

CHAPTER 286

GOVERNMENT - COUNTY

SENATE BILL 05-224

BY SENATOR(S) Bacon, Johnson, Tochtrop, Shaffer, Tupa, and Veiga;
also REPRESENTATIVE(S) McCluskey, Curry, Lundberg, Merrifield, and Paccione.

AN ACT

CONCERNING A PROCESS FOR ADDRESSING COUNTY SERVICE IMPACTS RELATED TO AN URBAN RENEWAL PROJECT, AND, IN CONNECTION THEREWITH, REQUIRING ANALYSIS OF AND A PLAN FOR FINANCING SUCH IMPACTS, ALLOWING AGREEMENTS CONCERNING SUCH IMPACTS, AND ESTABLISHING A PROCESS FOR DISPUTE RESOLUTION WHERE AGRICULTURAL LAND IS INVOLVED.

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

SECTION 1. 31-25-107 (3.5) and (9) (a) (II), Colorado Revised Statutes, are amended, and the said 31-25-107 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

31-25-107. Approval of urban renewal plans by the local governing body.
(3.5) (a) AT LEAST THIRTY DAYS prior to the ~~approval of~~ HEARING ON an urban renewal plan OR A SUBSTANTIAL MODIFICATION TO SUCH PLAN, the governing body OR THE AUTHORITY shall submit such plan OR MODIFICATION to the board of county commissioners AND, IF PROPERTY TAXES COLLECTED AS A RESULT OF THE COUNTY LEVY WILL BE UTILIZED, THE GOVERNING BODY OR THE AUTHORITY SHALL ALSO SUBMIT AN URBAN RENEWAL IMPACT REPORT, which shall include, at a minimum, the following information concerning the impact of such plan:

~~(a)~~ (I) The estimated duration of time to complete the urban renewal project;

~~(b)~~ (II) The estimated annual property tax increment to be generated by the urban renewal project and the portion of such property tax increment to be allocated during this ~~time~~ period to fund the urban renewal project;

(III) AN ESTIMATE OF THE IMPACT OF THE URBAN RENEWAL PROJECT ON COUNTY REVENUES AND ON THE COST AND EXTENT OF ADDITIONAL COUNTY INFRASTRUCTURE AND SERVICES REQUIRED TO SERVE DEVELOPMENT WITHIN THE PROPOSED URBAN

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

RENEWAL AREA, AND THE BENEFIT OF IMPROVEMENTS WITHIN THE URBAN RENEWAL AREA TO EXISTING COUNTY INFRASTRUCTURE;

(IV) A STATEMENT SETTING FORTH THE METHOD UNDER WHICH THE AUTHORITY OR THE MUNICIPALITY WILL FINANCE, OR THAT AGREEMENTS ARE IN PLACE TO FINANCE, ANY ADDITIONAL COUNTY INFRASTRUCTURE AND SERVICES REQUIRED TO SERVE DEVELOPMENT IN THE URBAN RENEWAL AREA FOR THE PERIOD IN WHICH ALL OR ANY PORTION OF THE PROPERTY TAXES DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (9) OF THIS SECTION AND LEVIED BY A COUNTY ARE PAID TO THE AUTHORITY; AND

~~(e)~~ (V) Any other estimated impacts of the urban renewal project on county services or revenues.

(b) THE INADVERTENT FAILURE OF A GOVERNING BODY OR AN AUTHORITY TO SUBMIT AN URBAN RENEWAL PLAN, SUBSTANTIAL MODIFICATION TO THE PLAN, OR AN URBAN RENEWAL IMPACT REPORT, AS APPLICABLE, TO A BOARD OF COUNTY COMMISSIONERS IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (3.5) SHALL NEITHER CREATE A CAUSE OF ACTION IN FAVOR OF ANY PARTY NOR INVALIDATE ANY URBAN RENEWAL PLAN OR MODIFICATION TO THE PLAN.

(3.7) UPON REQUEST OF THE GOVERNING BODY OR THE AUTHORITY, EACH COUNTY THAT IS ENTITLED TO RECEIVE A COPY OF THE PLAN SHALL PROVIDE AVAILABLE COUNTY DATA AND PROJECTIONS TO ASSIST THE GOVERNING BODY OR THE AUTHORITY IN PREPARING THE URBAN RENEWAL IMPACT REPORT REQUIRED PURSUANT TO SUBSECTION (3.5) OF THIS SECTION.

(9) (a) Notwithstanding any law to the contrary, any urban renewal plan, as originally approved or as later modified pursuant to this part 1, may contain a provision that taxes, if any, levied after the effective date of the approval of such urban renewal plan upon taxable property in an urban renewal area each year or that municipal sales taxes collected within said area, or both such taxes, by or for the benefit of any public body shall be divided for a period not to exceed twenty-five years after the effective date of adoption of such a provision, as follows:

(II) That portion of said property taxes or all or any portion of said sales taxes, or both, in excess of such amount shall be allocated to and, when collected, paid into a special fund of the authority to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, an urban renewal project, ~~within such urban renewal area~~ OR TO MAKE PAYMENTS UNDER AN AGREEMENT EXECUTED PURSUANT TO SUBSECTION (11) OF THIS SECTION. Any excess municipal sales tax collections not allocated pursuant to this subparagraph (II) shall be paid into the funds of the municipality. Unless and until the total valuation for assessment of the taxable property in an urban renewal area exceeds the base valuation for assessment of the taxable property in such urban renewal area, as provided in subparagraph (I) of this paragraph (a), all of the taxes levied upon the taxable property in such urban renewal area shall be paid into the funds of the respective public bodies. Unless and until the total municipal sales tax collections in an urban renewal area exceed the base year municipal sales tax collections in such urban renewal area, as provided in

subparagraph (I) of this paragraph (a), all such sales tax collections shall be paid into the funds of the municipality. When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith, have been paid, all taxes upon the taxable property or the total municipal sales tax collections, or both, in such urban renewal area shall be paid into the funds of the respective public bodies.

(11) THE GOVERNING BODY OR THE AUTHORITY MAY ENTER INTO AN AGREEMENT WITH ANY COUNTY WITHIN THE BOUNDARIES OF WHICH PROPERTY TAXES COLLECTED AS A RESULT OF THE COUNTY LEVY, OR ANY PORTION OF THE LEVY, WILL BE SUBJECT TO ALLOCATION PURSUANT TO SUBSECTION (9) OF THIS SECTION. THE AGREEMENT MAY PROVIDE FOR THE ALLOCATION OF RESPONSIBILITY AMONG THE PARTIES TO THE AGREEMENT FOR PAYMENT OF THE COSTS OF ANY ADDITIONAL COUNTY INFRASTRUCTURE OR SERVICES NECESSARY TO OFFSET THE IMPACTS OF AN URBAN RENEWAL PROJECT AND FOR THE SHARING OF REVENUES. EXCEPT WITH THE CONSENT OF THE GOVERNING BODY OR THE AUTHORITY, ANY SUCH SHARED REVENUES SHALL BE LIMITED TO ALL OR ANY PORTION OF THE TAXES LEVIED UPON TAXABLE PROPERTY WITHIN THE URBAN RENEWAL AREA BY THE COUNTY.

(12) (a) EXCEPT AS PROVIDED IN PARAGRAPH (e) OF THIS SUBSECTION (12), THE COUNTY MAY ENFORCE THE REQUIREMENTS OF SUBPARAGRAPHS (III) AND (IV) OF PARAGRAPH (a) OF SUBSECTION (3.5) AND PARAGRAPH (h) OF SUBSECTION (4) OF THIS SECTION BY MEANS OF THE ARBITRATION PROCESS ESTABLISHED BY THIS SUBSECTION (12) WHERE:

(I) PROPERTY LOCATED WITHIN SUCH COUNTY IS INCLUDED WITHIN AN URBAN RENEWAL PLAN;

(II) THE COUNTY HAS PROVIDED INFORMATION REQUESTED PURSUANT TO SUBSECTION (3.7) OF THIS SECTION; AND

(III) THE COUNTY HAS APPEARED AT A PUBLIC HEARING HELD PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION AND PRESENTED EVIDENCE AT SUCH HEARING THAT DEVELOPMENT WITHIN THE URBAN RENEWAL AREA WILL CREATE A NEED FOR ADDITIONAL COUNTY INFRASTRUCTURE AND SERVICES; EXCEPT THAT THE REQUIREMENTS OF THIS SUBPARAGRAPH (III) SHALL NOT APPLY IN THE CASE OF A COUNTY THAT DID NOT RECEIVE AN URBAN RENEWAL PLAN, A SUBSTANTIAL MODIFICATION TO THE PLAN, OR AN URBAN RENEWAL IMPACT REPORT, AS APPLICABLE, PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION.

(b) (I) A COUNTY OBJECTING UNDER THE PROVISIONS OF THIS SECTION TO AN URBAN RENEWAL PLAN APPROVED UNDER SUBSECTION (4) OF THIS SECTION THAT RECEIVED ON A TIMELY BASIS AN URBAN RENEWAL PLAN, A SUBSTANTIAL MODIFICATION TO THE PLAN, OR AN URBAN RENEWAL IMPACT REPORT, AS APPLICABLE, PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION SHALL FILE WRITTEN NOTICE OF THE OBJECTION WITH THE AUTHORITY AS WELL AS THE GOVERNING BODY THAT HAS APPROVED THE PLAN WITHIN FIFTEEN DAYS OF THE DATE OF THE APPROVAL OF THE PLAN. A COUNTY OBJECTING UNDER THE PROVISIONS OF THIS SECTION TO AN URBAN RENEWAL PLAN APPROVED UNDER SUBSECTION (4) OF THIS SECTION THAT DID NOT RECEIVE ON A TIMELY BASIS AN URBAN RENEWAL PLAN, A SUBSTANTIAL MODIFICATION TO THE PLAN, OR AN URBAN RENEWAL IMPACT REPORT,

AS APPLICABLE, PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION SHALL FILE WRITTEN NOTICE OF THE OBJECTION WITH THE AUTHORITY AS WELL AS THE GOVERNING BODY THAT HAS APPROVED THE PLAN WITHIN THIRTY DAYS OF THE DATE OF THE APPROVAL OF THE PLAN OR WITHIN FIVE DAYS OF THE DATE OF THE COUNTY'S RECEIPT OF THE PLAN, WHICHEVER DATE IS LATER. THE NOTICE OF OBJECTION SHALL INCLUDE A STATEMENT OF THE GROUNDS UPON WHICH THE COUNTY ASSERTS THAT THE AUTHORITY OR THE GOVERNING BODY HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPHS (III) AND (IV) OF PARAGRAPH (a) OF SUBSECTION (3.5) AND PARAGRAPH (h) OF SUBSECTION (4) OF THIS SECTION. THE NOTICE OF OBJECTION SHALL ALSO INCLUDE THE NAME OF ONE ATTORNEY WHO HAS BEEN LICENSED FOR A MINIMUM OF TEN YEARS IN THE STATE OF COLORADO, WHO IS EXPERIENCED IN ADMINISTRATIVE AND LAND USE LAW, AND WHO THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY BELIEVES TO BE QUALIFIED TO SERVE AS A MEMBER OF THE PANEL OF ARBITRATORS CHARGED WITH RESOLVING THE COUNTY'S OBJECTIONS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (12).

(II) WITHIN TWENTY DAYS OF RECEIPT OF THE NOTICE OF OBJECTION, THE GOVERNING BODY SHALL SUBMIT TO THE COUNTY THE NAME OF ONE ADDITIONAL PERSON TO SERVE AS A MEMBER OF THE PANEL OF ARBITRATORS, WHICH PERSON SHALL ALSO SATISFY THE REQUIREMENTS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b). WITHIN TWENTY DAYS OF SUCH SUBMISSION, THE TWO MEMBERS OF THE ARBITRATION PANEL SELECTED BY THE COUNTY AND THE GOVERNING BODY SHALL JOINTLY SELECT AN ADDITIONAL PERSON TO SERVE AS THE THIRD AND FINAL MEMBER OF THE PANEL OF ARBITRATORS, WHICH PERSON SHALL ALSO SATISFY THE REQUIREMENTS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b). THE PANEL OF THREE ARBITRATORS SELECTED PURSUANT TO THIS PARAGRAPH (b) SHALL BE CHARGED WITH RESOLVING THE COUNTY'S OBJECTIONS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (12). NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH (b), THE COUNTY, GOVERNING BODY, AND AUTHORITY MAY AGREE UPON A SINGLE ARBITRATOR TO RESOLVE THE COUNTY'S OBJECTIONS.

(III) IF THE COUNTY, GOVERNING BODY, AND AUTHORITY HAVE NOT REACHED A WRITTEN AGREEMENT RESOLVING THE COUNTY'S OBJECTIONS WITHIN THIRTY DAYS AFTER THE RECEIPT BY THE GOVERNING BODY OF THE NOTICE SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE OBJECTIONS SPECIFIED IN THE NOTICE SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (12).

(c) THE ARBITRATION HEARING, IF ANY, SHALL COMMENCE WITHIN SIXTY DAYS AFTER THE RECEIPT BY THE GOVERNING BODY OF THE NOTICE OF OBJECTION. THE PARTIES TO THE ARBITRATION SHALL BE THE COUNTY, GOVERNING BODY, AND AUTHORITY. AT THE ARBITRATION HEARING, THE GOVERNING BODY OR THE AUTHORITY, AS APPLICABLE, SHALL HAVE THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT IT SUBMITTED THE URBAN RENEWAL PLAN, A SUBSTANTIAL MODIFICATION TO THE PLAN, AND AN URBAN RENEWAL IMPACT REPORT, AS APPLICABLE, TO THE COUNTY PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION AND THAT IT DID NOT ABUSE ITS DISCRETION IN PREPARING THE ESTIMATE OR STATEMENT PROVIDED TO THE COUNTY PURSUANT TO SUBPARAGRAPHS (III) AND (IV) OF PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION AND THAT THE GOVERNING BODY DID NOT ABUSE ITS DISCRETION IN CONNECTION WITH THE FINDINGS IT HAS MADE UNDER PARAGRAPH (h) OF SUBSECTION

(4) OF THIS SECTION. THE DECISION OF THE ARBITRATORS SHALL BE BASED UPON THE OBJECTIONS CONTAINED IN THE NOTICE FILED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (12) AND UPON THE RECORD OF THE HEARING HELD PURSUANT TO SUBSECTION (3) OF THIS SECTION. IN RENDERING A DECISION, THE ARBITRATORS SHALL TAKE INTO CONSIDERATION THE GOALS AND OBJECTIVES OF THE URBAN RENEWAL PLAN, INFORMATION THAT HAS BEEN SUBMITTED BY THE COUNTY AS CONTAINED IN THE RECORD OF THE HEARING ON THE URBAN RENEWAL PLAN AND THE IMPACT REPORT PROVIDED TO THE COUNTY PURSUANT TO SUBSECTION (3.5) OF THIS SECTION, THE REASONABLENESS OF THE COUNTY'S OBJECTIONS CONTAINED IN THE NOTICE, THE EXTENT TO WHICH THE URBAN RENEWAL PROJECT WILL IMPROVE EXISTING COUNTY INFRASTRUCTURE, THE EXTENT TO WHICH TAX INCREMENT REVENUES, IF ANY, TO BE GENERATED BY DEVELOPMENT WITHIN THE URBAN RENEWAL AREA AND COLLECTED BY THE AUTHORITY PURSUANT TO PARAGRAPH (a) OF SUBSECTION (9) OF THIS SECTION MAY REASONABLY BE EXPECTED TO DEFRAY THE COST OF THE ADDITIONAL INFRASTRUCTURE AND SERVICES REQUESTED BY THE COUNTY, AND THE DEBT SERVICE REQUIREMENTS OF THE AUTHORITY. THE ARBITRATION HEARING SHALL BE CONCLUDED NOT LATER THAN SEVEN DAYS AFTER ITS COMMENCEMENT, AND THE DECISION OF THE ARBITRATORS SHALL BE RENDERED NOT LATER THAN THIRTY DAYS AFTER THE CONCLUSION OF THE HEARING. THE ORDER OF THE ARBITRATORS SHALL BE LIMITED TO EITHER APPROVING THE URBAN RENEWAL PLAN OR, UPON A FINDING OF ABUSE OF DISCRETION, REMANDING THE PLAN TO THE GOVERNING BODY FOR RECONSIDERATION OF THE COUNTY'S OBJECTIONS. THE ORDER SHALL BE FINAL AND BINDING ON THE PARTIES AND SHALL NOT BE SUBJECT TO JUDICIAL REVIEW EXCEPT TO ENFORCE THE ORDER OR TO DETERMINE WHETHER THE ORDER WAS PROCURED BY CORRUPTION, FRAUD, OR OTHER SIMILAR WRONGDOING.

(d) FIFTY PERCENT OF THE NECESSARY FEES AND NECESSARY EXPENSES OF ANY ARBITRATION CONDUCTED PURSUANT TO THIS SUBSECTION (12), EXCLUDING ALL FEES AND EXPENSES INCURRED BY EITHER PARTY IN THE PREPARATION OR PRESENTATION OF ITS CASE, SHALL BE BORNE BY THE COUNTY AND FIFTY PERCENT OF SUCH FEES AND EXPENSES SHALL BE BORNE BY THE GOVERNING BODY OR THE AUTHORITY.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE PROVISIONS OF THIS SUBSECTION (12) SHALL NOT APPLY TO ANY URBAN RENEWAL PLAN IN WHICH LESS THAN TEN PERCENT OF THE AREA IDENTIFIED IN SUCH PLAN:

(I) HAS BEEN CLASSIFIED AS AGRICULTURAL LAND FOR PURPOSES OF THE LEVYING AND COLLECTION OF PROPERTY TAX PURSUANT TO SECTION 39-1-103, C.R.S., AT ANY TIME DURING THE THREE-YEAR PERIOD PRIOR TO THE DATE OF ADOPTION OF THE PLAN; AND

(II) IS CURRENTLY IDENTIFIED FOR AGRICULTURAL USES IN A MASTER PLAN ADOPTED BY THE MUNICIPALITY PURSUANT TO SECTION 31-23-206 AND HAS BEEN SO IDENTIFIED FOR MORE THAN ONE YEAR PRIOR TO THE DATE OF ADOPTION OF THE PLAN.

(f) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE ARBITRATION PROCESS ESTABLISHED IN THIS SUBSECTION (12) SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO A COUNTY FOR CONTESTING THE SUFFICIENCY OF COMPLIANCE BY A GOVERNING BODY OR AN AUTHORITY WITH THE REQUIREMENTS OF THIS SECTION.

SECTION 2. 31-25-107 (4), Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW PARAGRAPH to read:

31-25-107. Approval of urban renewal plans by the local governing body.

(4) Following such hearing, the governing body may approve an urban renewal plan if it finds that:

(h) THE AUTHORITY OR THE MUNICIPALITY WILL ADEQUATELY FINANCE, OR THAT AGREEMENTS ARE IN PLACE TO FINANCE, ANY ADDITIONAL COUNTY INFRASTRUCTURE AND SERVICES REQUIRED TO SERVE DEVELOPMENT WITHIN THE URBAN RENEWAL AREA FOR THE PERIOD IN WHICH ALL OR ANY PORTION OF THE PROPERTY TAXES DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (9) OF THIS SECTION AND LEVIED BY A COUNTY ARE PAID TO THE AUTHORITY.

SECTION 3. The introductory portion to 31-25-103 (10), Colorado Revised Statutes, is amended to read:

31-25-103. Definitions. As used in this part 1, unless the context otherwise requires:

(10) "Urban renewal project" means undertakings and activities ~~in an urban renewal area~~ for the elimination and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment, or rehabilitation, or conservation, or any combination or part thereof, in accordance with an urban renewal plan. Such undertakings and activities may include:

SECTION 4. Applicability. This act shall apply to urban renewal plans approved on or after the effective date of this act.

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: June 3, 2005