

CHAPTER 194

TRANSPORTATION

HOUSE BILL 23-1276

BY REPRESENTATIVE(S) Lindstedt and Vigil, Bird, Boesenecker, Dickson, Epps, Frizzell, Froelich, Hamrick, Jodeh, Kipp, Lindsay, Lynch, Ricks, Story, Taggart, Valdez, Weinberg, Willford, McCluskie;
 also SENATOR(S) Zenzinger and Pelton B., Bridges, Buckner, Cutter, Exum, Ginal, Hansen, Hinrichsen, Kolker, Pelton R., Priola, Winter F.

AN ACT

CONCERNING THE BRIDGE AND TUNNEL ENTERPRISE, AND, IN CONNECTION THEREWITH, EXPANDING THE SCOPE OF THE ENTERPRISE'S POWERS TO INCLUDE THE COMPLETION OF PREVENTATIVE MAINTENANCE BRIDGE PROJECTS AND ALLOWING THE ENTERPRISE TO REPAIR, RECONSTRUCT, REPLACE, AND MAINTAIN A FAIR-RATED BRIDGE UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. In Colorado Revised Statutes, 43-4-802, **amend** (2)(c), (2)(d), (2)(f), and (3)(a) introductory portion as follows:

43-4-802. Legislative declaration. (2) The general assembly further finds and declares that:

(c) Increasing funding for designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, tunnel projects, and road safety projects in the short- and medium-term through the imposition of bridge and road safety surcharges, a bridge and tunnel impact fee, and other new fees at rates reasonably calculated based on the benefits received by the persons paying the fees will not only provide funding to complete the projects but will also accelerate the state's economic recovery by increasing bridge, tunnel, and road construction, repair, reconstruction, and maintenance activity, as well as related economic activity, and by employing significant numbers of Coloradans;

(d) The creation of a statewide bridge and tunnel enterprise authorized to complete designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and tunnel projects, to impose a bridge safety surcharge and a bridge and tunnel impact fee and issue revenue bonds, and, if required approvals are obtained,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

to contract with the state to receive one or more loans of money received by the state under the terms of one or more financed purchase of an asset or certificate of participation agreements authorized by this part 8 and to use the revenues generated by the bridge safety surcharge and the bridge and tunnel impact fee to repay any such loan or loans, will improve the safety and efficiency of the state transportation system by allowing the state to accelerate the repair, reconstruction, and replacement of structurally deficient, functionally obsolete, and rated as poor bridges, TO PERFORM PREVENTATIVE MAINTENANCE ON BRIDGES RATED AS FAIR AND GOOD, and TO repair, maintain, and more safely operate tunnels;

(f) Granting the bridge enterprise and the transportation enterprise both responsibility for the completion, respectively, of designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and tunnel projects and other important surface transportation projects and the flexibility to execute their respective missions in a variety of innovative ways will ensure that available resources for such projects are efficiently and effectively leveraged so that both the projects and the state's economic recovery can be completed as quickly as possible.

(3) The general assembly further finds and declares that:

(a) While it is necessary, appropriate, and in the best interests of the state to fund designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, tunnel projects, and highway safety projects and stimulate economic recovery in the short- and medium-term, the state must also develop a long-term strategy to provide sustainable long-term revenue streams dedicated for the construction of important surface transportation infrastructure projects and the continuing maintenance, repair, and reconstruction of the statewide surface transportation system that will:

SECTION 2. In Colorado Revised Statutes, 43-4-803, **amend** (11), (13)(b)(IV), and (13)(b)(V); and **add** (12.5), (12.7), and (17.5) as follows:

43-4-803. Definitions. As used in this part 8, unless the context otherwise requires:

(11) "Designated bridge project" means a project that involves the repair, reconstruction, replacement, or ongoing operation or maintenance, or any combination thereof, of a designated bridge by the bridge enterprise pursuant to an agreement between the enterprise and the commission or department authorized by section 43-4-805 (5)(f). A FAIR-RATED BRIDGE MAY BE INCLUDED IN A DESIGNATED BRIDGE PROJECT OR OTHER PROJECT INVOLVING THE REPAIR, REPLACEMENT, OR RECONSTRUCTION OF A DESIGNATED BRIDGE IF INCLUDING THE FAIR-RATED BRIDGE IS AN EFFICIENT USE OF THE BRIDGE ENTERPRISE'S RESOURCES AND WILL RESULT IN COST SAVINGS OR SCHEDULE ACCELERATION FOR A PROJECT THAT WILL IMPROVE SAFETY.

(12.5) "FAIR-RATED BRIDGE" MEANS EVERY BRIDGE, INCLUDING ANY ROADWAYS, SIDEWALKS, OR OTHER INFRASTRUCTURE CONNECTED TO, ADJACENT TO, OR REQUIRED FOR THE OPTIMAL FUNCTIONING OF THE BRIDGE, THAT:

(a) IS PART OF THE STATE HIGHWAY SYSTEM, AS DESCRIBED IN SECTION 43-2-101; AND

(b) THE DEPARTMENT HAS RATED AS FAIR.

(12.7) "GOOD-RATED BRIDGE" MEANS EVERY BRIDGE, INCLUDING ANY ROADWAYS, SIDEWALKS, OR OTHER INFRASTRUCTURE CONNECTED TO, ADJACENT TO, OR REQUIRED FOR THE OPTIMAL FUNCTIONING OF THE BRIDGE, THAT:

(a) IS PART OF THE STATE HIGHWAY SYSTEM, AS DESCRIBED IN SECTION 43-2-101; AND

(b) THE DEPARTMENT HAS RATED AS GOOD.

(13)(b) "Grant" does not include any of the following or any interest or income derived from the deposit and investment of the following:

(IV) Any ~~moneys~~ MONEY paid or advanced to the bridge enterprise or the transportation enterprise by the state, a local government or group of local governments, an authority, or any other government-owned business or governmental entity in exchange for an agreement by either enterprise to complete a designated bridge project, A PREVENTATIVE MAINTENANCE BRIDGE PROJECT, or a surface transportation infrastructure project; or

(V) Any ~~moneys~~ MONEY loaned by the commission to the bridge enterprise pursuant to section 43-4-805 (4) or (5)(r) or the transportation enterprise pursuant to section 43-4-806 (4).

(17.5) "PREVENTATIVE MAINTENANCE BRIDGE PROJECT" MEANS A PROJECT THAT INVOLVES A TREATMENT OR STRATEGY TO EXTEND THE SERVICE LIFE OF A FAIR-RATED OR GOOD-RATED BRIDGE BY PREVENTING, DELAYING, OR REDUCING THE DETERIORATION OF A BRIDGE.

SECTION 3. In Colorado Revised Statutes, 43-4-805, **amend** (1)(a), (1)(b), (2)(a)(I), (2)(b) introductory portion, (2)(b)(II), (2)(c), (3), (5)(c), (5)(f), (5)(h), (5)(k), (5)(l), (5)(p), (5)(q), (5)(r)(I), and (5)(r)(II) as follows:

43-4-805. Statewide bridge enterprise - creation - board - funds - powers and duties - legislative declaration - definitions. (1) The general assembly hereby finds and declares that:

(a) The completion of designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and tunnel projects is essential to address increasing traffic congestion and delays, hazards, injuries, and fatalities;

(b) Due to the limited availability of state and federal funding and the need to accomplish the financing, repair, reconstruction, and replacement of designated bridges, COMPLETION OF PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and COMPLETION OF tunnel projects as promptly and efficiently as possible, it is necessary to create a statewide bridge and tunnel enterprise and to authorize the enterprise to:

(I) Enter into agreements with the commission or the department to finance, repair, reconstruct, and replace designated bridges, COMPLETE PREVENTATIVE

MAINTENANCE BRIDGE PROJECTS, and complete tunnel projects in the state; and

(II) Impose a bridge safety surcharge, a bridge and tunnel impact fee, and a bridge and tunnel retail delivery fee at rates reasonably calculated to defray the costs of completing designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and tunnel projects and distribute the burden of defraying the costs in a manner based on the benefits received by persons paying the fees and using designated bridges and tunnels and receiving retail deliveries, receive and expend revenue generated by the surcharge and fees and other money, issue revenue bonds and other obligations, contract with the state, if required approvals are obtained, to receive one or more loans of money received by the state under the terms of one or more financed purchase of an asset or certificate of participation agreements authorized by this part 8, expend revenue generated by the surcharge to repay any such loan or loans received, and exercise other powers necessary and appropriate to carry out its purposes; and

(2) (a) (I) The scope of the existing statewide bridge enterprise created in this subsection (2)(a)(I) in 2009 is hereby expanded to include ~~both~~ designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and surface transportation infrastructure projects for tunnels, and the name of the expanded enterprise is the statewide bridge and tunnel enterprise. The bridge enterprise is and operates as a government-owned business within the department. The commission shall serve as the bridge enterprise board and shall, with the consent of the executive director, appoint a bridge enterprise director who shall possess such qualifications as may be established by the commission and the state personnel board. The bridge enterprise director shall oversee the discharge of all responsibilities of the bridge enterprise and shall serve at the pleasure of the bridge enterprise board.

(b) The business purpose of the bridge enterprise is to finance, repair, reconstruct, and replace any designated bridge in the state, COMPLETE PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and complete tunnel projects and, as agreed upon by the enterprise and the commission, or the department to the extent authorized by the commission, to maintain the bridges it finances, repairs, reconstructs, and replaces. To allow the bridge enterprise to accomplish this purpose and fully exercise its powers and duties through the bridge enterprise board, the bridge enterprise may:

(II) Issue revenue bonds payable from the revenues and other available ~~moneys~~ MONEY of the bridge enterprise pledged for their payment as authorized in section 43-4-807; and

(c) The bridge enterprise ~~shall constitute~~ CONSTITUTES an enterprise for purposes of section 20 of article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this subsection (2)(c), the bridge enterprise shall not be subject to any provisions of section 20 of article X of the state constitution. Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with "enterprise" status under section 20 of article X of the state constitution, the general assembly finds and declares that a

bridge safety surcharge, a bridge and tunnel impact fee, or a bridge and tunnel retail delivery fee imposed by the bridge enterprise as authorized by subsection (5)(g), (5)(g.5), or (5)(g.7) of this section is not a tax but is instead a fee imposed by the bridge enterprise to defray the cost of completing designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and tunnel projects that the enterprise provides as a specific service to the persons upon whom the fee is imposed and at rates reasonably calculated based on the benefits received by such persons.

(3) (a) The statewide bridge and tunnel enterprise special revenue fund, referred to in this part 8 as the "bridge special fund", is hereby created in the state treasury. All revenue received by the bridge enterprise, including, but not limited to, revenue from a bridge safety surcharge imposed as authorized by subsection (5)(g) of this section, revenue from a bridge and tunnel impact fee imposed as authorized by subsection (5)(g.5) of this section, revenue from a bridge and tunnel retail delivery fee imposed as authorized by subsection (5)(g.7) of this section, and any money loaned to the enterprise by the state pursuant to subsection (5)(r) of this section, shall be deposited into the bridge special fund. The bridge enterprise board may establish separate accounts within the bridge special fund as needed in connection with any specific designated bridge project, PREVENTATIVE MAINTENANCE BRIDGE PROJECT, or tunnel project. The bridge enterprise also may deposit or permit others to deposit other money into the bridge special fund, but in no event may revenue from any tax otherwise available for general purposes be deposited into the bridge special fund. The state treasurer, after consulting with the bridge enterprise board, shall invest any money in the bridge special fund, including any surplus or reserves, but excluding any proceeds from the sale of bonds or earnings on such proceeds invested pursuant to section 43-4-807 (2), that are not needed for immediate use. Such money may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113.

(b) All interest and income derived from the deposit and investment of moneys in the bridge special fund shall be credited to the bridge special fund and, if applicable, to the appropriate designated bridge project account, ~~Moneys~~ PREVENTATIVE MAINTENANCE BRIDGE PROJECT ACCOUNT, OR TUNNEL PROJECT ACCOUNT. MONEY in the bridge special fund shall be continuously appropriated to the bridge enterprise for the purposes set forth in this part 8. All ~~moneys~~ MONEY deposited in the bridge special fund shall remain in the bridge special fund for the purposes set forth in this part 8, and no part of the bridge special fund shall be used for any other purpose.

(c) ~~The bridge enterprise may expend money in the bridge special fund to pay bond or loan obligations, to fund the administration, planning, financing, repair, reconstruction, replacement, or maintenance of designated bridges and the completion of tunnel projects, and for the acquisition of land to the extent required in connection with any designated bridge project. The bridge enterprise may also expend money in the bridge special fund to pay its operating costs and expenses. The bridge enterprise board shall have~~ HAS exclusive authority to budget and approve the expenditure of money in the bridge special fund. THE BRIDGE ENTERPRISE MAY EXPEND MONEY IN THE BRIDGE SPECIAL FUND TO PAY FOR:

(I) BOND OR LOAN OBLIGATIONS;

(II) THE ADMINISTRATION, PLANNING, FINANCING, REPAIR, RECONSTRUCTION, REPLACEMENT, OR MAINTENANCE OF A DESIGNATED BRIDGE;

(III) THE COMPLETION OF PREVENTATIVE MAINTENANCE BRIDGE PROJECTS;

(IV) THE ADMINISTRATION, PLANNING, FINANCING, REPAIR, REPLACEMENT, RECONSTRUCTION, OR MAINTENANCE OF A FAIR-RATED BRIDGE IF THE REPAIR, REPLACEMENT, OR RECONSTRUCTION IS INCLUDED AS PART OF A DESIGNATED BRIDGE PROJECT OR OTHER PROJECT INVOLVING THE REPAIR, REPLACEMENT, OR RECONSTRUCTION OF A DESIGNATED BRIDGE. A FAIR-RATED BRIDGE MAY BE INCLUDED IN A DESIGNATED BRIDGE PROJECT OR OTHER PROJECT INVOLVING THE REPAIR, REPLACEMENT, OR RECONSTRUCTION OF A DESIGNATED BRIDGE IF INCLUDING THE FAIR-RATED BRIDGE IS AN EFFICIENT USE OF THE BRIDGE ENTERPRISE'S RESOURCES AND WILL RESULT IN COST SAVINGS OR SCHEDULE ACCELERATION FOR A PROJECT THAT WILL IMPROVE SAFETY.

(V) THE COMPLETION OF TUNNEL PROJECTS;

(VI) THE ACQUISITION OF LAND TO THE EXTENT REQUIRED IN CONNECTION WITH ANY DESIGNATED BRIDGE PROJECT; AND

(VII) THE OPERATING COSTS AND EXPENSES OF THE BRIDGE ENTERPRISE.

(5) In addition to any other powers and duties specified in this section, the bridge enterprise board has the following powers and duties:

(c) To issue revenue bonds, payable solely from the bridge special fund, for the purpose of paying the cost of financing, repairing, reconstructing, replacing, and maintaining designated bridges or fair-rated bridges if the fair-rated bridges are included as part of designated bridge projects or other projects pursuant to subsection (3)(c)(IV) of this section, completing preventative maintenance bridge projects, and completing tunnel projects;

(f) To enter into ~~agreements~~ AN AGREEMENT with the commission, or the department to the extent authorized by the commission, under which the bridge enterprise agrees to finance, repair, reconstruct, replace, and, if any given agreement so specifies, maintain ~~designated bridges as specified in the agreements~~ A DESIGNATED BRIDGE OR A FAIR-RATED BRIDGE IF THE FAIR-RATED BRIDGE IS INCLUDED AS PART OF A DESIGNATED BRIDGE PROJECT OR OTHER PROJECT PURSUANT TO SUBSECTION (3)(c)(IV) OF THIS SECTION;

(h) To make and enter into contracts or agreements with a private entity, to facilitate a public-private initiative pursuant to sections 43-1-1203 and 43-1-1204, including, but not limited to:

(I) An agreement pursuant to which the bridge enterprise or the enterprise on behalf of the department operates, maintains, or provides services or property in connection with a designated bridge project, ~~and~~ PREVENTATIVE MAINTENANCE BRIDGE PROJECT, OR TUNNEL PROJECT;

(II) An agreement pursuant to which a private entity designs, develops,

constructs, reconstructs, repairs, operates, or maintains all or any portion of a designated bridge project on behalf of the bridge enterprise; AND

(III) AN AGREEMENT PURSUANT TO WHICH A PRIVATE ENTITY PARTICIPATES IN OR COMPLETES A PREVENTATIVE MAINTENANCE BRIDGE PROJECT OR TUNNEL PROJECT.

(k) To prepare, or cause to be prepared, detailed plans, specifications, or estimates for any designated bridge project, PREVENTATIVE MAINTENANCE BRIDGE PROJECT, or tunnel project within the state;

(l) In connection with any designated bridge project, to acquire, finance, repair, reconstruct, replace, operate, and maintain any designated bridge within the state OR ANY FAIR-RATED BRIDGE IF THE FAIR-RATED BRIDGE IS INCLUDED AS PART OF A DESIGNATED BRIDGE PROJECT PURSUANT TO SUBSECTION (3)(c)(IV) OF THIS SECTION;

(p) Pursuant to section 24-1-107.5, ~~C.R.S.~~, to establish, create, and approve nonprofit entities and bonds issued by or on behalf of such nonprofit entities for the purpose of completing a designated bridge project, PREVENTATIVE MAINTENANCE BRIDGE PROJECT, OR TUNNEL PROJECT, to accept the assets of any such nonprofit entity, to obtain an option to acquire the assets of any such nonprofit entity by paying its bonds, to appoint or approve the appointment of members of the governing board of any such nonprofit entity, and to remove the members of the governing board of any such nonprofit entity for cause;

(q) To transfer money, property, or other assets of the bridge enterprise to the department to the extent necessary to implement the financing of any designated bridge project, PREVENTATIVE MAINTENANCE BRIDGE PROJECT, OR TUNNEL PROJECT, or for any other purpose authorized in this part 8;

(r) (I) To contract with the state to borrow money under the terms of one or more loan contracts entered into by the state and the bridge enterprise pursuant to subsection (5)(r)(III) of this section, to expend any money borrowed from the state for the purpose of completing designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, and tunnel projects and for any other authorized purpose that constitutes the construction, supervision, and maintenance of the public highways of this state for purposes of section 18 of article X of the state constitution, and to use revenue generated by any bridge safety surcharge, bridge and tunnel impact fee, or bridge and tunnel retail delivery fee imposed pursuant to subsection (5)(g), (5)(g.5), or (5)(g.7) of this section and any other legally available money of the bridge enterprise to repay the money borrowed and any other amounts payable under the terms of the loan contract.

(II) If the bridge enterprise board seeks to enter into a contract to borrow money from the state as authorized by subsection (5)(r)(I) of this section, the board shall provide the governor with a list of designated bridge projects, PREVENTATIVE MAINTENANCE BRIDGE PROJECTS, OR TUNNEL PROJECTS to be financed with the borrowed money and a statement of both the total amount of the loan requested and the estimated amount of the loan that will be used to fund each project on the list. If the governor determines, in the governor's sole discretion, that lending money to the bridge enterprise as requested by the enterprise, or lending a lesser amount of

money to the enterprise, is in the best interest of the state, the governor, after consultation with the executive director of the department of personnel and the state treasurer, shall prepare and provide to the state treasurer a list of state buildings or other state capital facilities that the state, acting by and through the state treasurer, may sell or lease and lease back pursuant to the terms of one or more financed purchase of an asset or certificate of participation agreements that the state, acting by and through the state treasurer, may enter into pursuant to subsection (5)(r)(III) of this section. When providing the list, the governor shall also specify to the state treasurer the maximum permitted principal amount of any loan that may be made to the bridge enterprise under the terms of any loan contract that the state, acting by and through the state treasurer, may enter into pursuant to subsection (5)(r)(III)(A) of this section.

SECTION 4. 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; 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 15, 2023