

RECOMMENDATIONS FOR 2006

TRANSPORTATION LEGISLATION REVIEW COMMITTEE

**Report to the Governor and
Colorado General Assembly**

**Research Publication No. 547
December 2005**

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December 2005

To Members of the Sixty-fifth General Assembly:

Submitted herewith is the final report of the Transportation Legislation Review Committee. This committee was created pursuant to Section 43-2-145, Colorado Revised Statutes. The purpose of the committee is to give guidance and direction to the state Department of Transportation in the development of the state transportation system, and to provide legislative overview of and input into such development.

At its meeting on November 15, 2005, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2006 session was approved.

Respectfully submitted,

/s/ Senator Joan Fitz-Gerald
Chairman

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TRANSPORTATION LEGISLATION REVIEW COMMITTEE

Members of the Committee

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EXECUTIVE SUMMARY

Committee Charge

Pursuant to Section 43-2-145, C.R.S., the Transportation Legislation Review Committee (TLRC) is authorized to give guidance and direction to the Colorado Department of Transportation (CDOT) in the development of the state transportation system and to provide legislative oversight of such development. The 18-member committee is directed to review any phase of operations for CDOT, including planning and construction of highway projects. The committee is also authorized to review any phase of operations for any public highway authority (e.g., E-470 Authority), as well as any rural transportation authority responsible for the development of rural transportation systems. In addition, the legislative committee provides guidance to the Regional Transportation District (RTD) and reviews its budget, farebox recovery ratio, and the privatization of bus service.

Committee Activities

The TLRC held five meetings during the 2005 interim. At these meetings, the committee heard testimony on a variety of transportation-related matters from representatives of 25 organizations, including CDOT, the Colorado Department of Revenue (DOR), the Colorado State Patrol, and the RTD. The committee received information regarding five major transportation subject areas: private toll roads; mass transit; transportation finance; motor vehicle regulation and licensure; and public highway authorities.

Private toll roads. The CDOT, along with other organizations, provided testimony to the committee regarding private toll roads. Many organizations reflected on bills introduced during the 2005 legislative session — House Bill 05-1030, House Bill 05-1342, and Senate Bill 05-230 — and made suggestions for changes to those bills. All of the bills concerned new requirements for private toll roads. None of the bills was enacted. The Denver Regional Council of Governments and Colorado Counties Inc. suggested that the planning for private toll roads should include officials at the local, regional, and state levels. Environmental Defense and the Nature Conservancy of Colorado recommended that air quality and other environmental issues be considered in the planning process for private toll roads. The CDOT suggested that eminent domain powers be allowed for private entities building private toll roads if the toll roads created public benefit. The TLRC recommends Bill A and Bill B specifying requirements that a corporation must meet before constructing a private toll road or highway and prohibiting the exercise of the power of eminent domain by a private corporation.

Mass transit. The RTD addressed mass transit in the Denver metropolitan area. RTD provided an overview of the agency's 2005 amended budget, fares, contracted bus service, the transit portion of the Transportation Expansion Project (T-REX), and the FasTracks plan. The FasTracks plan is a comprehensive plan to build and operate high speed rail lines and to expand and improve bus service and Park-n-Rides throughout the Denver metropolitan area.

Transportation finance. The CDOT updated the committee on prospects for federal transportation funding based on the federal *Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), the 2005 reauthorization of the federal surface transportation act. According to CDOT, SAFETEA-LU will increase federal transportation funding for Colorado by approximately 47 percent for 2005 through 2009. The CDOT also provided the committee with information regarding the process for developing a project list based on funding that would be furnished by Referendum D, the 2005 statewide ballot issue referred by the state legislature. The measure failed.

Motor vehicle regulation and licensure. The DOR provided information to the committee concerning the impact of the federal Real ID Act of 2005 regarding the issuance of driver's licenses. The Real ID Act of 2005 terminated negotiated rule-making for the issuance of driver's licenses and implemented mandatory federal standards for states to follow. In its presentation, DOR noted that it is waiting for mandates and rule-making at the federal level to evaluate funding options for implementation. The DOR also updated the committee on new steps to reduce wait times at Colorado's driver's licenses offices and noted that the DOR offers renewal of driver's licenses by mail. The Colorado State Patrol, in conjunction with the DOR, reiterated its concerns regarding the number of repeat offenders of driving under the influence (DUI). The TLRC recommends Bill D creating a designed driver's license for such offenders.

The Colorado State Patrol also presented two other safety issues to the committee: the expansion of the types of motor vehicles required to stop before crossing at grade railroad track to include commercial vehicles that transport passengers; and requiring motor vehicles weighing less than 10,000 pounds and transporting hazardous materials to meet the minimum standards for commercial vehicles. The TLRC recommended Bill F and Bill G addressing these issues.

Public highway authorities. The committee received annual reports and project updates from the E-470 and Northwest Parkway Public Highway Authorities. Representatives of the E-470 Public Highway Authority reviewed monthly traffic and revenue projections and indicated that it currently meets 95 percent of projected revenue and has recently paid back a state loan. The Northwest Public Highway Authority provided the committee with its amended 2005 budget and indicated that T-REX is scheduled to open in December 2006.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommended seven bills to the Legislative Council. A bill relating to the designation of persistent drunk driver status on drivers' licenses was not approved for introduction by the Legislative Council. The bills approved by the Legislative Council are summarized below.

Bill A — Requirements to be Met by a Corporation Before It Can Construct a Private Toll Road or Toll Highway. Bill A establishes requirements for a corporation formed for the purpose of constructing a private toll road or toll highway (private toll road). Representatives of federal, state, and local governments, planning regions, the trucking industry, and environmental groups provided information to the committee and suggested changes to current state law concerning private toll roads. The bill requires such a corporation to identify its private toll road route within three miles and begin work within three years of obtaining its rights of incorporation.

Bill B — Prohibition Against the Exercise of the Power of Eminent Domain by a Private Corporation. Bill B prohibits a private corporation formed for the purpose of constructing a private toll road or toll highway from using eminent domain to acquire any part of the right-of-way for the toll road. The bill allows a corporation to enter into an agreement with a public entity for purposes of constructing a private toll road or toll highway.

Bill C — Placement of On-premises Advertising Devices at Comprehensive Developments. Bill C changes the statutory phrase "on-premise advertising device" to "on-premises advertising device." An "on-premise advertising device" means an advertising device advertising the sale or lease of the property on which it is located or advertising activities conducted on the property on which it is located. The bill expands the definition of on-premises advertising device to include certain advertising devices located within a comprehensive development. The bill defines "comprehensive development" as a group of two or more lots or parcels of land used primarily for commercial or industrial activities. This proposal is being brought to the TLRC to have state laws comply with federal laws.

Bill D — Appearance of a Commercial Vehicle's Owner in a Court Hearing Concerning a Permit or Documentation Violation. Bill E declares a commercial vehicle owner to be a party of interest to a court hearing if the owner authorized a commercial vehicle to be operated without the appropriate required permits or documentation. The bill clarifies that the owner's appearance in court, without the vehicle operator, is not to be considered practicing law.

Bill E — Motor Vehicles Required to Stop Before Crossing at Grade Railroad Tracks. Bill F expands the types of motor vehicles required to stop before crossing at grade railroad track to include commercial vehicles that transport passengers. Additionally under the bill, school buses, vehicles carrying hazardous materials, and commercial vehicles transporting passengers will be required to stop before crossing railroad tracks in

a residential area. The bill requires such vehicles to stop even when the railroad crossing has a gate or flashing lights.

Bill F — Regulation of Commercial Motor Vehicles that Transport Hazardous Materials over the Public Highways. Bill G requires motor vehicles weighing less than 10,000 pounds and transporting hazardous materials to meet the minimum standards for commercial vehicles. The bill also repeals a provision prohibiting certain peace officers from enforcing the "Hazardous Materials Transportation Act of 1987" and amends the penalty for violating hazardous materials rules.

STATUTORY AUTHORITY AND RESPONSIBILITIES

The Transportation Legislation Review Committee (TLRC) is comprised of the members of the House Transportation and Energy and the Senate Transportation committees. The TLRC is granted statutory oversight responsibilities for certain activities of the Colorado Department of Transportation, rural transportation authorities, public highway authorities and the Regional Transportation District. In addition, the TLRC has traditionally monitored the activities of the Department of Revenue relating to the regulation of motor vehicles and driver control, the impact of Colorado's transportation system on air quality, and the effect of traffic law enforcement on transportation in the state.

Colorado Department of Transportation. Section 43-2-145 (1), C.R.S., requires the TLRC to give guidance and direction to Colorado Department of Transportation (CDOT) in the development of the state transportation system, to provide legislative overview of and input into such development, and to make recommendations concerning the financing of the state transportation system. The TLRC may review any phase of CDOT operations, including the planning and construction of highway projects. The TLRC may also review such projects upon completion to determine whether a project was completed in the most cost-effective and efficient manner. The committee may require CDOT to conduct long-term planning efforts for the state transportation system and may require financial and performance audits to be conducted. The TLRC is required to study annual recommendations of the Executive Director of CDOT regarding the acquisition of any abandoned railroad rights-of-way in the state. The TLRC may recommend legislation to the General Assembly and to the Governor resulting from these oversight responsibilities. CDOT is required to cooperate with the TLRC in carrying out its duties.

Rural transportation authorities. The TLRC is granted the authority to review the operations of rural transportation authorities in Colorado, including the planning and construction of rural transportation systems (Section 43-2-145 (1.9), C.R.S.). The TLRC may review authority projects to ensure completion in the most cost-effective and efficient manner. The TLRC is authorized to require long-range planning by rural transportation authorities, and may require financial and performance audits of these entities as well.

Public highway authorities. The TLRC is granted authority to review any phase of operations of public highway authorities in the state, including the planning and construction of public highway projects by these authorities (Section 43-2-145 (1.5), C.R.S.). The TLRC may review projects upon completion to ensure that they were constructed in the most cost-effective and efficient manner. The TLRC may also require public highway authorities to develop long-range plans and may require financial or performance audits of these entities.

Regional Transportation District. The Regional Transportation District (RTD) is required to contract at least 50 percent of its transportation services to private businesses through competitive bidding. RTD must ensure that these companies meet certain

standards relating to experience, safety records, and financial responsibility. The TLRC is required to monitor RTD's implementation of this statutory requirement and recommend any necessary changes to the General Assembly (Section 32-9-119.5 (8) (a), C.R.S.).

RTD is also required to ensure that at least 30 percent of its operating costs are funded by farebox revenues, and must prepare its annual budget based on this percentage (Section 32-9-119.7 (3), C.R.S.). In this regard, RTD is required to submit to the TLRC any information, data, testimony, or audits that the committee may request.

COMMITTEE ACTIVITIES

During the 2005 interim, the TLRC held five meetings and met with representatives of 25 agencies and organizations interested in the development and operation of Colorado's transportation systems. Some of the major topics addressed by the committee this interim are summarized below.

Toll Roads and Highways

Regarding private toll roads, the committee heard testimony from organizations regarding the requirements for the construction of private toll roads and the exercise of eminent domain. Many organizations reflected on bills introduced during the 2005 legislative session — House Bill 05-1030, House Bill 05-1342, and Senate Bill 05-230 — and made suggestions for changes to those bills. All of the bills concerned new requirements for private toll roads. None of the bills was enacted.

Construction of private toll roads. Representatives of federal, state, and local governments, planning regions, the trucking industry, and environmental groups provided information to the committee and suggested changes to current state law concerning the construction of private toll roads. Many representatives of such organizations did not have official positions on the issue of private toll roads, but rather provided suggestions for the planning process. The Eastern Transportation Planning Region explained the importance of participation from private toll road representatives in the transportation planning process to make the best use of state and federal funds. The Denver Regional Council of Governments (DRCOG) and Colorado Counties, Inc. suggested that the planning for private toll roads should include officials at the local, regional, and state levels. The Environmental Defense, the American Planning Association of Colorado, and the Nature Conservancy of Colorado recommended that air quality and other environmental issues be considered in the planning process for private toll roads.

CDOT testified that the department's position on private roads consists of protecting state interests and local property owner interests, while keeping funding opportunities flexible. CDOT opposed legislation introduced in 2005 that would have:

- required private toll roads to follow federal environmental guidelines that may be required for a new segment of a federal interstate highway;
- allowed the Colorado Tolling Enterprise to set toll rates for multi-county roads; and
- prohibited a private toll road company from utilizing the power of eminent domain.

CDOT presented three possible ways to build a private toll road which include: (1) privately funded, with the exercise of eminent domain prohibited; (2) privately funded,

with the exercise of eminent domain by a private entity; or (3) public-private initiative, using a combination of public and private funds, and with the exercise of eminent domain by a public entity.

Eminent domain. Many organizations did not have a position on the issue of private corporations exercising the power of eminent domain when constructing a private toll road. CDOT suggested that eminent domain powers be allowed for private corporations building private toll roads if the toll roads created public benefit. CDOT testified that private entities should prove to cities and counties, through the regional planning process and the statewide transportation plan, that there is a benefit to a private toll road. The Colorado State Land Board, which manages lands given to Colorado by the federal government at statehood as an endowment to benefit education, testified that it would resist the eminent domain efforts of a privately funded toll road corporation. A portion of the lands managed by the State Land Board would be affected by the recently proposed Front Range Toll Road.

Toll highways. Representatives from the Colorado Tolling Enterprise (CTE) provided the committee with an overview of the CTE and its recent activities. The CTE was created by CDOT to finance, build, operate, and maintain toll highways. CTE provided background information on toll bonding. Non-recourse bonds are used to finance toll facilities and place the financial responsibility on the people who purchase the bonds; the bonds are not paid back by the state government. CTE testified that CDOT has been given approval by the Federal Highway Administration to convert high occupancy vehicle (HOV) lanes to high occupancy toll (HOT) lanes on Interstate 25. Construction related to this conversion will begin in 2006.

Committee recommendations. Two proposed bills resulted from the committee's discussions on private toll roads. The committee recommends Bill A, which establishes requirements for a corporation formed for the purposes of constructing a private toll road. The bill requires such a corporation to comply with CDOT project standards and to undertake the appropriate analysis for such a road, and to notify metropolitan planning organizations, persons owning property within the route, and the county clerk and recorder's offices where the person's property exists. The committee also recommends Bill B, which prohibits a private corporation formed for the purpose of constructing a private toll road from using eminent domain to acquire any part of the right-of-way for the toll road. The bill allows a corporation to enter into an agreement with a public entity for purposes of constructing a private toll road or toll highway.

Mass Transit

Regional Transportation District (RTD). RTD testified on mass transit in the Denver metropolitan area. The committee received an update on RTD's 2005 amended budget, fares, contracted bus service, the transit portion of the Transportation Expansion Project (T-REX), and the FasTracks plan. The FasTracks plan is a comprehensive plan to build and operate high-speed rail lines and to expand and improve bus service and

Park-n-Rides throughout the Denver metropolitan area. The RTD also updated the committee on the progress of the Transportation Expansion Project (T-Rex). T-Rex is scheduled to open in December 2006.

Review of transit agencies. The Colorado Association of Transit Agencies (CASTA) provided the committee with information about CASTA. CASTA is a statewide association of transit agencies dedicated to improving mobility for all Coloradans, by promoting the development, operation, and enhancement of safe and effective public transportation by working with local, state, and federal legislators. It provides training and secures funding for transit agencies.

No committee recommendation. The committee recommends no legislation based on these discussions.

Transportation Finance

Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). CDOT updated the committee on prospects for federal transportation funding based on the federal SAFETEA-LU, which is the 2005 reauthorization of the Transportation Equity Act of the 21st Century (TEA-21). SAFETEA-LU allows for \$286.4 billion for 2005 through 2009, with 79 percent for highways, 18.5 percent for transit, and 2.5 percent for behavioral safety grants and enforcement. CDOT testified that SAFETEA-LU will increase federal transportation funding for Colorado by approximately 47 percent.

Referendum D projects. CDOT also provided the committee with a project list to be funded if voters approved Referendums C and D, the statewide ballot issues referred by the state legislature. Ultimately, Referendum C passed, while Referendum D did not pass. CDOT held meetings with various entities (local governments, the Statewide Transportation Advisory Committee, Colorado Transportation Commission) to determine the process for identifying the projects. CDOT explained that if Referendums C and D were passed, they would afford approximately \$300 million annually for construction contracts.

DRCOG also presented information pertaining to Referendum C and D and provided the committee with information on the Memorandum of Understanding (MOU) between DRCOG and CDOT. The result of collaborative work by both organizations to address concerns of the DRCOG Board about transportation funding equity, the MOU:

- supports a statewide transportation funding increase;
- adds projects statewide;
- considers congestion in system management; and
- signals an improved relationship between DRCOG and CDOT.

No committee recommendation. The committee recommended no legislation based on these discussions.

Motor Vehicle Regulation and Licensure

Real ID Act. The DOR provided the committee with information concerning the impact of the federal REAL ID Act of 2005 and the issuance of driver's licenses. The Real ID Act of 2005 terminated negotiated rule-making for the issuance of driver's licenses and implemented mandatory federal standards for states. DOR testified that it is waiting for mandates and rule-making at the federal level to evaluate funding options for the implementation of the act. In addition, DOR noted that Colorado currently has certain provisions of the Real ID Act already in place, including:

- the requirement for proof of legal presence to obtain a driver's license;
- a biometric facial recognition and finger printing system;
- association of end of stay to the expiration of a driver's license; and
- online social security verification.

The DOR updated the committee on new steps to reduce wait times at Colorado driver's licenses offices, and specifically noted that the DOR offers renewal of driver's licenses by mail.

Safety issues. The Colorado State Patrol presented several safety issues to the committee and updated the committee on the reduced number of car fatalities. The Colorado State Patrol suggested the committee adopt legislation to expand the types of motor vehicles required to stop before crossing at grade railroad tracks to include commercial vehicles that transport passengers. The Colorado State Patrol also suggested that motor vehicles weighing less than 10,000 pounds and transporting hazardous materials meet the minimum standards for commercial vehicles. The Colorado State Patrol stated that the revisions of current state law are required to comply with federal regulations governing interstate commercial transportation.

The Colorado State Patrol testified that there is a substantial need for investment in human and operational resources with the department. Consequences of low staffing levels include:

- a decrease in criminal interdiction on highways;
- a diminished capacity to prevent or respond to an act of terrorism;
- increased response time to crashes; and
- fewer traffic safety educational campaigns.

Trucking industry. Representatives from the Colorado Motor Carriers Association (CMCA) provided the committee with information pertaining to the Colorado trucking industry. CMCA testified that 81 percent of the communities in Colorado are served by the trucking industry. The committee was informed of the new truck stop electrification

program that will be implemented in Colorado. The truck stop electrification program provides grid electricity to stationary long-haul trucks. The program will save energy and eliminate the associated noise and air pollution of long-haul trucks by allowing the diesel engine of shorepower-capable trucks to be shut down.

Committee recommendations. Two committee recommendations address safety issues. The committee recommends Bill E, which expands the types of motor vehicles required to stop before crossing at grade railroad track to include commercial vehicles that transport passengers. The bill requires such vehicles to stop even when the railroad crossing has a gate or flashing lights. The committee also recommends Bill F, which requires motor vehicles weighing less than 10,000 pounds and transporting hazardous materials to meet the minimum standards for commercial vehicles. Bill F also repeals a provision prohibiting peace officers who have not attained a level I inspection certification from enforcing the "Hazardous Materials Transportation Act of 1987" and amends the penalty for violating hazardous materials rules.

Public Highway Authorities

The committee received annual reports and project updates from the E-470 and Northwest Parkway Public Highway Authorities. Representatives of the E-470 Public Highway Authority reviewed monthly traffic and revenue projections and indicated that it currently meets 95 percent of projected revenue and has recently paid back a state loan. In addition, the E-470 Authority testified that 83 percent of their revenue for 2005 is toll revenue. The Northwest Public Highway Authority briefed the committee about the organization and provided revenue sheets that included average daily and monthly transactions for 2004.

No committee recommendation. The committee recommends no legislation based on these discussions.

Environmental Standards

Air quality. The committee was provided with an air quality update by the Colorado Department of Public Health and Environment (CDPHE). CDPHE testified that all areas of Colorado are in compliance with federal health-based air quality standards. CDPHE also discussed the Clean Screen Program, also known as the rapid screen program, which involves a remote sensing device that reads emission levels in vehicle exhaust while the vehicles are moving. The program is a joint responsibility of the CDPHE and the DOR. CDPHE reported that 2,200 vehicles are tested by this program monthly.

Emissions testing. In accordance with Section 42-4-305 (11), C.R.S., DOR provided the committee with an annual report regarding emissions inspections for 2004. In 2004, approximately 1.3 million vehicles were tested in both the enhanced and basic areas, with a failure rate of 7.7 percent. Emissions testing is repealed for some Colorado

cities in 2007, including Fort Collins, Colorado Springs, and Greeley. CDPHE expects that within the next five years emissions testing will be repealed for all areas if air quality continues to improve.

Implementation of renewable energy standards. Representatives from Xcel Energy and Western Resource Advocates provided information regarding the activities of the organizations pertaining to the implementation of renewable energy standards. They discussed the implementation requirements established in Senate Bill 05-143, concerning renewable energy standards. The organizations conduct confidential negotiations before presenting proposals to the Public Utilities Commission.

No committee recommendation. The committee recommended no legislation based on these discussions.

Additional Committee Activities

Advertising devices. The CDOT testified that under current Colorado law, an advertising device is only considered "on-premise" when the advertising device is located on the actual physical location where the activity is routinely conducted. In areas where large malls exist, streets sometimes separate anchor stores, which, under current law, would prohibit a store from advertising on a universal mall sign if the store was located across the street. As malls have evolved, CDOT does not believe it was the intent of the law to restrict advertising for stores that are a part of a mall, but separated by streets.

Committee recommendation. The committee recommends Bill C, which changes the statutory phrase "on-premise advertising device" to "on-premises advertising device" and expands the definition of on-premises advertising device to include certain advertising devices located within a comprehensive development. The bill defines "comprehensive development" as a group of two or more lots or parcels of land used primarily for commercial or industrial activities. This proposal is being brought to the TLRC to have state laws comply with federal laws.

Commercial vehicle permitting. The Colorado Motor Carriers Association (CMCA) provided the committee with information pertaining to commercial vehicle permitting. CMCA noted that the commercial vehicle owner is responsible for permitting the vehicle, not the driver. CMCA recommended legislation to make the owner legally accountable for the permitting process by requiring the owner to appear in court. This would help eliminate the economic burden of returning an over-the-road driver to the state for court hearings and the loss of driving time.

Committee recommendation. The committee recommends Bill D, which declares a commercial vehicle owner to be a party of interest to a court hearing if the owner authorized a commercial vehicle to be operated without the appropriate required permits or documentation.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, seven bills were recommended to the Legislative Council. The Legislative Council approved six of the TLRC's recommended bills for introduction. The bills are designed to establish requirements to be met by a private corporation intending to construct a private toll road, prohibit the exercise of eminent domain by a private corporation, allow the placement of on-premises advertising at comprehensive developments, declare a commercial vehicle owner to be a party of interest to a court hearing if the owner authorized a commercial vehicle to be operated without the appropriate permits, expand the type of vehicles required to stop at railroad crossings, and require certain motor vehicles transporting hazardous materials to meet the minimum standards for commercial vehicles. A bill that would have required any driver's license issued to a persistent drunk driver to indicate, for a period of five years, that the driver is a persistent drunk driver, was not approved by the Legislative Council for introduction. The approved bills are described below.

Bill A — Concerning Private Toll Roads and Toll Highways, and, in Connection Therewith, Specifying Requirements that Must Be Met before a Corporation Can Construct a Private Toll Road or Toll Highway

Bill A establishes requirements for a corporation formed for the purpose of constructing a private toll road or toll highway (private toll road). The bill requires such a corporation to identify its private toll road route within three miles and begin work within three years of obtaining its rights of incorporation. Additionally, the bill requires the corporation to comply with CDOT project standards, to undertake the appropriate analyses for such a road, and to notify metropolitan planning organizations, persons owning property within the route, and county clerk and recorder's offices where the person's property exists. Bill A requires the Department of Transportation to review and certify various aspects of a private toll highway project and imposes a fee on the toll highway corporation to cover the reasonable expenses incurred by the department. The extent of potential revenues depends upon the nature of each toll project and has not been estimated. There may also be increased costs for local governments to process disclaimers of interest and to approve land use plans of private toll road corporations.

Bill B — Concerning a Prohibition Against the Exercise of the Power of Eminent Domain by a Private Corporation to Condemn the Private Property of Another Person or Entity for the Purpose of Acquiring Rights-of-Way for a Private Toll Road or Private Toll Highway

Bill B prohibits a private corporation formed for the purpose of constructing a private toll road or toll highway from using eminent domain to acquire any part of the right-of-way for the toll road. The committee devoted an entire meeting to the discussion

of private toll roads, discussion that included various government agencies and stakeholders. The bill allows a corporation to enter into an agreement with a public entity for purposes of constructing a private toll road or toll highway. If the Department of Transportation, a local government, or a statutory public entity chooses to enter into an agreement with a private corporation to construct a toll road, they may incur additional engineering, planning, legal and/or regulatory expenses, depending upon how the agreement is structured. The magnitude of these potential expenditures has not been estimated.

Bill C — Concerning the Placement of On-premises Advertising Devices at Comprehensive Developments

Bill C changes the statutory phrase "on-premise advertising device" to "on-premises advertising device." The bill expands the definition of on-premises advertising device to include certain advertising devices located within a comprehensive development. The bill defines "comprehensive development" as a group of two or more lots or parcels of land used primarily for commercial or industrial activities. The bill is not expected to affect state or local government revenues or expenditures.

Bill D — Concerning the Appearance of a Commercial Vehicle's Owner in a Court Hearing Concerning a Permit or Documentation Violation

Bill D declares a commercial vehicle owner to be a party of interest to a court hearing if the owner authorized a commercial vehicle to be operated without the appropriate required permits or documentation. The bill clarifies that the owner's appearance in court, without the vehicle operator, is not to be considered practicing law. Since the bill is not expected to impact the frequency of these violations, it will not affect state or local revenues or expenditures.

Bill E — Concerning Motor Vehicles Required to Stop Before Crossing at Grade Railroad Tracks

Bill E expands the types of motor vehicles required to stop before crossing at grade railroad track to include commercial vehicles that transport passengers. Additionally under the bill, school buses, vehicles carrying hazardous materials, and commercial vehicles transporting passengers will be required to stop before crossing railroad tracks in a residential area. The bill requires such vehicles to stop even when the railroad crossing has a gate or flashing lights.

Bill F — Concerning the Regulation of Commercial Motor Vehicles that Transport Hazardous Materials over the Public Highways

Bill F requires motor vehicles weighing less than 10,000 pounds and transporting hazardous materials to meet the minimum standards for commercial vehicles. The Colorado State Patrol stated that revisions of current state law are required to comply with federal regulations governing interstate commercial transportation. The bill also repeals a provision prohibiting certain peace officers from enforcing the "Hazardous Materials Transportation Act of 1987" and amends the penalty for violating hazardous materials rules. Bill F increases the penalty for such a violation from \$50 to \$250 with a \$33.30 surcharge, and a repeat offense within 12 months would double the penalty. The fiscal note anticipates fine revenue for FY 2006-07 to increase by \$17,030, based upon an estimated 73 convictions. Fines for violations of traffic offenses are to be credited to the Highway Users Tax Fund.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303-866-2055). The meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2005/05interim.

Meeting Summaries	Topics Discussed
June 16, 2005	Private toll roads.
June 17, 2005	Briefings by the Colorado Tolling Enterprise, Colorado Department of Transportation and the Denver Regional Council of Governments; reauthorization of Transportation Equity Act of the 21 st Century; CDOT's Referendum D projects.
August 11, 2005	Briefings by the Colorado Department of Revenue, the Regional Transportation District, the Northwest Public Highway Authority, the Colorado Motor Carriers Association, Transportation Technology Center, Inc., the E-470 Public Highway Authority; Colorado State Patrol, the Colorado Department of Public Health and Environment, Colorado Asphalt Pavement Association, Colorado Ready Mixed Concrete Association and Colorado Rocks Products Association; implementation of renewable energy standards; reauthorization of Transportation Equity Act of the 21 st Century.
September 15, 2005	Legislative proposals to be drafted by the Office of Legislative Legal Services; TLRC members' legislative proposals; briefings by the Colorado Association of Transit Agencies and Colorado Contractors Association.
October 7, 2005	Presentation/amendment/adoption of TLRC legislation.

Memoranda and Reports

Colorado Traffic Statistics, 1999-2003; Memorandum prepared by Legislative Council Staff, April 6, 2005.

2005 Legislation Related to Private Toll Roads and Related Land Use Issues, Memorandum prepared by Legislative Council Staff, June 14, 2005.

Off-the Top Funding of the Highway Users Tax Fund From FY 2001-02 to FY 2005-06, Memorandum prepared by Legislative Council Staff, June 14, 2005.

History of Colorado's Graduated Driver's Licensing Law for Minor Drivers, Memorandum prepared by Legislative Council Staff, August 5, 2005.

Annual Report Regarding Emissions Inspections for 2004, Report prepared by the Department of Revenue, August 11, 2005.

Issues and Outcomes from the Transportation Legislation Review Committee, Memorandum prepared by Legislative Council Staff, October 6, 2005.

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill A

DRAFT

LLS NO. 06-0168.01 Jason Gelender

HOUSE BILL

HOUSE SPONSORSHIP

Pommer, Borodkin, Green, Hefley, Larson, and McFadyen

SENATE SPONSORSHIP

Williams, Isgar, and Wiens

House Committees

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.)

Transportation Legislation Review Committee. 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

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.

- for the toll road or toll highway within 3 miles;
- Commence work on the toll road or toll highway within 3 years after incorporating and continue the work until it has expended at least \$500,000 or forfeit all rights acquired under its certificate of incorporation and be administratively dissolved;
- Comply with all department of transportation (department) standards for state transportation projects when planning, constructing, and maintaining a toll highway;
- Before constructing and operating a toll road or toll highway, undertake, at its own expense, the analysis and receive the 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 (executive director) 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 filed in a court to the adequacy of an impact analysis;
- Within 45 days following its incorporation, send written notice of its incorporation, its intent to construct a toll road or toll highway, and the route of the toll road or toll highway as specified within its certificate of incorporation to the executive director and to the board of directors of each metropolitan planning organization through which the route of the toll road or toll highway will pass;
- Within 45 days following its incorporation, provide written individual notice through a specified process 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, and record the notice with the office of the clerk and recorder of the county that includes the 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;
- Comply with certain standards, procedures, and other requirements specified in the act; and
- 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 act;
- The applicable transportation planning region and the department 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 and 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 previously filed a certificate of incorporation that does not comply with the new notice and disclaimer of interest requirements of the act to file a new or amended certificate of incorporation within 30 days of the date the new requirements take effect that certifies that the corporation will satisfy the requirements. Specifies that if a corporation is sold or sells its interest in a toll road or toll highway or real property obtained for the purpose of constructing or operating a toll road or toll highway, the purchaser shall use any real property purchased only for the purpose of constructing or operating a toll road or toll highway.

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 45 days 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.

Makes legislative finding and declarations.

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

2 **SECTION • Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Private toll roads and toll highways will help relieve the many
5 transportation needs of the state.

6 (b) When constructing and operating private toll roads and toll
7 highways, certain requirements must be met to ensure compliance with
8 federal and state laws and regulations.

9 **SECTION • 7-45-101** (1), Colorado Revised Statutes, is amended
10 to read:

11 **7-45-101. Additional statements in certificate - rights and**
12 **interests in toll roads.** (1) If any three or more persons associate to
13 form a corporation for the purpose of constructing a road or highway
14 under the provisions of law, their certificate of incorporation shall state
15 the termini of said road or highway and ~~the ITS SPECIFIC route of the same,~~
16 ~~as near as may be. Such company~~ WITHIN THREE MILES. IF THE
17 CORPORATION COMPLIES WITH THE REQUIREMENTS OF THIS ARTICLE, IT
18 shall have the ~~right-of-way over the line named in the certificate~~ ABILITY
19 to erect toll gates, not to exceed one in every ten miles of road OR
20 HIGHWAY, and to collect toll at the rates prescribed by the board of county
21 commissioners of the county in which ~~said~~ THE road OR HIGHWAY is
22 located, upon the application of the corporation.

23 **SECTION • Article 45 of title 7, Colorado Revised Statutes, is**

1 amended BY THE ADDITION OF THE FOLLOWING NEW
2 SECTIONS to read:

3 **7-45-101.5. Deadline to commence work - maintenance of**
4 **effort requirement.** A CORPORATION INCORPORATED IN ACCORDANCE
5 WITH THE PROVISIONS OF SECTION 7-45-101 SHALL COMMENCE WORK ON
6 THE TOLL ROAD OR TOLL HIGHWAY PROPOSED IN THE CERTIFICATE OF
7 INCORPORATION WITHIN THREE YEARS AFTER THE FILING OF THE
8 CERTIFICATE AND SHALL CONTINUE THE WORK FROM DAY TO DAY UNTIL
9 AT LEAST FIVE HUNDRED THOUSAND DOLLARS IS EXPENDED ON THE TOLL
10 ROAD OR TOLL HIGHWAY. IF THE CORPORATION FAILS TO PERFORM THE
11 REQUIRED WORK, IT SHALL FORFEIT ALL RIGHTS ACQUIRED UNDER ITS
12 CERTIFICATE OF INCORPORATION AND BE ADMINISTRATIVELY DISSOLVED.

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
22 FEDERAL 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
6 ANALYSIS PREPARED BY THE CORPORATION SATISFIES THE REQUIREMENTS
7 OF 23 U.S.C. SEC. 109, AS AMENDED, AND 40 CFR 1500, 1501, 1502, 1503,
8 1505, 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
24 THE TOLL ROAD OR TOLL HIGHWAY, MITIGATION PLAN, AND FINANCIAL
25 PLAN 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
9 FORMED IN ACCORDANCE WITH THIS ARTICLE FOR THE PURPOSE OF
10 CONSTRUCTING A PRIVATE TOLL ROAD OR TOLL HIGHWAY SHALL HAVE THE
11 INITIAL OBLIGATION TO PREPARE THE IMPACT ANALYSIS TO THE
12 SATISFACTION OF 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
3 AND 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 AND THAT THE CORPORATION HAS OR
24 CAN OBTAIN SUFFICIENT FINANCIAL RESOURCES TO CONSTRUCT, OPERATE,
25 AND 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
7 MAY COMPLETE THE SALE OF THE PROPERTY INTEREST.

8 **7-45-105. Notice to department of transportation, affected**
9 **metropolitan transportation organizations, affected property owners**
10 **and lessees - identification of investors.** (1) WITHIN FORTY-FIVE DAYS
11 OF FILING A CERTIFICATE OF INCORPORATION PURSUANT TO SECTION
12 7-45-101, A CORPORATION SHALL:

13 (a) SEND WRITTEN NOTICE OF ITS INCORPORATION, ITS INTENT TO
14 CONSTRUCT A TOLL ROAD OR TOLL HIGHWAY, AND THE ROUTE OF THE
15 TOLL ROAD OR TOLL HIGHWAY AS SPECIFIED WITHIN ITS CERTIFICATE OF
16 INCORPORATION TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
17 TRANSPORTATION AND TO THE BOARD OF DIRECTORS OF EACH
18 METROPOLITAN PLANNING ORGANIZATION, AS DEFINED IN SECTION
19 43-1-1102 (4), C.R.S., THROUGH WHICH THE ROUTE OF THE TOLL ROAD OR
20 TOLL HIGHWAY WILL PASS;

21 (b) CAUSE WRITTEN INDIVIDUAL NOTICE TO BE SENT TO EACH
22 PERSON WHO OWNS REAL PROPERTY WITHIN THE ROUTE SPECIFIED IN THE
23 CERTIFICATE OF INCORPORATION OF THE INTENT OF THE CORPORATION TO
24 CONSTRUCT A TOLL ROAD OR TOLL HIGHWAY AND, IF APPLICABLE, TO
25 ACQUIRE THE PERSON'S REAL PROPERTY. THE NOTICE SHALL INCLUDE A
26 LEGIBLE LEGAL DESCRIPTION THAT IDENTIFIES THE REAL PROPERTY, AND
27 THE CORPORATION SHALL RECORD THE NOTICE WITH THE OFFICE OF THE

1 CLERK AND RECORDER OF THE COUNTY THAT INCLUDES THE REAL
2 PROPERTY IDENTIFIED IN THE NOTICE. TO PROVIDE WRITTEN INDIVIDUAL
3 NOTICE, THE CORPORATION SHALL PROVIDE THE ASSESSOR OF EACH
4 COUNTY THAT INCLUDES AFFECTED REAL PROPERTY WITH COPIES OF EACH
5 APPLICABLE WRITTEN INDIVIDUAL NOTICE, AND THE ASSESSOR SHALL
6 PROMPTLY MAIL THE NOTICE TO EACH AFFECTED PROPERTY OWNER OF
7 RECORD. THE ASSESSOR SHALL ALSO PUBLISH THE NOTICE IN THE
8 APPLICABLE NEWSPAPER OF RECORD IN THE COUNTY FOR FOUR
9 CONSECUTIVE WEEKS. THE CORPORATION SHALL REIMBURSE EACH
10 ASSESSOR FOR THE EXPENSES INCURRED BY THE ASSESSOR IN COMPLYING
11 WITH THE REQUIREMENTS OF THIS PARAGRAPH (b).

12 (c) FILE A DISCLAIMER OF INTEREST WITH THE CLERK AND
13 RECORDER'S OFFICE IN THE COUNTY OF RESIDENCE OF EACH PERSON TO
14 WHOM THE CORPORATION PROVIDED WRITTEN NOTICE PURSUANT TO
15 PARAGRAPH (b) OF THIS SUBSECTION (1) THAT EXPRESSLY STATES THAT
16 THE CERTIFICATE OF INCORPORATION DOES NOT EFFECT AN INTEREST IN
17 THE PERSON'S REAL PROPERTY WITHIN THE ROUTE SPECIFIED IN THE
18 CERTIFICATE OF INCORPORATION.

19 (2) AS USED IN THIS ARTICLE, A TOLL ROAD OR TOLL HIGHWAY
20 MAY CONSIST OF IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO PAVING,
21 GRADING, LANDSCAPING, CURBS, GUTTERS, CULVERTS, SIDEWALKS,
22 BIKEWAYS, LIGHTING, BRIDGES, OVERPASSES, UNDERPASSES, FRONTAGE
23 ROADS, ACCESS ROADS, INTERCHANGES, DRAINAGE FACILITIES, MASS
24 TRANSIT LANES, PARK AND RIDE FACILITIES, TOLL COLLECTION FACILITIES,
25 SERVICE AREAS, WHICH SHALL BE LIMITED TO GAS STATIONS,
26 RESTAURANTS, AND TRAVEL-RELATED SERVICES THAT SERVE MOTORISTS
27 USING THE TOLL ROAD OR TOLL HIGHWAY, ADMINISTRATIVE OR

1 MAINTENANCE FACILITIES, AND GAS, ELECTRIC, WATER, SEWER, CABLE,
2 DATA TRANSMISSION, AND OTHER UTILITIES LOCATED OR TO BE LOCATED
3 IN THE RIGHT-OF-WAY OF A TOLL ROAD OR TOLL HIGHWAY, RELATING TO
4 THE FINANCING, CONSTRUCTION, OPERATION, OR MAINTENANCE OF A TOLL
5 ROAD OR TOLL HIGHWAY. NOTHING IN THIS ARTICLE SHALL BE
6 CONSTRUED TO AFFECT ANY COMMON CARRIER, AS DEFINED IN SECTION
7 40-1-102 (3), C.R.S., INCLUDING, BUT NOT LIMITED TO, ANY RAILROAD.

8 (3) A CORPORATION THAT HAS FILED A CERTIFICATE OF
9 INCORPORATION PRIOR TO THE EFFECTIVE DATE OF THIS SECTION THAT HAS
10 NOT SATISFIED THE NOTICE OR DISCLAIMER REQUIREMENTS OF SUBSECTION
11 (1) OF THIS SECTION SHALL FILE A NEW OR AMENDED CERTIFICATE OF
12 INCORPORATION WITHIN THIRTY DAYS THAT CERTIFIES THAT THE
13 CORPORATION WILL COMPLY WITH THOSE REQUIREMENTS.

14 **7-45-106. Sale of corporation or assets - land to be used only**
15 **for a toll road or toll highway.** IF A CORPORATION FORMED UNDER THIS
16 ARTICLE IS SOLD OR SELLS ITS INTEREST IN A TOLL ROAD OR TOLL
17 HIGHWAY OR REAL PROPERTY OBTAINED FOR THE PURPOSE OF
18 CONSTRUCTING OR OPERATING A TOLL ROAD OR TOLL HIGHWAY, THE
19 PURCHASER SHALL USE ANY REAL PROPERTY PURCHASED ONLY FOR THE
20 PURPOSE OF CONSTRUCTING OR OPERATING A TOLL ROAD OR TOLL
21 HIGHWAY.

22 **SECTION** • Part 3 of article 3 of title 43, Colorado Revised
23 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
24 SECTIONS to read:

25 **43-3-301.5. Toll road or toll highway.** AS USED IN THIS PART 3,
26 A TOLL ROAD OR TOLL HIGHWAY MAY CONSIST OF IMPROVEMENTS,
27 INCLUDING BUT NOT LIMITED TO PAVING, GRADING, LANDSCAPING, CURBS,

1 GUTTERS, CULVERTS, SIDEWALKS, BIKEWAYS, LIGHTING, BRIDGES,
2 OVERPASSES, UNDERPASSES, FRONTAGE ROADS, ACCESS ROADS,
3 INTERCHANGES, DRAINAGE FACILITIES, MASS TRANSIT LANES, PARK AND
4 RIDE FACILITIES, TOLL COLLECTION FACILITIES, SERVICE AREAS, WHICH
5 SHALL BE LIMITED TO GAS STATIONS, RESTAURANTS, AND
6 TRAVEL-RELATED SERVICES THAT SERVE MOTORISTS USING THE TOLL
7 ROAD OR TOLL HIGHWAY, ADMINISTRATIVE OR MAINTENANCE FACILITIES,
8 AND GAS, ELECTRIC, WATER, SEWER, CABLE, DATA TRANSMISSION, AND
9 OTHER UTILITIES LOCATED OR TO BE LOCATED IN THE RIGHT-OF-WAY OF
10 A TOLL ROAD OR TOLL HIGHWAY RELATING TO THE FINANCING,
11 CONSTRUCTION, OPERATION, OR MAINTENANCE OF A TOLL ROAD OR TOLL
12 HIGHWAY. NOTHING IN THIS PART 3 SHALL BE CONSTRUED TO AFFECT ANY
13 COMMON CARRIER, AS DEFINED IN SECTION 40-1-102 (3), C.R.S.,
14 INCLUDING, BUT NOT LIMITED TO, ANY RAILROAD.

15 **43-3-302.5. County and municipal oversight over land use.** A
16 CORPORATION FORMED IN ACCORDANCE WITH ARTICLE 45 OF TITLE 7,
17 C.R.S., FOR THE PURPOSE OF CONSTRUCTING A TOLL ROAD OR TOLL
18 HIGHWAY SHALL OBTAIN PLAN AND LAND USE APPROVAL FROM THE BOARD
19 OF COUNTY COMMISSIONERS OF EACH COUNTY AND THE GOVERNING BODY
20 OF EACH MUNICIPALITY IN WHICH PROPERTY TO BE AFFECTED BY THE
21 CONSTRUCTION IS LOCATED.

22 **SECTION • Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.


Colorado Legislative Council Staff
**STATE AND LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 06-0168
Prime Sponsor(s): Rep. Pommer
 Sen. Williams

Date: December 15, 2005
Bill Status: Transportation Legislation Review
 Committee
Fiscal Analyst: Brad Denning (303-866-4777)

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

Fiscal Impact Summary	FY 2006/2007	FY 2007/2008
State Revenues Cash Fund - State Highway Fund	Potential Increase	
State Expenditures Cash Fund Exempt - State Highway Fund	Potential Increase	
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: Upon the signature of the Governor.		
Appropriation Summary for FY 2006/2007: None required. The Department of Transportation has continuous spending authority from the State Highway Fund.		
Local Government Impact: Increased costs for local governments to process disclaimers of interest and to approve land use plans of private toll road corporations.		

Summary of Legislation

This bill requires a corporation formed for the purpose of constructing a private toll road to:

- specify in its article of incorporation a proposed route for the toll road within 3 miles and to identify all known investors and shareholders;
- receive certification from the Executive Director of the Colorado Department of Transportation that the corporation has prepared all necessary analyses required by federal law, identified and implemented all mitigation measures required by federal law, and received transportation planning region approval, including incorporation of the toll road project into statewide and regional transportation plans;

Bill A

- provide written notification to each person who owns real property within the proposed route of the toll road of the intent of the corporation to acquire such person's real property;
- file a disclaimer of interest with the county clerks and recorders for each applicable real property owner within the proposed route; and
- obtain approval of toll road construction plans from the board of county commissioners in which property affected by the construction is located.

State Revenues

The Department of Transportation is required to review and certify various aspects of the toll highway project, and the bill authorizes the department to impose a fee on the toll highway corporation to cover the reasonable expenses incurred by the department. The fiscal note assumes that these additional revenues will be deposited into the State Highway Fund. However, because the magnitude and timing of these new revenues depend upon the nature of each toll project, no estimate has been made.

State Expenditures

The Department of Transportation will incur additional costs to review and certify that the toll highway corporation has prepared all the necessary analyses required by federal law, identified and implemented all mitigation measures required by federal law, and analyzed the toll highway project for inclusion in the statewide transportation plan. Moreover, the inclusion of the toll highway project in the statewide transportation plan requires the department to verify that the toll project is financially viable and has sufficient financial resources to construct, operate, and maintain the toll road. The bill authorizes the department to impose fees to cover these expenses. The magnitude and timing of these additional expenses has not been estimated. The expenses will be paid out of the State Highway Fund which is continuously appropriated to the department.

Local Government Impact

The bill requires a toll corporation to provide written notice to each person who owns real property within the proposed route of the project of the intent of the corporation to acquire such person's real property. County assessors are required to mail these notices to affected property owners, but the corporation shall reimburse counties for these expenses. The bill also requires a toll corporation to file a disclaimer of interest with the county clerks and recorders of applicable real property owners within the proposed route. Local governments will incur additional costs to process these disclaimers of interest. Moreover, local governments will incur costs to review and approve land use plans related to the construction of a private toll highway. These costs can not be currently quantified.

Bill A

State Appropriations

No new state appropriations are needed to implement the bill in FY 2006-07. The Department of Transportation has continuous spending authority from the State Highway Fund.

Departments Contacted

Transportation

Local Affairs

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill B

DRAFT

LLS NO. 06-0172.02 Jason Gelender

SENATE BILL

SENATE SPONSORSHIP

Wiens, Isgar, and May R.

HOUSE SPONSORSHIP

Green, Borodkin, Hefley, and Larson

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING A PROHIBITION AGAINST THE EXERCISE OF THE POWER
102 OF EMINENT DOMAIN BY A PRIVATE CORPORATION TO CONDEMN
103 THE PRIVATE PROPERTY OF ANOTHER PERSON OR ENTITY FOR
104 THE PURPOSE OF ACQUIRING RIGHTS-OF-WAY FOR A PRIVATE
105 TOLL ROAD OR PRIVATE 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.)

Transportation Legislation Review Committee. Specifies that a private corporation formed for the purpose of constructing a private 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.

road or toll highway shall not have the power to use eminent domain to acquire rights-of-way for the toll road or toll highway, but that a corporation may enter into an agreement with a public entity to enable the construction of a private toll road or private toll highway.

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

2 **SECTION 1.** Article 45 of title 7, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **7-45-104. Acquisition of right-of-way.** NOTWITHSTANDING THE
5 PROVISIONS OF SECTION 38-2-101, C.R.S., ON AND AFTER THE EFFECTIVE
6 DATE OF THIS SECTION, A CORPORATION FORMED UNDER THIS ARTICLE
7 SHALL NOT HAVE THE POWER TO EXERCISE THE RIGHT OF EMINENT DOMAIN
8 TO ACQUIRE ANY PART OF THE RIGHT-OF-WAY OF THE LINE OF A PROPOSED
9 TOLL ROAD OR TOLL HIGHWAY SPECIFIED IN THE CERTIFICATE OF
10 INCORPORATION OF THE CORPORATION AS REQUIRED BY SECTION 7-45-101
11 (1). NOTHING HEREIN SHALL PROHIBIT A CORPORATION FROM ENTERING
12 INTO AN AGREEMENT WITH A PUBLIC ENTITY TO ENABLE THE
13 CONSTRUCTION OF SUCH A TOLL ROAD OR TOLL HIGHWAY.

14 **SECTION 2. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.

DRAFT

Bill B


 Colorado Legislative Council Staff
STATE, LOCAL, and
STATUTORY PUBLIC ENTITY
CONDITIONAL FISCAL IMPACT

Drafting Number: LLS 06-0172
Prime Sponsor(s): Sen. Wiens
 Rep. Green

Date: December 15, 2005
Bill Status: Transportation Legislation Review
 Committee
Fiscal Analyst: Brad Denning (303-866-4777)

TITLE: CONCERNING A PROHIBITION AGAINST THE EXERCISE OF THE POWER OF EMINENT DOMAIN BY A PRIVATE CORPORATION TO CONDEMN THE PRIVATE PROPERTY OF ANOTHER PERSON OR ENTITY FOR THE PURPOSE OF ACQUIRING RIGHTS-OF-WAY FOR A PRIVATE TOLL ROAD OR PRIVATE TOLL HIGHWAY.

Fiscal Impact Summary	FY 2006/2007	FY 2007/2008
State Revenues Cash Fund		
State Expenditures Cash Fund		
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: Upon signature of the Governor.		
Appropriation Summary for FY 2005/2006: None required.		
Local Government Impact: Potential increased costs for local governments who enter into agreements with private toll road corporations.		

Summary of Legislation

This bill specifies that a corporation constructing a private toll road will not have the power to use eminent domain to acquire right-of-way for the toll road or highway. However, the bill allows a corporation to enter into an agreement with a public entity to enable the construction of a toll road or highway.

Because the bill allows public entities to enter into agreements with private corporations to construct a toll road or highway, the bill is assessed as having a conditional state, local, and statutory public entity fiscal impact.

State Expenditures

If the Department of Transportation chooses to enter into an agreement with a private corporation to construct a toll road, it may incur additional engineering, planning, legal and/or regulatory expenses, depending upon how the agreement is structured. The fiscal note has not estimated the magnitude of these potential expenditures.

Local Government and Statutory Public Entity Impact

If a local government or a statutory public entity, such as E-470, chooses to enter into an agreement with a private corporation to construct a toll road, it may incur additional costs depending upon the terms of the agreement. For example, E-470 could incur additional engineering, planning, legal and/or regulatory expenses, depending upon how the agreement is structured. The fiscal note has not estimated the magnitude of these potential expenditures to local governments or statutory public entities.

Spending Authority

No additional state appropriations are needed to implement the bill in FY 2006-07.

Departments Contacted

Transportation Local Affairs Judicial

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill C

DRAFT

LLS NO. 06-0173.01 John Hershey

HOUSE BILL

HOUSE SPONSORSHIP

McFadyen, Larson, Pommer, and Ragsdale

SENATE SPONSORSHIP

Hagedorn, and May R.

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PLACEMENT OF ON-PREMISE ADVERTISING DEVICES
102 AT COMPREHENSIVE DEVELOPMENTS.

Bill Summary

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

Transportation Legislation Review Committee. Allows an on-premise advertising device located within a comprehensive development to advertise any activity conducted in the comprehensive development. Defines "comprehensive development" to mean a group of 2 or more lots or parcels of land used primarily for commercial or industrial activities that:

- Is located entirely on one side of a highway;

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.

- Consists of contiguous lots or parcels;
- Has local government approval as a development with a common identity and plan for public and private improvements;
- Has common areas; and
- Has a specified scheme of common ownership related to the common areas.

Specifies that a comprehensive development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for on-premise advertising.

Defines terms. Makes conforming amendments.

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

2 **SECTION 1.** 43-1-403 (14), Colorado Revised Statutes, is
 3 amended, and the said 43-1-403 is further amended BY THE ADDITION
 4 OF A NEW SUBSECTION, to read:

5 **43-1-403. Definitions.** As used in this part 4, unless the context
 6 otherwise requires:

7 (1.5) (a) "COMPREHENSIVE DEVELOPMENT" MEANS A GROUP OF
 8 TWO OR MORE LOTS OR PARCELS OF LAND USED PRIMARILY FOR
 9 COMMERCIAL OR INDUSTRIAL ACTIVITIES THAT:

10 (I) IS LOCATED ENTIRELY ON ONE SIDE OF A HIGHWAY;

11 (II) CONSISTS OF LOTS OR PARCELS THAT ARE CONTIGUOUS EXCEPT
 12 FOR PUBLIC OR PRIVATE ROADWAYS OR DRIVEWAYS THAT PROVIDE ACCESS
 13 TO THE DEVELOPMENT;

14 (III) HAS BEEN APPROVED BY THE RELEVANT LOCAL GOVERNMENT
 15 AS A DEVELOPMENT WITH A COMMON IDENTITY AND PLAN FOR PUBLIC AND
 16 PRIVATE IMPROVEMENTS;

17 (IV) HAS COMMON AREAS SUCH AS PARKING, AMENITIES, AND
 18 LANDSCAPING; AND

19 (V) HAS A SCHEME OF COMMON OWNERSHIP IN WHICH THE

1 OWNERS HAVE RECORDED IRREVOCABLE RIGHTS TO USE COMMON AREAS
2 AND THAT PROVIDES FOR THE MANAGEMENT AND MAINTENANCE OF
3 COMMON AREAS.

4 (b) "COMPREHENSIVE DEVELOPMENT" INCLUDES ALL LAND USED
5 OR TO BE USED OR OCCUPIED FOR THE ACTIVITIES OF THE DEVELOPMENT,
6 INCLUDING BUILDINGS, PARKING, STORAGE AND SERVICE AREAS, STREETS,
7 DRIVEWAYS, AND REASONABLY NECESSARY LANDSCAPED AREAS. A
8 COMPREHENSIVE DEVELOPMENT INCLUDES ONLY LAND THAT IS USED FOR
9 A PURPOSE REASONABLY RELATED TO THE ACTIVITIES OF THE
10 DEVELOPMENT OTHER THAN AN ATTEMPT TO QUALIFY THE LAND FOR
11 ON-PREMISE ADVERTISING.

12 (14) "On-premise advertising device" means an advertising device
13 advertising the sale or lease of the property on which it is located or
14 advertising activities conducted on the property on which it is located.
15 "ON-PREMISE ADVERTISING DEVICE" INCLUDES AN ADVERTISING DEVICE
16 LOCATED WITHIN A COMPREHENSIVE DEVELOPMENT THAT ADVERTISES
17 ANY ACTIVITY CONDUCTED IN THE COMPREHENSIVE DEVELOPMENT, SO
18 LONG AS THE PLACEMENT OF THE ADVERTISING DEVICE DOES NOT CAUSE
19 A REDUCTION OF FEDERAL AID HIGHWAY MONEYS PURSUANT TO 23 U.S.C.
20 SEC. 131.

21 **SECTION 2.** 43-1-404 (1) (b), Colorado Revised Statutes, is
22 amended to read:

23 **43-1-404. Advertising devices allowed - exception.** (1) The
24 following advertising devices as defined in section 43-1-403 may be
25 erected and maintained when in compliance with all provisions of this
26 part 4 and the rules and regulations adopted by the department:

27 (b) ~~On-premises~~ ON-PREMISE advertising devices;

1 **SECTION 3.** 43-1-406 (5) (a), Colorado Revised Statutes, is
2 amended to read:

3 **43-1-406. Bonus areas.** (5) The following shall be exempt from
4 the provisions of this section but shall in all respects comply with
5 applicable rules and regulations issued by the department:

6 (a) ~~On-premises~~ ON-PREMISE advertising devices;

7 **SECTION 4.** 43-1-421 (1) (a), Colorado Revised Statutes, is
8 amended to read:

9 **43-1-421. On-premise advertising device - extension**
10 **authorized.** (1) Notwithstanding any other provision of law and except
11 as otherwise provided in subsection (2) of this section, on-premise
12 advertising devices shall be allowed to extend over existing rights-of-way
13 and future rights-of-way as described in section 43-1-210 (3) of any state
14 highway if all of the following requirements are met:

15 (a) The on-premise advertising device is attached to and extended
16 from a building and only advertises activities or services offered in that
17 building OR IN A COMPREHENSIVE DEVELOPMENT OF WHICH THE BUILDING
18 IS A PART.

19 **SECTION 5. Effective date - applicability.** (1) This act shall
20 take effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly that is
22 allowed for submitting a referendum petition pursuant to article V,
23 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine
24 die is on May 10, 2006); except that, if a referendum petition is filed
25 against this act or an item, section, or part of this act within such period,
26 then the act, item, section, or part, if approved by the people, shall take
27 effect on the date of the official declaration of the vote thereon by

- 1 proclamation of the governor.
- 2 (2) The provisions of this act shall apply to advertising devices
- 3 placed on or after the applicable effective date of this act.

DRAFT

Bill C

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0173

Date: December 15, 2005

Prime Sponsor(s): Rep. McFadyen
Sen. Hagedorn

Bill Status: Transportation Legislation Review
Committee

Fiscal Analyst: Brad Denning (303-866-4777)

TITLE: CONCERNING THE PLACEMENT OF ON-PREMISE ADVERTISING DEVICES AT COMPREHENSIVE DEVELOPMENTS.

Summary of Assessment

Under current law, certain types of advertising devices are restricted for use in highway right-of-way by federal statutes and agreements, including any signs or devices advertising activities conducted on the property on which they are located. Pursuant to Section 131 of Title 23 of the United States Code, states that do not provide for the effective control of signs along the interstate highway system could lose 10 percent of federal highway funding. In FY 2006-07, Colorado is expected to receive approximately \$400 million in funding from the federal government.

This bill would permit an on-premise advertising device located within a comprehensive development to advertise any activity conducted in the comprehensive development, not just on the property where the activity is specifically located. "Comprehensive development" is defined as a group of two or more parcels of adjoining land primarily for commercial or industrial activities that are located entirely on one side of a highway, has a common identity and plan for public and private improvements, and has local government approval as a development. The bill also defines an "on- premise advertising device" to include an advertising device located within a comprehensive development that advertises any activity conducted in the comprehensive development, as long as the placement of the advertising device does not reduce federal highway funding according to Section 131 of Title 23 of the United States Code.

The bill is not expected to affect state or local government revenues or expenditures, including the receipt of any federal funds. Therefore, it is assessed as having no fiscal impact. The bill is effective on the day following the expiration of the ninety-day period after final adjournment of the General Assembly.

Departments Contacted

Transportation

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill D

DRAFT

LLS NO. 06-0175.02 Jery Payne

SENATE BILL

SENATE SPONSORSHIP

Isgar,

HOUSE SPONSORSHIP

Ragsdale, Larson, McFadyen, and Pommer

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING THE APPEARANCE OF A COMMERCIAL VEHICLE'S OWNER
102 IN A COURT HEARING CONCERNING A PERMIT OR
103 DOCUMENTATION VIOLATION.

Bill Summary

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

Transportation Legislation Review Committee. Declares the owner of a commercial vehicle to be a party in interest to a court hearing if the owner authorized the vehicle to be operated without the required credentials. Clarifies that the owner's appearance in court concerning the matter does not constitute practicing law.

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.

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

2 **SECTION 1.** Part 17 of article 4 of title 42, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **42-4-1719. Permit and document violations - parties.** (1) IF
6 THE OWNER OF A COMMERCIAL VEHICLE AUTHORIZES SUCH VEHICLE TO BE
7 OPERATED WITHOUT COMPLYING WITH APPLICABLE PERMIT OR
8 DOCUMENTATION REQUIREMENTS OF THIS TITLE, THE OWNER SHALL BE A
9 PARTY IN INTEREST CONCERNING SUCH VIOLATIONS. AS A PARTY IN
10 INTEREST IN A COURT HEARING CONCERNING SUCH VIOLATIONS, THE
11 OWNER MAY APPEAR BEFORE THE COURT WITHOUT THE OPERATOR AND,
12 WHEN DOING SO, SHALL NOT BE DEEMED TO BE PRACTICING LAW IN
13 VIOLATION OF ARTICLE 5 OF TITLE 12, C.R.S.

14 (2) AN APPEARANCE BY THE OWNER OF A COMMERCIAL VEHICLE
15 WHO IS A PARTY IN INTEREST UNDER THIS SECTION SHALL SATISFY A
16 PROMISE TO APPEAR IN COURT PURSUANT TO SECTION 42-4-1707.

17 **SECTION 2. Effective date - applicability.** This act shall take
18 effect July 1, 2006, and shall apply to offenses committed on or after said
19 date.

20 **SECTION 3. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.

DRAFT

Bill D

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0175
Prime Sponsor(s): Sen. Isgar
Rep. Ragsdale

Date: December 15, 2005
Bill Status: Transportation Legislation Review
Committee
Fiscal Analyst: Brad Denning (303-866-4777)

TITLE: CONCERNING THE APPEARANCE OF A COMMERCIAL VEHICLE'S OWNER IN A COURT HEARING CONCERNING A PERMIT OR DOCUMENTATION VIOLATION.

Summary of Assessment

This bill amends statutory provisions regarding the violation of commercial vehicle permitting or documentation. Under current law, a person committing a violation of Title 42, Vehicles and Traffic, Colorado Revised Statutes, punishable as a misdemeanor, petty offense, or misdemeanor traffic offense, may be served a summons and complaint and directed to appear in a specified county court. This person has generally been the commercial vehicle *operator*. The bill specifically declares the *owner* of a commercial vehicle to be a party in interest to a court hearing if the owner authorized the commercial vehicle to be operated without complying with applicable permitting or documentation requirements. Additionally, it specifies that the owner's appearance in court, without the vehicle operator, satisfies a promise to appear in court pursuant to Section 42-4-1707 (1) (a), C.R.S. The bill also clarifies that the commercial owner's appearance in court concerning the matter does not constitute practicing law.

The bill is not expected to impact the frequency of any violations, or the length of time required to conduct a court hearing. As such, the bill does not affect state or local revenues or expenditures, and is assessed as having no fiscal impact. The bill will become effective July 1, 2006.

Departments Contacted

Judicial Local Affairs Public Safety Revenue Transportation

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill E

DRAFT

LLS NO. 06-0176.01 Jery Payne

HOUSE BILL

HOUSE SPONSORSHIP

Ragsdale, Green, and Larson

SENATE SPONSORSHIP

May R., and Williams

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MOTOR VEHICLES REQUIRED TO STOP BEFORE CROSSING
102 AT GRADE RAILROAD TRACKS.

Bill Summary

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

Transportation Legislation Review Committee. Requires a commercial vehicle that transports passengers to stop before crossing railroad tracks. Requires a school bus, commercial vehicle transporting passengers, and vehicle carrying hazardous materials to stop before crossing railroad tracks within a residential area. Requires such vehicles to stop even when the railroad crossing has a gate or flashing lights.

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.

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

2 **SECTION 1.** 42-4-707 (1), (2), and (4) (a), Colorado Revised
3 Statutes, are amended to read:

4 **42-4-707. Certain vehicles must stop at railroad grade**
5 **crossings.** (1) Except as otherwise provided in this section, the driver of
6 ~~any~~ A school bus, as defined in paragraph (b) of subsection (5) of this
7 section, carrying any schoolchild, ~~or~~ THE DRIVER of ~~any~~ A vehicle
8 carrying hazardous materials ~~which~~ THAT is required to be placarded in
9 accordance with regulations issued pursuant to section 42-20-108, OR THE
10 DRIVER OF A COMMERCIAL VEHICLE TRANSPORTING PASSENGERS, before
11 crossing at grade any tracks of a railroad, shall stop such vehicle within
12 fifty feet but not less than fifteen feet from the nearest rail of such
13 railroad and while so stopped shall listen and look in both directions
14 along such track for any approaching train and for signals indicating the
15 approach of a train and shall not proceed until the driver can do so safely.
16 After stopping as required in this section and upon proceeding when it is
17 safe to do so, the driver of any said vehicle shall cross only in such gear
18 of the vehicle that there will be no necessity for changing gears while
19 traversing such crossing, and the driver shall not manually shift gears
20 while crossing the tracks.

21 (2) This section shall not apply at street railway grade crossings
22 within a business ~~or residence~~ district.

23 (4) Subsection (1) of this section shall not apply at:

24 (a) ~~Any railroad grade crossing protected by crossing gates or an~~
25 ~~alternately flashing light intended to give warning of the approach of a~~
26 ~~railroad train as provided in section 42-4-706;~~

1 **SECTION 2. Effective date - applicability.** This act shall take
2 effect July 1, 2006, and shall apply to acts committed on or after said
3 date.

4 **SECTION 3. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.

DRAFT

Bill E

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0176
Prime Sponsor(s): Rep. Ragsdale
Sen. May R.

Date: December 15, 2005
Bill Status: Transportation Legislation Review
Committee
Fiscal Analyst: Brad Denning (303-866-4777)

TITLE: CONCERNING MOTOR VEHICLES REQUIRED TO STOP BEFORE CROSSING AT GRADE RAILROAD TRACKS.

Summary of Assessment

This bill expands the types of vehicles that must stop at railroad grade crossings. Under current law, school buses and vehicles carrying hazardous materials must stop before crossing railroad tracks. It also requires a commercial vehicle that transports passengers to stop before crossing railroad tracks. All three types of vehicles would be required to stop before crossing street railroad tracks in a residential area, and to stop even when a railroad crossing has a gate or flashing lights.

The bill does not affect revenues or expenditures of the state or any local government. Therefore, the bill is assessed as having no fiscal impact and would become effective July 1, 2006.

Departments Contacted

Public Safety

Regulatory Agencies

Revenue

Transportation

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill F

DRAFT

LLS NO. 06-0178.01 Jery Payne

SENATE BILL

SENATE SPONSORSHIP

May R., and Williams

HOUSE SPONSORSHIP

Pommer, Green, Hefley, Knoedler, Larson, and Ragsdale

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF COMMERCIAL MOTOR VEHICLES
102 THAT TRANSPORT HAZARDOUS MATERIALS OVER THE PUBLIC
103 HIGHWAYS.

Bill Summary

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

Transportation Legislation Review Committee. Requires motor vehicles that weigh less than 10,000 pounds and transport hazardous materials to meet the minimum standards for commercial vehicles. Repeals a provision prohibiting a peace officer who has not attained level I inspection certification from enforcing the "Hazardous Materials Transportation Act of 1987". Changes the penalty for violating certain

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.

hazardous materials rules from a class 3 misdemeanor criminal offense to a class 2 misdemeanor traffic offense. Sets the penalty for such violation at \$250 with a \$33.30 surcharge. Doubles the penalty for a repeat offense within 12 months.

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

2 **SECTION 1.** 42-4-235 (1) (a), Colorado Revised Statutes, is
3 amended, and the said 42-4-235 (1) (a) is further amended BY THE
4 ADDITION OF A NEW SUBPARAGRAPH, to read:

5 **42-4-235. Minimum standards for commercial vehicles.**

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

7 (a) "Commercial vehicle" means:

8 (I) Any self-propelled or towed vehicle bearing an apportioned
9 plate or having a manufacturer's gross vehicle weight rating or gross
10 combination rating of ten thousand one pounds or more, which vehicle is
11 used in commerce on the public highways of this state or is designed to
12 transport sixteen or more passengers, including the driver, unless such
13 vehicle is a school bus regulated pursuant to section 42-4-1904 or any
14 vehicle that does not have a gross vehicle weight rating of twenty-six
15 thousand one or more pounds and that is owned or operated by a school
16 district so long as such school district does not receive remuneration for
17 the use of such vehicle, not including reimbursement for the use of such
18 vehicle; ~~and~~

19 (II) Any motor vehicle designed or equipped to transport other
20 motor vehicles from place to place by means of winches, cables, pulleys,
21 or other equipment for towing, pulling, or lifting, when such motor
22 vehicle is used in commerce on the public highways of this state; AND

23 (III) A MOTOR VEHICLE THAT IS USED IN COMMERCE ON THE

1 PUBLIC HIGHWAYS AND TRANSPORTS MATERIALS DETERMINED BY THE
2 SECRETARY OF TRANSPORTATION TO BE HAZARDOUS UNDER 49 U.S.C.
3 5103 IN SUCH QUANTITIES AS TO REQUIRE PLACARDING UNDER 49 CFR
4 PARTS 172 AND 173.

5 **SECTION 2.** 42-20-105 (1), Colorado Revised Statutes, is
6 amended to read:

7 **42-20-105. Enforcement.** (1) The provisions of parts 1, 2, and
8 3 of this article relating to the transportation of hazardous materials by
9 motor vehicle may only be enforced by an enforcement official. ~~On and~~
10 ~~after September 1, 2003, said provisions may only be enforced by an~~
11 ~~enforcement official who has been certified by the commercial vehicle~~
12 ~~safety alliance, or any successor organization thereto, to perform level I~~
13 ~~inspections.~~

14 **SECTION 3.** 42-20-109 (2), Colorado Revised Statutes, is
15 amended to read:

16 **42-20-109. Penalty for violations.** (2) Any person who violates
17 a rule ~~or regulation~~ promulgated by the chief pursuant to section
18 42-20-108 commits a ~~class 3 misdemeanor~~ CLASS 2 MISDEMEANOR
19 TRAFFIC OFFENSE and shall be punished as provided in section ~~18-1.3-501,~~
20 ~~C.R.S.~~ 42-4-1701.

21 **SECTION 4.** 42-4-1701 (4) (a) (I) (N), Colorado Revised
22 Statutes, is amended, and the said 42-4-1701 (4) (a) is further amended
23 BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

24 **42-4-1701. Traffic offenses and infractions classified -**
25 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except
26 as provided in paragraph (c) of subsection (5) of this section, every
27 person who is convicted of, who admits liability for, or against whom a

1 judgment is entered for a violation of any provision of this title to which
 2 the provisions of paragraph (a) or (b) of subsection (5) of this section
 3 apply shall be fined or penalized, and have a surcharge levied thereon
 4 pursuant to section 24-4.2-104 (1) (b) (I), C.R.S., in accordance with the
 5 penalty and surcharge schedule set forth in sub-subparagraphs (A) to (P)
 6 of this subparagraph (I); or, if no penalty or surcharge is specified in the
 7 schedule, the penalty for class A and class B traffic infractions shall be
 8 fifteen dollars, and the surcharge shall be two dollars. These penalties
 9 and surcharges shall apply whether the defendant acknowledges the
 10 defendant's guilt or liability in accordance with the procedure set forth by
 11 paragraph (a) of subsection (5) of this section or is found guilty by a court
 12 of competent jurisdiction or has judgment entered against the defendant
 13 by a county court magistrate. Penalties and surcharges for violating
 14 specific sections shall be as follows:

15	Section Violated	Penalty	Surcharge
16	(N) Other offenses:		
17	42-4-1301 (2) (a.5)	\$ 50.00	\$ 7.80
18	42-4-1305	50.00	7.80
19	42-4-1402	50.00	7.80
20	42-4-1403	15.00	2.60
21	42-4-1404	15.00	2.60
22	42-4-1406	35.00	5.20
23	42-4-1407 (3) (a)	35.00	5.20
24	42-4-1407 (3) (b)	100.00	15.00
25	42-4-1407 (3) (c)	500.00	100.00
26	42-4-314	35.00	5.20
27	42-4-1408	15.00	2.60

1	42-4-1414 (2) (a)	500.00	78.00
2	42-4-1414 (2) (b)	1,000.00	156.00
3	42-4-1414 (2) (c)	5,000.00	780.00
4	42-20-109 (2)	250.00	33.30

5 (VII) THE PENALTIES AND SURCHARGES FOR A SECOND OR
6 SUBSEQUENT VIOLATION OF SECTION 42-20-109 (2) WITHIN TWELVE
7 MONTHS SHALL BE DOUBLED.

8 **SECTION 5. Effective date - applicability.** This act shall take
9 effect July 1, 2006, and shall apply to offenses committed on or after said
10 date.

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

DRAFT

Bill F


 Colorado Legislative Council Staff
**STATE AND LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 06-0178
Prime Sponsor(s): Sen. R. May
 Rep. Pommer

Date: December 15, 2005
Bill Status: Transportation Legislation Review
 Committee
Fiscal Analyst: Brad Denning (303-866-4777)

TITLE: CONCERNING THE REGULATION OF COMMERCIAL MOTOR VEHICLES THAT TRANSPORT HAZARDOUS MATERIALS OVER THE PUBLIC HIGHWAYS.

Fiscal Impact Summary	FY 2006/2007	FY 2007/2008
State Revenues		
General Fund		
Cash Fund - HUTF	\$17,030	\$17,030
State Expenditures		
General Fund		
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: July 1, 2006		
Appropriation Summary for FY 2006/2007: None required.		
Local Government Impact: See Local Government Impact section on page 2.		

Summary of Legislation

The bill requires further regulation of commercial vehicles that transport hazardous materials over the public highways. It expands the definition of “commercial vehicle” to include a motor vehicle that is used in commerce on public highways and transports hazardous materials. The bill also repeals a provision that prohibits a peace officer who has not attained a Level 1 inspection certification from enforcing the federal Hazardous Materials Transportation Act of 1987.

Additionally, the bill changes the penalty for violating certain hazardous materials rules from a class 3 misdemeanor criminal offense to a class 2 misdemeanor traffic offense. Under current law, a class 3 misdemeanor for violating certain hazardous materials rules is a fine of at least \$50 to \$750, up to 6 months imprisonment, or both. This bill sets the penalty for such a violation at \$250 with a \$33.30 surcharge, 10 to 90 days in jail, or both, and doubles the penalty for a repeat offense within 12 months.

State Revenues

Per Section 18-1.3-501, C.R.S., the penalty for a class 3 misdemeanor is up to 6 months imprisonment in a county jail, a fine of \$50 to \$750, or both. This bill sets the penalty for such a violation at \$250 with a \$33.30 surcharge, 10 to 90 days in jail, or both, and doubles the penalty for a repeat offense within 12 months. In FY 2003-04, there were between 63 and 83 first-time traffic offense convictions for violation of the rules and regulations for transportation of hazardous materials. The fiscal note anticipates a net increase of fine revenue of \$17,030 for FY 2006-07, based upon an estimated 73 first-time convictions. Fines for violations of traffic offenses are to be credited to the Highway Users Tax Fund.

Local Government Impact

Under current law, all commercial vehicle safety inspections must be conducted by enforcement officers who are certified by the Commercial Vehicle Safety Alliance to perform Level 1 inspections. Currently, all state enforcement officers are certified to perform Level 1 inspections, although some local enforcement officers are not certified. This bill would allow peace officers to conduct safety inspections of commercial vehicles relating to the transportation of hazardous materials without this certification. It would also eliminate the possible additional training costs for peace officers to obtain the certification.

The penalty for a class 2 misdemeanor traffic offense is 10 to 90 days imprisonment in a county jail, a fine of \$10 to \$300, or both. This bill replaces the fine as \$250 with a \$33.30 surcharge. Because the courts have the discretion of incarceration or imposing a fine, this local impact cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$47.42 to house state inmates. It is assumed that the impact of this new misdemeanor traffic offense will be minimal and will not create the need for additional county jail space.

Departments Contacted

Judicial
Revenue

Local Affairs
Transportation

Public Safety

Regulatory Agencies