

Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 04-0628.01 Jason Gelender

HOUSE BILL 04-1190

HOUSE SPONSORSHIP

Romanoff,

SENATE SPONSORSHIP

(None),

House Committees

Finance

Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ECONOMIC DEVELOPMENT INCENTIVES, AND, IN
102 CONNECTION THEREWITH, ELIMINATING THE INSURANCE
103 PREMIUM TAX CREDIT ALLOWED TO CERTIFIED INVESTORS WHO
104 MAKE CERTIFIED INVESTMENTS IN CERTIFIED CAPITAL
105 COMPANIES ON OR AFTER JANUARY 31, 2004, AND CREATING AN
106 OFFSETTING INCOME TAX CREDIT FOR LOW-INCOME HOUSING.

Bill Summary

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

Replaces the insurance premium tax credit of \$100,000,000 allowed to certified investors who make certified investments in certified

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.

capital companies on or after January 31, 2004, with an income tax credit of \$100,000,000 for owners of qualified low-income housing developments. Authorizes the Colorado housing and finance authority (CHFA) to allocate up to a specified amount of the credit to qualified taxpayers annually from January 1, 2005, to December 31, 2008. Allows the credit to be carried forward for a specified period.

Pursuant to existing provisions of law that provided for a similar credit for owners of qualified low-income housing developments that CHFA was authorized to allocate between January 1, 2001, and December 31, 2002:

Requires a qualified development to be maintained and operated as such for 15 taxable years.

Provides for recapture of a credit in specified circumstances.

Allows an insurance company that is exempt from state income tax to claim and carry forward the credit against the state tax on insurance premiums to the same extent that a taxpayer would be able to claim and carry forward the credit against state income tax.

Requires CHFA and the executive director of the department of revenue to promulgate rules to administer the tax credit and to monitor compliance with respect to the credit.

Makes a legislative declaration. Defines a term.

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) By increasing construction of new residential developments,
5 rehabilitating older housing developments, and increasing the availability
6 of affordable housing, the income tax and insurance premium tax credit
7 for low-income housing developments authorized by House Bill 04-____
8 will create jobs and economic development in the state.

9 (b) The replacement of the insurance premium tax credit allowed
10 to certified investors who make certified investments in certified capital
11 companies on or after January 31, 2004, with the income tax and

1 insurance premium tax credit for low-income housing developments is a
2 single tax policy change that replaces one mechanism for job creation and
3 economic development with another mechanism designed to achieve the
4 same goals.

5 (2) The general assembly further finds and declares that
6 replacement of the insurance premium tax credit allowed to certified
7 investors who make certified investments in certified capital companies
8 on or after January 31, 2004, with the income tax and insurance premium
9 tax credit for low-income housing developments is not a tax policy
10 change directly resulting in a net tax revenue gain to the state and
11 therefore does not require voter approval in advance under section (20)
12 (4) (a) of article X of the state constitution because the total amount of
13 credits allowed will remain constant and taxpayers will receive the full
14 benefit of the credits sooner.

15 **SECTION 2.** 10-3.5-103 (10) and (14), Colorado Revised
16 Statutes, are amended to read:

17 **10-3.5-103. Definitions.** As used in this article, unless the
18 context otherwise requires:

19 (10) "Premium tax credit allocation claim" means a claim for
20 allocation of premium tax credits prepared and executed by a certified
21 investor on a form provided by the office and filed by a certified capital
22 company with the office. The form shall indicate whether the premium
23 tax credit allocation claim is for an allocation of premium tax credits
24 pursuant to section 10-3.5-106 (2) (a) (I) OR (2) (a) (II) ~~(2) (b) (I), or (2)~~
25 ~~(b) (II)~~; and shall include an affidavit of the certified investor pursuant to
26 which such certified investor shall become legally bound and irrevocably
27 committed to make an investment of certified capital in a certified capital

1 company in the amount allocated, even if such amount is less than the
2 amount of the claim, subject only to the receipt of an allocation pursuant
3 to section 10-3.5-106.

4 (14) "Qualified investment" means the investment of cash by a
5 certified capital company in a qualified business or qualified rural
6 business for the purchase of any debt, debt participation, equity, or hybrid
7 security, including a debt instrument or security that has the
8 characteristics of debt but provides for conversion into equity or equity
9 participation instruments, including, but not limited to, options or
10 warrants; except that, with respect to all certified capital invested
11 pursuant to an allocation of tax credits pursuant to section 10-3.5-106 (2)
12 (a) (I), ~~or (2) (b) (I)~~, the investment shall be made in a qualified rural
13 business.

14 **SECTION 3.** 10-3.5-104 (2) (d) and (5), Colorado Revised
15 Statutes, are amended to read:

16 **10-3.5-104. Certification - fees.** (2) An applicant shall:

17 (d) Have at least two principals or at least two persons employed
18 to manage the funds who each have at least two years of money
19 management experience in the venture capital industry; except that an
20 applicant that seeks to be certified with respect to premium tax credits to
21 be allocated pursuant to section 10-3.5-106 (2) (a) (I) ~~or (2) (b) (I)~~ need
22 only have at least two principals or at least two persons employed to
23 manage the funds who each have at least two years of experience in either
24 the venture capital or investment banking industry.

25 (5) The office shall stamp applications for certification with the
26 date and time of receipt. Within thirty days after receipt of an
27 application, the office shall issue the certification or refuse the

1 certification and communicate in detail to the applicant the grounds for
2 the refusal, including suggestions for the removal of such grounds. The
3 office shall review and approve or reject applications in the order
4 submitted, treating all applications received on the same day as being
5 received simultaneously; except that an application that is incomplete or
6 for which additional information is requested by the office shall be
7 treated as having been received on the date originally submitted only if
8 the applicant submits the additional information within fifteen days after
9 the office's request. The deadline for review may be extended by the
10 office an additional ten days. The certification issued by the office shall
11 indicate whether the certification is applicable only to credits to be
12 allocated pursuant to section 10-3.5-106 (2) (a) (I). ~~or (2) (b) (I).~~

13 **SECTION 4.** 10-3.5-105 (1), Colorado Revised Statutes, is
14 amended to read:

15 **10-3.5-105. Premium tax credit.** (1) Any certified investor that
16 makes an investment of certified capital pursuant to an allocation of
17 premium tax credits as set forth in section 10-3.5-106 shall, during the
18 year of investment, earn a vested credit against state premium tax liability
19 equal to one hundred percent of the certified investor's investment of
20 certified capital. With respect to investments of certified capital made
21 subsequent to January 31, 2002, but prior to January 31, 2004, a certified
22 investor shall be entitled to take up to ten percent of the vested premium
23 tax credit each year beginning in tax year 2003 and continuing thereafter
24 for ten years or, if the credit is carried forward pursuant to subsection (2)
25 of this section, until the credit is fully utilized. ~~With respect to~~
26 ~~investments of certified capital made subsequent to January 31, 2004, a~~
27 ~~certified investor shall be entitled to take up to ten percent of the vested~~

1 premium tax credit each year beginning in tax year 2005 and continuing
2 thereafter for ten years or, if the credit is carried forward pursuant to
3 subsection (2) of this section, until the credit is fully utilized.

4 **SECTION 5.** 10-3.5-106 (1), (2) (b), (3), (6), and (7), Colorado
5 Revised Statutes, are amended to read:

6 **10-3.5-106. Aggregate limitations on credits.** (1) The aggregate
7 amount of certified capital for which premium tax credits are allowed for
8 all certified investors under this article shall not exceed the amount that
9 would entitle all certified investors in certified capital companies to take
10 aggregate credits of ten million dollars per year for ten years beginning
11 in tax year 2003, which certified capital may be invested in certified
12 capital companies no earlier than January 31, 2002, ~~plus an additional~~
13 ~~amount that would entitle all certified investors in certified capital~~
14 ~~companies to take aggregate credits of ten million dollars per year for ten~~
15 ~~years beginning in tax year 2005, which certified capital may be invested~~
16 ~~in certified capital companies no earlier than January 31, 2004.~~ AND NO
17 LATER THAN JANUARY 30, 2004. A certified capital company, on an
18 aggregate basis together with its affiliates, shall not file premium tax
19 credit allocation claims in excess of the maximum amount of certified
20 capital for which premium tax credits may be allowed at the time of filing
21 as provided in this subsection (1); except that a certified capital company
22 whose certification is applicable only to credits to be allocated pursuant
23 to subparagraph (I) of paragraph (a) ~~or subparagraph (I) of paragraph (b)~~
24 of subsection (2) of this section shall not file premium tax credit
25 allocation claims in excess of the maximum amount of certified capital
26 for which premium tax credits may be allowed pursuant to such
27 subparagraph (I) of paragraph (a) ~~or subparagraph (I) of paragraph (b)~~ of

1 subsection (2) of this section at the time of filing.

2 (2) (b) ~~With regard to investments to be made in certified capital~~
3 ~~companies after January 31, 2004:~~

4 ~~(I) Twenty-five million dollars of certified capital for which~~
5 ~~premium tax credits are allowed shall be allocated to certified investors~~
6 ~~in certified capital companies in the order in which premium tax credit~~
7 ~~allocation claims that request an allocation of premium tax credits under~~
8 ~~this subparagraph (I) are filed with the office by certified capital~~
9 ~~companies on behalf of their certified investors; and~~

10 ~~(II) After all twenty-five million dollars have been allocated~~
11 ~~pursuant to subparagraph (I) of this paragraph (b), seventy-five million~~
12 ~~dollars of certified capital for which premium tax credits are allowed~~
13 ~~shall be allocated to certified investors in certified capital companies in~~
14 ~~the order in which premium tax credit allocation claims that request an~~
15 ~~allocation of premium tax credits under this subparagraph (II) are filed~~
16 ~~with the office by certified capital companies on behalf of their certified~~
17 ~~investors.~~

18 (3) If two or more certified capital companies file premium tax
19 credit allocation claims seeking an allocation of premium tax credits
20 pursuant to the same subparagraph of ~~the same paragraph~~ PARAGRAPH (a)
21 of subsection (2) of this section with the office on behalf of their
22 respective certified investors on the same day and the sum of such
23 premium tax credit allocation claims exceeds, in the aggregate, the
24 maximum aggregate amount available under such particular subparagraph
25 at the time of filing, the capital for which premium tax credits are allowed
26 under such particular subparagraph shall be allocated among the certified
27 investors on a pro rata basis. The pro rata allocation for any one certified

1 investor shall bear the same relation to the maximum aggregate amount
2 available under such particular subparagraph at the time of filing, as that
3 certified investor's premium tax credit allocation claim under such
4 particular subparagraph bears to the total of all premium tax credit
5 allocation claims seeking an allocation of premium tax credits pursuant
6 to the same subparagraph of ~~the same paragraph~~ PARAGRAPH (a) of
7 subsection (2) of this section filed on behalf of all certified investors on
8 the same day.

9 (6) The maximum amount of premium tax credit allocation claims
10 that any one certified investor and its affiliates may file in one or more
11 certified capital companies shall not exceed fifteen percent of the
12 maximum aggregate amount available under subsection (1) of this section
13 at the time of such filing; except that a certified investor that files a
14 premium tax credit allocation claim for an investment in a certified
15 capital company whose certification is applicable only to credits to be
16 allocated pursuant to subparagraph (I) of paragraph (a) ~~or subparagraph~~
17 ~~(I) of paragraph (b)~~ of subsection (2) of this section shall not file, on an
18 aggregate basis with its affiliates, premium tax credit allocation claims in
19 excess of the maximum amount of certified capital for which premium
20 tax credits may be allowed pursuant to ~~such sections~~ SAID SUBPARAGRAPH
21 (I) at the time of filing.

22 (7) Unless its certification indicates otherwise, a certified capital
23 company may file premium tax credit allocation claims on behalf of its
24 certified investors pursuant to either or both of the subparagraphs of
25 ~~paragraphs (a) and (b)~~ PARAGRAPH (a) of subsection (2) of this section.
26 If the certified investors of a certified capital company are allocated
27 premium tax credits pursuant to both subparagraphs of ~~paragraphs (a) and~~

1 ~~(b)~~ PARAGRAPH (a) of subsection (2) of this section, the requirements of
2 this act shall apply to the certified capital invested pursuant to each such
3 allocation on a separate and independent basis.

4 **SECTION 6.** 10-3.5-107 (2), Colorado Revised Statutes, is
5 amended to read:

6 **10-3.5-107. Requirements for continuance of certification -**
7 **fees.** (2) The aggregate cumulative amount of all qualified investments
8 made by the certified capital company from an allocation date shall be
9 considered in the calculation of the percentage requirements under this
10 article. For purposes of satisfying the percentage requirements of
11 subsection (1) of this section only, a certified capital company that has
12 raised certified capital pursuant to an allocation under section 10-3.5-106
13 (2) (a) (II) ~~or (2) (b) (H)~~ shall be deemed to have invested two dollars for
14 every dollar actually invested in a qualified rural business or qualified
15 business that has its principal business operations located in a distressed
16 urban community from certified capital raised under such section. Any
17 proceeds received from a qualified investment may be invested in another
18 qualified investment and shall count toward any requirement in this
19 article with respect to investments of certified capital.

20 **SECTION 7.** 39-22-2101 (10), Colorado Revised Statutes, is
21 amended to read:

22 **39-22-2101. Definitions.** As used in this part 21, unless the
23 context otherwise requires:

24 (10) (a) WITH RESPECT TO CREDITS ALLOCATED PURSUANT TO
25 SECTION 39-22-2102 (7), "qualified development" means a "qualified
26 low-income housing project", as that term is defined in section 42 of the
27 internal revenue code, that is located in Colorado and is determined by

1 the authority to be eligible for a federal tax credit whether or not a federal
2 tax credit is allocated with respect to ~~said~~ THE development.

3 (b) WITH RESPECT TO CREDITS ALLOCATED PURSUANT TO SECTION
4 39-22-2102 (7.5), "QUALIFIED DEVELOPMENT" MEANS A "QUALIFIED
5 LOW-INCOME HOUSING PROJECT", AS THAT TERM IS DEFINED IN SECTION 42
6 OF THE INTERNAL REVENUE CODE, THAT IS LOCATED IN COLORADO AND IS
7 DETERMINED BY THE AUTHORITY TO BE ELIGIBLE FOR A FEDERAL TAX
8 CREDIT WHETHER OR NOT A FEDERAL TAX CREDIT IS ALLOCATED WITH
9 RESPECT TO THE DEVELOPMENT, AND FOR WHICH THE DEVELOPER:

10 (I) ACQUIRES AN EXISTING BUILDING AND INCURS REHABILITATION
11 EXPENDITURES AS DEFINED BY SECTION 42 (e) (2) OF THE INTERNAL
12 REVENUE CODE; OR

13 (II) SETS ASIDE AT LEAST TEN PERCENT OF THE RESIDENTIAL UNITS
14 THAT ARE BOTH RENT RESTRICTED AND OCCUPIED BY PERSONS WHOSE
15 INDIVIDUAL OR HOUSEHOLD INCOME DOES NOT EXCEED THIRTY PERCENT
16 OF AREA GROSS MEDIAN INCOME.

17 **SECTION 8.** The introductory portion to 39-22-2102 (2) and
18 39-22-2102 (2) (d), (5) (a), and (6), Colorado Revised Statutes, are
19 amended, and the said 39-22-2102 is further amended BY THE
20 ADDITION OF A NEW SUBSECTION, to read:

21 **39-22-2102. Credit against tax - low-income housing**
22 **developments.** (2) The authority may allocate a credit to an owner of a
23 qualified development by issuing to the owner an allocation certificate.
24 The authority may determine the time at which ~~such~~ THE allocation
25 certificate is issued. The credit shall be in an amount determined by the
26 authority, subject to the following guidelines:

27 (d) The aggregate sum of credits allocated annually shall not

1 exceed the limits set forth in ~~subsection (7)~~ SUBSECTIONS (7) AND (7.5) of
2 this section.

3 (5) The authority shall not allocate a credit pursuant to this part
4 21 unless:

5 (a) The developer of the proposed qualified development has
6 conducted a public hearing in the community in which the proposed
7 qualified development is located concerning the project for which the
8 allocation has been applied. At ~~such~~ THE hearing, the developer of the
9 proposed qualified development shall specify the total cost of the project,
10 the estimated present value of the allocation, and the estimated total
11 amount of the allocation. Public comments and other information shall
12 be solicited at the hearing. The hearing shall be recorded VERBATIM BY
13 AN AUDIO RECORDING DEVICE OR BY TRANSCRIPTION by the developer of
14 the proposed qualified development and the developer shall make copies
15 of the recording OR TRANSCRIPT available to interested parties. The
16 authority shall consider any comments or other information provided at
17 the hearing when ranking an application for a credit pursuant to this
18 section.

19 (6) The allocated credit amount may be taken against the taxes
20 imposed by this article for each taxable year of the credit period. Any
21 amount of credit ALLOCATED PURSUANT TO SUBSECTION (7) OF THIS
22 SECTION that exceeds the tax due for a taxable year may be carried
23 forward as a tax credit against subsequent years' income tax liability up
24 to tax year 2012 and shall be applied first to the earliest years possible.
25 ANY AMOUNT OF CREDIT ALLOCATED PURSUANT TO SUBSECTION (7.5) OF
26 THIS SECTION MAY BE CARRIED FORWARD AS A TAX CREDIT AGAINST
27 SUBSEQUENT YEARS' INCOME TAX LIABILITY UP TO TAX YEAR 2014 AND

1 SHALL BE APPLIED FIRST TO THE EARLIEST YEARS POSSIBLE. Any amount
2 of the credit that is not used shall not be refunded to the taxpayer.

3 (7.5) DURING EACH CALENDAR YEAR OF THE FOUR-YEAR PERIOD
4 BEGINNING JANUARY 1, 2005, AND ENDING DECEMBER 31, 2008, THE
5 AUTHORITY MAY ALLOCATE A CREDIT, THE FULL AMOUNT OF WHICH MAY
6 BE CLAIMED AGAINST THE TAXES IMPOSED BY THIS ARTICLE FOR EACH
7 TAXABLE YEAR OF THE FOUR-YEAR CREDIT PERIOD. THE AGGREGATE
8 AMOUNT OF ALL CREDITS ALLOCATED BY THE AUTHORITY IN EACH
9 CALENDAR YEAR OF THE FOUR-YEAR PERIOD BEGINNING JANUARY 1, 2005,
10 AND ENDING DECEMBER 31, 2008, SHALL NOT EXCEED THE AMOUNT OF:

11 (a) SIX MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS FOR
12 CREDITS ALLOCATED PURSUANT TO SUBSECTION (1) OF THIS SECTION AND
13 SECTION 39-22-2105 COMBINED;

14 (b) UNALLOCATED CREDITS, IF ANY, FOR THE PRECEDING
15 CALENDAR YEARS; AND

16 (c) ANY CREDIT RECAPTURED OR OTHERWISE RETURNED TO THE
17 AUTHORITY IN THE CALENDAR YEAR.

18 **SECTION 9. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.