



COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 43. TRANSPORTATION
FINANCING
ARTICLE 4. FINANCING
PART 8. FUNDING ADVANCEMENT FOR SURFACE TRANSPORTATION AND ECONOMIC RECOVERY

GO TO COLORADO STATUTES ARCHIVE DIRECTORY

C.R.S. 43-4-806 (2013)

43-4-806. High-performance transportation enterprise - creation - board - funds - powers and duties - limitations - reporting requirements - legislative declaration

(1) The general assembly hereby finds and declares that:

(a) It is necessary, appropriate, and in the best interests of the state for the state to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, will allow more efficient movement of people, goods, and information throughout the state, and will accelerate the economic recovery of the state;

(b) Such innovative means of financing projects include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

(c) It is the intent of the general assembly that the high-performance transportation enterprise created in this section actively seek out opportunities for public-private partnerships for the purpose of completing surface transportation infrastructure projects and that this section be broadly construed to allow the transportation enterprise sufficient flexibility, consistent with the requirements of the state constitution, to pursue any available means of financing such surface transportation infrastructure projects that will allow the efficient completion of the projects.

(2) (a) (I) The high-performance transportation enterprise is hereby created. The transportation enterprise shall operate as a government-owned business within the department and shall be a division of the department. The board of the transportation enterprise shall consist of the following seven members:

(A) Four members appointed by the governor, each of whom shall have professional expertise in transportation planning or development, local government, design-build contracting, public or private finance, engineering, environmental issues, or any other area that the governor believes will benefit the board in the execution of its powers and performance of its duties. The governor shall appoint one member who resides within the planning area of the Denver regional council of governments, one member who resides within the planning area of the Pikes Peak area council of governments, one member who resides within the planning area of the north front range metropolitan planning organization, and one member who resides within the interstate 70 mountain corridor.

(B) Three members of the commission appointed by resolution of the commission.

(II) Initial appointments to the transportation enterprise board shall be made no later than July 1, 2009. Members of the board shall serve at the pleasure of the appointing authority and without compensation. Vacancies in the membership of the transportation enterprise board shall be filled in the same manner as regular appointments.

(III) (A) The transportation enterprise and the transportation enterprise director shall exercise their powers and perform their duties as if the same were transferred to the department by a type 1 transfer, as defined in *section 24-1-105, C.R.S.*

(B) The statewide tolling enterprise, created by the commission pursuant to *section 43-4-803 (1)*, prior to the repeal and reenactment of said section by Senate Bill 09-108, enacted in 2009, and its powers, duties, and functions are transferred by a type 3 transfer, as defined in *section 24-1-105, C.R.S.*, to the transportation enterprise, and the statewide tolling enterprise is abolished.

(b) The transportation enterprise board shall, with the consent of the executive director, appoint a director of the enterprise who shall possess such qualifications as may be established by the board and the state personnel board. The director shall oversee the discharge of all responsibilities of the transportation enterprise and shall serve at the pleasure of the board.

(c) The business purpose of the transportation enterprise is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects. To allow the transportation enterprise to accomplish this purpose and fully exercise its powers and duties through the transportation enterprise board, the transportation enterprise may:

(I) Subject to the limitations specified in *section 43-4-808 (3)*, impose user fees for the privilege of using surface transportation infrastructure;

(II) Issue or reissue revenue bonds payable from the revenues and other available moneys of the transportation enterprise pledged for their payment as authorized in *section 43-4-807*;

(III) Contract with any other governmental or nongovernmental source of funding for loans or grants to be used to support transportation enterprise functions; and

(IV) Seek out and enter into public-private partnerships.

(d) The transportation enterprise shall constitute an enterprise for purposes of *section 20 of article X of the state constitution* so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this paragraph (d), the transportation enterprise shall not be subject to any provisions of *section 20 of article X of the state constitution*.

(3) (a) The statewide transportation enterprise special revenue fund, referred to in this part 8 as the "transportation special fund", is hereby created in the state treasury. All revenues received by the transportation enterprise, including any revenues from user fees collected pursuant to subparagraph (I) of paragraph (c) of subsection (2) of this section, shall be deposited into the transportation special fund. The transportation enterprise board may establish separate accounts within the transportation special fund as needed in connection with any specific surface transportation infrastructure project. The transportation enterprise also may deposit or permit others to deposit other moneys into the transportation special fund, but in no event may revenues from any tax otherwise available for general purposes be deposited into the transportation special fund. The state treasurer, after consulting with the transportation enterprise board, shall invest any moneys in the transportation special fund, including any surplus or reserves, but excluding any proceeds from the sale of bonds or earnings on such proceeds invested pursuant *section 43-4-807 (2)*, that are not needed for immediate use. Such moneys may be invested in the types of investments authorized in *sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.*

(b) All interest and income derived from the deposit and investment of moneys in the transportation special fund shall be credited to the transportation special fund and, if applicable, to the appropriate surface transportation infrastructure project account. Moneys in the transportation special fund shall be continuously appropriated to the transportation enterprise for the purposes set forth in this part 8. All moneys deposited in the transportation special fund shall remain in the fund for the purposes set forth in this part 8, and no part of the fund shall be used for any other purpose.

(c) The transportation enterprise shall prepare a separate annual accounting of the user fees collected from any surface transportation infrastructure project upon which any user fee is imposed; except that a partner of the enterprise may prepare the annual accounting for a project upon which it imposes a user fee pursuant to the terms of a public-private partnership.

(d) The transportation enterprise may expend moneys in the transportation special fund to pay bond obligations, to fund surface transportation infrastructure projects, and for the acquisition of land to the extent required in connection with any surface transportation infrastructure project. The transportation enterprise may also expend moneys in the transportation special fund to pay its operating costs and expenses. The transportation enterprise board shall have exclusive authority to budget and approve the expenditure of moneys in the transportation special fund.

(4) The commission may transfer moneys from the state highway fund created in *section 43-1-219* to the transportation enterprise for the purpose of defraying expenses incurred by the transportation enterprise prior to the receipt of bond proceeds or revenues by the enterprise. The transportation enterprise may accept and expend any moneys so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the commission to the transportation enterprise and shall not be considered a grant for purposes of *section 20 (2) (d) of article X of the state constitution*. As the transportation enterprise receives sufficient revenues in excess of expenditures, the enterprise shall reimburse the state highway fund for the principal amount of any loan made by the commission plus interest at a rate set by the commission. Any moneys loaned to the transportation enterprise pursuant to this section shall be deposited into a fund to be known as the statewide transportation enterprise operating fund, which fund is hereby created, and shall not be deposited into the transportation special fund. Moneys from the transportation special fund may, however, be used to reimburse the state highway fund for the amount of any loan or any interest thereon.

(5) Notwithstanding any other provision of this section, user fee revenues shall be expended only for purposes authorized by subsection (3) of this section and only for the surface transportation infrastructure project for which they were collected, to address ongoing congestion management needs related to the project, or as a portion of the expenditures made for another surface transportation infrastructure project that is integrated with the project as part of a surface transportation system; except that the transportation enterprise board may use user fee revenues from each surface transportation infrastructure project in proportion to the total amount of such revenues generated by the project to pay overhead of the transportation enterprise.

(6) In addition to any other powers and duties specified in this section, the transportation enterprise board shall have the following powers and duties:

(a) To supervise and advise the transportation enterprise director;

(b) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(c) To issue revenue bonds, payable solely from the transportation special fund, for the purpose of completing surface transportation infrastructure projects;

(d) To acquire, hold title to, and dispose of real and personal property as necessary in the exercise of its powers and performance of its duties;

(e) To acquire, by purchase, gift, or grant, or, subject to the requirements of articles 1 to 7 of title 38, C.R.S., by condemnation, any and all rights-of-way, lands, buildings, moneys, or grounds necessary or convenient for its authorized purposes;

(f) To enter into agreements with the commission, or the department to the extent authorized by the commission, under which the transportation enterprise agrees to complete surface transportation infrastructure projects as specified in the agreements;

(g) To make and enter into contracts or agreements with any private or public entity to facilitate a public-private partnership, including, but not limited to:

(I) An agreement pursuant to which the transportation enterprise or the enterprise on behalf of the department operates, maintains, or provides services or property in connection with a surface transportation infrastructure project; or

(II) An agreement pursuant to which a private entity completes all or any portion of a surface transportation infrastructure project on behalf of the transportation enterprise;

(h) To make and to enter into all other contracts or agreements, including, but not limited to, design-build contracts, as defined in *section 43-1-1402 (3)*, and intergovernmental agreements pursuant to *section 29-1-203, C.R.S.*, that are necessary or incidental to the exercise of its powers and performance of its duties;

(i) To employ or contract for the services of consulting engineers or other experts as are necessary in its judgment to carry out its powers and duties;

(j) To prepare, or cause to be prepared, detailed plans, specifications, or estimates for any surface transportation infrastructure project within the state;

(k) In connection with any surface transportation infrastructure project, to acquire, finance, repair, reconstruct, replace, operate, or maintain any surface transportation infrastructure within the state;

(l) To set and adopt, on an annual basis, a budget for the transportation enterprise;

(m) To purchase, trade, exchange, acquire, buy, sell, lease, lease with an option to purchase, dispose of, or encumber real or personal property or any interest therein, including easements and rights-of-way, without restriction or limitation;

(n) To enter into interest rate exchange agreements for bonds that have been issued in accordance with article 59.3 of title 11, C.R.S.;

(o) Pursuant to *section 24-1-107.5, C.R.S.*, to establish, create, and approve nonprofit entities and bonds issued by or on behalf of such nonprofit entities for the purpose of completing a surface transportation infrastructure project, to accept the assets of any such nonprofit entity, to obtain an option to acquire the assets of any such nonprofit entity by paying its bonds, to appoint or approve the appointment of members of the governing board of any such nonprofit entity, and to remove the members of the governing board of any such nonprofit entity for cause;

(p) To transfer money, property, or other assets of the transportation enterprise to the department to the extent necessary to implement the financing of any surface transportation infrastructure project or for any other purpose authorized in this part 8; and

(q) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers and duties granted in this section.

(7) (a) In addition to the powers and duties specified in subsection (6) of this section, the transportation enterprise board has the duty to evaluate any toll highway in the state that is owned and offered for sale or for lease and an operating concession by an entity other than the state in order to determine whether it is in the best interests of the state for the transportation enterprise to purchase or lease the toll highway or a partial interest in the toll highway that is being offered for sale, lease, or concession or enter into a public-private partnership in connection with the toll highway. In evaluating a toll highway, the transportation enterprise board shall consider the financial costs and benefits to the state and users of the toll highway of purchasing or leasing the toll highway or a partial interest in the toll highway or entering into a public-private partnership in connection with the toll highway; the effect of such a purchase, lease, or public-private partnership on statewide, regional, or local transportation plans previously adopted and on future transportation planning; and any other factors deemed significant by the board. In considering the effect on regional or local transportation plans, the transportation enterprise board shall consult with the appropriate regional or local transportation planning agency. Subject to criteria, procedures, processes, and rules established by the entity other than the state offering the toll highway for sale or for lease and an operating concession including, without limitation, provisions for rejecting all bids or proposals and short-listing bidders and proposers, and without any special consideration for either public or private sector interests that may bid on or propose to purchase or lease a toll highway, the transportation enterprise board may bid on or propose to purchase or lease a toll highway or a partial interest in a toll highway so offered without change or delay of such criteria, procedures, processes, and rules or may enter into a public-private partnership in connection with a toll highway and may finance all or a portion of the purchase or lease of a toll highway or a public-private partnership entered into in connection with a toll highway by issuing bonds as authorized by *section 43-4-807* if the board determines that the purchase, lease, or public-private partnership is in the best interests of the state. Funding to perform a toll highway evaluation shall be provided by the department and managed by the transportation enterprise board. An entity other than the state shall consider and represent the interests of its constituency at all times during and after the evaluation process conducted by the transportation enterprise board pursuant to this subsection (7).

(b) For purposes of this subsection (7), "entity other than the state" means a public highway authority created pursuant to *section 43-4-504*, a regional transportation authority created pursuant to *section 43-4-603*, a toll road or toll highway company formed pursuant to *section 7-45-101, C.R.S.*, or any other natural person or entity other than the state or a department or agency of the state that may own a toll highway.

(c) This subsection (7) shall not be construed to require the transportation enterprise board to purchase or lease any toll highway or partial interest in a toll highway or to enter into any public-private partnership in connection with any toll highway.

(7.5) In addition to any other powers and duties specified in this section, the transportation enterprise may enter into a transportation demand management contract with the department under which the department compensates the transportation enterprise for relieving traffic congestion during peak travel times, as determined by the department and the transportation enterprise, in the portion of the interstate 70 mountain corridor that includes and lies between Floyd hill and the Eisenhower-Johnson tunnels by providing and operating reversible highway lanes within that portion of the corridor. If a feasibility study of a moveable barrier system on interstate 70 is completed and demonstrates that such a system is viable and that life safety issues can be addressed, a transportation demand management contract may establish, consistent with planning provisions in *section 43-1-1103*, the interstate 70 collaborative effort, context sensitive solutions, and the processes required by the federal "National Environmental Policy Act of 1969", *42 U.S.C. 4321 et seq.*, the goal of beginning the provision and operation of reversible highway lanes and reporting to the general assembly no later than January 1, 2011. A transportation demand management contract may authorize the transportation enterprise to enter into single-fiscal year or multiple-fiscal year operating lease agreements or capital lease or lease-purchase agreements with a private contractor as needed to provide and operate the reversible highway lanes.

(8) (a) When the transportation enterprise board decides to study the feasibility or desirability of completing a surface transportation infrastructure project that adds substantial transportation capacity or significantly alters travel patterns, the board shall invite every metropolitan planning organization or other transportation planning region with planning responsibility for any area in which the project will be located and every affected public mass transit operator, as defined in *section 43-1-102 (5)*, public highway authority created pursuant to part 5 of this article, and regional transportation authority created pursuant to part 6 of this article to collaborate with the board in its study and review and comment regarding the project. The transportation enterprise board and a metropolitan planning organization, transportation planning region, public mass transit operator, public highway authority, or regional transportation authority may enter into an intergovernmental agreement to define the degree of collaboration and any sharing of costs and revenues. The transportation enterprise board, in collaboration with those metropolitan planning organizations, transportation planning regions, public mass transit operators, and authorities that are entitled to and wish to collaborate with the board, may develop a plan for the completion of the surface transportation infrastructure project that addresses the feasibility of the project, the technology to be utilized, project financing, and any other federally required information.

(b) In order to ensure that the limited resources available for the completion of major surface transportation infrastructure projects are allocated only to projects deemed essential by all impacted metropolitan planning organizations and other transportation planning regions, every metropolitan planning organization or other transportation planning region that includes territory in which all or any portion of a proposed surface transportation infrastructure project that will add substantial transportation capacity or significantly alter traffic patterns is to be completed shall have the right to participate in the planning and development, and approve the completion, of the project. The right of participation shall extend, without limitation, to decisions regarding the scope of the project, the type of surface transportation infrastructure to be provided, project financing, allocation of project revenues, and the manner in which any user fees are to be imposed. A surface transportation infrastructure project shall not proceed past the planning stage until all metropolitan planning organizations entitled to participate in the planning, development, and approval process, including the transportation enterprise and any partner of the enterprise under the terms of a public-private partnership, have approved the project.

(9) (a) The transportation enterprise shall not supplant or duplicate the services provided by any public mass transit operator, as defined in *section 43-1-102 (5)*, railroad, public highway authority created pursuant to part 5 of this article, or regional transportation authority created pursuant to part 6 of this article except as described in detail in an intergovernmental agreement or other contractual agreement entered into by the transportation enterprise and the operator, railroad, or authority. The creation of and undertaking of surface transportation infrastructure projects by the transportation enterprise pursuant to this part 8 is not intended to discourage any combination of local governments from forming a public highway authority or a regional transportation authority.

(b) Moneys made available for any surface transportation infrastructure project pursuant to this part 8 shall not be used to supplant existing or budgeted department funding for any portion of the state highway system within the territory of any transportation planning region, as defined in *section 43-1-1102 (8)*, that includes any portion of the project.

(10) No later than February 15, 2010, and no later than February 15 of each year thereafter, the transportation enterprise shall present a report to the committees of the house of representatives and the senate that have jurisdiction over transportation. The report shall include a summary of the transportation enterprise's activities for the previous year, a summary of the status of any current surface transportation infrastructure projects, a statement of the enterprise's revenues and expenses, and any recommendations for statutory changes that the enterprise deems necessary or desirable. The committees shall review the report and may recommend legislation. The report shall be public and shall be available on the web site of the department on or before January 15 of the year in which the report is presented.

HISTORY: Source: L. 2009: Entire part R&RE, (SB 09-108), ch. 5, p. 30, § 1, effective March 2. L. 2010: (7.5) added, (SB 10-184), ch. 334, p. 1536, § 1, effective May 27.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Highways

Editor's note: This section is similar to former § § 43-4-803, 43-4-804, 43-4-805, and 43-4-806 as they existed prior to 2009.