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#532

INTERIM COMMITTEE ON ECONOMIC DEVELOPMENT - BUSINESS PERSONAL PROPERTY TAX

Report to the

COLORADO

GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 532
November 2004

RECOMMENDATIONS FOR 2005

INTERIM COMMITTEE ON ECONOMIC DEVELOPMENT – BUSINESS PERSONAL PROPERTY TAX

Report to the
Colorado General Assembly

Research Publication No. 532
November 2004

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November 2004

To Members of the Sixty-fifth General Assembly:

Submitted herewith is the final report of the Interim Committee on Economic Development – Business Personal Property Tax. This committee was created pursuant to Section 2-2-1101, C.R.S., to study how tax policy changes, including changes in the business personal property tax, can stimulate economic development in Colorado.

At its meeting on October 15, 2004, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills herein for consideration in the 2005 session was approved.

Respectfully submitted,

/s/ Representative Lola Spradley
Chairman

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The fiscal notes for Bills B, D, E, and F were not available on the date of printing and will be posted on the committee's website when they are completed.

Interim Committee on Economic Development – Business Personal Property Tax

Members of the Committee

Representative Bob McCluskey
Co-Chairman
Representative Bob Briggs
Representative Michael Garcia
Representative Joel Judd
Representative Mike May

Senator Bruce Cairns
Co-Chairman
Senator John Andrews
Senator Maryanne Keller
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Executive Summary

Committee Charge

Pursuant to Section 2-2-1101, C.R.S., the Committee on Economic Development–Business Personal Property Tax was created to study how tax policy changes, including changes in the business personal property tax, can stimulate economic development in Colorado. Specifically, the committee was required to study:

- how tax policy changes, including the phasing out or elimination of the business personal property tax, affect job creation and retention;
- the fiscal impact of these policy changes on state and local governments in Colorado;
- the use of dynamic economic models to analyze tax policy changes;
- methods to mitigate any revenue reduction to the state and local governments resulting from tax policy changes;
- policies that encourage economic development in rural areas; and
- other actions that can be taken to encourage, promote, and stimulate economic development in Colorado.

Committee Activities

The Committee on Economic Development – Business Personal Property Tax held six meetings during the 2004 interim. These meetings focused on: (1) the impact of the business personal property tax on businesses and economic development in Colorado; (2) the business personal property tax and government fiscal issues; (3) economic development issues facing the state; (4) policies to improve the state's business climate; and (5) the use of dynamic modeling to evaluate tax policy changes.

The Business Personal Property Tax

Overview. Taxable personal property generally consists of any equipment that is used in an income-generating enterprise, including machinery, furniture, and computers, as well as cable, pipelines, utility and phone lines, and similar assets. The business personal property tax generated about $634.4 million in locally collected property taxes during 2003, or 13.8 percent of the $4.6 billion in property taxes collected statewide.

Impact on businesses. Several economic development and business advocacy organizations held that the business personal property tax makes the state less attractive for certain businesses and hinders economic development. Further, the tax is costly to administer. The organizations stated that business personal property tax relief is necessary for the state to be as competitive as possible in the global economy. In contrast, testimony from other business and economic development organizations indicated that the tax is not a significant issue. When assessing the business climate, these organizations were more concerned with rising health care costs and the availability of an educated workforce than the business personal property tax.

Government fiscal issues. The committee heard from several local governments and local government organizations regarding the business personal property tax. Testimony indicated that a reduction in the tax would result in reduced services for residents and businesses, and reducing the tax is challenging because some local governments are more dependent upon the tax than others. Another concern voiced was that any decline in local property tax revenue would result in increased state expenditures for K-12 public education.

Economic Development Issues

In addition to issues pertaining to the business personal property tax, the committee heard testimony from economic development organizations regarding the state's business climate. Testimony indicated that the state needs to enact policies to foster a business climate that would help create higher paying jobs and increase the number of employers in the state. Several businesses and economic development organizations also cited the need for the state to increase its investment in infrastructure, such as the state's transportation network and higher education. The increasingly high cost of housing and health care were also cited as issues impacting the state's ability to stimulate economic development.

Dynamic Analysis

Throughout the committee's six meetings, committee members discussed incorporating dynamic modeling into the fiscal analysis process for bills that propose tax policy changes. *Dynamic* analysis takes into account the direct and indirect effects of a tax policy change. Currently, the legislature's fiscal notes consider only the initial direct, or *static*, impacts of a tax policy change.

The committee heard testimony from representatives from the academic community, the state of New Mexico, Legislative Council Staff, and a private economic consulting firm regarding dynamic modeling. Dynamic modeling proponents maintained that when modeling is used for tax policy changes, the analysis provides a more complete economic and fiscal estimate than a static analysis. The committee also heard about potential obstacles tied to dynamic modeling such as the significant staff time required for model implementation and use, the lack of accurate local economic data, and the greater uncertainty tied to dynamic estimates.

Committee Recommendations

The committee recommends six legislative proposals for consideration during the 2005 legislative session.

Bill A — Exemption of Business Personal Property from Property Taxation. Bill A phases in an exemption for business personal property first used in a business after 2004. Beginning January 1, 2005, 55 percent of the value of new business personal property would be exempt from taxation. The exemption increases by three percentage points each year until 2020, when all new business personal property is exempt. The percentage exempted for the year that the business personal property is first used is applied to the property for all subsequent years that the property is subject to taxation. A county with 30 percent or more of its total assessed value attributed to business personal property is exempt from this measure.

Bill A is estimated to reduce property tax revenues for school districts and cause a corresponding increase of up to $13.6 million in state expenditures for school funding beginning in FY 2006-07. The exemption in Bill A is also estimated to reduce property taxes for other local governments by up to $26.2 million beginning in the 2007 budget year. In addition, the exemption is estimated to cause a decline in the residential assessment rate in 2007 resulting in a further decline in property tax revenues for local governments. The fiscal impact of this measure is estimated to increase each year as larger portions of business personal property are exempted.

Bill B — The Use of Dynamic Modeling Analysis for Tax Policy Changes. Bill B requires Legislative Council Staff to use dynamic modeling to analyze the economic impact of up to ten bills each session that make a tax policy change. The analysis is to be conducted at the request of a majority of the leadership of either the House of Representatives or the Senate. Legislative Council Staff will have 30 days to complete the analysis. The dynamic analysis must be in addition to any fiscal note that is prepared pursuant to rules of the General Assembly.

Bill C — Special District Property Tax Reduction Agreements. Bill C authorizes special districts to negotiate the same type of incentive agreements that cities and counties are currently authorized to negotiate to lower business personal property taxes for taxpayers who establish or expand a new business facility. A special district can only enter into an agreement with a taxpayer if the taxpayer also enters (or has already entered) into an agreement with a municipality or county. Incentive agreements for special districts are capped at 50 percent of the amount of business personal property taxes levied by the special district and attributable to the new or expanded business facility.

Current law allows cities and counties *located in enterprise zones* to negotiate incentive agreements with businesses that establish new or expanded facilities on *all taxable property*. This bill authorizes special districts located in enterprise zones to negotiate the same type of agreement with taxpayers. The amount of these incentive agreements cannot exceed the lesser of the taxes owed on all taxable property or an amount equal to the difference between the current taxes owed and the taxes owed for the same property one year before the enterprise zone was approved.

Bill C may cause special districts that enter into property tax reduction agreements to forgo some future property tax revenue that they otherwise would have received if taxpayers would have located or expanded in the districts without the agreements.

Bill D — Tax Credit for New Business Equipment. Bill D creates a state income tax credit equal to 50 percent of the amount of business personal property taxes paid to a school district on the operating portion of the district's levy. The tax credit is available beginning January 1, 2007, and applies to personal property first used in a business on or after January 1, 2005. This measure requires taxpayers who claim the credit to earn at least 50 percent of their gross receipts from products produced in Colorado and sold to buyers in other states.

Bill E — Benefits for Employers that Create Jobs. Bill E establishes the *Employer Retention of Employee Wage Withholding Act* to stimulate economic development. Beginning January 1, 2006, the act authorizes employers to keep 50 percent of an employee's state income tax withholdings if the employer is engaged in a strategic project. A strategic project is one that is projected to increase state revenue in the same fiscal year in which the withholdings occur. The employer can only retain the withholdings for employees hired exclusively for the project tied to the state revenue gain. Employees are not liable to pay the state income tax withholdings kept by the employer.

The act authorizes employers to keep 100 percent of an employee's income tax withholdings if the employer spends 50 percent of the amount retained for a public infrastructure project, such as public education, medical facilities, telecommunications, road, utility, or water projects. The act is repealed June 30, 2012.

Bill F — Exemption for Fully Depreciated Personal Property. Bill F exempts from taxation fully depreciated business personal property first acquired by a business beginning January 1, 2005. Currently, depending upon the type of property, 7 to 15 percent of the original cost of fully depreciated personal property is subject to taxation until the property is no longer used by a business.

Statutory Authority and Responsibilities

Senate Bill 04-001 created the Interim Committee on Economic Development – Business Personal Property Tax to study ways to stimulate economic development through business personal property tax exemptions and other methods. The committee was required to meet six times and consisted of ten members from the General Assembly. The committee was charged to study:

- how tax policy changes, including the phasing out or elimination of the business personal property tax, affect job creation and retention;
- the fiscal impact of these policy changes on state and local governments in Colorado;
- the use of dynamic economic models to analyze tax policy changes;
- methods to mitigate any revenue reduction to state and local governments resulting from tax policy changes;
- policies that encourage economic development in rural areas; and
- other actions that can be taken to encourage, promote, and stimulate economic development in Colorado.

The committee was directed to solicit testimony from the public, especially those with expertise on the fiscal impact of tax policy changes. Legislative Council Staff and the Office of Legislative Legal Services were directed to assist the committee in carrying out its duties.

Committee Activities

The committee held six meetings and recommended six bills for the 2005 legislative session. The committee heard testimony from state departments such as the Governor's Office of Economic Development and International Trade and the Division of Property Taxation. Others testifying were representatives from local governments, including municipalities, counties, school and special districts, regional economic development councils, advocates for business organizations, large and small employers from both urban and rural-based businesses, owners of sole proprietorships, members of the academic community, and interested persons.

The committee primarily focused on ways to reduce or eliminate the business personal property tax and incorporate dynamic modeling in the fiscal note process. The committee also discussed ideas to simplify the administration of the business personal property tax to make compliance easier for businesses and to reduce taxes on fully depreciated personal property.

In regard to measures aimed at improving the state's economic climate other than through business personal property tax reductions, representatives from some businesses and economic development councils encouraged the committee to look at ways to provide incentives to employers to create jobs and spur economic growth. These incentives were generally structured to mitigate the revenue impact to government resulting from the cost of the incentives. Additionally, the committee discussed ideas that would allow special districts the ability to enter into incentive agreements with new business facilities to stimulate job growth and business investment within the district.

The following section begins with background information on the business personal property tax. In the concluding sections, information is provided on the issues and discussions that were taken up by the committee that led to legislation.

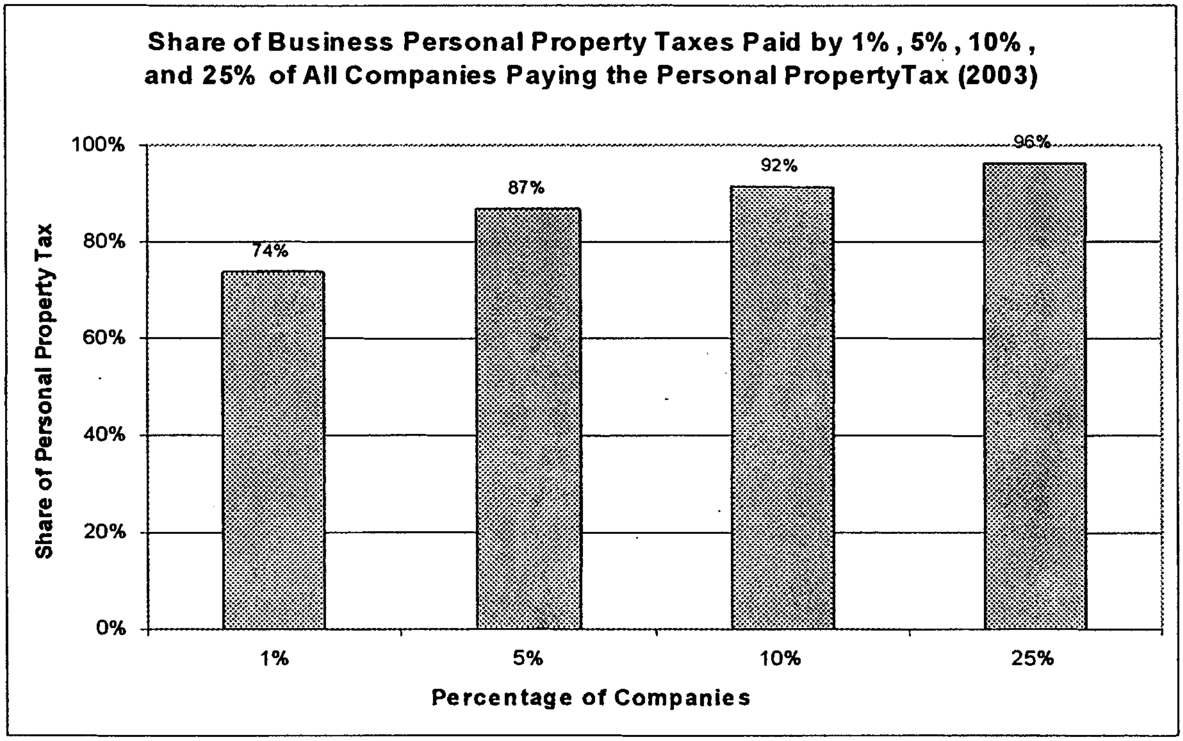
Overview of the Business Personal Property Tax

Taxable business personal property generally consists of any equipment that is used in an income-generating enterprise. It includes machinery, furniture, and computers, as well as cable, pipelines, utility and phone lines, and similar assets. Each local government's mill levy is applied to all taxable property within the government's boundaries, including business personal property. In 2003, business personal property generated an estimated $634 million of the $4.6 billion in total property tax collections, or 13.8 percent of the total. In 2003, the statewide assessed value of personal property was $8.2 billion.

Origin of the personal property tax and exemptions. Colorado's first state property tax laws were enacted in November 1876 and required that all real and personal property that is not exempted be taxed. Exempted property included mines and mining claims, ditches and canals for irrigation, government-owned real and personal property, and other property used for religious or nonprofit purposes. Several additional personal property exemptions are now in place. For example, household furnishings not used to produce income, business inventories and supplies are not taxed. Also, agricultural equipment is exempt. According to the U.S. Census Bureau, in addition to Colorado, 40 states were taxing at least some business personal property in 2000.

Consumable personal property and the $2,500 exemption. Business personal property with an acquisition cost of $250 or less or that has a useful life of less than a year is not taxed. This category of personal property is often referred to as consumable personal property. In addition, a company's personal property is exempt if its actual value is less than $2,500 per county. According to committee testimony, the $2,500 exemption was enacted in 1996 to reduce the tax burden on smaller businesses. This exemption first reduced business personal property taxes payable in 1998.

Companies paying the tax. Approximately 84,000 businesses pay personal property taxes to local governments in Colorado. These companies are not evenly distributed among taxpayers as the bulk of all statewide business personal property taxes are paid by one quarter of these companies. For example, 1 percent of all companies paying business personal property taxes pay about 74 percent of total business personal property taxes. These companies include some of the largest utility companies in Colorado, such as Qwest and Xcel Energy. Twenty-five percent of all companies paying the tax pay about 96 percent of total statewide business personal property taxes. The following graph shows the share of business personal property taxes paid by 1, 5, 10, and 25 percent of the companies paying the tax for 2003.



Collection of business personal property tax revenue. Business personal property taxes are collected by local governments in the same manner as real property taxes. Counties collect approximately 25 percent of all business personal property taxes,[1] while cities collect about 6 percent. The largest share of all business personal property taxes, 54 percent, is collected by school districts (43 percent of all business personal property taxes is used to fund school district general operations and the other 11 percent is used for bond obligations).

In general, rural counties with a power plant or pipeline tend to be most dependent on personal property for property tax revenue. Those counties with the highest proportion of their tax base attributable to personal property are Moffat, Morgan, and Baca counties. The following table shows estimated business personal property tax revenues collected by local governments for 2003.

Estimated Personal Property Tax Revenues Collected by Local Governments
(Calendar Year 2003)

Local Government	Percentage	Amount (in millions)
Counties	25%	$159
Cities	6	38
Special Districts	15	95
School Districts	54	342
Total	**100%**	**$634**

Fiscal issues surrounding a full or partial exemption of business personal property. Exempting business personal property from the property tax has two major fiscal impacts. The first major impact results from the simple decrease in the tax base. A second impact results from a change in the residential assessment rate (RAR) triggered by the Gallagher Amendment. The RAR is the percentage of the market value of residential property that is subject to taxation.

The Gallagher Amendment requires the RAR to be adjusted to ensure that the assessed value of residential property remain at a certain proportion of the assessed value of all property. Thus, if nonresidential assessed value were to decline due to a full or partial exemption of business personal property, the RAR would also decline so that residential values remain at a constant proportion of total values.

If business personal property was fully exempted, Legislative Council Staff estimates that the Gallagher Amendment would require the RAR to decline by nearly two percentage points, resulting in a loss of approximately $7.3 billion in residential assessed value and

[1] The cities and counties of Denver and Broomfield are included in the county total.

approximately $560 million in property tax revenue. The revenue loss resulting from a decline in residential assessed values is in addition to the direct loss of $634 million. Therefore, a total exemption of business personal property would reduce property tax revenues statewide by about $1.2 billion. This would affect every jurisdiction that levies a property tax, though to differing degrees depending upon each jurisdiction's tax structure.

The combination of these two impacts is especially prevalent in Morgan County, where there is a predominant amount of both business personal property and residential property. Legislative Council Staff estimates that Morgan County would see over half of its property tax base eliminated if all business personal property were exempted from property taxes.

In addition to these two impacts, any action that changes the amount of personal property taxes collected impacts the state budget due to the school finance act, which requires the state to fund the portion of school funding not provided from local sources. If an exemption is adopted that lowers total business personal property taxes, the state's obligation for school finance would be increased.

Reducing or Eliminating the Business Personal Property Tax

The committee solicited ideas from the business community and regional economic development groups on ways to reduce or eliminate the business personal property tax to stimulate economic development in Colorado. The committee also heard testimony from local government officials to determine the reliance these governments place on the business personal property tax as a revenue source. County assessors, municipal financial officers, and the Colorado Municipal League provided information on the fiscal impact of reducing or eliminating the business personal property tax.

The tax's impact on the state's business climate. Testimony from various individuals and groups asserted that the business personal property tax makes the state less attractive for certain businesses and hinders economic development. These groups included the Governor's Office of Economic Development and International Trade, regional economic development organizations, such as the Greater Colorado Springs Economic Development Corporation and the Southeast Denver Business Partnership, and advocates for business such as the Colorado Association of Commerce and Industry. Testimony indicated that since 2001, or the year the economic downturn began, businesses have increasingly looked at operating costs as a primary factor in their relocation and expansion decisions.

Although some groups acknowledged that the state compares favorably to other states in total tax burden, representatives from these organizations testified that the tax is a disincentive to business investment and is an impediment to job creation. Further, the tax is costly to administer. The organizations stated that business personal property tax relief is necessary for the state to be as competitive as possible in the global economy.

Other regional and business concerns. Testimony from other business and economic development organizations indicated that the tax is not a significant issue. For example, a representative from the Colorado Rural Economic Development Council explained that the tax is not a major impediment to economic development in rural Colorado. Other organizations, such as the Colorado Biosciences Association and the Grand Junction Chamber of Commerce, indicated that the tax is not the most significant issue facing companies in their industry and region. When assessing the business climate, these organizations were more concerned with rising health care costs, housing costs, and the availability of an educated workforce than the business personal property tax. Another issue that was cited as important to the state's business climate was the need for increased investment in the state's transportation network. One of the most significant needs expressed by representatives from rural Colorado was the need for technical staff from the state to assist rural communities with their economic development issues.

Local government reliance on the tax. To learn further about the reliance local governments have on the business personal property tax as a revenue source, the committee heard testimony from local government officials such as assessors from La Plata, Arapahoe, and El Paso counties, and commissioners from Moffat and Larimer counties. Assessors from La Plata and Moffat counties testified that any reduction or elimination of the tax would have a significant impact on the ability of their counties to provide vital services. In contrast, assessors from Arapahoe and El Paso counties discussed the exemptions and credits each county offers to reduce the business personal property tax burden on businesses. Testimony indicated that it is difficult to assess whether the personal property tax exemptions and credits have led to an improved business climate.

Representatives from some municipalities expressed a similar concern about foregone revenues should the tax be eliminated and offered suggestions on other ways to stimulate economic development rather than reducing or eliminating the business personal property tax. To stimulate business investment, some city officials suggested the more frequent use of incentive agreements that allow cities and towns to rebate local sales taxes. These parties also suggested the state offer a state income tax credit to employers who create jobs in lieu of any reduction in the tax.

Phasing out and lowering taxes on business personal property. Testimony from regional economic development groups and businesses suggested ways to reduce the business personal property tax burden on businesses. Many groups generally agreed phasing out the tax over time is the most viable option because it would allow jurisdictions that are reliant on the tax time to find replacement revenue sources.

The Colorado Association of Commerce and Industry also endorsed a measure which creates a state income tax credit equal to 50 percent of the amount of business personal property taxes paid to a school district on the operating portion of a school district's tax levy. This measure is similar to HB 04-1453, which was introduced during the 2004 session.

Simplification and other methods to reduce the business personal property tax. The Division of Property Taxation provided a presentation on the administration and filing process tied to the business personal property tax. Committee members requested the division to submit ideas that may simplify the filing process for the businesses that pay the tax. The division suggested the following:

- raise the $250 consumable exemption;
- increase the $2,500 exemption;
- exempt fully depreciated property; and
- rather than using the state's valuation process, change to a federal depreciation methodology used for federal taxing purposes.

By raising the $250 consumable exemption, the filing process would be simplified by reducing the number of taxable assets taxpayers must declare. The increase may also lower the tax that some businesses pay by exempting some business personal property from taxation. An increase in the $2,500 exemption would reduce the number of taxpayers required to file, thus, eliminating the tax for some businesses. If fully depreciated property were exempted, the filing process for businesses would be simpler because the personal property would no longer need to be declared. In addition, the business's taxes would be lower because it would not be required to pay taxes on fully depreciated personal property.

Proposed legislation. In response to testimony that discussed the need to enact a full or partial exemption of business personal property, the committee took a three-pronged approach to reduce the business personal property tax. The committee recommends the following three measures:

- **Bill A** — phases in an exemption for business personal property;
- **Bill D** — creates a state income tax credit for taxpayers who pay business personal property taxes to a school district; and
- **Bill F** — exempts fully depreciated business personal property from property taxes.

By phasing in an exemption for business personal property first used in a business beginning in 2005 and exempting all new personal property by 2020, Bill A responds to two concerns. First, the bill provides a way to mitigate the state and local government cost tied to a full exemption by using an incremental approach over time. Second, the measure's phase-in approach allows time for jurisdictions to find replacement revenue sources for revenue declines resulting from a reduction in the tax. By creating a state tax credit, Bill D provides a method to lower the business personal property tax burden for businesses without reducing the revenue of local taxing jurisdictions. Bill F lowers business personal property taxes while responding to committee member concerns related to simplifying the filing process.

Other debated legislation. In response to testimony that businesses were concerned about the continuing availability of an educated workforce, the committee debated a measure that would have provided a state income tax credit to persons who contribute to higher education. Committee members maintained that contributions to higher education stimulate the economy by enhancing education levels of Colorado's workforce. This measure was not recommended by the committee.

Dynamic Analysis of Tax Policy Changes

Dynamic analysis takes into account the direct and indirect effects of a tax policy change on the economy and state revenue. For example, if a tax policy change raised gasoline taxes, the direct effects may include increased revenues from the tax increase or reduced gasoline consumption. The indirect effects related to a gasoline tax increase may include impacts on overall production, employment, income, personal savings, and investment. Currently, the fiscal notes prepared for the legislature only consider the initial direct, or *static*, impacts of a tax policy change.

Benefits of dynamic modeling. The committee heard testimony from a number of different parties on the use of dynamic modeling analysis within the fiscal note process. Staff from the New MexicoTaxation and Revenue Department testified on his state's recent experience of using dynamic modeling. Representatives from the academic community also provided information on dynamic modeling's use in other states and pointed out that dynamic modeling can be used to show the effect of tax policy changes on taxpayers. Proponents of dynamic modeling, such as the Colorado Association of Commerce and Industry, testified that the state's cost for certain tax incentives can be offset in whole or in part by revenues from enhanced economic activity that results from a specific tax policy change. Proponents also maintained that when modeling is used for tax policy changes, the analysis provides a more complete economic and fiscal estimate than a static analysis.

The committee also heard testimony from a business that develops dynamic models used to analyze state tax policy changes – Regional Economic Modeling Inc. (REMI). REMI maintains that taxes are a significant cost for businesses, and thus, it is important to know how tax policy changes affect a state's business environment. A REMI representative stated that the REMI dynamic model includes the ability to:

- show the economic and fiscal impacts of a policy change over time on an annual basis;
- provide a more complete understanding of the effects of tax policy changes;
- provide results that can be easily understood by legislators; and
- be customized for states that have varying economies and tax structures.

Dynamic modeling issues relating to Colorado's fiscal note process. Staff from the New MexicoTaxation and Revenue Department and Legislative Council Staff testified on potential issues tied to dynamic modeling. These issues include:

- developing and maintaining a dynamic model requires significant data collection;

- for some measures, data can be unreliable or not available;
- dynamic analysis may not be useful for small tax policy changes;
- TABOR may be a complicating factor because of its requirement that excess revenues be refunded;
- the up-front time to undertake a dynamic analysis for fiscal note purposes can be significant;
- there is a greater level of uncertainty in the accuracy of dynamic estimates; and
- differences between dynamic and static analysis are generally small.

In addition, it was noted that Colorado's balanced budget requirement would require any initial revenue reduction from a tax policy change to be offset by a corresponding tax increase or spending reduction. This may offset some of the policy's dynamic effects.

Proposed legislation. In response to testimony that highlighted the advantages tied to dynamic modeling, the committee recommends Bill B. The bill requires Legislative Council Staff to use dynamic modeling to analyze the economic impact of up to ten bills that propose a tax policy change during each session.

Stimulating Colorado's Business Climate Through Other Measures

The committee also heard testimony from regional economic development organizations regarding ways to improve the state's business climate. According to the Jefferson Economic Council and the Longmont Area Economic Development Council, the state does not compare favorably to other states when comparing the tax incentives it offers to employers and businesses. Economic development incentives can include tax credits, job recruiting and training assistance, utility rate incentives, project financing assistance, and relocation assistance.

Several representatives from economic development and business organizations stressed the state should not rely upon its quality of life to attract businesses; the state needs to enact policies that provide direct incentives to employers who create higher paying or primary jobs. Primary jobs are created by larger companies in industries such as advanced technology, agriculture, energy production, defense, financial services, higher education, manufacturing, telecommunications, and tourism. These industries tend to export goods and services to other states which generate new state wealth. Large employers also create secondary jobs in industries that support workers in the primary job industry. These employers benefit governments because their businesses increase regional economic activity which, in turn, increases regional tax bases.

Proposed legislation. In response to concerns that Colorado falls short in the tax incentives it offers to employers for job creation, the committee recommends Bill E. For the period January 1, 2006, through June 30, 2012, this bill authorizes employers to retain either 50 percent or all of an employee's state income tax withholdings if the employer is engaged in a certified, strategic project. In order to mitigate the state revenue impact resulting from the incentive, the bill requires that the certified, strategic project generate more state revenue from income taxes, sales and use taxes, or other sources than the state's cost of forgiving state income tax withholdings. The bill authorizes employers to retain 100 percent of an employee's state income tax withholdings if the employer spends 50 percent of the amount retained for a public infrastructure project.

Committee members also discussed the incentives that cities and towns can offer new businesses to entice them to relocate to a specific area or expand an existing facility. To provide additional incentives to employers who either establish or expand a new business facility within a special district, the committee recommends Bill C. The bill authorizes a special district to negotiate a property tax reduction agreement with a taxpayer who establishes an eligible new business facility or expands an existing facility within a special district. The measure provides a larger incentive for new business facilities that set up shop or expand in an enterprise zone.

Other debated legislation. In response to committee discussions on ways to stimulate Colorado's business climate the committee debated two additional measures. Neither measure was recommended by the committee. To stimulate Colorado's rural economies one measure would have created a rural technical assistance program in the Governor's Office of Economic Development and International Trade. It would have also increased and expanded the enterprise zone investment tax credit from 3 to 10 percent if the asset is used by a business located in an enhanced rural enterprise zone.

The committee also debated a measure that would have provided an incentive to businesses that use Colorado-produced products in their businesses and bring new wealth into the state by selling products or services to out-of-state persons and businesses. The measure would have allowed companies to transfer (sell) all or a portion of a taxpayer's net operating losses to another taxpayer. Thus, the company transferring the loss generates capital while the company buying the loss reduces its income tax liability.

Summary of Recommendations

The Interim Committee on Economic Development – Business Personal Property Tax recommended the following six bills to the Colorado General Assembly for the 2005 session.

Bill A — Concerning the Exemption of Business Personal Property from Property Taxation

The bill phases in an exemption for business personal property first used in a business after 2004. Beginning January 1, 2005, this bill exempts 55 percent of the value of new personal property from taxation. The exemption increases by three percentage points each year until all business personal property first used in a business in 2020 is exempt. The percentage exempted for the year that the business personal property is first used is applied to the property for all subsequent years that the property is subject to taxation. For example, if in 2005 a company purchases a $100,000 asset subject to personal property taxes, 55 percent of the asset's value would be exempted from property taxation for all subsequent years that the property is subject to taxation. If in 2006 the same company purchases another $100,000 asset subject to personal property taxes, 58 percent of that asset's value would be exempted. A county that has 30 percent or more of its total assessed value attributed to business personal property is exempt from this measure.

The exemption for new business personal property in Bill A is estimated to reduce property tax revenues for school districts which, under the school finance act, would require replacement state aid. Bill A is estimated to cause state expenditures for school funding to increase by up to $13.6 million beginning in FY 2006-07. The exemption in Bill A is also estimated to reduce property taxes for other local governments by up to $26.2 million in the 2007 budget year. In addition, the exemption is estimated to cause a decline in the residential assessment rate as a result of the Gallagher Amendment. The decline in the residential assessment rate is estimated to further decrease tax revenues for school districts by $23.3 million in FY 2007-08 and $44.8 million for other local governments in the 2008 budget year. The fiscal impact of this bill is estimated to increase each year as larger portions of business personal property are exempted. The bill is estimated to cause a minor increase in state revenue as corporate income tax liabilities increase.

Bill B — Concerning the Requirement that Legislative Council Staff Use a Dynamic Model to Analyze the Economic Impact of a Bill that Makes a Tax Policy Change

The bill requires Legislative Council Staff to use dynamic modeling to analyze the economic impact of up to ten bills each session that make a tax policy change. The analysis is to be conducted at the request of a majority of the leadership of either the House of Representatives or the Senate. Legislative Council Staff will have 30 days to complete the request. The dynamic analysis must be in addition to any fiscal note that is prepared pursuant to rules of the General Assembly.

Bill C — Concerning the Authority of a Special District to Enter Into a Property Tax Reduction Agreement with a Taxpayer for the Purpose of Economic Development

The bill authorizes special districts to negotiate the same type of incentive agreements that cities and counties are currently authorized to negotiate to lower business personal property taxes. These agreements are made with taxpayers who establish an eligible new business facility or expand an existing facility within their boundaries. The agreements reduce the taxpayer's tax burden through either payments or credits. A special district can only enter into an agreement with a taxpayer if the taxpayer also enters (or has already entered) into an agreement with a municipality or county. Incentive agreements for special districts are capped at 50 percent of the amount of business personal property taxes levied by the special district upon the new or expanded business facility. Further, any agreement cannot exceed a term of ten years, including the renewal of any agreement.

Current law allows cities and counties *located in enterprise zones* to negotiate incentive agreements with businesses on *all taxable property* associated with a new or expanded facility. This bill authorizes special districts located in enterprise zones to negotiate the same agreement with taxpayers. The amount of the incentive agreement cannot exceed the lesser of the taxes owed on all taxable property or an amount equal to the difference between the current taxes owed and the taxes owed for the same property one year before the enterprise zone was approved.

Bill C may cause special districts that enter into property tax reduction agreements to forgo some future property tax revenue that they otherwise would have received if taxpayers would have located or expanded in the districts without the agreements.

Bill D — Concerning the Creation of a Colorado Income Tax Credit to Reimburse a Taxpayer for a Certain Portion of the Property Taxes that the Taxpayer Pays to a School District for the Taxpayer's Use of Business Personal Property

The bill creates a state income tax credit equal to 50 percent of the amount of business personal property taxes paid to a school district for the operating portion of the district's tax levy. The tax credit is available beginning January 1, 2007, and applies to personal property first used in a business on or after January 1, 2005.

This measure requires taxpayers who claim the credit to earn at least 50 percent of their gross receipts from products produced in Colorado and sold to buyers outside the state. Taxpayers that lease taxable equipment are eligible for the credit. Taxpayers who purchase business personal property and then lease the property are not eligible for the credit. In addition, taxpayers that export extracted minerals from the state are not eligible. The bill requires taxpayers to file certain information with their income tax return in order to qualify for the credit. Also, to mitigate the state's cost for this tax credit, counties must certify that the taxes paid on the property for which the credit is claimed reduces state aid to the school district.

Under existing law, during years in which there is a TABOR surplus, businesses can receive a credit equal to 100 percent of the first $700 in business personal property taxes paid, plus 16 percent of taxes paid in excess of $700. Bill D prohibits taxpayers from receiving an amount from the TABOR refund mechanism and the credit under Bill D that exceeds their total business personal property taxes paid. The following table provides examples of refund and credit amounts that taxpayers can receive in years for which the refund and credit can be claimed.

Total Refund and Credit Amounts
(for TABOR surplus years)

Total Business Personal Property (BPP) Taxes Paid	$700	$900	$800,000
TABOR Refund Amount — 100% of the first $700 in BBP taxes paid plus 16% of excess	700	732	128,588
BPP Taxes Paid to a School District for the Operating Portion of the District's Tax Levy — About 43% of total BPP taxes paid	300	387	344,000
Bill D Credit — Lesser of either 50% of BPP taxes paid to school district or the difference between total personal property taxes paid and the TABOR refund amount	0	168	172,000
Total Refund and Credit Amounts	$700	$900	$300,588

If a taxpayer pays $700 or less in total business personal property taxes, the taxpayer would receive a refund of all personal property taxes paid through the TABOR refund mechanism, and would not benefit from the tax credit in Bill D. This is due to the provision that limits the credit in Bill D to the lesser of either the Bill D credit or the difference between total personal property taxes paid and the TABOR refund amount. In this case, since the taxpayer has already been refunded all of the personal property taxes paid ($700), the difference between total personal property taxes paid ($700) and the refund ($700) is $0 and is the lesser of any credit under Bill D. In this scenario, the benefit of the Bill D credit is $0.

For taxpayers who pay more than $700 in personal property taxes, the combined benefit of the refund mechanism and the Bill D credit would be up to the amount of total personal property taxes paid. This amount would be determined by the total business personal property taxes paid, the TABOR refund amount, and the business personal property taxes paid to a school district.

Bill E — Concerning the Establishment of a Program that Allows Certain Employers to Retain a Percentage of the Wages Withheld from Their Employees for State Income Tax Purposes as an Incentive for Creating Job Growth

The bill establishes the *Employer Retention of Employee Wage Withholding Act* to stimulate economic development. The act authorizes employers to retain 50 percent of an employee's state income tax withholdings if the employer is engaged in a certified, strategic project. Employers would be authorized to retain these withholdings for the period January 1, 2006, through June 30, 2012. A strategic project is one that is projected to increase state revenue in the same fiscal year in which the withholding occurs. For example, the state would have to take in more revenues from income taxes, sales and use taxes, or other sources than the state's cost of forgiving employer income tax withholdings. The employer can only retain the withholdings for employees hired exclusively for the project tied to the state revenue gain. Employees are not liable to pay the state the income tax withholdings retained by their employer. The bill requires taxpayers to file certain information with their income tax return in order to qualify for the incentive.

The act authorizes employers to retain an additional 50 percent of an employee's income tax withholdings from a strategic project if the employer spends 50 percent of the amount retained for a public infrastructure project, such as public education, medical facilities, telecommunications, road, utility, or water projects. In these instances, the employer would be retaining 100 percent of an employee's income tax withholdings. This measure requires counties and municipalities in which a project is located to contribute to the infrastructure project. These local governments must contribute a combined amount equal to 10 percent of the employer's expenditure for the infrastructure project. The act is repealed June 30, 2012.

Bill F — Concerning an Exemption from Property Tax for Business Personal Property that Has Fully Depreciated

The bill exempts from taxation fully depreciated business personal property first acquired by a business beginning January 1, 2005. Currently, depending upon the type of property, 7 to 15 percent of the original cost of fully depreciated personal property is subject to taxation until the property is no longer used by a business.

Resource Materials

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, CO (303-866-2055). For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir/lcsstaff/2004/04interim.htm

Meeting Summaries	Briefings/Recommendations
July 26, 2004	Introductory comments by the chair and committee members. Briefings by the Division of Property Taxation, the Governor's Office of Economic Development and International Trade, and Legislative Council Staff.
August 5, 2004	Briefings by economic development and business advocacy organizations. Closing comments by Representative Lola Spradley, Speaker, House of Representatives.
August 20, 2004	Meeting hosted by the National Federation of Independent Businesses and held at the Beaver Run Resort, Breckenridge, Colorado. Briefings by Colorado's telecommunications, bioscience, and technology industries, small rural business owners, and representatives from economic development and business advocacy organizations located on Colorado's western slope
September 2, 2004	Briefings on dynamic modeling by representatives from the academic community, Center for Tax Policy, New Mexico Taxation and Revenue Department, and Legislative Council Staff. Presentation by the Division of Property Taxation on the administration of the business personal property tax. The committee voted to approve two bill drafts.
September 21, 2004	Briefings from Regional Economic Modeling Inc. (REMI) on dynamic modeling and services provided by REMI. The committee voted to approve four bill drafts.

Memoranda

Legislative Council Staff memoranda:

January 14, 2004	*Salvage Value of Personal Property*
July 19, 2004	*Business Personal Property Tax*
July 29, 2004	*State Sales Tax Exemptions Applying to Personal Property*
August 19, 2004	*Business Personal Property Taxes in Other States; Dynamic Modeling in Other States; and Incentive Payments for New and Expanding Businesses.*
September 14, 2004	*Enterprise Zone Information*

Bill A

HOUSE SPONSORSHIP

Cairns, and Lamborn

SENATE SPONSORSHIP

May M., and McCluskey

A BILL FOR AN ACT

CONCERNING THE EXEMPTION OF BUSINESS PERSONAL PROPERTY FROM PROPERTY TAXATION.

Bill Summary

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

Interim Committee on Stimulating Economic Development Through Business Personal Property Tax Exemptions and Other Methods. For property tax years commencing on or after January 1, 2005, exempts from property taxation a percentage of business personal property first used in a business. Establishes the exemption percentage for the tax year commencing on January 1, 2005, as 55%, and increases the percentage by 3% each year thereafter until all business personal property first used in a business is exempt. Requires the exemption percentage for the year that the business personal property is first used in a business to be applied to the property for all years thereafter that the property is subject to property taxation.

Establishes an exception to the exemption for counties in which the assessed value of business personal property is 30% or more of the total assessed property value in the county.

Makes legislative findings and declarations.

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

SECTION 1. 39-3-118.5, Colorado Revised Statutes, is amended to read:

39-3-118.5. Business personal property - exemption - legislative declaration. (1) For property tax years commencing on and after January 1, 1996, business personal property shall be exempt from the levy and collection of property tax until such business personal property is first used in the business after acquisition.

(2) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT, IN LIGHT OF THE EXISTING ECONOMIC CONDITIONS, MEASURES NEED TO BE TAKEN TO ENCOURAGE, PROMOTE, AND STIMULATE ECONOMIC DEVELOPMENT IN COLORADO. TO THAT END, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO EXEMPT A PART OF ALL BUSINESS PERSONAL PROPERTY FIRST USED IN A BUSINESS AFTER JANUARY 1, 2005, FROM THE LEVY AND COLLECTION OF PROPERTY TAX. THE GENERAL ASSEMBLY FURTHER FINDS THAT THIS EXEMPTION WILL HAVE THE FOLLOWING BENEFICIAL EFFECTS:

(I) IF A BUSINESS IS NOT REQUIRED TO PAY AS MUCH YEARLY PROPERTY TAX ON ITS MACHINERY AND EQUIPMENT, THE COSTS OF DOING BUSINESS IN THE STATE WILL BE PROPORTIONALLY REDUCED. THE REDUCTION

OF THESE COSTS WILL ENCOURAGE LARGE MANUFACTURING COMPANIES, WHICH TYPICALLY OWN A SUBSTANTIAL AMOUNT OF BUSINESS PERSONAL PROPERTY, TO RELOCATE THEIR OPERATIONS TO COLORADO. THIS RELOCATION WILL CREATE NEW JOBS, GENERATE SALES AND INCOME TAX REVENUE, AND OTHERWISE STIMULATE THE STATE ECONOMY.

(II) THE EXEMPTION WILL STIMULATE THE STATE ECONOMY BY PROVIDING A STRONG INVESTMENT INCENTIVE FOR EXISTING COLORADO COMPANIES TO REDUCE THEIR TAX LIABILITIES BY PURCHASING NEW EQUIPMENT AND MACHINERY TO REPLACE THEIR CURRENT EQUIPMENT AND MACHINERY. THIS INVESTMENT IN REPLACEMENT BUSINESS PERSONAL PROPERTY WILL ALSO CREATE NEW JOBS AND GENERATE SALES AND INCOME TAX REVENUE.

(b) (I) FOR EACH PROPERTY TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2005, A PERCENTAGE OF ALL BUSINESS PERSONAL PROPERTY FIRST USED IN A BUSINESS DURING SUCH YEAR SHALL BE EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX, EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (2). FOR BUSINESS PERSONAL PROPERTY FIRST USED IN A BUSINESS DURING THE TAX YEAR COMMENCING ON JANUARY 1, 2005, FIFTY-FIVE PERCENT OF THE ACTUAL VALUE OF SUCH PROPERTY SHALL BE EXEMPT. FOR BUSINESS PERSONAL PROPERTY FIRST USED IN A BUSINESS DURING EACH PROPERTY TAX YEAR THEREAFTER, THE PERCENTAGE SHALL BE INCREASED BY THREE PERCENTAGE POINTS FROM THE IMMEDIATELY PRECEDING TAX YEAR. FOR EACH TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2020, ALL BUSINESS PERSONAL PROPERTY FIRST USED IN A BUSINESS DURING SUCH YEAR SHALL BE EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX.

(II) THE EXEMPTION PERCENTAGE IDENTIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE APPLIED TO THE BUSINESS PERSONAL PROPERTY FOR ALL YEARS THEREAFTER THAT THE PROPERTY IS SUBJECT TO PROPERTY TAXATION.

(III) THE VALUE OF THE BUSINESS PERSONAL PROPERTY AFTER THE EXEMPTION IS APPLIED SHALL BE USED TO DETERMINE WHETHER THE PROPERTY ALSO QUALIFIES FOR AN EXEMPTION PURSUANT TO SECTION 39-3-119.5.

(c) THE EXEMPTION SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL NOT APPLY TO BUSINESS PERSONAL PROPERTY LOCATED WITHIN A COUNTY IN WHICH THE ASSESSED VALUE OF BUSINESS PERSONAL PROPERTY FOR THE PROPERTY TAX YEAR COMMENCING ON JANUARY 1, 2004, WAS THIRTY PERCENT OR MORE OF THE TOTAL ASSESSED PROPERTY VALUE IN

THE COUNTY FOR THE SAME YEAR. THE EXEMPTION SHALL NOT APPLY TO BUSINESS PERSONAL PROPERTY LOCATED WITHIN THE COUNTY UNTIL THE FIRST YEAR SUBSEQUENT TO A PROPERTY TAX YEAR IN WHICH THE ASSESSED VALUE OF BUSINESS PERSONAL PROPERTY IS LESS THAN THIRTY PERCENT OF THE TOTAL ASSESSED PROPERTY VALUE IN THE COUNTY.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

DRAFT

Bill A

Colorado Legislative Council Staff

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 05-0054	**Date:**	November 19, 2004
Prime Sponsor(s):	Rep. May	**Bill Status:**	Interim Committee on Economic Development - Business Personal Property Tax
		Fiscal Analyst:	Josh Harwood (303-866-4796)

TITLE: CONCERNING THE EXEMPTION OF BUSINESS PERSONAL PROPERTY FROM PROPERTY TAXATION.

Fiscal Impact Summary	FY 2005/06	FY 2006/07	FY 2007/08
State Revenues General Fund		up to $378,000	up to $1,703,000
State Expenditures General Fund		up to $13,600,000	up to $48,500,000
FTE Position Change	0.0 FTE	0.0 FTE	0.0 FTE
Other State Impact: Future TABOR Impact			
Effective Date: 90 days after adjournment (August 10, 2005), unless a referendum petition is filed. Applies to tax years beginning on and after January 1, 2006.			
Appropriation Summary for FY 2005/06: None Required			
Local Government Impact: Non-school public entities would no longer be able to collect revenues from property taxes on a portion of any new business personal property. This will result in a non-school finance local government revenue reduction of up to $26.2 million in the 2007 budget year.			

Summary of Legislation

The bill provides a method for exempting new business personal property beginning with 55% of all business personal property first used in the 2005 property tax year. The amount exempted will increase three percentage points each year thereafter, apply only to new or unused personal property in that year, and continue for the life of the property.

Business personal property begins to be taxed the year *after* it is first used. For example, new personal property first used in 2006 will appear on the tax rolls in 2007, and have taxes paid on it in 2008. Under this example, 58% of its value would be exempted from property taxes, but new personal property first used in 2005 would be depreciated and retain its 55% exemption for the life of the property. This will result in an increasing proportion of business personal property being exempted, with all new business personal property exempted after January 1, 2020.

A second provision of the bill allows counties to not apply the exemption if they receive more than 30% of their property tax revenue from personal property. Based on 2003 assessed values, six counties - Baca, Dolores, Las Animas, Lincoln, Moffat, and Morgan - would not be required to implement the exemption, and could continue to tax business personal property at current levels.

Background

Business personal property currently represents slightly over $8.2 billion in statewide assessed value, or roughly 25% of all nonresidential property assessed value. Based on current county-wide mill levies, this value translates into approximately $634 million in local property taxes collected in 2004. Current law exempts any business personal property with an actual value less than $2,500 that would otherwise appear on a single property tax schedule.

State Expenditures

School Finance Act. The bill creates two impacts that affect school funding. The state's share of public school total program funding would increase by the amount of local school operating property taxes foregone by increasing the amount of exempted business personal property. The following impacts could be mitigated slightly depending on the number of school districts reaching their TABOR revenue limit.

The first impact results from exempting a portion of all new business personal property. Based on business investment rates and depreciation schedules, approximately $672.5 million in assessed value would be exempted in 2006. Business investment rates are determined using industry figures for equipment stock and new capital investment. Based on county average mill levies, this would result in a potential $13.6 million reduction in school district property taxes that must be backfilled by the state in FY 2006-07, and up to $26.2 million reduction in total non-school property taxes.

A second impact results from a drop in the residential assessment rate (RAR) beginning in 2007. In 2007, residential assessed values will decrease by 3.5% as a result of a .26 percentage point decline in the RAR from a projected 7.43% to 7.17%. Because roughly $1.24 billion of business personal property would no longer be counted as nonresidential property in the RAR calculation, the RAR must decline further in order to maintain the 45% residential/55% nonresidential assessed value ratio prescribed by Section 3 (1) (b) of Article X of the State Constitution, more commonly referred to as the Gallagher Amendment. This adjustment results in an additional reduction of roughly $1.15 billion in statewide residential assessed value. Based on average mill levies, the impact in FY 2007-08 would be a potential $23.3 million reduction in school district property taxes that must be backfilled by the state, and a reduction of up to $44.8 million in total non-school property taxes that would not be backfilled by the state.

State Revenues

Changes in the amount of property taxes paid will result in another minor fiscal impact, which may be more than offset through additional investment created by this exemption. The decrease in property tax liability will increase a company's state and federal income tax liability for those paying corporate income taxes in the form of a lower property tax deduction. The increases in state income tax liability will only slightly offset any increase in school finance appropriations expected as a result of the bill, and, would be refunded in years in which the state's spending limit is reached. This impact is estimated at $378,000 for FY 2006-07, and will grow every year thereafter as larger proportions of business personal property are exempted.

To the extent that the exemption contained in this bill generates greater investment in new business personal property than would have otherwise occurred, the state could receive increased sales and income tax revenues. However, based on current revenue forecasts, additional sales and income tax revenue would serve to increase the TABOR refund, minimizing the amount of money available for spending.

Local Government Impact

Local government entities would be unable to collect property taxes on a portion of all new business personal property. Furthermore, the property tax base would decrease in 2005 as a result of the lower RAR. For local governments consistently reaching their revenue limit due to high growth levels, the impact would be partially alleviated by a smaller decline in the mill levy. In these cases, a portion of the moneys that would have been received from business personal property taxpayers would instead be spread out over the remaining tax bills in the form of a higher mill levy than would have occurred had taxes been collected on all business personal property currently valued. Overall, local non-school property taxes are estimated to decline up to $26.2 million in the 2007 budget year.

State Appropriations

No state appropriations are required to implement the bill in FY 2005-06. State expenditures for school funding under the Public School Finance Act are expected to increase by up to $13.6 million beginning in FY 2006-07 and increase each year thereafter. The actual amount required would be determined following the certification of mill levies in December 2006.

Departments Contacted

Local Affairs	Legislative Council Staff

Bill B

HOUSE SPONSORSHIP

McCluskey,

SENATE SPONSORSHIP

Lamborn, and Cairns

A BILL FOR AN ACT

CONCERNING THE REQUIREMENT THAT LEGISLATIVE COUNCIL STAFF USE A DYNAMIC MODEL TO ANALYZE THE ECONOMIC IMPACT OF A BILL THAT MAKES A TAX POLICY CHANGE.

Bill Summary

(Note: This summary applies to this bill as introduced and doesnot necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Stimulating Economic Development Through Business Personal Property Tax Exemptions and Other Methods. Upon the request of a majority of the leadership of either house of the general assembly, requires the director of research to use a dynamic model to analyze the economic impact of a bill introduced by the general assembly that makes a tax policy change. Gives the director 30 days to complete the request. Establishes a limit of 10 bills per legislative session for which the dynamic model may be used, but permits the dynamic model to be used more than once for each bill. Establishes that the analysis using a dynamic model is in addition to any fiscal note that is otherwise prepared by legislative council staff.

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

SECTION 1. Part 3 of article 3 of title 2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

2-3-304.5. Tax policy changes - dynamic model. (1) UPON THE REQUEST OF A MAJORITY OF THE LEADERSHIP OF EITHER HOUSE OF THE GENERAL ASSEMBLY, THE DIRECTOR OF RESEARCH SHALL USE A DYNAMIC MODEL TO ANALYZE THE ECONOMIC IMPACT OF A BILL INTRODUCED BY THE GENERAL ASSEMBLY THAT MAKES A TAX POLICY CHANGE. THE ANALYSIS SHALL CONSIDER THE SECONDARY OR INDIRECT ECONOMIC EFFECTS RELATED TO THE BILL, INCLUDING AN ESTIMATE OF THE PROBABLE BEHAVIORAL RESPONSES OF TAXPAYERS, BUSINESSES, AND OTHER PERSONS TO THE PROPOSED TAX POLICY CHANGE. THE DIRECTOR SHALL HAVE THIRTY DAYS FROM THE DATE THAT THE REQUEST IS MADE TO COMPLETE THE ANALYSIS.

(2) THE DIRECTOR OF RESEARCH SHALL NOT BE REQUIRED TO USE THE DYNAMIC MODEL ON MORE THAN TEN BILLS PER LEGISLATIVE SESSION, BUT THERE MAY BE MORE THAN ONE REQUEST TO USE THE DYNAMIC MODEL PER BILL.

(3) THE ANALYSIS OF THE ECONOMIC IMPACT USING A DYNAMIC MODEL SHALL BE IN ADDITION TO ANY FISCAL NOTE THAT IS PREPARED PURSUANT TO THE RULES OF THE GENERAL ASSEMBLY.

(4) THE DIRECTOR OF RESEARCH SHALL USE BEST PRACTICES IN SELECTING A DYNAMIC MODEL.

(5) AS USED IN THIS SECTION, LEADERSHIP IN THE SENATE SHALL INCLUDE THE PRESIDENT OF THE SENATE, THE SENATE MAJORITY LEADER, AND THE SENATE MINORITY LEADER, AND LEADERSHIP IN THE HOUSE OF REPRESENTATIVES SHALL INCLUDE THE SPEAKER OF THE HOUSE, THE HOUSE MAJORITY LEADER, AND THE HOUSE MINORITY LEADER.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Bill C

HOUSE SPONSORSHIP

May M., Briggs, Garcia, Judd, and McCluskey

SENATE SPONSORSHIP

Lamborn, Cairns, Keller, and Veiga

A BILL FOR AN ACT

CONCERNING THE AUTHORITY OF A SPECIAL DISTRICT TO ENTER INTO A PROPERTY TAX REDUCTION AGREEMENT WITH A TAXPAYER FOR THE PURPOSE OF ECONOMIC DEVELOPMENT.

Bill Summary

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

Interim Committee on Stimulating Economic Development Through Business Personal Property Tax Exemptions and Other Methods. Permits a special district to negotiate for an incentive payment or credit with a taxpayer who, within the special district, establishes a new business facility or expands an existing facility. Establishes criteria for eligible facilities. Limits the amount of the payment or credit and establishes a maximum term. Requires a special district that negotiates an agreement to give a taxpayer an incentive payment or credit to inform any municipality, county, and school district in the same area of such negotiations.

Permits a special district that is within an enterprise zone to negotiate with a qualified taxpayer who establishes a new business facility or expands an existing facility within the enterprise zone for an incentive payment or credit. Limits the amount of the payment or credit.

Prohibits a special district from entering into an agreement to give a taxpayer an incentive payment or credit unless, prior to or simultaneous with the execution of the agreement, the taxpayer also enters into a similar agreement with a municipality or county.

Makes legislative findings and declarations. Defines a term.

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

SECTION 1. Article 1 of title 32, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 17

PROPERTY TAX REDUCTION AGREEMENT

32-1-1701. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE HEALTH, SAFETY, AND WELFARE OF THE PEOPLE OF THIS STATE ARE DEPENDENT UPON THE ATTRACTION OF NEW PRIVATE ENTERPRISE AS WELL AS THE RETENTION AND EXPANSION OF EXISTING PRIVATE ENTERPRISE; THAT INCENTIVES ARE OFTEN NECESSARY IN ORDER TO ATTRACT PRIVATE ENTERPRISE; AND THAT PROVIDING INCENTIVES STIMULATES ECONOMIC DEVELOPMENT IN THE STATE AND RESULTS IN THE CREATION AND MAINTENANCE OF NEW JOBS.

32-1-1702. New business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation. (1) NOTWITHSTANDING ANY LAW TO THE CONTRARY, A SPECIAL DISTRICT MAY NEGOTIATE FOR AN INCENTIVE PAYMENT OR CREDIT WITH A

TAXPAYER WHO ESTABLISHES A NEW BUSINESS FACILITY, AS DEFINED IN SECTION 39-22-508.2 (3), C.R.S., BUT EXCLUDING THE REQUIREMENTS OF PARAGRAPH (b) OF SUCH SUBSECTION (3), IN THE SPECIAL DISTRICT. IN NO INSTANCE SHALL ANY NEGOTIATION RESULT IN AN ANNUAL INCENTIVE PAYMENT OR CREDIT THAT IS GREATER THAN FIFTY PERCENT OF THE AMOUNT OF TAXES LEVIED BY THE SPECIAL DISTRICT UPON THE TAXABLE BUSINESS PERSONAL PROPERTY LOCATED AT OR WITHIN THE NEW BUSINESS FACILITY AND USED IN CONNECTION WITH THE OPERATION OF THE NEW BUSINESS FACILITY FOR THE CURRENT PROPERTY TAX YEAR. THE TERM OF ANY AGREEMENT MADE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL NOT EXCEED TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED.

(2) NOTWITHSTANDING ANY LAW TO THE CONTRARY, A SPECIAL DISTRICT MAY NEGOTIATE FOR AN INCENTIVE PAYMENT OR CREDIT WITH A TAXPAYER WHO EXPANDS A FACILITY, AS DEFINED IN SECTION 39-22-508.2 (2) (a), C.R.S., THE EXPANSION OF WHICH CONSTITUTES A NEW BUSINESS FACILITY, AS DEFINED IN SECTION 39-22-508.2 (3), C.R.S., BUT EXCLUDING THE REQUIREMENTS OF PARAGRAPH (b) OF SUCH SUBSECTION (3), AND WHICH IS LOCATED IN THE SPECIAL DISTRICT. IN NO INSTANCE SHALL ANY NEGOTIATION RESULT IN AN ANNUAL INCENTIVE PAYMENT OR CREDIT THAT IS GREATER THAN FIFTY PERCENT OF THE AMOUNT OF THE TAXES LEVIED BY THE SPECIAL DISTRICT UPON THE TAXABLE BUSINESS PERSONAL PROPERTY DIRECTLY ATTRIBUTABLE TO THE EXPANSION LOCATED AT OR WITHIN THE EXPANDED FACILITY AND USED IN CONNECTION WITH THE OPERATION OF THE EXPANDED FACILITY FOR THE CURRENT PROPERTY TAX YEAR. THE TERM OF ANY AGREEMENT MADE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL NOT EXCEED TEN YEARS, INCLUDING THE TERM OF ANY ORIGINAL AGREEMENT BEING RENEWED.

(3) A SPECIAL DISTRICT SHALL NOT ENTER INTO AN AGREEMENT PURSUANT TO THE PROVISIONS OF THIS SECTION UNLESS, PRIOR TO OR SIMULTANEOUS WITH THE EXECUTION OF THE AGREEMENT, THE TAXPAYER ALSO ENTERS INTO AN AGREEMENT WITH A MUNICIPALITY OR COUNTY PURSUANT TO SECTION 30-11-123, 31-15-903, OR 39-30-107.5, C.R.S.

(4) A SPECIAL DISTRICT THAT NEGOTIATES AN AGREEMENT PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL INFORM ANY MUNICIPALITY, COUNTY, AND SCHOOL DISTRICT IN WHICH A NEW BUSINESS FACILITY WOULD BE LOCATED OR AN EXPANDED BUSINESS FACILITY IS LOCATED, WHICHEVER IS APPLICABLE, OF SUCH NEGOTIATIONS.

SECTION 2. 39-30-107.5 (1), Colorado Revised Statutes, is amended to read:

39-30-107.5. Taxable property valuations - sales taxes - incentives - definitions. (1) (a) Notwithstanding any law to the contrary, any SPECIAL DISTRICT, county, municipality, or city and county within an enterprise zone may negotiate with any taxpayer who qualifies for a credit pursuant to section 39-30-105, who establishes a new business facility within an enterprise zone, or who expands a facility within an enterprise zone, the expansion of which constitutes a new business facility, for an incentive payment or credit equal to not more than the amount of the taxes levied upon the taxable property of the taxpayer; but in no instance shall any such negotiation result in such an incentive payment or credit which is greater than the difference between the current property tax liability and the tax liability for the same property for the year preceding the year in which the enterprise zone was approved.

(b) A SPECIAL DISTRICT SHALL NOT ENTER INTO AN AGREEMENT PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (1) UNLESS, PRIOR TO OR SIMULTANEOUS WITH THE EXECUTION OF THE AGREEMENT, THE TAXPAYER ALSO ENTERS INTO AN AGREEMENT WITH A MUNICIPALITY OR COUNTY PURSUANT TO THIS SECTION.

SECTION 3. 39-30-107.5 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-30-107.5. Taxable property valuations - sales taxes - incentives - definitions. (3) As used in this section:

(c) "SPECIAL DISTRICT" MEANS A SPECIAL DISTRICT AS DEFINED IN SECTION 32-1-103 (20), C.R.S.

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

DRAFT

Bill C

Colorado Legislative Council Staff

LOCAL CONDITIONAL FISCAL IMPACT

Drafting Number:	LLS 05-0056	**Date:**	November 22, 2004
Prime Sponsor(s):	Rep. May M. Sen. Lamborn	**Bill Status:**	Interim Committee on Economic Development - Business Personal Property Tax
		Fiscal Analyst:	Josh Harwood (303-866-4796)

TITLE: CONCERNING THE AUTHORITY OF A SPECIAL DISTRICT TO ENTER INTO A PROPERTY TAX REDUCTION AGREEMENT WITH A TAXPAYER FOR THE PURPOSE OF ECONOMIC DEVELOPMENT.

Fiscal Impact Summary	FY 2005/06	FY 2006/07
State Revenues General Fund		
State Expenditures General Fund		
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: 90 days after adjournment (August 10, 2005), unless a referendum petition is filed. Applies to tax years beginning on and after January 1, 2006.		
Appropriation Summary for FY 2005/06: None Required		
Local Government Impact: Research suggests that special districts entering into these agreements would likely forgo some future property tax revenue that they otherwise may receive.		

Summary of Legislation

The bill would authorize special districts to participate in business incentive agreements. These agreements are already allowed under Colorado statutes for counties and municipalities. The bill states that in order for a special district to enter into an agreement, the taxpayer must either simultaneously or already have an agreement with a county or municipality.

Background. Colorado Revised Statutes (CRS, Title 32, Article I) allow counties and municipalities to enter into business incentive agreements with taxpayers that are providing new investment in the local economy. Under these agreements, a city or county will collect property taxes on a portion of the new investment made by the taxpayer. It is assumed that without this incentive, such investment would not have taken place. Therefore, by providing the incentive, the city or county realizes some property tax revenue, as well as the potential for additional sales tax revenue, that it otherwise may not have received.

Local Government Impact

Special districts would receive some increased property tax revenue, if the taxpayer would *not* have invested in the district without the agreement. However, if it is believed that the investment receiving the property tax reduction would have occurred without such an agreement, then a special district could receive less property tax revenue than it otherwise would have. Due to the small levies associated with special districts, especially relative to those of the counties or municipalities they would be forced to enter into the agreements with, research suggests that, while an additional tool for economic developers, the additional incentive would be unlikely to cause a business to locate or expand in the special district. Therefore, special districts entering into these agreements would likely forgo some future property tax revenue that they otherwise would have received.

State Appropriations

The fiscal note implies that no new appropriation is required to implement this bill.

Departments Contacted

Local Affairs		Legislative Council Staff

Bill D

HOUSE SPONSORSHIP

McCluskey

SENATE SPONSORSHIP

Cairns

A BILL FOR AN ACT

CONCERNING THE CREATION OF A COLORADO INCOME TAX CREDIT TO REIMBURSE A TAXPAYER FOR A CERTAIN PORTION OF THE PROPERTY TAXES THAT THE TAXPAYER PAYS TO A SCHOOL DISTRICT FOR THE TAXPAYER'S USE OF BUSINESS PERSONAL PROPERTY.

Bill Summary

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

Interim Committee on Stimulating Economic Development Through Business Personal Property Tax Exemptions and Other Methods. For income tax years commencing on or after January 1, 2007, creates a Colorado income tax credit in an amount equal to 50% of the business personal property taxes that the taxpayer claiming the credit paid during the income tax year to a school district for the operating portion of the property tax levy on personal property first used in a business on or after January 1, 2005.

States that in order for a taxpayer to qualify for the income tax credit for business personal property first used in a business on or after January 1, 2005, the taxpayer shall include the following in the tax return:

- An affidavit verifying that the taxpayer earns at least 50% of its gross receipts from products that are produced in Colorado and sold to buyers outside of Colorado, or if the gross receipts of a taxpayer are derived from the performance of services, an affidavit verifying that the services are performed in Colorado by the taxpayer or the taxpayer's employees and that the taxpayer earns at least 50% of its gross receipts from services sold or provided by the taxpayer to persons outside of Colorado;
- Proof that the taxpayer paid the business personal property tax for which the income tax credit is claimed; and
- Written certification from the county in which the property tax is paid stating that the amount of the business personal property tax that was collected from the taxpayer reduced the state equalization payment to the school district to which the property tax was paid in the state fiscal year in which the business personal property tax was paid.

In the event that the taxpayer files an electronic income tax return, the taxpayer shall submit all required attachments to the department of revenue upon demand.

In the event that a taxpayer leases the equipment for which business personal property tax is paid, the lessee shall be eligible for the income tax credit for taxes paid on the business personal property in an amount equal to the amount of the credit that the lessee would have been allowed had the lessee owned the property. Specifies that a taxpayer who purchases business personal property and leases such property shall not be entitled to the credit for purchases of new business personal property.

Specifies that any taxpayer that exports extracted minerals from the state shall not qualify to receive the income tax credit for taxes paid on new business personal property.

Prevents a taxpayer who qualifies for both the income tax credit for business personal property first used in a business on or after January 1, 2005, and the income tax credit pursuant to the taxpayer's bill of rights (TABOR) refund mechanism for business personal property taxes paid from receiving both credits.

Authorizes the county in which the property tax is paid to impose a reasonable fee for the preparation of the certification required in order for a taxpayer to claim the income tax credit.

Specifies that taxpayers that file a combined, consolidated, or combined and consolidated income tax return shall be deemed to be one taxpayer when calculating the income tax credit allowed.

Authorizes the executive director of the department of revenue to promulgate rules for the implementation of the income tax credit. States that the income tax credit shall be implemented within the existing resources of the department.

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

SECTION • Part 5 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-529. Income tax credit for taxes paid on new business personal property. (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION AND EXCEPT AS OTHERWISE SPECIFIED IN SUBSECTIONS (3) AND (4) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2007, THERE SHALL BE ALLOWED TO ANY TAXPAYER A CREDIT AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE IN AN AMOUNT EQUAL TO FIFTY PERCENT OF THE BUSINESS PERSONAL PROPERTY TAXES THAT THE TAXPAYER PAID DURING THE INCOME TAX YEAR TO ANY SCHOOL DISTRICT PURSUANT TO SECTION 3 OF ARTICLE X OF THE STATE CONSTITUTION, FOR THE OPERATING PORTION OF THE TAX LEVY ONLY, ON ALL BUSINESS PERSONAL PROPERTY FIRST USED IN A BUSINESS ON OR AFTER JANUARY 1, 2005.

(2) (a) IN ORDER TO QUALIFY FOR A TAX CREDIT PURSUANT TO SUBSECTION (1) OF THIS SECTION, A TAXPAYER SHALL OBTAIN AND INCLUDE THE FOLLOWING IN THE TAXPAYER'S INCOME TAX RETURN:

(I) AN AFFIDAVIT VERIFYING THAT THE TAXPAYER EARNS AT LEAST FIFTY PERCENT OF ITS GROSS RECEIPTS FROM PRODUCTS THAT ARE PRODUCED IN COLORADO AND SOLD TO BUYERS OUTSIDE OF COLORADO, OR IF THE GROSS RECEIPTS OF A TAXPAYER ARE DERIVED FROM THE PERFORMANCE OF SERVICES, AN AFFIDAVIT VERIFYING THAT THE SERVICES ARE PERFORMED IN COLORADO BY THE TAXPAYER OR THE TAXPAYER'S EMPLOYEES AND THAT THE TAXPAYER EARNS AT LEAST FIFTY PERCENT OF ITS GROSS RECEIPTS FROM SERVICES SOLD OR PROVIDED BY THE TAXPAYER TO PERSONS OUTSIDE OF COLORADO. FOR PURPOSES OF THIS SECTION, "PRODUCED" MEANS MANUFACTURED, GROWN, OR RAISED.

(II) PROOF THAT THE TAXPAYER PAID THE BUSINESS PERSONAL PROPERTY TAX FOR WHICH THE INCOME TAX CREDIT IS CLAIMED; AND

(III) WRITTEN CERTIFICATION FROM THE COUNTY IN WHICH THE PROPERTY TAX IS PAID STATING THAT THE AMOUNT OF THE BUSINESS PERSONAL PROPERTY TAX THAT WAS COLLECTED FROM THE TAXPAYER REDUCED THE STATE EQUALIZATION PAYMENT TO THE SCHOOL DISTRICT IN WHICH THE PROPERTY TAX WAS PAID IN THE STATE FISCAL YEAR IN WHICH THE

BUSINESS PERSONAL PROPERTY TAX WAS PAID.

(b) IN THE EVENT THAT A TAXPAYER FILES AN ELECTRONIC INCOME TAX RETURN, THE TAXPAYER SHALL SUBMIT ALL ATTACHMENTS REQUIRED PURSUANT TO THIS SECTION TO THE DEPARTMENT OF REVENUE UPON DEMAND.

(3) IN THE EVENT THAT A TAXPAYER LEASES THE EQUIPMENT FOR WHICH BUSINESS PERSONAL PROPERTY TAX IS PAID, THE LESSEE SHALL BE ELIGIBLE FOR THE CREDIT SPECIFIED IN SUBSECTION (1) OF THIS SECTION IN AN AMOUNT EQUAL TO THE AMOUNT OF THE CREDIT THAT THE LESSEE WOULD HAVE BEEN ALLOWED HAD THE LESSEE OWNED THE PROPERTY. A TAXPAYER WHO PURCHASES BUSINESS PERSONAL PROPERTY AND LEASES SUCH PROPERTY SHALL NOT BE ENTITLED TO THE CREDIT SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

(4) ANY TAXPAYER THAT EXPORTS EXTRACTED MINERALS FROM THE STATE, INCLUDING, BUT NOT LIMITED TO, OIL AND GAS, COAL, AND METALLIC ORES SHALL NOT BE ELIGIBLE TO RECEIVE THE TAX CREDIT ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(5) THE CREDIT ALLOWED TO A TAXPAYER FOR ANY INCOME TAX YEAR PURSUANT TO THIS SECTION SHALL NOT EXCEED THE TAXPAYER'S ACTUAL TAX LIABILITY FOR SUCH INCOME TAX YEAR. ANY AMOUNT OF THE CREDIT IN EXCESS OF THE TAXPAYER'S INCOME TAX LIABILITY SHALL NOT BE ALLOWED AS A REFUND AND SHALL NOT BE CARRIED FORWARD AS A CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

(6) IN THE EVENT THAT A TAXPAYER QUALIFIES FOR A TAX CREDIT PURSUANT TO THIS SECTION AND SECTION 39-22-124, THE CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL BE THE LESSER OF THE AMOUNT OF THE CREDIT CALCULATED PURSUANT TO THIS SECTION OR THE DIFFERENCE BETWEEN THE TOTAL BUSINESS PERSONAL PROPERTY TAX PAID BY THE TAXPAYER AND THE AMOUNT OF THE REFUND ISSUED TO THE TAXPAYER PURSUANT TO SECTION 39-22-124. THE TAX CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL BE OFFSET BY THE TAX CREDIT ISSUED PURSUANT TO SECTION 39-22-124 BASED ON THE SAME BUSINESS PERSONAL PROPERTY TAX PERIOD.

(7) THE COUNTY IN WHICH THE PROPERTY TAX IS PAID SHALL BE ALLOWED TO IMPOSE A REASONABLE FEE FOR THE PREPARATION OF THE CERTIFICATION REQUIRED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION.

(8) FOR PURPOSES OF THIS SECTION, THOSE TAXPAYERS THAT FILE COMBINED, CONSOLIDATED, OR COMBINED AND CONSOLIDATED INCOME TAX

RETURNS SHALL BE DEEMED TO BE ONE TAXPAYER WHEN CALCULATING THE CREDIT ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(9) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR THE EXECUTIVE DIRECTOR'S DESIGNEE MAY PROMULGATE RULES AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(10) THIS SECTION SHALL BE IMPLEMENTED WITHIN EXISTING RESOURCES OF THE DEPARTMENT OF REVENUE.

SECTION • Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Bill E

HOUSE SPONSORSHIP

Briggs, and McCluskey

SENATE SPONSORSHIP

(None)

A BILL FOR AN ACT

CONCERNING THE ESTABLISHMENT OF A PROGRAM THAT ALLOWS CERTAIN EMPLOYERS TO RETAIN A PERCENTAGE OF THE WAGES WITHHELD FROM THEIR EMPLOYEES FOR STATE INCOME TAX PURPOSES AS AN INCENTIVE FOR CREATING JOB GROWTH.

Bill Summary

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

Interim Committee on Stimulating Economic Development Through Business Personal Property Tax Exemptions and Other Methods. Establishes the "Employer Retention of Employee Wage Withholding Act". For income tax years commencing on or after January 1, 2006, allows any employer in the state that is engaged in a strategic project to retain 50% of the amount that the employer withholds from an employee's wages for state income taxes for employees hired exclusively for purposes of the strategic project.

Specifies that in order to retain wages withheld, an employer shall obtain an affidavit issued by an economic research organization that has been certified by the Colorado office of economic development (certified organization). Specifies that the affidavit shall verify that the project for which the wage withholdings are retained is a strategic project. Specifies that the affidavit shall include verification that the counties and municipalities in which the project occurs will contribute a specified amount for the project.

For income tax years commencing on or after January 1, 2006, authorizes any employer that is qualified to retain 50% of employee wage withholdings to retain 100% of such wage withholdings so long as the employer spends 50% of the amount retained for a public economic infrastructure project.

Requires an employer that retains 100% of wage withholdings to obtain an affidavit from a certified organization verifying that the project for which the wage withholdings are retained is a strategic project and verifying that the infrastructure project is a public economic infrastructure project.

Specifies certain requirements that a certified organization shall satisfy in order to receive and to maintain certification. Authorizes a certified organization to impose a reasonable fee on any employer seeking an affidavit.

Specifies that an employer's retention of any amount of an employee's wage withholdings shall not affect the status of the employee for income tax purposes or for any other purpose.

Defines terms.

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

SECTION 1. Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 30.5

Employer Retention of Employee Wage Withholding

39-30.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "EMPLOYER RETENTION OF EMPLOYEE WAGE WITHHOLDING ACT".

39-30.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE

CONTEXT OTHERWISE REQUIRES:

(1) "CERTIFIED ECONOMIC MODEL" MEANS AN ECONOMIC MODEL THAT HAS BEEN CERTIFIED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION 39-30.5-105.

(2) "CERTIFIED ECONOMIC RESEARCH ORGANIZATION" MEANS AN ECONOMIC RESEARCH ORGANIZATION THAT HAS BEEN CERTIFIED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION 39-30.5-105.

(3) "EMPLOYER" MEANS A TAXPAYER THAT TRANSACTS BUSINESS IN OR DERIVES INCOME FROM SOURCES WITHIN THE STATE, HAS EMPLOYEES WHO PERFORM SERVICES FOR THE TAXPAYER, CONTROLS THE PAYMENT OF WAGES FOR THE EMPLOYEES' SERVICES, AND WITHHOLDS WAGES FOR INCOME TAX PURPOSES PURSUANT TO SECTION 39-22-604.

(4) (a) "PUBLIC ECONOMIC INFRASTRUCTURE PROJECT" MEANS AN INFRASTRUCTURE PROJECT:

(I) THAT IS FINANCED IN PART BY AN EMPLOYER THAT IS APPROVED BY BOTH THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT AND THE GOVERNING BODY OF EACH COUNTY AND MUNICIPALITY IN WHICH THE PROJECT OCCURS;

(II) FOR WHICH THE PROJECTED DIRECT BENEFIT TO THE EMPLOYER FOR THE EMPLOYER'S EXPENDITURE ON THE INFRASTRUCTURE PROJECT IS NOT MORE THAN TWENTY-FIVE PERCENT OF THE VALUE OF THE INFRASTRUCTURE PROJECT; AND

(III) FOR WHICH THE COUNTIES AND MUNICIPALITIES IN WHICH THE PROJECT OCCURS CONTRIBUTE TO THE INFRASTRUCTURE PROJECT A COMBINED TOTAL AMOUNT EQUAL TO TEN PERCENT OF THE EMPLOYER'S EXPENDITURE ON THE INFRASTRUCTURE PROJECT.

(b) "PUBLIC ECONOMIC INFRASTRUCTURE PROJECT" SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, INFRASTRUCTURE FOR PUBLIC HIGHER EDUCATION, INFRASTRUCTURE FOR PUBLIC ELEMENTARY AND SECONDARY EDUCATION, ROADS, UTILITY EXTENSIONS, WATER PROJECTS, INFRASTRUCTURE FOR MEDICAL FACILITIES, AND INFRASTRUCTURE FOR TELECOMMUNICATIONS.

(5) "STATE REVENUE GAIN" MEANS ADDITIONAL INCOME TAX, SALES AND USE TAX, OR OTHER REVENUES TO THE STATE IN AN AMOUNT THAT IS GREATER THAN THE COST TO THE STATE OF ALLOWING RETENTION OF EMPLOYEE WAGE WITHHOLDINGS PURSUANT TO THIS ARTICLE.

(6) "STRATEGIC PROJECT" MEANS A PROJECT THAT IS PROJECTED TO GENERATE A STATE REVENUE GAIN IN THE SAME FISCAL YEAR AS THE

WITHHOLDING AND FOR WHICH A CERTIFIED ECONOMIC RESEARCH ORGANIZATION HAS ISSUED AN AFFIDAVIT STATING THAT THE PROJECT WILL GENERATE A STATE REVENUE GAIN BASED ON A CERTIFIED ECONOMIC MODEL.

39-30.5-103. Employer retention of employee wage withholding - strategic projects. (1) SUBJECT TO THE PROVISIONS OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2006, ANY EMPLOYER THAT IS ENGAGED IN A STRATEGIC PROJECT IN THE STATE MAY RETAIN FIFTY PERCENT OF THE AMOUNT THAT THE EMPLOYER WITHHOLDS FROM AN EMPLOYEE'S WAGES FOR STATE INCOME TAXES PURSUANT TO SECTION 39-22-604 FOR EVERY EMPLOYEE HIRED EXCLUSIVELY FOR PURPOSES OF THE STRATEGIC PROJECT.

(2) IN ORDER TO RETAIN WAGES WITHHELD AS PERMITTED BY SUBSECTION (1) OF THIS SECTION, EACH YEAR AN EMPLOYER SHALL OBTAIN AND INCLUDE IN THE EMPLOYER'S INCOME TAX RETURN AN AFFIDAVIT ISSUED BY A CERTIFIED ECONOMIC RESEARCH ORGANIZATION. THE AFFIDAVIT SHALL VERIFY THAT THE PROJECT FOR WHICH THE EMPLOYER RETAINS A PERCENTAGE OF WAGES WITHHELD IS A STRATEGIC PROJECT.

39-30.5-104. Employer retention of employee wage withholding - public economic infrastructure project. (1) SUBJECT TO THE PROVISIONS OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2006, ANY EMPLOYER THAT IS PERMITTED TO RETAIN WAGES WITHHELD AS PERMITTED BY SECTION 39-30.5-103 MAY RETAIN THE REMAINDER OF THE WAGES WITHHELD FROM THE SAME EMPLOYEES, SO LONG AS FIFTY PERCENT OF THE AMOUNT WITHHELD IS EXPENDED BY THE EMPLOYER ON A PUBLIC ECONOMIC INFRASTRUCTURE PROJECT.

(2) IN ORDER TO RETAIN WAGES WITHHELD AS PERMITTED BY SUBSECTION (1) OF THIS SECTION AND TO USE FIFTY PERCENT OF SUCH AMOUNT ON A PUBLIC ECONOMIC INFRASTRUCTURE PROJECT, EACH YEAR AN EMPLOYER SHALL OBTAIN AND INCLUDE IN THE EMPLOYER'S INCOME TAX RETURN AN AFFIDAVIT ISSUED BY A CERTIFIED ECONOMIC RESEARCH ORGANIZATION. THE AFFIDAVIT SHALL VERIFY THAT THE INFRASTRUCTURE PROJECT FOR WHICH THE EMPLOYER RETAINS WAGES WITHHELD IS A PUBLIC ECONOMIC INFRASTRUCTURE PROJECT. THE AFFIDAVIT SHALL INCLUDE VERIFICATION FROM THE COUNTIES AND MUNICIPALITIES IN WHICH THE PROJECT OCCURS THAT THE COUNTIES AND MUNICIPALITIES WILL CONTRIBUTE A COMBINED TOTAL AMOUNT TO THE INFRASTRUCTURE PROJECT EQUAL TO TEN PERCENT OF THE EMPLOYER'S EXPENDITURE FOR THE INFRASTRUCTURE PROJECT. THE

TAXPAYER SHALL OBTAIN SUCH AFFIDAVIT IN ADDITION TO THE AFFIDAVIT REQUIRED TO VERIFY THAT THE PROJECT FOR WHICH THE EMPLOYER RETAINS WAGES WITHHELD IS A STRATEGIC PROJECT.

39-30.5-105. Certification of economic research organizations - issuance of affidavit. (1) THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL BE RESPONSIBLE FOR CERTIFYING THE FOLLOWING:

(a) ECONOMIC RESEARCH ORGANIZATIONS AS SUITABLE TO DETERMINE WHETHER A PROJECT IS A STRATEGIC PROJECT AND TO ISSUE AFFIDAVITS TO THAT EXTENT FOR PURPOSES OF SECTION 39-30.5-103;

(b) ECONOMIC RESEARCH ORGANIZATIONS AS SUITABLE TO DETERMINE WHETHER AN INFRASTRUCTURE PROJECT IS A PUBLIC ECONOMIC INFRASTRUCTURE PROJECT FOR PURPOSES OF SECTION 39-30.5-104; AND

(c) ECONOMIC MODELS AS SUITABLE FOR USE BY AN ECONOMIC RESEARCH ORGANIZATION.

(2) ANY ECONOMIC RESEARCH ORGANIZATION MAY APPLY TO THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT TO BE CERTIFIED TO ISSUE AFFIDAVITS PURSUANT TO THIS SECTION. THE OFFICE SHALL HAVE THE DISCRETION TO CERTIFY ANY ORGANIZATION THAT APPLIES FOR CERTIFICATION PURSUANT TO THIS SECTION AND THAT SATISFIES THE FOLLOWING REQUIREMENTS:

(a) THE ORGANIZATION SHALL BE ONE OF THE FOLLOWING, AS DETERMINED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT:

(I) A PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION THAT IS ENGAGED IN SUBSTANTIAL ECONOMIC RESEARCH ACTIVITY INDEPENDENT OF ANY ECONOMIC RESEARCH IN CONNECTION WITH THE REQUIREMENTS OF THIS SECTION; OR

(II) A PRIVATE ECONOMIC RESEARCH ORGANIZATION THAT DEMONSTRATES COMPETENCE, INTEGRITY, AND THE EXPERIENCE NECESSARY TO PERFORM THE ANALYSIS REQUIRED TO DETERMINE WHETHER A PROJECT IS A STRATEGIC PROJECT FOR PURPOSES OF SECTION 39-30.5-103 AND TO DETERMINE WHETHER AN INFRASTRUCTURE PROJECT IS A PUBLIC ECONOMIC INFRASTRUCTURE PROJECT FOR PURPOSES OF SECTION 39-30.5-104.

(b) THE ORGANIZATION SHALL USE AN ECONOMIC MODEL THAT HAS BEEN CERTIFIED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT.

(3) A CERTIFIED ECONOMIC RESEARCH ORGANIZATION SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS IN ORDER TO MAINTAIN CERTIFICATION:

(a) THE ORGANIZATION SHALL PUBLISH FOR PUBLIC REVIEW THE

ECONOMIC MODEL AND ANY OTHER CRITERIA AND METHODOLOGY USED TO DETERMINE WHETHER A PROJECT IS A STRATEGIC PROJECT OR, IF APPLICABLE, THE ECONOMIC MODEL AND ANY OTHER CRITERIA AND METHODOLOGY USED TO DETERMINE WHETHER AN INFRASTRUCTURE PROJECT IS A PUBLIC ECONOMIC INFRASTRUCTURE PROJECT.

(b) THE ORGANIZATION SHALL APPLY GENERALLY ACCEPTED ECONOMIC IMPACT ANALYSIS METHODOLOGY IN MAKING ITS DETERMINATIONS PURSUANT TO THIS ARTICLE.

(c) THE ORGANIZATION SHALL PROVIDE ITS CERTIFICATION ANALYSIS AND RESULTS TO THE STATE AUDITOR UPON REQUEST FROM THE AUDITOR.

(4) ANY EMPLOYER THAT RETAINS WAGES WITHHELD PURSUANT TO THIS ARTICLE SHALL OBTAIN THE REQUIRED AFFIDAVIT FROM ONE OF THE CERTIFIED ECONOMIC RESEARCH ORGANIZATIONS. THE ORGANIZATIONS MAY IMPOSE A REASONABLE FEE ON ANY EMPLOYER SEEKING AN AFFIDAVIT PURSUANT TO THIS SECTION.

39-30.5-106. Employees held harmless. AN EMPLOYER'S RETENTION OF ANY AMOUNT OF AN EMPLOYEE'S WAGE WITHHOLDINGS PURSUANT TO THIS ARTICLE SHALL NOT AFFECT THE STATUS OF THE EMPLOYEE FOR INCOME TAX PURPOSES OR FOR ANY OTHER PURPOSE. THE EMPLOYEE SHALL BE HELD HARMLESS BY THE STATE AND SHALL BE TREATED AS IF THE EMPLOYER HAD NOT RETAINED ANY PERCENTAGE OF THE EMPLOYEE'S WAGE WITHHOLDINGS.

39-30.5-107. Repeal of article. THIS ARTICLE IS REPEALED, EFFECTIVE JUNE 30, 2012, UNLESS IT IS CONTINUED OR REESTABLISHED BY THE GENERAL ASSEMBLY ACTING BY BILL PRIOR TO SAID DATE.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Bill F

HOUSE SPONSORSHIP

Lamborn, and Cairns

SENATE SPONSORSHIP

May M., and McCluskey

A BILL FOR AN ACT

CONCERNING AN EXEMPTION FROM PROPERTY TAX FOR BUSINESS PERSONAL PROPERTY THAT HAS FULLY DEPRECIATED.

Bill Summary

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

Interim Committee on Stimulating Economic Development Through Business Personal Property Tax Exemptions and Other Methods. Exempts from property tax business personal property that is acquired by a business during a property tax year commencing on or after January 1, 2005, and that has fully depreciated.

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

SECTION 1. Part 1 of article 3 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-3-118.7. Business personal property - fully depreciated - exemption. BUSINESS PERSONAL PROPERTY THAT IS ACQUIRED BY A BUSINESS DURING A PROPERTY TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2005, AND THAT HAS FULLY DEPRECIATED ACCORDING TO THE MANUALS, APPRAISAL PROCEDURES, AND INSTRUCTIONS PREPARED AND PUBLISHED BY THE PROPERTY TAX ADMINISTRATOR PURSUANT TO SECTION 39-2-109 (1) (e) SHALL BE EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.