

CHAPTER 148

**TRANSPORTATION**

SENATE BILL 06-115

BY SENATOR(S) Takis, Mitchell, Tochtrop, and Williams;  
also REPRESENTATIVE(S) Larson, Berens, Green, Hall, Merrifield, Paccione, Solano, and Stafford.

**AN ACT**

**CONCERNING THE RIGHTS OF A LOCAL GOVERNMENT WITH REGARD TO THE CONSTRUCTION OF A PRIVATE TOLL ROAD OR TOLL HIGHWAY.**

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

**SECTION 1.** 38-2-101, Colorado Revised Statutes, is amended to read:

**38-2-101. Who may condemn real estate, rights-of-way, or other rights - additional requirements for private toll roads and toll highways.** (1) If any corporation formed for the purpose of constructing a road, ditch, reservoir, pipeline, bridge, ferry, tunnel, telegraph line, railroad line, electric line, electric plant, telephone line, or telephone plant is unable to agree with the owner for the purchase of any real estate or right-of-way or easement or other right necessary or required for the purpose of any such corporation for transacting its business or for any lawful purpose connected with the operations of the company, ~~such~~ THE corporation may acquire title to such real estate or right-of-way or easement or other right in the manner provided by law for the condemnation of real estate or right-of-way. Any ditch, reservoir, or pipeline company, in the same manner, may condemn and acquire the right to take and use any water not previously appropriated.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, A CORPORATION FORMED FOR THE PURPOSE OF CONSTRUCTING A PRIVATE TOLL ROAD OR TOLL HIGHWAY MAY NOT CONDEMN REAL ESTATE OR RIGHT-OF-WAY, BUT THE DEPARTMENT OF TRANSPORTATION MAY EXERCISE, SUBJECT TO THE CONDITIONS AND LIMITATIONS SET FORTH IN SECTIONS 7-45-104 AND 43-1-1202 (1) (f), C.R.S., THE POWER OF EMINENT DOMAIN IN CONNECTION WITH A TOLL ROAD OR TOLL HIGHWAY PROJECT BEING UNDERTAKEN AS A PUBLIC-PRIVATE INITIATIVE BETWEEN THE DEPARTMENT AND SUCH A CORPORATION. SUCH A CORPORATION SHALL, WITHIN SIX MONTHS AFTER THE DATE OF ITS INCORPORATION, FILE AND RECORD WITH THE

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

COUNTY CLERK AND RECORDER OF EACH COUNTY THROUGH WHICH ANY PORTION OF THE PROPOSED TOLL ROAD OR TOLL HIGHWAY WILL PASS A MAP OR SURVEY OF THE PROPOSED ROUTE OF THE TOLL ROAD OR TOLL HIGHWAY. THE CORPORATION SHALL INCLUDE WITH THE MAP OR SURVEY A STATEMENT OF THE PROPOSED ROUTE OF THE TOLL ROAD OR TOLL HIGHWAY, WITHIN THREE MILES, AND A LISTING OF ALL PROPERTY OVER OR ACROSS WHICH THE PROPOSED TOLL ROAD OR TOLL HIGHWAY WILL BE CONSTRUCTED, AND SHALL FILE AND RECORD SUPPLEMENTARY MAPS, SURVEYS, STATEMENTS, AND LISTINGS UPON ANY LAWFUL CHANGE OF THE PROPOSED ROUTE OF THE TOLL ROAD OR TOLL HIGHWAY.

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE ANY CORPORATION TO CONSTRUCT A PRIVATE TOLL ROAD OR TOLL HIGHWAY THROUGH, IN, UPON, UNDER, OR OVER ANY STREET OR ALLEY OF ANY CITY, INCORPORATED TOWN, COUNTY, OR CITY AND COUNTY WITHOUT FIRST OBTAINING THE CONSENT OF THE MUNICIPAL OR COUNTY AUTHORITIES HAVING POWER TO GIVE THE CONSENT OF THE CITY, INCORPORATED TOWN, COUNTY, OR CITY AND COUNTY.

(4) (a) A POLITICAL SUBDIVISION MAY LEVY A TAX, FEE, OR CHARGE FOR ANY RIGHT OR PRIVILEGE OF CONSTRUCTING OR OPERATING A PRIVATE TOLL ROAD OR TOLL HIGHWAY SUCH AS A STREET OR PUBLIC HIGHWAY CONSTRUCTION PERMIT FEE OR AN IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE DESIGNED TO FUND EXPENDITURES BY THE POLITICAL SUBDIVISION ON CAPITAL FACILITIES NEEDED TO SERVE THE TOLL ROAD OR TOLL HIGHWAY, BUT SHALL ONLY LEVY A CONSTRUCTION PERMIT FEE TO THE EXTENT THAT THE PERMIT FEE APPLIES TO ALL PERSONS SEEKING A CONSTRUCTION PERMIT.

(b) ALL PERMIT FEES, IMPACT FEES, OR OTHER SIMILAR DEVELOPMENT CHARGES LEVIED BY A POLITICAL SUBDIVISION ON A CORPORATION CONSTRUCTING OR OPERATING A PRIVATE TOLL ROAD OR TOLL HIGHWAY SHALL BE NO GREATER THAN NECESSARY TO DEFRAY THE COSTS DIRECTLY INCURRED BY THE POLITICAL SUBDIVISION IN PROVIDING SERVICES, AND, IN THE CASE OF IMPACT FEES OR OTHER DEVELOPMENT CHARGES, SHALL BE NO GREATER THAN NECESSARY TO DEFRAY IMPACTS DIRECTLY RELATED TO THE TOLL ROAD OR TOLL HIGHWAY. THE FEES AND CHARGES SHALL ALSO BE REASONABLY RELATED IN TIME TO THE INCURRENCE OF THE IMPACTS OR COSTS. IN ANY CONTROVERSY CONCERNING THE APPROPRIATENESS OF A FEE OR CHARGE, THE POLITICAL SUBDIVISION SHALL HAVE THE BURDEN OF PROVING THAT THE FEE OR CHARGE IS NO GREATER THAN NECESSARY TO DEFRAY THE DIRECT IMPACTS OR COSTS INCURRED BY THE POLITICAL SUBDIVISION. ALL COSTS OF CONSTRUCTION SHALL BE BORNE BY THE CORPORATION CONSTRUCTING OR OPERATING THE TOLL ROAD OR TOLL HIGHWAY.

**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 (August 9, 2006, if adjournment sine die is on May 10, 2006); 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: April 24, 2006