HB 22-1149

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 2, 2022)

Drafting Number:	LLS 22-0505	**Date:**	May 5, 2022
Prime Sponsors:	Rep. Lynch; Bird Sen. Rankin; Hansen	**Bill Status:**	Senate Appropriations
		Fiscal Analyst:	Louis Pino | 303-866-3556 louis.pino@state.co.us

Bill Topic: **ADVANCED INDUSTRY INVESTMENT TAX CREDIT**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

This bill extends the Advanced Industry Investment Income Tax Credit Program for five income tax years. The bill will increase state expenditures and reduce state revenue in FY 2022-23 through FY 2027-28.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $72,080 to the Office of Economic Development and International Trade (OEDIT). The bill includes an appropriation for $90,000 to OEDIT.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate Finance Committee.

Table 1
State Fiscal Impacts Under HB 22-1149

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue	General Fund	($1.1 million)	($2.9 million)	($3.9 million)
	Total Revenue	**($1.1 million)**	**($2.9 million)**	**($3.9 million)**
Expenditures	General Fund	$72,080	$82,750	$82,750
	Centrally Appropriated	$12,480	$15,973	$15,973
	Total Expenditures	**$84,560**	**$98,723**	**$98,723**
	Total FTE	**0.8 FTE**	**1.0 FTE**	**1.0 FTE**
Transfers		-	-	-
Other Budget Impacts	TABOR Refund	($1.1 million)	($2.9 million)	Not estimated
	General Fund Reserve	$10,812	$12,413	$12,413

Summary of Legislation

This bill extends the Advanced Industry Investment Income Tax Credit Program for five income tax years (2023 through 2026) and increases the amount of state income tax credits from $750,000 to $4 million each year. If the full $4 million amount is not certified for allocation of the credit, it may not be certified in future tax years. In addition, the bill increases the amount of the tax credit from 30 percent of qualified investments made in rural or economically distressed areas to 35 percent. The bill also increases the maximum credit amount per tax year from $50,000 to $100,000 for each investment in a qualified business, and specifies how certain types of businesses may utilize the credit among partners, investors, and shareholders.

Background

House Bill 14-1012 created the Advanced Industry Investment Income Tax Credit Program. The program provides state income tax credits to investors that invest in advanced industry businesses. The investor must be an individual, S Corporation, partnership LLC, or other business entity. Corporations are not eligible for the tax credit.

The tax credit is equal to 25 percent of the investment, or 30 percent if the investment is to a business located in a rural or economically distressed area. The maximum credit amount per tax year is $50,000 for each investment in a qualified business. Taxpayers may claim multiple credits if they invest in more than one qualified business.

The OEDIT was authorized to issue $375,000 in tax credits for tax year 2014, and $750,000 each year for tax years 2015, 2016, and 2017. House Bill 17-1090 authorized the OEDIT to issue an additional $750,000 worth of state income tax credits each year from 2018 to 2022. The credits are approved on a first-come, first-served basis. The credit is non-refundable but may be carried forward for up to five years. Data from the OEDIT shows that the office issued the full allowable amount of tax credits in tax years 2014 through 2021, and the office anticipates to certify the maximum allowable amount ($750,000) in tax year 2022 as well.

In order to qualify for the credit, an investor must invest a minimum of $10,000 in a business that qualifies as a Colorado advanced industry. The following industries meet the definition of an advanced industry:

- advanced manufacturing;
- bioscience;
- electronics;
- aerospace;
- energy and natural resources;
- infrastructure engineering; and
- information technology industries.

A business must either have its headquarters located in Colorado or have at least 50 percent of its employees based in Colorado. The company must have received less than $10 million dollars from third party investors, and annual revenues cannot be more than $5 million. In addition, the company must have been actively operating and generating revenue for less than five years. Finally, in order to qualify for the credit, the investor may not own more than 30 percent of the business before making the investment or more than 50 percent after making the investment. The OEDIT is responsible for verifying the eligibility of the business and authorizing the tax credit.

The Office of the State Auditor (OSA) is required to evaluate all of the state's tax expenditures at least once every five years. The OSA published the Advanced Industry Investment Credit evaluation report in July 2021. The OSA evaluation determined that the credit has likely encouraged some investors to increase their investments in qualified small businesses to some extent, and these businesses generally reported an improvement in their financial situations following these investments. However, the credit's $750,000 cumulative annual cap has limited its effectiveness. The full report can be found here:
https://leg.colorado.gov/sites/default/files/2021_te15_advanced_industry_investment_credit.pdf

Assumptions

This bill authorizes a total of $16 million of income tax credits that can be certified by the OEDIT for calendar years 2023 through 2026. However, the fiscal note assumes that the $4 million annual cap allowed under the bill will not to be reached until the second year of the program, leaving approximately $1 million in credits not certified. To the extent the cap is reached earlier than assumed in the fiscal note, the unused amount of credits will be lower.

In addition, the fiscal note assumes 70 percent of the tax credit will be claimed by taxpayers in the first income tax year, 30 percent will be used in the second year.. Data from the Department of Revenue shows that, on average, 70 percent of the tax credit was claimed by the taxpayer in the first income tax year the credit was authorized.

State Revenue

As shown in Table 3, it is estimated that the total revenue impact from the credits under this bill will be phased in over six fiscal years. General Fund revenue will be reduced by $1.1 million (half-year impact) in FY 2022-23, $2.9 million in FY 2023-24, with slightly larger impacts in subsequent years that will taper off over time. This bill will reduce income tax revenue, which is subject to TABOR.

The revenue impacts of the tax credit will vary, consistent with the assumption section above. A taxpayer can claim the allowed amount in the same tax year they made the investment to the qualified business and received certification from the OEDIT, or use a portion of the tax credit and carry forward the balance in up to five subsequent income tax years. The amount and timing of carry-forward tax credits are dependent on a number of factors, such as the economy and individual and business tax liabilities in any given year. To the degree that the full amount of tax credit is not utilized as early as assumed here, reductions in General Fund revenue will be pushed into future fiscal years. Conversely, if credits are claimed sooner, General Fund reductions will occur earlier than what is shown in Table 3. To the extent that the full $20 million in credits is certified and claimed, the revenue reduction will be larger than assumed.

Table 3
Estimated Revenue Impact of HB 22-1149

Fiscal Year	Amount Claimed
FY 2022-23	$1.1 million
FY 2023-24	$2.9 million
FY 2024-25	$3.9 million
FY 2025-26	$4.0 million
FY 2026-27	$2.6 million
FY 2027-28	$600,000
Total	**$15 million**

State Expenditures

The bill will increase General Fund expenditures in the OEDIT by $84,560 million in FY 2022-23 and by $98,723 million in FY 2023-24, and by similar amounts through FY 2027-28 when the credit is set to expire. Expenditures are summarized in Table 4 and detailed below.

Table 4
Expenditures Under HB 22-1149

	FY 2022-23	FY 2023-24	FY 2024-25
Office of Economic Development			
Personal Services	$49,800	$66,400	$66,400
Operating Expenses	$1,080	$1,350	$1,350
Capital Outlay Costs	$6,200	-	-
Computer Programming	$15,000	$15,000	$15,000
Centrally Appropriated Costs[1]	$12,480	$15,973	$15,973
FTE – Personal Services	0.8 FTE	1.0 FTE	1.0 FTE
Total Cost	**$84,560**	**$98,723**	**$98,723**
Total FTE	**0.8 FTE**	**1.0 FTE**	**1.0 FTE**

[1]Centrally appropriated costs are not included in the bill's appropriation.

Personal services. The OEDIT will require additional 1.0 FTE to manage and administer the additional credits authorized under this bill. Under the current program, 0.5 FTE is used to manage approximately 50 applications for the income tax credit. The fiscal note assumes an additional 220 applications will need to be administered and managed under this bill. In addition, the OEDIT will require support for marketing, encouraging additional investors, promoting local businesses, and reaching out to rural entities. For FY 2022-23, estimated personnel costs assume an October 1, 2022, start date to begin administering and managing the additional income tax credits.

Computer programming. The OEDIT will require additional application support for their online application portal, SalesForce. Expected increases in businesses and investors use of the online application will require additional resources to manage and account for the income tax credits.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above for FY 2022-23 and for FY 2023- 24. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24.

Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to decrease the amount of General Fund held in reserve by the amounts shown in Table 1, which will increase the amount of General Fund available for other purposes.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

In FY 2022-23, the fiscal note estimates that the bill requires a General Fund appropriation of $72,080 to the OEDIT and 0.8 FTE. The bill includes an appropriation of $90,000 to the Governor's Office and 0.8 FTE.

State and Local Government Contacts

Information Technology	OEDIT
Revenue	State Auditor