

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 07-0187.03 Jason Gelender

HOUSE BILL 07-1068

HOUSE SPONSORSHIP

Looper,

SENATE SPONSORSHIP

Williams,

House Committees
Transportation & Energy

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

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

Modifies existing prerequisites to the development of a toll road or toll highway (toll road) by a toll road or toll highway company

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.

HOUSE
3rd Reading Unamended
March 8, 2007

HOUSE
Amended 2nd Reading
March 7, 2007

(company) and adds new prerequisites as follows:

Removes the requirement that a company specify the corridor of a proposed toll road in its filed formation document.

Requires the removal of any route of a proposed toll road or location of a toll road project specified in an existing filed formation document unless the route or location is included within the statewide transportation plan by a specified date, requires the affected company to provide public notice of the removal in affected counties.

Prohibits a company from entering into an agreement with a city, county, or city and county under which the city, county, or city and county agrees to take action to divert traffic to a toll road.

Requires a company that commences work on a toll road or toll road project to provide quarterly status reports to the department of transportation (CDOT) until the completion of construction.

Requires a company to independently acquire a specified percentage of property or rights-of-way for a toll road before CDOT may exercise the power of eminent domain to acquire property or rights-of-way for the completion of a toll road.

Requires the reserve fund, performance bond, or other appropriate mechanism required to be established by a company before the company's proposed toll road or toll road project may be included in the statewide transportation plan to be sufficient to ensure completion of the proposed transportation corridor.

Prohibits a company from sending the notice of its plans for a toll road or toll road project to affected counties and property owners and filing the map and disclaimer of interest required by existing law until the road or project has been included in the statewide transportation plan.

Upon completion of right-of-way acquisition, requires a company that has specified and mapped a corridor in its filed formation document to amend the document to specify only the right-of-way actually acquired.

Prohibits CDOT from including a toll road project proposed by a company in the statewide transportation plan or taking any action relating to the construction of such a project unless it has been included in the regional transportation plans of all metropolitan planning organizations and regional planning commissions whose territory includes any portion of the road or project.

Makes conforming amendments.

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

2 **SECTION 1.** 7-45-101, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **7-45-101. Formation of toll road or toll highway company -**
5 **description of corridor - annual reporting.** (5) ON OR BEFORE EACH
6 SEPTEMBER 1 THAT FOLLOWS THE FORMATION OF A TOLL ROAD OR TOLL
7 HIGHWAY COMPANY, THE COMPANY SHALL SUBMIT TO THE EXECUTIVE
8 DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION AN ANNUAL REPORT
9 DETAILING THE STATUS OF ITS PROPOSED TOLL ROAD, TOLL HIGHWAY, OR
10 TOLL ROAD OR TOLL HIGHWAY PROJECT. THE DEPARTMENT SHALL MAKE
11 EACH ANNUAL REPORT AVAILABLE FOR PUBLIC VIEWING ON THE
12 DEPARTMENT'S INTERNET WEB SITE.

13 **SECTION 2.** 7-45-103, Colorado Revised Statutes, is amended
14 to read:

15 **7-45-103. Deadline to commence work - maintenance of effort**
16 **requirement - designation of right-of-way - deadline to commence**
17 **construction.** (1) A toll road or toll highway company shall commence
18 work, including but not limited to planning, design, environmental
19 mitigation, and other preconstruction work, on the toll road, or toll
20 highway, OR TOLL ROAD OR TOLL HIGHWAY PROJECT proposed in the filed
21 formation document no later than ~~three years~~ EIGHTEEN MONTHS after the
22 filing of the document. ~~or within one year after receiving all necessary~~
23 ~~approvals for construction. If any necessary approval is the subject of~~
24 ~~administrative or judicial review, then the one-year period shall be~~
25 ~~automatically extended until one year after all administrative or judicial~~

1 ~~review has been concluded.~~ The toll road or toll highway company and
2 any successor toll road or toll highway company shall REASONABLY
3 continue the work ~~from day to day~~ until at least five hundred thousand
4 dollars have been expended OR INVESTED on the toll road, ~~or~~ toll highway,
5 OR PROJECT. If the toll road or toll highway company fails to perform the
6 required work, it shall forfeit all rights acquired under its filed formation
7 document and be administratively dissolved. If the toll road or toll
8 highway company performs the required work, it shall have the exclusive
9 right to develop or seek approval to develop a toll road, ~~or~~ toll highway,
10 OR PROJECT within the three-mile corridor specified in its filed formation
11 document as required by section 7-45-101 (1).

12 (2) (a) WITHIN NINETY DAYS OF THE INCORPORATION OF A
13 PROPOSED TOLL ROAD, TOLL HIGHWAY, OR TOLL ROAD OR TOLL HIGHWAY
14 PROJECT INTO THE COMPREHENSIVE STATEWIDE TRANSPORTATION PLAN
15 PREPARED PURSUANT TO SECTION 43-1-1103 (5), C.R.S., IN ACCORDANCE
16 WITH SECTION 7-45-106 (2) AND AS REQUIRED BY SECTION 7-45-105 (1),
17 THE PRIVATE TOLL ROAD OR TOLL HIGHWAY COMPANY PROPOSING THE
18 TOLL ROAD, TOLL HIGHWAY, OR PROJECT SHALL FILE WITH THE
19 DEPARTMENT OF TRANSPORTATION A MAP OF THE RIGHT-OF-WAY OF THE
20 TOLL ROAD, TOLL HIGHWAY, OR PROJECT. THE DEPARTMENT SHALL MAKE
21 THE MAP AVAILABLE FOR PUBLIC VIEWING ON THE DEPARTMENT'S
22 INTERNET WEB SITE AND SHALL REMOVE THE NOTICE PREVIOUSLY MADE
23 AVAILABLE FOR PUBLIC VIEWING ON THE DEPARTMENT'S INTERNET WEB
24 SITE PURSUANT TO SECTION 7-45-108 (1) (a). WITHIN SEVEN YEARS
25 FOLLOWING THE DATE OF THE FILING OF THE MAP, THE COMPANY SHALL
26 COMMENCE ACTUAL CONSTRUCTION OF THE TOLL ROAD, TOLL HIGHWAY,
27 OR PROJECT; EXCEPT THAT:

1 (I) IF ADMINISTRATIVE OR JUDICIAL REVIEW INITIATED BY A
2 PERSON OTHER THAN THE COMPANY OF ANY NECESSARY APPROVAL
3 DELAYS THE COMMENCEMENT OF CONSTRUCTION BEYOND THE
4 SEVEN-YEAR DEADLINE FOR COMMENCEMENT CONSTRUCTION, THE
5 DEADLINE SHALL BE EXTENDED UNTIL ONE YEAR AFTER ALL
6 ADMINISTRATIVE OR JUDICIAL REVIEW HAS BEEN CONCLUDED.

7 (II) THE DEADLINE FOR COMMENCEMENT OF CONSTRUCTION MAY
8 BE EXTENDED BY UP TO AN ADDITIONAL FIVE YEARS IF:

9 (A) THE COMPANY HAS EXPENDED OR INVESTED AT LEAST FIVE
10 MILLION DOLLARS ON THE TOLL ROAD, TOLL HIGHWAY, OR PROJECT; AND

11 (B) THE TRANSPORTATION COMMISSION CREATED IN SECTION
12 43-1-106 (1), C.R.S., APPROVES THE EXTENSION OF THE DEADLINE.

13 (b) IF A TOLL ROAD OR TOLL HIGHWAY COMPANY FAILS TO
14 COMMENCE ACTUAL CONSTRUCTION OF A TOLL ROAD, TOLL HIGHWAY, OR
15 PROJECT WITHIN THE DEADLINE SPECIFIED IN PARAGRAPH (a) OF THIS
16 SUBSECTION (2), THE COMPANY SHALL FORFEIT ALL RIGHTS ACQUIRED
17 UNDER ITS FILED FORMATION DOCUMENT AND BE ADMINISTRATIVELY
18 DISSOLVED.

19 **SECTION 3.** 7-45-108, Colorado Revised Statutes, is amended
20 to read:

21 **7-45-108. County clerk notification.** (1) Within ninety days of
22 filing a formation document pursuant to section 7-45-101, a toll road or
23 toll highway company shall:

24 (a) ~~Cause MAIL written notice to be sent to and recorded by the~~
25 ~~clerk and recorder of each county that includes territory that is included~~
26 ~~within the three-mile corridor specified in the filed formation document~~
27 of the intent of the toll road or toll highway company to construct a toll

1 road, toll highway, or toll road or toll highway project within that corridor
2 and shall mail the written notice THE THREE-MILE CORRIDOR SPECIFIED IN
3 THE FILED FORMATION DOCUMENT to each person who owns real property
4 within the three-mile corridor AND TO THE DEPARTMENT OF
5 TRANSPORTATION. The toll road or toll highway company shall send the
6 notice by certified mail and shall generally describe the proposed toll
7 road, toll highway, or project, including its location, termini,
8 improvements, and operation. The notice shall also explain that the
9 project may not go forward until the process for approving the project
10 required by this article has been completed, summarize the approval
11 process, identify opportunities during the process for public involvement,
12 and provide a contact for additional information. THE DEPARTMENT
13 SHALL MAKE THE NOTICE AVAILABLE FOR PUBLIC VIEWING ON THE
14 DEPARTMENT'S INTERNET WEB SITE.

15 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1.5) OF THIS
16 SECTION, file a disclaimer of interest and map of the three-mile corridor
17 with the clerk and recorder's office in the county of residence of each
18 person to whom the company provided written notice pursuant to
19 paragraph (a) of this subsection (1) that expressly states that the filed
20 formation document does not effect an interest in the person's real
21 property within the three-mile corridor specified in the filed formation
22 document.

23 (1.5) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION
24 (1.5), A PRIVATE TOLL ROAD OR TOLL HIGHWAY COMPANY MAY NOT FILE
25 A DISCLAIMER OF INTEREST AND MAP AS OTHERWISE REQUIRED BY
26 PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION AND MAY NOT FILE
27 WITH THE CLERK AND RECORDER OF ANY COUNTY THE WRITTEN NOTICE

1 REQUIRED TO BE MAILED TO PERSONS WHO OWN REAL PROPERTY IN ITS
2 THREE-MILE CORRIDOR PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1)
3 OF THIS SECTION. ANY DISCLAIMER OF INTEREST, MAP, OR WRITTEN
4 NOTICE FILED OR RECORDED BY A PRIVATE TOLL ROAD OR TOLL HIGHWAY
5 COMPANY BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (1.5), IS
6 HEREBY DECLARED VOID. THE VOIDING OF A DISCLAIMER OF INTEREST,
7 MAP, OR WRITTEN NOTICE PURSUANT TO THIS SUBSECTION (1.5)
8 CONCLUSIVELY ESTABLISHES THAT THE DISCLAIMER OF INTEREST, MAP, OR
9 WRITTEN NOTICE DOES NOT AFFECT THE TITLE TO ANY PROPERTY OR HAVE
10 ANY OTHER LEGAL EFFECT, AND A TITLE INSURANCE COMPANY SHALL
11 EXCLUDE A VOID DISCLAIMER OF INTEREST, MAP, OR WRITTEN NOTICE
12 FROM ANY DOCUMENTS IT PREPARES AFTER THE EFFECTIVE DATE OF THIS
13 SUBSECTION (1.5).

14 (b) IN ACCORDANCE WITH SECTION 13-21-127, C.R.S., THE
15 FOLLOWING PERSONS AND ENTITIES ARE IMMUNE FROM CIVIL LIABILITY IN
16 ANY LAWSUIT ALLEGING DAMAGES ARISING OUT OF THE FILING,
17 RECORDING, VOIDING, INCLUSION, OR EXCLUSION OF A DISCLAIMER OF
18 INTEREST, MAP, OR WRITTEN NOTICE LAWFULLY FILED OR RECORDED
19 PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SUBSEQUENTLY
20 VOIDED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5):

21 (I) THE TOLL ROAD OR TOLL HIGHWAY COMPANY, INCLUDING ANY
22 AUTHORIZED AGENT THEREOF, THAT FILED OR RECORDED THE
23 DISCLAIMER OF INTEREST, MAP, OR WRITTEN NOTICE;

24 (II) ANY COUNTY CLERK AND RECORDER THAT FILED OR
25 RECORDED THE DISCLAIMER OF INTEREST, MAP, OR WRITTEN
26 NOTICE; AND

27 (III) ANY TITLE INSURANCE COMPANY THAT INCLUDED THE

1 DISCLAIMER OF INTEREST, MAP, OR WRITTEN NOTICE ON ANY DOCUMENT
2 IT PREPARED BEFORE ITS VOIDING OR EXCLUDED THE DISCLAIMER OF
3 INTEREST, MAP, OR WRITTEN NOTICE FROM DOCUMENTS IT PREPARED
4 AFTER ITS VOIDING.

5 (2) A toll road or toll highway company that has filed a formation
6 document prior to June 6, 2006, and that has not satisfied the notice
7 requirements of subsection (1) of this section shall file a new or amended
8 formation document within ninety days of June 6, 2006, that includes the
9 information required by section 7-45-101 (1) and that certifies that the
10 company has complied with or will comply with the requirements of said
11 subsection (1) within ninety days of June 6, 2006.

12 (3) Compliance with the notification and filing requirements of
13 subsections (1) and (2) of this section shall constitute compliance with the
14 notification, filing, and recording requirements of section 38-2-101 (2),
15 C.R.S., as enacted by Senate Bill 06-115, enacted at the second regular
16 session of the sixty-fifth general assembly.

17 **SECTION 4.** Article 21 of title 13, Colorado Revised Statutes, is
18 amended BY THE ADDITION OF A NEW SECTION to read:

19 **13-21-127. Voided private toll road company disclaimers of**
20 **interest and maps - immunity from civil liability.** (1) THE FOLLOWING
21 PERSONS AND ENTITIES ARE IMMUNE FROM CIVIL LIABILITY IN ANY
22 LAWSUIT ALLEGING DAMAGES ARISING OUT OF THE FILING, RECORDING,
23 VOIDING, INCLUSION, OR EXCLUSION OF A DISCLAIMER OF INTEREST,
24 MAP, OR WRITTEN NOTICE LAWFULLY FILED PURSUANT TO SECTION
25 7-45-108 (1), C.R.S., AND SUBSEQUENTLY VOIDED PURSUANT TO
26 SECTION 7-45-108 (1.5) (a), C.R.S.:

27 (I) THE TOLL ROAD OR TOLL HIGHWAY COMPANY, AS DEFINED IN

1 SECTION 7-45-102 (9), C.R.S., INCLUDING ANY AUTHORIZED AGENT
2 THEREOF, THAT FILED OR RECORDED THE DISCLAIMER OR INTEREST, MAP,
3 OR WRITTEN NOTICE;

4 (II) ANY COUNTY CLERK AND RECORDER THAT FILED OR
5 RECORDED THE DISCLAIMER OF INTEREST, MAP, OR WRITTEN NOTICE;
6 AND

7 (III) ANY TITLE INSURANCE COMPANY THAT INCLUDED THE
8 DISCLAIMER OF INTEREST, MAP, OR WRITTEN NOTICE ON ANY DOCUMENT
9 IT PREPARED BEFORE ITS VOIDING OR EXCLUDED THE DISCLAIMER OF
10 INTEREST, MAP, OR WRITTEN NOTICE FROM DOCUMENTS IT PREPARED
11 AFTER ITS VOIDING.

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

14 **38-2-101. Who may condemn real estate, rights-of-way, or**
15 **other rights - additional requirements for private toll roads and toll**
16 **highways.** (2) Notwithstanding the provisions of subsection (1) of this
17 section, a toll road or toll highway company may not condemn real estate
18 or right-of-way, but the department of transportation may exercise,
19 subject to the conditions and limitations set forth in sections 7-45-104 and
20 43-1-1202 (1) (f), C.R.S., the power of eminent domain for purposes of
21 acquiring property and rights-of-way necessary for the completion of a
22 toll road or toll highway open to the public that is incorporated into the
23 comprehensive statewide transportation plan prepared pursuant to section
24 43-1-1103 (5), C.R.S., and is being undertaken as a public-private
25 initiative between the department and the company. ~~Such a toll road or~~
26 ~~toll highway company shall, within six months after the date of filing of~~
27 ~~its filed formation document, file and record with the county clerk and~~

1 recorder of each county through which any portion of the proposed toll
2 road or toll highway will pass a map or survey of the proposed route of
3 the toll road or toll highway. The toll road or toll highway company shall
4 include with the map or survey a statement of the proposed route of the
5 toll road or toll highway, within three miles, and a listing of all property
6 over or across which the proposed toll road or toll highway will be
7 constructed, and shall file and record supplementary maps, surveys,
8 statements, and listings upon any lawful change of the proposed route of
9 the toll road or toll highway.

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

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

13 **SECTION 6. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.