

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 10-0410.01 Nicole Myers

SENATE BILL 10-162

SENATE SPONSORSHIP

Heath,

HOUSE SPONSORSHIP

Hullinghorst, May

Senate Committees

Finance
Appropriations

House Committees

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.

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) BEFORE ENGAGING IN ANY ACTIVITY FOR WHICH A
20 TAXPAYER INTENDS TO CLAIM AN INCOME TAX CREDIT PURSUANT TO
21 SECTION 39-30-104, 39-30-105, 39-30-105.5, OR 39-30-105.6, AN
22 AUTHORIZED COMPANY OFFICIAL OF THE TAXPAYER'S BUSINESS OR THE
23 TAXPAYER WHO IS THE OWNER OF THE BUSINESS SHALL SUBMIT A
24 PRE-CERTIFICATION FORM TO THE ENTERPRISE ZONE ADMINISTRATOR AS
25 SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (7). A TAXPAYER SHALL
26 NOT BE REQUIRED TO SUBMIT A PRE-CERTIFICATION FORM FOR ACTIVITIES
27 COMPLETED BY THE TAXPAYER PRIOR TO JANUARY 1, 2012; HOWEVER, A

1 TAXPAYER IS REQUIRED TO OBTAIN AUTHORIZATION FROM THE
2 ENTERPRISE ZONE ADMINISTRATOR PRIOR TO JANUARY 1, 2013, FOR
3 ACTIVITIES THAT OCCURRED PRIOR TO JANUARY 1, 2012. IN CONNECTION

4 WITH THE PRE-CERTIFICATION, THE TAXPAYER SHALL BE REQUIRED TO:

5 (I) OBTAIN VERIFICATION FROM THE ENTERPRISE ZONE
6 ADMINISTRATOR THAT THE TAXPAYER'S BUSINESS IS LOCATED IN AN
7 ENTERPRISE ZONE;

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

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

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

20 (b) THE DEPARTMENT OF REVENUE SHALL AMEND THE CURRENT
21 CERTIFICATION FORMS THAT A TAXPAYER IS REQUIRED TO COMPLETE IN
22 CONNECTION WITH CLAIMING AN INCOME TAX CREDIT PURSUANT TO THIS
23 ARTICLE, TO INCLUDE A SECTION THROUGH WHICH THE TAXPAYER OR AN
24 AUTHORIZED COMPANY OFFICIAL OF THE TAXPAYER'S BUSINESS MAY
25 PROVIDE THE INFORMATION REQUIRED PURSUANT TO SUBPARAGRAPHS (II)
26 TO (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (7).

27 **SECTION 2.** 39-30-103.5, Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW SUBSECTION to read:

2 **39-30-103.5. Credit against tax - contributions to enterprise**
3 **zone administrators to implement economic development plans.**

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

16 (b) THE COLORADO ECONOMIC DEVELOPMENT COMMISSION SHALL
17 REVIEW THE ADMINISTRATIVE FEE POLICY ESTABLISHED BY AN ENTERPRISE
18 ZONE ADMINISTRATOR AND SHALL APPROVE THE POLICY OR REQUIRE THAT
19 THE ENTERPRISE ZONE ADMINISTRATOR MAKE MODIFICATIONS TO THE
20 POLICY AS SPECIFIED BY THE COMMISSION BEFORE APPROVING THE POLICY.

21 **SECTION 3.** Article 30 of title 39, Colorado Revised Statutes, is
22 amended BY THE ADDITION OF THE FOLLOWING NEW
23 SECTIONS to read:

24 **39-30-110. Electronic submissions.** (1) THE COLORADO OFFICE
25 OF ECONOMIC DEVELOPMENT SHALL COLLABORATE WITH THE
26 COLORADO ECONOMIC DEVELOPMENT COMMISSION AND THE DEPARTMENT
27 OF REVENUE TO DEVELOP THE CAPABILITY TO ALLOW TAXPAYERS THAT

1 INTEND TO CLAIM ONE OR MORE INCOME TAX CREDITS PURSUANT TO THIS
2 ARTICLE TO OBTAIN ANY NECESSARY AUTHORIZATION OR CERTIFICATION,
3 INCLUDING PRE-CERTIFICATION REQUIREMENTS, FROM THE ENTERPRISE
4 ZONE ADMINISTRATOR IN AN ELECTRONIC FORMAT. THE COLORADO
5 OFFICE OF ECONOMIC DEVELOPMENT SHALL IMPLEMENT THE ELECTRONIC
6 SUBMISSION SYSTEM BY JANUARY 1, 2013. IF THE COLORADO OFFICE OF
7 ECONOMIC DEVELOPMENT IS UNABLE TO IMPLEMENT AN ELECTRONIC
8 SUBMISSION SYSTEM BY JANUARY 1, 2013, THE OFFICE SHALL SUBMIT A
9 REPORT TO THE COLORADO ECONOMIC DEVELOPMENT COMMISSION AND
10 THE GENERAL ASSEMBLY THAT EXPLAINS THE REASONS THAT THE
11 IMPLEMENTATION OF SUCH SYSTEM HAS NOT BEEN ACCOMPLISHED.

12 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE
13 CONSTRUED TO PROHIBIT A TAXPAYER THAT INTENDS TO CLAIM ONE OR
14 MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE FROM
15 SUBMITTING PRINTED COPIES OF ___ CERTIFICATION FORMS, INCLUDING
16 PRE-CERTIFICATION REQUIREMENTS.

17 **39-30-111. Department of revenue - enterprise zone data -**
18 **electronic filing - submission of carry forward schedule.** (1) FOR THE
19 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR THEREAFTER, ANY
20 TAXPAYER THAT CLAIMS ONE OR MORE INCOME TAX CREDITS PURSUANT
21 TO THIS ARTICLE SHALL FILE A STATE INCOME TAX RETURN WITH THE
22 DEPARTMENT OF REVENUE IN AN ELECTRONIC FORMAT, UNLESS FILING IN
23 AN ELECTRONIC FORMAT WOULD CAUSE UNDUE HARDSHIP TO THE
24 TAXPAYER BECAUSE THE TAXPAYER DOES NOT HAVE ACCESS TO A
25 COMPUTER, OR DOES NOT HAVE SUFFICIENT INTERNET ACCESS, INTERNET
26 CAPABILITY, OR COMPUTER KNOWLEDGE TO FILE INCOME TAXES
27 ELECTRONICALLY.

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

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

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

21 **39-30-112. Data provided to department of revenue.** (1) ON
22 OR BEFORE SEPTEMBER 30 OF EACH CALENDAR YEAR, THE DIRECTOR OF
23 THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT OR THE DIRECTOR'S
24 DESIGNEE SHALL TRANSMIT TO THE DEPARTMENT OF REVENUE THE DATA
25 REGARDING INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE
26 THAT ARE CERTIFIED BY ENTERPRISE ZONE ADMINISTRATORS FROM
27 JANUARY 1 THROUGH JUNE 30 OF THE SAME CALENDAR YEAR.

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

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

9 **39-21-113. Reports and returns - repeal.**

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

24 **SECTION 5.** 39-22-622 (4), Colorado Revised Statutes, is
25 amended to read:

26 **39-22-622. Refunds.** (4) The provisions of subsection (2) of this
27 section shall not apply to any return that is being audited or to any return

1 that may take longer than normal to process due to the mathematical or
2 clerical errors contained in said return, to unforeseen delays caused by the
3 failure of processing equipment, or because of a tax credit allowed in
4 section 39-22-531, OR BECAUSE THE TAXPAYER CLAIMED AN ENTERPRISE
5 ZONE TAX CREDIT PURSUANT TO ARTICLE 30 OF THIS TITLE AND THE
6 DEPARTMENT IS AWAITING CONFIRMATION FROM THE COLORADO OFFICE
7 OF ECONOMIC DEVELOPMENT THAT THE TAXPAYER IS ELIGIBLE FOR SUCH
8 CREDIT. Such ~~determination~~ DETERMINATIONS shall be made in good
9 faith by the department of revenue.

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

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