

CHAPTER 273

TRANSPORTATION

HOUSE BILL 06-1257

BY REPRESENTATIVE(S) Green, Borodkin, Coleman, Frangas, Madden, McGihon, and Merrifield;
also SENATOR(S) Keller, Boyd, Fitz-Gerald, Hagedorn, Williams, and Windels.

AN ACT

**CONCERNING NOISE MITIGATION MEASURES ALONG STATE HIGHWAYS, AND MAKING AN
APPROPRIATION THEREFOR.**

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

SECTION 1. 24-32-114 (1) (b) (I), Colorado Revised Statutes, is amended to read:

24-32-114. Cleanup of illegally disposed of waste tires - waste tire cleanup fund - assistance to counties - legislative declaration - repeal. (1) Moneys appropriated from the waste tire recycling development cash fund, created in section 25-17-202 (3), C.R.S., to the division of local government in accordance with said section, shall be deposited in the waste tire cleanup fund, which fund is hereby created in the state treasury, for use in accordance with this section. In addition to moneys otherwise provided as funds are available and within appropriated amounts, moneys in the waste tire cleanup fund, less a proportionate share of the administrative costs of the department of local affairs in administering the fund, including 0.5 full-time equivalent employees (FTE), shall be expended for the following purposes:

(b)(I) Up to twenty percent of the moneys appropriated to the department of local affairs from the waste tire recycling development cash fund may be expended to provide for tire reuse or recycling incentives in public projects for products that contain or make use of recycled, ~~RECAPPED, AND OTHER PREVIOUSLY USED~~ waste tires. The director shall determine how moneys for such incentives shall be distributed among projects. Any state agency is authorized to expend tire reuse or recycling incentive moneys distributed pursuant to this section.

SECTION 2. 23-1-106.5 (9) (b), Colorado Revised Statutes, as amended by

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

House Bill 06-1074, enacted at the Second Regular Session of the Sixty-fifth General Assembly, is amended to read:

23-1-106.5. Duties and powers of the commission with regard to advanced technology - fund created. (9) (b) The commission shall expend moneys in the advanced technology fund to finance research, development, and technology transfer with regard to waste diversion and recycling strategies or environmental alternatives by providing research funding and technology transfer capital to individuals or public or private entities seeking to develop or implement waste diversion or recycling projects for materials or products of any kind, ~~including, without limitation,~~ strategies pertaining to waste tires, INCLUDING THE USE OF WASTE TIRES FOR NOISE MITIGATION ALONG STATE HIGHWAYS AS PRIORITIZED BY THE DEPARTMENT OF TRANSPORTATION PURSUANT TO SECTION 43-2-402 (5) (b), C.R.S., or ~~for~~ environmental, research, development, and technology transfer programs in the state for materials and products of any kind. The commission shall adopt a policy for the expenditure of such moneys, which shall contain priorities and the criteria for providing research funding and technology transfer.

SECTION 3. Article 2 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 4
NOISE MITIGATION

43-2-401. Definitions. AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPLICANT" MEANS A HOMEOWNER OR RENTER RESIDING IN AN ELIGIBLE AREA, OR THE OPERATOR OF A TEMPORARY HOUSING FACILITY OR PUBLIC HOUSING FACILITY LOCATED IN AN ELIGIBLE AREA, WHO SUBMITS AN APPLICATION TO THE TRANSPORTATION COMMISSION IN ACCORDANCE WITH THIS PART 4.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION.

(3) "ELIGIBLE AREA" MEANS A RESIDENTIAL AREA THAT:

(a) IS LOCATED ADJACENT TO A STATE HIGHWAY;

(b) EXISTED AS A RESIDENTIAL AREA BEFORE THE STATE HIGHWAY WAS CONSTRUCTED OR WIDENED; AND

(c) IS LOCATED WITHIN THE BOUNDARIES OF A LOCAL GOVERNMENT THAT, AS OF THE DATE OF THE APPLICATION, HAS ADOPTED AN ORDINANCE OR RESOLUTION TO MITIGATE THE EFFECTS OF NOISE IN FUTURE RESIDENTIAL OR OTHER NOISE-SENSITIVE DEVELOPMENT ADJACENT TO THE STATE HIGHWAYS WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT.

(4) "LOCAL GOVERNMENT" MEANS A CITY, TOWN, COUNTY, OR CITY AND COUNTY.

(5) "NOISE MITIGATION MEASURES" MEANS NOISE MITIGATION MEASURES APPROVED BY THE TRANSPORTATION COMMISSION PURSUANT TO SECTION 43-2-404.

43-2-402. Noise mitigation measures. (1) AN APPLICANT MAY SUBMIT AN APPLICATION FOR NOISE MITIGATION MEASURES TO THE DEPARTMENT BETWEEN NOVEMBER 1 AND MARCH 31 IN ACCORDANCE WITH THE APPLICATION PROCEDURES ESTABLISHED BY THE TRANSPORTATION COMMISSION BY RULE.

(2) AN APPLICATION FOR NOISE MITIGATION MEASURES SHALL:

(a) BE ACCOMPANIED BY A PETITION IN SUPPORT OF THE NOISE MITIGATION MEASURES SIGNED BY MEMBERS OF NO LESS THAN SEVENTY-FIVE PERCENT OF THE HOUSEHOLDS IN AN ELIGIBLE AREA WHO LIVE NO MORE THAN FOUR-TENTHS OF ONE MILE FROM THE NEAREST EDGE OF THE RIGHT-OF-WAY OF THE STATE HIGHWAY;

(b) SPECIFY WHETHER A LOCAL GOVERNMENT HAS AGREED TO PROVIDE ANY OF THE MONEYS NECESSARY TO CONSTRUCT THE NOISE MITIGATION MEASURES; AND

(c) SPECIFY WHICH NOISE MITIGATION MEASURES THE APPLICANT PROPOSES FOR THE ELIGIBLE AREA.

(3) IF LOCAL GOVERNMENTS IN AN ELIGIBLE AREA HAVE NOT AGREED TO PROVIDE AT LEAST FIFTY PERCENT OF THE MONEYS NECESSARY TO CONSTRUCT THE PROPOSED NOISE MITIGATION MEASURES IN THE ELIGIBLE AREA, AN APPLICANT MAY SUBMIT AN APPLICATION FOR NOISE MITIGATION MEASURES UNDER THIS SECTION ONLY IF THE ELIGIBLE AREA EXISTED AS A RESIDENTIAL AREA BEFORE THE STATE HIGHWAY WAS CONSTRUCTED OR WIDENED.

(4) (a) THE DEPARTMENT SHALL CONSIDER APPLICATIONS RECEIVED BETWEEN NOVEMBER 1 AND MARCH 31 FOR NOISE MITIGATION MEASURES TO BE CONSTRUCTED IN THE STATE FISCAL YEAR COMMENCING THE FOLLOWING JULY 1.

(b) NO LATER THAN JULY 1 OF EACH YEAR, THE DEPARTMENT SHALL REVIEW APPLICATIONS RECEIVED BETWEEN NOVEMBER 1 AND MARCH 31 OF THE PREVIOUS STATE FISCAL YEAR AND PLACE APPLICATIONS THAT MEET THE REQUIREMENTS OF THIS SECTION ON A LIST OF APPROVED NOISE MITIGATION MEASURES. THE DEPARTMENT SHALL PRIORITIZE THE MEASURES ON THE LIST USING A FORMULA THAT GIVES EQUAL WEIGHT TO THE FOLLOWING FACTORS:

(I) THE HOURLY EQUIVALENT NOISE LEVEL AT THE FIRST RECEIVERS IN THE ELIGIBLE AREA;

(II) THE NUMBER OF HOMES IN THE AREA THAT WILL BENEFIT SIGNIFICANTLY FROM NOISE MITIGATION MEASURES; AND

(III) THE LENGTH OF TIME THAT THE AREA HAS BEEN AN ELIGIBLE AREA.

(5) (a) THE DEPARTMENT SHALL CONSTRUCT NOISE MITIGATION MEASURES ON THE LIST OF APPROVED MEASURES FOR WHICH A LOCAL GOVERNMENT HAS AGREED TO PROVIDE NO LESS THAN FIFTY PERCENT OF THE NECESSARY MONEYS IN THE ORDER OF PRIORITY ESTABLISHED PURSUANT TO SUBSECTION (4) OF THIS SECTION, USING MONEYS PROVIDED BY LOCAL GOVERNMENTS AND ANY MONEYS DISTRIBUTED TO THE DEPARTMENT BY THE DIRECTOR OF THE DIVISION OF LOCAL GOVERNMENT IN THE DEPARTMENT OF LOCAL AFFAIRS PURSUANT TO SECTION 24-32-114 (1) (b),

C.R.S.

(b) AFTER THE CONSTRUCTION OF NOISE MITIGATION MEASURES IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (5), THE DEPARTMENT SHALL USE ANY MONEYS PROVIDED BY LOCAL GOVERNMENTS OR DISTRIBUTED TO THE DEPARTMENT PURSUANT TO SECTION 24-32-114 (1) (b), C.R.S., TO CONSTRUCT OTHER NOISE MITIGATION MEASURES ON THE LIST OF APPROVED MEASURES IN THE ORDER OF PRIORITY ESTABLISHED PURSUANT TO SUBSECTION (4) OF THIS SECTION.

(c) IF A NOISE MITIGATION MEASURE ON THE LIST OF APPROVED MEASURES IS NOT CONSTRUCTED IN A STATE FISCAL YEAR, THE APPLICANT MAY SUBMIT AN APPLICATION FOR THE NOISE MITIGATION MEASURE FOR THE NEXT STATE FISCAL YEAR.

43-2-403. Noise mitigation - privately funded. (1) AN APPLICANT MAY SUBMIT AN APPLICATION FOR NOISE MITIGATION MEASURES TO BE PRIVATELY FUNDED TO THE DEPARTMENT AT ANY TIME IN ACCORDANCE WITH THE APPLICATION PROCEDURES ESTABLISHED BY THE TRANSPORTATION COMMISSION BY RULE.

(2) AN APPLICATION FOR PRIVATELY FUNDED NOISE MITIGATION MEASURES SHALL:

(a) BE ACCOMPANIED BY A PETITION SIGNED BY NO LESS THAN SEVENTY-FIVE PERCENT OF THE RESIDENT HOMEOWNERS IN AN ELIGIBLE AREA WHOSE HOMES ARE LOCATED NO MORE THAN FOUR-TENTHS OF ONE MILE FROM THE NEAREST EDGE OF THE RIGHT-OF-WAY OF THE STATE HIGHWAY;

(b) SPECIFY THE SOURCE OF THE MONEYS NECESSARY TO CONSTRUCT THE NOISE MITIGATION MEASURES; AND

(c) SPECIFY WHICH NOISE MITIGATION MEASURES THE APPLICANT PROPOSES FOR THE ELIGIBLE AREA.

(3) (a) THE DEPARTMENT SHALL CONSIDER AN APPLICATION FOR NOISE MITIGATION MEASURES MADE PURSUANT TO THIS SECTION WITHIN THREE MONTHS AFTER THE APPLICATION IS RECEIVED.

(b) THE DEPARTMENT SHALL APPROVE AN APPLICATION FOR NOISE MITIGATION MEASURES THAT MEETS THE REQUIREMENTS OF THIS SECTION. THE APPLICANT MAY CONSTRUCT NOISE MITIGATION MEASURES APPROVED BY THE DEPARTMENT.

(c) NOISE MITIGATION MEASURES CONSTRUCTED IN ACCORDANCE WITH THIS SECTION SHALL:

(I) COMPLY WITH APPLICABLE RULES AND PROCEDURAL DIRECTIVES OF THE DEPARTMENT AND THE TRANSPORTATION COMMISSION;

(II) MEET THE NOISE REDUCTION STANDARDS ESTABLISHED BY THE DEPARTMENT;

(III) BE COMPATIBLE WITH ANY EXISTING NOISE MITIGATION MEASURES IN THE ELIGIBLE AREA; AND

(IV) COMPLY WITH THE ZONING AND BUILDING REQUIREMENTS ESTABLISHED BY A LOCAL GOVERNMENT IN THE ELIGIBLE AREA.

(4) NOISE MITIGATION MEASURES APPROVED PURSUANT TO THIS SECTION MAY BE CONSTRUCTED IN THE STATE HIGHWAY RIGHT-OF-WAY WITH THE APPROVAL OF THE DEPARTMENT OR ON PRIVATE LAND. THE DEPARTMENT MAY SELL AT FAIR-MARKET VALUE OR GRANT AN EASEMENT TO ANY LAND IN THE STATE HIGHWAY RIGHT-OF-WAY FOR THE PURPOSE OF CONSTRUCTING NOISE MITIGATION MEASURES APPROVED IN ACCORDANCE WITH THIS SECTION, SUBJECT TO THE PROVISIONS OF SECTION 43-1-210 (5).

(5) THE APPLICANT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE NOISE MITIGATION MEASURES CONSTRUCTED IN ACCORDANCE WITH THIS SECTION.

43-2-404. Rule-making authority. THE TRANSPORTATION COMMISSION CREATED BY PART 1 OF ARTICLE 1 OF THIS TITLE SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO IMPLEMENT THE PROVISIONS OF THIS PART 4. THE RULES SHALL INCLUDE NOISE MITIGATION STANDARDS AND A LIST OF APPROVED NOISE MITIGATION MEASURES AND PRODUCTS THAT MEET THE STANDARDS.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2006, the sum of three thousand dollars (\$3,000), or so much thereof as may be necessary, for the provision of legal services related to the drafting and review of the transportation commission's proposed rules related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of transportation.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2006