

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

INTRODUCED

LLS NO. 09-0395.01 Esther van Mourik

HOUSE BILL 09-1001

HOUSE SPONSORSHIP

Rice, Balmer, Liston, McFadyen, Solano

SENATE SPONSORSHIP

Heath, Mitchell, Scheffel, Schwartz, Veiga

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF AN INCOME TAX CREDIT TO**
102 **INCENTIVIZE COLORADO JOB GROWTH.**

Bill Summary

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

Establishes the Colorado job growth incentive tax credit for a specified period. Upon conditional approval and annual calculation by the Colorado economic development commission, allows a taxpayer to claim a credit for a specified number of consecutive months within the specified period the credit is available. Allows the commission to allocate the credits by issuing credit certificates to taxpayers who meet established criteria for a project in the state. Allows the credit to be carried forward

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.

for a specified time but not refunded. Establishes the methods for issuing credit certificates as well as the application process. Specifies how a credit is to be calculated. Grants the department of revenue rule-making authority.

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

2 **SECTION 1.** Part 5 of article 22 of title 39, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **39-22-531. Colorado job growth incentive tax credit - rules -**
6 **definitions - repeal.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
7 OTHERWISE REQUIRES:

8 (a) "COMMISSION" MEANS THE COLORADO ECONOMIC
9 DEVELOPMENT COMMISSION CREATED IN SECTION 24-46-102, C.R.S.

10 (b) "CREDIT CERTIFICATE" MEANS A STATEMENT ISSUED BY THE
11 COMMISSION CERTIFYING THAT THE PROJECT QUALIFIES FOR THE JOB
12 GROWTH INCENTIVE TAX CREDIT ALLOWED IN THIS SECTION AND
13 SPECIFYING THE AMOUNT OF THE CREDIT ALLOWED.

14 (c) "CREDIT PERIOD" MEANS A PERIOD OF UP TO SIXTY
15 CONSECUTIVE MONTHS FOR WHICH A TAXPAYER MAY CLAIM A CREDIT
16 ALLOWED IN THIS SECTION THAT IS CALCULATED ANNUALLY BY THE
17 COMMISSION. THE CREDIT PERIOD SHALL NOT EXTEND PAST DECEMBER
18 31, 2019.

19 (d) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

20 (e) "NET JOB GROWTH" MEANS THE DIFFERENCE BETWEEN THE
21 TOTAL NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES EMPLOYED BY THE
22 TAXPAYER AT THE END OF EACH CALENDAR YEAR OF A PROJECT AND THE
23 TOTAL NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES EMPLOYED BY THE

1 TAXPAYER AT THE COMMENCEMENT OF THE PROJECT.

2 (f) "PROJECT" MEANS A PROJECT THAT ENCOURAGES, PROMOTES,
3 AND STIMULATES ECONOMIC DEVELOPMENT IN KEY ECONOMIC SECTORS,
4 INCLUDING, BUT NOT LIMITED TO, AEROSPACE, BIOSCIENCE, LIFE SCIENCE,
5 CLEAN ENERGY TECHNOLOGY, TOURISM, AND INFORMATION TECHNOLOGY,
6 AND THAT IS APPROVED BY THE COMMISSION AS SPECIFIED IN SUBSECTION
7 (3) OF THIS SECTION.

8 (g) "TAXPAYER" HAS THE SAME MEANING AS SET FORTH IN
9 SECTION 39-21-101 (4).

10 (2) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
11 1, 2009, BUT PRIOR TO JANUARY 1, 2020, AT THE DISCRETION OF THE
12 COMMISSION AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, THERE
13 MAY BE ALLOWED TO ANY TAXPAYER AN ANNUAL JOB GROWTH INCENTIVE
14 TAX CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED BY THIS
15 ARTICLE THAT A TAXPAYER MAY CLAIM FOR A CREDIT PERIOD IN AN
16 AMOUNT DETERMINED BY THE COMMISSION PURSUANT TO SUBSECTION (5)
17 OF THIS SECTION.

18 (3) THE COMMISSION MAY APPROVE ANY JOB GROWTH INCENTIVE
19 TAX CREDITS ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION
20 SUBJECT TO THE FOLLOWING:

21 (a) DURING A CREDIT PERIOD A PROJECT SHALL:

22 (I) BRING A NET JOB GROWTH OF AT LEAST TWENTY NEW JOBS PER
23 YEAR TO THE STATE WITH AN AVERAGE YEARLY WAGE OF AT LEAST ONE
24 HUNDRED TEN PERCENT OF THE AVERAGE YEARLY WAGE OF THE COUNTY
25 IN WHICH THE TAXPAYER IS LOCATED OR ANY OTHER PERCENTAGE OF THE
26 AVERAGE YEARLY WAGE THAT THE COMMISSION DEEMS APPROPRIATE
27 UNDER THE CIRCUMSTANCES;

1 (II) RESULT IN THE RETENTION OF ANY NEW EMPLOYEES HIRED FOR
2 THE PROJECT FOR AT LEAST ONE YEAR; AND

3 (III) BE APPROVED BY THE COMMISSION ONLY IF THE PROJECT
4 WOULD NOT OCCUR BUT FOR THE CREDIT ALLOWED IN THIS SECTION.

5 (b) A TAXPAYER SHALL SUBMIT A COMPLETE WRITTEN
6 APPLICATION FOR A CREDIT ALLOWED IN THIS SECTION TO THE
7 COMMISSION BEFORE THE PROJECT COMMENCES IN THE STATE. THE
8 APPLICATION SHALL INCLUDE:

9 (I) AN IDENTIFICATION OF THE COST DIFFERENTIAL IN THE
10 PROJECTED COSTS OF THE PROJECT COMPARED TO THE PROJECTED COSTS
11 WERE THE PROJECT COMMENCED IN A COMPETING STATE. THE COST
12 DIFFERENTIAL SHALL INCLUDE ANY IMPACT OF THE COMPETING STATE'S
13 INCENTIVE PROGRAMS AND MAY INCLUDE:

14 (A) SPECIFIC COSTS FOR LABOR, UTILITIES, TAXES, AND ANY OTHER
15 COSTS OF A COMPETING STATE'S SITE; AND

16 (B) THE COST STRUCTURE OF THE TAXPAYER'S INDUSTRY IN THE
17 COMPETING STATE.

18 (II) DOCUMENTATION TO DEMONSTRATE THAT WITHOUT THE
19 CREDIT ALLOWED IN THIS SECTION, THE PROJECT WOULD NOT OCCUR IN
20 THIS STATE. SUCH DOCUMENTATION SHALL INCLUDE INFORMATION THAT
21 INDICATES THAT:

22 (A) THE TAXPAYER COULD REASONABLY AND EFFICIENTLY
23 LOCATE THE PROJECT OUTSIDE OF THIS STATE;

24 (B) AT LEAST ONE OTHER STATE IS BEING CONSIDERED FOR THE
25 PROJECT;

26 (C) RECEIPT OF THE CREDIT ALLOWED IN THIS SECTION IS A MAJOR
27 FACTOR IN THE TAXPAYER'S DECISION; AND

1 (D) WITHOUT THE CREDIT ALLOWED IN THIS SECTION, THE
2 TAXPAYER IS NOT LIKELY TO COMMENCE THE PROJECT IN THE STATE.

3 (c) IN THE EXERCISE OF THE COMMISSION'S DISCRETION GRANTED
4 BY THIS SUBSECTION (3), THE COMMISSION SHALL ONLY CONSIDER THE
5 FOLLOWING:

- 6 (I) THE ECONOMIC HEALTH OF THE STATE;
- 7 (II) THE ECONOMIC VIABILITY OF THE PROPOSED NEW JOBS;
- 8 (III) THE ECONOMIC BENEFITS TO THE STATE OF THE NEW JOBS;
- 9 AND
- 10 (IV) THE MAXIMUM AMOUNT OF THE CREDIT AS CALCULATED
11 PURSUANT TO PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION.

12 (4) (a) (I) THE COMMISSION SHALL REVIEW EACH APPLICATION FOR
13 A CREDIT ALLOWED IN THIS SECTION SUBMITTED BY ANY TAXPAYER.
14 BASED ON THE APPLICATION SUBMITTED, THE COMMISSION MAY OFFER
15 CONDITIONAL APPROVAL TO A TAXPAYER FOR A CREDIT. THE
16 CONDITIONAL APPROVAL SHALL INCLUDE THE MAXIMUM AMOUNT OF THE
17 CREDIT AVAILABLE TO THE TAXPAYER FOR THE CREDIT PERIOD
18 CALCULATED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (5) OF THIS
19 SECTION AND THE SPECIFIC TERMS THAT SHALL BE MET TO QUALIFY FOR
20 THE CREDIT.

21 (II) A TAXPAYER THAT RECEIVES CONDITIONAL APPROVAL FOR A
22 CREDIT ALLOWED IN THIS SECTION SHALL NOTIFY THE COMMISSION
23 PROMPTLY IF THE PROJECT IS CANCELED OR OTHERWISE BECOMES
24 INELIGIBLE FOR THE ESTIMATED CREDIT, IN WHICH CASE THE CONDITIONAL
25 APPROVAL MAY BE CANCELED. THE CONDITIONAL APPROVAL SHALL BE
26 VOID AND ANY CREDIT CLAIMED SHALL BE REPAID IF A TAXPAYER THAT
27 RECEIVES CONDITIONAL APPROVAL DOES NOT COMMENCE THE PROJECT

1 WITHIN ONE AND A HALF YEARS OF THE RECEIPT OF THE CONDITIONAL
2 APPROVAL OR FAILS TO MEET THE TERMS OF SUBSECTION (3) OF THIS
3 SECTION.

4 (b) BY MARCH 1 OF THE CALENDAR YEAR AFTER THE
5 COMMENCEMENT OF THE PROJECT, AND EACH MARCH 1 OF ANY CALENDAR
6 YEAR FOLLOWING A YEAR OF THE CREDIT PERIOD, A TAXPAYER THAT
7 RECEIVED CONDITIONAL APPROVAL AS SPECIFIED IN PARAGRAPH (a) OF
8 THIS SUBSECTION (4) SHALL SUBMIT AN ANNUAL REQUEST FOR A CREDIT
9 CERTIFICATE. THE REQUEST SHALL INCLUDE DOCUMENTS THAT DETAIL
10 THE NUMBER OF EMPLOYEES HIRED FOR THE PROJECT, THE NET JOB
11 GROWTH FOR THE TAXPAYER, ALL DOCUMENTATION NECESSARY TO
12 CALCULATE THE CREDIT AS SPECIFIED IN SUBSECTION (5) OF THIS SECTION,
13 AND ANY OTHER INFORMATION REQUESTED BY THE COMMISSION.

14 (c) IF THE PROJECT HAS COMMENCED AND THE PROJECT MEETS OR
15 EXCEEDS THE CONDITIONS OF A PROJECT AS SPECIFIED IN PARAGRAPHS (a)
16 AND (b) OF SUBSECTION (3) OF THIS SECTION, THE COMMISSION SHALL
17 CALCULATE THE ANNUAL AMOUNT OF THE CREDIT ALLOWED IN THIS
18 SECTION AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS
19 SECTION AND SHALL ISSUE A CREDIT CERTIFICATE IN THAT AMOUNT TO THE
20 TAXPAYER. THE CREDIT CERTIFICATE SHALL BE SUBMITTED BY THE
21 TAXPAYER TO THE DEPARTMENT WITH THE TAXPAYER'S INCOME TAX
22 RETURN FOR THAT TAX YEAR.

23 (5) THE CREDIT ALLOWED IN THIS SECTION SHALL BE CALCULATED
24 BY THE COMMISSION AS FOLLOWS:

25 (a) FOR THE MAXIMUM AMOUNT OF THE CREDIT ALLOWED IN THIS
26 SECTION AVAILABLE TO THE TAXPAYER FOR THE CREDIT PERIOD, THE
27 COMMISSION SHALL MULTIPLY THE ESTIMATED NET JOB GROWTH FOR EACH

1 OF THE YEARS IN THE CREDIT PERIOD BY FIFTY PERCENT OF THE
2 TAXPAYER'S TOTAL ESTIMATED TAXES IMPOSED EACH YEAR FOR THE NEW
3 EMPLOYEES UNDER THE "FEDERAL INSURANCE CONTRIBUTIONS ACT", 26
4 U.S.C. SEC. 3101 ET SEQ. THE MAXIMUM AMOUNT OF THE CREDIT SHALL
5 BE THE RESULT OF THIS CALCULATION OR SUCH LESSER AMOUNT AS THE
6 COMMISSION DEEMS PROPER UNDER ITS DISCRETION AS SPECIFIED IN
7 PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION.

8 (b) FOR THE ANNUAL AMOUNT OF THE CREDIT ALLOWED IN THIS
9 SECTION AVAILABLE TO THE TAXPAYER, THE COMMISSION SHALL
10 MULTIPLY THE ACTUAL NET JOB GROWTH FOR THAT YEAR BY FIFTY
11 PERCENT OF THE TAXPAYER'S TAXES IMPOSED FOR THE NEW EMPLOYEES
12 UNDER THE "FEDERAL INSURANCE CONTRIBUTIONS ACT", 26 U.S.C. SEC.
13 3101 ET SEQ. THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION
14 SHALL BE THE RESULT OF THIS CALCULATION; EXCEPT THAT NO CREDIT
15 CERTIFICATE SHALL BE ISSUED IF THE AGGREGATE OF ALL CREDITS
16 CLAIMED OR TO BE CLAIMED BY THE TAXPAYER, INCLUDING THE CURRENT
17 CREDIT CERTIFICATE, EXCEEDS THE MAXIMUM AMOUNT OF THE CREDIT AS
18 CALCULATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5).

19 (6) IF THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION
20 EXCEEDS THE AMOUNT OF INCOME TAXES OTHERWISE DUE ON THE
21 TAXPAYER'S INCOME IN THE INCOME TAX YEAR FOR WHICH THE CREDIT IS
22 BEING CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET
23 AGAINST INCOME TAXES IN THE CURRENT INCOME TAX YEAR MAY BE
24 CARRIED FORWARD AND USED AS A CREDIT AGAINST SUBSEQUENT YEARS'
25 INCOME TAX LIABILITY FOR A PERIOD NOT TO EXCEED TEN YEARS AND
26 SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.
27 ANY CREDIT REMAINING AFTER SAID PERIOD SHALL NOT BE REFUNDED OR

1 CREDITED TO THE TAXPAYER.

2 (7) THE COMMISSION OR ITS DESIGNEE MAY AUDIT THE ACCOUNTS
3 OF A TAXPAYER UP TO TWELVE MONTHS FOLLOWING THE ISSUANCE OF ANY
4 CREDIT CERTIFICATE.

5 (8) NO LATER THAN JANUARY 30, 2010, AND NO LATER THAN
6 JANUARY 30 OF EACH YEAR THROUGH JANUARY 30, 2019, THE
7 COMMISSION SHALL REPORT TO THE FINANCE COMMITTEES OF THE SENATE
8 AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES,
9 REGARDING ALL CREDIT CERTIFICATES ISSUED AND ALL CREDITS CLAIMED
10 PURSUANT TO THIS SECTION.

11 (9) IF A TAXPAYER RECEIVING A CREDIT ALLOWED IN THIS SECTION
12 IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR
13 SIMILAR PASS-THROUGH ENTITY, THE TAXPAYER MAY ALLOCATE THE
14 CREDIT AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER
15 CONSTITUENT TAXPAYERS IN ANY MANNER AGREED TO BY SUCH
16 PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT
17 TAXPAYERS. THE TAXPAYER SHALL CERTIFY TO THE COMMISSION AND THE
18 DEPARTMENT THE AMOUNT OF THE CREDIT ALLOCATED TO EACH PARTNER,
19 SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT TAXPAYER. EACH
20 PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT TAXPAYER
21 SHALL BE ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY
22 RESTRICTIONS SET FORTH IN THIS SECTION.

23 (10) NO LATER THAN APRIL 1, 2010, AND NO LATER THAN APRIL
24 1 OF EACH YEAR THEREAFTER THROUGH APRIL 1, 2020, THE COMMISSION
25 SHALL PROVIDE THE DEPARTMENT WITH AN ELECTRONIC REPORT OF THE
26 TAXPAYERS RECEIVING A CREDIT ALLOWED IN THIS SECTION FOR THAT
27 INCOME TAX YEAR THAT INCLUDES THE FOLLOWING INFORMATION:

- 1 (a) THE TAXPAYER'S NAME;
- 2 (b) THE TAXPAYER'S COLORADO ACCOUNT NUMBER AND FEDERAL
3 EMPLOYER IDENTIFICATION NUMBER;
- 4 (c) THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION; AND
- 5 (d) ANY ASSOCIATED TAXPAYER'S NAMES, COLORADO ACCOUNT
6 NUMBERS, AND FEDERAL EMPLOYER IDENTIFICATION NUMBERS OR SOCIAL
7 SECURITY NUMBERS, IF THE CREDIT ALLOWED IN THIS SECTION IS
8 ALLOCATED FROM A PASS-THROUGH ENTITY PURSUANT TO SUBSECTION (9)
9 OF THIS SECTION.

10 (11) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY
11 PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND ENFORCE
12 ANY PROVISION OF THIS SECTION. THE RULES SHALL BE PROMULGATED IN
13 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

14 (12) ANY TAXPAYER WHO OFFSETS A TAX DEFICIENCY WITH A
15 CREDIT ALLOWED IN THIS SECTION THAT IS DISALLOWED PURSUANT TO
16 THIS SECTION SHALL BE LIABLE FOR SUCH TAX DEFICIENCY, INTEREST, AND
17 PENALTIES AS MAY BE SPECIFIED IN THIS ARTICLE OR OTHERWISE
18 PROVIDED BY LAW.

19 (13) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2031.

20 **SECTION 2.** 39-22-622 (4), Colorado Revised Statutes, is
21 amended to read:

22 **39-22-622. Refunds.** (4) The provisions of subsection (2) of this
23 section shall not apply to any return that is being audited or to any return
24 that may take longer than normal to process due to the mathematical or
25 clerical errors contained in said return, ~~or~~ to unforeseen delays caused by
26 the failure of processing equipment, OR BECAUSE OF A TAX CREDIT
27 ALLOWED IN SECTION 39-22-531. Such determination shall be made in

1 good faith by the department OF REVENUE. Any refund attributable to a
2 return ~~which~~ THAT takes longer than normal to process for reasons
3 specified in this subsection (4) shall be subject to the requirements of
4 section 39-22-604 (9).

5 **SECTION 3. Act subject to petition - effective date.** This act
6 shall take effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly that is
8 allowed for submitting a referendum petition pursuant to article V,
9 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
10 sine die is on May 6, 2009); except that, if a referendum petition is filed
11 against this act or an item, section, or part of this act within such period,
12 then the act, item, section, or part, if approved by the people, shall take
13 effect on the date of the official declaration of the vote thereon by
14 proclamation of the governor.