HOUSE BILL 17-1091

A BILL FOR AN ACT

CONCERNING THE CREATION OF A CREDIT AGAINST THE STATE INCOME TAX TO PROMOTE EMPLOYER-ASSISTED HOUSING PROJECTS IN RURAL AREAS.

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.)

For income tax years commencing on or after January 1, 2017, but prior to January 1, 2021, the bill allows a taxpayer making a donation to an employer-assisted housing project located in a rural area a credit against the taxpayer's state income tax obligations.

The bill defines "donation" to mean cash, securities, or real or...
personal property that is donated to a not-for-profit sponsor that is used solely for costs associated with an employer-assisted housing project located within the state.

The bill defines "employer-assisted housing project" to mean down payment assistance, reduced-interest mortgages, mortgage guarantee programs, rental subsidies, or individual development account savings plans that are:

- Provided by an employer to employees to assist them in securing affordable housing near the workplace;
- Restricted to housing in geographic areas that are near such workplaces;
- Restricted to employees in households whose adjusted income is less than 120% of the median income of the geographic area of the household's employer-assisted housing project; and
- Restricted to housing that is located in a rural area of the state.

The bill specifies procedures by which a not-for-profit entity that is a sponsor of an employer-assisted housing project (sponsor) applies to either the Colorado housing and finance authority or a municipality or county finance authority for an award of a tax credit allowed under the bill. The bill also specifies procedures governing an agency's review of the application and the process by which the agency, if it approves the application, reserves tax credits for donations to the employer-assisted housing project. The amount of the tax credits reserved must be 50% of the approved amount of the donation or the actual donation, whichever is less.

The bill also specifies procedures by which the donation is documented and achieves proper certification.

For employer-assisted housing projects, the bill allows a sponsor to aggregate a number of donations from multiple employers into a single source of funds for use in assisting eligible employees to secure housing near their workplaces. The tax credits awarded may be divided among the donors of the individual donations as determined by the sponsor.

The bill specifies that the minimum amount of a donation is $10,000; except that individual donations in an aggregated donation may be less than that amount.

The bill requires each agency that has allocated tax credits to report to the general assembly on a periodic basis on the overall economic activity, usage, and impact to the state from the employer-assisted housing projects for which it has allocated tax credits.

1 Be it enacted by the General Assembly of the State of Colorado:
SECTION 1. In Colorado Revised Statutes, add 39-22-539 as follows:

39-22-539. Credit for the donation of moneys or property to the sponsor of an employer-assisted housing project located in a rural area - report to general assembly - rules - legislative declaration - definitions - repeal. (1) The general assembly finds, determines, and declares that:

(a) Since 2000, the state's need for affordable housing in all geographic regions has grown exponentially. Among other effects, the immense demand for affordable housing is a huge impediment to economic growth and opportunity within the state and the ability of the state to provide a high quality of life for all its residents and to develop, attract, and maintain a high quality workforce.

(b) A significant segment of the state's population, including many of the state's teachers, emergency responders, health care professionals, and small business owners and employees earn too much on an annual basis to qualify for most federal and state housing assistance but do not make enough in yearly income to be able to afford market rate housing, particularly housing that may be in close proximity to their place of employment.

(c) The shortage of affordable housing that is close to employees' places of employment is an especially acute problem for workers in many of the state's rural areas.

(d) By enacting the tax credit created in this section, the general assembly intends to provide certain financial incentives
TO ENCOURAGE THE DEVELOPMENT AND GROWTH OF EMPLOYER-ASSISTED
HOUSING PROJECTS THAT ARE LOCATED IN RURAL AREAS FOR THE PURPOSE
OF EXPANDING THE SUPPLY OF HOUSING IN CLOSE PROXIMITY TO
WORKPLACES FOR INDIVIDUALS IN MODERATE INCOME HOUSEHOLDS, AS
DEFINED IN THIS SECTION, WHO LIVE AND WORK IN RURAL AREAS OF THE
STATE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
REQUIRES:

(a) "AGENCY" MEANS THE COLORADO HOUSING AND FINANCE
AUTHORITY CREATED IN SECTION 29-4-704 (1) OR ANY HOUSING
AUTHORITY OPERATED BY ANY MUNICIPALITY OR COUNTY IN THE STATE.

(b) "ALLOCATION" MEANS AN AWARD BY AN AGENCY OF A TAX
CREDIT ISSUED UNDER THIS SECTION IN CONNECTION WITH AN
EMPLOYER-ASSISTED HOUSING PROJECT.

(c) "APPLICATION" MEANS AN APPLICATION TO AN AGENCY FOR A
RESERVATION AND AN ALLOCATION SUBMITTED BY A SPONSOR, INCLUDING
THE REQUIRED SUPPORTING DOCUMENTATION.

(d) "CERTIFICATE" IS A DOCUMENT ISSUED BY AN AGENCY
EVIDENCING AN ALLOCATION. THE CERTIFICATE MUST STATE THE
EFFECTIVE DATE OF THE ALLOCATION.

(e) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE OR ANY
SUCCESSOR ENTITY.

(f) "DONATION" MEANS CASH, SECURITIES, OR REAL OR PERSONAL
PROPERTY THAT IS DONATED TO A SPONSOR THAT IS USED SOLELY FOR
COSTS ASSOCIATED WITH AN EMPLOYER-ASSISTED HOUSING PROJECT
LOCATED WITHIN THE STATE.

(g) "EMPLOYER-ASSISTED HOUSING PROJECT" MEANS DOWN
PAYMENT ASSISTANCE, REDUCED-INTEREST MORTGAGES, MORTGAGE
GUARANTEE PROGRAMS, RENTAL SUBSIDIES, OR INDIVIDUAL
DEVELOPMENT ACCOUNT SAVINGS PLANS THAT ARE:

(I) PROVIDED BY AN EMPLOYER TO EMPLOYEES TO ASSIST THEM IN
SECURING AFFORDABLE HOUSING NEAR THE WORKPLACE;

(II) RESTRICTED TO HOUSING IN GEOGRAPHIC AREAS THAT ARE
NEAR SUCH WORKPLACES;

(III) RESTRICTED TO EMPLOYEES IN MODERATE INCOME
HOUSEHOLDS; AND

(IV) RESTRICTED TO HOUSING THAT IS LOCATED IN A RURAL AREA
OF THE STATE.

(h) "GEOGRAPHIC AREA" MEANS A METROPOLITAN AREA OR
COUNTY DESIGNATED AS AN AREA BY THE UNITED STATES DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT UNDER SECTION 8 OF THE "UNITED
STATES HOUSING ACT OF 1937", 42 U.S.C. SEC. 1437, FOR THE PURPOSE
OF DETERMINING FAIR MARKET RENTAL RATES.

(i) "MODERATE INCOME HOUSEHOLD" MEANS A HOUSEHOLD
WHOSE ADJUSTED INCOME IS LESS THAN ONE HUNDRED TWENTY PERCENT
OF THE MEDIAN INCOME WITHIN THE GEOGRAPHIC AREA OF THE
HOUSEHOLD'S EMPLOYER-ASSISTED HOUSING PROJECT, ADJUSTED FOR
FAMILY SIZE, AS SUCH ADJUSTED INCOME AND MEDIAN INCOME FOR THE
GEOGRAPHIC AREA ARE DETERMINED FROM TIME TO TIME BY THE UNITED
STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR
PURPOSES OF SECTION 8 OF THE "UNITED STATES HOUSING ACT OF 1937",

(j) "RESERVATION" MEANS AN AGENCY'S CONDITIONAL
RESERVATION OF TAX CREDITS MADE AVAILABLE TO A SPONSOR UNDER
THIS SECTION.

(k) "RESERVATION LETTER" MEANS A LETTER FROM AN AGENCY TO A SPONSOR CONDITIONALLY RESERVING TAX CREDITS MADE AVAILABLE UNDER THIS SECTION.

(l) "RURAL AREA" MEANS A COUNTY THAT IS LOCATED IN A NONMETROPOLITAN AREA IN THE STATE THAT EITHER HAS NO MUNICIPALITY WITHIN ITS TERRITORIAL BOUNDARIES WITH FIFTY THOUSAND OR MORE PERMANENT RESIDENTS, BASED UPON THE MOST RECENT POPULATION ESTIMATES PUBLISHED BY THE UNITED STATES CENSUS BUREAU, OR THAT SATISFIES ALTERNATE CRITERIA FOR THE DESIGNATION OF A RURAL AREA AS MAY BE PROMULGATED BY THE FEDERAL OFFICE OF MANAGEMENT AND BUDGET.

(m) "SPONSOR" MEANS A NOT-FOR-PROFIT ORGANIZATION THAT IS:

(I) ORGANIZED UNDER THE LAWS OF THIS OR ANOTHER STATE FOR THE PURPOSE OF CONSTRUCTING OR REHABILITATING AFFORDABLE HOUSING UNITS WITHIN THE STATE;


(n) "TAXPAYER" MEANS A PERSON MAKING A DONATION WHO FILES AN INCOME TAX RETURN UNDER THIS ARTICLE 39.

(3) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2017, BUT PRIOR TO JANUARY 1, 2021, A TAXPAYER WHO MAKES A
DONATION TO AN EMPLOYER-ASSISTED HOUSING PROJECT AND RECEIVES A CERTIFICATE AS DESCRIBED IN SUBSECTION (9) OF THIS SECTION IS ALLOWED A TAX CREDIT AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

(4) If the amount of the credit allowed pursuant to this section exceeds the amount of the income tax otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in such income tax year is not allowed as a refund but may be carried forward and applied against the income tax due in each of the five succeeding income tax years, but must first be applied against the income tax due for the earliest of the income tax years possible.

(5) A taxpayer claiming the credit allowed by this section must maintain and record any information that the department may require by rule regarding the employer-assisted housing project for which the credit is claimed. When claiming the credit, the taxpayer must provide information regarding the taxpayer's donation to the employer-assisted housing project, including the certificate issued to the taxpayer pursuant to this subsection (9) of this section.

(6) In connection with an application, an agency may collect a fee from a prospective sponsor in an amount not to exceed five hundred dollars, payable when the application is submitted. In connection with a reservation, an agency may collect a fee from the a prospective sponsor in an amount not to exceed three percent of the reservation, payable by the date
SPECIFIED IN THE RESERVATION LETTER.

(7) (a) The sponsor must apply for an allocation on forms prescribed by an agency that may require the following information:

(I) The name and location of the proposed employer-assisted housing project;

(II) The name, address, and telephone number of the sponsor of the employer-assisted housing project;

(III) A history of the sponsor's experience in developing housing and, in particular, housing for moderate income households;

(IV) A complete description of the proposed employer-assisted housing project;

(V) The amount of the proposed financing for the employer-assisted housing project, including letters of interest or commitments from proposed lenders;

(VI) The nature and amount of any proposed or anticipated donations;

(VII) The estimated total cost of the proposed employer-assisted housing project;

(VIII) The amount of tax credits made available under this section that the sponsor is requesting; and

(IX) Such additional documentation as the agency may require in order to complete its review of the application.

(b) The sponsor must also certify in writing that all information contained in the application, and all accompanying information, is true, accurate, and complete to the best of the
SPONSOR'S KNOWLEDGE.

(8) (a) The agency shall review each complete application and approve or reject it. The agency's review of an application must include, without limitation, consideration of the ability of the employer-assisted housing project to satisfy the requirements of this section, the ability of the sponsor to implement the employer-assisted housing project, the amount of the proposed or anticipated donations and the sponsor's plan for obtaining such donations, and the likelihood that the employer-assisted housing project will increase the quality and quantity of housing units for those in moderate income households in the geographic area in which the employer-assisted housing project will be located.

(b) Upon an agency's completion of its review of the application, the agency shall notify the sponsor in writing of its approval or rejection of the application. Upon the approval of the application, the agency shall issue a reservation letter conditionally reserving tax credits for donations to the employer-assisted housing project. The amount of the tax credits reserved must be fifty percent of the approved amount of the donation or the actual donation, whichever is less. The reservation letter must set forth the terms and conditions upon which the tax credits will be allocated to the sponsor for the employer-assisted housing project. A reservation is valid for a period no longer than twenty-four months from the date of the reservation letter. If the tax credits so reserved have not been allocated to the sponsor within the twenty-four month period,
THE RESERVATION LETTER IS EXPIRED AND SHALL NOT BE RENEWED.
(c) The sponsor has twelve months from the date of the reservation letter to obtain one or more donations to the employer-assisted housing project. The sponsor may submit a written request for an extension of the donation period for an additional twelve months as approved by the agency.
(d) An agency shall make allocations for an employer-assisted housing project after the agency has received documentation, in a format acceptable to the agency, that the sponsor is in compliance with all of the requirements of this section and has the ability to implement the employer-assisted housing project. The date of the allocation is the date of the satisfaction of these requirements.
(9) Once the agency has determined that a qualifying donation has been given to a sponsor by a taxpayer in fulfillment of the requirements of this section, the agency shall issue a certificate to the taxpayer. The sponsor must execute and attach a certification of donation to the certificate.
(10) (a) A donation to a sponsor must be made in the form of cash, securities, or real or personal property. The provision of services of any kind does not constitute a donation. Upon receipt of a donation, a sponsor shall notify the agency and provide to the agency documentation evidencing both the donation and its value.
(b) For employer-assisted housing projects, a sponsor may aggregate a number of donations from multiple donors into a single source of funds for use in assisting eligible employees to
SECURE HOUSING NEAR THEIR WORKPLACES, WHICH MUST BE DETERMINABLE AS OF THE DATE OF THE DONATION. THE CERTIFICATE ISSUED IN CONNECTION WITH THE.AlLOCATION MUST STATE THE AGGREGATE AMOUNT OF THE DONATION; EXCEPT THAT THE TAX CREDITS AWARDED UNDER THIS SECTION MAY BE DIVIDED AMONG THE DONORS OF THE INDIVIDUAL DONATIONS AS DETERMINED BY THE SPONSOR.

(c) THE MINIMUM AMOUNT OF A DONATION IS TEN THOUSAND DOLLARS. INDIVIDUAL DONATIONS IN AN AGGREGATED DONATION MAY BE LESS THAN TEN THOUSAND DOLLARS.

(11) (a) EACH AGENCY THAT HAS ALLOCATED TAX CREDITS UNDER THIS SECTION SHALL REPORT TO THE GENERAL ASSEMBLY BY MARCH 1, 2019, AND BY MARCH 1 OF EACH YEAR THEREAFTER, THROUGH AND INCLUDING MARCH 1, 2022, ON THE OVERALL ECONOMIC ACTIVITY, USAGE, AND IMPACT TO THE STATE FROM THE EMPLOYER-ASSISTED HOUSING PROJECTS FOR WHICH IT HAS ALLOCATED TAX CREDITS UNDER THIS SECTION.

(b) THE DEPARTMENT SHALL PROMULGATE RULES NECESSARY TO FURTHER THE IMPLEMENTATION THIS SECTION IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24.

(12) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2031.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2018 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.