

## CHAPTER 274

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**GOVERNMENT - SPECIAL DISTRICTS**

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**SENATE BILL 02-214**

BY SENATOR(S) Fitz-Gerald, Anderson, Phillips, and Taylor;  
also REPRESENTATIVE(S) White, Hoppe, Madden, Plant, Saliman, Scott, and Swenson.

**AN ACT****CONCERNING THE RELOCATION OF EXISTING PROVISIONS OF THE COLORADO REVISED STATUTES  
GOVERNING THE MOFFAT TUNNEL.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) The Moffat tunnel improvement district was originally formed to facilitate transportation and communication between the eastern and western portions of the state through the efficient operation and maintenance of the existing Moffat tunnel under the continental divide at or near James Peak and to promote the health, comfort, safety, convenience, and welfare of the people of the state with special benefit to the property within the boundaries of the improvement district created in article 8 of title 32, Colorado Revised Statutes.

(b) The Moffat tunnel improvement district and the Moffat tunnel commission have successfully accomplished the construction of the tunnel and the retirement of bonds issued to finance the costs of the construction. The users of the tunnel, its approaches, and equipment have undertaken the ongoing operations and maintenance relating to the Moffat tunnel, its approaches, and necessary work incidental to the tunnel.

(c) In 1996, acting in the belief that accountability for the operation, maintenance, improvement, and disposition of the assets of the Moffat tunnel improvement district would best be accomplished by authorizing the Moffat tunnel commission to dispose of the assets of the district, the general assembly passed, and the governor signed into law, Senate Bill 96-233, which legislation transferred control of the district and its rights, responsibilities, property, and other assets to the department of local affairs so that an unnecessary layer of government would be eliminated. In connection with

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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.*

that legislation, part 29 of article 32 of title 24, Colorado Revised Statutes, concerning the Moffat tunnel, was added to the Colorado Revised Statutes.

(d) The transfer of the control of the Moffat tunnel improvement district and its rights, responsibilities, property, and other assets to the department of local affairs has been accomplished.

(2) Without in any manner affecting any right, responsibility, property, or asset possessed by any party with respect to the Moffat tunnel, or superceding in any manner the intention of the general assembly with respect to control over the Moffat tunnel improvement district as expressed in Senate Bill 96-233, the general assembly now intends to eliminate unnecessary and duplicative statutory provisions by repealing part 29 of article 32 of title 24, Colorado Revised Statutes, and relocating specified provisions of said part 29 into article 8 of title 32, Colorado Revised Statutes.

**SECTION 2.** 32-8-103 (1), (2), (3), (3.5), (5), (6), (7), and (8), Colorado Revised Statutes, are amended to read:

**32-8-103. Commission - election - appointment - transfer of powers to the department of local affairs.** (1) ~~The Moffat tunnel improvement district shall be~~ WAS, UNTIL FEBRUARY 1, 1998, managed and controlled by a board of five members known as the "Moffat tunnel commission". ~~and in this article referred to as the "board". The district is divided into two divisions. That portion of the same lying east of the continental divide shall be known as division number 1, and that portion of the district lying west of the continental divide shall be known as division number 2.~~ AT THAT TIME, ACTING PURSUANT TO SENATE BILL 96-233, THE DEPARTMENT ASSUMED THE POWERS OF THE BOARD.

(2) ~~This article shall not be construed to in any way obligate the state of Colorado for any debts or other obligations incurred by the board in the discharge of its official duties. The board is empowered to make rules and regulations, not in conflict with law, for holding the elections provided for in this article as will carry out the purposes of this article.~~

(3) ~~On the first Tuesday after the first Monday in November, 1964, at the general state election, and every two years thereafter, an election shall be held in the district to elect three commissioners from division number 1 and two commissioners from division number 2 to serve for two years and until the election and qualification of their successors. Nominations for commissioners at the elections shall be made by petition, pursuant to the provisions of section 1-4-802, C.R.S., and part 9 of article 4 of title 1, C.R.S., as nonpartisan independent candidates, and the petition shall not be circulated until the date specified for circulation in section 1-4-802 (1) (d), C.R.S. The petition shall be signed by eligible electors residing in the division of the district who have paid a tax on real estate in the district in the year preceding the year in which any election is held in a number equal to at least one-half of one percent of the total votes cast for the commissioner who received the most votes at the last preceding election in that division of the district. The election shall be conducted in accordance with articles 1 to 13 of title 1, C.R.S. An eligible elector shall be a taxpaying elector as defined in section 1-1-104 (49), C.R.S. The election held pursuant to this section shall be a coordinated election as specified in section 1-7-116,~~

C.R.S.

~~(3.5) Upon the expiration of the terms of commissioners elected at the 1994 general state election, commissioners shall no longer be elected pursuant to the provisions of this section and, instead, the governor shall appoint their successors to serve until the department assumes the powers of the board pursuant to subsection (7) of this section. Three commissioners shall be appointed from division number 1 and two commissioners from division number 2. Upon a vacancy occurring in the board, the governor shall appoint a successor to fill the vacancy to serve for the unexpired term.~~

~~(5) Upon a vacancy occurring in the board, the governor of the state of Colorado shall appoint a successor to fill the vacancy, who shall serve for the unexpired term.~~

~~(6) Each member of the board shall receive as compensation for his services at such rate as shall be fixed by the board not to exceed the rate of one thousand dollars per annum, payable monthly, and necessary traveling expenses actually expended while engaged in the performance of his duties.~~

~~(7) The department of local affairs shall assume the powers of the board upon the earlier of February 1, 1998, or at such time as the board has adopted a resolution to allow the department of local affairs to assume the powers of the board and has conveyed or entered into agreements to convey substantially all of the real property of the district and the interests therein. At such time as the department assumes the powers of the board pursuant to this subsection (7), the terms of the members of the board shall end and the board shall no longer manage and control the Moffat tunnel improvement district. Immediately prior to the assumption of the board's powers by the department of local affairs, the board shall:~~

~~(a) Pay in full all liabilities of the district;~~

~~(b) Transfer any remaining proceeds from the sale of district property, cash, or other moneys of the district to the Moffat tunnel cash fund created in section 32-8-126;~~

~~(c) Transfer the records and remaining assets of the district, including, but not limited to, fixtures, books, documents, contracts, records of title, and securities to the department of local affairs;~~

~~(d) Execute all necessary bills of sale and instruments of conveyance or assignment to evidence the transfer of property and take any other actions necessary to carry out the purposes of this article; and~~

~~(e) Repealed.~~

~~(8) After the department of local affairs assumes the powers of the board pursuant to subsection (7) of this section, the Moffat tunnel improvement THE district shall be managed and controlled by the department. of local affairs created by section 24-1-125, C.R.S. The department of local affairs shall be referred to in this article as the "department". The department shall have the powers and duties set forth in section 32-8-124 and in part 29 of article 32 of title 24, C.R.S.; SECTIONS 32-8-107~~

AND 32-8-124 with respect to the ~~Moffat tunnel improvement~~ district and the properties of the district.

**SECTION 3.** The introductory portion to 32-8-107 (1) and 32-8-107 (1) (k), Colorado Revised Statutes, are amended to read:

**32-8-107. Powers of board.** (1) The ~~board~~ DEPARTMENT has power on behalf of said district:

(k) ~~To implement projects and make distributions pursuant to section 32-8-123.~~

**SECTION 4.** 32-8-124, Colorado Revised Statutes, is amended, WITH THE RELOCATION OF PROVISIONS, AS AMENDED, to read:

**32-8-124. Administration of district - department of local affairs - assumption of obligations - powers - immunity.** (1) ~~After the department has assumed the powers of the board pursuant to section 32-8-103 (7) and~~ Annually thereafter on or before July 1, the department shall determine the amount of revenue necessary for administrative costs of the department relating to the property of the district. After setting aside sufficient revenue necessary for administrative costs, which may be paid from the available cash, securities, and other moneys of the ~~Moffat tunnel improvement~~ district, not including proceeds from sales of district property, the department shall transfer all cash, securities, and other moneys of the ~~Moffat tunnel improvement~~ district, including any remaining proceeds from sales of district property, to each of the counties and the city and county of Denver included, in whole or in part, in the district as specified in section 32-8-102 in such proportion as the total amount of taxes and assessments received by the district from each county or city and county of Denver and its taxpayers since the district's creation is to the total of all taxes and assessments received by the district from those sources since the district's creation.

(2) ~~[Formerly 24-32-2903] After the department has assumed the powers of the board pursuant to section 32-8-103 (7), C.R.S.,~~ The department shall have authority over all of the property of the district to the same extent as other property of the department; except that, if this authority conflicts with or is limited by any provision of this ~~part 29~~ ARTICLE, the provision of this ~~part 29~~ ARTICLE shall apply. Except as otherwise provided in this ~~part 29 or article 8 of title 32, C.R.S.~~ ARTICLE, the state shall not assume any liability for the acts, omissions, indebtedness, or other obligations of the board or the district and shall be immune from any action relating to the construction, operation, or maintenance of the Moffat tunnel, its approaches, or equipment, pursuant to the provisions of the "Colorado Governmental Immunity Act", article 10 of ~~this title~~ TITLE 24, C.R.S.

**SECTION 5.** Article 8 of title 32, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

**32-8-101.5. [Formerly 24-32-2902] Definitions.** As used in this ~~part 29~~ ARTICLE, unless the context otherwise requires:

(1) "Board" means the Moffat tunnel commission created pursuant to ~~section~~

~~32-8-103 (1), C.R.S.~~ SECTION 32-8-103 (1).

(2) "Contract" or "contractual" means any contract, lease, license, permit, or other written authority for the use of the Moffat tunnel, its approaches, and equipment according to the terms of the underlying agreement.

(3) "Department" means the department of local affairs CREATED IN SECTION 24-1-125, C.R.S.

(4) "District" means the Moffat tunnel improvement district created pursuant to THIS article. ~~8 of title 32, C.R.S.~~

(5) "Moffat Tunnel" or "tunnel" shall include any and all portions of the Moffat railroad ~~and water tunnels their~~ TUNNEL, ITS approaches, or equipment.

(6) "User" means any lessee, licensee, permittee, or other holder of any interest in, or any contractual right to use, any portion of the Moffat tunnel, but not any person claiming by, through, or under such user. "User" also includes the owner of any permanent improvements lawfully located on any portion of the Moffat tunnel or its approaches.

**32-8-124.3. [Formerly 24-32-2904] Contracts for use of tunnel.** (1) ~~After the department has assumed the powers of the board pursuant to section 32-8-103 (7), C.R.S.,~~ The department shall have:

(a) The right to enforce the provisions of any contracts and to modify the contracts upon mutual agreement of the respective parties to the contracts; ~~(2) After the department has assumed the powers of the board pursuant to section 32-8-103 (7), C.R.S., the department shall have~~ AND

(b) The power to enter into contracts with persons and with private and public corporations for the right to use the tunnel for the transmission of power, for telephone and other communication lines, ~~for the transmission of water;~~ for railroad and railway purposes, and for any other purpose to which the same may be adapted. All the contracts and rights of use shall be subject and subordinate to all prior contracts and may not impair the rights of any existing legal user.

~~(3)~~ (2) Users shall be responsible for the cost of maintaining, to the extent of their use, the Moffat tunnel, its approaches, and equipment.

**32-8-124.5. [Formerly 24-32-2905] Rules - right to construct and repair.** (1) ~~After the department has assumed the powers of the board pursuant to section 32-8-103 (7), C.R.S.,~~ The executive director of the department is authorized to adopt reasonable rules relating to the Moffat tunnel subject to the provisions of this ~~part 29~~ ARTICLE and subject to existing contractual rights and obligations of the users. All rules ~~and regulations~~ of the ~~Moffat tunnel commission~~ BOARD shall be repealed upon the adoption of rules by the executive director ~~of the department~~ relating to the Moffat tunnel pursuant to this subsection (1).

(2) As provided through any existing contractual rights and in accordance with reasonable rules of the department, users shall have the right to construct and repair,

for their own benefit and at their sole cost, betterments or improvements on or to the Moffat tunnel relating to their respective uses, as long as the betterments or improvements do not interfere with other existing uses.

**32-8-124.7. [Formerly 24-32-2906] Property of Moffat tunnel improvement district.** (1) (a) ~~After the department has assumed the powers of the board pursuant to section 32-8-103 (7), C.R.S.,~~ The department shall have the authority to convey or transfer ownership of all tangible property, real and personal, or any interest therein owned by the district for fair market value. Each user shall have the right to purchase, to the extent of its use, real property interests of the district at fair market value, which shall be determined pursuant to the appraisal procedures of the department. Fair market value, as used in this section, shall not include any improvements or the value of any improvements owned or paid for by the user. In addition, when determining fair market value of any portion of or interest in the real property of the district, the value or detriment of any lease, license, or permit granted for the benefit of the party acquiring such real property shall not be considered. Each user shall also have a commercially reasonable right of first refusal to purchase at the fair market value, to the extent of its use, any real property interest offered for conveyance.

(b) The purchaser of any real property or interest therein of the district, whether the purchaser is a current user or any other party, shall take the property subject to then existing leases, contracts for use, licenses, or other encumbrances on or obligations relating to the property and the right of the district, and its successors and assigns, to reasonable access across the interests conveyed for access to the tunnel.

(2) Proceeds from any conveyance shall be used first for the expenses of the conveyance. Expenses of conveyance, including administrative costs incurred by the state and legal and other costs incurred in connection with the sale of the property of the district, shall not in the aggregate exceed four percent of the purchase price of the property being conveyed. Any remaining proceeds shall be immediately transferred to the counties and the city and county of Denver included, in whole or in part, in the district as specified in ~~section 32-8-102, C.R.S.~~ SECTION 32-8-102, in such proportion as the total amount of taxes and assessments received by the district from each county or the city and county of Denver and its taxpayers since the district's creation is to the total of all taxes and assessments received by the district from those sources since the ~~district's~~ DISTRICT'S creation. Proceeds may be transferred directly to the counties and the city and county of Denver in conjunction with the closing of the sale of the property of the district, or they may be credited first to the cash fund created in ~~section 32-8-126, C.R.S.,~~ SECTION 32-8-126 before being immediately transferred to the counties and the city and county of Denver.

(3) ~~After the department has assumed the powers of the board pursuant to section 32-8-103 (7), C.R.S.,~~ The department may adopt reasonable procedures consistent with this ~~part 29~~ ARTICLE for the disposition of property of the district. All dispositions shall be made at fair market value and unencumbered except to the extent provided in paragraph (b) of subsection (1) of this section. All conveyances of property shall be made in the name of the "Moffat tunnel improvement district, by and through the department of local affairs of the state of Colorado acting as the Moffat tunnel commission under authority of ~~section 24-32-2906, C.R.S.~~ SECTION 32-8-124.7, C.R.S."

**SECTION 6.** 32-8-126, Colorado Revised Statutes, is amended to read:

**32-8-126. Moffat tunnel cash fund - created.** All cash, proceeds, and other moneys collected by the department pursuant to this article ~~and part 29 of article 32 of title 24, C.R.S.~~, shall be transmitted to the state treasurer who shall credit the same to the Moffat tunnel cash fund, which fund is hereby created. Moneys in the fund not subject to immediate transfer pursuant to ~~section 24-32-2906, C.R.S.~~, SECTION 32-8-124.7 (2) shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article. ~~and part 29 of article 32 of title 24, C.R.S.~~

**SECTION 7. Repeal of provisions not being relocated in this act.** 24-32-2901, Colorado Revised Statutes, is repealed.

**SECTION 8. Repeal of provisions being relocated in this act.** 24-32-2902, 24-32-2903, 24-32-2904, 24-32-2905, and 24-32-2906, Colorado Revised Statutes, are repealed.

**SECTION 9. 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: June 1, 2002