

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

PREAMENDED

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

LLS NO. 17-1132.04 Esther van Mourik x4215

HOUSE BILL 17-1356

HOUSE SPONSORSHIP

Duran and Esgar, Covarrubias, Garnett, Kraft-Tharp, Lawrence, Pabon, Van Winkle

SENATE SPONSORSHIP

Tate and Garcia,

House Committees

Finance
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A BILL FOR AN ACT

101 **CONCERNING THE TEMPORARY AUTHORITY OF THE COLORADO**
102 **ECONOMIC DEVELOPMENT COMMISSION TO ALLOW CERTAIN**
103 **BUSINESSES TO TREAT SPECIFIC EXISTING INCOME TAX CREDITS**
104 **DIFFERENTLY.**

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 allows the Colorado economic development commission to allow certain businesses that make a strategic capital investment in the state, subject to a maximum amount, and subject to the requirements of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

the specified income tax credits, to treat any of the following income tax credits allowed to the business as either carryforwardable for a five-year period or as transferable:

- ! Colorado job growth incentive tax credit;
- ! Enterprise zone income tax credit for investment in certain property;
- ! Income tax credit for new enterprise zone business employees; and
- ! Enterprise zone income tax credit for expenditures for research and experimental activities.

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

SECTION 1. In Colorado Revised Statutes, **add** 24-46-104.3 as follows:

24-46-104.3. Transferable income tax credits for certain businesses located in the state - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BUSINESS" MEANS A PERSON DOING BUSINESS IN THE STATE.

(b) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF REVENUE.

(c) "INCOME TAX CREDIT" MEANS THE INCOME TAX CREDITS ALLOWED TO A BUSINESS NO SOONER THAN THE INCOME TAX YEAR COMMENCING JANUARY 1, 2019, IN SECTION 39-22-531, 39-30-104, 39-30-105.1, OR 39-30-105.5.

(d) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION 24-48.5-101.

(e) "PERIOD" MEANS TEN CONSECUTIVE INCOME TAX YEARS STARTING WITH THE BUSINESS' INCOME TAX YEAR THAT COMMENCES IMMEDIATELY FOLLOWING THE DATE THE BUSINESS RECEIVES PRECERTIFICATION FROM THE COMMISSION AUTHORIZING THE INCOME TAX CREDITS TO BE TREATED DIFFERENTLY PURSUANT TO THIS SECTION.

1 (f) "PRECERTIFICATION" MEANS THE WRITTEN PRECERTIFICATION
2 THE COMMISSION MAY ISSUE AS ALLOWED IN SUBSECTION (2)(a) OF THIS
3 SECTION THAT MUST SET FORTH THE INCOME TAX CREDITS A BUSINESS
4 MAY TREAT DIFFERENTLY AND THE TOTAL ESTIMATED VALUE OF THE
5 INCOME TAX CREDITS THAT THE BUSINESS MAY TREAT DIFFERENTLY
6 PURSUANT TO THIS SECTION.

7 (g) "STRATEGIC CAPITAL INVESTMENT" MEANS A CAPITAL
8 INVESTMENT TOTALING NOT LESS THAN ONE HUNDRED MILLION DOLLARS
9 THAT THE COMMISSION FINDS WILL BE SIGNIFICANT TO THE STATE AND IS
10 EXPECTED TO BE PRODUCTIVE OVER MANY YEARS.

11 (h) "TWELVE-MONTH INTERVAL" MEANS EACH TWELVE-MONTH
12 INTERVAL FROM JULY 1, 2017, THROUGH JUNE 30, 2020, DURING WHICH
13 THE COMMISSION MAY ISSUE PRECERTIFICATIONS.

14 (2) (a) (I) SUBJECT TO THE LIMITATIONS SPECIFIED IN SUBSECTION
15 (2)(b) OF THIS SECTION, COMMENCING JULY 1, 2017, THROUGH JUNE 30,
16 2020, IF A BUSINESS INTENDS TO MAKE A STRATEGIC CAPITAL INVESTMENT
17 IN THE STATE, THE COMMISSION MAY ISSUE A WRITTEN PRECERTIFICATION
18 TO THE BUSINESS TO GRANT THE BUSINESS THE AUTHORITY TO TREAT ITS
19 ALLOWED INCOME TAX CREDITS DURING THE BUSINESS' PERIOD
20 DIFFERENTLY AS SPECIFIED IN THIS SECTION. THE STRATEGIC CAPITAL
21 INVESTMENT MUST BE INITIATED AFTER THE ISSUANCE OF THE
22 PRECERTIFICATION AND COMPLETED BEFORE THE END OF THE BUSINESS'
23 PERIOD; EXCEPT THAT, IF A BUSINESS MAKES A STRATEGIC CAPITAL
24 INVESTMENT THAT COULD RESULT IN ALLOWED INCOME TAX CREDITS WITH
25 A TOTAL VALUE GREATER THAN THE PRECERTIFICATION LIMITATIONS SET
26 FORTH IN SUBSECTION (2)(b) OF THIS SECTION, THE COMMISSION MAY
27 ISSUE A SECOND OR THIRD WRITTEN PRECERTIFICATION TO THE SAME

1 BUSINESS IN THE FOLLOWING TWELVE-MONTH INTERVALS FOR THE SAME
2 STRATEGIC CAPITAL INVESTMENT, EVEN IF THE STRATEGIC CAPITAL
3 INVESTMENT HAS ALREADY BEEN INITIATED OR COMPLETED. IF, AFTER
4 PRECERTIFICATION AND DURING THE BUSINESS' PERIOD, THE BUSINESS
5 MEETS THE REQUIREMENTS OF ONE OR MORE OF THE INCOME TAX CREDITS
6 AS SET FORTH IN THE STATUTORY SECTIONS PERTAINING TO EACH CREDIT,
7 THEN ONCE THE INCOME TAX CREDITS ARE ALLOWED, THE BUSINESS MAY
8 ELECT, BY FILING A WRITTEN ELECTION AS SPECIFIED IN SUBSECTION
9 (2)(a)(III) OF THIS SECTION, TO:

10 (A) USE THE INCOME TAX CREDITS AS AN OFFSET AGAINST THE
11 BUSINESS' INCOME TAXES IN THE INCOME TAX YEAR THAT THE INCOME TAX
12 CREDIT IS ALLOWED;

13 (B) CARRY FORWARD THE INCOME TAX CREDITS TO BE USED
14 AGAINST THE BUSINESS' INCOME TAX LIABILITY FOR NO MORE THAN FIVE
15 YEARS, EXCEPT AS PROVIDED IN SUBSECTION (2)(a)(II) OF THIS SECTION,
16 USING THE CARRIED FORWARD INCOME TAX CREDITS IN THE EARLIEST
17 INCOME TAX YEARS POSSIBLE; OR

18 (C) TRANSFER THE INCOME TAX CREDITS DURING THE
19 CARRY-FORWARD PERIOD DESCRIBED IN SUBSECTION (2)(a)(I)(B) OF THIS
20 SECTION AND AS ALLOWED IN SUBSECTION (4) OF THIS SECTION.

21 (II) THE FIVE-YEAR CARRY-FORWARD PERIOD COMMENCES WHEN
22 THE INCOME TAX CREDIT IS ALLOWED AND IS NOT LIMITED BY THE END OF
23 THE BUSINESS' PERIOD DESCRIBED IN THIS SECTION.

24 (III) IF A BUSINESS ELECTS TO TREAT ITS ALLOWED INCOME TAX
25 CREDITS DIFFERENTLY AS SPECIFIED IN THIS SECTION AND AS ALLOWED IN
26 THE PRECERTIFICATION, THE BUSINESS MUST FILE A WRITTEN ELECTION
27 WITH THE OFFICE. IF THE BUSINESS FILES THE WRITTEN ELECTION, THEN,

1 EXCEPT AS PROVIDED IN SUBSECTION (2)(b)(II) OF THIS SECTION, THE
2 BUSINESS MAY NOT ELECT TO RECEIVE A REFUND AS ALLOWED IN SECTION
3 39-30-104 (2.6).

4 (b) (I) ALL PRECERTIFICATIONS ISSUED BY THE COMMISSION IN
5 EACH TWELVE-MONTH INTERVAL [REDACTED] MAY NOT EXCEED TEN MILLION
6 DOLLARS OF ESTIMATED TOTAL VALUE OF ALL INCOME TAX CREDITS. ANY
7 PORTION OF THE TEN MILLION DOLLARS NOT PRECERTIFIED IN A
8 TWELVE-MONTH INTERVAL MAY NOT BE CARRIED FORWARD TO THE NEXT
9 TWELVE-MONTH INTERVAL.

10 (II) IF THE ACTUAL VALUE OF THE INCOME TAX CREDITS THAT A
11 BUSINESS IS ALLOWED EXCEEDS THE PRECERTIFICATION'S ESTIMATED
12 VALUE OF THE INCOME TAX CREDITS, THEN THE BUSINESS MAY NOT TREAT
13 THE DIFFERENCE BETWEEN THE ESTIMATED VALUE OF THE INCOME TAX
14 CREDITS AND THE ACTUAL VALUE OF THE INCOME TAX CREDITS
15 DIFFERENTLY AS SPECIFIED IN THIS SECTION. INSTEAD, THE DIFFERENCE
16 MUST BE TREATED AS SPECIFIED IN THE STATUTORY SECTIONS FOR EACH
17 INCOME TAX CREDIT.

18 (3) THE BUSINESS SHALL NOTIFY THE COMMISSION WHEN THE
19 BUSINESS HAS MET THE REQUIREMENTS OF ONE OR MORE OF THE INCOME
20 TAX CREDITS IN THE PERIOD, SHALL PROVIDE THE COMMISSION WITH
21 VERIFIABLE EVIDENCE THAT THE STRATEGIC CAPITAL INVESTMENT WAS
22 MADE, AND SHALL SUBMIT AN AUDIT OPINION FROM AN INDEPENDENT
23 CERTIFIED PUBLIC ACCOUNTANT ATTESTING THAT THE INCOME TAX CREDIT
24 OR INCOME TAX CREDITS HAVE BEEN PROPERLY CALCULATED. IF THE
25 COMMISSION AGREES THAT THE BUSINESS HAS SATISFIED THE TERMS OF
26 THE PRECERTIFICATION, THEN THE OFFICE SHALL NOTIFY THE DEPARTMENT
27 IN WRITING OF THE DIFFERENT TREATMENT OF THE BUSINESS' INCOME TAX

1 CREDITS FOR THE BUSINESS' PERIOD.

2 (4) (a) IF THE BUSINESS CHOOSES TO TRANSFER ITS ALLOWED
3 INCOME TAX CREDITS, THEN THE INCOME TAX CREDITS ARE FREELY
4 TRANSFERABLE AND ASSIGNABLE, SUBJECT TO THE COMMISSION'S
5 ISSUANCE OF THE PRECERTIFICATION PURSUANT TO THIS SECTION, AND
6 SUBJECT TO ANY NOTICE AND VERIFICATION REQUIREMENTS TO BE
7 DETERMINED BY THE OFFICE; EXCEPT THAT THE BUSINESS MAY ONLY
8 TRANSFER THE PORTION OF THE INCOME TAX CREDITS THAT WERE NOT
9 APPLIED AGAINST THE BUSINESS' INCOME TAX IMPOSED BY ARTICLE 22 OF
10 TITLE 39.

11 (b) THE TRANSFEREE MAY USE ALL OR A PORTION OF THE
12 TRANSFERRED INCOME TAX CREDIT AS AN OFFSET AGAINST THE
13 TRANSFEREE'S INCOME TAX IMPOSED BY ARTICLE 22 OF TITLE 39. ANY
14 UNUSED PORTION OF THE TRANSFERRED INCOME TAX CREDIT MAY BE
15 CARRIED FORWARD AND USED AS AN INCOME TAX CREDIT AGAINST THE
16 TRANSFEREE'S SUBSEQUENT YEARS' INCOME TAX LIABILITY FOR AN
17 INTERVAL NOT TO EXCEED THREE ADDITIONAL INCOME TAX YEARS FROM
18 THE DATE OF THE TRANSFEREE'S ACQUISITION AND SHALL BE APPLIED
19 FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE. THE TRANSFEREE
20 MAY TRANSFER ANY UNUSED PORTION OF THE ACQUIRED INCOME TAX
21 CREDIT TO A SECONDARY TRANSFEREE IN THAT THREE INCOME TAX YEAR
22 INTERVAL, BUT THE SECONDARY TRANSFEREE MAY ONLY OFFSET ITS
23 ACQUIRED INCOME TAX CREDIT AGAINST ITS INCOME TAX IMPOSED BY
24 ARTICLE 22 OF TITLE 39 FOR THE REMAINDER OF THE THREE INCOME TAX
25 YEAR INTERVALS FROM THE DATE OF THE FIRST TRANSFEREE'S
26 ACQUISITION.

27 (c) WITH RESPECT TO THE INCOME TAX CREDIT SET FORTH IN

1 SECTION 39-30-104, IF THE BUSINESS SEEKS A WAIVER OF THE LIMITATION
2 SPECIFIED IN SECTION 39-30-104 (2)(c) AND AS ALLOWED IN SECTION
3 39-30-104 (2)(c)(II), AND THE COMMISSION APPROVES SUCH WAIVER,
4 THEN THE APPROVED WAIVER OF THE LIMITATION MUST BE REFLECTED IN
5 THE PRECERTIFICATION AND APPLIES TO ANY TRANSFEREE OF THE
6 BUSINESS' INCOME TAX CREDIT ALLOWED UNDER SECTION 39-30-104.

7 (d) THE OFFICE SHALL ESTABLISH NOTICE AND VERIFICATION
8 REQUIREMENTS FOR TRANSFERRED INCOME TAX CREDITS.

9 (e) THE TRANSFEROR AND THE TRANSFEREE OF THE INCOME TAX
10 CREDITS SHALL JOINTLY FILE A COPY OF THE WRITTEN TRANSFER
11 AGREEMENT WITH THE OFFICE WITHIN THIRTY DAYS AFTER THE TRANSFER.
12 ANY FILING OF THE WRITTEN TRANSFER AGREEMENT WITH THE OFFICE
13 PERFECTS THE TRANSFER.

14 (f) THE OFFICE SHALL DEVELOP A SYSTEM TO TRACK THE
15 TRANSFERS OF INCOME TAX CREDITS AND TO CERTIFY THE OWNERSHIP OF
16 THE INCOME TAX CREDITS. A CERTIFICATION BY THE OFFICE OF THE
17 OWNERSHIP AND THE AMOUNT OF INCOME TAX CREDITS MAY BE RELIED ON
18 BY THE DEPARTMENT AND THE TRANSFEREE AS BEING ACCURATE TO THE
19 EXTENT THE DATA SUPPLIED BY THE BUSINESS IS ACCURATE, AND THE
20 OFFICE SHALL NOT ADJUST THE AMOUNT OF INCOME TAX CREDITS AS TO
21 THE TRANSFEREE. THE OFFICE, THE DEPARTMENT, AND ANY OTHER STATE
22 AGENCY RETAIN ANY REMEDIES THEY MAY HAVE AGAINST THE BUSINESS
23 AND ANY OTHER TAXPAYER THAT MISREPRESENTS THE VALUE OF THE
24 TRANSFERABLE INCOME TAX CREDIT IN A TRANSFER. THE OFFICE SHALL
25 ESTABLISH POLICIES TO PERMIT VERIFICATION OF THE OWNERSHIP AND
26 AMOUNT OF THE INCOME TAX CREDITS AND SHALL POST THOSE POLICIES
27 ON THE OFFICE'S WEBSITE; EXCEPT THAT THE POLICIES MAY NOT UNDULY

1 RESTRICT OR HINDER THE TRANSFER OF THE TAX CREDITS AS ALLOWED IN
2 THIS SECTION.

3 (g) THE OFFICE SHALL PROVIDE A REPORT TO THE DEPARTMENT
4 SPECIFYING THE OWNERSHIP AND TRANSFERS OF INCOME TAX CREDITS AS
5 ALLOWED IN THIS SECTION. THE REPORT MUST BE PROVIDED ON A
6 SCHEDULE TO BE DETERMINED BY THE DEPARTMENT AND THE OFFICE.

7 (5) THE COMMISSION AND THE OFFICE SHALL POST ON THE OFFICE'S
8 WEBSITE ALL NONCONFIDENTIAL INFORMATION RELATED TO THE
9 PRECERTIFICATION AND APPROVAL OF THE TREATMENT OF THE INCOME
10 TAX CREDITS AS SPECIFIED IN THIS SECTION. **NOTHING IN THIS SECTION**
11 **MAY BE CONSTRUED TO ABROGATE THE CONFIDENTIALITY PROVISIONS SET**
12 **FORTH IN SECTION 39-21-113.**

13 (6) THE COMMISSION SHALL INCLUDE INFORMATION REGARDING
14 ANY TRANSFERABILITY AUTHORIZED PURSUANT TO THIS SECTION,
15 INCLUDING THE NAMES OF THE BUSINESSES AND THE AMOUNTS
16 TRANSFERRED, IN ITS ANNUAL REPORT REQUIRED TO BE PRESENTED TO THE
17 GENERAL ASSEMBLY PURSUANT TO SECTION 24-46-104 (2).

18 **SECTION 2.** In Colorado Revised Statutes, 39-22-531, **amend**
19 (6) as follows:

20 **39-22-531. Colorado job growth incentive tax credit - rules -**
21 **definitions - repeal.** (6) EXCEPT AS PROVIDED IN SECTION 24-46-104.3,
22 if the amount of the credit allowed in this section exceeds the amount of
23 income taxes otherwise due on the taxpayer's income in the income tax
24 year for which the credit is being claimed, the amount of the credit not
25 used as an offset against income taxes in the current income tax year may
26 be carried forward and used as a credit against subsequent years' income
27 tax liability for a period not to exceed ten years and shall be applied first

1 to the earliest income tax years possible. Any credit remaining after said
2 period shall not be refunded or credited to the taxpayer.

3 **SECTION 3.** In Colorado Revised Statutes, 39-30-104, **amend**
4 (2.5)(a)(I) and (2.6)(a) introductory portion as follows:

5 **39-30-104. Credit against tax - investment in certain property**
6 **- definitions.** (2.5) (a) (I) Notwithstanding ~~the provisions of section~~
7 39-22-507.5 (7)(b), and except as otherwise provided in ~~subparagraph (H)~~
8 ~~of this paragraph (a) and paragraph (b) of this subsection (2.5)~~ SECTION
9 24-46-104.3 AND SUBSECTIONS (2.5)(a)(II) AND (2.5)(b) OF THIS SECTION,
10 any excess credit allowed pursuant to this section shall be an investment
11 tax credit carryover to each of the twelve income tax years following the
12 unused credit year.

13 (2.6) (a) Except as provided in ~~paragraph (b) of this subsection~~
14 ~~(2.6)~~ SECTION 24-46-104.3 AND SUBSECTION (2.6)(b) OF THIS SECTION and
15 notwithstanding any other provision in this section, in each income tax
16 year commencing on or after January 1, 2015, but before January 1, 2021,
17 a taxpayer who places a new renewable energy investment in service on
18 or after January 1, 2015, but before January 1, 2021, that results in a
19 credit pursuant to subsection (1) of this section may elect to receive a
20 refund of eighty percent of the amount of such credit as specified in this
21 ~~paragraph (a)~~ SUBSECTION (2.6)(a) and forego the remaining twenty
22 percent as a cost of such election. If eighty percent of the amount of the
23 credit in subsection (1) of this section is:

24 **SECTION 4.** In Colorado Revised Statutes, 39-30-105.1, **amend**
25 (4)(a) as follows:

26 **39-30-105.1. Credit for new enterprise zone business**
27 **employees - definitions.** (4) (a) (I) EXCEPT AS PROVIDED IN SECTION

1 24-46-104.3, for any income tax year commencing on or after January 1,
2 2014, if the total amount of the credits claimed by a taxpayer pursuant to
3 ~~the provisions of subparagraph (I) of paragraph (a) of subsection (1),~~
4 ~~paragraph (b) of subsection (1), and paragraph (a) of subsection (3)~~
5 SUBSECTIONS (1)(a)(I), (1)(b), AND (3)(a) of this section exceeds the
6 amount of income taxes due on the income of the taxpayer in the income
7 tax year for which the credits are being claimed, the amount of the credits
8 not used as an offset against income taxes in said income tax year is not
9 allowed as a refund but may be carried forward as a credit against
10 subsequent years' tax liability for a period not exceeding five years and is
11 applied first to the earliest income tax years possible. Any amount of the
12 credit that is not used during said period is not refundable to the taxpayer.

13 (II) EXCEPT AS PROVIDED IN SECTION 24-46-104.3, for any income
14 tax year commencing on or after January 1, 2014, if the total amount of
15 credits claimed by a taxpayer pursuant to ~~subparagraph (II) of paragraph~~
16 ~~(a) of subsection (1) of this section and paragraph (b) of subsection (3)~~
17 SUBSECTIONS (1)(a)(III) AND (3)(b) of this section exceeds the amount of
18 income taxes due on the income of the taxpayer in the income tax year for
19 which the credits are being claimed, the amount of credits not used as an
20 offset against income taxes in said income tax year is not allowed as a
21 refund but may be carried forward as a credit against subsequent years'
22 tax liability for a period not exceeding seven years and is applied first to
23 the earliest income tax years possible. Any amount of the credit that is not
24 used during said period is not refundable to the taxpayer.

25 **SECTION 5.** In Colorado Revised Statutes, 39-30-105.5, **amend**
26 (2) introductory portion as follows:

27 **39-30-105.5. Credit against Colorado income taxes based on**

1 **expenditures for research and experimental activities.** (2) EXCEPT AS
2 PROVIDED IN SECTION 24-46-104.3, in any one tax year, the amount of
3 such credit allowable for deduction from the taxpayer's tax liability shall
4 be the total of:

5 **SECTION 6. No appropriation.** The general assembly has
6 determined that this act can be implemented within existing
7 appropriations, and therefore no separate appropriation of state money is
8 necessary to carry out the purposes of this act.

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