

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

PREAMENDED

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

LLS NO. 09-0578.01 Ed DeCecco

HOUSE BILL 09-1105

HOUSE SPONSORSHIP

Kefalas,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE COLORADO INNOVATION**
102 **INVESTMENT TAX CREDIT TO BE APPLIED AGAINST STATE**
103 **INCOME TAXES, AND MAKING AN APPROPRIATION IN**
104 **CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Creates the Colorado innovation investment tax credit (tax credit) to be applied against state income tax liability. Permits the tax credit for an equity investment in a qualified small business that is in the aerospace, bioscience, clean energy, or information technology industry. Establishes

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.

that the tax credit is equal to a specified percentage of the total investment evenly spread over the 2 tax years after the investment. Limits the tax credit to a maximum amount. Prohibits a tax credit from being refunded, but permits the tax credit to be carried forward a specified number of years.

Requires the Colorado office of economic development (office) to determine the eligibility for the tax credit and to issue nontransferable tax credit certificates as evidence of eligibility and the amount of the tax credit. Requires a taxpayer to submit a copy of the tax credit certificate in order to claim the tax credit.

Requires the office and the department of revenue to share information related to the tax credits.

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 and declares that:

4 (a) Growing new high-potential companies in our strategic
5 technology industries is one of the most promising tools for helping
6 facilitate the creation of high-paying jobs;

7 (b) Access to seed capital is one of the key challenges facing early
8 stage technology companies, and many good business proposals go
9 unfunded each year;

10 (c) Reducing risk to investors through a tax credit based on an
11 investment in startup businesses in strategic industries will reduce some
12 of the risk to investors and thereby draw additional investment dollars for
13 such business;

14 (d) These successfully funded startup businesses will go on to
15 raise additional capital, create jobs that pay high wages, and ultimately
16 produce revenue and additional economic growth in the state; and

17 (e) Eighteen states currently offer some form of tax credits for
18 investors, and Colorado needs to establish a similar investment credit in
19 order to encourage startups to begin and stay in the state.

1 (2) Now, therefore, it is the intent of the general assembly to
2 create a pilot income tax credit for investment in certain qualified
3 businesses [REDACTED] to be known as the Colorado innovation investment
4 tax credit.

5 SECTION 2. Article 48.5 of title 24, Colorado Revised Statutes,
6 is amended BY THE ADDITION OF A NEW SECTION to read:

7 24-48.5-111. Administration of Colorado innovation
8 investment tax credit - cash fund - created - definitions. (1) AS USED
9 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

10 (a) "AFFILIATE" MEANS ANY PERSON OR ENTITY THAT CONTROLS,
11 IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER
12 PERSON OR ENTITY. FOR PURPOSES OF THIS PARAGRAPH (a), "CONTROL"
13 MEANS THE POWER TO DETERMINE THE POLICIES OF AN ENTITY WHETHER
14 THROUGH OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR
15 OTHERWISE.

16 (b) "ASSET" MEANS ANY OWNED PROPERTY THAT HAS VALUE,
17 INCLUDING FINANCIAL ASSETS AND PHYSICAL ASSETS. INTELLECTUAL
18 PROPERTY SHALL NOT BE INCLUDED WHEN DETERMINING TOTAL ASSETS.

19 [REDACTED]
20 (c) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX
21 CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN SECTION
22 39-22-531, C.R.S.

23 [REDACTED]
24 (d) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC
25 DEVELOPMENT CREATED IN SECTION 24-48.5-101.

26 (e) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT MADE [REDACTED]
27 DURING THE 2010 CALENDAR YEAR IN AN EQUITY SECURITY THAT MEETS

1 ALL OF THE FOLLOWING REQUIREMENTS:

2 (I) THE EQUITY SECURITY IS COMMON STOCK, PREFERRED STOCK,
3 AN INTEREST IN A PARTNERSHIP OR LIMITED LIABILITY COMPANY, A
4 SECURITY THAT IS CONVERTIBLE INTO AN EQUITY SECURITY, A
5 CONVERTIBLE DEBT INVESTMENT, OR OTHER EQUITY SECURITY AS
6 DETERMINED BY THE OFFICE;

7 (II) THE INVESTMENT IS AT LEAST TWENTY-FIVE THOUSAND
8 DOLLARS; AND

9 (III) THE QUALIFIED INVESTOR AND ITS AFFILIATES DO NOT HOLD,
10 OF RECORD OR BENEFICIALLY, IMMEDIATELY BEFORE MAKING AN
11 INVESTMENT, EQUITY SECURITIES POSSESSING MORE THAN THIRTY
12 PERCENT OF THE TOTAL VOTING POWER OF ALL EQUITY SECURITIES OF THE
13 QUALIFIED SMALL BUSINESS.

14 (f) "QUALIFIED INVESTOR" MEANS AN INDIVIDUAL, LIMITED
15 LIABILITY COMPANY, PARTNERSHIP, S CORPORATION, AS DEFINED IN
16 SECTION 39-22-103 (10.5), C.R.S., OR OTHER BUSINESS ENTITY THAT
17 MAKES A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS.
18 "QUALIFIED INVESTOR" DOES NOT INCLUDE A C CORPORATION, AS DEFINED
19 IN SECTION 39-22-103 (2.5), C.R.S.

20 (g) "QUALIFIED SMALL BUSINESS" MEANS A CORPORATION,
21 LIMITED LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY
22 THAT:

23 (I) MAINTAINS ITS PRINCIPLE PLACE OF BUSINESS IN THE STATE;

24 (II) HAS AT LEAST FIFTY PERCENT OF ITS GROSS ASSETS AND FIFTY
25 PERCENT OF ITS EMPLOYEES LOCATED WITHIN THE STATE. IF THE ENTITY
26 IS A MEMBER OF AN AFFILIATE, THE GROSS ASSETS AND THE NUMBER OF
27 EMPLOYEES OF ALL MEMBERS OF THE AFFILIATE, WHEREVER THOSE ASSETS

1 AND EMPLOYEES ARE LOCATED, SHALL BE INCLUDED FOR THE PURPOSE OF
2 DETERMINING THE PERCENTAGE OF THE ENTITY'S GROSS ASSETS AND
3 EMPLOYEES THAT ARE LOCATED IN THE STATE.

4 (III) HAS AT LEAST TWO NONADMINISTRATIVE, FULL-TIME
5 EQUIVALENT EMPLOYEES WHO ARE RESIDENTS OF THE STATE;

6 (IV) HAS A PRINCIPAL BUSINESS INVOLVED PRIMARILY IN
7 RESEARCH AND DEVELOPMENT OR MANUFACTURING OF NEW
8 TECHNOLOGIES, PRODUCTS, OR PROCESSES.

9 (V) HAS BEEN IN OPERATION FOR LESS THAN FIVE YEARS; AND

10 (VI) HAS TOTAL YEARLY REVENUES OF LESS THAN TWO MILLION
11 DOLLARS AND TOTAL ASSETS OF LESS THAN FIVE MILLION DOLLARS,
12 EXCLUDING ANY INVESTMENT THAT IS THE BASIS OF A COLORADO
13 INNOVATION INVESTMENT TAX CREDIT.

14 (2) (a) THE OFFICE SHALL RECEIVE AND EVALUATE APPLICATIONS
15 THAT ARE SUBMITTED BY QUALIFIED INVESTORS TO RECEIVE A COLORADO
16 INNOVATION INVESTMENT TAX CREDIT FOR QUALIFIED INVESTMENTS MADE
17 IN A QUALIFIED SMALL BUSINESS DURING THE 2010 CALENDAR YEAR.

18 (b) TO BE ELIGIBLE FOR A COLORADO INNOVATION INVESTMENT
19 TAX CREDIT, A QUALIFIED INVESTOR SHALL FILE AN APPLICATION WITH THE
20 OFFICE WITHIN THIRTY DAYS AFTER MAKING A QUALIFIED INVESTMENT.

21 AN APPLICATION SHALL BE MADE IN THE MANNER AND FORM
22 PRESCRIBED BY THE OFFICE. THE OFFICE SHALL NOTE THE TIME AND DATE
23 OF EACH APPLICATION RECEIVED. IN ADDITION TO ANY OTHER
24 REQUIREMENTS ESTABLISHED BY THE OFFICE, THE APPLICATION SHALL
25 INCLUDE:

26 (I) THE NAME, ADDRESS, AND FEDERAL INCOME TAX
27 IDENTIFICATION NUMBER OF THE APPLICANT;

- 1 (II) THE NUMBER OF NEW EMPLOYEES HIRED BY THE QUALIFIED
- 2 SMALL BUSINESS AS A RESULT OF THE QUALIFIED INVESTMENT;
- 3 (III) THE NAME AND FEDERAL EMPLOYER IDENTIFICATION NUMBER
- 4 OF THE QUALIFIED SMALL BUSINESS THAT RECEIVED A QUALIFIED
- 5 INVESTMENT MADE BY THE APPLICANT;
- 6 (IV) THE AMOUNT OF THE QUALIFIED INVESTMENT;
- 7 (V) THE NAME OF ANY PARTNER, MEMBER, OR SUBCHAPTER S
- 8 SHAREHOLDER ENTITY, IF ANY, AND THE FEDERAL INCOME TAX
- 9 IDENTIFICATION NUMBER OF SUCH PERSON OR ENTITY;
- 10 (VI) THE DATE THE QUALIFIED INVESTMENT WAS MADE; AND
- 11 (VII) ANY ADDITIONAL INFORMATION THAT THE OFFICE REQUIRES.

12 (c) A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP,

13 OR OTHER BUSINESS ENTITY MAY REQUEST THE OFFICE TO DETERMINE

14 WHETHER IT IS A QUALIFIED SMALL BUSINESS. UPON RECEIVING SUCH

15 REQUEST OR UPON RECEIPT OF AN APPLICATION FOR A COLORADO

16 INNOVATION INVESTMENT TAX CREDIT FROM A QUALIFIED INVESTOR, THE

17 OFFICE SHALL DETERMINE WHETHER THE CORPORATION, LIMITED

18 LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY THAT IS

19 NAMED IN THE APPLICATION OR WRITTEN REQUEST IS A QUALIFIED SMALL

20 BUSINESS. AFTER DETERMINING THE QUALIFICATIONS, THE OFFICE SHALL

21 CERTIFY THE QUALIFIED SMALL BUSINESS AS BEING ELIGIBLE TO RECEIVE

22 QUALIFIED INVESTMENTS FOR PURPOSES OF THIS SECTION. THE

23 CERTIFICATION IS VALID FOR THE 2010 CALENDAR YEAR; EXCEPT THAT

24 SUCH CERTIFICATION SHALL BE REVOKED IF THE QUALIFIED SMALL

25 BUSINESS FAILS TO MAINTAIN THE QUALIFICATIONS. A SMALL BUSINESS

26 SHALL NOTIFY THE OFFICE WITHIN FIVE BUSINESS DAYS FROM THE DATE

27 THAT IT FAILS TO MAINTAIN THE QUALIFICATIONS. IF THE CERTIFICATION

1 IS REVOKED, THE OFFICE MAY ASSESS A PENALTY AGAINST THE BUSINESS
2 ENTITY EQUAL TO THE AMOUNT OF THE COLORADO INNOVATION
3 INVESTMENT TAX CREDITS AUTHORIZED AFTER THE BUSINESS FAILED TO
4 MEET THE QUALIFICATIONS. THE PENALTY SHALL BE DEPOSITED INTO THE
5 STATE GENERAL FUND. IF THE CERTIFICATION IS REVOKED, SUBSEQUENT
6 INVESTMENTS IN THE BUSINESS SHALL NOT QUALIFY FOR A TAX CREDIT.
7 ALL TAX CREDITS ISSUED BEFORE [REDACTED] THE REVOCATION OF THE
8 CERTIFICATION SHALL REMAIN VALID. ANY APPLICATION FOR A TAX
9 CREDIT SHALL NOT BE DENIED ON THE BASIS OF THE [REDACTED] REVOCATION OF
10 THE CERTIFICATION IF THE INVESTMENT WAS MADE BEFORE THE DATE OF
11 THE [REDACTED] REVOCATION.

12 (d) AS PART OF THE APPLICATION FOR A COLORADO INNOVATION
13 INVESTMENT TAX CREDIT, THE APPLICANT AND THE QUALIFIED SMALL
14 BUSINESS THAT RECEIVES THE INVESTMENT SHALL EACH PROVIDE WRITTEN
15 AUTHORIZATION TO PERMIT THE DEPARTMENT OF REVENUE TO PROVIDE
16 TAX INFORMATION TO THE OFFICE FOR THE PURPOSE OF DETERMINING IF
17 THERE ARE ANY MISREPRESENTATIONS ON THE APPLICATION. THE
18 AUTHORIZATION SHALL LIMIT DISCLOSURE TO INCOME TAX INFORMATION
19 FOR THE LATEST TWO YEARS FOR WHICH RETURNS WERE FILED WITH THE
20 DEPARTMENT OF REVENUE PRECEDING THE DATE THE APPLICATION IS
21 FILED AND FOR ALL TAX YEARS THROUGH THE YEAR IN WHICH THE
22 INVESTMENT WAS MADE FOR WHICH A RETURN WAS NOT FILED AS OF THE
23 DATE OF THE APPLICATION. THE APPLICANT SHALL ALSO PROVIDE IN THE
24 WRITTEN AUTHORIZATION INCOME TAX INFORMATION FOR ALL TAX YEARS
25 IN WHICH THE APPLICANT ACTUALLY CLAIMS A TAX CREDIT OR CARRIES
26 FORWARD A TAX CREDIT ON A RETURN FILED WITH THE DEPARTMENT OF
27 REVENUE. AN APPLICANT WITH AN INDIVIDUAL OWNERSHIP INTEREST AS

1 A CO-OWNER OF A BUSINESS AND THAT MAY BE ENTITLED TO A PRO RATA
2 SHARE OF THE TAX CREDIT PURSUANT TO SECTION 39-22-531 (5), C.R.S.,
3 SHALL PROVIDE A WRITTEN AUTHORIZATION WITH CONTENT SIMILAR TO
4 THE AUTHORIZATION, AND IN THE SAME MANNER, AS ANY OTHER
5 APPLICANT IS REQUIRED TO PROVIDE.

6 (e) THE OFFICE SHALL REVIEW AND MAKE A DETERMINATION WITH
7 RESPECT TO EACH APPLICATION FOR A COLORADO INNOVATION
8 INVESTMENT TAX CREDIT WITHIN NINETY DAYS AFTER RECEIVING THE
9 APPLICATION. THE OFFICE MAY REQUEST ADDITIONAL INFORMATION FROM
10 THE APPLICANT IN ORDER TO MAKE AN INFORMED DECISION REGARDING
11 THE ELIGIBILITY OF THE QUALIFIED INVESTOR OR QUALIFIED SMALL
12 BUSINESS.

13 (3) (a) SUBJECT TO THE LIMITATION SET FORTH IN SUBSECTION (4)
14 OF THIS SECTION, THE OFFICE SHALL AUTHORIZE A COLORADO INNOVATION
15 INVESTMENT TAX CREDIT FOR EACH QUALIFIED INVESTOR WHO MAKES A
16 QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS. THE AMOUNT
17 OF THE CREDIT SHALL BE FIFTEEN PERCENT OF THE AMOUNT OF THE
18 INVESTMENT; EXCEPT THAT THE TOTAL AMOUNT OF THE CREDIT SHALL
19 NOT EXCEED TWENTY THOUSAND DOLLARS. THE OFFICE SHALL ISSUE A
20 TAX CREDIT CERTIFICATE TO THE QUALIFIED INVESTOR STATING THE
21 AMOUNT OF THE TAX CREDIT THAT IS AUTHORIZED FOR PURPOSES OF
22 SECTION 39-22-531, C.R.S. A TAX CREDIT CERTIFICATE IS
23 NONTRANSFERABLE. THE OFFICE SHALL CERTIFY TO THE DEPARTMENT OF
24 REVENUE THE NAME OF EACH QUALIFIED INVESTOR WHO RECEIVES A TAX
25 CREDIT CERTIFICATE, THE AMOUNT OF THE CREDIT, AND OTHER RELEVANT
26 INFORMATION RELATING TO THE TAX CREDITS.

27 (b) A QUALIFIED INVESTOR SHALL SUBMIT A TAX CREDIT

1 CERTIFICATE AS PART OF A TAX RETURN TO THE DEPARTMENT OF REVENUE
2 IN ACCORDANCE WITH SECTION 39-22-531 (3), C.R.S., BY THE DUE DATE
3 OF THE RETURN, INCLUDING EXTENSIONS, FOR THE 2010 TAX YEAR. IF
4 THE QUALIFIED INVESTOR FAILS TO TIMELY FILE THE TAX CREDIT
5 CERTIFICATE, THE TAX CREDIT EXPIRES FOR THAT TAXABLE YEAR AND
6 THERE SHALL BE NO CARRYFORWARD OF THE EXPIRED CREDIT. CREDITS
7 THAT EXPIRE OR THAT OTHERWISE ARE NOT TIMELY USED BY THE
8 QUALIFIED INVESTOR SHALL NOT BE REISSUED.

9 (4) (a) THE TOTAL AMOUNT OF COLORADO INNOVATION
10 INVESTMENT TAX CREDITS ALLOWED FOR THE 2010 TAX YEAR SHALL
11 NOT EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS.

12 (b) IF QUALIFYING APPLICATIONS IN A TAX YEAR EXCEED SEVEN
13 HUNDRED FIFTY THOUSAND DOLLARS, THE OFFICE SHALL AUTHORIZE
14 COLORADO INNOVATION INVESTMENT TAX CREDITS IN THE ORDER OF THE
15 DATE AND TIME THAT THE APPLICATIONS ARE RECEIVED BY THE OFFICE, AS
16 EVIDENCED BY THE TIME AND DATE THAT THE OFFICE RECEIVED THE
17 APPLICATION. IF AN APPLICATION IS RECEIVED THAT, IF AUTHORIZED,
18 WOULD REQUIRE THE OFFICE TO EXCEED THE SEVEN HUNDRED FIFTY
19 THOUSAND DOLLAR LIMIT, THE OFFICE SHALL ONLY GRANT THE APPLICANT
20 THE REMAINING AMOUNT OF TAX CREDITS THAT WOULD NOT EXCEED THE
21 SEVEN HUNDRED FIFTY THOUSAND DOLLAR LIMIT.

22 (5) NO LATER THAN JANUARY 30, 2011, THE OFFICE SHALL
23 PROVIDE TO THE DEPARTMENT OF REVENUE AN ELECTRONIC REPORT THAT
24 INCLUDES THE INFORMATION SET FORTH IN PARAGRAPH (b) OF SUBSECTION
25 (2) OF THIS SECTION AND ANY OTHER INFORMATION REQUIRED TO
26 ADMINISTER SECTION 39-22-531, C.R.S. IF THE OFFICE SUBSEQUENTLY
27 DISCOVERS THAT AN APPLICANT WHO RECEIVED A COLORADO INNOVATION

1 INVESTMENT TAX CREDIT MISREPRESENTED INFORMATION ON THE
2 APPLICATION, THE OFFICE SHALL IMMEDIATELY NOTIFY THE DEPARTMENT
3 OF REVENUE AND PROVIDE THE DEPARTMENT OF REVENUE ALL
4 INFORMATION THAT RELATES TO THAT APPLICANT. IF THE DEPARTMENT OF
5 REVENUE DETERMINES THAT THERE HAS BEEN A MISREPRESENTATION ON
6 THE APPLICATION, THE DEPARTMENT OF REVENUE SHALL DENY THE TAX
7 CREDIT IF THE MISREPRESENTATION RELATES TO WHETHER THE APPLICANT
8 WAS A QUALIFIED INVESTOR OR MADE A QUALIFIED INVESTMENT. IF THE
9 MISREPRESENTATION RELATES TO WHETHER THE INVESTMENT WAS MADE
10 TO A QUALIFIED SMALL BUSINESS, THE DEPARTMENT OF REVENUE SHALL
11 DENY THE TAX CREDIT ONLY IF THE APPLICANT KNEW OR SHOULD HAVE
12 KNOWN AT ANY TIME BEFORE THE CERTIFICATION THAT THE
13 REPRESENTATION WAS FALSE.

14 (6) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
15 COLORADO INNOVATION INVESTMENT TAX CREDIT CASH FUND, REFERRED
16 TO IN THIS SUBSECTION (6) AS THE "FUND", TO PROVIDE FOR THE DIRECT
17 AND INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF THE TAX
18 CREDIT AND TO OFFSET LOST GENERAL FUND REVENUE AS A RESULT OF THE
19 TAX CREDIT. THE OFFICE IS AUTHORIZED TO SEEK AND ACCEPT GIFTS,
20 GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES. ALL PRIVATE
21 AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS
22 SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT
23 THE SAME TO THE FUND. THE MONEYS IN THE FUND SHALL BE SUBJECT TO
24 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND
25 INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF THIS SECTION.
26 ANY MONEYS IN THE FUND NOT EXPENDED FOR SUCH PURPOSE MAY BE
27 INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST

1 AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS
2 IN THE FUND SHALL BE CREDITED TO THE FUND. EXCEPT AS OTHERWISE
3 SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (6), ANY UNEXPENDED
4 AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A
5 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR
6 TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

7 (b) (I) ON JUNE 30, 2010, THE STATE TREASURER SHALL TRANSFER
8 THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FROM THE FUND TO
9 THE GENERAL FUND.

10 (II) ON JULY 1, 2010, THE STATE TREASURER SHALL TRANSFER
11 THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FROM THE FUND TO
12 THE GENERAL FUND.

13 **SECTION 3.** 39-21-113, Colorado Revised Statutes, is amended
14 BY THE ADDITION OF A NEW SUBSECTION to read:

15 **39-21-113. Reports and returns - repeal.**

16 (18) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE
17 EXECUTIVE DIRECTOR SHALL PROVIDE THE COLORADO OFFICE OF
18 ECONOMIC DEVELOPMENT WITH INFORMATION AS REQUIRED PURSUANT TO
19 SECTION 24-48.5-111 (2) (d), C.R.S.

20 **SECTION 4.** Part 5 of article 22 of title 39, Colorado Revised
21 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
22 read:

23 **39-22-531. Colorado innovation investment tax credit -**
24 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
25 OTHERWISE REQUIRES:

26 (a) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX
27 CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN THIS

1 SECTION.

2 (b) "QUALIFIED INVESTMENT" SHALL HAVE THE SAME MEANING AS
3 SET FORTH IN SECTION 24-48.5-111 (1) (g), C.R.S.

4 (c) "QUALIFIED INVESTOR" SHALL HAVE THE SAME MEANING AS
5 SET FORTH IN SECTION 24-48.5-111 (1) (h), C.R.S.

6 (d) "QUALIFIED SMALL BUSINESS" SHALL HAVE THE SAME
7 MEANING AS SET FORTH IN SECTION 24-48.5-111 (1) (i), C.R.S.

8 (e) "TAX CREDIT CERTIFICATE" MEANS A TAX CREDIT CERTIFICATE
9 ISSUED TO A QUALIFIED INVESTOR PURSUANT TO SECTION 24-48.5-111 (3),
10 C.R.S.

11 (2) THERE SHALL BE ALLOWED A COLORADO INNOVATION
12 INVESTMENT TAX CREDIT AGAINST THE INCOME TAXES IMPOSED PURSUANT
13 TO THIS ARTICLE FOR A QUALIFIED INVESTMENT IN A QUALIFIED SMALL
14 BUSINESS. THE AMOUNT OF THE CREDIT IS THE AMOUNT DETERMINED AND
15 AUTHORIZED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT
16 PURSUANT TO SECTION 24-48.5-111, C.R.S., AND SET FORTH IN A TAX
17 CREDIT CERTIFICATE.

18 (3) TO CLAIM THE COLORADO INNOVATION INVESTMENT TAX
19 CREDIT, THE TAXPAYER SHALL ATTACH TO THE TAXPAYER'S TAX RETURN
20 A COPY OF THE TAX CREDIT CERTIFICATE. NO TAX CREDIT IS ALLOWED
21 UNDER THIS SECTION UNLESS THE TAXPAYER PROVIDES THE COPY OF THE
22 TAX CREDIT CERTIFICATE.

23

24 (4) IF THE ALLOWABLE COLORADO INNOVATION INVESTMENT TAX
25 CREDIT EXCEEDS THE AMOUNT OF INCOME TAX DUE ON THE INCOME OF
26 THE TAXPAYER FOR THE 2010 TAX YEAR, THE AMOUNT OF THE TAX CREDIT
27 NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SUCH INCOME TAX

1 YEAR SHALL NOT BE ALLOWED AS A REFUND, BUT MAY BE CARRIED
2 FORWARD AND APPLIED AGAINST THE INCOME TAX DUE IN EACH OF THE
3 FIVE SUCCEEDING INCOME TAX YEARS, BUT SHALL BE FIRST APPLIED
4 AGAINST THE INCOME TAX DUE FOR THE EARLIEST OF THE INCOME TAX
5 YEARS POSSIBLE. ANY AMOUNT OF THE TAX CREDIT THAT IS NOT USED
6 AFTER SAID PERIOD SHALL NOT BE REFUNDABLE.

7 (5) INDIVIDUALS WHO ARE CO-OWNERS OF A BUSINESS, INCLUDING
8 PARTNERS IN A PARTNERSHIP AND SHAREHOLDERS OF AN S CORPORATION,
9 MAY EACH CLAIM ONLY THEIR INDIVIDUAL PRO RATA SHARES OF THE
10 COLORADO INNOVATION INVESTMENT TAX CREDIT ALLOWED UNDER THIS
11 SECTION BASED ON THEIR OWNERSHIP INTERESTS. THE TOTAL OF THE TAX
12 CREDITS ALLOWED TO ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT
13 THAT WOULD HAVE BEEN ALLOWED TO A SOLE OWNER.

14 (6) IF THE DEPARTMENT OF REVENUE DETERMINES THAT THERE
15 HAS BEEN A MISREPRESENTATION ON AN APPLICATION SUBMITTED TO THE
16 COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION
17 24-48.5-111, C.R.S., THE DEPARTMENT OF REVENUE SHALL DENY THE
18 COLORADO INNOVATION INVESTMENT TAX CREDIT IF THE
19 MISREPRESENTATION RELATES TO WHETHER THE APPLICANT WAS A
20 QUALIFIED INVESTOR OR MADE A QUALIFIED INVESTMENT. IF THE
21 MISREPRESENTATION RELATES TO WHETHER THE INVESTMENT WAS MADE
22 TO A QUALIFIED SMALL BUSINESS, THE DEPARTMENT OF REVENUE SHALL
23 DENY THE TAX CREDIT ONLY IF THE APPLICANT KNEW OR SHOULD HAVE
24 KNOWN AT ANY TIME BEFORE THE CERTIFICATION THAT THE
25 REPRESENTATION WAS FALSE.

26 **SECTION 5. Appropriation.** In addition to any other
27 appropriation, there is hereby appropriated, out of any moneys in the

1 Colorado innovation investment tax credit cash fund created in section
2 24-48.5-111, Colorado Revised Statutes, not otherwise appropriated, to
3 the governor -- lieutenant governor -- state planning and budgeting, for
4 allocation to economic development programs, for the fiscal year
5 beginning July 1, 2009, the sum of eighty-two thousand fifty-five dollars
6 (\$82,055) cash fund and 1.0 FTE, or so much thereof as may be
7 necessary, for the implementation of this act.

8 **SECTION 6. Act subject to petition - effective date.** (1) This
9 act shall take effect September 1, 2009; except that this act shall not take
10 effect unless, prior to such date, the revisor of statutes has received
11 written notice from the Colorado office of economic development that the
12 office has transmitted at least eight hundred thirty-two thousand fifty-five
13 dollars to the state treasurer for deposit in the Colorado innovation
14 investment tax credit cash fund.

15 (2) However, if a referendum petition is filed against this act or
16 an item, section, or part of this act during the ninety-day period after final
17 adjournment of the general assembly that is allowed for submitting a
18 referendum petition pursuant to article V, section 1 (3) of the state
19 constitution, then the act, item, section, or part, shall not take effect unless
20 approved by the people at a biennial regular general election and shall
21 take effect on the date specified in subsection (1) or on the date of the
22 official declaration of the vote thereon by proclamation of the governor,
23 whichever is later.