

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0671.01 Ed DeCecco x4216

HOUSE BILL 18-1054

HOUSE SPONSORSHIP

Rosenthal,

SENATE SPONSORSHIP

Court,

House Committees

Local Government
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING AN INCREASE IN FUNDING FOR AFFORDABLE HOUSING
102 THROUGH A TAX ON PLASTIC SHOPPING BAGS.

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>.)

Contingent on prior voter approval, if a store that meets certain criteria provides any plastic shopping bags to a customer, then the store is required to collect a tax of 25 cents from the customer. The tax is the same regardless of the number of bags provided as part of a transaction, but does not apply if the customer is enrolled in the federal supplemental nutrition assistance program. The store is required to remit the tax

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.

revenue to the department of revenue (department) after keeping 1% of the taxes to cover the store's collection and remittance expenses. The department may require a store to make returns and payments electronically.

To comply with the Taxpayer's Bill of Rights (TABOR), a ballot issue about the plastic shopping bag tax is referred to the voters at the November 2018 election. If the voters reject the tax, then the entire article containing the tax is repealed. If the voters approve the tax, then the tax will be imposed beginning January 1, 2019.

The tax revenue is deposited in the general fund via the old age pension fund. Then, an amount equal to the department's administrative expenses is transferred to the newly created plastic shopping bag tax administration cash fund and the remainder of the tax revenue is deposited in the housing development grant fund. The division of housing in the department of local affairs is required to use the money in the housing development grant fund for the existing purposes of the fund, which is to improve, preserve, or expand the supply of affordable housing in Colorado.

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

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

4 **24-32-721. Colorado affordable housing construction grants**
5 **and loans - housing development grant fund - creation - housing**
6 **assistance for a person with a behavioral or mental health disorder**
7 **in the criminal or juvenile justice system - cash fund - definition.**

8 (1) There is hereby created in the state treasury the housing development
9 grant fund, which fund ~~shall be~~ IS administered by the division and is
10 referred to in this section as the "fund". The fund ~~shall consist~~ CONSISTS
11 of ~~moneys~~ MONEY TRANSFERRED TO THE FUND IN ACCORDANCE WITH
12 SECTION 39-26.5-106(1); MONEY appropriated to the Colorado affordable
13 housing construction grants and loan fund by the general assembly; all
14 ~~moneys~~ MONEY collected by the division for purposes of this section from
15 federal grants, from other contributions, gifts, grants, and donations

1 received from any other organization, entity, or individual, public or
2 private; and from any fees or interest earned on such ~~moneys~~ MONEY. The
3 division is hereby authorized and directed to solicit, accept, expend, and
4 disburse all ~~moneys~~ MONEY collected for the fund from the sources
5 specified in this subsection (1) for the purpose of making grants or loans
6 and for program administration as provided in this section. All such
7 ~~moneys~~ MONEY shall be transmitted to the state treasurer to be credited to
8 the fund. The ~~moneys~~ MONEY in the fund ~~are hereby~~ IS continuously
9 appropriated to the division for the purposes of this section. The ~~moneys~~
10 MONEY in the fund may be expended for the purpose of funding activities
11 initiated during the current state fiscal year that are to be completed in
12 subsequent state fiscal years.

13 **SECTION 2.** In Colorado Revised Statutes, **add** article 26.5 to
14 title 39 as follows:

15 **ARTICLE 26.5**

16 **Plastic Shopping Bag Tax**

17 **39-26.5-101. Legislative declaration.** (1) THE GENERAL
18 ASSEMBLY FINDS AND DECLARES THAT THERE IS A SIGNIFICANT SHORTAGE
19 OF AFFORDABLE HOUSING THROUGHOUT THE STATE. AS SUCH, IT IS
20 BECOMING EXCEEDINGLY DIFFICULT FOR COLORADANS TO OWN OR RENT
21 THEIR HOMES. ACCESS TO SAFE, HIGH-QUALITY, AND AFFORDABLE
22 HOUSING IS ONE OF THE MOST PRESSING ISSUES FACING COLORADO AND
23 THE NATION.

24 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
25 EACH YEAR STORES PROVIDE MILLIONS OF PLASTIC SHOPPING BAGS TO
26 CUSTOMERS TO CARRY PURCHASED ITEMS FROM THE STORE. THESE BAGS,
27 WHICH ARE OFTEN MADE FROM NONRENEWABLE RESOURCES AND ARE NOT

1 BIODEGRADABLE, POSE A SIGNIFICANT THREAT TO OUR FRAGILE
2 ENVIRONMENT.

3 (3) NOW, THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY
4 TO ADDRESS BOTH OF THESE ISSUES TO INCREASE FUNDING FOR
5 AFFORDABLE HOUSING THROUGH A TAX ON PLASTIC SHOPPING BAGS,
6 WHICH WILL PROVIDE AN INCENTIVE FOR PEOPLE TO USE MORE
7 ENVIRONMENTALLY FRIENDLY ALTERNATIVES.

8 **39-26.5-102. Definitions.** AS USED IN THIS ARTICLE 26.5, UNLESS
9 THE CONTEXT OTHERWISE REQUIRES:

10 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

11 (2) (a) "PLASTIC SHOPPING BAG" MEANS ANY PLASTIC BAG THAT
12 A STORE PROVIDES TO A CUSTOMER FOR THE PURPOSE OF CARRYING ITEMS
13 FROM THE STORE.

14 (b) "PLASTIC SHOPPING BAG" DOES NOT INCLUDE A BAG THAT IS
15 ORDINARILY INTENDED AND DESIGNED FOR USE BY CUSTOMERS INSIDE A
16 STORE TO:

17 (I) PACKAGE LOOSE BULK ITEMS, SUCH AS FRUIT, VEGETABLES,
18 NUTS, GRAINS, CANDY, COOKIES, OR SMALL HARDWARE ITEMS;

19 (II) CONTAIN OR WRAP FROZEN FOODS, MEAT, OR FISH;

20 (III) CONTAIN OR WRAP FLOWERS, POTTED PLANTS, OR OTHER
21 DAMP ITEMS;

22 (IV) SEGREGATE FOOD OR MERCHANDISE THAT COULD DAMAGE OR
23 CONTAMINATE OTHER FOOD OR MERCHANDISE WHEN PLACED TOGETHER
24 IN A BAG; OR

25 (V) CONTAIN UNWRAPPED PREPARED FOODS OR BAKERY GOODS.

26 (c) "PLASTIC SHOPPING BAG" ALSO EXCLUDES A:

27 (I) DRY CLEANING OR GARMENT BAG;

1 (II) BAG PROVIDED BY A PHARMACIST TO CONTAIN PRESCRIPTION
2 DRUGS;

3 (III) BAG PROVIDED BY A DINE-IN OR TAKE-OUT RESTAURANT TO
4 CONTAIN FOOD OR DRINK PURCHASED BY THE RESTAURANT'S CUSTOMERS;

5 (IV) REUSABLE BAG PURCHASED BY THE CUSTOMER; AND

6 (V) COMPOSTABLE PLASTIC BAG.

7 (3) "PLASTIC SHOPPING BAG TAX" MEANS THE TAX CREATED IN
8 SECTION 39-26.5-103 (1).

9 (4) "STORE" MEANS ANY BUSINESS THAT:

10 (a) SELLS TANGIBLE PERSONAL PROPERTY OR FOOD;

11 (b) IS LOCATED IN A PERMANENT BUILDING; AND

12 (c) OCCUPIES OVER TWO THOUSAND SQUARE FEET OF SPACE OR IS

13 A PART OF A CHAIN, WHICH IS A BUSINESS WITH TWENTY OR MORE

14 LOCATIONS NATIONALLY AND DOING BUSINESS:

15 (I) UNDER THE SAME TRADE NAME;

16 (II) UNDER COMMON OWNERSHIP OR CONTROL; OR

17 (III) AS FRANCHISED OUTLETS OF A PARENT BUSINESS.

18 **39-26.5-103. Tax levied - identification in receipt.**

19 (1) BEGINNING JANUARY 1, 2019, IF A STORE PROVIDES A CUSTOMER WITH
20 ANY PLASTIC SHOPPING BAGS, THEN THE STORE SHALL COLLECT AND THE
21 CUSTOMER SHALL PAY A TAX OF TWENTY-FIVE CENTS. THE TAX IS THE
22 SAME REGARDLESS OF THE NUMBER OF PLASTIC SHOPPING BAGS PROVIDED
23 AS PART OF THE SAME TRANSACTION.

24 (2) THE PLASTIC SHOPPING BAG TAX IS NOT IMPOSED IF THE
25 CUSTOMER IS ENROLLED IN THE FEDERAL SUPPLEMENTAL NUTRITION
26 ASSISTANCE PROGRAM ADMINISTERED BY THE DEPARTMENT OF HUMAN
27 SERVICES IN ACCORDANCE WITH PART 3 OF ARTICLE 2 OF TITLE 26.

1 (3) A STORE SHALL SEPARATELY IDENTIFY THE PLASTIC SHOPPING
2 BAG TAX CHARGED ON THE RECEIPT PROVIDED TO THE CUSTOMER.

3 **39-26.5-104. Submission of ballot issue - voter-approved**
4 **revenue change.** (1) THE SECRETARY OF STATE SHALL SUBMIT A BALLOT
5 ISSUE TO A VOTE OF THE REGISTERED ELECTORS OF THE STATE OF
6 COLORADO AT THE STATEWIDE ELECTION TO BE HELD IN NOVEMBER 2018,
7 FOR THEIR APPROVAL OR REJECTION. FOR PURPOSES OF TITLE 1, THE
8 BALLOT ISSUE IS A PROPOSITION. EACH ELECTOR VOTING AT THE
9 NOVEMBER ELECTION SHALL CAST A VOTE AS PROVIDED BY LAW ON THE
10 FOLLOWING PROPOSITION: "SHALL STATE TAXES BE INCREASED BY \$ _____
11 IN THE FIRST FULL FISCAL YEAR AND BY ANY AMOUNTS RAISED ANNUALLY
12 THEREAFTER THROUGH A TAX OF 25 CENTS PER TRANSACTION ANY TIME
13 A STORE PROVIDES A CUSTOMER WITH ANY PLASTIC SHOPPING BAGS, WITH
14 THE TAX REVENUE BEING USED PRIMARILY FOR AFFORDABLE HOUSING AND
15 BEING COLLECTED AND SPENT NOTWITHSTANDING ANY LIMITATIONS
16 PROVIDED BY LAW?"

17 (2) THE VOTES CAST FOR THE ADOPTION OR REJECTION OF THE
18 BALLOT ISSUE SUBMITTED PURSUANT TO SUBSECTION (1) OF THIS SECTION
19 SHALL BE CANVASSED AND THE RESULT DETERMINED IN THE MANNER
20 PROVIDED BY LAW FOR THE CANVASSING OF VOTES FOR REPRESENTATIVES
21 IN CONGRESS.

22 (3) NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING,
23 OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE
24 STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES
25 GENERATED BY THE PLASTIC SHOPPING BAG TAX APPROVED BY THE
26 VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2018 MAY BE
27 COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE.

1 **39-26.5-105. Remittance of tax - fee for expenses.** (1) BEFORE
2 THE TWENTIETH DAY OF EACH MONTH, A STORE SHALL REMIT TO THE
3 DEPARTMENT ANY PLASTIC SHOPPING BAG TAX THAT THE STORE
4 COLLECTED IN THE PRECEDING CALENDAR MONTH; EXCEPT THAT THE
5 STORE SHALL RETAIN AN AMOUNT NOT TO EXCEED ONE PERCENT OF THE
6 PLASTIC SHOPPING BAG TAX COLLECTIONS TO COVER THE STORE'S EXPENSE
7 IN COLLECTING AND REMITTING THE TAX TO THE DEPARTMENT.

8 (2) THE DEPARTMENT SHALL ESTABLISH A FORM THAT A STORE
9 MUST COMPLETE AND RETURN WITH ITS PLASTIC SHOPPING BAG TAX
10 COLLECTIONS.

11 (3) THE DEPARTMENT MAY REQUIRE A STORE TO FILE TAX RETURNS
12 ELECTRONICALLY AND TO REMIT PLASTIC SHOPPING BAG TAX
13 COLLECTIONS BY ELECTRONIC FUNDS TRANSFERS.

14 **39-26.5-106. Disposition of tax collected - plastic shopping bag**
15 **tax administration cash fund - creation.** (1) THE PROCEEDS OF ALL
16 MONEY COLLECTED FROM THE PLASTIC SHOPPING BAG TAX ARE INITIALLY
17 CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF
18 ARTICLE XXIV OF THE STATE CONSTITUTION IN ACCORDANCE WITH
19 PARAGRAPHS (a) AND (f) OF SECTION 2 OF ARTICLE XXIV OF THE STATE
20 CONSTITUTION AND THEREAFTER ARE TRANSFERRED TO THE GENERAL
21 FUND IN ACCORDANCE WITH SECTION 7 OF ARTICLE XXIV OF THE STATE
22 CONSTITUTION.

23 (2) THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL
24 TO THE AMOUNT DEPOSITED IN THE GENERAL FUND IN ACCORDANCE WITH
25 SUBSECTION (1) OF THIS SECTION AS FOLLOWS:

26 (a) AN AMOUNT EQUAL TO THE DEPARTMENT'S ANTICIPATED
27 EXPENSES FOR ADMINISTERING THIS ARTICLE 26.5 TO THE PLASTIC

1 SHOPPING BAG TAX ADMINISTRATION CASH FUND CREATED IN SUBSECTION
2 (3) OF THIS SECTION; AND

3 (b) THE REMAINDER TO THE HOUSING DEVELOPMENT GRANT FUND
4 CREATED IN SECTION 24-32-721.

5 (3) (a) THE PLASTIC SHOPPING BAG TAX ADMINISTRATION CASH
6 FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS
7 OF MONEY CREDITED TO THE FUND PURSUANT TO SUBSECTION (2)(a) OF
8 THIS SECTION.

9 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
10 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
11 PLASTIC SHOPPING BAG TAX ADMINISTRATION CASH FUND TO THE FUND.

12 (c) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
13 ASSEMBLY, THE DEPARTMENT MAY EXPEND MONEY FROM THE FUND FOR
14 ITS ADMINISTRATIVE EXPENSES ASSOCIATED WITH IMPLEMENTATION OF
15 THIS ARTICLE 26.5.

16 (4) THE DEPARTMENT SHALL NOTIFY THE STATE TREASURER OF
17 THE AMOUNT THAT SHOULD BE TRANSFERRED TO THE PLASTIC SHOPPING
18 BAG TAX ADMINISTRATION CASH FUND IN ACCORDANCE WITH SUBSECTION
19 (2)(a) OF THIS SECTION.

20 **39-26.5-107. Rules.** THE DEPARTMENT SHALL PROMULGATE RULES
21 THAT ARE NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE 26.5 IN
22 ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT",
23 ARTICLE 4 OF TITLE 24.

24 **39-26.5-108. Repeal of article.** (1) THIS ARTICLE 26.5 IS
25 REPEALED, EFFECTIVE FEBRUARY 1, 2019, IF THE VOTERS AT THE
26 NOVEMBER 2018 STATEWIDE ELECTION DO NOT APPROVE THE QUESTION
27 DESCRIBED IN SECTION 39-26.5-104 AND THE GOVERNOR ISSUES AN

1 OFFICIAL DECLARATION OF THE VOTE THEREON.

2 (2) THIS SECTION IS REPEALED, EFFECTIVE FEBRUARY 1, 2019, IF
3 THE VOTERS AT THE NOVEMBER 2018 STATEWIDE ELECTION APPROVE THE
4 QUESTION DESCRIBED IN SECTION 39-26.5-104 AND THE GOVERNOR ISSUES
5 AN OFFICIAL DECLARATION OF THE VOTE THEREON.

6 **SECTION 3. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly (August
9 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within such period, then the act, item, section, or part will not take effect
13 unless approved by the people at the general election to be held in
14 November 2018 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.