

CHAPTER 185

TRANSPORTATION

SENATE BILL 97-128

BY SENATORS Duke, Ament, Arnold, Coffman, Congrove, Dennis, Linkhart, Mutzebaugh, Powers, Tebedo, Rupert, and Weddig;
also REPRESENTATIVES Swenson, Owen, Allen, June, Lamborn, Lawrence, May, McElhany, Salaz, Agler, Arrington, Dean, Gottlieb, Morrison, Nichol, Pfiffner, Schwarz, and Tucker.

AN ACT

CONCERNING A PILOT PROGRAM TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO CONTRACTS THAT REQUIRE A WARRANTY FOR QUALIFIED HOT BITUMINOUS PAVEMENT PROJECTS.

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

SECTION 1. 43-1-106, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

43-1-106. Transportation commission - powers and duties. (16) (a) THE COMMISSION SHALL ESTABLISH A PILOT PROGRAM FOR THE WARRANTY OF QUALIFIED HOT BITUMINOUS PAVEMENT PROJECTS. THE PILOT PROGRAM SHALL BEGIN NO LATER THAN JULY 1, 1997, AND SHALL END JULY 1, 2002, UNLESS EXTENDED BY THE GENERAL ASSEMBLY ACTING BY BILL. THE COMMISSION IS HEREBY AUTHORIZED TO PREPARE CONTRACT SPECIFICATIONS AND ENTER INTO CONTRACTS FOR QUALIFIED BITUMINOUS PAVEMENT PROJECTS IN THE STATE AND REQUIRE CONTRACTORS TO WARRANT WORK ON SUCH PROJECTS FOR A PERIOD NOT TO EXCEED THREE YEARS FOLLOWING THE COMPLETION OF A QUALIFIED HOT BITUMINOUS PAVEMENT PROJECT. NO CONTRACTOR SHALL BE HELD RESPONSIBLE UNDER A WARRANTY IMPOSED PURSUANT TO THIS SUBSECTION (16) FOR PAVEMENT DISTRESSES THAT ARE CAUSED BY FACTORS BEYOND THE CONTROL OF THE CONTRACTOR. NO CONTRACTOR SHALL BE HELD RESPONSIBLE UNDER A WARRANTY IMPOSED PURSUANT TO THIS SUBSECTION (16) UNLESS THE DEPARTMENT COMPLIES WITH THE CONDITIONS STATED THEREIN. FOR PURPOSES OF THIS SUBSECTION (16):

(I) "QUALIFIED HOT BITUMINOUS PAVEMENT PROJECT" MEANS A PROJECT UNDERTAKEN AS PART OF A PILOT PROGRAM COMPRISED OF THREE PROJECTS BID DURING 1997 OR 1998 AND APPROVED BY THE COMMISSION AND A TECHNICAL

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

ADVISORY COMMITTEE SELECTED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (16). SUCH PROJECTS MUST BE CONSTRUCTED ALONG THE FRONT RANGE.

(II) "WARRANTY" MEANS A WRITTEN WARRANTY, SO LABELED, OF THE HOT BITUMINOUS PAVEMENT WORK TO BE PERFORMED IN CONNECTION WITH A QUALIFIED HOT BITUMINOUS PAVEMENT PROJECT, INCLUDING ANY TERMS OR CONDITIONS PRECEDENT TO THE ENFORCEMENT OF OBLIGATIONS UNDER SUCH WARRANTY.

(b) ANY WARRANTY OBTAINED BY THE COMMISSION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (16) SHALL REMAIN VALID FOR THE DURATION OF THE WARRANTY'S TERM UNLESS THE COMMISSION AND CONTRACTOR AGREE OTHERWISE.

(c) WHEN A PROVISION HAS BEEN MADE FOR THE NECESSARY FUNDS, INCLUDING ANY FEDERAL FUNDS, FOR ANY QUALIFIED HOT BITUMINOUS PAVEMENT PROJECT AND WHEN THE PROJECT HAS BEEN APPROVED BY THE PROPER FEDERAL AUTHORITIES, THE COMMISSION MAY PROCEED TO REQUIRE A WARRANTY FOR A QUALIFIED HOT BITUMINOUS PAVEMENT PROJECT AS PROVIDED IN THIS SUBSECTION (16) WITH DUE REGARD TO ANY APPLICABLE FEDERAL REQUIREMENT OR REGULATION.

(d) A TECHNICAL ADVISORY COMMITTEE SHALL SELECT THOSE PAVING PROJECTS THAT WILL BE CONSTRUCTED AS PART OF THE PILOT PROGRAM CREATED PURSUANT TO THIS SUBSECTION (16) AND THE BITUMINOUS PAVEMENT WARRANTY PROGRAM DEVELOPED BY THE DEPARTMENT OF TRANSPORTATION. SUCH COMMITTEE SHALL BE SELECTED BY THE COMMISSION AND CONSIST OF PRIVATE BITUMINOUS PAVEMENT CONTRACTORS AND DEPARTMENT OFFICIALS WHO ARE KNOWLEDGEABLE ABOUT BITUMINOUS PAVING AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION STRATEGIC HIGHWAY RESEARCH PROGRAM, AS IT APPLIES TO THE PROVISIONS OF THIS SUBSECTION (16).

(e) ALL PAVING PROJECTS CONSTRUCTED PURSUANT TO THIS SUBSECTION (16) SHALL BE SUBJECT TO A COST-BENEFIT EVALUATION BY A COMMITTEE SELECTED BY THE COMMISSION. SUCH COMMITTEE SHALL CONSIST OF TWO REPRESENTATIVES FROM THE STATE DEPARTMENT OF TRANSPORTATION, TWO INDIVIDUALS FROM THE ASPHALT PAVING CONSTRUCTION INDUSTRY, AND AN INDEPENDENT ENGINEER WHO SHALL BE COMPENSATED BY THE DEPARTMENT FOR REASONABLE FEES. COMMITTEE MEMBERS SHALL NOT BE CONNECTED WITH THE PAVEMENT PROJECT THAT IS THE SUBJECT OF SUCH COST-BENEFIT EVALUATION. SAID COMMITTEE SHALL GATHER DATA ON ACTUAL COSTS, INCLUDING MAINTENANCE COSTS, OF WARRANTED PROJECTS AND COMPARABLE NONWARRANTED PROJECTS, AND PRESENT ITS CONCLUSIONS IN A REPORT TO THE HOUSE AND SENATE TRANSPORTATION COMMITTEES AT THE END OF THE WARRANTY PERIOD FOR THE PROJECTS OR AT AN EARLIER DATE SPECIFIED BY EITHER COMMITTEE.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 21, 1997