

First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 05-1050.01 Jason Gelender

HOUSE BILL 05-1342

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

(None),

House Committees

Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PRIVATE TOLL ROADS AND TOLL HIGHWAYS, AND, IN
102 CONNECTION THEREWITH, SPECIFYING REQUIREMENTS THAT
103 MUST BE MET BEFORE A CORPORATION CAN CONSTRUCT A
104 PRIVATE TOLL ROAD OR TOLL HIGHWAY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a corporation formed for the purposes of constructing a private toll road or toll highway (corporation) to:

Specify in its certificate of incorporation a proposed route for the toll road or toll highway within 3 miles;

Before constructing or operating a toll road or toll

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

highway, undertake, at its own expense, all analyses and receive all approvals that would be required for any new segment of a federal interstate highway, including but not limited to: Certification by the executive director of the department of transportation (executive director) both that all applicable required regional transportation and statewide transportation plans approved by the transportation commission (commission) include the toll road or toll highway and that the corporation has prepared an environmental, economic, and social impact analysis that meets all substantive and approval requirements imposed by specified federal laws and regulations; identification and implementation of all mitigation measures required by specified federal regulations; and transportation planning region approval with attendant incorporation into regional and statewide transportation plans of the proposed toll road or toll highway and the mitigation and financial plans prepared by the corporation; Bear the responsibility for defending any legal challenge to the adequacy of an impact analysis filed in a court; Within a specified period following its incorporation, provide written individual notice, through a specified process that involves applicable county assessors and also requires public notice in appropriate newspapers, to each person who owns real property within the route specified in the certificate of incorporation of the intent of the corporation to construct a toll road or toll highway and, if applicable, to acquire the person's real property; File a disclaimer of interest with the clerk and recorder's office in the county of residence of each person to whom the corporation provided written notice that expressly states that the certificate of incorporation does not effect an interest in the person's real property within the route specified in the certificate of incorporation; Identify in its certificate of incorporation all known investors and shareholders of the corporation; Comply with certain standards, procedures, and other requirements specified in the legislation; Obtain plan and land use approval from the board of county commissioners of the county in which property to be affected by the construction is located.

Specifies that a toll road or toll highway shall be included by amendment in an applicable regional and statewide transportation plan only if:

The corporation has complied with all planning,

construction, maintenance, and environmental mitigation standards and requirements specified in or developed in accordance with the legislation;

The applicable transportation planning region and the department of transportation certify that the taxpayers of the state or any county will not bear any direct or indirect costs resulting from the construction, operation, or maintenance of the toll road or toll highway; and

The corporation establishes to the satisfaction of the commission that the proposed toll road or toll highway is financially viable because the corporation has or can obtain sufficient financial resources to construct, operate, and maintain the toll road or toll highway.

Requires a corporation that has already filed a certificate of incorporation that does not comply with the new investor and shareholder identification and disclaimer of interest requirements or that has failed to provide the required notice to affected landowners in connection with its incorporation to file a new or amended certificate of incorporation within a specified period that certifies that the corporation will satisfy the requirements. Specifies that if a corporation is dissolved any property interest in a toll road or toll highway held by the corporation reverts to the state.

Allows the executive director to charge a fee to a corporation to cover the reasonable expenses incurred by the executive director and the department in determining whether to grant any approval or certification required to be obtained from the executive director. Requires a corporation to provide written notification to the commission of its intent to sell a property interest in a toll road or toll highway. Allows the commission, within a specified period following notification, to adopt a resolution that prohibits the corporation from completing the sale of the property interest, and allows the corporation to complete the sale of the property interest if the commission does not adopt such a resolution.

Defines terms.

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

2 **SECTION 1.** 7-45-101 (1), Colorado Revised Statutes, is
3 amended to read:

4 **7-45-101. Additional statements in certificate - rights and**
5 **interests in toll roads.** (1) If any three or more persons associate to
6 form a corporation for the purpose of constructing a road or highway

1 under the provisions of law, their certificate of incorporation shall state
2 the termini of said road or highway and ~~the~~ ITS SPECIFIC route ~~of the~~
3 ~~same, as near as may be. Such company~~ WITHIN THREE MILES. IF THE
4 CORPORATION COMPLIES WITH THE REQUIREMENTS OF THIS ARTICLE, IT
5 shall have the ~~right-of-way over the line named in the certificate~~ ABILITY
6 to erect toll gates, not to exceed one in every ten miles of road OR
7 HIGHWAY, and to collect toll at the rates prescribed by the board of
8 county commissioners of the county in which ~~said~~ THE road OR HIGHWAY
9 is located, upon the application of the corporation.

10 **SECTION 2.** Article 45 of title 7, Colorado Revised Statutes, is
11 amended BY THE ADDITION OF THE FOLLOWING NEW
12 SECTIONS to read:

13 **7-45-104. Construction standards - planning - environmental**
14 **review.** (1) WHEN PLANNING, CONSTRUCTING, AND MAINTAINING A TOLL
15 ROAD OR TOLL HIGHWAY, A CORPORATION FORMED UNDER THIS ARTICLE
16 SHALL COMPLY WITH ALL DEPARTMENT OF TRANSPORTATION STANDARDS
17 FOR STATE TRANSPORTATION PROJECTS.

18 (2) (a) BEFORE CONSTRUCTING AND OPERATING A PRIVATE TOLL
19 ROAD OR TOLL HIGHWAY, A CORPORATION FORMED UNDER THIS ARTICLE
20 SHALL UNDERTAKE, AT ITS OWN EXPENSE, THE ANALYSIS AND RECEIVE THE
21 APPROVALS THAT WOULD BE REQUIRED FOR A NEW SEGMENT OF A FEDERAL
22 INTERSTATE HIGHWAY, INCLUDING BUT NOT LIMITED TO:

23 (I) RECEIPT OF CERTIFICATION FROM THE EXECUTIVE DIRECTOR OF
24 THE DEPARTMENT OF TRANSPORTATION THAT ALL APPLICABLE REGIONAL
25 TRANSPORTATION AND STATEWIDE TRANSPORTATION PLANS REQUIRED
26 PURSUANT TO SECTION 43-1-1103, C.R.S., AND APPROVED BY THE
27 TRANSPORTATION COMMISSION INCLUDE THE TOLL ROAD OR TOLL

1 HIGHWAY, THAT THE CORPORATION HAS OBTAINED ANY REQUIRED
2 FEDERAL APPROVALS FROM THE UNITED STATES DEPARTMENT OF
3 TRANSPORTATION AND THE UNITED STATES ARMY CORPS OF ENGINEERS
4 FOR FEDERAL INTERSTATE ACCESS PERMITS OR DREDGE AND FILL PERMITS,
5 AND THAT AN ENVIRONMENTAL, ECONOMIC, AND SOCIAL IMPACT ANALYSIS
6 PREPARED BY THE CORPORATION SATISFIES THE REQUIREMENTS OF 23
7 U.S.C. SEC. 109, AS AMENDED, AND 40 CFR 1500, 1501, 1502, 1503, 1505,
8 1506, AND 1508, AS AMENDED, FOR THE REVIEW OF MAJOR ACTIONS
9 HAVING A SIGNIFICANT IMPACT ON THE HUMAN ENVIRONMENT;

10 (II) IDENTIFICATION OF ALL MITIGATION MEASURES AS REQUIRED
11 BY 40 CFR 1502.14 (f) AND 1502.16 (h), AS AMENDED, AND ADOPTION OF
12 A MONITORING AND ENFORCEMENT PROGRAM AND FINANCIAL PLAN
13 ADEQUATE TO ENSURE THE IMPLEMENTATION OF ANY MITIGATION
14 MEASURES NECESSARY TO AVOID OR ELIMINATE ANY IDENTIFIED ADVERSE
15 IMPACTS OF THE CONSTRUCTION OF THE TOLL ROAD OR TOLL HIGHWAY;
16 AND

17 (III) WITH RESPECT TO EACH TRANSPORTATION PLANNING REGION,
18 AS DESCRIBED IN 2 CCR 604-2, SECTION IV, AS AMENDED, WITHIN WHICH
19 THE TOLL ROAD OR TOLL HIGHWAY WILL BE CONSTRUCTED, RECEIPT OF
20 APPROVAL OF AN AMENDMENT TO THE REGIONAL TRANSPORTATION PLAN
21 IN EFFECT FOR THE REGION PURSUANT TO SECTIONS 43-1-1102 AND
22 43-1-1103, C.R.S., AND TO THE STATEWIDE TRANSPORTATION PLAN
23 REQUIRED PURSUANT TO SECTION 43-1-1103 (5), C.R.S., THAT ADOPTS THE
24 TOLL ROAD OR TOLL HIGHWAY, MITIGATION PLAN, AND FINANCIAL PLAN
25 PROPOSED BY THE CORPORATION.

26 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
27 TRANSPORTATION MAY CHARGE A FEE TO A CORPORATION TO COVER THE

1 REASONABLE EXPENSES INCURRED BY THE EXECUTIVE DIRECTOR AND THE
2 DEPARTMENT IN DETERMINING WHETHER TO GRANT ANY APPROVAL OR
3 CERTIFICATION REQUIRED TO BE OBTAINED BY A CORPORATION UNDER
4 PARAGRAPH (a) OF THIS SUBSECTION (2).

5 (3) FOR PURPOSES OF THIS SECTION, "AGENCY", AS USED IN THE
6 INCORPORATED PARTS OF TITLE 40 OF THE CODE OF FEDERAL
7 REGULATIONS, SHALL MEAN THE EXECUTIVE DIRECTOR OF THE
8 DEPARTMENT OF TRANSPORTATION; EXCEPT THAT A CORPORATION FORMED
9 IN ACCORDANCE WITH THIS ARTICLE FOR THE PURPOSE OF CONSTRUCTING
10 A PRIVATE TOLL ROAD OR TOLL HIGHWAY SHALL HAVE THE INITIAL
11 OBLIGATION TO PREPARE THE IMPACT ANALYSIS TO THE SATISFACTION OF
12 THE EXECUTIVE DIRECTOR.

13 (4) APPROVAL OR CERTIFICATION OF AN IMPACT ANALYSIS
14 GRANTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
15 TRANSPORTATION PURSUANT TO THIS SECTION MAY BE APPEALED WITHIN
16 THIRTY DAYS OF PUBLICATION THEREOF IN THE COLORADO REGISTER TO
17 THE TRANSPORTATION COMMISSION FOR A FINAL DECISION BY THE
18 COMMISSION. NOTWITHSTANDING THE RECEIPT OF ANY APPROVAL OR
19 CERTIFICATION OF AN IMPACT ANALYSIS FROM THE EXECUTIVE DIRECTOR
20 OR THE COMMISSION, THE CORPORATION SHALL BEAR THE RESPONSIBILITY
21 FOR DEFENDING ANY LEGAL CHALLENGE TO THE ADEQUACY OF AN IMPACT
22 ANALYSIS FILED IN A COURT.

23 (5) NO TRANSPORTATION PLANNING ORGANIZATION, AS DEFINED
24 BY 2 CCR 604-2, SECTION III, AS AMENDED, SHALL APPROVE AN
25 AMENDMENT TO ANY APPLICABLE REGIONAL TRANSPORTATION PLAN AS
26 REQUIRED BY THIS SECTION UNTIL AFTER THE IMPACT ANALYSIS REQUIRED
27 BY PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION HAS BEEN

1 APPROVED BY THE DEPARTMENT OF TRANSPORTATION AND HAS BEEN
2 MADE AVAILABLE TO THE TRANSPORTATION PLANNING ORGANIZATION AND
3 THE PUBLIC FOR CONSIDERATION AT LEAST THIRTY DAYS PRIOR TO A
4 PUBLIC HEARING ON ANY PROPOSED AMENDMENT TO THE REGIONAL
5 TRANSPORTATION PLAN.

6 (6) A REGIONAL AND STATE TRANSPORTATION PLAN MAY BE
7 AMENDED TO INCLUDE A TOLL ROAD OR TOLL HIGHWAY PROPOSED BY A
8 CORPORATION FORMED IN ACCORDANCE WITH THIS ARTICLE FOR THE
9 PURPOSE OF CONSTRUCTING THE PRIVATE TOLL ROAD OR TOLL HIGHWAY
10 ONLY IF:

11 (a) THE CORPORATION HAS COMPLIED WITH ALL PLANNING,
12 CONSTRUCTION, MAINTENANCE, AND ENVIRONMENTAL MITIGATION
13 STANDARDS AND REQUIREMENTS SPECIFIED IN OR DEVELOPED IN
14 ACCORDANCE WITH THIS SECTION;

15 (b) THE APPLICABLE TRANSPORTATION PLANNING REGION AS
16 DESCRIBED IN 2 CCR 604-2, SECTION IV, AS AMENDED, AND THE
17 DEPARTMENT OF TRANSPORTATION CERTIFY THAT THE TAXPAYERS OF THE
18 STATE OR ANY COUNTY WILL NOT BEAR ANY DIRECT OR INDIRECT COSTS
19 RESULTING FROM THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF
20 THE TOLL ROAD OR TOLL HIGHWAY; AND

21 (c) THE CORPORATION ESTABLISHES TO THE SATISFACTION OF THE
22 TRANSPORTATION COMMISSION THAT THE PROPOSED TOLL ROAD OR TOLL
23 HIGHWAY IS FINANCIALLY VIABLE BECAUSE THE CORPORATION HAS OR CAN
24 OBTAIN SUFFICIENT FINANCIAL RESOURCES TO CONSTRUCT, OPERATE, AND
25 MAINTAIN THE TOLL ROAD OR TOLL HIGHWAY.

26 (7) A CORPORATION FORMED UNDER THE PROVISIONS OF THIS
27 ARTICLE SHALL PROVIDE WRITTEN NOTIFICATION TO THE TRANSPORTATION

1 COMMISSION OF ITS INTENT TO SELL A PROPERTY INTEREST IN A TOLL ROAD
2 OR TOLL HIGHWAY HELD BY THE CORPORATION. THE COMMISSION MAY,
3 WITHIN FORTY-FIVE DAYS AFTER NOTIFICATION, ADOPT A RESOLUTION
4 THAT PROHIBITS THE CORPORATION FROM COMPLETING THE SALE OF THE
5 PROPERTY INTEREST. IF THE COMMISSION DOES NOT ADOPT SUCH A
6 RESOLUTION WITHIN THE FORTY-FIVE-DAY PERIOD, THE CORPORATION MAY
7 COMPLETE THE SALE OF THE PROPERTY INTEREST.

8 **7-45-105. Notice to affected property owners and lessees -**
9 **identification of investors.** (1) WITHIN FORTY-FIVE DAYS OF FILING A
10 CERTIFICATE OF INCORPORATION PURSUANT TO SECTION 7-45-101, A
11 CORPORATION SHALL:

12 (a) CAUSE WRITTEN INDIVIDUAL NOTICE TO BE SENT TO EACH
13 PERSON WHO OWNS REAL PROPERTY WITHIN THE ROUTE SPECIFIED IN THE
14 CERTIFICATE OF INCORPORATION OF THE INTENT OF THE CORPORATION TO
15 CONSTRUCT A TOLL ROAD OR TOLL HIGHWAY AND, IF APPLICABLE, TO
16 ACQUIRE THE PERSON'S REAL PROPERTY. TO PROVIDE WRITTEN
17 INDIVIDUAL NOTICE, THE CORPORATION SHALL PROVIDE THE ASSESSOR OF
18 EACH COUNTY THAT INCLUDES AFFECTED REAL PROPERTY WITH COPIES OF
19 EACH APPLICABLE WRITTEN INDIVIDUAL NOTICE, AND THE ASSESSOR SHALL
20 PROMPTLY MAIL THE NOTICE TO EACH AFFECTED PROPERTY OWNER OF
21 RECORD. THE ASSESSOR SHALL ALSO PUBLISH THE NOTICE IN THE
22 APPLICABLE NEWSPAPER OF RECORD IN THE COUNTY FOR FOUR
23 CONSECUTIVE WEEKS. THE CORPORATION SHALL REIMBURSE EACH
24 ASSESSOR FOR THE EXPENSES INCURRED BY THE ASSESSOR IN COMPLYING
25 WITH THE REQUIREMENTS OF THIS PARAGRAPH (a).

26 (b) FILE A DISCLAIMER OF INTEREST WITH THE CLERK AND
27 RECORDER'S OFFICE IN THE COUNTY OF RESIDENCE OF EACH PERSON TO

1 WHOM THE CORPORATION PROVIDED WRITTEN NOTICE PURSUANT TO
2 PARAGRAPH (a) OF THIS SUBSECTION (1) THAT EXPRESSLY STATES THAT
3 THE CERTIFICATE OF INCORPORATION DOES NOT EFFECT AN INTEREST IN
4 THE PERSON'S REAL PROPERTY WITHIN THE ROUTE SPECIFIED IN THE
5 CERTIFICATE OF INCORPORATION.

6 (2) A CERTIFICATE OF INCORPORATION FILED PURSUANT TO
7 SECTION 7-45-101 SHALL IDENTIFY ALL KNOWN INVESTORS AND
8 SHAREHOLDERS OF THE CORPORATION.

9 (3) AS USED IN THIS ARTICLE, A "TOLL ROAD" OR "TOLL HIGHWAY"
10 MAY CONSIST OF IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO PAVING,
11 GRADING, LANDSCAPING, CURBS, GUTTERS, CULVERTS, SIDEWALKS,
12 BIKEWAYS, LIGHTING, BRIDGES, OVERPASSES, UNDERPASSES, RAILROAD
13 FACILITIES, RAIL CROSSINGS, FRONTAGE ROADS, ACCESS ROADS,
14 INTERCHANGES, DRAINAGE FACILITIES, MASS TRANSIT LANES, PARK AND
15 RIDE FACILITIES, TOLL COLLECTION FACILITIES, SERVICE AREAS,
16 ADMINISTRATIVE OR MAINTENANCE FACILITIES, GAS, ELECTRIC, WATER,
17 SEWER, CABLE, DATA TRANSMISSION, AND OTHER UTILITIES LOCATED OR
18 TO BE LOCATED IN THE RIGHT-OF-WAY OF A TOLL ROAD OR TOLL HIGHWAY,
19 AND OTHER REAL OR PERSONAL PROPERTY, INCLUDING EASEMENTS,
20 RIGHTS-OF-WAY, AND OTHER INTERESTS THEREIN, RELATING TO THE
21 FINANCING, CONSTRUCTION, OPERATION, OR MAINTENANCE OF A TOLL
22 ROAD OR TOLL HIGHWAY.

23 (4) A CORPORATION THAT HAS FILED A CERTIFICATE OF
24 INCORPORATION PRIOR TO THE EFFECTIVE DATE OF THIS SECTION THAT
25 DOES NOT COMPLY WITH THE INVESTOR AND SHAREHOLDER
26 IDENTIFICATION REQUIREMENT OF SUBSECTION (2) OF THIS SECTION OR
27 THAT HAS NOT SATISFIED THE NOTICE OR DISCLAIMER REQUIREMENTS OF

1 SUBSECTION (1) OF THIS SECTION SHALL FILE A NEW OR AMENDED
2 CERTIFICATE OF INCORPORATION WITHIN THIRTY DAYS THAT CERTIFIES
3 THAT THE CORPORATION WILL COMPLY WITH THOSE REQUIREMENTS.

4 **SECTION 3.** Part 3 of article 3 of title 43, Colorado Revised
5 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
6 SECTIONS to read:

7 **43-3-301.5. Toll road or toll highway - definitions.** AS USED IN
8 THIS PART 3, A "TOLL ROAD" OR "TOLL HIGHWAY" MAY CONSIST OF
9 IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO PAVING, GRADING,
10 LANDSCAPING, CURBS, GUTTERS, CULVERTS, SIDEWALKS, BIKEWAYS,
11 LIGHTING, BRIDGES, OVERPASSES, UNDERPASSES, RAILROAD FACILITIES,
12 RAIL CROSSINGS, FRONTAGE ROADS, ACCESS ROADS, INTERCHANGES,
13 DRAINAGE FACILITIES, MASS TRANSIT LANES, PARK AND RIDE FACILITIES,
14 TOLL COLLECTION FACILITIES, SERVICE AREAS, ADMINISTRATIVE OR
15 MAINTENANCE FACILITIES, GAS, ELECTRIC, WATER, SEWER, CABLE, DATA
16 TRANSMISSION, AND OTHER UTILITIES LOCATED OR TO BE LOCATED IN THE
17 RIGHT-OF-WAY OF A TOLL ROAD OR TOLL HIGHWAY, AND OTHER REAL OR
18 PERSONAL PROPERTY, INCLUDING EASEMENTS, RIGHTS-OF-WAY, AND
19 OTHER INTERESTS THEREIN, RELATING TO THE FINANCING, CONSTRUCTION,
20 OPERATION, OR MAINTENANCE OF A TOLL ROAD OR TOLL HIGHWAY.

21 **43-3-302.5. County oversight over land use.** A CORPORATION
22 FORMED IN ACCORDANCE WITH ARTICLE 45 OF TITLE 7, C.R.S., FOR THE
23 PURPOSE OF CONSTRUCTING A TOLL ROAD OR TOLL HIGHWAY SHALL
24 OBTAIN PLAN AND LAND USE APPROVAL FROM THE BOARD OF COUNTY
25 COMMISSIONERS OF EACH COUNTY IN WHICH PROPERTY TO BE AFFECTED
26 BY THE CONSTRUCTION IS LOCATED.

27 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.