

CHAPTER 114

TRANSPORTATION

HOUSE BILL 96-1144

BY REPRESENTATIVES Anderson, Entz, Hagedorn, Lamborn, May, Pankey, and Piffner;
also SENATORS Ament, Perlmutter, and Weddig.

AN ACT

CONCERNING THE REGULATION OF TOLL ROADS WITHIN THE STATE TRANSPORTATION SYSTEM.

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

SECTION 1. 43-3-202 (1) (b), (1) (d), and (1) (f), Colorado Revised Statutes, 1993 Repl. Vol., are amended, and the said 43-3-202 is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

43-3-202. Powers granted to department. (1) In addition to the powers now possessed by it, the department of transportation has power:

(b) To DESIGN, FINANCE, construct, operate, maintain, improve, and reconstruct turnpikes in the state and to acquire, construct, operate, control, and use ~~said~~ THE turnpikes and all works, facilities, and means necessary or convenient to the full exercise of the powers granted in this section. It is declared that such turnpikes are public highways of the state.

(c.5) TO MAKE AND ENTER INTO CONTRACTS OR AGREEMENTS WITH ONE OR MORE PUBLIC OR PRIVATE ENTITIES TO DESIGN, FINANCE, CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, OR IMPROVE A TURNPIKE PROJECT BY MEANS OF A PUBLIC-PRIVATE INITIATIVE PURSUANT TO SECTION 43-3-202.5 AND PART 12 OF ARTICLE 1 OF THIS TITLE.

(d) To establish, REVISE PERIODICALLY, and collect fees, fares, and tolls for the privilege of traveling along and over ~~said~~ THE turnpikes and for such other uses as may be made available by the establishment of such turnpikes, to adopt such rules ~~and regulations~~ governing the use of ~~said~~ THE turnpikes as the department of transportation may determine to be advisable, and to exercise such other powers and

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

authority as may be necessary or convenient to the practical and full operation and use thereof;

(f) To set aside in a special sinking fund and to pledge from the proceeds in the state highway fund derived from the imposition of licenses, registration, and other charges with respect to the operation of any motor vehicle upon any public highway of the state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel an amount sufficient to insure the payment of the principal and interest on the bonds authorized in this part 2 to be issued promptly as the same respectively become due; except that any such pledge shall first be approved by joint resolution of the senate and house of representatives and further except that the amount so set aside and pledged shall not exceed in any one year one hundred percent of the total of the following:

(I) The amount of principal and interest falling due during such year; and

(II) The amount required to be paid into the special sinking fund as a reasonable reserve for the payment of the bonds authorized in this part 2 in accordance with the resolution of the ~~department of transportation~~ TRANSPORTATION COMMISSION authorizing their issuance as approved by the joint resolution of the senate and house of representatives.

SECTION 2. Part 2 of article 3 of title 43, Colorado Revised Statutes, 1993 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

43-3-202.5. Public-private initiatives - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE DEPARTMENT OF TRANSPORTATION IS IN NEED OF FUNDS TO INVEST IN NEW INFRASTRUCTURE PROJECTS, INCLUDING TURNPIKES, WITHIN THE STATE TRANSPORTATION SYSTEM, AND PUBLIC-PRIVATE PARTNERSHIPS CAN PROVIDE THE STATE WITH A NEW SOURCE OF CAPITAL FOR SUCH PROJECTS;

(b) PRIVATELY-DEVELOPED TRANSPORTATION PROJECTS CAN RESULT IN TIME AND COST SAVINGS, RISK REDUCTION, AND NEW TAX REVENUES TO THE STATE; AND

(c) PUBLIC-PRIVATE AGREEMENTS CAN BE UTILIZED BY THE STATE NOT ONLY FOR THE DEVELOPMENT OF NEW TURNPIKES BUT ALSO FOR THE MODERNIZATION AND IMPROVEMENT OF EXISTING TURNPIKES.

(2) THE DEPARTMENT OF TRANSPORTATION MAY ENTER INTO PUBLIC-PRIVATE INITIATIVES PURSUANT TO PART 12 OF ARTICLE 1 OF THIS TITLE FOR THE FOLLOWING PURPOSES:

(a) TO DESIGN, FINANCE, CONSTRUCT, AND OPERATE A NEW TURNPIKE PROJECT WITHIN THE STATE; OR

(b) TO IMPROVE AN EXISTING TURNPIKE PROJECT IN THE STATE BY MODERNIZING, UPGRADING, EXPANDING, OR MAINTAINING AN EXISTING TURNPIKE FACILITY.

(3) (a) THE DEPARTMENT OF TRANSPORTATION IS AUTHORIZED TO SOLICIT AND

CONSIDER PROPOSALS, ENTER INTO AGREEMENTS, GRANT PUBLIC BENEFITS, AND ACCEPT CONTRIBUTIONS FOR PUBLIC-PRIVATE INITIATIVES PURSUANT TO PART 12 OF ARTICLE 3 OF THIS TITLE CONCERNING THE PURPOSES SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(b) AS USED IN THIS SUBSECTION (3), "PUBLIC BENEFIT" HAS THE SAME MEANING AS SET FORTH IN SECTION 43-1-1201 (2).

(4) A PUBLIC-PRIVATE INITIATIVE UNDER THIS SECTION SHALL INCLUDE A PROVISION THAT THE PUBLIC OR PRIVATE ENTITY SHALL SECURE AND MAINTAIN LIABILITY INSURANCE COVERAGE DURING THE CONSTRUCTION AND IMPROVEMENT OF ANY TURNPIKE PROJECT IN AMOUNTS APPROPRIATE TO PROTECT A PROJECT'S VIABILITY.

SECTION 3. 43-3-203, Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

43-3-203. Bonds authorized. (1) For the purpose of defraying the cost of constructing, improving, or reconstructing any such turnpike and all expenses incidental thereto, including ~~without limiting the generality of the foregoing,~~ all engineering and legal fees and interest during construction and for one year thereafter, the department of transportation may, upon the affirmative majority vote of the entire membership of the transportation commission AND with the approval of the general assembly evidenced by joint resolution of the senate and house of representatives, and signed by the governor, issue bonds of the state of Colorado, payable from a fund consisting of the fees, fares, and tolls derived from any designated turnpike project and with the approval of the general assembly evidenced by joint resolution of the senate and house of representatives, additionally secured by a pledge of and payable from a special fund set aside from the state highway fund, but the amount so set aside and pledged shall not exceed in any one year one hundred percent of the total of the following:

(a) The amount of principal and interest falling due during such year; and

(b) The amount required to be paid into the special sinking fund as a reasonable reserve for the payment of the bonds authorized in this part 2 in accordance with the resolution of the ~~department of transportation~~ TRANSPORTATION COMMISSION authorizing their issuance as approved by the joint resolution of the senate and house of representatives.

SECTION 4. 43-3-204, Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

43-3-204. Bond details. All bonds issued under the provisions of this part 2 shall bear interest at a rate not exceeding a maximum net effective rate authorized by resolution of the ~~department of transportation~~ TRANSPORTATION COMMISSION on the face value of the issue of bonds and shall be in such form and executed in such manner and shall be payable at such times extending not more than thirty years from the date thereof, shall contain ~~such~~ THE provisions for prior redemption, and shall be payable at such places as the department of transportation determines. ~~Said~~ THE bonds shall be sold at public or private sale on such terms as the department of

transportation may determine. In case any of the officers whose signatures or countersignatures appear on the ~~said~~ bonds or the coupons attached thereto cease to be officers before delivery of ~~such~~ THE bonds, ~~such~~ THE signatures and countersignatures shall nevertheless be valid and sufficient for all purposes with the same force and effect as if they had remained in office until ~~such~~ THE delivery. ~~Such~~ THE bonds shall contain on their face the designation of the project as determined by the department of transportation and in anticipation of the revenues of which the same are issued. All bonds issued under the provisions of this part 2 shall have and are declared to have all the qualities and incidents of negotiable instruments under the law of the state.

SECTION 5. 43-3-206, Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

43-3-206. Payment of bonds - use and disposition of fund. (1) (a) At or before the issuance of any ~~such~~ bonds UNDER THE PROVISIONS OF THIS PART 2, the department of transportation shall, by resolution OF THE TRANSPORTATION COMMISSION:

(I) Establish a schedule of fees, fares, and tolls to be charged for the use of the project; and ~~shall also by said resolution~~

(II) Create a special sinking fund in the state treasury for the payment of the principal of and the interest on ~~said~~ THE bonds authorized to be issued promptly as the same, respectively, become due.

(b) Into ~~said~~ THE fund there shall be set aside and pledged by the department of transportation all ~~said~~ THE fees, fares, and tolls and all other income however derived resulting from the operation of the project and all moneys authorized to be set aside and pledged from the state highway fund not exceeding in any one year one hundred percent of the total of the following:

~~(a)~~ (I) The amount of principal and interest falling due during such year; and

~~(b)~~ (II) The amount required to be paid into the special sinking fund as a reasonable reserve for the payment of the bonds authorized in this part 2 in accordance with the resolution of the ~~department of transportation~~ TRANSPORTATION COMMISSION authorizing their issuance as approved by the joint resolution of the senate and house of representatives.

(2) The department of transportation may, by resolution OF THE TRANSPORTATION COMMISSION passed prior to the issuance of the bonds or in the trust indenture, covenant to pay the cost of maintaining, repairing, and operating any turnpike constructed under the provisions of this part 2, and, inasmuch as such turnpike will at all times belong to the state, such resolution shall have the force of contract between the state and the holders of the bonds issued for such turnpike.

(3) To the extent that the fund provided for in this section is not required for the payment of bonds and the creation of a reserve fund and a sinking fund, the same ~~may~~ SHALL be used to pay the cost of maintaining, repairing, and operating the turnpike project PURSUANT TO SECTION 43-3-212.5. ~~but~~ Nothing in this section shall be

construed as impairing the obligation of the state to maintain and operate any such turnpike project as a state highway.

(4) ~~Said~~ THE BONDS ISSUED UNDER THIS PART 2 shall constitute an irrevocable charge against ~~said~~ THE SPECIAL SINKING FUND. Separate accounts shall be kept in the office of the state treasury of the funds derived from each project against the revenues of which bonds are issued under this part 2. ~~Said resolutions~~ THE RESOLUTIONS OF THE TRANSPORTATION COMMISSION may contain such other provisions or covenants not inconsistent ~~herewith~~ WITH THE PROVISIONS OF THIS PART 2 as the department of transportation may consider advisable to insure the payment of ~~said~~ THE BONDS.

SECTION 6. 43-3-207 (3), Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

43-3-207. Bond lien. (3) Any resolution of the ~~department of transportation~~ TRANSPORTATION COMMISSION for the issuance of bonds pursuant to section 43-3-203 may contain ~~such~~ THE PROVISIONS for protecting and enforcing the rights and remedies of the holders of any of the bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the department of transportation in relation to the purposes to which proceeds of the bonds may be applied, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding, and application of all moneys. Any such resolution may set forth the rights and remedies of the holders of any bonds and may restrict the individual right of action by any such holders. In addition, any such resolution may contain ~~such~~ ANY OTHER PROVISIONS as the department of transportation may deem reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of ~~such~~ THE RESOLUTION may be paid from the revenues or assets pledged or assigned to the payment of the bonds. In the event of default in any such payment or in any agreements of the department of transportation made as part of the contract under which the bonds were issued or contained in the resolution concerning the bonds, ~~said~~ THE PAYMENT OR AGREEMENT may be enforced by suit, mandamus, or either of ~~such~~ THE REMEDIES.

SECTION 7. 43-3-210, Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

43-3-210. Refunding bonds. The department of transportation is authorized to provide, by resolution OF THE TRANSPORTATION COMMISSION, for the issuance of refunding bonds of the state of Colorado for the purpose of refunding any bonds issued under the provisions of this part 2 and then outstanding. The issuance of ~~such~~ THE REFUNDING BONDS, the maturities and other details thereof, the rights of the holders thereof, and the duties of the department of transportation in respect to the same shall be governed by the provisions of this part 2 insofar as the same may be applicable.

SECTION 8. 43-3-212, Colorado Revised Statutes, 1993 Repl. Vol., is repealed as follows:

43-3-212. Effect of payment of bonds. ~~When all bonds and the interest thereon have been paid or a sufficient amount for the payment thereof and the interest thereon to maturity has been set aside in trust for the benefit of the bondholders and continues to be held for that purpose, the turnpike shall be maintained by the department of~~

~~transportation free of tolls and all funds of the department of transportation not required for the payment of the bonds issued in anticipation of the revenues of the turnpike project and all machinery, equipment, and other property used in connection with the project shall be used and disposed of by the department of transportation as provided by law.~~

SECTION 9. Part 2 of article 3 of title 43, Colorado Revised Statutes, 1993 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

43-3-212.5. Disposition of tolls - when bonds issued. (1) IF ANY BONDS ARE ISSUED PURSUANT TO THIS PART 2, ANY FEES, FARES, AND TOLLS TO BE CHARGED FOR THE USE OF ANY TURNPIKE SHALL BE FIXED AND ADJUSTED SO THAT THE FEES, FARES, AND TOLLS COLLECTED, ALONG WITH OTHER REVENUES, IF ANY, ARE AT LEAST SUFFICIENT TO PAY FOR:

(a) ANY BONDS ISSUED PURSUANT TO THIS PART 2 AND INTEREST THEREON, ALL SINKING FUND REQUIREMENTS, AND ANY OTHER REQUIREMENTS PROVIDED FOR BY RESOLUTION OF THE TRANSPORTATION COMMISSION OR BY ANY TRUST INDENTURE TO WHICH THE DEPARTMENT IS A PARTY; OR

(b) THE REASONABLE RETURN ON INVESTMENT OF ANY PRIVATE ENTITY FINANCING THE PROJECT BY MEANS OF A PUBLIC-PRIVATE INITIATIVE PURSUANT TO SECTION 43-3-202.5 AND PART 12 OF ARTICLE 1 OF THIS TITLE.

(2) IF AMOUNTS GENERATED FROM THE FEES, FARES, AND TOLLS COLLECTED EXCEED THE AMOUNT REQUIRED IN SUBSECTION (1) OF THIS SECTION, SUCH FEES, FARES, AND TOLLS SHALL THEN BE USED TO PAY THE NECESSARY COSTS FOR THE PROPER OPERATION, MAINTENANCE, AND REPAIR OF ANY TURNPIKE PROJECT.

(3) IF THE TRANSPORTATION COMMISSION DETERMINES THAT A TURNPIKE PROJECT IS BEING ADEQUATELY MAINTAINED, THE DEPARTMENT MAY USE ANY PROCEEDS IN THE SPECIAL SINKING FUND IN EXCESS OF THE AMOUNTS REQUIRED UNDER SUBSECTIONS (1) AND (2) OF THIS SECTION FOR THE MAINTENANCE, CONSTRUCTION, AND OPERATION OF A NETWORK OF TURNPIKES.

43-3-212.6. Disposition of tolls - when bonds not issued. (1) IF BONDS ARE NOT ISSUED PURSUANT TO THIS PART 2, ANY FEES, FARES, AND TOLLS TO BE CHARGED FOR THE USE OF ANY TURNPIKE SHALL BE FIXED AND ADJUSTED SO THAT THE FEES, FARES, AND TOLLS COLLECTED, ALONG WITH OTHER REVENUES, IF ANY, ARE AT LEAST SUFFICIENT TO ENSURE REIMBURSEMENT OR PAYMENT TO THE DEPARTMENT OF TRANSPORTATION FOR ALL COSTS RELATING TO OR RESULTING FROM THE TURNPIKE PROJECT, INCLUDING, BUT NOT LIMITED TO, COSTS FOR THE DESIGN, FINANCE, CONSTRUCTION, OPERATION, MAINTENANCE, IMPROVEMENT, AND RECONSTRUCTION OF THE TURNPIKE, AND FOR ALL WORKS, FACILITIES, AND MEANS NECESSARY OR CONVENIENT TO THE FULL EXERCISE OF THE POWERS GRANTED TO THE DEPARTMENT OF TRANSPORTATION UNDER THIS PART 2.

(2) IF AMOUNTS GENERATED FROM THE FEES, FARES, AND TOLLS COLLECTED EXCEED THE AMOUNT REQUIRED IN SUBSECTION (1) OF THIS SECTION AND IF THE TRANSPORTATION COMMISSION DETERMINES THAT A TURNPIKE PROJECT IS BEING

ADEQUATELY MAINTAINED, THE DEPARTMENT OF TRANSPORTATION MAY USE ANY PROCEEDS IN EXCESS OF SUCH AMOUNTS FOR THE MAINTENANCE, CONSTRUCTION, AND OPERATION OF A NETWORK OF TURNPIKES.

SECTION 10. 43-1-1202 (1) (a) (VIII) and (1) (a) (IX), Colorado Revised Statutes, 1993 Repl. Vol., as amended, are amended, and the said 43-1-1202 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

43-1-1202. Department powers. (1) Notwithstanding any other law, the department may:

(a) Solicit and consider proposals, enter into agreements, grant benefits, and accept contributions for public-private initiatives pursuant to this part 12 concerning any of the following:

(VIII) Commercial fleet management and electronic clearance of ports of entry;
~~and~~

(IX) Development of national standards and protocols for intelligent transportation systems; AND

(X) DESIGN, FINANCING, CONSTRUCTION, OPERATION, MAINTENANCE, AND IMPROVEMENT OF TURNPIKE PROJECTS WITHIN THE STATE PURSUANT TO PART 2 OF ARTICLE 3 OF THIS TITLE.

SECTION 11. 7-45-102, Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

7-45-102. Start of work after organization. ~~Any corporation organized under law for the construction of a toll road, within ninety days after its organization, shall commence work on the proposed road and continue the work from day to day until at least five hundred dollars has been expended on such road. In case of a failure to perform such work, the corporation shall forfeit its right acquired under its certificate of incorporation.~~

SECTION 12. Repeal. Part 1 of article 4 of title 43, Colorado Revised Statutes, 1993 Repl. Vol., is repealed.

SECTION 13. 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: April 23, 1996