

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
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LLS NO. 20-0575.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Amendments Due To Automatic Repeal Of Tax Credit"

A BILL FOR AN ACT

101 CONCERNING NECESSARY STATUTORY AMENDMENTS DUE TO THE
102 AUTOMATIC REPEAL OF AN ENTERPRISE ZONE ACT INCOME TAX
103 CREDIT FOR NEW BUSINESS FACILITY EMPLOYEES.

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/>.)

Statutory Revision Committee. Current law includes an income tax credit for new business facility employees in enterprise zones for income tax years commencing prior to January 1, 2014. That statute, found in section 39-30-105, Colorado Revised Statutes, repealed on December 31, 2019. The income tax credit was replaced in 2013 with a

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

modified income tax credit found in section 39-30-105.1, Colorado Revised Statutes, for tax years commencing on or after January 1, 2014. When the modified income tax credit was enacted, certain conforming amendments for the eventual repeal of section 39-30-105, Colorado Revised Statutes, were not made. The bill makes those conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-46-105.7, **amend**
3 (3) as follows:

4 **24-46-105.7. Performance-based incentive for new job**
5 **creation - new jobs incentives cash fund.** (3) An employer that
6 qualifies to receive a performance-based incentive for new jobs created
7 pursuant to this section and that qualifies for an income tax credit
8 pursuant to ~~section 39-30-105, C.R.S.~~ SECTION 39-30-105.1, shall be
9 allowed to receive the incentive allowed pursuant to this section and
10 claim the credit allowed pursuant to ~~section 39-30-105, C.R.S.~~ SECTION
11 39-30-105.1.

12 **SECTION 2.** In Colorado Revised Statutes, 30-11-123, **amend**
13 (1)(b) and (2) as follows:

14 **30-11-123. New business facilities - expansion of existing**
15 **business facilities - incentives - limitations - authority to exceed**
16 **revenue-raising limitations - legislative declaration - definitions.**

17 (1) (b) Notwithstanding any law to the contrary, any county may
18 negotiate for an incentive payment or credit with any taxpayer who
19 establishes a new business facility, as defined in ~~section 39-30-105(7)(c),~~
20 ~~C.R.S.~~ SECTION 39-30-105.1 (6)(b), in the county. In no instance shall
21 MAY any negotiation result in an annual incentive payment or credit that
22 is greater than the amount of the taxes levied by the county upon the

1 taxable personal property located at or within the ~~new~~ business facility
2 and used in connection with the operation of the ~~new~~ business facility for
3 the current property tax year. The term of any agreement made prior to
4 August 6, 2014, pursuant to the provisions of this subsection (1) ~~shall~~
5 MAY not exceed ten years, including the term of any original agreement
6 being renewed. The term of any agreement made on or after August 6,
7 2014, pursuant to this subsection (1) ~~shall~~ MAY not exceed thirty-five
8 years, which does not include the term of any prior agreement.

9 (2) Notwithstanding any law to the contrary, any county may
10 negotiate for an incentive payment or credit with any taxpayer who
11 expands a facility, as defined in ~~section 39-30-105 (7)(c), C.R.S., the~~
12 ~~expansion of which constitutes a new business facility, as defined in~~
13 ~~section 39-30-105 (7)(c), C.R.S.,~~ SECTION 39-30-105.1 (6)(e), THE
14 EXPANSION OF WHICH AUTHORIZES A TAXPAYER TO CLAIM A CREDIT
15 DESCRIBED IN SECTION 39-30-105.1, and that is located in the county. In
16 no instance ~~shall~~ MAY any negotiation result in an annual incentive
17 payment or credit that is greater than the amount of the taxes levied by the
18 county upon the taxable personal property directly attributable to the
19 expansion, located at or within the expanded facility, and used in
20 connection with the operation of the expanded facility for the current
21 property tax year. The term of any agreement made prior to August 6,
22 2014, pursuant to the provisions of this subsection (2) ~~shall~~ MAY not
23 exceed ten years, including the term of any original agreement being
24 renewed. The term of any agreement made on or after August 6, 2014,
25 pursuant to this subsection (2) ~~shall~~ MAY not exceed thirty-five years,
26 which does not include the term of any prior agreement.

27 **SECTION 3.** In Colorado Revised Statutes, 31-15-903, **amend**

1 (1)(b) and (2) as follows:

2 **31-15-903. Legislative declaration - municipalities - new**
3 **business facilities - expanded or existing business facilities - incentives**
4 **- limitations - authority to exceed revenue-raising limitation.**

5 (1) (b) Notwithstanding any law to the contrary, any municipality may
6 negotiate for an incentive payment or credit with any taxpayer who
7 establishes a ~~new~~ business facility, as defined in ~~section 39-30-105 (7)(c),~~
8 ~~C.R.S.~~ SECTION 39-30-105.1 (6)(b), in the municipality. In no instance
9 ~~shall~~ MAY any negotiation result in an annual incentive payment or credit
10 that is greater than the amount of taxes levied by the municipality upon
11 the taxable personal property located at or within the ~~new~~ business facility
12 and used in connection with the operation of the ~~new~~ business facility for
13 the current property tax year. The term of any agreement made prior to
14 August 6, 2014, pursuant to the provisions of this subsection (1) ~~shall~~
15 MAY not exceed ten years, including the term of any original agreement
16 being renewed. The term of any agreement made on or after August 6,
17 2014, pursuant to this subsection (1) ~~shall~~ MAY not exceed thirty-five
18 years, which does not include the term of any prior agreement.

19 (2) Notwithstanding any law to the contrary, any municipality may
20 negotiate for an incentive payment or credit with any taxpayer who
21 expands a facility, as defined in ~~section 39-30-105 (7)(c), C.R.S., the~~
22 ~~expansion of which constitutes a new business facility, as defined in~~
23 ~~section 39-30-105 (7)(c), C.R.S.,~~ SECTION 39-30-105.1 (6)(e), THE
24 EXPANSION OF WHICH AUTHORIZES A TAXPAYER TO CLAIM A CREDIT
25 DESCRIBED IN SECTION 39-30-105.1, and that is located in the
26 municipality. In no instance ~~shall~~ MAY any negotiation result in an annual
27 incentive payment or credit that is greater than the amount of the taxes

1 levied by the municipality upon the taxable personal property directly
2 attributable to the expansion, located at or within the expanded facility,
3 and used in connection with the operation of the expanded facility for the
4 current property tax year. The term of any agreement made prior to
5 August 6, 2014, pursuant to the provisions of this subsection (2) ~~shall~~
6 MAY not exceed ten years, including the term of any original agreement
7 being renewed. The term of any agreement made on or after August 6,
8 2014, pursuant to this subsection (2) ~~shall~~ MAY not exceed thirty-five
9 years, which does not include the term of any prior agreement.

10 **SECTION 4.** In Colorado Revised Statutes, 32-1-1702, **amend**
11 (1) and (2) as follows:

12 **32-1-1702. New business facilities - expanded or existing**
13 **business facilities - incentives - limitations - authority to exceed**
14 **revenue-raising limitation.** (1) Notwithstanding any law to the contrary,
15 a special district may negotiate for an incentive payment or credit with a
16 taxpayer who establishes a ~~new~~ business facility, as defined in ~~section~~
17 ~~39-30-105 (7)(c), C.R.S.~~ SECTION 39-30-105.1 (6)(b), in the special
18 district. In no instance ~~shall~~ MAY any negotiation result in an annual
19 incentive payment or credit that is greater than the amount of taxes levied
20 by the special district upon the taxable business personal property located
21 at or within the ~~new~~ business facility and used in connection with the
22 operation of the ~~new~~ business facility for the current property tax year.
23 The term of any agreement made prior to August 6, 2014, pursuant to the
24 provisions of this subsection (1) ~~shall~~ MAY not exceed ten years, including
25 the term of any original agreement being renewed. The term of any
26 agreement made on or after August 6, 2014, pursuant to this subsection
27 (1) ~~shall~~ MAY not exceed thirty-five years, which does not include the

1 term of any prior agreement.

2 (2) Notwithstanding any law to the contrary, a special district may
3 negotiate for an incentive payment or credit with a taxpayer who expands
4 a facility, as defined in ~~section 39-30-105 (7)(c), C.R.S., the expansion of~~
5 ~~which constitutes a new business facility, as defined in section 39-30-105~~
6 ~~(7)(c), C.R.S.,~~ SECTION 39-30-105.1 (6)(e), THE EXPANSION OF WHICH
7 AUTHORIZES A TAXPAYER TO CLAIM A CREDIT DESCRIBED IN SECTION
8 39-30-105.1, and that is located in the special district. In no instance ~~shall~~
9 MAY any negotiation result in an annual incentive payment or credit that
10 is greater than the amount of the taxes levied by the special district upon
11 the taxable business personal property directly attributable to the
12 expansion located at or within the expanded facility and used in
13 connection with the operation of the expanded facility for the current
14 property tax year. The term of any agreement made prior to August 6,
15 2014, pursuant to the provisions of this subsection (2) ~~shall~~ MAY not
16 exceed ten years, including the term of any original agreement being
17 renewed. The term of any agreement made on or after August 6, 2014,
18 pursuant to this subsection (2) ~~shall~~ MAY not exceed thirty-five years,
19 which does not include the term of any prior agreement.

20 **SECTION 5.** In Colorado Revised Statutes, 39-30-103, **amend**
21 (4)(b) introductory portion, (4)(b)(IX), (4)(b)(X), (6)(a), and (7)(a)
22 introductory portion as follows:

23 **39-30-103. Zones established - review - termination -**
24 **repeal.** (4) (b) The Colorado economic development commission shall
25 work with the zone administrators of each enterprise zone to ensure that
26 each zone has specific economic development objectives with outcomes
27 that can be measured with specific, verifiable data. The director of the

1 Colorado office of economic development shall require the zone
2 administrators for each zone to submit annual documentation of efforts
3 to improve conditions in areas designated as enterprise zones and the
4 results of those efforts. Such annual documentation ~~shall~~ MUST include
5 specific, verifiable data that can be used to measure whether the zone has
6 achieved the specific economic development objectives for the zone that
7 have measurable outcomes. In order for the commission to determine if
8 the enterprise zones or portions thereof are achieving the specific
9 economic development objectives submitted pursuant to this ~~paragraph~~
10 ~~(b) or to paragraph (d) of subsection (3) of this section~~ SUBSECTION (4)(b)
11 OR TO SUBSECTION (3)(d) OF THIS SECTION, such annual documentation
12 ~~shall~~ MUST include, but need not be limited to, the most recent statistics
13 available for companies claiming enterprise zone tax credits on:

14 (IX) ~~The number of employees employed in new or expanded~~
15 ~~business facilities for which a credit is claimed pursuant to section~~
16 ~~39-30-105 and the number of business facility employees for which a~~
17 ~~credit is claimed pursuant to section 39-30-105.1;~~

18 (X) The amount of investment tax credits claimed pursuant to
19 ~~section 39-30-104, the amount of credits claimed for new business facility~~
20 ~~employees pursuant to section 39-30-105, SECTION 39-30-104 and the~~
21 amount of credits claimed pursuant to section 39-30-105.1;

22 (6) (a) When the termination of an enterprise zone or portion of
23 an enterprise zone would prevent a taxpayer from qualifying for tax
24 benefits under this ~~article~~ ARTICLE 30 and the taxpayer can identify job
25 creation or capital expansion activities that were planned prior to the
26 termination announcement and that would have otherwise entitled the
27 taxpayer to claim tax benefits under section 39-30-103.5, 39-30-104,

1 ~~39-30-105~~, or 39-30-105.1, the enterprise zone administrator and the
2 taxpayer shall jointly certify detailed information about such planned
3 activities. A taxpayer who files such certification with the taxpayer's state
4 income tax return may claim tax benefits otherwise actually earned up to
5 the limits of such certified information for a period not to exceed the ten
6 tax years following the year in which the enterprise zone or portion of an
7 enterprise zone was terminated. It is the intent of this subsection (6) only
8 to permit taxpayers to claim tax benefits on which they demonstrably
9 relied in making business planning decisions, and, except as specifically
10 provided in this subsection (6), nothing in this subsection (6) ~~shall~~ MAY
11 be construed to authorize the commission or any enterprise zone
12 administrator to grant tax benefits that have been repealed by the general
13 assembly or to grant tax benefits in excess of the limits established by
14 law.

15 (7) (a) Beginning on January 1, 2012, before a taxpayer engages
16 in any activity for which the taxpayer intends to claim an income tax
17 credit pursuant to section 39-30-104, ~~39-30-105~~, 39-30-105.1,
18 39-30-105.5, or 39-30-105.6, an authorized company official of the
19 taxpayer's business or the taxpayer who is the owner of the business shall
20 submit a pre-certification form to the enterprise zone administrator as
21 specified in this subsection (7). A taxpayer that completes an activity
22 prior to January 1, 2012, for which the taxpayer intends to claim an
23 income tax credit pursuant to this ~~article~~ ARTICLE 30 shall submit to the
24 zone administrator on or before December 31, 2012, any information
25 related to such completed activity that is necessary to receive certification
26 from the zone administrator that the taxpayer's business is located in the
27 enterprise zone. Nothing in this subsection (7) ~~shall~~ MAY be construed to

1 require a taxpayer to submit a pre-certification form to the zone
2 administrator for activities completed prior to January 1, 2012. In
3 connection with the pre-certification, the taxpayer shall be required to:

4 **SECTION 6.** In Colorado Revised Statutes, 39-30-103.2, **amend**
5 (5) as follows:

6 **39-30-103.2. Enhanced rural enterprise zones - criteria -**
7 **termination.** (5) If the termination of an enhanced rural enterprise zone
8 would prevent a taxpayer from qualifying for tax benefits under this
9 ~~article~~ ARTICLE 30 and the taxpayer can identify job creation or capital
10 expansion activities that were planned before the director of the Colorado
11 office of economic development issued the list of eligible counties and
12 that would have otherwise entitled the taxpayer to claim tax benefits
13 under ~~section 39-30-105~~ or SECTION 39-30-105.1, the enterprise zone
14 administrator and the taxpayer shall jointly certify detailed information
15 about such planned activities. A taxpayer who files such certification with
16 the taxpayer's state income tax return may claim tax benefits otherwise
17 actually earned up to the limits of such certified information for a period
18 not to exceed the five tax years following the year in which the enhanced
19 rural enterprise zone was terminated. It is the intent of this subsection (5)
20 to permit taxpayers to claim only those tax benefits on which they
21 demonstrably relied in making business planning decisions, and, except
22 as specifically provided in this subsection (5), nothing in this subsection
23 (5) ~~shall~~ MAY be construed to authorize any enterprise zone administrator
24 to grant tax benefits that have been repealed by law or to grant tax
25 benefits in excess of the limits established by law.

26 **SECTION 7.** In Colorado Revised Statutes, 39-30-104, **amend**
27 (2)(a); and **repeal** (6) as follows:

1 **39-30-104. Credit against tax - investment in certain property**
2 **- definitions.** (2) (a) For income tax years commencing prior to January
3 1, 2014, the amount of the credit set forth in subsection (1) of this section
4 shall be subject to the limitations of section 39-22-507.5; except that, in
5 computing the limitations on credit pursuant to section 39-22-507.5 (3),
6 a taxpayer's actual tax liability for the income tax year shall not be
7 reduced by the amount of credits allowed by ~~section 39-30-105~~ SECTION
8 39-30-105.1 and the limit on that portion of a taxpayer's tax liability that
9 exceeds five thousand dollars shall be fifty percent.

10 ~~(6) For credits claimed for income tax years commencing on or~~
11 ~~after January 1, 1997, no credit shall be allowed pursuant to this section~~
12 ~~if the investment resulted from the relocation of a business operation from~~
13 ~~within the state to an enterprise zone, regardless of whether the original~~
14 ~~location of the operation was within an enterprise zone, except to the~~
15 ~~extent such relocation meets the criteria for an expansion pursuant to~~
16 ~~section 39-30-105 (7)(c)(II) and (7)(c)(III).~~

17 **SECTION 8.** In Colorado Revised Statutes, 39-30-107.5, **amend**
18 (1)(a) and (2) as follows:

19 **39-30-107.5. Taxable property valuations - sales taxes -**
20 **incentives - definitions.** (1) (a) Notwithstanding any law to the contrary,
21 any special district, county, municipality, or city and county within an
22 enterprise zone may negotiate with any taxpayer who qualifies for a credit
23 pursuant to ~~section 39-30-105~~ or SECTION 39-30-105.1 for an incentive
24 payment or credit equal to not more than the amount of the taxes levied
25 upon the taxable property of the taxpayer; but in no instance shall any
26 such negotiation result in such an incentive payment or credit which is
27 greater than the difference between the current property tax liability and

1 the tax liability for the same property for the year preceding the year in
2 which the enterprise zone was approved.

3 (2) Notwithstanding any law to the contrary, any county,
4 municipality, or city and county within an enterprise zone may negotiate
5 with any taxpayer who qualifies for a credit pursuant to ~~section 39-30-105~~
6 ~~or~~ SECTION 39-30-105.1 a refund of the sales taxes levied by such county,
7 municipality, or city and county for the purchase of equipment,
8 machinery, machine tools, or supplies used in the taxpayer's business in
9 the enterprise zone.

10 **SECTION 9. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety. <{Section 39-30-105
13 repealed automatically on 12/31/2019. These issues should be clarified
14 upon signature of the Governor and not wait for August 2020 or until
15 after a petition might be filed against the bill.>