

CHAPTER 364

TRANSPORTATION

HOUSE BILL 08-1007

BY REPRESENTATIVE(S) Looper, Garza-Hicks, Rose, Stafford, Borodkin, Fischer, Labuda, and May M.;
also SENATOR(S) Tapia, Harvey, Penry, Sandoval, Schultheis, Ward, and Wiens.

AN ACT

CONCERNING THE MODIFICATION OF STATUTORY PROVISIONS ENACTED BY THE GENERAL ASSEMBLY DURING THE 2006 LEGISLATIVE SESSION THAT IMPOSE CERTAIN REQUIREMENTS ON PRIVATE TOLL COMPANIES FOR THE PURPOSE OF ALLEVIATING CONSEQUENCES OF THOSE PROVISIONS THAT MAY AFFECT REAL PROPERTY.

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

SECTION 1. 7-45-101 (1), (3), and (4), Colorado Revised Statutes, are amended to read:

7-45-101. Formation of toll road or toll highway company - description of corridor. (1) A toll road or toll highway company shall be formed under Colorado law. ~~and its filed formation document shall specify and map a three-mile corridor within which a toll road or toll highway or a toll road or toll highway project will be located and identify the general location of the termini within the corridor~~ ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED, A TOLL ROAD OR TOLL HIGHWAY COMPANY MAY NOT SPECIFY AND MAP A TRANSPORTATION CORRIDOR IN ITS FILED FORMATION DOCUMENT, AND ANY CORRIDOR INCLUDED IN A FILED FORMATION DOCUMENT FILED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED, SHALL NOT BE DEEMED TO GIVE THE FILING TOLL ROAD OR TOLL HIGHWAY COMPANY ANY PROPERTY RIGHT OR EXCLUSIVE DEVELOPMENT RIGHT OF ANY KIND WITHIN THE CORRIDOR OTHER THAN AS SPECIFIED IN SECTION 7-45-103. If a toll road or toll highway company complies with the provisions of this article, it shall have the power to erect toll gates and set and collect tolls.

(3) ~~Nothing in articles 30 to 52, 101 to 117, or 121 to 137 of this title shall be construed to authorize a toll road or toll highway company to locate all or any part of its three-mile corridor, as described in subsection (1) of this section, upon any~~

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

~~existing toll road, toll highway, or public highway that is, at the time of the formation of the company, used as such, or within five miles of the route or corridor for a future toll road, toll highway, or toll road or toll highway project that has been designated in any previously filed formation document except as necessary to cross the toll road, toll highway, project, route, or corridor.~~

~~(4) On June 6, 2006, any toll road or toll highway company whose existing certificate of incorporation specifies the route of a future toll road or toll highway or the location of a future toll road or toll highway project, or any affiliate of such a company, shall have the exclusive right for a period of ninety days to file new or amended formation documents that encompass land within the specified route.~~

SECTION 2. 7-45-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

7-45-102. Definitions. As used in this article, unless the context otherwise requires:

(7.3) "NEW TOLL ROAD OR TOLL HIGHWAY COMPANY" MEANS A TOLL ROAD OR TOLL HIGHWAY COMPANY THAT, AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (7.3), HAS NOT SPECIFIED AND MAPPED A THREE-MILE CORRIDOR IN ITS FILED FORMATION DOCUMENT AS WAS REQUIRED BY SECTION 7-45-101 (1) BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (7.3).

(7.5) "PREEXISTING TOLL ROAD OR TOLL HIGHWAY COMPANY" MEANS A TOLL ROAD OR TOLL HIGHWAY COMPANY THAT, AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (7.5), HAD SPECIFIED AND MAPPED A THREE-MILE CORRIDOR IN ITS FILED FORMATION DOCUMENT AS WAS REQUIRED BY SECTION 7-45-101 (1) BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (7.5).

SECTION 3. 7-45-103, Colorado Revised Statutes, is amended to read:

7-45-103. Deadline to commence work - maintenance of effort requirement.

A PREEXISTING toll road or toll highway company shall commence work, including but not limited to planning, design, environmental mitigation, and other preconstruction work, on the toll road or toll highway proposed in ~~the~~ ITS filed formation document no later than three years after the filing of the document or within one year after receiving all necessary approvals for construction. If any necessary approval is the subject of administrative or judicial review, then the one-year period shall be automatically extended until one year after all administrative or judicial review has been concluded. The PREEXISTING toll road or toll highway company and any successor toll road or toll highway company shall continue the work from day to day until at least five hundred thousand dollars have been expended on the toll road or toll highway. If the PREEXISTING toll road or toll highway company fails to perform the required work, it shall forfeit all rights ~~acquired under its filed formation document and be administratively dissolved~~ TO DEVELOP AND CONSTRUCT THE PROPOSED TOLL ROAD OR TOLL HIGHWAY. If the PREEXISTING toll road or toll highway company performs the required work, it shall have the exclusive right to ~~develop or~~ seek approval to develop a toll road or toll highway within the three-mile corridor specified in its filed formation document as required by section 7-45-101 (1) BEFORE THE EFFECTIVE DATE OF THIS SECTION, AS

AMENDED, AND, ONLY IF SUCH APPROVAL IS GRANTED, THE EXCLUSIVE RIGHT TO DEVELOP A TOLL ROAD OR TOLL HIGHWAY WITHIN THE CORRIDOR.

SECTION 4. 7-45-104 (1), Colorado Revised Statutes, is amended to read:

7-45-104. Acquisition of right-of-way. (1) Notwithstanding the provisions of section 38-2-101, C.R.S., on and after June 6, 2006, a PREEXISTING toll road or toll highway company shall not have the power to exercise the right of eminent domain to acquire any part of the right-of-way of the three-mile corridor of a proposed toll road or toll highway specified in the filed formation document of the company as required by section 7-45-101 (1) AND A NEW TOLL ROAD OR TOLL HIGHWAY COMPANY SHALL NOT HAVE THE POWER TO EXERCISE THE RIGHT OF EMINENT DOMAIN TO ACQUIRE ANY PART OF THE RIGHT-OF-WAY OF A TOLL ROAD OR TOLL HIGHWAY IT PROPOSES TO CONSTRUCT. Nothing herein shall prohibit a PREEXISTING OR NEW toll road or toll highway company from entering into a public-private initiative with the department of transportation in accordance with the provisions of part 12 of article 1 of title 43, C.R.S., and as authorized in section 7-45-111 for the purpose of enabling the construction of ~~such~~ a toll road or toll highway, but in such a case the power of eminent domain shall not be exercised by the toll road or toll highway company and may be exercised by the department only for purposes of acquiring property and rights-of-way necessary for the completion of a toll road or toll highway open to the public that is incorporated into the comprehensive statewide transportation plan prepared pursuant to section 43-1-1103 (5), C.R.S. The department may not use the power of eminent domain provided in this section to acquire a cemetery, as defined in section 10-15-102 (2), C.R.S., or property owned by or primarily used by a religious organization. In exercising the power of eminent domain, the department shall comply with all laws and administrative rules that govern the department's use of eminent domain for state highway projects, and the rights-of-way acquired shall form a corridor no larger than that approved by all affected metropolitan planning organizations, regional planning commissions, and the transportation commission pursuant to sections 7-45-105 and 7-45-106. In accordance with section 43-1-1204 (3) (b), C.R.S., the department may not sell or otherwise transfer ownership of property or rights-of-way acquired through the exercise of the power of eminent domain as authorized by this section to a toll road or toll highway company.

SECTION 5. 7-45-105 (1) and (3) (b), Colorado Revised Statutes, are amended to read:

7-45-105. Planning standards and project review. (1) A PREEXISTING OR NEW toll road or toll highway company shall not commence the construction of a toll road or toll highway or of any other element of a toll road or toll highway project until the toll road or toll highway or other element has been reviewed by every metropolitan planning organization or regional planning commission that is located in whole or in part within the three-mile corridor designated by the PREEXISTING toll road or toll highway company as required by section 7-45-101 (1) BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED, OR THAT IS LOCATED IN WHOLE OR IN PART WITHIN THE PROPOSED ROUTE OF THE TOLL ROAD OR TOLL HIGHWAY PROPOSED BY THE NEW TOLL ROAD OR TOLL HIGHWAY COMPANY and has been included in the regional transportation plan in effect for the region pursuant to section 43-1-1103, C.R.S., and in the comprehensive statewide transportation plan

required pursuant to section 43-1-1103 (5), C.R.S. In designated nonattainment areas for any pollutant pursuant to the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., as amended, a metropolitan planning organization or regional planning commission shall not include a toll road or toll highway project in the regional transportation plan unless the organization or commission has performed an emissions analysis that demonstrates that regional emissions and local project emissions will continue to conform to the state implementation plan if the project is added to the regional transportation plan. The toll road or toll highway company shall pay the reasonable actual costs for the emissions analysis. Each organization or commission may condition its addition of a toll road or toll highway project into the regional transportation plan upon acceptable environmental mitigation activities and commitments to offset incremental costs of public services that will be necessary as a result of development of the project within the planning region.

(3) (b) Upon request of a local government located in whole or in part within the three-mile corridor of a proposed toll road or toll highway or toll road or toll highway project as specified pursuant to AND MAPPED BY A PREEXISTING TOLL ROAD OR TOLL HIGHWAY COMPANY IN ITS FILED FORMATION DOCUMENT AS REQUIRED BY section 7-45-101 (1) BEFORE THE EFFECTIVE DATE OF THIS PARAGRAPH (b), AS AMENDED, OR LOCATED IN WHOLE OR IN PART WITHIN THE PROPOSED ROUTE OF A TOLL ROAD OR TOLL HIGHWAY PROPOSED BY A NEW TOLL ROAD OR TOLL HIGHWAY COMPANY, a PREEXISTING OR NEW toll road or toll highway company shall consult with representatives from the local government and shall consider available mitigation of demonstrable negative impacts on the local government or its citizens that would result from the construction, operation, or financing of the toll road or toll highway or project.

SECTION 6. 7-45-108, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

7-45-108. Notice requirements for proposed toll roads and toll highways - removal from titles and voiding of previously filed and recorded documents.

(1) (a) WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS PARAGRAPH (a):

(I) THE COUNTY CLERK AND RECORDER OF EACH COUNTY IN WHICH A PREEXISTING TOLL ROAD OR TOLL HIGHWAY COMPANY FILED A DISCLAIMER OF INTEREST AND MAP PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), AS SAID PARAGRAPH (b) EXISTED BEFORE THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (I), SHALL TRANSFER THE MAP, BUT NOT THE DISCLAIMER OF INTEREST, TO THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY; AND

(II) A PREEXISTING TOLL ROAD OR TOLL HIGHWAY COMPANY SHALL PROVIDE A COPY OF THE MAP, BUT NOT THE DISCLAIMER OF INTEREST, THAT THE COMPANY FILED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), AS SAID PARAGRAPH (b) EXISTED BEFORE THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (II), TO THE GOVERNING BODY OF EACH MUNICIPALITY THAT IS INCLUDED WITHIN THE THREE-MILE CORRIDOR SPECIFIED AND MAPPED IN THE COMPANY'S FILED FORMATION DOCUMENT.

(b) (I) ANY PROPERLY AUTHORIZED WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP FILED OR RECORDED BY A PREEXISTING TOLL ROAD OR TOLL HIGHWAY

COMPANY AS REQUIRED BY SUBSECTION (1) OF THIS SECTION, AS SAID SUBSECTION (1) EXISTED BEFORE THE EFFECTIVE DATE OF THIS PARAGRAPH (b), IS HEREBY DECLARED VOID AND OF NO EFFECT. THE VOIDING OF A WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP PURSUANT TO THIS PARAGRAPH (b) CONCLUSIVELY ESTABLISHES THAT THE WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP DOES NOT AFFECT THE TITLE TO ANY PROPERTY OR HAVE ANY OTHER LEGAL EFFECT, AND A TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT SHALL EXCLUDE A VOID WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP FROM ANY DOCUMENTS IT PREPARES ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b).

(II) NO CAUSE OF ACTION AT LAW OR IN EQUITY SHALL BE MAINTAINED BASED UPON:

(A) THE ACT OF PREPARING, FILING, OR RECORDING A WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP FILED OR RECORDED BY A PREEXISTING TOLL ROAD OR TOLL HIGHWAY COMPANY PURSUANT TO SUBSECTION (1) OF THIS SECTION, AS SAID SUBSECTION (1) EXISTED BEFORE THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (A), THAT WAS SUBSEQUENTLY VOIDED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b);

(B) THE VOIDING OF SUCH A WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP; OR

(C) THE INCLUSION OR EXCLUSION OF SUCH A WRITTEN NOTICE, DISCLAIMER OF INTEREST, OR MAP FROM ANY DOCUMENT PREPARED BY A TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT.

(2) WITHIN NINETY DAYS OF THE INCLUSION OF A TOLL ROAD OR TOLL HIGHWAY OR ANY OTHER ELEMENT OF A TOLL ROAD OR TOLL HIGHWAY PROJECT PROPOSED BY A PREEXISTING OR NEW TOLL ROAD OR TOLL HIGHWAY COMPANY IN THE COMPREHENSIVE STATEWIDE TRANSPORTATION PLAN AS REQUIRED BY SECTION 7-45-105 (1), THE TOLL ROAD OR TOLL HIGHWAY COMPANY SHALL SEND WRITTEN NOTICE TO EACH PERSON WHO OWNS REAL PROPERTY WITHIN THE PROPOSED ROUTE OF THE PROPOSED TOLL ROAD, TOLL HIGHWAY, OR PROJECT OF THE INTENT OF THE TOLL ROAD OR TOLL HIGHWAY COMPANY TO CONSTRUCT THE PROPOSED TOLL ROAD, TOLL HIGHWAY, OR ELEMENT OF THE PROJECT. THE TOLL ROAD OR TOLL HIGHWAY COMPANY SHALL SEND THE NOTICE BY CERTIFIED MAIL AND SHALL DESCRIBE THE PROPOSED TOLL ROAD, TOLL HIGHWAY, OR PROJECT, INCLUDING ITS LOCATION, TERMINI, IMPROVEMENTS, AND OPERATION.

SECTION 7. 7-45-109, Colorado Revised Statutes, is amended to read:

7-45-109. Use of land by toll road or toll highway company - right to repurchase unneeded condemned property. Any interest in real property that is obtained by a PREEXISTING toll road or toll highway company, other than a leasehold interest in property or rights-of-way acquired and owned by the department of transportation as authorized in section 7-45-104, within the three-mile corridor specified AND MAPPED in its filed formation document AS WAS REQUIRED BY SECTION 7-45-101 (1) BEFORE THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, AND ANY INTEREST IN REAL PROPERTY THAT IS OBTAINED BY A NEW TOLL ROAD OR TOLL HIGHWAY COMPANY, OTHER THAN A LEASEHOLD INTEREST IN PROPERTY OR

RIGHTS-OF-WAY ACQUIRED AND OWNED BY THE DEPARTMENT OF TRANSPORTATION AS AUTHORIZED IN SECTION 7-45-104, WITHIN THE PROPOSED ROUTE OF THE TOLL ROAD OR TOLL HIGHWAY PROPOSED BY THE NEW TOLL ROAD OR TOLL HIGHWAY COMPANY ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, and that is not used for a toll road or toll highway project shall not be used for commercial, residential, or industrial development; except that this limitation on use shall apply only during the period in which the toll road or toll highway company is developing or operating a toll road or toll highway within the corridor OR PROPOSED ROUTE. If the development or operation of a toll road or toll highway ceases after the department has exercised the power of eminent domain to acquire property deemed at the time of acquisition to be necessary for the completion of the toll road or toll highway as authorized in section 7-45-104, a person from whom the department acquired property through the exercise of eminent domain has an exclusive option to repurchase the property acquired at the price paid for the property as just compensation by the department. The person may exercise the option within eighteen months following the cessation of the development or operation of the toll road or toll highway.

SECTION 8. 7-45-110 (1) and (2), Colorado Revised Statutes, are amended to read:

7-45-110. Sale of interest in or assets of a toll road or toll highway company.

(1) If any interest in a PREEXISTING OR NEW toll road or toll highway company is sold or transferred, the toll road or toll highway company shall continue to comply with the limitations set forth in section 7-45-109.

(2) If a PREEXISTING OR NEW toll road or toll highway company sells or transfers any interest in its real property within the three-mile corridor specified in ~~its~~ THE filed formation document OF THE PREEXISTING TOLL ROAD OR TOLL HIGHWAY COMPANY OR WITHIN THE PROPOSED ROUTE OF THE TOLL ROAD OR TOLL HIGHWAY PROPOSED BY THE NEW TOLL ROAD OR TOLL HIGHWAY COMPANY that is not used for the toll road or toll highway, then the purchaser shall comply with the limitations set forth in section 7-45-109.

SECTION 9. 38-2-101 (2) and (5) (a), Colorado Revised Statutes, are amended to read:

38-2-101. Who may condemn real estate, rights-of-way, or other rights - additional requirements for private toll roads and toll highways.

(2) Notwithstanding the provisions of subsection (1) of this section, a toll road or toll highway company may not condemn real estate or right-of-way, but the department of transportation may exercise, subject to the conditions and limitations set forth in sections 7-45-104 and 43-1-1202 (1) (f), C.R.S., the power of eminent domain for purposes of acquiring property and rights-of-way necessary for the completion of a toll road or toll highway open to the public that is incorporated into the comprehensive statewide transportation plan prepared pursuant to section 43-1-1103 (5), C.R.S., and is being undertaken as a public-private initiative between the department and the company. Such a toll road or toll highway company shall ~~within six months after the date of filing of its filed formation document, file and record with the county clerk and recorder of each county through which any portion of the proposed toll road or toll highway will pass a map or survey of the proposed~~

~~route of the toll road or toll highway. The toll road or toll highway company shall include with the map or survey a statement of the proposed route of the toll road or toll highway, within three miles, and a listing of all property over or across which the proposed toll road or toll highway will be constructed, and shall file and record supplementary maps, surveys, statements, and listings upon any lawful change of the proposed route of the toll road or toll highway~~ PROVIDE WRITTEN NOTICE OF ITS INTENT TO CONSTRUCT A TOLL ROAD OR TOLL HIGHWAY AS REQUIRED BY SECTION 7-45-108 (2), C.R.S.

(5) As used in this section, unless the context otherwise requires:

(a) ~~"Filed formation document" shall have the meaning set forth in section 7-45-102 (7), C.R.S.~~

SECTION 10. Article 35.7 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-35.7-105. Disclosure of transportation projects - rules. NO LATER THAN JANUARY 1, 2009, THE REAL ESTATE COMMISSION CREATED IN SECTION 12-61-105, C.R.S., SHALL, BY RULE, REQUIRE EACH SELLER'S PROPERTY DISCLOSURE FOR REAL PROPERTY THAT IS SUBJECT TO THE COMMISSION'S JURISDICTION PURSUANT TO ARTICLE 61 OF TITLE 12, C.R.S., TO DISCLOSE THE EXISTENCE OF ANY PROPOSED OR EXISTING TRANSPORTATION PROJECT THAT AFFECTS OR IS EXPECTED TO AFFECT THE REAL PROPERTY.

SECTION 11. 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 2, 2008