferee and may be claimed or transferred by the decedent's estate.

18 (VII) The qualified entity that transfers a transferable expense
19 amount to be claimed as a credit by a transferee pursuant to this
20 subsection (2) is the tax matters representative in all matters with respect
21 to the credit. ~~The tax matters representative is responsible for representing~~
22 ~~and binding the transferees with respect to all issues affecting the credit,~~
23 ~~including the amounts expended for the approved remediation, the~~
24 ~~certificate issued by the department of public health and environment,~~
25 ~~notifications and correspondence from and with the department of~~
26 ~~revenue, audit examinations, assessments or refunds, settlement~~
27 ~~agreements, and the statute of limitations.~~

1 (VIII) ~~Final resolution of disputes regarding the tax credit~~
2 ~~between the department of revenue and the tax matters representative,~~
3 ~~including final determinations, compromises, payment of additional taxes~~
4 ~~or refunds due, and administrative and judicial decisions, is binding on~~
5 ~~transferees.~~

6 (d) ~~For purposes of AS USED IN~~ this subsection (2), "qualified
7 entity" means a county, home rule county, city, town, home rule city,
8 home rule city and county, SCHOOL DISTRICT, CHARTER SCHOOL, SPECIAL
9 DISTRICT, DISTRICT AUTHORIZED BY ARTICLE 20 OF TITLE 30, ARTICLE 25
10 OF TITLE 31, AND ARTICLES 41 TO 50 OF TITLE 37, STATE INSTITUTION OF
11 HIGHER EDUCATION, QUASI-GOVERNMENTAL ENTITY, OR MUNICIPAL,
12 QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO
13 LAW, or a private nonprofit entity that is exempt from the income taxes
14 imposed by this ~~article~~ ARTICLE 22.

15 (3) In addition to any other requirements of this section, a
16 taxpayer shall submit a claim for a credit and a qualified entity shall
17 submit a claim for a transferrable expense amount to the department of
18 public health and environment. The department shall issue certificates for
19 the claims received in the order submitted. After certificates have been
20 issued for credits and transferrable expense amounts in the aggregate
21 amount of three million dollars for all taxpayers and qualified entities
22 combined for the 2014 TO 2021 calendar years and ~~three~~ SEVEN million
23 dollars for each calendar year thereafter, any claims that exceed the
24 amount allowed for the calendar year shall be placed on a wait list in the
25 order submitted and a certificate shall be issued for use of the credit or
26 transferrable expense amount in the next year for which the department
27 has not issued credit certificates in excess of three OR SEVEN million

1 dollars ~~except that no more than one million dollars in claims shall be~~
2 ~~placed on the wait list for any given calendar year~~ RESPECTIVELY. The
3 department shall not issue certificates for any calendar year, including
4 certificates placed on a wait list for that year, in an aggregate amount that
5 exceeds three OR SEVEN million dollars RESPECTIVELY. TWO MILLION
6 DOLLARS OF THE SEVEN MILLION DOLLAR CAP IS RESERVED ONLY FOR
7 PROJECTS IN A RURAL COMMUNITY. THE REMAINING FIVE MILLION
8 DOLLARS EACH YEAR MAY BE USED BY RURAL OR NONRURAL
9 COMMUNITIES. No claim for a credit or a transferrable expense amount is
10 allowed for any income tax year commencing on or after January 1, 2014,
11 unless a certificate has been issued by the department pursuant to this
12 subsection (3).

13 (3.5) IN ACCORDANCE WITH SECTION 39-21-304 (1), WHICH
14 REQUIRES EACH BILL THAT CREATES A NEW TAX EXPENDITURE OR
15 EXTENDS AN EXPIRING TAX EXPENDITURE TO INCLUDE A TAX PREFERENCE
16 PERFORMANCE STATEMENT AS PART OF A STATUTORY LEGISLATIVE
17 DECLARATION, THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES
18 THAT:

19 (a) THE GENERAL LEGISLATIVE PURPOSES OF THE INCOME TAX
20 CREDIT ALLOWED BY THIS SECTION ARE:

21 (I) TO INDUCE CERTAIN DESIGNATED BEHAVIOR BY TAXPAYERS;
22 AND

23 (II) TO PROVIDE TAX RELIEF FOR CERTAIN BUSINESSES OR
24 INDIVIDUALS;

25 (b) THE SPECIFIC LEGISLATIVE PURPOSE OF THE INCOME TAX
26 CREDIT ALLOWED BY THIS SECTION IS TO ENCOURAGE VOLUNTARY
27 ENVIRONMENTAL REMEDIATION OF CONTAMINATED SITES BY PROVIDING

1 A FINANCIAL INCENTIVE TO MOVE FORWARD WITH COSTLY REMEDIATION
2 PROJECTS; AND

3 (c) IN ORDER TO ALLOW THE GENERAL ASSEMBLY AND THE STATE
4 AUDITOR TO MEASURE THE EFFECTIVENESS OF ACHIEVING THE PURPOSES
5 SPECIFIED IN SUBSECTIONS (3.5)(a) AND (3.5)(b) OF THIS SECTION, CDPHE
6 IS REQUIRED TO PROVIDE DATA THAT INDICATES FOR EACH CALENDER
7 YEAR HOW MANY PROJECTS QUALIFIED FOR THE CREDIT AND THE NUMBER
8 OF CREDIT RECIPIENTS.

9 (4) This section is repealed, effective ~~December 31, 2029~~
10 DECEMBER 31, 2039.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, or safety.