

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 11-0272.02 Ed DeCecco

HOUSE BILL 11-1045

HOUSE SPONSORSHIP

Kefalas,

SENATE SPONSORSHIP

Newell,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE COLORADO INNOVATION**
102 **INVESTMENT TAX CREDIT, AND MAKING AN APPROPRIATION IN**
103 **CONNECTION THEREWITH.**

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>.)

In 2009, the general assembly created a pilot income tax credit for investment in certain qualified businesses, which was called the Colorado innovation investment tax credit (tax credit). The tax credit is administered by the Colorado office of economic development (office),

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.*

SENATE
2nd Reading Unam ended
May 10, 2011

HOUSE
3rd Reading Unam ended
May 6, 2011

HOUSE
Am ended 2nd Reading
May 5, 2011

and it applied to qualified investments made in 2010. The creation of the tax credit was contingent on the office transferring sufficient moneys to backfill lost income tax revenue and to pay for the administration of the tax credit.

The bill makes the following changes related to the tax credit:

- ! A limited amount of tax credits are available in 2011;
- ! The amount of tax credits available in 2011 may increase and tax credits may be available in future years if there is additional funding to backfill lost income tax revenue and to pay for the office's administration of the tax credit;
- ! The state treasurer must transfer a portion of the additional funding to the general fund to backfill lost income tax revenue related to the tax credit;
- ! If such additional funding is available, the office must provide notice on its web site of the amount of the additional tax credits that are available;
- ! The requirement that a qualified small business has at least 2 nonadministrative, full-time equivalent employees who are residents of the state is eliminated;
- ! The operation requirement for a qualified small business is modified so that only times of active operation are considered when determining eligibility;
- ! The deadline for submitting an application for a tax credit is extended by 60 days;
- ! The cap on the tax credit is clarified to apply only per investment, as opposed to per taxpayer; and
- ! The deadline for the office to provide the department of revenue an electronic report relating to the tax credit is extended by 3 months.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that:

4 (a) Job creation is the number one priority for the state of
5 Colorado;

6 (b) Job creation programs are most effective when there is a
7 strong and innovative public-private partnership;

8 (c) In 2010, the Colorado innovation investment tax credit

1 program proved to be an effective economic development tool that has
2 leveraged private-sector investments to help more than twenty start-up
3 businesses throughout Colorado to access seed capital; and

4 (d) Access to this seed capital allowed these businesses to create
5 jobs.

6 (2) Now, therefore, it is the purpose of House Bill 11-1045,
7 enacted in 2011, to continue, improve, and expand the Colorado
8 innovation investment tax credit program and create the framework for
9 future expansion of the program contingent on additional moneys being
10 available to backfill lost income tax revenue and to pay related
11 administrative expenses.

12 **SECTION 2.** 24-48.5-112 (1) (a), the introductory portion to
13 24-48.5-112 (1) (e), 24-48.5-112 (1) (g) (III), (1) (g) (V), (2) (a), the
14 introductory portion to 24-48.5-112 (2) (b), and 24-48.5-112 (2) (c), (3),
15 (4), (5), and (6), Colorado Revised Statutes, are amended, and the said
16 24-48.5-112 (1) is further amended BY THE ADDITION OF THE
17 FOLLOWING NEW PARAGRAPHS, to read:

18 **24-48.5-112. Administration of Colorado innovation**
19 **investment tax credit - cash fund - created - definitions.** (1) As used
20 in this section, unless the context otherwise requires:

21 (a) ~~"Affiliate" means any person or entity that controls, is~~
22 ~~controlled by, or is under common control with another person or entity.~~
23 ~~For purposes of this paragraph (a), "control" means the power to~~
24 ~~determine the policies of an entity whether through ownership of voting~~
25 ~~securities, by contract, or otherwise~~ "ADDITIONAL FUNDING" MEANS THAT,
26 ON OR AFTER JANUARY 1, 2011, THE STATE TREASURER CREDITS MONEYS
27 TO THE FUND PURSUANT TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS

1 SECTION.

2 (a.5) "AFFILIATE" MEANS ANY PERSON OR ENTITY THAT CONTROLS,
3 IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER
4 PERSON OR ENTITY. FOR PURPOSES OF THIS PARAGRAPH (a.5), "CONTROL"
5 MEANS THE POWER TO DETERMINE THE POLICIES OF AN ENTITY WHETHER
6 THROUGH OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR
7 OTHERWISE.

8 (c.3) "CONTINGENT YEAR" MEANS ALL OR PART OF A CALENDAR
9 YEAR IDENTIFIED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF
10 PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION DURING WHICH
11 ADDITIONAL COLORADO INNOVATION INVESTMENT TAX CREDITS ARE
12 AVAILABLE.

13 (c.7) "FUND" MEANS THE COLORADO INNOVATION INVESTMENT
14 TAX CREDIT CASH FUND CREATED IN SUBSECTION (6) OF THIS SECTION.

15 (e) "Qualified investment" means an investment made during the
16 2010 ■ calendar year OR A CONTINGENT YEAR in an equity security that
17 meets all of the following requirements:

18 (g) "Qualified small business" means a corporation, limited
19 liability company, partnership, or other business entity that:

20 (III) ~~Has at least two nonadministrative, full-time equivalent~~
21 ~~employees who are residents of the state;~~

22 (V) ~~Has been in operation~~ ACTIVELY OPERATING for less than five
23 years; and

24 (2) (a) The office shall receive and evaluate applications that are
25 submitted by qualified investors to receive a Colorado innovation
26 investment tax credit for qualified investments made in a qualified small
27 business during the 2010 ■ calendar year OR A CONTINGENT YEAR.

1 (b) To be eligible for a Colorado innovation investment tax credit,
2 a qualified investor shall file an application with the office within ~~thirty~~
3 NINETY days after making a qualified investment. An application shall be
4 made in the manner and form prescribed by the office. The office shall
5 note the time and date of each application received. In addition to any
6 other requirements established by the office, the application shall include:

7 (c) A corporation, limited liability company, partnership, or other
8 business entity may request the office to determine whether it is a
9 qualified small business. Upon receiving such request or upon receipt of
10 an application for a Colorado innovation investment tax credit from a
11 qualified investor, the office shall determine whether the corporation,
12 limited liability company, partnership, or other business entity that is
13 named in the application or written request is a qualified small business.
14 After determining the qualifications, the office shall certify the qualified
15 small business as being eligible to receive qualified investments for
16 purposes of this section. The certification FOR A QUALIFIED SMALL
17 BUSINESS, INCLUDING A BUSINESS THAT WAS CERTIFIED IN THE 2010
18 CALENDAR YEAR, is valid for ~~the 2010 calendar year~~ TWO YEARS; except
19 that such certification shall be revoked if the qualified small business no
20 longer meets the qualifications. A small business shall notify the office
21 within thirty business days from the date that it no longer meets the
22 qualifications. If the certification is revoked, the office may assess a
23 penalty against the business entity equal to the amount of the Colorado
24 innovation investment tax credits authorized after the date that the
25 business no longer meets the qualifications. The penalty shall be
26 deposited into the state general fund. If the certification is revoked,
27 subsequent investments in the business shall not qualify for a tax credit.

1 All tax credits issued before the revocation of the certification shall
2 remain valid. Any application for a tax credit shall not be denied on the
3 basis of the revocation of the certification if the investment was made
4 before the date of the revocation.

5 (3) (a) Subject to the limitation set forth in subsection (4) of this
6 section, the office shall authorize a Colorado innovation investment tax
7 credit for each qualified investor who makes a qualified investment in a
8 qualified small business. The amount of the credit shall be fifteen percent
9 of the amount of the investment; except that the total amount of the credit
10 FOR EACH QUALIFIED INVESTMENT shall not exceed twenty thousand
11 dollars. A QUALIFIED INVESTOR MAY NOT CLAIM MORE THAN ONE TAX
12 CREDIT PER QUALIFIED SMALL BUSINESS. The office shall issue a tax
13 credit certificate to the qualified investor FOR EACH QUALIFIED
14 INVESTMENT stating the amount of the tax credit that is authorized for
15 purposes of section 39-22-532, C.R.S. A tax credit certificate is
16 nontransferable. The office shall certify to the department of revenue the
17 name of each qualified investor who receives a tax credit certificate, the
18 amount of the credit, and other relevant information relating to the tax
19 credits.

20 (b) A qualified investor shall submit a copy of a EACH tax credit
21 certificate as part of a tax return to the department of revenue in
22 accordance with section 39-22-532 (3), C.R.S., by the due date of the
23 return, including extensions, for the ~~2010~~ tax year DURING WHICH THE
24 QUALIFIED INVESTMENT WAS MADE. If the qualified investor fails to
25 timely file the tax credit certificate, the tax credit expires for that taxable
26 year and there shall be no carry forward of the expired credit. Credits that
27 expire or that otherwise are not timely used by the qualified investor shall

1 not be reissued.

2 (4) (a) (I) The total amount of Colorado innovation investment tax
3 credits allowed for the 2010 tax year shall not exceed seven hundred fifty
4 thousand dollars.

5 (II) (A) IF, ON OR AFTER JANUARY 1, 2011, THERE IS ADDITIONAL
6 FUNDING, ADDITIONAL COLORADO INNOVATION INVESTMENT TAX CREDITS
7 SHALL BE AVAILABLE FOR QUALIFIED INVESTMENTS MADE DURING THE
8 REMAINDER OF THE CALENDAR YEAR AFTER THE ADDITIONAL FUNDING
9 AND ANY FUTURE CALENDAR YEAR; EXCEPT THAT NO TAX CREDITS SHALL
10 BE AVAILABLE AFTER THE LIMIT SET FORTH IN SUB-SUBPARAGRAPH (B) OF
11 THIS SUBPARAGRAPH (II) IS MET.

12 (B) THE TOTAL AMOUNT OF COLORADO INNOVATION INVESTMENT
13 TAX CREDITS ALLOWED PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT
14 EXCEED THE TOTAL AMOUNT OF THE MONEYS CREDITED TO THE FUND
15 THROUGH THE ADDITIONAL FUNDING LESS ANY MONEYS USED BY THE
16 OFFICE TO PROVIDE FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED
17 WITH THE ADMINISTRATION OF THE TAX CREDIT.

18 (C) THE OFFICE SHALL POST ON ITS WEB SITE THE AMOUNT OF THE
19 ADDITIONAL COLORADO INNOVATION INVESTMENT TAX CREDITS THAT ARE
20 AVAILABLE PURSUANT TO THIS SUBPARAGRAPH (II).

21 (b) If qualifying applications in the 2010 tax year exceed seven
22 hundred fifty thousand dollars OR THE ADDITIONAL AMOUNT SET FORTH
23 IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (4), the
24 office shall authorize Colorado innovation investment tax credits in the
25 order of the date and time that the applications are received by the office,
26 as evidenced by the time and date that the office received the application.
27 If an application is received that, if authorized, would require the office

1 to exceed the seven hundred fifty thousand dollar limit, the office shall
2 only grant the applicant the remaining amount of tax credits that would
3 not exceed the seven hundred fifty thousand dollar limit OR THE
4 ADDITIONAL AMOUNT SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH
5 (a) OF THIS SUBSECTION (4).

6 (5) No later than ~~January 30, 2011~~ APRIL 30 OF THE YEAR
7 FOLLOWING A YEAR DURING WHICH THE OFFICE AUTHORIZES A COLORADO
8 INNOVATION INVESTMENT TAX CREDIT, the office shall provide to the
9 department of revenue an electronic report that includes the information
10 set forth in paragraph (b) of subsection (2) of this section and any other
11 information required to administer section 39-22-532, C.R.S. If the office
12 subsequently discovers that an applicant who received a ~~Colorado~~
13 ~~innovation investment~~ tax credit misrepresented information on the
14 application, the office shall immediately notify the department of revenue
15 and provide the department of revenue all information that relates to that
16 applicant. If the department of revenue determines that there has been a
17 misrepresentation on the application, the department of revenue shall
18 deny the tax credit if the misrepresentation relates to whether the
19 applicant was a qualified investor or made a qualified investment. If the
20 misrepresentation relates to whether the investment was made to a
21 qualified small business, the department of revenue shall deny the tax
22 credit only if the applicant knew or should have known at any time before
23 the certification that the representation was false.

24 (6) (a) There is hereby created in the state treasury the Colorado
25 innovation investment tax credit cash fund ~~referred to in this subsection~~
26 ~~(6) as the "fund"~~, to provide for the direct and indirect costs associated
27 with the administration of the tax credit and to offset lost general fund

1 revenue as a result of the tax credit. The office is authorized to seek and
2 accept gifts, grants, or donations from private or public sources. All
3 private and public ~~funds~~ MONEYS received through gifts, grants, or
4 donations shall be transmitted to the state treasurer, who shall credit the
5 same to the fund. The moneys in the fund shall be subject to annual
6 appropriation by the general assembly for the direct and indirect costs
7 associated with the administration of this section. Any moneys in the
8 fund not expended for such purpose may be invested by the state treasurer
9 as provided by law. All interest and income derived from the investment
10 and deposit of moneys in the fund shall be credited to the fund. Except
11 as otherwise set forth in paragraph (b) of this subsection (6), any
12 unexpended and unencumbered moneys remaining in the fund at the end
13 of a fiscal year shall remain in the fund and shall not be credited or
14 transferred to the general fund or any other fund.

15 (b) (I) On June 30, 2010, the state treasurer shall transfer three
16 hundred seventy-five thousand dollars from the fund to the general fund.

17 (II) On July 1, 2010, the state treasurer shall transfer three
18 hundred seventy-five thousand dollars from the fund to the general fund.

19 (III) IF THERE IS ADDITIONAL FUNDING AND THE OFFICE
20 AUTHORIZES A COLORADO INNOVATION INVESTMENT TAX CREDIT
21 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (4)
22 OF THIS SECTION, THE STATE TREASURER SHALL TRANSFER AN AMOUNT
23 EQUAL TO THE TAX CREDIT FROM THE FUND TO THE GENERAL FUND.
24 TRANSFERS SHALL BE MADE ON JUNE 30 OF THE YEAR IMMEDIATELY
25 FOLLOWING THE CONTINGENT YEAR IN WHICH THE OFFICE AUTHORIZES THE
26 TAX CREDIT.

27 **SECTION 3.** 39-22-532 (4), Colorado Revised Statutes, is

1 amended to read:

2 **39-22-532. Colorado innovation investment tax credit -**
3 **definitions.** (4) If the allowable Colorado innovation investment tax
4 credit exceeds the amount of income tax due on the income of the
5 taxpayer for the ~~2010~~ tax year DURING WHICH THE QUALIFIED INVESTMENT
6 WAS MADE, the amount of the tax credit not used as an offset against
7 income taxes in such income tax year shall not be allowed as a refund, but
8 may be carried forward and applied against the income tax due in each of
9 the five succeeding income tax years, but shall be first applied against the
10 income tax due for the earliest of the income tax years possible. Any
11 amount of the tax credit that is not used after said period shall not be
12 refundable.

13 **SECTION 4. Appropriation.** In addition to any other
14 appropriation, there is hereby appropriated, out of any moneys in the
15 Colorado innovation investment tax credit cash fund created in section
16 24-48.5-112 (6) (a), Colorado Revised Statutes, not otherwise
17 appropriated, to the governor-lieutenant governor-state planning and
18 budgeting, for allocation to the economic development programs division,
19 for the fiscal year beginning July 1, 2011, the sum of thirty-five thousand
20 three hundred ninety-eight dollars (\$35,398) cash funds and 0.5 FTE, or
21 so much thereof as may be necessary, for the implementation of this act.

22 **SECTION 5. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.