

CHAPTER 211

TAXATION

SENATE BILL 16-203

BY SENATOR(S) Lambert, Grantham, Steadman, Kefalas;
 also REPRESENTATIVE(S) Hamner and Rankin, Young, Arndt, Becker K., Court, Duran, Fields, Foote, Klingenschmitt,
 Kraft-Tharp, Lebsack, Lee, Lontine, Mitsch Bush, Pabon, Pettersen, Roupe, Ryden, Saine, Singer, Tyler, Winter, Hullinghorst.

AN ACT

**CONCERNING THE EVALUATION OF STATE TAX EXPENDITURES, AND, IN CONNECTION THEREWITH,
 MAKING AN APPROPRIATION.**

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

SECTION 1. In Colorado Revised Statutes, 39-21-301, **add** (3) as follows:

39-21-301. Legislative declaration. (3) THE GENERAL ASSEMBLY MUST SPEND ITS RESOURCES WISELY AND IT IS BENEFICIAL TO THE STATE TO KNOW WHETHER THE TAX EXPENDITURES THAT ARE IN PLACE ARE ACCOMPLISHING THE GOALS THEY WERE INTENDED TO MEET. IN ENACTING SECTION 39-21-305, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE AUDITOR'S EVALUATION WILL PROVIDE THE STATE WITH FACTUAL EVIDENCE OF WHETHER THE STATE'S TAX EXPENDITURES ACHIEVE THE OBJECTIVES THEY ARE INTENDED TO ACHIEVE, INCLUDING ECONOMIC DEVELOPMENT, ASSISTING BENEFICIARIES, AND PROMOTING THE HEALTH, SAFETY, AND WELFARE OF THE PUBLIC, INCLUDING THE BUSINESS ENVIRONMENT. ADDITIONALLY, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE AUDITOR'S EVALUATION:

- (a) COMPARES THE STATE'S TAX EXPENDITURES WITH OTHER STATE'S TAX EXPENDITURES;
- (b) COMPARES THE EFFECT OF THE STATE'S TAX EXPENDITURES ON COMPETITION;
- (c) MEASURES THE EFFECT OF THE STATE'S TAX EXPENDITURES ON BUSINESS AND STAKEHOLDER NEEDS;
- (d) DETERMINES WHETHER THE STATE'S TAX EXPENDITURES ARE ADMINISTERED

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

EFFICIENTLY AND TRANSPARENTLY WITH DEFINED PERFORMANCE MEASURES THAT SUPPORT ACCOUNTABILITY; AND

(e) ANALYZES HOW THE STATE'S TAX EXPENDITURES SERVE THE PUBLIC'S INTERESTS BY PROTECTING TAXPAYER DOLLARS AND HOW THE STATE'S TAX EXPENDITURES ENSURE COST-EFFECTIVENESS.

SECTION 2. In Colorado Revised Statutes, 39-21-302, **add** (1.3) and (1.5) as follows:

39-21-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1.3) "EVALUATION REPORT" MEANS THE EVALUATION REPORT THAT THE STATE AUDITOR IS REQUIRED TO PREPARE PURSUANT TO SECTION 39-21-305.

(1.5) "STATE AUDITOR" MEANS THE STATE AUDITOR DESCRIBED IN SECTION 2-3-102, C.R.S.

SECTION 3. In Colorado Revised Statutes, **add** 39-21-305 as follows:

39-21-305. Tax expenditure - state auditor evaluation. (1) (a) THE STATE AUDITOR SHALL EVALUATE THE STATE'S TAX EXPENDITURES PURSUANT TO THE REQUIREMENTS IN THIS SECTION. IN EVALUATING EACH TAX EXPENDITURE, THE STATE AUDITOR SHALL CONSULT WITH THE INTENDED BENEFICIARIES OR REPRESENTATIVES OF THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE. IN ADDITION, IF THE TAX EXPENDITURE IS INTENDED TO BENEFIT A SPECIFIC GEOGRAPHIC REGION OF THE STATE, THE STATE AUDITOR SHALL CONSULT WITH THE INTENDED BENEFICIARIES IN THAT SPECIFIC GEOGRAPHIC REGION OF THE STATE.

(b) THE STATE AUDITOR'S TAX EXPENDITURE EVALUATION MUST INCLUDE THE FOLLOWING:

(I) A SUMMARY DESCRIPTION OF THE PURPOSE, INTENT, OR GOAL OF THE TAX EXPENDITURE;

(II) THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE;

(III) WHETHER THE TAX EXPENDITURE IS ACCOMPLISHING ITS PURPOSE, INTENT, OR GOAL;

(IV) AN EXPLANATION OF THE INTENDED ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE, WITH ANALYSES TO SUPPORT THE EVALUATION IF THEY ARE AVAILABLE OR REASONABLY POSSIBLE;

(V) A COMPARISON OF THE TAX EXPENDITURE TO OTHER SIMILAR TAX EXPENDITURES IN OTHER STATES;

(VI) WHETHER THERE ARE OTHER TAX EXPENDITURES, FEDERAL OR STATE SPENDING, OR OTHER GOVERNMENT, NONPROFIT, COMMERCIAL, VOLUNTEER, OR PHILANTHROPIC PROGRAMS, TO THE EXTENT THE INFORMATION IS READILY

AVAILABLE, THAT HAVE THE SAME OR SIMILAR PURPOSE, INTENT, OR GOAL AS THE TAX EXPENDITURE, HOW THOSE ALL ARE COORDINATED, AND IF COORDINATION COULD BE IMPROVED, OR WHETHER ANY REDUNDANCIES CAN BE ELIMINATED;

(VII) IF THE EVALUATION OF A PARTICULAR TAX EXPENDITURE'S ECONOMIC IMPACT IS MADE DIFFICULT BECAUSE OF DATA CONSTRAINTS, ANY SUGGESTIONS FOR CHANGES IN ADMINISTRATION OR LAW THAT WOULD FACILITATE SUCH DATA COLLECTION; AND

(VIII) AN EXPLANATION OF THE PERFORMANCE MEASURES USED TO DETERMINE THE EXTENT TO WHICH THE TAX EXPENDITURE IS ACCOMPLISHING ITS PURPOSE, INTENT, OR GOAL. THE PERFORMANCE MEASURES MUST BE CLEAR AND RELEVANT TO THE SPECIFIC TAX EXPENDITURE BEING EVALUATED, SHOULD BE MEASURABLE AND TRACK ACTIONABLE GOALS, AND CAN BE ASSESSABLE AND REPORTABLE OVER TIME. THE STATE AUDITOR SHALL CONSIDER THE ORIGINAL LEGISLATIVE INTENT AS WELL AS SUBSEQUENT DEVELOPMENTS IN THE STATE'S ECONOMY, THE NATIONAL ECONOMY, AND ANY CHANGES IN NATIONAL, STATE, OR LOCAL FISCAL POLICIES AND CONDITIONS.

(c) TO THE EXTENT IT CAN BE DETERMINED BY THE STATE AUDITOR, THE TAX EXPENDITURE EVALUATION SHOULD ALSO INCLUDE THE FOLLOWING:

(I) THE EXTENT TO WHICH THE TAX EXPENDITURE IS A COST-EFFECTIVE USE OF RESOURCES COMPARED TO OTHER OPTIONS FOR USING THE SAME RESOURCES TO ADDRESS THE SAME PURPOSE, INTENT, OR GOAL;

(II) AN ANALYSIS OF THE TAX EXPENDITURE'S EFFECT ON COMPETITION AND ON BUSINESS AND STAKEHOLDER NEEDS;

(III) WHETHER THERE ARE ANY OPPORTUNITIES TO IMPROVE THE EFFECTIVENESS OF THE TAX EXPENDITURE IN MEETING ITS PURPOSE, INTENT, OR GOAL; AND

(IV) AN ANALYSIS OF THE EFFECT OF THE STATE TAX POLICIES CONNECTED TO LOCAL TAXING JURISDICTIONS ON THE OVERALL PURPOSE, INTENT, OR GOAL OF THE TAX EXPENDITURE.

(d) NO LATER THAN SEPTEMBER 15, 2017, THE STATE AUDITOR SHALL DEVELOP AND PUBLISH A MULTI-YEAR SCHEDULE THAT LISTS ALL TAX EXPENDITURES IN LAW AS OF JULY 1, 2017, AND INDICATES THE YEAR WHEN THE EVALUATION REPORT WILL BE PUBLISHED FOR EACH TAX EXPENDITURE. IN DEVELOPING THE MULTI-YEAR SCHEDULE THE STATE AUDITOR SHALL ENDEAVOR TO REVIEW THE OLDEST TAX EXPENDITURES FIRST AND SHALL ENDEAVOR TO REVIEW A TAX EXPENDITURE WITH A STATUTORY REPEAL DATE SO THAT THE EVALUATION REPORT FOR SUCH TAX EXPENDITURE IS AVAILABLE DURING THE LEGISLATIVE SESSION HELD IN THE CALENDAR YEAR BEFORE THE TAX EXPENDITURE IS SCHEDULED TO REPEAL. THE STATE AUDITOR MAY REVISE THE SCHEDULE SO LONG AS THE STATE AUDITOR CONTINUES TO PROVIDE FOR A SYSTEMATIC EVALUATION OF ALL TAX EXPENDITURES, INCLUDING ANY NEW TAX EXPENDITURES ENACTED BY THE GENERAL ASSEMBLY SINCE THE PUBLICATION OF A PREVIOUS EVALUATION REPORT, AND SO LONG AS EACH TAX EXPENDITURE IS REVIEWED AT LEAST ONCE EVERY FIVE YEARS.

(e) NOTWITHSTANDING SECTION 2-3-103 (2), C.R.S., THE STATE AUDITOR SHALL PRESENT THE RESULTS IN THE FORM OF AN EVALUATION REPORT THAT THE STATE AUDITOR SHALL ENSURE IS POSTED ON THE GENERAL ASSEMBLY'S WEBSITE, AND, NOTWITHSTANDING SECTION 24-1-136 (9), C.R.S., THE STATE AUDITOR SHALL DELIVER A COPY OF THE REPORT TO THE JOINT BUDGET COMMITTEE AND THE FINANCE COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES. THE STATE AUDITOR SHALL ENSURE THE FIRST EVALUATION REPORT IS DELIVERED AND POSTED NO LATER THAN SEPTEMBER 14, 2018, AND SHALL ENSURE SUBSEQUENT EVALUATION REPORTS ARE DELIVERED AND POSTED NO LATER THAN SEPTEMBER 15 OF EACH YEAR THEREAFTER.

(2) (a) ANY RECORDS, INFORMATION, OR DOCUMENTATION GENERATED PURSUANT TO THIS SECTION ARE WORK PAPERS OF THE STATE AUDITOR AND SHALL BE OPEN TO PUBLIC INSPECTION ONLY UPON APPROVAL OF A MAJORITY OF MEMBERS OF THE LEGISLATIVE AUDIT COMMITTEE CREATED IN SECTION 2-3-101, C.R.S. ONLY THE SPECIFIC WORK PAPERS THAT THE LEGISLATIVE AUDIT COMMITTEE VOTES TO APPROVE FOR DISCLOSURE SHALL BE OPEN TO PUBLIC INSPECTION. WORK PAPERS THAT HAVE NOT BEEN SPECIFICALLY APPROVED FOR DISCLOSURE BY A MAJORITY VOTE OF THE LEGISLATIVE AUDIT COMMITTEE SHALL REMAIN CONFIDENTIAL. UNDER NO CIRCUMSTANCES SHALL THE WORK PAPERS BE OPEN TO PUBLIC INSPECTION PRIOR TO A COMPLETED REPORT BEING POSTED AS SPECIFIED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

(b) THE DEPARTMENT OF REVENUE MUST PROVIDE ANY REQUESTED INFORMATION, ANALYSIS, OR DATA, IF AVAILABLE AND UNDER THE CONTROL OF THE DEPARTMENT, AS REQUESTED BY THE STATE AUDITOR; EXCEPT THAT, IF THE REQUEST INCLUDES CONFIDENTIAL INFORMATION, SUCH INFORMATION MUST REMAIN CONFIDENTIAL IN THE HANDS OF THE STATE AUDITOR, AND THE STATE AUDITOR IS SUBJECT TO THE SAME LIMITATIONS SPECIFIED IN SECTION 39-21-113.

(c) THE STATE AUDITOR'S AUTHORITY SET FORTH IN SECTION 2-3-107, C.R.S., APPLIES TO THE STATE AUDITOR'S EVALUATION SET FORTH IN THIS SECTION.

SECTION 4. Appropriation. For the 2016-17 state fiscal year, \$212,149 is appropriated to the legislative department for use by the office of the state auditor. This appropriation is from the general fund and is based on an assumption that the office will require an additional 2.7 FTE. To implement this act, the office may use this appropriation for evaluating and reporting on state tax expenditures.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 6, 2016