

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

REREVISED

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

LLS NO. 09-0578.01 Ed DeCecco

HOUSE BILL 09-1105

HOUSE SPONSORSHIP

Kefalas,

SENATE SPONSORSHIP

Scheffel,

House Committees

Business Affairs and Labor
Finance
Appropriations

Senate Committees

Finance
Appropriations

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.*

SENATE
3rd Reading Unamended
May 5, 2009

SENATE
Amended 2nd Reading
May 4, 2009

HOUSE
3rd Reading Unamended
April 15, 2009

HOUSE
Amended 2nd Reading
April 14, 2009

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 _____
5 (a) Access to seed capital is one of the key challenges facing early
6 stage _____ companies, and many good business proposals go unfunded
7 each year;

8 (b) Reducing risk to investors through a tax credit based on an
9 investment in startup businesses _____ will reduce some of the risk to
10 investors and thereby draw additional investment dollars for such
11 business;

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

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

18 (2) Now, therefore, it is the intent of the general assembly to
19 create a pilot income tax credit for investment in certain qualified

1 businesses [REDACTED] to be known as the Colorado innovation investment
2 tax credit.

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

5 **24-48.5-111. Administration of Colorado innovation**
6 **investment tax credit - cash fund - created - definitions.** (1) AS USED
7 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

24 (e) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT MADE [REDACTED]
25 DURING THE 2010 CALENDAR YEAR IN AN EQUITY SECURITY THAT MEETS
26 ALL OF THE FOLLOWING REQUIREMENTS:

27 (I) THE EQUITY SECURITY IS COMMON STOCK, PREFERRED STOCK,

1 AN INTEREST IN A PARTNERSHIP OR LIMITED LIABILITY COMPANY, A
2 SECURITY THAT IS CONVERTIBLE INTO AN EQUITY SECURITY, A
3 CONVERTIBLE DEBT INVESTMENT, OR OTHER EQUITY SECURITY AS
4 DETERMINED BY THE OFFICE;

5 (II) THE INVESTMENT IS AT LEAST TWENTY-FIVE THOUSAND
6 DOLLARS; AND

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

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

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

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

22 (II) HAS AT LEAST FIFTY PERCENT OF ITS GROSS ASSETS AND FIFTY
23 PERCENT OF ITS EMPLOYEES LOCATED WITHIN THE STATE. IF THE ENTITY
24 IS A MEMBER OF AN AFFILIATE, THE GROSS ASSETS AND THE NUMBER OF
25 EMPLOYEES OF ALL MEMBERS OF THE AFFILIATE, WHEREVER THOSE ASSETS
26 AND EMPLOYEES ARE LOCATED, SHALL BE INCLUDED FOR THE PURPOSE OF
27 DETERMINING THE PERCENTAGE OF THE ENTITY'S GROSS ASSETS AND

1 EMPLOYEES THAT ARE LOCATED IN THE STATE.

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

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

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

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

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

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

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

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

26 (II) THE NUMBER OF NEW EMPLOYEES HIRED BY THE QUALIFIED
27 SMALL BUSINESS AS A RESULT OF THE QUALIFIED INVESTMENT;

1 (III) THE NAME AND FEDERAL EMPLOYER IDENTIFICATION NUMBER
2 OF THE QUALIFIED SMALL BUSINESS THAT RECEIVED A QUALIFIED
3 INVESTMENT MADE BY THE APPLICANT;

4 (IV) THE AMOUNT OF THE QUALIFIED INVESTMENT;

5 (V) THE NAME OF ANY PARTNER, MEMBER, OR SUBCHAPTER S
6 SHAREHOLDER ENTITY, IF ANY, AND THE FEDERAL INCOME TAX
7 IDENTIFICATION NUMBER OF SUCH PERSON OR ENTITY;

8 (VI) THE DATE THE QUALIFIED INVESTMENT WAS MADE; AND

9 (VII) ANY ADDITIONAL INFORMATION THAT THE OFFICE REQUIRES.

10 (c) A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP,
11 OR OTHER BUSINESS ENTITY MAY REQUEST THE OFFICE TO DETERMINE
12 WHETHER IT IS A QUALIFIED SMALL BUSINESS. UPON RECEIVING SUCH
13 REQUEST OR UPON RECEIPT OF AN APPLICATION FOR A COLORADO
14 INNOVATION INVESTMENT TAX CREDIT FROM A QUALIFIED INVESTOR, THE
15 OFFICE SHALL DETERMINE WHETHER THE CORPORATION, LIMITED
16 LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY THAT IS
17 NAMED IN THE APPLICATION OR WRITTEN REQUEST IS A QUALIFIED SMALL
18 BUSINESS. AFTER DETERMINING THE QUALIFICATIONS, THE OFFICE SHALL
19 CERTIFY THE QUALIFIED SMALL BUSINESS AS BEING ELIGIBLE TO RECEIVE
20 QUALIFIED INVESTMENTS FOR PURPOSES OF THIS SECTION. THE
21 CERTIFICATION IS VALID FOR THE 2010 CALENDAR YEAR; EXCEPT THAT
22 SUCH CERTIFICATION SHALL BE REVOKED IF THE QUALIFIED SMALL
23 BUSINESS NO LONGER MEETS THE QUALIFICATIONS. A SMALL BUSINESS
24 SHALL NOTIFY THE OFFICE WITHIN THIRTY BUSINESS DAYS FROM THE DATE
25 THAT IT NO LONGER MEETS THE QUALIFICATIONS. IF THE CERTIFICATION
26 IS REVOKED, THE OFFICE MAY ASSESS A PENALTY AGAINST THE BUSINESS
27 ENTITY EQUAL TO THE AMOUNT OF THE COLORADO INNOVATION

1 INVESTMENT TAX CREDITS AUTHORIZED AFTER THE DATE THAT THE
2 BUSINESS NO LONGER MEETS THE QUALIFICATIONS. THE PENALTY SHALL
3 BE DEPOSITED INTO THE STATE GENERAL FUND. IF THE CERTIFICATION IS
4 REVOKED, SUBSEQUENT INVESTMENTS IN THE BUSINESS SHALL NOT
5 QUALIFY FOR A TAX CREDIT. ALL TAX CREDITS ISSUED BEFORE THE
6 REVOCATION OF THE CERTIFICATION SHALL REMAIN VALID. ANY
7 APPLICATION FOR A TAX CREDIT SHALL NOT BE DENIED ON THE BASIS OF
8 THE REVOCATION OF THE CERTIFICATION IF THE INVESTMENT WAS
9 MADE BEFORE THE DATE OF THE REVOCATION.

10 (d) AS PART OF THE APPLICATION FOR A COLORADO INNOVATION
11 INVESTMENT TAX CREDIT, THE APPLICANT AND THE QUALIFIED SMALL
12 BUSINESS THAT RECEIVES THE INVESTMENT SHALL EACH PROVIDE WRITTEN
13 AUTHORIZATION TO PERMIT THE DEPARTMENT OF REVENUE TO PROVIDE
14 TAX INFORMATION TO THE OFFICE FOR THE PURPOSE OF DETERMINING IF
15 THERE ARE ANY MISREPRESENTATIONS ON THE APPLICATION. THE
16 AUTHORIZATION SHALL LIMIT DISCLOSURE TO INCOME TAX INFORMATION
17 FOR THE LATEST TWO YEARS FOR WHICH RETURNS WERE FILED WITH THE
18 DEPARTMENT OF REVENUE PRECEDING THE DATE THE APPLICATION IS
19 FILED AND FOR ALL TAX YEARS THROUGH THE YEAR IN WHICH THE
20 INVESTMENT WAS MADE FOR WHICH A RETURN WAS NOT FILED AS OF THE
21 DATE OF THE APPLICATION. THE APPLICANT SHALL ALSO PROVIDE IN THE
22 WRITTEN AUTHORIZATION INCOME TAX INFORMATION FOR ALL TAX YEARS
23 IN WHICH THE APPLICANT ACTUALLY CLAIMS A TAX CREDIT OR CARRIES
24 FORWARD A TAX CREDIT ON A RETURN FILED WITH THE DEPARTMENT OF
25 REVENUE. AN APPLICANT WITH AN INDIVIDUAL OWNERSHIP INTEREST AS
26 A CO-OWNER OF A BUSINESS AND THAT MAY BE ENTITLED TO A PRO RATA
27 SHARE OF THE TAX CREDIT PURSUANT TO SECTION 39-22-531 (5), C.R.S.,

1 SHALL PROVIDE A WRITTEN AUTHORIZATION WITH CONTENT SIMILAR TO
2 THE AUTHORIZATION, AND IN THE SAME MANNER, AS ANY OTHER
3 APPLICANT IS REQUIRED TO PROVIDE.

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

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

25 (b) A QUALIFIED INVESTOR SHALL SUBMIT A COPY OF A TAX CREDIT
26 CERTIFICATE AS PART OF A TAX RETURN TO THE DEPARTMENT OF REVENUE
27 IN ACCORDANCE WITH SECTION 39-22-531 (3), C.R.S., BY THE DUE DATE

1 OF THE RETURN, INCLUDING EXTENSIONS, FOR THE 2010 TAX YEAR. IF
2 THE QUALIFIED INVESTOR FAILS TO TIMELY FILE THE TAX CREDIT
3 CERTIFICATE, THE TAX CREDIT EXPIRES FOR THAT TAXABLE YEAR AND
4 THERE SHALL BE NO CARRYFORWARD OF THE EXPIRED CREDIT. CREDITS
5 THAT EXPIRE OR THAT OTHERWISE ARE NOT TIMELY USED BY THE
6 QUALIFIED INVESTOR SHALL NOT BE REISSUED.

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

10 (b) IF QUALIFYING APPLICATIONS IN THE 2010 TAX YEAR EXCEED
11 SEVEN HUNDRED FIFTY THOUSAND DOLLARS, THE OFFICE SHALL
12 AUTHORIZE COLORADO INNOVATION INVESTMENT TAX CREDITS IN THE
13 ORDER OF THE DATE AND TIME THAT THE APPLICATIONS ARE RECEIVED BY
14 THE OFFICE, AS EVIDENCED BY THE TIME AND DATE THAT THE OFFICE
15 RECEIVED THE APPLICATION. IF AN APPLICATION IS RECEIVED THAT, IF
16 AUTHORIZED, WOULD REQUIRE THE OFFICE TO EXCEED THE SEVEN
17 HUNDRED FIFTY THOUSAND DOLLAR LIMIT, THE OFFICE SHALL ONLY GRANT
18 THE APPLICANT THE REMAINING AMOUNT OF TAX CREDITS THAT WOULD
19 NOT EXCEED THE SEVEN HUNDRED FIFTY THOUSAND DOLLAR LIMIT.

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

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

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

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

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

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

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

13 **39-21-113. Reports and returns - repeal.**

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

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

21 **39-22-531. Colorado innovation investment tax credit -**
22 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
23 OTHERWISE REQUIRES:

24 (a) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX
25 CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN THIS
26 SECTION.

27 (b) "QUALIFIED INVESTMENT" SHALL HAVE THE SAME MEANING AS

1 SET FORTH IN SECTION 24-48.5-111 (1) (e), C.R.S.

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

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

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

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

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

21

22 (4) IF THE ALLOWABLE COLORADO INNOVATION INVESTMENT TAX
23 CREDIT EXCEEDS THE AMOUNT OF INCOME TAX DUE ON THE INCOME OF
24 THE TAXPAYER FOR THE 2010 TAX YEAR, THE AMOUNT OF THE TAX CREDIT
25 NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SUCH INCOME TAX
26 YEAR SHALL NOT BE ALLOWED AS A REFUND, BUT MAY BE CARRIED
27 FORWARD AND APPLIED AGAINST THE INCOME TAX DUE IN EACH OF THE

1 FIVE SUCCEEDING INCOME TAX YEARS, BUT SHALL BE FIRST APPLIED
2 AGAINST THE INCOME TAX DUE FOR THE EARLIEST OF THE INCOME TAX
3 YEARS POSSIBLE. ANY AMOUNT OF THE TAX CREDIT THAT IS NOT USED
4 AFTER SAID PERIOD SHALL NOT BE REFUNDABLE.

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

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

24 **SECTION 5. Appropriation.** In addition to any other
25 appropriation, there is hereby appropriated, out of any moneys in the
26 Colorado innovation investment tax credit cash fund created in section
27 24-48.5-111 (6) (a), Colorado Revised Statutes, not otherwise

1 appropriated, to the governor -- lieutenant governor -- state planning and
2 budgeting, for allocation to economic development programs, for the
3 fiscal year beginning July 1, 2009, the sum forty-three thousand six
4 hundred eighty-two dollars (\$43,682) cash funds and 0.5 FTE, or so much
5 thereof as may be necessary, for the implementation of this act.

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

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