A BILL FOR 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.

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...
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.

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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) 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;

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

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

(g) 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;

(h) 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

(i) 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
(1) There is hereby created in the state treasury the housing development grant fund, which fund shall be administered by the division and is referred to in this section as the "fund". The fund shall consist of moneys 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 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 money. The division is hereby authorized and directed to solicit, accept, expend, and disburse all 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 money shall be transmitted to the state treasurer to be credited to the fund. The money in the fund are hereby appropriated to the division for the purposes of this section. The 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 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 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 AWARD, 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 PROJECTS 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:


(1) (c) (I) (A) Except as provided in 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 (II) 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 (II) 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.

(II) Except as provided in section 39-26-105.3 (8)(b)(III):

(II) (A) Except as provided in 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 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 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 MONTH.

(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, 39-26-123, amend (1)(a) and (3); and add (1)(a.7) and (3.2) 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-__,
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 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) AN AMOUNT EQUAL TO THE INCREASE IN SALES AND USE TAX 
REVENUE ATTRIBUTABLE TO THE VENDOR FEE CHANGES, WHICH THE STATE 
TREASURER SHALL CREDIT TO THE HOUSING DEVELOPMENT GRANT FUND 
CREATED IN SECTION 24-32-721 (1).

(3.2) (a) THE AMOUNT THE STATE TREASURER IS REQUIRED TO 
TRANSFER FOR THE STATE FISCAL YEAR 2019-20 TO THE HOUSING 
DEVELOPMENT GRANT FUND CREATED IN SECTION 24-32-721 (1) IN 
ACCORDANCE WITH SUBSECTION (3)(b) OF THIS SECTION IS REDUCED BY 
ONE MILLION DOLLARS.
(b) This subsection (3.2) is repealed, effective July 1, 2021.

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

SECTION 8. 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 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.