

CHAPTER 199

GOVERNMENT - LOCAL

HOUSE BILL 19-1245

BY REPRESENTATIVE(S) Weissman, Arndt, Buckner, Caraveo, Duran, Exum, Galindo, Garnett, Gonzales-Gutierrez, Herod, Jackson, Jaquez Lewis, Kennedy, McCluskie, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Tipper, Bird, Buentello, Cutter, Hooton, Kipp, Titone, Valdez A., Becker;
also SENATOR(S) Gonzales and Foote, Crowder, Ginal, Lee, Moreno, Pettersen, Story, Winter.

AN ACT

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

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

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

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

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

(b) Metro area rents and home prices have increased nearly fifty percent since 2011 and nonmetro area home prices have increased twenty-eight percent, while wages have increased only eleven percent during this time;

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

(d) During the 2017-18 school year, the department of education counted over twenty-four thousand children in Colorado's public schools that at some point during the year were homeless-either unsheltered or living in shelters, motels, or

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

cars-due to economic hardship, domestic violence, or other familial instability;

(e) In both 2017 and 2018, Colorado had at least one thousand homeless veterans, according to the annual homeless assessment report to congress;

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

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

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

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

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

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

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

24-32-721. Colorado affordable housing construction grants and loans - housing development grant fund - creation - housing assistance for a person with a behavioral or mental health disorder in the criminal or juvenile justice system - cash fund - definition. (1) There is hereby created in the state treasury the housing development grant fund, which fund ~~shall be~~ is administered by the division and is referred to in this section as the "fund". The fund ~~shall consist~~ CONSISTS OF ~~moneys~~ MONEY CREDITED TO THE FUND IN ACCORDANCE WITH SECTION 39-26-123 (3)(b); MONEY appropriated to the ~~Colorado affordable housing construction grants and loan~~ fund by the general assembly; all ~~moneys~~ MONEY collected by the division for purposes of this section from federal grants, from other contributions, gifts, grants, and donations received from any other organization, entity, or individual, public or private; and from any fees or interest earned on such ~~moneys~~ MONEY. The division is hereby authorized and directed to solicit, accept, expend, and disburse all ~~moneys~~ MONEY collected for the fund from the sources specified in this subsection (1) for the purpose of making grants or loans and for program administration as provided in this section. All such ~~moneys~~ MONEY shall be transmitted to the state treasurer to be credited to the fund. The ~~moneys~~ MONEY in the fund ~~are hereby~~ IS continuously appropriated to the division for the purposes of this section. The ~~moneys~~ MONEY in the fund may be expended for the purpose of funding activities initiated during the current state fiscal year that are to be completed in subsequent state fiscal years.

(2)(a) Subject to the requirements of this section, upon the approval of the board, the division may make a grant or loan from ~~moneys~~ MONEY in the fund to improve, preserve, or expand the supply of affordable housing in Colorado as well as to fund the acquisition of housing and economic data necessary to advise the board on local housing conditions. In making loans of ~~moneys~~ or grants from the fund, the division shall give priority to owners of property that was either destroyed or incurred substantial damage as a result of one or more state or federally declared natural disasters where the property owner has received the maximum insurance proceeds and public disaster assistance. THE DIVISION SHALL ANNUALLY ALLOCATE, WITH OR WITHOUT BOARD APPROVAL, AT LEAST ONE-THIRD OF THE MONEY CREDITED TO THE FUND IN ACCORDANCE WITH SECTION 39-26-123 (3)(b) TO IMPROVE, PRESERVE, OR EXPAND AFFORDABLE HOUSING FOR HOUSEHOLDS WHOSE ANNUAL INCOME IS LESS THAN OR EQUAL TO THIRTY PERCENT OF THE AREA MEDIAN INCOME, AS PUBLISHED ANNUALLY BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

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

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

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

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

39-26-105. Vendor liable for tax - repeal - definitions. (1) (c) (I) (A) Except as provided in ~~sub-subparagraph (B) of this subparagraph (I)~~ SUBSECTION (1)(c)(I)(B) OF THIS SECTION, every retailer shall remit, along with the return required in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION, an amount equivalent to the percentage on sales as specified in ~~subparagraph (I) of paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a)(I) OF THIS SECTION to the executive director of the department of revenue, less an amount as set forth in ~~subparagraph (H) of this paragraph (c)~~ SUBSECTION (1)(c)(II) OR (1)(d) OF THIS SECTION to cover the retailer's expense in the collection and remittance of said tax.

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

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

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

(B) For a twelve-month period commencing upon the first day of the third month following the effective date of any act of congress authorizing states to require certain retailers to pay, collect, or remit state or local sales tax, the percentage of all sales tax reported as specified in ~~sub-subparagraph (A) of this subparagraph (II)~~ ~~shall be~~ SUBSECTION (1)(c)(II)(A) OR (1)(d) OF THIS SECTION IS reduced by one hundred five one-thousandths percentage points.

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

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

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

(III) IF A RETAILER IS PERMITTED TO RETAIN AN AMOUNT TO COVER THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING LOCAL SALES TAX THAT IS THE SAME AMOUNT AS PERMITTED BY THE STATE UNDER THIS SECTION, THEN SUCH AMOUNT IS THE AMOUNT THAT WAS PERMITTED AS OF DECEMBER 31, 2019, UNLESS MODIFIED AS PROVIDED IN SUBSECTION (1)(c)(II)(B) OF THIS SECTION.

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

SECTION 6. In Colorado Revised Statutes, 39-26-105, **amend** (1)(c)(III) and (5)(c); **amend as amended by House Bill 19-1240** (1)(c)(I) and (1)(c)(II); and **add** (1)(d) as follows:

39-26-105. Vendor liable for tax - repeal. (1) (c) (I) Every retailer shall remit, along with the return required in subsection (1)(b) of this section, an amount equivalent to the percentage on sales as specified in subsection (1)(a)(I) of this section to the executive director of the department of revenue, less an amount as set forth in ~~subsection (1)(c)(II)~~ SUBSECTION (1)(c)(II) OR (1)(d) of this section to cover the retailer's expense in the collection and remittance of said tax.

(II) FOR SALES MADE PRIOR TO JANUARY 1, 2020, the amount retained by a retailer to cover the retailer's expense in collecting and remitting tax pursuant to this section is three and one-third percent of all sales tax reported.

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

(d) (I) FOR SALES MADE ON OR AFTER JANUARY 1, 2020, THE AMOUNT RETAINED BY A RETAILER TO COVER THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING TAX IN ACCORDANCE WITH THIS SECTION IS FOUR PERCENT OF THE TAX REPORTED; EXCEPT THAT A RETAILER SHALL NOT RETAIN MORE THAN ONE THOUSAND DOLLARS IN ANY FILING PERIOD.

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

(III) IF A RETAILER IS PERMITTED TO RETAIN AN AMOUNT TO COVER THE RETAILER'S EXPENSE IN COLLECTING AND REMITTING LOCAL SALES TAX THAT IS THE SAME AMOUNT AS PERMITTED BY THE STATE UNDER THIS SECTION, THEN SUCH AMOUNT IS THE AMOUNT THAT WAS PERMITTED AS OF DECEMBER 31, 2019.

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

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

39-26-123. Receipts - disposition - transfers of general fund surplus - sales tax holding fund - creation - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) ~~"Net revenue" means the gross amount of sales and use tax receipts collected under the provisions of this article, less a fee retained by vendors for the collection and remittance of the tax pursuant to section 39-26-105 (1) and less refunds and adjustments made by the department of revenue in conjunction with its collection and enforcement duties under this article~~ "INCREASE IN SALES AND USE TAX REVENUE ATTRIBUTABLE TO THE VENDOR FEE CHANGES" MEANS AN AMOUNT EQUAL TO THE NET REVENUE FOR A FISCAL YEAR MINUS WHAT THE NET REVENUE WOULD HAVE BEEN FOR THE FISCAL YEAR IF THE AMOUNT RETAINED BY A VENDOR TO COVER THE VENDOR'S EXPENSES IN COLLECTING AND REMITTING SALES TAX HAD NOT BEEN MODIFIED BY HOUSE BILL 19-1245, ENACTED IN 2019.

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

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

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

(b) (I) EXCEPT AS SET FORTH IN SUBSECTION (3)(b)(II) OF THIS SECTION, AN AMOUNT EQUAL TO THE INCREASE IN SALES AND USE TAX REVENUE ATTRIBUTABLE TO THE VENDOR FEE CHANGES, WHICH AMOUNT THE STATE TREASURER SHALL CREDIT TO THE HOUSING DEVELOPMENT GRANT FUND CREATED IN SECTION 24-32-721 (1).

(II) THE AMOUNT CREDITED TO THE HOUSING DEVELOPMENT GRANT FUND CREATED IN SECTION 24-32-721 (1) UNDER SUBSECTION (1)(b)(I) OF THIS SECTION IS REDUCED BY THE FOLLOWING AMOUNTS:

(A) FIFTEEN MILLION THREE HUNDRED THIRTY-FIVE THOUSAND SEVEN HUNDRED EIGHTY-ONE DOLLARS FOR THE STATE FISCAL YEAR 2019-20;

(B) FORTY MILLION THREE HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED FIFTY-EIGHT DOLLARS FOR THE STATE FISCAL YEAR 2020-21; AND

(C) NINE HUNDRED EIGHTY-FIVE THOUSAND THREE HUNDRED THIRTY-FIVE DOLLARS FOR THE STATE FISCAL YEAR 2021-22 AND EACH STATE FISCAL YEAR THEREAFTER.

SECTION 8. In Colorado Revised Statutes, 39-26-703, **amend** (2)(c) and (2)(c.5) as follows:

39-26-703. Disputes and refunds. (2) (c) A refund shall be made or a credit

allowed by the executive director of the department of revenue to any person entitled to an exemption where the person establishes: That a tax was paid by another on a purchase made on behalf of such person or that a tax was paid by an independent contractor on or before July 1, 1979, on tangible personal property incorporated into realty for the sole use, benefit, and ownership of any person entitled to an exemption; that a refund has not been granted to the person making the purchase; and that the person entitled to exemption paid or reimbursed the purchaser for such tax. No such refund shall be made or credit allowed in an amount greater than the tax paid. ~~less the expense allowance on the purchase retained by the vendor pursuant to section 39-26-105 (1).~~

(c.5) The executive director of the department of revenue shall make a refund or allow a credit to any person who establishes that he or she has overpaid the tax due pursuant to this ~~article~~ ARTICLE 26. No such refund shall be made or credit allowed in an amount greater than the tax paid. ~~less the expense allowance on the purchase retained by the vendor pursuant to section 39-26-105 (1).~~

SECTION 9. Appropriation. (1) For the 2019-20 state fiscal year, \$3,398 is appropriated to the department of local affairs for use by the division of housing. This appropriation is from the general fund. To implement this act, the division may use this appropriation for affordable housing program costs.

(2) For the 2019-20 state fiscal year, \$286,408 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$186,436 for use by the taxpayer services division for personal services, which amount is based on an assumption that the division will require an additional 0.4 FTE;

(b) \$5,368 for use by the taxpayer services division for operating expenses; and

(c) \$94,604 for the tax administration IT system (GenTax) support.

SECTION 10. Act subject to petition - effective date. (1) Except as set forth in subsection (2) of this section, 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 2, 2019, if adjournment sine die is on May 3, 2019); 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 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) (a) Section 5 of this act takes effect only if House Bill 19-1240 does not become law.

(b) Section 6 of this act takes effect only if House Bill 19-1240 becomes law, in

which case section 6 of this act takes effect on the effective date of this act or House Bill 19-1240, whichever is later.

Approved: May 17, 2019