

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 17-0112.01 Ed DeCecco x4216

HOUSE BILL 17-1090

HOUSE SPONSORSHIP

Kraft-Tharp and Wilson,

SENATE SPONSORSHIP

Gardner and Kefalas,

House Committees

Business Affairs and Labor
Finance
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE ADVANCED INDUSTRY INVESTMENT TAX CREDIT,**
102 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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://leg.colorado.gov/>.)

A qualified investor who, prior to January 1, 2018, makes an equity investment in a qualified small business from an advanced industry is allowed an income tax credit that is equal to a percentage of the investment, up to a maximum credit of \$50,000. The Colorado office of economic development (office) determines the eligibility for the tax credits and issues nontransferable tax credit certificates that are used to

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 10, 2017

SENATE
Amended 2nd Reading
May 9, 2017

HOUSE
3rd Reading Unamended
May 3, 2017

HOUSE
Amended 2nd Reading
May 2, 2017

claim the credit. The maximum amount of tax credits allowed for a calendar year is \$750,000.

The bill extends the credit by allowing qualified investments made on or after January 1, 2018, but prior to January 1, 2023, to qualify for the tax credit. For those years, the total maximum amount of credits for a calendar year is increased to \$1.5 million; except that, if the office authorizes less than this amount in a year, then the remaining, unused credits are added to the next year's total maximum amount. In addition, the definition of "qualified small business" is expanded to include a company that has annual revenues of less than \$5 million or that has been actively operating and generating revenue for less than 5 years. Currently, a business must meet both criteria, in addition to other criteria that will continue to apply.

The advanced industry investment tax credit cash fund, which was started with money transferred from another cash fund and has no current revenue source, is repealed.

In 2022, the office is required to submit to legislative committees a report that includes information about the tax credits issued after January 1, 2018, and the economic benefits from the related qualified investments.

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 advanced
5 industries is one of the most promising ways to stimulate the state
6 economy and create high-paying jobs;

7 (b) Access to capital is one of the key challenges facing early
8 stage companies in the advanced industries, and it remains one of the
9 biggest hurdles for those companies getting their products to market;

10 (c) Allowing a tax credit based on investment in an advanced
11 industry business reduces some of the risk to investors and thereby draws
12 additional investment dollars for those businesses;

13 (d) These successfully funded businesses may raise additional
14 capital, produce more revenue, and create more high-paying, high-skill

1 jobs in the state; and

2 (e) Increased investment in Colorado's innovative advanced
3 industry sectors will promote economic growth within the state.

4 (2) Now, therefore, the general assembly hereby declares that its
5 purpose in extending and expanding the expiring tax credit in this act is
6 to help more Colorado advanced industry companies receive more capital
7 from Colorado investors.

8 **SECTION 2.** In Colorado Revised Statutes, 24-48.5-112, **amend**
9 (1)(e) introductory portion, (1)(g)(III), (1)(g)(IV), (2)(c), (3)(b)(I), and
10 (6); and **repeal** (1)(g)(V) and (5) as follows:

11 **24-48.5-112. Advanced industry investment tax credit -**
12 **administration - definitions - repeal.** (1) As used in this section, unless
13 the context otherwise requires:

14 (e) "Qualified investment" means an investment made at any time
15 on or after July 1, 2014, but before ~~January 1, 2018~~ JANUARY 1, 2023, in
16 an equity security that meets all of the following requirements:

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

19 (III) Has received less than ten million dollars from third-party
20 investors, not including grants, since the business was formed; AND

21 (IV) Has annual revenues of less than five million dollars ~~and~~ OR
22 HAS BEEN ACTIVELY OPERATING AND GENERATING REVENUE FOR LESS
23 THAN FIVE YEARS.

24 ~~(V) Has been actively operating and generating revenue for less~~
25 ~~than five years.~~

26 (2) (c) A business may request the office to determine whether it
27 is a qualified small business. Upon receiving ~~such~~ THE request or upon

1 receipt of an application for an advanced industry investment tax credit
2 from a qualified investor, the office shall determine whether the business
3 that is named in the application or written request is a qualified small
4 business. After determining the qualifications, the office shall certify the
5 qualified small business as being eligible to receive qualified investments
6 for purposes of this section. The certification for a qualified small
7 business that is certified after July 1, 2014, is valid until ~~January 1, 2018~~
8 JANUARY 1, 2023; except that the certification is revoked if the business
9 no longer meets the qualifications. A business shall notify the office
10 within thirty business days from the date that it no longer meets the
11 qualifications. If the certification is revoked, the office may assess a
12 penalty against the business that is equal to the amount of the advanced
13 industry investment tax credits authorized after the date that the business
14 no longer meets the qualifications. The state treasurer shall deposit the
15 penalty into the state general fund. If the certification is revoked,
16 subsequent investments in the business do not qualify for a tax credit. All
17 tax credits issued before the revocation of the certification ~~shall~~ remain
18 valid. The office shall not deny any application for a tax credit on the
19 basis of the revocation of the certification if the investment was made
20 before the date of the revocation.

21 (3) (b) (I) The total amount of the advanced industry investment
22 tax credits shall not exceed three hundred seventy-five thousand dollars
23 for the 2014 calendar year; and seven hundred fifty thousand dollars for
24 each of the 2015, 2016, and 2017 calendar years; except that the amount
25 of tax credits that were not authorized for 2014 may be allocated to 2015
26 CALENDAR YEAR FROM 2015 THROUGH 2022; EXCEPT THAT, IF THE TOTAL
27 AMOUNT OF THE CREDITS FOR 2018 OR A LATER CALENDAR YEAR IS LESS

1 THAN THE MAXIMUM AMOUNT, THEN THE MAXIMUM AMOUNT FOR THE
2 NEXT YEAR IS INCREASED BY AN AMOUNT EQUAL TO THE REMAINING,
3 UNUSED TAX CREDITS FROM THE PRIOR YEAR. The office shall authorize
4 the tax credits in the order that applications are received by the office and
5 shall deny any application received after the limit has been met. The
6 office may partially authorize the last tax credit that is awarded up to the
7 limit.

8 (5) ~~The state treasurer shall transfer the unexpended and~~
9 ~~unencumbered moneys that were in the innovation investment tax credit~~
10 ~~cash fund on May 29, 2014, to the advanced industry investment tax~~
11 ~~credit cash fund, which is created in the state treasury. The general~~
12 ~~assembly shall annually appropriate moneys in the fund to the office for~~
13 ~~the direct and indirect costs associated with the administration of this~~
14 ~~section. Any moneys in the fund not expended for such purpose may be~~
15 ~~invested by the state treasurer as provided by law. All interest and income~~
16 ~~derived from the investment and deposit of moneys in the fund shall be~~
17 ~~credited to the fund. Any unexpended and unencumbered moneys~~
18 ~~remaining in the fund at the end of a fiscal year shall remain in the fund~~
19 ~~and shall not be credited or transferred to the general fund or any other~~
20 ~~fund.~~

21 (6) On November 1, 2017, the office of economic development
22 shall submit a FIRST report to the finance and the business, labor, and
23 economic and workforce development committees of the house of
24 representatives; to the business, labor, and technology and the finance
25 committees of the senate, or any successor committees; and to the joint
26 budget committee summarizing all of the tax certificates issued since July
27 1, 2014. At a minimum, the report must include the amount of the capital

1 invested by qualified investors and the tax credit that each qualified
2 investor received, a description of the qualified businesses that received
3 the qualified investment, A PROJECTION OF the number of new employees
4 hired by the qualified small businesses as a result of the qualified
5 investment, the geographic distribution of the jobs, and any other
6 economic impacts that resulted from the ~~grant~~ QUALIFIED INVESTMENT.
7 NOTWITHSTANDING SECTION 24-1-136 (11), THE OFFICE SHALL SUBMIT A
8 SECOND REPORT ON NOVEMBER 1, 2022, TO THE SAME LEGISLATIVE
9 COMMITTEES SUMMARIZING ALL OF THE TAX CERTIFICATES ISSUED AFTER
10 JANUARY 1, 2018. THE SECOND REPORT MUST INCLUDE THE SAME
11 INFORMATION AS THE FIRST REPORT.

12 **SECTION 3. Appropriation.** For the 2017-18 state fiscal year,
13 \$23,062 is appropriated to the office of the governor for use by the
14 Colorado office of economic development. This appropriation is from the
15 general fund and is based on an assumption that the office will require an
16 additional 0.3 FTE. To implement this act, the office may use this
17 appropriation for economic development commission - general economic
18 incentives and marketing.

19 **SECTION 4. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.