

CHAPTER 286

TAXATION

HOUSE BILL 02-1399

BY REPRESENTATIVE(S) Spradley, Dean, Boyd, Cadman, Cloer, Fritz, King, Schultheis, Sinclair, Smith, Vigil, Williams T., Chavez, Coleman, Garcia, Groff, Hefley, Jahn, Jameson, Kester, Lawrence, Marshall, Miller, Romanoff, Sanchez, Tapia, and Williams S.;
also SENATOR(S) Matsunaka, Hernandez, Musgrave, Chlouber, Epps, Lamborn, May, McElhany, and Owen.

AN ACT

CONCERNING THE ECONOMIC RECOVERY ACT, AND, IN CONNECTION THEREWITH, INCREASING THE MAXIMUM TERM FOR WHICH A SCHOOL DISTRICT BOARD OF EDUCATION, A COUNTY, OR A MUNICIPALITY MAY NEGOTIATE A BUSINESS INCENTIVE AGREEMENT, REQUIRING A SCHOOL DISTRICT BOARD OF EDUCATION TO SUBMIT A BUSINESS INCENTIVE AGREEMENT FOR THE REVIEW OF THE COLORADO ECONOMIC DEVELOPMENT COMMISSION BEFORE ENTERING INTO THE BUSINESS INCENTIVE AGREEMENT, AND REPEALING A STATUTORY PROVISION THAT REQUIRES THE CREATION AND REVIEW OF A PLAN ESTABLISHING CRITERIA, PROCEDURES, AND A SCHEDULE FOR THE TERMINATION OF ENTERPRISE ZONES OR PORTIONS THEREOF THAT NO LONGER MEET SPECIFIED CRITERIA.

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

SECTION 1. 22-32-110 (1) (ff) and (1) (gg), Colorado Revised Statutes, are amended to read:

22-32-110. Board of education - specific powers - repeal. (1) In addition to any other power granted to a board of education of a school district by law, each board of education of a school district shall have the following specific powers, to be exercised in its judgment:

(ff) (I) To negotiate for an incentive payment or credit with any taxpayer who establishes a new business facility, as defined in section 39-22-508.2 (3), C.R.S., but excluding the requirements of paragraph (b) of said subsection (3), in such school district; however, no negotiations may be entered into with any taxpayer establishing a new business facility unless such school district has been notified, pursuant to sections 30-11-123 (5) and 31-15-903 (4), C.R.S., by any county and by any municipality in which such new business facility would be located of agreements negotiated by such local governments with such taxpayer. In no instance shall any

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

such negotiation result in an annual incentive payment or credit ~~which~~ THAT exceeds fifty percent of the amount of the taxes levied by the school district upon the taxable personal property located at or within such new business facility and used in connection with the operation of such new business facility for the current property tax year. An agreement negotiated pursuant to this paragraph (ff) prior to July 1, 1994, shall be valid. Any school district ~~which~~ THAT negotiates any agreement pursuant to the provisions of this paragraph (ff) shall inform any county and any municipality in which a new business facility would be located of such negotiations. The terms of any agreement made pursuant to the provisions of this paragraph (ff) shall not exceed four years; EXCEPT THAT THE TERM OF ANY AGREEMENT MADE OR AMENDED ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (ff), AS AMENDED, MAY EXTEND TO AS MANY AS TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED, IF THE COUNTY, AND IF APPLICABLE THE MUNICIPALITY, IN WHICH A NEW BUSINESS FACILITY IS ESTABLISHED HAVE NEGOTIATED AGREEMENTS WITH THE SAME TAXPAYER FOR THE SAME PERIOD PURSUANT TO SECTIONS 30-11-123 (1) (b) AND 31-15-903 (1) (b), C.R.S.

(II) ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (ff), AS AMENDED, A SCHOOL DISTRICT BOARD OF EDUCATION SHALL NOT ENTER INTO AN AGREEMENT TO PROVIDE AN INCENTIVE PAYMENT OR CREDIT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (ff) UNLESS THE COLORADO ECONOMIC DEVELOPMENT COMMISSION HAS REVIEWED THE AGREEMENT.

(gg) (I) To negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section 39-22-508.2 (2) (a), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-22-508.2 (3), C.R.S., but excluding the requirements of paragraph (b) of said subsection (3), and which is located in such school district; however, no negotiations may be entered into with any taxpayer expanding a facility unless such school district has been notified, pursuant to sections 30-11-123 (5) and 31-15-903 (4), C.R.S., by any county and by any municipality in which such expanded business facility is located of agreements negotiated by such local governments with such taxpayer. In no instance shall any such negotiation result in such an annual incentive payment or credit ~~which~~ THAT is greater than fifty percent of the amount of the taxes levied by the school district upon the taxable personal property directly attributable to such expansion, located at or within such expanded facility, and used in connection with the operation of such expanded facility for the current property tax year. An agreement negotiated pursuant to this paragraph (gg) prior to July 1, 1994, shall be valid. Any school district which negotiates any agreement pursuant to the provisions of this paragraph (gg) shall inform any county and any municipality in which an expanded business facility is located of such negotiations. The terms of any agreement made pursuant to the provisions of this paragraph (gg) shall not exceed four years; EXCEPT THAT THE TERM OF ANY AGREEMENT MADE OR AMENDED ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (gg), AS AMENDED, MAY EXTEND TO AS MANY AS TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED, IF THE COUNTY, AND IF APPLICABLE THE MUNICIPALITY, IN WHICH AN EXPANDED BUSINESS FACILITY IS LOCATED HAVE NEGOTIATED AGREEMENTS WITH THE SAME TAXPAYER FOR THE SAME PERIOD PURSUANT TO SECTIONS 30-11-123 (2) AND 31-15-903 (2), C.R.S.

(II) ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (gg), AS AMENDED, A SCHOOL DISTRICT BOARD OF EDUCATION SHALL NOT ENTER INTO AN AGREEMENT TO

PROVIDE AN INCENTIVE PAYMENT OR CREDIT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (gg) UNLESS THE COLORADO ECONOMIC DEVELOPMENT COMMISSION HAS REVIEWED THE AGREEMENT.

SECTION 2. 24-46-104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-46-104. Powers and duties of commission. (1) The commission has the following powers and duties:

(m) TO REVIEW AGREEMENTS FOR INCENTIVE PAYMENTS OR CREDITS NEGOTIATED BY SCHOOL DISTRICTS AND TAXPAYERS PURSUANT TO SECTION 22-32-110 (1) (ff) AND (1) (gg), C.R.S.

SECTION 3. 30-11-123 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

30-11-123. Legislative declaration - counties - new business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitations. (1) (b) Notwithstanding any law to the contrary, any county may negotiate for an incentive payment or credit with any taxpayer who establishes a new business facility, as defined in section 39-22-508.2 (3), C.R.S., but excluding the requirements of paragraph (b) of said subsection (3), in such county. In no instance shall any such negotiation result in such an annual incentive payment or credit ~~which~~ THAT is greater than fifty percent of the amount of the taxes levied by the county upon the taxable personal property located at or within such new business facility and used in connection with the operation of such new business facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; EXCEPT THAT THE TERM OF ANY AGREEMENT MADE OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b), AS AMENDED, MAY EXTEND TO AS MANY AS TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED.

(2) Notwithstanding any law to the contrary, any county may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section 39-22-508.2 (2) (a), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-22-508.2 (3), C.R.S., but excluding the requirements of paragraph (b) of said subsection (3), and which is located in such county. In no instance shall any such negotiation result in such an annual incentive payment or credit ~~which~~ THAT is greater than fifty percent of the amount of the taxes levied by the county upon the taxable personal property directly attributable to such expansion, located at or within such expanded facility, and used in connection with the operation of such expanded facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; EXCEPT THAT THE TERMS OF ANY AGREEMENT MADE OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2) MAY EXTEND TO AS MANY AS TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED.

SECTION 4. 31-15-903 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

31-15-903. Legislative declaration - municipalities - new business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation. (1) (b) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who establishes a new business facility, as defined in section 39-22-508.2 (3), C.R.S., but excluding the requirements of paragraph (b) of said subsection (3), in such municipality. In no instance shall any such negotiation result in an annual incentive payment or credit ~~which~~ THAT is greater than fifty percent of the amount of taxes levied by the municipality upon the taxable personal property located at or within such new business facility and used in connection with the operation of such new business facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; EXCEPT THAT THE TERM OF ANY AGREEMENT MADE OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b), AS AMENDED, MAY EXTEND TO AS MANY AS TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED.

(2) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section 39-22-508.2 (2) (a), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-22-508.2 (3), C.R.S., but excluding the requirements of paragraph (b) of said subsection (3), and which is located in such municipality. In no instance shall any such negotiation result in such an annual incentive payment or credit ~~which~~ THAT is greater than fifty percent of the amount of the taxes levied by the municipality upon the taxable personal property directly attributable to such expansion, located at or within such expanded facility, and used in connection with the operation of such expanded facility for the current property tax year. The term of any agreement made pursuant to the provisions of this section shall not exceed four years; EXCEPT THAT THE TERMS OF ANY AGREEMENT MADE OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, MAY EXTEND TO AS MANY AS TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED.

SECTION 5. Repeal. 39-30-103 (4) (d), Colorado Revised Statutes, is repealed as follows:

39-30-103. Zones established - termination. (4) (d) ~~(I) Within twelve months after the release of socio-economic data from the United States census and every five years thereafter, the executive director of the department of local affairs shall submit to the Colorado economic development commission created in section 24-46-102, C.R.S., and to the state auditor a plan establishing criteria, procedures, and a schedule for the termination of enterprise zones or portions thereof that no longer meet the criteria set forth by subsection (1) of this section or other criteria established by the Colorado economic development commission.~~

~~(II) The plan shall not provide for tax credits that are based on an area's enterprise zone status and that have already been earned by taxpayers under criteria existing when the qualifying transactions are completed to be restricted, curtailed, or otherwise cutoff. In addition, the plan shall establish procedures for recognizing and allowing credits to taxpayers who have taken actions in reliance on agreements reached with zone administrators or local governments for long-term investments. Finally, the plan shall provide that all decisions concerning the designation or~~

~~termination of enterprise zones or portions thereof are to be made by the Colorado economic development commission created in section 24-46-102, C.R.S., upon the recommendations of the executive director of the department of local affairs; except that the plan shall provide that no termination decision shall be effective prior to July 1, 1997, or prior to the submission of a report on the termination decision to the general assembly.~~

~~(H) The state auditor shall review the plan submitted by the executive director pursuant to this paragraph (d) and shall provide comments and suggestions concerning the plan to the general assembly within sixty days after it is received.~~

SECTION 6. 39-30-103 (6), Colorado Revised Statutes, is amended to read:

39-30-103. Zones established - termination. (6) (a) When the termination of an enterprise zone or portion of an enterprise zone would prevent a taxpayer from qualifying for tax benefits under this article and the taxpayer can identify job creation or capital expansion activities that were planned prior to the termination announcement and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-103.5, 39-30-104, or 39-30-105, the enterprise zone administrator and the taxpayer shall jointly certify the circumstances and detailed plan information prior to the effective date of the termination. Such certification may be filed with the taxpayer's state income tax return to extend the period within which the taxpayer may claim such tax benefits, not to exceed the ~~five~~ TEN tax years following the year of the termination, and the amount of each benefit that the taxpayer may claim during the extension period, based on the plan information filed with the tax return. It is the intent of this subsection (6) only to permit taxpayers to claim tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (6), nothing in this subsection (6) shall be construed to authorize the commission or any enterprise zone administrator to grant tax benefits that have been repealed by the general assembly or to grant tax benefits in excess of the limits established by law.

(b) NOTWITHSTANDING ANY DATE RESTRICTION SET FORTH IN ITS TEXT, ANY CERTIFICATION THAT WAS PREPARED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6) PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH (b), THAT EXTENDS THE RIGHT OF A TAXPAYER TO CLAIM TAX BENEFITS FOR THE MAXIMUM PERIOD THAT WAS ALLOWED BY LAW AT THE TIME THE CERTIFICATION WAS PREPARED, AND THAT ALLOWS THE TAXPAYER TO CLAIM TAX BENEFITS FOR ONE OR MORE INCOME TAX YEARS THAT END ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b) SHALL EXTEND THE RIGHT OF THE TAXPAYER TO CLAIM TAX BENEFITS FOR THE MAXIMUM PERIOD SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (6).

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2002