

CHAPTER 154

TRANSPORTATION

HOUSE BILL 98-1304

BY REPRESENTATIVES Pankey, Young, June, Nichol, Paschall, Swenson, Taylor, and Entz;
also SENATOR Mutzebaugh.

AN ACT

CONCERNING THE FUNDING OF TRANSPORTATION SYSTEM PROJECTS IN COLORADO, AND, IN CONNECTION
THEREWITH, PROVIDING FOR THE PRIVATE INVESTMENT IN SUCH TRANSPORTATION SYSTEM
PROJECTS.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that an efficient transportation system is essential for the economic, social, and environmental well-being of the state as a whole and for the maintenance of a high quality of life for the people of Colorado. If the state is to continue providing and improving an efficient transportation system, the limited public resources available for such purposes must be enhanced. The general assembly believes that partnerships with the private sector can provide such additional resources.

(2) The general assembly further declares that moneys invested in the state's transportation system can benefit not only the public using the system, but the businesses and individuals who make such investments. Colorado citizens and businesses should be given every opportunity to invest in the future of Colorado, which includes investing in the state's transportation system.

(3) Therefore, the general assembly finds and declares that the barriers that prevent the citizens and businesses in Colorado from investing in the future of the state through sound investments in transportation system projects should be eliminated to the greatest extent possible.

SECTION 2. Part 12 of article 1 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

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

43-1-1209. Notice of investment opportunities. (1) THE DEPARTMENT OR THE PRIVATE ENTITY RESPONSIBLE FOR FUNDING A PUBLIC-PRIVATE INITIATIVE UNDER THIS PART 12 MAY FORWARD THE AGREEMENT AND A DESCRIPTION OF THE INVESTMENT OPPORTUNITY FOR SUCH INITIATIVE TO ANY OF THE FOLLOWING FOR CONSIDERATION UNDER THEIR RESPECTIVE STATUTORY AUTHORITY:

(a) THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION CREATED UNDER SECTION 24-51-203, C.R.S.;

(b) THE STATE DEFERRED COMPENSATION COMMITTEE AND THE ADMINISTRATOR, AS DEFINED IN SECTION 24-52-101, C.R.S.;

(c) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION, AS DEFINED IN SECTION 31-31-102 (2), C.R.S.;

(d) THE BOARDS OF TRUSTEES OF THE FIREFIGHTERS' AND POLICE OFFICERS' OLD HIRE PENSION FUNDS, AS DEFINED IN SECTION 31-30.5-102 (1), C.R.S.;

(e) THE BOARD OF TRUSTEES OF THE VOLUNTEER FIREFIGHTER PENSION FUND, AS DEFINED IN SECTION 31-30-1102 (1), C.R.S.;

(f) THE BOARDS OF EDUCATION OF SCHOOL DISTRICTS, AS DESCRIBED IN SECTION 22-64-112, C.R.S.;

(g) THE BOARD OF DIRECTORS OF THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY, AS DEFINED IN SECTION 23-21-502 (2), C.R.S.;

(h) THE STATE TREASURER FOR CONSIDERATION UNDER SECTION 23-20-117.5, C.R.S.;

(i) THE COUNTY BOARDS OF RETIREMENT, AS DESCRIBED IN SECTION 24-54-107, C.R.S.;

(j) THE GOVERNING BOARDS OF STATE COLLEGES AND UNIVERSITIES, AS DEFINED IN SECTIONS 24-54.5-102 (5) AND 24-54.6-102 (4), C.R.S.; AND

(k) ANY EMPLOYER WHO HAS ESTABLISHED A DEFINED CONTRIBUTION PLAN.

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

43-3-220. Notice of investment opportunity. (1) THE DEPARTMENT OR THE PRIVATE ENTITY RESPONSIBLE FOR ISSUING BONDS UNDER THIS PART 2 MAY FORWARD A COPY OF THE BONDS AND A DESCRIPTION OF THE INVESTMENT OPPORTUNITY FOR SUCH BONDS TO ANY OF THE FOLLOWING FOR CONSIDERATION UNDER THEIR RESPECTIVE STATUTORY AUTHORITY:

(a) THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION CREATED UNDER SECTION 24-51-203, C.R.S.;

(b) THE STATE DEFERRED COMPENSATION COMMITTEE AND THE ADMINISTRATOR, AS DEFINED IN SECTION 24-52-101, C.R.S.;

(c) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION, AS DEFINED IN SECTION 31-31-102 (2), C.R.S.;

(d) THE BOARDS OF TRUSTEES OF THE FIREFIGHTERS' AND POLICE OFFICERS' OLD HIRE PENSION FUNDS, AS DEFINED IN SECTION 31-30.5-102 (1), C.R.S.;

(e) THE BOARD OF TRUSTEES OF THE VOLUNTEER FIREFIGHTER PENSION FUND, AS DEFINED IN SECTION 31-30-1102 (1), C.R.S.;

(f) THE BOARDS OF EDUCATION OF SCHOOL DISTRICTS, AS DESCRIBED IN SECTION 22-64-112, C.R.S.;

(g) THE BOARD OF DIRECTORS OF THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY, AS DEFINED IN SECTION 23-21-502 (2), C.R.S.;

(h) THE STATE TREASURER FOR CONSIDERATION UNDER SECTION 23-20-117.5, C.R.S.;

(i) THE COUNTY BOARDS OF RETIREMENT, AS DESCRIBED IN SECTION 24-54-107, C.R.S.;

(j) THE GOVERNING BOARDS OF STATE COLLEGES AND UNIVERSITIES, AS DEFINED IN SECTIONS 24-54.5-102 (5) AND 24-54.6-102 (4), C.R.S.; AND

(k) ANY EMPLOYER WHO HAS ESTABLISHED A DEFINED CONTRIBUTION PLAN.

SECTION 4. Part 4 of article 3 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

43-3-416. Notice of investment opportunity. (1) THE DEPARTMENT OR THE PRIVATE ENTITY RESPONSIBLE FOR ISSUING ANTICIPATION WARRANTS UNDER THIS PART 4 MAY FORWARD A COPY OF THE ANTICIPATION WARRANTS AND A DESCRIPTION OF THE INVESTMENT OPPORTUNITY FOR SUCH ANTICIPATION WARRANTS TO ANY OF THE FOLLOWING FOR CONSIDERATION UNDER THEIR RESPECTIVE STATUTORY AUTHORITY:

(a) THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION CREATED UNDER SECTION 24-51-203, C.R.S.;

(b) THE STATE DEFERRED COMPENSATION COMMITTEE AND THE ADMINISTRATOR, AS DEFINED IN SECTION 24-52-101, C.R.S.;

(c) THE BOARD OF DIRECTORS OF THE FIRE AND POLICE PENSION ASSOCIATION, AS DEFINED IN SECTION 31-31-102 (2), C.R.S.;

(d) THE BOARDS OF TRUSTEES OF THE FIREFIGHTERS' AND POLICE OFFICERS' OLD HIRE PENSION FUNDS, AS DEFINED IN SECTION 31-30.5-102 (1), C.R.S.;

(e) THE BOARD OF TRUSTEES OF THE VOLUNTEER FIREFIGHTER PENSION FUND, AS DEFINED IN SECTION 31-30-1102 (1), C.R.S.;

(f) THE BOARDS OF EDUCATION OF SCHOOL DISTRICTS, AS DESCRIBED IN SECTION 22-64-112, C.R.S.;

(g) THE BOARD OF DIRECTORS OF THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY, AS DEFINED IN SECTION 23-21-502 (2), C.R.S.;

(h) THE STATE TREASURER FOR CONSIDERATION UNDER SECTION 23-20-117.5, C.R.S.;

(i) THE COUNTY BOARDS OF RETIREMENT, AS DESCRIBED IN SECTION 24-54-107, C.R.S.;

(j) THE GOVERNING BOARDS OF STATE COLLEGES AND UNIVERSITIES, AS DEFINED IN SECTIONS 24-54.5-102 (5) AND 24-54.6-102 (4), C.R.S.; AND

(k) ANY EMPLOYER WHO HAS ESTABLISHED A DEFINED CONTRIBUTION PLAN.

SECTION 5. 23-20-117.5 (3), Colorado Revised Statutes, is amended to read:

23-20-117.5. University of Colorado fund - creation - control - use.

(3) Moneys in the university of Colorado fund may be invested by the state treasurer in investments authorized by sections 24-36-109, 24-36-112, and 24-36-113, C.R.S., ANY PUBLIC-PRIVATE INITIATIVES WITH THE DEPARTMENT OF TRANSPORTATION, AS DEFINED IN SECTION 43-1-1201 (3), C.R.S., BONDS ISSUED FOR TURNPIKES IN ACCORDANCE WITH PART 2 OF ARTICLE 3 OF TITLE 43, C.R.S., AND ANTICIPATION WARRANTS ISSUED FOR TOLL TUNNELS IN ACCORDANCE WITH PART 4 OF ARTICLE 3 OF TITLE 43, C.R.S. The board shall determine the amount of moneys to be credited in the fund. Until the board of regents withdraws the moneys from the fund, the state treasurer shall invest the moneys on behalf of the board of regents.

SECTION 6. 31-30-1113, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

31-30-1113. Fund investments. (3) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE BOARD MAY INVEST ALL OR ANY PART OF FUND MONEYS IN THE NAME OF THE BOARD'S TREASURER OR IN THE NAME OF A CUSTODIAN OR CUSTODIANS APPOINTED BY THE BOARD UNDER THIS SECTION IN ONE OR MORE OF THE FOLLOWING:

(a) ANY PUBLIC-PRIVATE INITIATIVE WITH THE DEPARTMENT OF TRANSPORTATION, AS DEFINED IN SECTION 43-1-1201 (3), C.R.S.;

(b) BONDS ISSUED FOR TURNPIKES IN ACCORDANCE WITH PART 2 OF ARTICLE 3 OF TITLE 43, C.R.S.;

(c) ANTICIPATION WARRANTS ISSUED FOR TOLL TUNNELS IN ACCORDANCE WITH PART 4 OF ARTICLE 3 OF TITLE 43, C.R.S.; OR

(d) ANY OTHER PUBLIC-PRIVATE INITIATIVE PROGRAM FOR TRANSPORTATION

SYSTEM PROJECTS IN COLORADO AUTHORIZED BY LAW.

(4) THE BOARD MAY GIVE PREFERENCE TO THE INVESTMENTS DESCRIBED IN SUBSECTION (3) OF THIS SECTION IF SUCH INVESTMENTS ARE CONSISTENT WITH SOUND INVESTMENT POLICY.

SECTION 7. 40-1-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

40-1-104. Securities - issuance - guarantee. (9) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE COMMISSION MAY APPROVE A PETITION FROM A PUBLIC UTILITY PROPOSING AN INVESTMENT IN ANY OF THE FOLLOWING IF THE COMMISSION DETERMINES THAT SUCH INVESTMENT IS NOT OTHERWISE INCONSISTENT WITH THE PUBLIC INTEREST OR THAT SUCH INVESTMENT IS NOT OTHERWISE INCONSISTENT WITH THIS SECTION:

(a) ANY PUBLIC-PRIVATE INITIATIVE WITH THE DEPARTMENT OF TRANSPORTATION, AS DEFINED IN SECTION 43-1-1201 (3), C.R.S.;

(b) BONDS ISSUED FOR TURNPIKES IN ACCORDANCE WITH PART 2 OF ARTICLE 3 OF TITLE 43, C.R.S.;

(c) ANTICIPATION WARRANTS ISSUED FOR TOLL TUNNELS IN ACCORDANCE WITH PART 4 OF ARTICLE 3 OF TITLE 43, C.R.S.; OR

(d) ANY OTHER PUBLIC-PRIVATE INITIATIVE PROGRAM FOR TRANSPORTATION SYSTEM PROJECTS IN COLORADO AUTHORIZED BY LAW.

SECTION 8. Part 1 of article 9.5 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

40-9.5-116. Investment in public-private transportation facilities.

(1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE BOARD OF DIRECTORS OF A COOPERATIVE ELECTRIC ASSOCIATION MAY CONSIDER INVESTING IN ONE OR MORE OF THE FOLLOWING:

(a) ANY PUBLIC-PRIVATE INITIATIVE WITH THE DEPARTMENT OF TRANSPORTATION, AS DEFINED IN SECTION 43-1-1201 (3), C.R.S.;

(b) BONDS ISSUED FOR TURNPIKES IN ACCORDANCE WITH PART 2 OF ARTICLE 3 OF TITLE 43, C.R.S.;

(c) ANTICIPATION WARRANTS ISSUED FOR TOLL TUNNELS IN ACCORDANCE WITH PART 4 OF ARTICLE 3 OF TITLE 43, C.R.S.; OR

(d) ANY OTHER PUBLIC-PRIVATE INITIATIVE PROGRAM FOR TRANSPORTATION SYSTEM PROJECTS IN COLORADO AUTHORIZED BY LAW.

(2) THE BOARD OF DIRECTORS OF A COOPERATIVE ELECTRIC ASSOCIATION MAY GIVE PREFERENCE TO THE INVESTMENTS DESCRIBED IN SUBSECTION (1) OF THIS SECTION IF SUCH INVESTMENTS ARE IN THE INTEREST OF THE COOPERATIVE ELECTRIC

ASSOCIATION'S MEMBERS AND ARE CONSISTENT WITH SOUND INVESTMENT POLICY.

SECTION 9. 40-20-102 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

40-20-102. Powers of corporation. (1) Every such corporation, in addition to the powers conferred in articles 101 to 117 of title 7, C.R.S., has the power:

(h) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, TO INVEST IN ANY OF THE FOLLOWING IF SUCH INVESTMENT IS CONSISTENT WITH SOUND INVESTMENT POLICY:

(I) ANY PUBLIC-PRIVATE INITIATIVE WITH THE DEPARTMENT OF TRANSPORTATION, AS DEFINED IN SECTION 43-1-1201 (3), C.R.S.;

(II) BONDS ISSUED FOR TURNPIKES IN ACCORDANCE WITH PART 2 OF ARTICLE 3 OF TITLE 43, C.R.S.;

(III) ANTICIPATION WARRANTS ISSUED FOR TOLL TUNNELS IN ACCORDANCE WITH PART 4 OF ARTICLE 3 OF TITLE 43, C.R.S.; OR

(IV) ANY OTHER PUBLIC-PRIVATE INITIATIVE PROGRAM FOR TRANSPORTATION SYSTEM PROJECTS IN COLORADO AUTHORIZED BY LAW.

SECTION 10. Part 2 of article 2 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

43-2-219. County authority to privatize county highways and bridges - charge a toll. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE BOARD OF COUNTY COMMISSIONERS OF A COUNTY MAY ENTER PUBLIC-PRIVATE INITIATIVES, AS DEFINED IN SECTION 43-1-1201 (3), FOR COUNTY HIGHWAYS AND BRIDGES ON BEHALF OF THE COUNTY. IN ADDITION, THE BOARD OF COUNTY COMMISSIONERS OF A COUNTY MAY ENTER INTO CONTRACTS OR OTHER AGREEMENTS ON BEHALF OF THE COUNTY TO PRIVATIZE ANY COUNTY HIGHWAY OR BRIDGE OR CHARGE A TOLL THEREFOR. THE BOARD MAY ALSO CHARGE A TOLL FOR ANY COUNTY HIGHWAY OR BRIDGE FOR THE PURPOSE OF CONSTRUCTING, OPERATING, OR MAINTAINING SUCH BRIDGE OR HIGHWAY.

SECTION 11. Repeal. 43-1-1208, Colorado Revised Statutes, is repealed as follows:

43-1-1208. Repeal. ~~This part 12 is repealed, effective July 1, 2000. The repeal of this part 12 shall have no effect on contracts entered into on or before July 1, 2000.~~

SECTION 12. 43-1-1204 (3), Colorado Revised Statutes, is amended to read:

43-1-1204. Public-private initiative agreement. (3) The agreement ~~shall~~ MAY provide that:

(a) The private entity ~~shall not pledge or cause a lien to be created on the transportation system or right-of-way involved in the transportation system project~~

MAY PLEDGE THE TRANSPORTATION SYSTEM PROJECT OR THE RIGHT-OF-WAY INVOLVED IN THE TRANSPORTATION SYSTEM PROJECT IF THE PROJECT OR RIGHT-OF-WAY IS ENTIRELY FUNDED BY PRIVATE MONEYS AND THE DEPARTMENT DETERMINES THAT SUCH A PLEDGE IS IN THE PUBLIC INTEREST. THE PRIVATE ENTITY SHALL NOT PLEDGE OR CAUSE A LIEN TO BE CREATED ON A TRANSPORTATION SYSTEM PROJECT OR A RIGHT-OF-WAY INVOLVED IN A TRANSPORTATION SYSTEM PROJECT IF PUBLIC FUNDS WERE USED TO PURCHASE THE PROJECT OR RIGHT-OF-WAY OR THE DEPARTMENT OWNS THE PROJECT OR RIGHT-OF-WAY;

(b) ~~The department~~ PRIVATE ENTITY owns the highway and right-of-way involved in the transportation system project ~~at all times~~. IF THE PROJECT OR RIGHT-OF-WAY IS ENTIRELY FUNDED BY PRIVATE MONEYS AND THE DEPARTMENT DETERMINES THAT SUCH OWNERSHIP IS IN THE PUBLIC INTEREST. THE DEPARTMENT MAY NOT TRANSFER OWNERSHIP OF A TRANSPORTATION SYSTEM PROJECT OR A RIGHT-OF-WAY INVOLVED IN A TRANSPORTATION SYSTEM PROJECT IF PUBLIC FUNDS WERE USED TO PURCHASE THE PROJECT OR RIGHT-OF-WAY OR THE DEPARTMENT OWNS THE PROJECT OR RIGHT-OF-WAY.

SECTION 13. 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: April 21, 1998