

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 10-0410.01 Nicole Myers

SENATE BILL 10-162

SENATE SPONSORSHIP

Heath,

HOUSE SPONSORSHIP

Hullinghorst and May,

Senate Committees

Finance
Appropriations

House Committees

Finance

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE "URBAN AND RURAL**
102 **ENTERPRISE ZONE ACT" TO IMPROVE THE ACCOUNTABILITY OF**
103 **INCOME TAX CREDITS ALLOWED BY THE ACT.**

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://www.leg.state.co.us/billsummaries>.)

The "Urban and Rural Enterprise Zone Act" (act) specifies limitations on the population of an area that may be included in an enterprise zone but does not include a standard method of calculating the population. The bill specifies that the population of an enterprise zone

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.*

HOUSE
Am ended 2nd Reading
April 26, 2010

SENATE
3rd Reading Unamended
March 29, 2010

SENATE
Am ended 2nd Reading
March 26, 2010

shall be calculated using data from the most recent federal decennial census at the county, municipal, or block levels and that the calculations that require the use of block level data shall include the entire population of each block in which the enterprise zone is included. In addition, the bill increases the population limitation for an urban enterprise zone from 80,000 to 115,000 people and increases the limitation for a rural enterprise zone from 100,000 to 150,000 people to account for population growth that has occurred since 1986 when the population limits were established and to account for new standardized methodology.

Currently, the state auditor is required to use 6 broad economic indicators when evaluating the effectiveness of the act in an audit. The current factors are too broad to be utilized to determine the impact of an enterprise zone. The bill eliminates the requirement that the state auditor use the 6 indicators and instead creates a new pre-certification process that a taxpayer is required to follow if the taxpayer intends to claim an enterprise zone income tax credit pursuant to the act in order to demonstrate that the act has an impact on the taxpayers' decisions.

Currently, a taxpayer's business may earn an income tax credit pursuant to the act by:

- ! Being located in the enterprise zone; and
- ! Performing an activity that is eligible for an enterprise zone income tax credit, regardless of whether the availability of the income tax credit had any demonstrable impact on the taxpayer's decision to start, relocate, or expand the business in the enterprise zone.

The bill requires a taxpayer to complete a pre-certification process prior to beginning and completing any activity for which a taxpayer intends to claim an income tax credit pursuant to the act to ensure that the income tax credits allowed pursuant to the act have an impact on taxpayers' business decisions. The bill directs the department of revenue (department) to include a section for the pre-certification data on the enterprise zone income tax credit certification forms that the department currently uses.

Currently, some enterprise zone administrators charge a fee to programs, projects, and organizations (contribution projects) that have been approved by the Colorado economic development commission (commission). Current statute does not provide any authority or limitation regarding the fees, and, consequently, the fee policies vary from one enterprise zone to another. The bill requires each enterprise zone administrator that charges fees to create a policy regarding the fees and to submit the policy to the commission for approval. The commission must review each policy submitted by an enterprise zone administrator.

The bill directs the Colorado office of economic development (office) to work with the commission and the department to develop the

capability, if there is no fiscal impact, to allow taxpayers that intend to claim one or more income tax credits pursuant to the act to submit pre-certification forms, certification forms, and required reporting information in an electronic format.

The bill requires the department to aggregate and report data collected regarding tax credits claimed pursuant to the act, categorized by the date that the tax credit was authorized, the specific tax credit allowed pursuant to the act that each taxpayer was authorized to claim, and the total amount of the tax credits claimed for each tax credit allowed pursuant to the act. The bill requires the department to submit the data to the office on an annual basis.

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

2 **SECTION 1.** The introductory portion to 39-30-103 (1) and
3 39-30-103 (4) (b) (I) and (4) (c) (II), Colorado Revised Statutes, are
4 amended, and the said 39-30-103 is further amended BY THE
5 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

6 **39-30-103. Zones established - termination.** (1) Any
7 municipality, county, or group of contiguous municipalities or counties
8 may propose an area of such municipality, county, or group of
9 municipalities or counties to be designated as an enterprise zone if the
10 area has a population of no more than ~~eighty~~ ONE HUNDRED FIFTEEN
11 thousand persons AS CALCULATED PURSUANT TO SUBSECTION (1.3) OF
12 THIS SECTION, or one hundred FIFTY thousand persons AS CALCULATED
13 PURSUANT TO SUBSECTION (1.3) OF THIS SECTION if the area is a rural area,
14 and meets at least one of the following additional criteria:

15 (1.3) FOR THE PURPOSES OF THIS ARTICLE, THE POPULATION OF AN
16 ENTERPRISE ZONE SHALL BE CALCULATED USING DATA FROM THE MOST
17 RECENT FEDERAL DECENNIAL CENSUS AT THE COUNTY, MUNICIPAL, OR
18 BLOCK LEVELS. SUCH CALCULATIONS THAT REQUIRE THE USE OF BLOCK
19 LEVEL DATA SHALL INCLUDE THE ENTIRE POPULATION OF EACH BLOCK IN

1 WHICH THE ENTERPRISE ZONE IS LOCATED.

2 (4) (b) For any area designated as an enterprise zone or as a
3 portion of an enterprise zone prior to July 1, 1999, the Colorado economic
4 development commission shall work with the zone administrator to
5 ensure that the area has specific economic development objectives with
6 outcomes that can be measured with specific, verifiable data. The
7 director of the Colorado office of economic development shall require the
8 zone administrators for each zone to submit annual documentation of
9 efforts to improve conditions in areas designated as enterprise zones and
10 the results of those efforts. Such annual documentation shall include
11 specific, verifiable data that can be used to measure whether the zone has
12 achieved the specific economic development objectives for the zone that
13 have measurable outcomes. In order for the commission to determine if
14 the enterprise zones or portions thereof are achieving the specific
15 economic development objectives submitted pursuant to this paragraph
16 (b) or to paragraph (d) of subsection (3) of this section, such annual
17 documentation shall include, but need not be limited to, the most recent
18 statistics available for companies claiming enterprise zone tax credits on:

19 (I) The number of jobs created in the enterprise zone and the
20 standard industrial classification code (SIC) NORTH AMERICAN INDUSTRY
21 CLASSIFICATION SYSTEM (NAICS) CODE of each company reporting the
22 creation of jobs within the zone;

23 (4) (c) (II) The state auditor shall submit a report to the governor
24 and the general assembly, at the discretion of the state auditor and the
25 legislative audit committee, evaluating the implementation of the
26 enterprise zone program, and its effect on the employment,
27 unemployment rate, investment, overall growth rate, economic diversity,

1 ~~and per capita income in each enterprise zone and enhanced rural~~
2 ~~enterprise zone or county containing an enterprise zone or enhanced rural~~
3 ~~enterprise zone, evaluating the effectiveness of each zone in achieving its~~
4 ~~measurable objectives, making recommendations for statutory changes,~~
5 if any, and including any other information requested by the governor or
6 the general assembly. The evaluation shall be based upon the data
7 included in the annual reports submitted by the director of the Colorado
8 office of economic development on behalf of the Colorado economic
9 development commission to the general assembly pursuant to paragraph
10 (b.7) of this subsection (4) and objective verifiable data submitted by the
11 ENTERPRISE zone administrators and maintained by the Colorado office
12 of economic development, local governments, and ENTERPRISE zone
13 administrators. The report shall also include information concerning the
14 amounts of tax credits claimed and allowed under the program. For
15 purposes of preparing the report required by this paragraph (c), the state
16 auditor shall have access to all records and documents applicable to the
17 program, whether maintained by the Colorado office of economic
18 development, local governments, or enterprise zone administrators.

19 (7) (a) BEGINNING ON JANUARY 1, 2012, BEFORE A TAXPAYER
20 ENGAGES IN ANY ACTIVITY FOR WHICH THE TAXPAYER INTENDS TO CLAIM
21 AN INCOME TAX CREDIT PURSUANT TO SECTION 39-30-104, 39-30-105,
22 39-30-105.5, OR 39-30-105.6, AN AUTHORIZED COMPANY OFFICIAL OF THE
23 TAXPAYER'S BUSINESS OR THE TAXPAYER WHO IS THE OWNER OF THE
24 BUSINESS SHALL SUBMIT A PRE-CERTIFICATION FORM TO THE ENTERPRISE
25 ZONE ADMINISTRATOR AS SPECIFIED IN THIS SUBSECTION (7). A
26 TAXPAYER THAT COMPLETES AN ACTIVITY PRIOR TO JANUARY 1, 2012, FOR
27 WHICH THE TAXPAYER INTENDS TO CLAIM AN INCOME TAX CREDIT

1 PURSUANT TO THIS ARTICLE SHALL SUBMIT TO THE ZONE ADMINISTRATOR
2 ON OR BEFORE DECEMBER 31, 2012, ANY INFORMATION RELATED TO SUCH
3 COMPLETED ACTIVITY THAT IS NECESSARY TO RECEIVE CERTIFICATION
4 FROM THE ZONE ADMINISTRATOR THAT THE TAXPAYER'S BUSINESS IS
5 LOCATED IN THE ENTERPRISE ZONE. NOTHING IN THIS SUBSECTION (7)
6 SHALL BE CONSTRUED TO REQUIRE A TAXPAYER TO SUBMIT A
7 PRE-CERTIFICATION FORM TO THE ZONE ADMINISTRATOR FOR ACTIVITIES
8 COMPLETED PRIOR TO JANUARY 1, 2012. IN CONNECTION WITH THE
9 PRE-CERTIFICATION, THE TAXPAYER SHALL BE REQUIRED TO:

10 (I) OBTAIN VERIFICATION FROM THE ENTERPRISE ZONE
11 ADMINISTRATOR THAT THE TAXPAYER'S BUSINESS IS LOCATED IN AN
12 ENTERPRISE ZONE;

13 (II) CERTIFY THAT THE TAXPAYER IS AWARE OF THE ENTERPRISE
14 ZONE INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE;

15 (III) CERTIFY THAT THE ENTERPRISE ZONE INCOME TAX CREDITS
16 ALLOWED PURSUANT TO THIS ARTICLE ARE A CONTRIBUTING FACTOR TO
17 THE START-UP, EXPANSION, OR RELOCATION OF THE TAXPAYER'S BUSINESS
18 IN THE ENTERPRISE ZONE; AND

19 (IV) CERTIFY THAT THE TAXPAYER ACKNOWLEDGES THAT THE
20 PRE-CERTIFICATION REQUIRED PURSUANT TO THIS SECTION IS FOR
21 ACTIVITIES THAT SHALL COMMENCE AFTER THE DATE THAT THE
22 PRE-CERTIFICATION FORM IS EXECUTED BY THE ENTERPRISE ZONE
23 ADMINISTRATOR THROUGH THE END OF THE BUSINESS'S THEN-CURRENT
24 INCOME TAX YEAR;

25 (b) THE DEPARTMENT OF REVENUE SHALL AMEND THE CURRENT
26 CERTIFICATION FORMS THAT A TAXPAYER IS REQUIRED TO COMPLETE IN
27 CONNECTION WITH CLAIMING AN INCOME TAX CREDIT PURSUANT TO THIS

1 ARTICLE, TO INCLUDE A SECTION THROUGH WHICH THE TAXPAYER OR AN
2 AUTHORIZED COMPANY OFFICIAL OF THE TAXPAYER'S BUSINESS MAY
3 PROVIDE THE INFORMATION REQUIRED PURSUANT TO SUBPARAGRAPHS (II)
4 TO (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (7).

5 **SECTION 2.** 39-30-103.5, Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW SUBSECTION to read:

7 **39-30-103.5. Credit against tax - contributions to enterprise**
8 **zone administrators to implement economic development plans.**

9 (8) (a) ANY ENTERPRISE ZONE ADMINISTRATOR THAT PROVIDES
10 OVERSIGHT, MANAGEMENT, OR OTHER ADMINISTRATIVE SERVICES TO A
11 PROGRAM, PROJECT, OR ORGANIZATION THAT HAS BEEN APPROVED BY THE
12 ECONOMIC DEVELOPMENT COMMISSION FOR PURPOSES OF THE
13 CONTRIBUTION TAX CREDIT AS DEFINED IN THIS SECTION IS AUTHORIZED
14 TO CHARGE REASONABLE FEES TO PROGRAMS, PROJECTS, AND
15 ORGANIZATIONS AS DEFINED IN THIS SECTION. EACH ENTERPRISE ZONE
16 ADMINISTRATOR THAT CHARGES ADMINISTRATIVE FEES PURSUANT TO THIS
17 PARAGRAPH (a) SHALL ESTABLISH A REASONABLE POLICY REGARDING THE
18 IMPOSITION OF SUCH FEES AND SHALL SUBMIT THE POLICY TO THE
19 COLORADO ECONOMIC DEVELOPMENT COMMISSION FOR REVIEW AND
20 APPROVAL.

21 (b) THE COLORADO ECONOMIC DEVELOPMENT COMMISSION SHALL
22 REVIEW THE ADMINISTRATIVE FEE POLICY ESTABLISHED BY AN ENTERPRISE
23 ZONE ADMINISTRATOR AND SHALL APPROVE THE POLICY OR REQUIRE THAT
24 THE ENTERPRISE ZONE ADMINISTRATOR MAKE MODIFICATIONS TO THE
25 POLICY AS SPECIFIED BY THE COMMISSION BEFORE APPROVING THE POLICY.

26 **SECTION 3.** Article 30 of title 39, Colorado Revised Statutes, is
27 amended BY THE ADDITION OF THE FOLLOWING NEW

1 SECTIONS to read:

2 **39-30-110. Electronic submissions.** (1) THE COLORADO OFFICE
3 OF ECONOMIC DEVELOPMENT SHALL COLLABORATE _____ WITH THE
4 COLORADO ECONOMIC DEVELOPMENT COMMISSION AND THE DEPARTMENT
5 OF REVENUE TO DEVELOP THE CAPABILITY TO ALLOW TAXPAYERS THAT
6 INTEND TO CLAIM ONE OR MORE INCOME TAX CREDITS PURSUANT TO THIS
7 ARTICLE TO OBTAIN ANY NECESSARY _____ CERTIFICATION, INCLUDING
8 PRE-CERTIFICATION REQUIREMENTS, FROM THE ENTERPRISE ZONE
9 ADMINISTRATOR IN AN ELECTRONIC FORMAT. THE COLORADO OFFICE OF
10 ECONOMIC DEVELOPMENT SHALL IMPLEMENT THE ELECTRONIC
11 SUBMISSION SYSTEM BY JANUARY 1, 2013. IF THE COLORADO OFFICE OF
12 ECONOMIC DEVELOPMENT IS UNABLE TO IMPLEMENT AN ELECTRONIC
13 SUBMISSION SYSTEM BY JANUARY 1, 2013, THE OFFICE SHALL SUBMIT A
14 REPORT TO THE COLORADO ECONOMIC DEVELOPMENT COMMISSION AND
15 THE GENERAL ASSEMBLY THAT EXPLAINS THE REASONS THAT THE
16 IMPLEMENTATION OF SUCH SYSTEM HAS NOT BEEN ACCOMPLISHED.

17 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE
18 CONSTRUED TO PROHIBIT A TAXPAYER THAT INTENDS TO CLAIM ONE OR
19 MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE FROM
20 SUBMITTING PRINTED COPIES OF _____ CERTIFICATION FORMS, INCLUDING
21 PRE-CERTIFICATION REQUIREMENTS.

22 **39-30-111. Department of revenue - enterprise zone data -**
23 **electronic filing - submission of carry forward schedule.** (1) FOR THE
24 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR THEREAFTER, ANY
25 TAXPAYER THAT CLAIMS ONE OR MORE INCOME TAX CREDITS PURSUANT
26 TO THIS ARTICLE SHALL FILE A STATE INCOME TAX RETURN WITH THE
27 DEPARTMENT OF REVENUE IN AN ELECTRONIC FORMAT, UNLESS FILING IN

1 AN ELECTRONIC FORMAT WOULD CAUSE UNDUE HARDSHIP TO THE
2 TAXPAYER BECAUSE THE TAXPAYER DOES NOT HAVE ACCESS TO A
3 COMPUTER, OR DOES NOT HAVE SUFFICIENT INTERNET ACCESS, INTERNET
4 CAPABILITY, OR COMPUTER KNOWLEDGE TO FILE INCOME TAXES
5 ELECTRONICALLY.

6 (2) FOR THE 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR
7 THEREAFTER, ANY TAXPAYER THAT CLAIMS ONE OR MORE INCOME TAX
8 CREDITS PURSUANT TO THIS ARTICLE SHALL SUBMIT TO THE DEPARTMENT
9 OF REVENUE ALONG WITH THE TAXPAYER'S STATE INCOME TAX RETURN,
10 A FULL CARRY FORWARD SCHEDULE FOR EACH INCOME TAX CREDIT
11 CLAIMED PURSUANT TO THIS ARTICLE.

12 (3) FOR THE 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR
13 THEREAFTER, THE DEPARTMENT OF REVENUE SHALL AGGREGATE AND
14 REPORT DATA ON ALL OF THE INCOME TAX CREDITS THAT ARE CLAIMED
15 PURSUANT TO THIS ARTICLE FOR EACH INCOME TAX YEAR. THE
16 DEPARTMENT SHALL CATEGORIZE SUCH AGGREGATED DATA BY THE DATE
17 THAT THE INCOME TAX CREDIT WAS CERTIFIED BY AN ENTERPRISE ZONE
18 ADMINISTRATOR, THE SPECIFIC INCOME TAX CREDIT ALLOWED PURSUANT
19 TO THIS ARTICLE THAT EACH TAXPAYER WAS AUTHORIZED TO CLAIM, AND
20 THE TOTAL AMOUNT OF THE INCOME TAX CREDITS CLAIMED FOR EACH
21 INCOME TAX CREDIT ALLOWED PURSUANT TO THIS ARTICLE.

22 (4) THE DEPARTMENT OF REVENUE SHALL SUBMIT THE DATA
23 COLLECTED PURSUANT TO SUBSECTIONS (2) AND (3) OF THIS SECTION TO
24 THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON AUGUST 1, 2013,
25 AND ON AUGUST 1 EACH YEAR THEREAFTER.

26 **39-30-112. Data provided to department of revenue.** (1) ON
27 OR BEFORE SEPTEMBER 30 OF EACH CALENDAR YEAR, THE DIRECTOR OF

1 THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT OR THE DIRECTOR'S
2 DESIGNEE SHALL TRANSMIT TO THE DEPARTMENT OF REVENUE THE DATA
3 REGARDING INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE
4 THAT ARE CERTIFIED BY ENTERPRISE ZONE ADMINISTRATORS FROM
5 JANUARY 1 THROUGH JUNE 30 OF THE SAME CALENDAR YEAR.

6 (2) ON OR BEFORE MARCH 31 OF EACH CALENDAR YEAR, THE
7 DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT OR THE
8 DIRECTOR'S DESIGNEE SHALL TRANSMIT TO THE DEPARTMENT OF REVENUE
9 THE DATA REGARDING INCOME TAX CREDITS ALLOWED PURSUANT TO THIS
10 ARTICLE THAT ARE CERTIFIED BY ENTERPRISE ZONE ADMINISTRATORS
11 FROM JULY 1 THROUGH DECEMBER 31 OF THE PREVIOUS CALENDAR YEAR.

12 **SECTION 4.** 39-21-113, Colorado Revised Statutes, is amended
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 **39-21-113. Reports and returns - repeal.**

15 (22) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE
16 EXECUTIVE DIRECTOR SHALL SUPPLY THE COLORADO OFFICE OF ECONOMIC
17 DEVELOPMENT WITH INFORMATION RELATING TO THE ACTUAL AMOUNT OF
18 ANY ENTERPRISE ZONE TAX CREDIT CLAIMED PURSUANT TO ARTICLE 30 OF
19 THIS TITLE AS WELL AS INFORMATION SUBMITTED TO THE DEPARTMENT
20 PURSUANT TO SECTION 39-30-111 (2) AND (3) REGARDING THE CARRY
21 FORWARD OF SUCH INCOME TAX CREDITS. ANY INFORMATION PROVIDED
22 TO THE OFFICE PURSUANT TO THIS SUBSECTION (22) SHALL REMAIN
23 CONFIDENTIAL, AND ALL OFFICE EMPLOYEES SHALL BE SUBJECT TO THE
24 LIMITATIONS SET FORTH IN SUBSECTION (4) OF THIS SECTION AND THE
25 PENALTIES CONTAINED IN SUBSECTION (6) OF THIS SECTION. NOTHING IN
26 THIS SUBSECTION (22) SHALL PREVENT THE OFFICE FROM MAKING
27 AGGREGATED DATA REGARDING ENTERPRISE ZONE TAX CREDITS

1 AVAILABLE.

2 SECTION 5. 39-22-622 (4), Colorado Revised Statutes, is
3 amended to read:

4 39-22-622. Refunds. (4) The provisions of subsection (2) of this
5 section shall not apply to any return that is being audited or to any return
6 that may take longer than normal to process due to the mathematical or
7 clerical errors contained in said return, to unforeseen delays caused by the
8 failure of processing equipment, or because of a tax credit allowed in
9 section 39-22-531, OR BECAUSE THE TAXPAYER CLAIMED AN ENTERPRISE
10 ZONE TAX CREDIT PURSUANT TO ARTICLE 30 OF THIS TITLE AND THE
11 DEPARTMENT IS AWAITING CONFIRMATION FROM THE COLORADO OFFICE
12 OF ECONOMIC DEVELOPMENT THAT THE TAXPAYER IS ELIGIBLE FOR SUCH
13 CREDIT. Such ~~determination~~ DETERMINATIONS shall be made in good
14 faith by the department of revenue.

15 **SECTION 6. Act subject to petition - specified effective date.**

16 This act shall take effect January 1, 2012; except that, if a referendum
17 petition is filed pursuant to section 1 (3) of article V of the state
18 constitution against this act or an item, section, or part of this act within
19 the ninety-day period after final adjournment of the general assembly,
20 then the act, item, section, or part shall not take effect unless approved by
21 the people at the general election to be held in November 2010 and shall
22 take effect on January 1, 2012, or on the date of the official declaration
23 of the vote thereon by the governor, whichever is later.