

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

PREAMENDED

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

LLS NO. 11-0272.02 Ed DeCecco

HOUSE BILL 11-1045

HOUSE SPONSORSHIP

Kefalas,

SENATE SPONSORSHIP

Newell,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE COLORADO INNOVATION**
102 **INVESTMENT TAX CREDIT.**

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), and it applied to qualified investments made in 2010. The creation of the

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.*

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
9 program proved to be an effective economic development tool that has

1 leveraged private-sector investments to help more than twenty start-up
2 businesses throughout Colorado to access seed capital; and

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

5 (2) Now, therefore, it is the purpose of House Bill 11-1045,
6 enacted in 2011, to continue, improve, and expand the Colorado
7 innovation investment tax credit program for one additional year beyond
8 the pilot year using the remaining moneys that were originally dedicated
9 for this job-creation program and create the framework for future
10 expansion of the program contingent on additional moneys being
11 available to backfill lost income tax revenue and to pay related
12 administrative expenses.

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

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

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

1 TO THE FUND PURSUANT TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS
2 SECTION.

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

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

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

16 (e) "Qualified investment" means an investment made during the
17 2010 OR 2011 calendar year OR A CONTINGENT YEAR in an equity security
18 that meets all of the following requirements:

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

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

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

25 (2) (a) The office shall receive and evaluate applications that are
26 submitted by qualified investors to receive a Colorado innovation
27 investment tax credit for qualified investments made in a qualified small

1 business during the 2010 OR 2011 calendar year OR A CONTINGENT YEAR.

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

8 (c) A corporation, limited liability company, partnership, or other
9 business entity may request the office to determine whether it is a
10 qualified small business. Upon receiving such request or upon receipt of
11 an application for a Colorado innovation investment tax credit from a
12 qualified investor, the office shall determine whether the corporation,
13 limited liability company, partnership, or other business entity that is
14 named in the application or written request is a qualified small business.
15 After determining the qualifications, the office shall certify the qualified
16 small business as being eligible to receive qualified investments for
17 purposes of this section. The certification FOR A QUALIFIED SMALL
18 BUSINESS, INCLUDING A BUSINESS THAT WAS CERTIFIED IN THE 2010
19 CALENDAR YEAR, is valid for ~~the 2010 calendar year~~ TWO YEARS; except
20 that such certification shall be revoked if the qualified small business no
21 longer meets the qualifications. A small business shall notify the office
22 within thirty business days from the date that it no longer meets the
23 qualifications. If the certification is revoked, the office may assess a
24 penalty against the business entity equal to the amount of the Colorado
25 innovation investment tax credits authorized after the date that the
26 business no longer meets the qualifications. The penalty shall be
27 deposited into the state general fund. If the certification is revoked,

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

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

21 (b) A qualified investor shall submit a copy of a EACH tax credit
22 certificate as part of a tax return to the department of revenue in
23 accordance with section 39-22-532 (3), C.R.S., by the due date of the
24 return, including extensions, for the 2010 tax year DURING WHICH THE
25 QUALIFIED INVESTMENT WAS MADE. If the qualified investor fails to
26 timely file the tax credit certificate, the tax credit expires for that taxable
27 year and there shall be no carry forward of the expired credit. Credits that

1 expire or that otherwise are not timely used by the qualified investor shall
2 not be reissued.

3 (4) (a) (I) EXCEPT AS SET FORTH IN SUBPARAGRAPH (II) OF THIS
4 PARAGRAPH (a), the total amount of Colorado innovation investment tax
5 credits allowed ~~for the 2010 tax year~~ shall not exceed seven hundred fifty
6 thousand dollars.

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

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

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

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

1 as evidenced by the time and date that the office received the application.
2 If an application is received that, if authorized, would require the office
3 to exceed the seven hundred fifty thousand dollar limit, the office shall
4 only grant the applicant the remaining amount of tax credits that would
5 not exceed the seven hundred fifty thousand dollar limit OR THE
6 ADDITIONAL AMOUNT SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH
7 (a) OF THIS SUBSECTION (4).

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

26 (6) (a) There is hereby created in the state treasury the Colorado
27 innovation investment tax credit cash fund ~~referred to in this subsection~~

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

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

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

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

1 TAX CREDIT.

2 **SECTION 3.** 39-22-532 (4), Colorado Revised Statutes, is
3 amended, and the said 39-22-532 is further amended BY THE
4 ADDITION OF A NEW SUBSECTION, to read:

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

16 (7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2011, UNLESS
17 THE APPROPRIATIONS COMMITTEE IN EITHER CHAMBER OF THE GENERAL
18 ASSEMBLY HAS IDENTIFIED EQUIVALENT DECREASES IN TAX EXPENDITURES
19 OR OTHER OFFSETS TO THE GENERAL FUND OR HAS SPECIFICALLY
20 IDENTIFIED EQUIVALENT INCREASES IN REVENUE TO OFFSET THE
21 CONTINUATION OF THE COLORADO INNOVATION INVESTMENT TAX CREDIT
22 BY HOUSE BILL 11-1045, ENACTED IN 2011, FOR THE NEXT STATE FISCAL
23 YEAR AND FOR ANY OTHER STATE FISCAL YEAR THAT THE TAX CREDIT
24 WOULD BE AVAILABLE. FOR PURPOSES OF THIS SECTION, "TAX
25 EXPENDITURE" MEANS, WITHOUT LIMITATION, A DEDUCTION FROM
26 TAXABLE INCOME, A TAX CREDIT, A TAX EXEMPTION, THE LOWERING OF A
27 TAX RATE, THE ELIMINATION OF A TAX, OR THE ELIMINATION OR

1 **REDUCTION OF A FEE.**

2 **SECTION 4. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.