

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0538.01 Ed DeCecco x4216

HOUSE BILL 19-1245

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AN INCREASE IN AFFORDABLE HOUSING FUNDING FROM**
102 **INCREASED STATE SALES TAX REVENUE THAT RESULTS FROM A**
103 **MODIFICATION TO THE STATE SALES TAX VENDOR FEE, AND, IN**
104 **CONNECTION THEREWITH, ENACTING THE "AFFORDABLE**
105 **HOUSING ACT OF 2019" AND MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The state treasurer is required to credit an amount equal to the increase in sales taxes attributable to the vendor fee changes that result

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

from the bill to the housing development grant fund, which the division of housing in the department of local affairs (division) uses to make grants and loans to improve, preserve, or expand the supply of affordable housing in the state. The division is required to annually award at least 1/3 of this money for affordable housing projects for households whose annual income is less than or equal to 30% of the area median income.

The increase in sales taxes attributable to the vendor fee changes that result from the bill are excluded from the definition of "state sales tax increment revenue" for purposes of the "Colorado Regional Tourism Act" so that the increase is payable to the state and not an applicable financing entity.

A retailer who collects state sales tax is currently allowed to retain 3 1/3% of the state sales taxes collected as compensation for the retailer's expenses incurred in collecting and remitting the tax (vendor fee). Beginning January 1, 2020, the bill increases the vendor fee to 4% and establishes a \$1,000 monthly cap on the vendor fee. This limit applies regardless of the number of the retailer's locations. A vendor with multiple locations is required to register all locations under one account with the department of revenue. The changes to the state vendor fee do not apply to a local government that imposes a sales tax and permits a vendor fee that is based on the state's vendor fee.

The sales and use tax revenue that is deposited in the housing development grant fund for the state fiscal year 2019-20 is reduced by a specified amount to cover the department of revenue's expenses to make the IT changes necessary to implement the bill, which results in a corresponding increase in the general fund. In turn, this amount is appropriated from the general fund to the department of revenue for this purpose.

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

2 **SECTION 1. Short title.** The short title of this act is the
3 "Affordable Housing Act of 2019".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 hereby finds and declares that:

6 (a) According to a 2017 centennial state survey by Colorado
7 Mesa university, "Coloradans rank housing and real estate as the number
8 one problem facing their communities today.";

9 (b) Metro area rents and home prices have increased nearly fifty

1 percent since 2011 and nonmetro area home prices have increased
2 twenty-eight percent, while wages have increased only eleven percent
3 during this time;

4 (c) Fifty percent of Colorado rental households statewide are
5 cost-burdened, spending thirty percent or more of total household income
6 on housing;

7 (d) Home prices in Colorado have increased three hundred
8 sixty-six percent since 1991, which is more than any other state,
9 according to the federal housing finance agency;

10 (e) The Colorado association of REALTORS affordability index
11 reached its lowest level ever in November 2018;

12 (f) Independent analysis of Colorado demographic data projects
13 a deficit of over twenty thousand housing units until at least 2025;

14 (g) Among all states that allow retailers to retain a vendor fee,
15 Colorado is among a minority of such states that do not impose an upper
16 limit on the amount of the vendor fee allowance;

17 (h) The purpose of the state sales tax vendor fee is to assist
18 Colorado retailers in complying with the obligation to collect and remit
19 sales tax, but fewer than two percent of all retailers retain nearly
20 two-thirds of all vendor fees retained, an amount exceeding fifty million
21 dollars annually; and

22 (i) By aligning state sales tax vendor fee policy with national
23 norms, Colorado can increase funding for affordable housing without
24 raising taxes.

25 **SECTION 3.** In Colorado Revised Statutes, 24-32-721, **amend**
26 (1) and (2)(a) as follows:

27 **24-32-721. Colorado affordable housing construction grants**

1 **and loans - housing development grant fund - creation - housing**
2 **assistance for a person with a behavioral or mental health disorder**
3 **in the criminal or juvenile justice system - cash fund - definition.**

4 (1) There is hereby created in the state treasury the housing development
5 grant fund, which fund ~~shall be~~ IS administered by the division and is
6 referred to in this section as the "fund". The fund ~~shall consist~~ CONSISTS
7 of ~~moneys~~ MONEY CREDITED TO THE FUND IN ACCORDANCE WITH SECTION
8 39-26-123 (3)(b); MONEY appropriated to the ~~Colorado affordable~~
9 ~~housing construction grants and loan~~ fund by the general assembly; all
10 ~~moneys~~ MONEY collected by the division for purposes of this section from
11 federal grants, from other contributions, gifts, grants, and donations
12 received from any other organization, entity, or individual, public or
13 private; and from any fees or interest earned on such ~~moneys~~ MONEY. The
14 division is hereby authorized and directed to solicit, accept, expend, and
15 disburse all ~~moneys~~ MONEY collected for the fund from the sources
16 specified in this subsection (1) for the purpose of making grants or loans
17 and for program administration as provided in this section. All such
18 ~~moneys~~ MONEY shall be transmitted to the state treasurer to be credited to
19 the fund. The ~~moneys~~ MONEY in the fund ~~are hereby~~ IS continuously
20 appropriated to the division for the purposes of this section. The ~~moneys~~
21 MONEY in the fund may be expended for the purpose of funding activities
22 initiated during the current state fiscal year that are to be completed in
23 subsequent state fiscal years.

24 (2) (a) Subject to the requirements of this section, upon the
25 approval of the board, the division may make a grant or loan from ~~moneys~~
26 MONEY in the fund to improve, preserve, or expand the supply of
27 affordable housing in Colorado as well as to fund the acquisition of

1 housing and economic data necessary to advise the board on local housing
2 conditions. In making loans ~~of moneys~~ or grants from the fund, the
3 division shall give priority to owners of property that was either destroyed
4 or incurred substantial damage as a result of one or more state or federally
5 declared natural disasters where the property owner has received the
6 maximum insurance proceeds and public disaster assistance. THE
7 DIVISION SHALL ANNUALLY AWARD, WITH OR WITHOUT BOARD APPROVAL,
8 AT LEAST ONE-THIRD OF THE MONEY CREDITED TO THE FUND IN
9 ACCORDANCE WITH SECTION 39-26-123 (3)(b) TO IMPROVE, PRESERVE, OR
10 EXPAND AFFORDABLE HOUSING PROJECTS FOR HOUSEHOLDS WHOSE
11 ANNUAL INCOME IS LESS THAN OR EQUAL TO THIRTY PERCENT OF THE
12 AREA MEDIAN INCOME, AS PUBLISHED ANNUALLY BY THE UNITED STATES
13 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

14 **SECTION 4.** In Colorado Revised Statutes, 24-46-303, **amend**
15 (12) as follows:

16 **24-46-303. Definitions.** As used in this part 3, unless the context
17 otherwise requires:

18 (12) "State sales tax increment revenue" means the portion of the
19 revenue derived from state sales taxes, including any revenue attributable
20 to the baseline growth rate and not including any sales taxes for remote
21 sales as specified in section 39-26-104 (2), ~~C.R.S.~~, collected within a
22 designated regional tourism zone in excess of the amount of base year
23 revenue. "STATE SALES TAX INCREMENT REVENUE" DOES NOT INCLUDE
24 ANY ADDITIONAL REVENUE DERIVED FROM STATE SALES TAXES THAT ARE
25 DUE TO THE CHANGES SET FORTH IN SECTION 39-26-105 (1)(d), ENACTED
26 IN 2019, TO THE AMOUNT RETAINED BY A VENDOR TO COVER THE
27 VENDOR'S EXPENSES IN COLLECTING AND REMITTING SALES TAX.

1 **SECTION 5.** In Colorado Revised Statutes, 39-26-105, **amend**
2 (1)(c) and (5)(c); and **add** (1)(d) as follows:

3 **39-26-105. Vendor liable for tax - repeal - definitions.**

4 (1) (c) (I) (A) Except as provided in ~~sub-subparagraph (B) of this~~
5 ~~subparagraph (I)~~ SUBSECTION (1)(c)(I)(B) OF THIS SECTION, every retailer
6 shall remit, along with the return required in ~~paragraph (b) of this~~
7 ~~subsection (I)~~ SUBSECTION (1)(b) OF THIS SECTION, an amount equivalent
8 to the percentage on sales as specified in ~~subparagraph (I) of paragraph~~
9 ~~(a) of this subsection (I)~~ SUBSECTION (1)(a)(I) OF THIS SECTION to the
10 executive director of the department of revenue, less an amount as set
11 forth in ~~subparagraph (H) of this paragraph (c)~~ SUBSECTION (1)(c)(II) OR
12 (1)(d) OF THIS SECTION to cover the retailer's expense in the collection and
13 remittance of said tax.

14 (B) Every remote seller shall remit, along with the return required
15 in ~~paragraph (b) of this subsection (I)~~ SUBSECTION (1)(b) OF THIS
16 SECTION, the amounts specified in section 39-26-104 (2)(a), less an
17 amount as set forth in ~~subparagraph (H) of this paragraph (c)~~ SUBSECTION
18 (1)(c)(II) OR (1)(d) OF THIS SECTION to cover the retailer's expense in the
19 collection and remittance of said tax.

20 ~~(H) Except as provided in section 39-26-105.3 (8)(b)(H):~~

21 (II) (A) Except as provided in ~~sub-subparagraph (B)~~ SUBSECTION
22 (1)(c)(II)(B) OF THIS SECTION, FOR SALES MADE PRIOR TO JANUARY 1,
23 2020, the amount retained by a retailer to cover the retailer's expense in
24 collecting and remitting tax pursuant to this section ~~shall be~~ IS three and
25 one-third percent of all sales tax reported.

26 (B) For a twelve-month period commencing upon the first day of
27 the third month following the effective date of any act of congress

1 authorizing states to require certain retailers to pay, collect, or remit state
2 or local sales tax, the percentage of all sales tax reported as specified in
3 ~~sub-subparagraph (A) of this subparagraph (H) shall be~~ SUBSECTION
4 (1)(c)(II)(A) OR (1)(d) OF THIS SECTION IS reduced by one hundred five
5 one-thousandths percentage points.

6 (III) If any retailer is delinquent in remitting said tax, other than
7 in unusual circumstances shown to the satisfaction of the executive
8 director of the department of revenue, the retailer shall not be allowed to
9 retain any amounts UNDER THIS SUBSECTION (1)(c) OR SUBSECTION (1)(d)
10 OF THIS SECTION to cover such retailer's expense in collecting and
11 remitting said tax, and an amount equivalent to the said percentage, plus
12 the amount of any local vendor expense that may be allowed by the local
13 government to the vendor, shall be remitted to the executive director by
14 any such delinquent vendor. Any local vendor expense remitted to the
15 executive director shall be deposited to the state general fund.

16 (d) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(c)(II)(B) OF THIS
17 SECTION, FOR SALES MADE ON OR AFTER JANUARY 1, 2020, THE AMOUNT
18 RETAINED BY A RETAILER TO COVER THE RETAILER'S EXPENSE IN
19 COLLECTING AND REMITTING TAX IN ACCORDANCE WITH THIS SECTION IS
20 FOUR PERCENT OF THE TAX REPORTED; EXCEPT THAT A RETAILER SHALL
21 NOT RETAIN MORE THAN ONE THOUSAND DOLLARS IN ANY MONTH.

22 (II) A RETAILER WITH MULTIPLE LOCATIONS IS TREATED AS A
23 SINGLE RETAILER FOR PURPOSES OF THIS SUBSECTION (1)(d) AND IS
24 REQUIRED TO REGISTER ALL LOCATIONS UNDER ONE ACCOUNT WITH THE
25 DEPARTMENT OF REVENUE.

26 (III) IF A RETAILER IS PERMITTED TO RETAIN AN AMOUNT TO COVER
27 THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING LOCAL SALES

1 TAX THAT IS THE SAME AMOUNT AS PERMITTED BY THE STATE UNDER THIS
2 SECTION, THEN SUCH AMOUNT IS THE AMOUNT THAT WAS PERMITTED AS
3 OF DECEMBER 31, 2019, UNLESS MODIFIED AS PROVIDED IN SUBSECTION
4 (1)(c)(II)(B) OF THIS SECTION.

5 (5) (c) From the amount of the tax required to be remitted
6 pursuant to ~~paragraph (a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS
7 SECTION, a qualified purchaser shall be entitled to retain the amount
8 specified in ~~subparagraph (H) of paragraph (c) of subsection (1)~~
9 SUBSECTION (1)(c)(II) OR (1)(d) of this section that a retailer would
10 otherwise be entitled to retain to cover the retailer's expense in collecting
11 and remitting the tax imposed by this ~~article~~ ARTICLE 26 if the qualified
12 purchaser had not provided a direct payment permit number to the
13 retailer.

14 **SECTION 6.** In Colorado Revised Statutes, 39-26-123, **amend**
15 (1)(a) and (3); and **add** (1)(a.7) and (3.2) as follows:

16 **39-26-123. Receipts - disposition - transfers of general fund**
17 **surplus - sales tax holding fund - creation - definitions - repeal.**

18 (1) As used in this section, unless the context otherwise requires:

19 (a) ~~"Net revenue" means the gross amount of sales and use tax~~
20 ~~receipts collected under the provisions of this article, less a fee retained~~
21 ~~by vendors for the collection and remittance of the tax pursuant to section~~
22 ~~39-26-105 (1) and less refunds and adjustments made by the department~~
23 ~~of revenue in conjunction with its collection and enforcement duties~~
24 ~~under this article~~ "INCREASE IN SALES AND USE TAX REVENUE
25 ATTRIBUTABLE TO THE VENDOR FEE CHANGES" MEANS AN AMOUNT EQUAL
26 TO THE NET REVENUE FOR A FISCAL YEAR MINUS WHAT THE NET REVENUE
27 WOULD HAVE BEEN FOR THE FISCAL YEAR IF THE AMOUNT RETAINED BY A

1 VENDOR TO COVER THE VENDOR'S EXPENSES IN COLLECTING AND
2 REMITTING SALES TAX HAD NOT BEEN MODIFIED BY HOUSE BILL 19-___,
3 ENACTED IN 2019.

4 (a.7) "NET REVENUE" MEANS THE GROSS AMOUNT OF SALES AND
5 USE TAX RECEIPTS COLLECTED UNDER THIS ARTICLE 26, LESS A FEE
6 RETAINED BY VENDORS FOR THE COLLECTION AND REMITTANCE OF THE
7 TAX PURSUANT TO SECTION 39-26-105 (1) AND LESS REFUNDS AND
8 ADJUSTMENTS MADE BY THE DEPARTMENT OF REVENUE IN CONJUNCTION
9 WITH ITS COLLECTION AND ENFORCEMENT DUTIES UNDER THIS ARTICLE 26.

10 (3) For any state fiscal year commencing on or after July 1, 2013,
11 the state treasurer shall credit eighty-five percent of all net revenue
12 collected under ~~the provisions of this article~~ ARTICLE 26 to the old age
13 pension fund created in section 1 of article XXIV of the state constitution.
14 The state treasurer shall credit to the general fund the remaining fifteen
15 percent of the net revenue, less:

16 (a) Ten million dollars, which the state treasurer shall credit to the
17 older Coloradans cash fund created in section 26-11-205.5 (5); ~~C.R.S.~~;
18 AND

19 (b) AN AMOUNT EQUAL TO THE INCREASE IN SALES AND USE TAX
20 REVENUE ATTRIBUTABLE TO THE VENDOR FEE CHANGES, WHICH THE STATE
21 TREASURER SHALL CREDIT TO THE HOUSING DEVELOPMENT GRANT FUND
22 CREATED IN SECTION 24-32-721 (1).

23 (3.2) (a) THE AMOUNT THE STATE TREASURER IS REQUIRED TO
24 TRANSFER FOR THE STATE FISCAL YEAR 2019-20 TO THE HOUSING
25 DEVELOPMENT GRANT FUND CREATED IN SECTION 24-32-721 (1) IN
26 ACCORDANCE WITH SUBSECTION (3)(b) OF THIS SECTION IS REDUCED BY
27 ONE MILLION DOLLARS.

1 (b) THIS SUBSECTION (3.2) IS REPEALED, EFFECTIVE JULY 1, 2021.

2 **SECTION 7. Appropriation.** For the 2019-20 state fiscal year,
3 \$1,000,000 is appropriated to the department of revenue. This
4 appropriation is from the general fund. To implement this act, the
5 department may use this appropriation for tax administration IT system
6 (GenTax) support.

7 **SECTION 8. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part will not take effect
14 unless approved by the people at the general election to be held in
15 November 2020 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.