Title 29 - GOVERNMENT – LOCAL

PART 1 LOCAL GOVERNMENT BUDGET LAW OF COLORADO

29-1-101. Short title.

This part 1 shall be known and may be cited as the "Local Government Budget Law of Colorado".

Source: L. 90: Entire part R&RE, p. 1429, § 1, effective January 1, 1991.

Editors note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-101 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

Law reviews. For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959).

29-1-102. Definitions

As used in this part 1, unless the context otherwise requires:

(1) "Appropriation" means the authorization by ordinance or resolution of a spending limit for expenditures and obligations for specific purposes.

(2) "Basis of budgetary accounting" means any one of the following methods of measurement of timing when revenue and other financing **Source**s and expenditures and other financing uses are recognized for budget purposes:

(a) Cash basis (when cash is received and disbursed).

(b) Modified accrual basis (when revenue and other financing **Source**s are due and available and when obligations or liabilities are incurred for expenditures and other financing uses, except for certain stated items such as, but not limited to, prepaids, inventories of consumable goods, and interest payable in a future fiscal year); or

(c) Encumbrance basis (the modified accrual basis, but including the recognition of encumbrances).

(3) "Budget" means the complete estimated financial plan of the local government.

(4) "Budget year" means the ensuing fiscal year.

(5) "Certified" means a written statement by a member of the governing body or a person appointed by the governing body that the document being filed is a true and accurate copy of the action taken by the governing body.

(6) "Division" means the division of local government in the department of local affairs.

(7) "Encumbrance" means a commitment related to unperformed contracts for goods or services.

(8) (a) "Expenditure" means any use of financial re**Source**s of the local government consistent with its basis of accounting for budget purposes for the provision or acquisition of goods and services for operations, debt service, capital outlay, transfers, or other financial uses.

(b) "Expenditure" shall not include the payment or transfer of moneys by the office of the public trustee created in section 38-37-101, C.R.S., that are received from and required to be paid to another person or entity pursuant to the requirements of article 37, 38, or 39 of title 38, C.R.S., including, but not limited to, recording fees and publication costs pursuant to sections 38-38-101 and 38-39-102, C.R.S., and transfers of excess funds to the county treasurer made pursuant to section 38-37-104 (3), C.R.S.

(9) "Fiscal year" means the period commencing January 1 and ending December 31; except that "fiscal year" may mean the federal fiscal year for water conservancy districts which have contracts with the federal government.

(10) "Fund" means a fiscal and accounting entity with a self-balancing set of accounts in which cash and other financial re**Source**s, all related liabilities and residual equities or balances, and changes therein are recorded and segregated to carry on specific activities or to attain certain objectives in accordance with special regulations, restrictions, or limitations.

(11) "Fund balance" means the balance of total re**Source**s available for subsequent years' budgets consistent with the basis of accounting elected for budget purposes.

(12) "Governing body" means a board, council, or other elected or appointed body in which the legislative powers of the local government are vested.

(13) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. The office of the county public trustee shall be deemed an agency of the county for the purposes of this part 1. "Local government" does not include the Colorado educational and cultural facilities authority, the university of Colorado hospital authority, collegeinvest, the Colorado health facilities authority, the Colorado housing and finance authority, the Colorado agricultural development authority, the Colorado sheep and wool authority, the Colorado beef council authority, the Colorado horse development authority, the fire and police pension association, any public entity insurance or investment pool formed pursuant to state law, any county or municipal housing authority, any association of political subdivisions formed pursuant to section 29-1-401, or any home rule city or town, home rule city and county, cities and towns operating under a territorial charter, school district, or junior college district.

(14) "Object of expenditure" means the classification of fund data by character of expenditure. "Object of expenditure" includes, but is not limited to, personal services, purchased services, debt service, supplies, capital outlay, grants, and transfers.

(15) "Objection" means a written or oral protest filed by an elector of the local government.

(16) "Revenue" means all re**Source**s available to finance expenditures.

(17) "Spending agency", as designated by the local government, means any office, unit, department, board, commission, or institution which is responsible for any particular expenditures or revenues.

Source: L. 90: Entire part R&RE, p. 1429, § 1, effective January 1, 1991. L. 91: (13) amended, p. 588, § 11, effective October 1. L. 93: (13) amended, pp. 1846, 1855, §§ 3, 4, effective July 1. L. 95: (13) amended, p. 1001, § 2, effective July 1. L. 98: (13) amended, p. 610, § 18, effective May 4; (13) amended, p. 1262, § 8, effective June 1. L. 2003: (8) amended, p. 733, § 1, effective August 6. L. 2004: (13) amended, p. 576, § 34, effective July 1.

Editor's note: (1) Amendments to subsection (13) by Senate Bill 93-240 and Senate Bill 93-243 were harmonized.

(2) Amendments to subsection (13) by Senate Bill 98-082 and Senate Bill 98-188 were harmonized.

Cross references: For the legislative declaration contained in the act amending subsection (13) in 1991, see section 1 of chapter 99, Session Laws of Colorado 1991.

29-1-103. Budgets required.

(1) Each local government shall adopt an annual budget. To the extent that the financial activities of any local government are fully reported in the budget or budgets of a parent local government or governments, a separate budget is not required. Such budget shall present a complete financial plan by fund and by spending agency within each fund for the budget year and shall set forth the following:

(a) All proposed expenditures for administration, operations, maintenance, debt service, and capital projects to be undertaken or executed by any spending agency during the budget year;

(b) Anticipated revenues for the budget year;

(c) Estimated beginning and ending fund balances;

(d) The corresponding actual figures for the prior fiscal year and estimated figures projected through the end of the current fiscal year, including disclosure of all beginning and ending fund balances, consistent with the basis of accounting used to prepare the budget;

(e) A written budget message describing the important features of the proposed budget, including a statement of the budgetary basis of accounting used and a description of the services to be delivered during the budget year; and

(f) Explanatory schedules or statements classifying the expenditures by object and the revenues by **Source**.

(2) No budget adopted pursuant to this section shall provide for expenditures in excess of available revenues and beginning fund balances.

(3) (a) The general assembly finds and declares that the use of lease-purchase agreements by local governments creates financial obligations of those governments and that the disclosure of such obligations is in the public interest and is a matter of statewide concern.

(b) In addition to the governmental entities included in the definition of "local government" in section 29-1-102, the provisions of this subsection (3) shall apply to every home rule city, home rule city and county, school district, and junior college district.

(c) As used in this subsection (3), "lease-purchase agreement" means any installment purchase agreement for the purchase of real or personal property which requires payments during more than one

fiscal year or any agreement for the lease or rental of real or personal property which requires payments during more than one fiscal year and under which title to the property is transferred at the end of the term for nominal or no additional consideration.

(d) (I) The budget adopted by every local government shall separately set forth each of the following:

(A) The total amount to be expended during the ensuing fiscal year for payment obligations under all lease-purchase agreements involving real property;

(B) The total maximum payment liability of the local government under all lease-purchase agreements involving real property over the entire terms of such agreements, including all optional renewal terms;

(C) The total amount to be expended during the ensuing fiscal year for payment obligations under all lease-purchase agreements other than those involving real property.

(D) The total maximum payment liability of the local government under all lease-purchase agreements other than those involving real property over the entire terms of such agreements, including all optional renewal terms.

(II) Each budget required to be filed pursuant to section 29-1-113 shall include a supplemental schedule that contains the information described in this paragraph (d).

(e) (I) No local government shall enter into any lease-purchase agreement whose duration, including all optional renewal terms, exceeds the weighted average useful life of the assets being financed. In the case of a lease-purchase agreement involving both real property and other property, the lease-purchase agreement shall provide that the real property involved shall be amortized over a period not to exceed its weighted average useful life and the other property shall be separately amortized over a period not to exceed its weighted average useful life. This provision shall not prevent a local government from releasing property from a lease-purchase agreement pursuant to an amortization schedule reflecting the times when individual pieces of property have been amortized.

(II) Nothing contained in this paragraph (e) shall be construed to apply to any lease-purchase agreement entered into prior to April 9, 1990.

Source: L. 90: Entire part R&RE and (3) added, pp. 1431, 1289, §§ 1, 4, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-104 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 535.

C.J.S. See 20 C.J.S., Counties, § 189; 64 C.J.S., Municipal Corporations, § 1885.

Law reviews. For article, "Lease-Purchase Financing: The Local Government Budget Law of Colorado", see 20 Colo. Law. 63 (1991).

29-1-104. By whom budge prepared.

The governing body of each local government shall designate or appoint a person to prepare the budget and submit the same to the governing body.

Source: L. 90: Entire part R&RE, p. 1431, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-105 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

Law reviews. For article, "Lease-Purchase Financing: The Local Government Budget Law of Colorado", see 20 Colo. Law. 63 (1991).

Applied in Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978) (decided under § 29-1-105 as it existed prior to the 1990 repeal and reenactment of this part 1).

29-1-105. Budget estimates.

On or before a date to be determined by the governing body of each local government, all spending agencies shall prepare and submit to the person appointed to prepare the budget estimates of their expenditure requirements and their estimated revenues for the budget year, and, in connection therewith, the spending agency shall submit the corresponding actual figures for the last completed fiscal year and the estimated figures projected through the end of the current fiscal year and an explanatory schedule or statement classifying the expenditures by object and the revenues by **Source**. In addition to the other information required by this section, every office, department, board, commission, and other spending agency of any local government shall prepare and submit to the person appointed to prepare the budget the information required by section 29-1-103 (3) (d). No later than October 15 of each year, the person appointed to prepare the budget shall submit such budget to the governing body.

Source: L. 90: Entire part R&RE and entire section amended, pp. 1431, 1290, §§ 1, 5, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is similar to 29-1-106 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

29-1-106. Notice of budget.

(1) Upon receipt of the proposed budget, the governing body shall cause to be published a notice containing the following information:

(a) The date and time of the hearing at which the adoption of the proposed budget will be considered;

(b) A statement that the proposed budget is available for inspection by the public at a designated public office located within the boundaries of the local government, or, if no public office is located within such boundaries, the nearest public office where the budget is available; and

(c) A statement that any interested elector of the local government may file any objections to the proposed budget at any time prior to the final adoption of the budget by the governing body.

(2) If the governing body has submitted or intends to submit a request for increased property tax revenues to the division pursuant to section 29-1-302 (1), the amount of the increased property tax revenues resulting from such request shall be stated in such notice or in a subsequent notice in the manner provided in subsection (3) of this section.

(3) (a) For any local government whose proposed budget is more than fifty thousand dollars, the notice required by subsection (1) of this section shall be published one time in a newspaper having general circulation in the local government.

(b) Any local government whose proposed budget is fifty thousand dollars or less shall cause copies of the notice required by subsection (1) of this section to be posted in three public places within the jurisdiction of such local government in lieu of such publication.

Source: L. 90: Entire part R&RE, p. 1432, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is similar to 29-1-108 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

29-1-107. Objections to budget.

Any elector of the local government has the right to file or register his protest with the governing body prior to the time of the adoption of the budget.

Source: L. 90: Entire part R&RE, p. 1432, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-109 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

29-1-108. Adoption of budget – appropriations – failure to adopt.

(1) The governing body of the local government shall hold a hearing to consider the adoption of the proposed budget, at which time objections of the electors of the local government shall be considered. The governing body shall revise, alter, increase, or decrease the items as it deems necessary in view of the needs of the various spending agencies and the anticipated revenue of the local government. Adoption of the proposed budget shall be effective only upon an affirmative vote of a majority of the members of the governing body.

(2) Before the mill levy is certified pursuant to section 39-1-111 or 39-5-128, C.R.S., the governing body shall enact an ordinance or resolution adopting the budget and making appropriations for the budget year. The amounts appropriated shall not exceed the expenditures specified in the budget. Appropriations shall be made by fund or by spending agencies within a fund, as determined by the governing body. Changes to the adopted budget or appropriation shall be made in accordance with the provisions of section 29-1-109.

(3) If the governing body fails to adopt a budget before certification of the mill levy as provided for in subsection (2) of this section, then ninety percent of the amounts appropriated in the current fiscal year for operation and maintenance expenses shall be deemed reappropriated for the purposes specified in such last appropriation ordinance or resolution.

(4) If the appropriations for the budget year have not been made by December 31 of the current fiscal year, then ninety percent of the amount appropriated in the current fiscal year for operation and maintenance expenses shall be deemed reappropriated for the budget year.

(5) Notwithstanding any other provision of law, the adoption of the budget, the appropriation of funds, and the certification of the mill levy shall be effective upon adoption.

(6) All unexpended appropriations, or unencumbered appropriations if the encumbrance basis of budgetary accounting is adopted, expire at the end of the fiscal year.

Source: L. 90: Entire part R&RE, p. 1432, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is similar to 29-1-110 and 29-1-111 as said sections existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

CJ.S. See 64 C.J.S., Municipal Corporations, § 1886.

Annotator's note. Since § 29-1-108 is similar to §§ 29-1-110 and 29-1-111 as they existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing those provisions have been included in the **Annotation**s to this section.

This section requires the governing body of such subdivisions to enact an appropriation resolution for each fiscal year and further states that the amounts appropriated shall not exceed the amounts established by the budget as adopted. Shannon Water & San. Dist. v. Norris & Sons Drilling Co., 29 Colo. App. 48, 477 P.2d 476 (1970).

Taxpayers may demand refund of excess school taxation. If school directors, although proceeding in form as required by law, certify an amount to be raised by taxation greatly beyond the school requirements, they thereby supply a basis for a demand by taxpayers for a refund of the excess. Lowden v. Bd. of County Comm'rs, 101 Colo. 52, 69 P.2d 779 (1937).

Circumstances to be considered by governing body in determining reasonableness of salaries include the amount of revenue available, the needs of other county departments, and the ability of the county's taxpayers to fund additional requests, as well as the requesting department's need for the expenditures. Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978).

Purpose of subsections (3) and (4) is to prevent collapse of governmental subdivision. These provisions were designed to insure that various governmental subdivisions regulated by the budget law would not collapse through failure to adopt a budget or to appropriate moneys; rather, under it, subdivisions failing to budget or appropriate are at least allowed to maintain themselves and to carry out essential functions of public service until such time as a proper budget is adopted and appropriations made. Shannon Water & San. Dist. v. Norris & Sons Drilling Co., 29 Colo. App. 48, 477 P.2d 476 (1970).
Certification of tax levy no substitute. Certification of the tax levy to the board of county commissioners does not correct a water and sanitation district's failure to adopt a budget and pass an appropriation resolution. Shannon Water & San. Dist. v. Norris & Sons Drilling Co., 29 Colo. App. 48, 477 P.2d 476 (1970).

This section does not permit initiation of new projects or capital expenditures. Shannon Water & San. Dist. v. Norris & Sons Drilling Co., 29 Colo. App. 48, 477 P.2d 476 (1970).

Applied in City of Englewood v. Ripple & Howe, Inc., 150 Colo. 434, 374 P.2d 360 (1962); Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

29-1-109. Changes to budget – transfers – supplemental appropriations.

(1) (a) If, after adopting the budget and making appropriations, the governing body of a local government deems it necessary, it may transfer appropriated moneys between funds or between spending agencies within a fund, as determined by the original appropriation level, in accordance with the procedures established in subsection (2) of this section.

(b) If, after adoption of the budget, the local government receives unanticipated revenues or revenues not assured at the time of the adoption of the budget from any **Source** other than the local government's property tax mill levy, the governing body may authorize the expenditure of such funds by enacting a supplemental budget and appropriation.

(c) In the event that revenues are lower than anticipated in the adopted budget, the governing body may adopt a revised appropriation ordinance or resolution as provided in section 29-1-108.

(2) (a) Any transfer, supplemental appropriation, or revised appropriation made pursuant to this section shall be made only by ordinance or resolution which complies with the notice provisions of section 29-1-106.

(b) For transfers, such ordinance or resolution shall set forth in full the amounts to be transferred and shall be documented in detail in the minutes of the meeting of the governing body. A certified copy of such ordinance or resolution shall be transmitted immediately to the affected spending agencies and the officer or employee of the local government whose duty it is to draw warrants or orders for the payment of money and to keep the record of expenditures as required by section 29-1-114. A certified copy of such ordinance or resolution shall be filed with the division.

(c) For supplemental budgets and appropriations, such ordinance or resolution shall set forth in full the **Source** and amount of such revenue, the purpose for which such revenues are being budgeted and appropriated, and the fund or spending agency which shall make such supplemental expenditure. A certified copy of such ordinance or resolution shall be filed with the division.

Source: L. 90: Entire part R&RE, p. 1433, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is similar to 29-1-111.5 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

29-1-110. Expenditures not to exceed appropriation.

(1) During the fiscal year, no officer, employee, or other spending agency shall expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated. Any contract, verbal or written, made in violation of this section shall be void, and no moneys belonging to a local government shall be paid on such contract.

(2) Multiple-year contracts may be entered into where allowed by law or if subject to annual appropriation.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

29-1-111. Contingencies.

In cases of emergency which could not have been reasonably foreseen at the time of adoption of the budget, the governing body may authorize the expenditure of funds in excess of the appropriation by ordinance or resolution duly adopted by a majority vote of such governing body at a public meeting. Such ordinance or resolution shall set forth the facts concerning such emergency and shall be documented in detail in the minutes of the meeting of such governing body at which such ordinance or resolution was adopted. A certified copy of such ordinance or resolution shall be filed with the division.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-114 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

Annotator's note. Since § 29-1-111 is similar to § 29-1-114 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the **Annotation**s to this section.

Absent a contingency, contract in excess of appropriations void. A contract by a city for a survey and detailed study for a sewer system is void where no appropriation had been made, where there was no casualty, accident, or unforeseen contingency. City of Englewood v. Ripple & Howe, Inc., 150 Colo. 434, 374 P.2d 360 (1962).

Failure to set forth facts is technical deficiency. A city resolution authorizing an unforeseeable expenditure which fails to set forth in full the facts necessitating a departure from the normal budgeting and appropriations process is a technical deficiency and does not justify striking down a contract. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

29-1-112. Payment for contingencies.

In case of an emergency and the passage of an ordinance or resolution authorizing additional expenditures in excess of the appropriation as provided in section 29-1-111 and if there is money available for such excess expenditure in some other fund or spending agency which will not be needed for expenditures during the balance of the fiscal year, the governing body shall transfer the available money from such fund to the fund from which the excess expenditures are to be paid. If available money which can be so transferred is not sufficient to meet the authorized excess expenditure, then the governing body may obtain a temporary loan to provide for such excess expenditures. The total amount of the temporary loan shall not exceed the amount which can be raised by a two-mill levy on the total assessed valuation of the taxable property within the limits of the local government of such governing body.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Edtor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-115 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

Annotator's note. Since § 29-1-112 is similar to § 29-1-115 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the **Annotation**s to this section.

Counties may use contingency funds for aid to dependent children. The counties must produce their 20% of aid to dependent children whether it be from contingency funds, an excess levy, registered warrants, sales tax or otherwise. Colo. State Bd. of Soc. Serv. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

Transfer to road and bridge fund not authorized. This section does not authorize the transfer of general fund revenue to the road and bridge fund to avoid the requirement of a mill levy pursuant to §§ 43-2-202 and 43-2-203. City of Greeley v. Bd. of County Comm'rs, 644 P.2d 76 (Colo. App. 1981).

Section 30-25-106 (1) specifically prohibits the transfer of county general fund money for expenditures for roads and bridges. City of Colo. Springs v. Bd. of County Comm'rs, 648 P.2d 671 (Colo. App. 1982).

29-1-113. Filing of budget.

(1) No later than thirty days following the beginning of the fiscal year of the budget adopted pursuant to section 29-1-108, the governing body shall cause a certified copy of such budget, including the budget message, to be filed in the office of the division. Copies of such budget and of ordinances or resolutions

authorizing expenditures or the transfer of funds shall be filed with the officer or employee of the local government whose duty it is to disburse moneys or issue orders for the payment of money.

(2) Notwithstanding the provisions of section 29-1-102 (13), budgets shall be filed with the division by home rule cities, cities and counties, and towns and cities operating under a territorial charter for the purpose of information and research.

(3) If the governing body of a local government fails to file a certified copy of the budget with the division as required by this section, the division, after notice to the affected local government, may notify any county treasurer holding moneys of the local government generated pursuant to the taxing authority of such local government and authorize the county treasurer to prohibit release of any such moneys until the local government complies with the provisions of this section.

Source: L. 90: Entire part R&RE, p. 1434, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-116 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

29-1-114. Record of expenditures.

The officer or employee of the local government whose duty it is to disburse moneys or issue orders for the payment of money shall keep in his office a record showing the amounts authorized by the appropriation and the expenditures drawn against the same and also a record of the transfer of moneys from one fund to another and of any authorized additional expenditures as provided in section 29-1-111. Such record shall be kept so that it will show at all times the unexpended balance in each of the appropriated funds or spending agencies. Such officer or employee shall report on such record as may be required by the governing body. No such officer or employee shall disburse any moneys or issue orders for the payment of money in excess of the amount available as shown by said record or report.

Source: L. 90: Entire part R&RE, p. 1435, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-117 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

29-1-115. Violation is malfeasance – removal.

Any member of the governing body of any local government or any officer, employee, or agent of any spending agency who knowingly or willfully fails to perform any of the duties imposed upon him by this part 1 or who knowingly and willfully violates any of its provisions is guilty of malfeasance in office, and, upon conviction thereof, the court shall enter judgment that such officer so convicted shall be removed from office. Any elector of the local government may file an affidavit regarding suspected malfeasance with the district attorney, who shall investigate the allegations and prosecute the violation if sufficient cause is found. It is the duty of the court rendering any such judgment to cause immediate notice of such removal to be given to the proper officer of the local government so that the vacancy thus caused may be filled.

Source: L. 90: Entire part R&RE, p. 1435, § 1, effective January 1, 1991.

Editor's note: This section was contained in a part that was repealed and reenacted in 1990. This section, as it existed in 1990, is the same as 29-1-118 as said section existed in 1989, the year prior to the repeal and reenactment of this part.

Annotation

Am. Jur.2d. See 63C Am. Jur.2d, Public Officers and Employees, § 191.

C.J.S. See 67 C.J.S., Officers, § 154.

Annotator's note. Since § 29-1-115 is similar to § 29-1-118 as it existed prior to the 1990 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the **Annotation**s to this section.

Applied in People v. Pile, 197 Colo. 146, 595 P.2d 222 (1979); People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980); People v. Losavio, 199 Colo. 212, 606 P.2d 856 (1980); Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

PART 2 INTERGOVERNMENTAL RELATIONSHIPS

Editor's note: This part 2 was numbered as article 2 of chapter 88 in C.R.S. 1963. The substantive provisions of this part 2 were repealed and reenacted in 1971, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the comparative table located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

Law reviews: For article, "The IGA: A Smart Approach For Local Governments", see 29 Colo. Law. 73 (June 2000).

29-1-201. Legislative declaration.

The purpose of this part 2 is to implement the provisions of section 18 (2) (a) and (2) (b) of article XIV of the state constitution, adopted at the 1970 general election, and the amendment to section 2 of article XI of the state constitution, adopted at the 1974 general election, by permitting and encouraging governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments, and to this end this part 2 shall be liberally construed.

Source: L. 71: R&RE, p. 955, § 1. C.R.S. 1963: § 88-2-1. L. 75: Entire section amended, p. 955, § 1, effective May 20.

Annotation

The phrase "lawfully authorized to each" in subsection (2)(a) of section 18 of article XIV of state constitution held to mean only that each entity must have the authority to perform the subject activity within its own boundaries. This interpretation held to be consistent with legislative intent of statutory scheme. Durango Transp., Inc. v. City of Durango, 824 P.2d 48 (Colo. App. 1991).

29-1-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Government" means any political subdivision of the state, any agency or department of the state government or of the United States, a federally recognized tribal entity, and any political subdivision of an adjoining state.

29-1-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Government" means any political subdivision of the state, any agency or department of the state government or of the United States, a federally recognized tribal entity, and any political subdivision of an adjoining state.

(2) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, city or county housing authority, or water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.
Source: L. 71: R&RE, p. 955, § 1. C.R.S. 1963: § 88-2-2. L. 99: (2) amended, p. 128, § 1, effective March 24. L. 2000: (1) amended, p. 4, § 1, effective March 2.

Annotation

Applied in People v. Bailey, 41 Colo. App. 504, 595 P.2d 252 (1978).

29-1-203. Government may cooperate or contract – contents.

(1) Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt, only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. Any such contract providing for the sharing of costs or the imposition of taxes may be entered into for any period, notwithstanding any provision of law limiting the length of any financial contracts or obligations of governments.

(2) Any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties.

(3) Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

(4) Any such contract may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.

(5) Any separate legal entity formed pursuant to the provisions of this part 2 may make loans to any government which enters into any contract pursuant to the provisions of this section, which loans may be secured by loan and security agreements, leases, or any other instruments upon such terms and conditions, including, without limitation, the terms and conditions authorized by section 31-35-402 (1) (h), C.R.S., as the board of directors of such intergovernmental entity shall determine.

(6) The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such separate legal entities.

Source: L. 71: R&RE, p. 956, § 1. C.R.S. 1963: § 88-2-3. L. 88: (5) added, p. 1098, § 1, effective April 13; (6) added, p. 429, § 8, effective April 20. L. 2005: (1) amended, p. 1352, § 1, effective June 3.

Annotation

Law reviews. For article, "Cooperative Management of Urban Growth Areas Through IGAs", see 29 Colo. Law. 85 (November 2000).

29-1-204. Establishment of separate governmental entity.

(1) Any combination of cities and towns of this state which are authorized to own and operate electric systems may, by contract with each other or with cities and towns of any adjoining state, establish a

separate governmental entity, to be known as a power authority, to be used by such contracting municipalities to effect the development of electric energy re**Source**s or production and transmission of electric energy in whole or in part for the benefit of the inhabitants of such contracting municipalities.

(2) Any contract establishing such separate governmental entity shall specify:

(a) The name and purpose of such entity and the functions or services to be provided by such entity;

(b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation if any, and the procedure for filling vacancies on the board;

(II) The officers of the entity, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

(IV) The duties of the board which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the entity;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the entity has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

(3) The general powers of such entity shall include the following powers:

(a) To develop electric energy re**Source**s and produce or transmit electric energy in whole or in part for the benefit of the inhabitants of the contracting municipalities;

(b) To make and enter into contracts, including, without limitation, contracts with cities and towns in any adjoining state, irrespective of whether such cities and towns are parties to the contract establishing the separate governmental entity;

(c) To employ agents and employees;

(d) To acquire, construct, manage, maintain, or operate electric energy facilities, works, or improvements or any interest therein;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service;

(f) To condemn property for public use, if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the entity and which are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To deposit moneys of the power authority not then needed in the conduct of the power authority affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board of directors may appoint, by written resolution, one or more persons to act as custodians of the moneys of the power authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(o) To acquire or cross railroad rights-of-way in the manner set forth in section 40-5-105, C.R.S.

(4) The separate governmental entity established by such contracting municipalities shall be a political subdivision and a public corporation of the state, separate from the parties to the contract, and shall be a validly created and existing political subdivision and public corporation of the state, irrespective of whether a contracting municipality, including a city or town of an adjoining state, withdraws (whether voluntarily, by operation of law, or otherwise) from such entity subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such entity pursuant to its terms. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of the entity.

(5) The bonds, notes, and other obligations of such separate governmental entity shall not be the debts, liabilities, or obligations of the contracting municipalities.

(6) The contracting municipalities may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity.

(7) (a) To carry out the purposes for which the separate governmental entity was established, the entity is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the function, service, or facility or the combined functions, services, or facilities of the entity or from any other available funds of the entity. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations issued under this subsection (7) shall not constitute an indebtedness of the entity or the cooperating or contracting municipalities within the meaning of any constitutional or statutory limitation or other provision. Each bond, note, or other obligation issued under this subsection (7) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable

solely from the revenues and other available funds of the entity pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the entity or the cooperating or contracting municipalities within the meaning of any constitutional or statutory limitations or provisions. Notwithstanding anything in this section to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the board of the entity. Notwithstanding anything in this section to the contrary, in the case of short-term notes or other obligations maturing not later than one year from the date of issuance thereof, the board of the entity may authorize officials of the entity to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the board shall prescribe by resolution. Such action may be taken by the board of the entity only at a public meeting preceded by adequate notice, and the action of the board shall be properly recorded on the permanent records of the board.

(b) The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the board of the entity to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the entity. The bonds, notes, and other obligations of the entity and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

(8) A separate governmental entity established by contracting municipalities shall, if the contract so provides, be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting municipalities to provide the same function, service, or facility, and such separate governmental entity shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(9) The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for electric systems owned by separate governmental entities over electric systems owned by other or different entities.

(10) For the purposes of subsection (1), paragraph (b) of subsection (3), and subsection (4) of this section, "cities and towns of any adjoining state" means any city or town located in any state sharing a common border with the state of Colorado which owns an electric system and which is located not more than fifteen miles from the common border of the state of Colorado and such adjoining state.

Source: L. 75: Entire section added, p. 955, § 2, effective May 20. L. 76: (1), (3)(b), and (4) amended and (10) added, pp. 683, 684, §§ 1, 2, effective May 7. L. 77: (4) and (10) amended, p. 286, §§ 54, 55, effective June 29. L. 79: (3)(n) added, p. 1616, § 11, effective June 8. L. 82: (1) amended, p. 453, § 1, effective March 17; (7)(a) amended, p. 455, § 1, effective April 16. L. 2002: (3)(o) added, p. 1948, § 5, effective June 8.

Editor's note: This section was enacted as § 29-1-203.1 in House Bill 75-1666 but was renumbered on revision in the 1977 replacement volume for ease of location.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (3)(o), see section 1 of chapter 350, Session Laws of Colorado 2002.

Annotation

Applied in Paulu v. Lower Ark. Valley Council of Gov'ts, 655 P.2d 1391 (Colo. App. 1982).

29-1-204.2. Establishment of separate governmental entity to develop water reSources, systems, facilities, and drainage facilities.

(1) Any combination of municipalities, special districts, or other political subdivisions of this state that are authorized to own and operate water systems or facilities or drainage facilities may establish, by contract with each other, a separate governmental entity, to be known as a water or drainage authority, to be used by such contracting parties to effect the development of water re**Source**s, systems, or facilities or of drainage facilities in whole or in part for the benefit of the inhabitants of such contracting parties or others at the discretion of the board of directors of the water or drainage authority.

(2) Any contract establishing such separate governmental entity shall specify:

(a) The name and purpose of such entity and the functions or services to be provided by such entity;

(b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board;

(II) The officers of the entity, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

(IV) The duties of the board, which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the entity;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the entity has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations;

(e) The conditions or requirements to be fulfilled for adding or deleting parties to the contract in the future or for providing water services and drainage facilities to others outside the boundaries of the contracting parties.

(3) The general powers of such entity shall include the following powers:

(a) To develop water re**Source**s, systems, or facilities or drainage facilities in whole or in part for the benefit of the inhabitants of the contracting parties or others, at the discretion of the board of directors, subject to fulfilling any conditions or requirements set forth in the contract establishing the entity;

(b) To make and enter into contracts;

(c) To employ agents and employees;

(d) To acquire, construct, manage, maintain, or operate water systems, facilities, works, or improvements, or drainage facilities, or any interest therein;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized only for the purposes of water treatment, distribution, and waste water disposal, or of drainage;

(f) To condemn property for use as rights-of-way only if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose;

(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the entity and which are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To permit other municipalities, special districts, or political subdivisions of this state that are authorized to supply water or to provide drainage facilities to enter the contract at the discretion of the board of directors, subject to fulfilling any and all conditions or requirements of the contract establishing the entity; except that rates need not be uniform between the authority and the contracting parties;

(o) To provide for the rehabilitation of any surfaces adversely affected by the construction of water pipelines, facilities, or systems or of drainage facilities through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands;

(p) To justly indemnify property owners or others affected for any losses or damages incurred, including reasonable attorney fees, or that may subsequently be caused by or which result from actions of such corporations.

(4) The separate governmental entity established by such contracting parties shall be a political subdivision and a public corporation of the state, separate from the parties to the contract. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of the entity.

(5) The bonds, notes, and other obligations of a water or drainage authority formed under the provisions of this section shall not be the debts, liabilities, or obligations of the original contracting parties or parties that may enter the establishing contract in the future.

(6) The contracting parties may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity.

(7) (a) To carry out the purposes for which the separate governmental entity was established, the entity is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived from the function, service, system, or facility or the combined functions, services, systems, or facilities of the entity or from any other available funds of the entity. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and, as nearly as may be practicable, shall be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations issued under this subsection (7) shall not constitute an indebtedness of the entity or the cooperating or contracting parties within the meaning of any constitutional or statutory limitations or other provision. Each bond, note, or other obligation issued under this subsection (7) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the entity pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the entity or the cooperating or contracting parties within the meaning of any constitutional or statutory limitation or provision. Notwithstanding anything in this section to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the board of directors of the entity.

(b) The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the board of directors of the entity to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the entity. The bonds, notes, and other obligations of the entity and the income therefrom shall be exempt from taxation by this state, except inheritance, estate, and transfer taxes.

(8) A separate governmental entity established by contract, if the contract so provides, shall be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting parties to provide the same function, service, system, or facility, and such separate governmental entity shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(9) The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for water systems or facilities or for drainage facilities owned by separate governmental entities over water systems or facilities or over drainage facilities owned by other or different entities.

Source: L. 77: Entire section added, p. 1389, § 1, effective June 21. L. 82: (1) amended, p. 453, § 2, effective March 17. L. 2001: (1), (2)(e), (3)(a), (3)(d), (3)(e), (3)(n), (3)(o), (5), and (9) amended, p. 61, § 1, effective August 8.

Editor's note: This section was enacted as § 29-1-203.2 in House Bill 77-1211 but was renumbered on revision in the 1977 replacement volume for ease of location.

Annotation

Law reviews. For article, "Using a Water Authority to Develop And Deliver Water Re**Source**s", see 19 Colo. Law. 651 (1990).

29-1-204.5. Establishment of multijurisdictional housing authorities.

(1) Any combination of home rule or statutory cities, towns, counties, and cities and counties of this state may, by contract with each other, establish a separate governmental entity to be known as a multijurisdictional housing authority, referred to in this section as an "authority". Such an authority may be used by such contracting member governments to effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan:

(a) To provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income; and

(b) To provide affordable housing projects or programs for employees of employers located within the jurisdiction of the authority.

(2) Any contract establishing any such authority shall specify:

(a) The name and purpose of such authority and the functions or services to be provided by such authority;

(a.5) The boundaries of the authority, which boundaries may include less than the entire area of the separate governmental entities and may be modified after the establishment of the authority as provided in the contract;

(b) To make and enter into contracts with any person, including, without limitation, contracts with state or federal agencies, private enterprises, and nonprofit organizations also involved in providing such housing projects or programs or the financing for such housing projects or programs, irrespective of whether such agencies are parties to the contract establishing the authority;

(c) To employ agents and employees;

(d) To cooperate with state and federal governments in all respects concerning the financing of such housing projects and programs;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service;

(f) To condemn property for public use, if such property is not owned by any governmental entity or any public utility and devoted to public use pursuant to state authority;

(f.1) (I) Subject to the provisions of subsection (7.5) of this section, to levy, in all of the area within the boundaries of the authority, a sales or use tax, or both, at a rate not to exceed one percent, upon every transaction or other incident with respect to which a sales or use tax is levied by the state. The tax imposed pursuant to this paragraph (f.1) is in addition to any other sales or use tax imposed pursuant to law and is exempt from the limitation imposed by section 29-2-108. The executive director of the department of revenue shall collect, administer, and enforce the sales or use tax, to the extent feasible, in the manner provided in section 29-2-106. However, the executive director shall not begin the collection, administration, and enforcement of a sales and use tax until such time as the financial officer of the authority and the executive director have agreed on all necessary matters pursuant to subparagraph (III) of paragraph (e) of subsection (2) of this section. The executive director shall begin the collection, administration, and enforcement of a sales and use tax on a date mutually agreeable to the department of revenue and the authority.

(II) The executive director shall make monthly distributions of the tax collections to the authority, which shall apply the proceeds solely to the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs within the means of families of low or moderate income.

(III) The department of revenue shall retain an amount not to exceed the cost of the collection, administration, and enforcement and shall transmit the amount retained to the state treasurer, who shall credit the same amount to the multijurisdictional housing authority sales tax fund, which fund is hereby created in the state treasury. The amounts so retained are hereby appropriated annually from the fund to the department to the extent necessary for the department's collection, administration, and enforcement of the provisions of this section. Any moneys remaining in the fund attributable to taxes collected in the prior fiscal year shall be transmitted to the authority; except that, prior to the transmission to the authority of such moneys, any moneys appropriated from the general fund to the department for the collection, administration, and enforcement of the tax for the prior fiscal year shall be repaid.

(f.2) Subject to the provisions of subsection (7.5) of this section, to levy, in all of the area within the boundaries of the authority, an ad valorem tax at a rate not to exceed five mills on each dollar of valuation for assessment of the taxable property within such area. The tax imposed pursuant to this paragraph (f.2) shall be in addition to any other ad valorem tax imposed pursuant to law. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county within the authority, or having a portion of its territory within the district, the levy of ad valorem property taxes in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the designated portion of the area within the boundaries of the authority. It is the duty of the body having authority to levy taxes within each county to levy the taxes provided by this subsection (3). It is the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the authority ordering the levy and collection. The payment of such collections shall be made monthly to the authority or paid into the depository thereof to the credit of the authority. All taxes levied under this paragraph (f.2), together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general taxes.

(f.5) (I) To establish, and from time to time increase or decrease, a development impact fee and collect such fee from persons who own property located within the boundaries of the authority who apply for approval for new residential, commercial, or industrial construction in accordance with applicable ordinances, resolutions, or regulations of any county or municipality.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (f.5), an impact fee may only be imposed by an authority if all of the following conditions have been satisfied:

(A) No portion of the authority is located in a county with a population of more than one hundred thousand;

(B) The fee is not levied upon the development, construction, permitting, or otherwise in connection with low or moderate income housing or affordable employee housing;

(C) The rate of the fee is two dollars per square foot or less; and

(D) The authority also imposes a sales and use tax pursuant to paragraph (f.1) of this subsection (3), an ad valorem tax pursuant to paragraph (f.2) of this subsection (3), or both.

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rents, security deposits, and charges for functions, services, or facilities provided by the authority;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

(l) To exercise any other powers that are essential to the provision of functions, services, or facilities by the authority and that are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To establish enterprises for the ownership, planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, or operation, or any combination of the foregoing, of housing projects or programs authorized by this section on the same terms as and subject to the same conditions provided in section 43-4-605, C.R.S.

(4) The authority established by such contracting member governments shall be a political subdivision and a public corporation of the state, separate from the parties to the contract, and shall be a validly created and existing political subdivision and public corporation of the state, irrespective of whether a contracting member government withdraws (whether voluntarily, by operation of law, or otherwise) from such authority subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such authority pursuant to its terms. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The authority may deposit and invest its moneys in the manner provided in section 43-4-616, C.R.S.

(5) The bonds, notes, and other obligations of such authority shall not be the debts, liabilities, or obligations of the contracting member governments.

(6) The contracting member governments may provide in the contract for payment to the authority of funds from proprietary revenues for services rendered or facilities provided by the authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the authority.

(7) (Deleted by amendment, L. 2001, p. 966, § 1, effective August 8, 2001).

(7.1) The authority may issue revenue or general obligation bonds, as the term bond is defined in section 43-4-602 (3), C.R.S., and may pledge its revenues and revenue-raising powers for the payment of such bonds. Such bonds shall be issued on the terms and subject to the conditions set forth in section 43-4-609, C.R.S.

(7.3) The income or other revenues of the authority, all properties at any time owned by an authority, any bonds issued by an authority, and the transfer of and the income from any bonds issued by the authority are exempt from all taxation and assessments in the state.

(7.5) (a) No action by an authority to establish or increase any tax or development impact fee authorized by this section shall take effect unless first submitted to a vote of the registered electors of the authority in which the tax or development impact fee is proposed to be collected.

(b) No action by an authority creating a multiple-fiscal year debt or other financial obligation that is subject to section 20 (4) (b) of article X of the state constitution shall take effect unless first submitted to a vote of the registered electors residing within the boundaries of the authority; except that no such vote is required for obligations of enterprises established under paragraph (n) of subsection (3) of this section or for obligations of any other enterprise under section 20 (4) of article X of the state constitution.

(c) The questions proposed to the registered electors under paragraphs (a) and (b) of this subsection (7.5) shall be submitted at a general election or any election to be held on the first Tuesday in November of an odd-numbered year. The action shall not take effect unless a majority of the registered electors voting thereon at the election vote in favor thereof. The election shall be conducted in substantially the same manner as county elections and the county clerk and recorder of each county in which the election is conducted shall assist the authority in conducting the election. The authority shall pay the costs incurred by each county in conducting such an election. No moneys of the authority may be used to urge or oppose passage of an election required under this section.

(7.7) (a) For the purpose of determining any authority's fiscal year spending limit under section 20 (7) (b) of article X of the state constitution, the initial spending base of the authority shall be the amount of revenues collected by the authority from **Source**s not excluded from fiscal year spending pursuant to section 20 (2) (e) of article X of the state constitution during the first full fiscal year for which the authority collected revenues.

(b) For purposes of this subsection (7.7), "fiscal year" means any year-long period used by an authority for fiscal accounting purposes.

(8) An authority established by contracting member governments shall, if the contract so provides, be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting member governments to provide the same function, service, or facility, and such authority shall be entitled to all the rights and privileges and shall assume all the obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(9) The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their individual powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for housing projects owned by authorities over housing projects owned by other or different entities.

(10) An authority and the property of an authority shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities in sections 29-4-226 and 29-4-227.

Source: L. 77: Entire section added, p. 1393, § 1, effective July 7. L. 2001: Entire section amended, p. 966, § 1, effective August 8. L. 2002: (10) added, p. 1937, § 1, effective June 7.

Editor's note: (1) This section was enacted as § 29-1-203.5 in Senate Bill 77-488 but was renumbered on revision in the 1977 replacement volume for ease of location.

(2) Section 4 of chapter 346, Session Laws of Colorado 2002, provides that the act enacting subsection (10) applies only with respect to taxable years beginning after December 31, 2000.

29-1-205. List of contracts.

On or before February 1 of each year, each political subdivision shall file with the division of local government an updated informational list of all contracts in effect with other political subdivisions. Said list

shall contain the names of the contracting political subdivisions, the nature of the contract, and the expiration date thereof. Within ten days after the execution of a contract establishing a separate governmental entity pursuant to section 29-1-204, or an amendment or a modification thereof, a copy of such contract, amendment, or modification shall be filed with the division of local government. Failure to make any filing under this section shall not invalidate any contract referred to in this section.

Source: L. 71: R&RE, p. 956, § 1. C.R.S. 1963: § 88-2-4. L. 75: Entire section amended, p. 958, § 3, effective May 20.

Editor's note: This section was originally numbered as § 29-1-204 in C.R.S. 1973 but was renumbered on revision in the 1977 replacement volume for ease of location.

29-1-206. Law enforcement agreements.

Any county in this state that shares a common border with a county in another state, and any municipality located in such a bordering county of this state, may enter into an agreement with the bordering county of the other state or with a municipality located in the bordering county of the other state to provide for reciprocal law enforcement between such entities. Such agreement shall meet the requirements of section 29-1-203 and shall include, but shall not be limited to, an additional requirement that any person who is assigned to law enforcement duty in this state pursuant to such intergovernmental agreement and section 29-5-104 (2) shall be certified as a peace officer in the other state and shall apply to the peace officer standards and training board for recognition prior to such assignment.

Source: L. 93: Entire section added, p. 245, § 1, effective March 31. L. 96: Entire section amended, p. 1574, § 7, effective June 3. L. 2000: Entire section amended, p. 43, § 4, effective March 10.

29-1-207. Notification to military installations by local governments of land use changes – legislative declaration – definitions.

(1) The general assembly hereby finds, determines, and declares that it is desirable for local governments in the state to cooperate with military installations located within the state in order to encourage compatible land use, help prevent incompatible urban encroachment upon military installations, and facilitate the continued presence of major military installations within the state.

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

(a) "Local government" means a county, home rule or statutory city, town, territorial charter city, city and county, or a metropolitan district created pursuant to title 32, C.R.S.

(b) "Military installation" means a base, camp, post, station, airfield, yard, center, or any other land area under the jurisdiction of the United States department of defense, including any leased facility, the total acreage of which installation is in excess of one thousand acres. "Military installation" does not include the Rocky Mountain arsenal nor any facility used primarily for civil works, river projects, or flood control projects.

(2) Each local government within whose territorial boundaries is located all or any portion of a military installation shall timely provide to the commanding officer of that installation, or his or her designee, information relating to proposed changes to the local government's comprehensive plan, amendments to the plan, or land development regulations that, if approved, would significantly affect the intensity, density, or use of any area within the territorial boundaries of the local government that is within two miles of the military installation. Nothing in this subsection (3) is intended to require submission of any information in connection with a site-specific development application under consideration by the local government.

(4) Upon submission of the information required to be provided pursuant to subsection (3) of this section, the local government shall provide the military installation an opportunity to review the information and comment on the impact the proposed changes may have on the mission of the military installation. Such comments may include:

(a) If the military installation has an airfield, whether the proposed changes will be compatible with the safety and noise standards contained in the air installation compatible use zone adopted by the military installation for that airfield;

(b) Whether the proposed changes are compatible with the installation environmental noise management program of the United States Army;

(c) Whether the proposed changes are compatible with any joint land use study for the area within which the changes are to take place, if such study has been completed; or

(d Whether the military installation's mission will be adversely affected by the proposed changes.

(5 The local government shall review any comments received from the commanding officer or his or her designee pursuant to subsection (4) of this section when considering approval of a comprehensive plan, amendments to the plan, or its land development regulations. The local government shall forward a copy of any such comments received to the office of smart growth created in section 24-32-3203 (1) (a), C.R.S.

Source: L. 2005: Entire section added, p. 222, § 1, effective August 8.

PART 3 ANNUAL LEVY - INCREASE OR REDUCTION - LIMITATION

29-1-301. Levies reduced – limitation.

(1) (a) All statutory tax levies for collection in 1989 and thereafter when applied to the total valuation for assessment of the state, each of the counties, cities, and towns not chartered as home rule except as provided in this subsection (1), and each of the fire, sanitation, irrigation, drainage, conservancy, and other special districts established by law shall be so reduced as to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus five and one-half percent plus the amount of revenue abated or refunded by the taxing entity by August 1 of the current year less the amount of revenue received by the taxing entity by August 1 of the current year as taxes paid on any taxable property that had previously been omitted from the assessment roll of any year, except to provide for the payment of bonds and interest thereon, for the payment of any contractual obligation that has been approved by a majority of the qualified electors of the taxing entity, for the payment of expenses incurred in the reappraisal of classes or subclasses ordered by or conducted by the state board of equalization, for the payment to the state of excess state equalization payments to school districts which excess is due to the undervaluation of taxable property, or for the payment of capital expenditures as provided in subsection (1.2) of this section. For purposes of this subsection (1), the amount of revenues received as taxes paid on any taxable property that had been previously omitted from the assessment roll shall not include the amount of such revenues received as taxes paid on oil and gas leaseholds and lands that had been previously omitted from the assessment roll due to underreporting of the selling price or the quantity of oil or gas sold therefrom. In computing the limit, the following shall be excluded: The increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the taxing entity for the preceding year; the increased valuation for assessment attributable to new construction and personal property connected therewith, as defined by the property tax administrator in manuals prepared pursuant to section 39-2-109 (1) (e), C.R.S., within the taxing entity for the preceding year; the increased valuation for assessment attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if said increase in volume of production causes an increase in the level of services provided by the taxing entity; and the increased valuation for assessment

attributable to previously legally exempt federal property which becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(b) For property tax years beginning on or after January 1, 1991, any taxing entity may apply to the division of local government in the department of local affairs for authorization to exclude the following from the computation of the limitation set forth in paragraph (a) of this subsection (1): All or any portion of the increased valuation for assessment attributable to new primary oil or gas production for the preceding year from any producing oil and gas leasehold or land if such oil and gas leasehold or land is wholly or partially within the taxing entity and if such new primary oil or gas production has caused or will cause an increase in the level of services provided by the taxing entity.

(c) Any application submitted by a taxing entity pursuant to paragraph (b) of this subsection (1) shall contain the following information:

(I) An explanation of the causal relationship between the new primary oil or gas production specified in paragraph (b) of this subsection (1) and the increase in the level of services provided or to be provided by the taxing entity;

(II) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is authorized;

(III) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is not authorized;

(IV) The nature and amount of the expenditures which would be made from any increased amount of revenues collected if said exclusion is authorized.

(d) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government may grant or deny authority to the taxing entity to exclude all or any portion of such increased valuation for assessment specified in paragraph (b) of this subsection (1). Any authorization granted pursuant to this paragraph (d) shall specify the amount of such valuation for assessment which may be excluded. If said exclusion is authorized by said division, the taxing entity shall deposit any increased amount of revenues collected as a result of said exclusion into a fund created by the taxing entity which shall consist solely of such revenues. Moneys in such fund shall be used exclusively for any increase in the level of services provided by the taxing entity which occurs as a result of the new primary oil or gas production specified in paragraph (b) of this subsection (1).

(e) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government shall provide a copy of such application to the oil and gas operators of record wherein the taxing jurisdiction the increased valuation from new primary oil and gas production has occurred.

(f) Standing to challenge any determination made by the division of local government pursuant to this subsection (1) shall be limited to the owners of taxable property located wholly or partially within the taxing entity on the date the taxing entity is granted or denied authorization to make an exclusion pursuant to this subsection (1).

(1.2) (a) The limitation provided for in subsection (1) of this section shall not apply for the purpose of raising revenue to pay for capital expenditures. Such revenue shall not be included in determining the limitation in following years. For the purposes of this paragraph (a), "capital expenditure" means an expenditure made by a taxing entity for long-term additions or betterments, which expenditure, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. This paragraph (a) shall apply to counties, cities, and towns.

(b) If a county imposes an increased mill levy pursuant to paragraph (a) of this subsection (1.2) for a one-time, nonrecurring expenditure for a county road or bridge capital project or county road or bridge capital asset, the county may also request that the division of local government waive application of the provisions of section 43-2-202 (2), C.R.S., to the revenue received from that increased levy. In that event, said division shall notify the governing body of each municipality in the county of the request and of the period of time, not less than twenty days, during which the division will receive comment on the request. In considering whether to waive application of said section 43-2-202 (2), the division shall consider, among other relevant matters, the benefit of the project or asset to the municipalities in the county, the need for the project or asset, and alternative methods of and timing for financing the project or asset. No approval for such waiver shall be granted or continued until the division determines that the property tax revenues in the road and bridge fund, excluding the revenues from such increased levy, for the year for which the increase is imposed bear at least the same proportion to all countywide property tax revenues as in the immediate prior year budget.

(c) Any decision to exceed the limitation for the purpose of raising revenue for capital expenditures pursuant to this subsection (1.2) shall conform with the advertising and public hearing requirements of this paragraph (c). No taxing entity may exceed the limitation to raise such revenue unless the governing board of such taxing entity has advertised its intention to do so and unless such excess has been approved by at least two-thirds of the members of such governing board voting at a public hearing. The advertisement specified in this paragraph (c) shall be in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity and shall appear twice therein. The second such appearance shall not be more than eight days prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a public hearing shall be held to consider increasing your property taxes for capital expenditures". Such advertisement shall be in a type no smaller than eighteen-point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, and the purpose of such hearing and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed matter. Such advertisement shall also state what the property taxes would be without such excess and what the property taxes will be with such excess and the percentage difference between such property taxes. Any public hearing held pursuant to this paragraph (c) shall be open to the general public. An opportunity shall be provided for all persons to present oral testimony within such reasonable time limits as shall be set by the board conducting the hearing. Prior to the conclusion of the public hearing, the governing board of the taxing entity shall publicly announce the percent by which the mill levy required to raise such excess exceeds the mill levy computed without such excess.

(1.3) Repealed.

(1.5) All property tax revenues, except such revenues as are exempted in subsection (1) of this section, raised from any property tax levied by a taxing entity which is subject to this section, shall be combined for the purpose of determining the total amount of property tax revenue which the taxing entity is allowed to raise subject to the limitation imposed by this section. The limitation shall be applied to such aggregate property tax revenues. However, such aggregate amount shall not include any property tax revenue which is raised by or on behalf of a district, authority, or area which is within but is not comprised of the entire taxing entity and which is raised by a tax upon only property within such district, authority, or area; such property tax revenue is subject to a limitation independent of the limitation which is applied to the taxing entity within which such district, authority, or area is located. No statute establishing a set mill levy or establishing a maximum mill levy or authorizing an additional mill levy for a special purpose shall be construed as authorizing the taxing entity to exceed the limitation imposed by this section.

(1.7) For property tax years commencing on or after January 1, 1988, any taxing entity which is subject to the provisions of this section shall not levy any property tax for purposes which are exempt from the limitation imposed by subsection (1) of this section in an amount which is greater than the amount of

revenues required to be raised for such purposes during any year as specified by the provisions of any contract entered into by such taxing entity or any schedule of payments established for the payment of any obligation incurred by such taxing entity. Where bonds, contractual obligations, or capital expenditures have been approved, but actual revenues required for such purposes are not known at the time the levy is set, the taxing entity may base its levy on the estimated revenues which are so required for one year only and in subsequent years the levy shall be based on the actual revenues which are so required. Nothing in this subsection (1.7) shall preclude refunding of any obligation or contract.

(2) If an increase over said limitation is allowed by the division of local government in the department of local affairs or voted by the electors of a taxing entity under the provisions of section 29-1-302, the increased revenue resulting therefrom shall be included in determining the limitation in the following year. However, any portion of such increased revenue which is allowed as a capital expenditure pursuant to section 29-1-302 (1.5) shall not be included in determining the limitation in the following year.

(3) The limitations of this part 3 shall apply to home rule counties unless provisions are included in the county home rule charter which are, as determined by the division of local government, equal to or more restrictive than the provisions of this part 3.

(4) In the event of a consolidation or merger, in whole or in part, of two or more political subdivisions or taxing entities, the surviving entity or the entity assuming service responsibilities shall use a direct proportion of the combined entities' prior year property tax revenues as the base for computing the limitation in the year first succeeding such consolidation or merger.

(5) Repealed.

(6) Where a taxing entity exceeds the limitation imposed by subsection (1) of this section during any year, the division of local government shall order a reduction in the authorized revenue of the taxing entity for the subsequent year in an amount which offsets the excess revenues levied in the preceding year. Such order shall be preceded by notice to the taxing entity of the proposed order and an opportunity for the taxing entity to respond prior to issuance of the order.

Source: L. 13: p. 560, § 11. L. 15: p. 403, § 1. L. 17: p. 429, § 1. C.L. § 7214. L. 29: p. 546, § 1. L. 31: p. 701 § 1. CSA: C. 142, § 39. L. 52: p. 142, § 1. CRS 53: § 36-3-2. L. 55: p. 253, § 1. C.R.S. 1963: § 88-3-1. L. 69: p. 1053, § 24. L. 70: p. 378, § 3. L. 71: p. 957, § 1. L. 76: Entire section amended, p. 685, § 1, effective July 1. L. 80: (1) amended, p. 678, § 2, effective April 13. L. 81: (1) and (2) amended and (1.3) and (1.5) added, p. 1395, § 5, effective June 19; (1) amended, p. 1612, § 6, effective June 19. L. 83: (1) amended and (1.2) added, p. 1199, § 1, effective May 25; (1) amended, p. 1196, § 1, effective June 3; (1) amended, p. 2085, § 3, effective October 13. L. 85: (1.2)(c) amended, p. 1024, § 1, effective July 1. L. 86: (1), (1.2)(a), (1.2)(c), (1.5), and (2) amended and (1.3) R&RE, pp. 1021, 1023, §§ 2, 3, effective May 16. L. 87: (1) amended, p. 1178, § 1, effective April 16; (1.2)(a), (1.5), and (4) amended, p. 1181, § 1, effective April 30; (1.2)(c) amended, p. 1184, § 1, effective May 1. L. 88: (1) and (1.3) amended and (1.7) and (6) added, p. 1279, § 3, effective May 23; (1) and (1.3) amended and (5) added, pp. 1099, 1268, §§ 1, 3, effective May 29. L. 89: (1) amended, p. 1467, § 35, effective June 7. L. 90: (1) amended, p. 1704, § 39, effective June 9. L. 91: (1) amended, p. 1969, § 1, effective April 19. L. 93: (1)(a) amended, p. 1281, § 1, effective June 6. L. 96: (1)(a) amended, p. 16, § 1, effective February 22.

Editor's note: (1) Amendments to subsection (1) by House Bill 81-1320 and House Bill 81-1613 were harmonized.

(2) Amendments to subsection (1) by House Bill 83-1011 and House Bill 83-1405 were harmonized.

(3) Subsection (1.3)(c) provided for the repeal of subsection (1.3), effective June 30, 1991. (See L. 88, p. 1279.) Subsection (5)(c) provided for the repeal of subsection (5), effective January 1, 1991. (See L. 88, p. 1268.)

(4) Amendments to subsection (1) by Senate Bill 88-184, House Bill 88-1016, and Senate Bill 88-126 were harmonized.

(5) Amendments to subsection (1.3) by House Bill 88-1016 and Senate Bill 88-184 were harmonized.

Annotation

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, § 600.

C.J.S. See 20 C.J.S., Counties, §§ 230, 231; 64 Municipal Corporations, § 1986.

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For comment, "Colorado Public School Financing: Constitutional Issues", see 59 U. Colo. L. Rev. 149 (1988).

Decreased debt service not offset against revenue increase to reduce increase and avoid special election. Any decrease in a district's debt service is a separate matter and cannot be offset against the increase in general revenue so as to reduce the percentage increase for purposes of determining whether a special election is required for a proposed tax levy. Stegon v. Pueblo W. Metro. Dist., 198 Colo. 128, 596 P.2d 1206 (1979).

County exempt from the five and one half percent revenue limitation of this section where voters had approved a ballot question allowing the county to keep all property tax revenues generated by its existing mill levy even though the ballot question did not specifically refer to that limitation. Wilber v. Bd. of County Comm'rs of County of La Plata, 42 P.3d 49 (Colo. App. 2001).

Applied in Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978); Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

29-1-301.1. Levies reduced – limitation – 1988. (Repealed).

(1) (a) All statutory tax levies for collection in 1989 and thereafter when applied to the total valuation for assessment of the state, each of the counties, cities, and towns not chartered as home rule except as provided in this subsection (1), and each of the fire, sanitation, irrigation, drainage, conservancy, and other special districts established by law shall be so reduced as to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus five and one-half percent plus the amount of revenue abated or refunded by the taxing entity by August 1 of the current year less the amount of revenue received by the taxing entity by August 1 of the current year as taxes paid on any taxable property that had previously been omitted from the assessment roll of any year, except to provide for the payment of bonds and interest thereon, for the payment of any contractual obligation that has been approved by a majority of the qualified electors of the taxing entity, for the payment of expenses incurred in the reappraisal of classes or subclasses ordered by or conducted by the state board of equalization, for the payment to the state of excess state equalization payments to school districts which excess is due to the undervaluation of taxable property, or for the payment of capital expenditures as provided in subsection (1.2) of this section. For purposes of this subsection (1), the amount of revenues received as taxes paid on any taxable property that had been previously omitted from the assessment roll shall not include the amount of such revenues received as taxes paid on oil and gas leaseholds and lands that had been previously omitted from the assessment roll due to underreporting of the selling price or the quantity of oil or gas sold therefrom. In computing the limit, the following shall be excluded: The increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the taxing entity for the preceding year; the increased valuation for assessment attributable to new construction and personal property connected therewith, as defined by the property tax administrator in manuals prepared pursuant to section 39-2-109 (1) (e), C.R.S., within the taxing entity for the preceding year; the increased valuation for assessment attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if said increase in volume of production causes an increase

in the level of services provided by the taxing entity; and the increased valuation for assessment attributable to previously legally exempt federal property which becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(b) For property tax years beginning on or after January 1, 1991, any taxing entity may apply to the division of local government in the department of local affairs for authorization to exclude the following from the computation of the limitation set forth in paragraph (a) of this subsection (1): All or any portion of the increased valuation for assessment attributable to new primary oil or gas production for the preceding year from any producing oil and gas leasehold or land if such oil and gas leasehold or land is wholly or partially within the taxing entity and if such new primary oil or gas production has caused or will cause an increase in the level of services provided by the taxing entity.

(c) Any application submitted by a taxing entity pursuant to paragraph (b) of this subsection (1) shall contain the following information:

(I) An explanation of the causal relationship between the new primary oil or gas production specified in paragraph (b) of this subsection (1) and the increase in the level of services provided or to be provided by the taxing entity;

(II) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is authorized;

(III) The statutory mill levy and estimated amount of revenue that the taxing entity would collect if said exclusion is not authorized;

(IV) The nature and amount of the expenditures which would be made from any increased amount of revenues collected if said exclusion is authorized.

(d) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government may grant or deny authority to the taxing entity to exclude all or any portion of such increased valuation for assessment specified in paragraph (b) of this subsection (1). Any authorization granted pursuant to this paragraph (d) shall specify the amount of such valuation for assessment which may be excluded. If said exclusion is authorized by said division, the taxing entity shall deposit any increased amount of revenues collected as a result of said exclusion into a fund created by the taxing entity which shall consist solely of such revenues. Moneys in such fund shall be used exclusively for any increase in the level of services provided by the taxing entity which occurs as a result of the new primary oil or gas production specified in paragraph (b) of this subsection (1).

(e) Upon receipt of an application which complies with the provisions of paragraph (c) of this subsection (1), the division of local government shall provide a copy of such application to the oil and gas operators of record wherein the taxing jurisdiction the increased valuation from new primary oil and gas production has occurred.

(f) Standing to challenge any determination made by the division of local government pursuant to this subsection (1) shall be limited to the owners of taxable property located wholly or partially within the taxing entity on the date the taxing entity is granted or denied authorization to make an exclusion pursuant to this subsection (1).

(1.2) (a) The limitation provided for in subsection (1) of this section shall not apply for the purpose of raising revenue to pay for capital expenditures. Such revenue shall not be included in determining the limitation in following years. For the purposes of this paragraph (a), "capital expenditure" means an expenditure made by a taxing entity for long-term additions or betterments, which expenditure, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. This paragraph (a) shall apply to counties, cities, and towns.

(b) If a county imposes an increased mill levy pursuant to paragraph (a) of this subsection (1.2) for a one-time, nonrecurring expenditure for a county road or bridge capital project or county road or bridge capital asset, the county may also request that the division of local government waive application of the provisions of section 43-2-202 (2), C.R.S., to the revenue received from that increased levy. In that event, said division shall notify the governing body of each municipality in the county of the request and of the period of time, not less than twenty days, during which the division will receive comment on the request. In considering whether to waive application of said section 43-2-202 (2), the division shall consider, among other relevant matters, the benefit of the project or asset to the municipalities in the county, the need for the project or asset, and alternative methods of and timing for financing the project or asset. No approval for such waiver shall be granted or continued until the division determines that the property tax revenues in the road and bridge fund, excluding the revenues from such increased levy, for the year for which the increase is imposed bear at least the same proportion to all countywide property tax revenues as in the immediate prior year budget.

(c) Any decision to exceed the limitation for the purpose of raising revenue for capital expenditures pursuant to this subsection (1.2) shall conform with the advertising and public hearing requirements of this paragraph (c). No taxing entity may exceed the limitation to raise such revenue unless the governing board of such taxing entity has advertised its intention to do so and unless such excess has been approved by at least two-thirds of the members of such governing board voting at a public hearing. The advertisement specified in this paragraph (c) shall be in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity and shall appear twice therein. The second such appearance shall not be more than eight days prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a public hearing shall be held to consider increasing your property taxes for capital expenditures". Such advertisement shall be in a type no smaller than eighteen-point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, and the purpose of such hearing and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed matter. Such advertisement shall also state what the property taxes would be without such excess and what the property taxes will be with such excess and the percentage difference between such property taxes. Any public hearing held pursuant to this paragraph (c) shall be open to the general public. An opportunity shall be provided for all persons to present oral testimony within such reasonable time limits as shall be set by the board conducting the hearing. Prior to the conclusion of the public hearing, the governing board of the taxing entity shall publicly announce the percent by which the mill levy required to raise such excess exceeds the mill levy computed without such excess.

(1.3) Repealed.

(1.5) All property tax revenues, except such revenues as are exempted in subsection (1) of this section, raised from any property tax levied by a taxing entity which is subject to this section, shall be combined for the purpose of determining the total amount of property tax revenue which the taxing entity is allowed to raise subject to the limitation imposed by this section. The limitation shall be applied to such aggregate property tax revenues. However, such aggregate amount shall not include any property tax revenue which is raised by or on behalf of a district, authority, or area which is within but is not comprised of the entire taxing entity and which is raised by a tax upon only property within such district, authority, or area; such property tax revenue is subject to a limitation independent of the limitation which is applied to the taxing entity within which such district, authority, or area is located. No statute establishing a set mill levy or establishing a maximum mill levy or authorizing an additional mill levy for a special purpose shall be construed as authorizing the taxing entity to exceed the limitation imposed by this section.

(1.7) For property tax years commencing on or after January 1, 1988, any taxing entity which is subject to the provisions of this section shall not levy any property tax for purposes which are exempt from the limitation imposed by subsection (1) of this section in an amount which is greater than the amount of

revenues required to be raised for such purposes during any year as specified by the provisions of any contract entered into by such taxing entity or any schedule of payments established for the payment of any obligation incurred by such taxing entity. Where bonds, contractual obligations, or capital expenditures have been approved, but actual revenues required for such purposes are not known at the time the levy is set, the taxing entity may base its levy on the estimated revenues which are so required for one year only and in subsequent years the levy shall be based on the actual revenues which are so required. Nothing in this subsection (1.7) shall preclude refunding of any obligation or contract.

(2) If an increase over said limitation is allowed by the division of local government in the department of local affairs or voted by the electors of a taxing entity under the provisions of section 29-1-302, the increased revenue resulting therefrom shall be included in determining the limitation in the following year. However, any portion of such increased revenue which is allowed as a capital expenditure pursuant to section 29-1-302 (1.5) shall not be included in determining the limitation in the following year.

(3) The limitations of this part 3 shall apply to home rule counties unless provisions are included in the county home rule charter which are, as determined by the division of local government, equal to or more restrictive than the provisions of this part 3.

(4) In the event of a consolidation or merger, in whole or in part, of two or more political subdivisions or taxing entities, the surviving entity or the entity assuming service responsibilities shall use a direct proportion of the combined entities' prior year property tax revenues as the base for computing the limitation in the year first succeeding such consolidation or merger.

(5) Repealed.

(6) Where a taxing entity exceeds the limitation imposed by subsection (1) of this section during any year, the division of local government shall order a reduction in the authorized revenue of the taxing entity for the subsequent year in an amount which offsets the excess revenues levied in the preceding year. Such order shall be preceded by notice to the taxing entity of the proposed order and an opportunity for the taxing entity to respond prior to issuance of the order.

Source: L. 13: p. 560, § 11. L. 15: p. 403, § 1. L. 17: p. 429, § 1. C.L. § 7214. L. 29: p. 546, § 1. L. 31: p. 701 § 1. CSA: C. 142, § 39. L. 52: p. 142, § 1. CRS 53: § 36-3-2. L. 55: p. 253, § 1. C.R.S. 1963: § 88-3-1. L. 69: p. 1053, § 24. L. 70: p. 378, § 3. L. 71: p. 957, § 1. L. 76: Entire section amended, p. 685, § 1, effective July 1. L. 80: (1) amended, p. 678, § 2, effective April 13. L. 81: (1) and (2) amended and (1.3) and (1.5) added, p. 1395, § 5, effective June 19; (1) amended, p. 1612, § 6, effective June 19. L. 83: (1) amended and (1.2) added, p. 1199, § 1, effective May 25; (1) amended, p. 1196, § 1, effective June 3; (1) amended, p. 2085, § 3, effective October 13. L. 85: (1.2)(c) amended, p. 1024, § 1, effective July 1. L. 86: (1), (1.2)(a), (1.2)(c), (1.5), and (2) amended and (1.3) R&RE, pp. 1021, 1023, §§ 2, 3, effective May 16. L. 87: (1) amended, p. 1178, § 1, effective April 16; (1.2)(a), (1.5), and (4) amended, p. 1181, § 1, effective April 30; (1.2)(c) amended, p. 1184, § 1, effective May 1. L. 88: (1) and (1.3) amended and (1.7) and (6) added, p. 1279, § 3, effective May 23; (1) and (1.3) amended and (5) added, pp. 1099, 1268, §§ 1, 3, effective May 29. L. 89: (1) amended, p. 1467, § 35, effective June 7. L. 90: (1) amended, p. 1704, § 39, effective June 9. L. 91: (1) amended, p. 1969, § 1, effective April 19. L. 93: (1)(a) amended, p. 1281, § 1, effective June 6. L. 96: (1)(a) amended, p. 16, § 1, effective February 22.
Editor's note: (1) Amendments to subsection (1) by House Bill 81-1320 and House Bill 81-1613 were harmonized.

(2) Amendments to subsection (1) by House Bill 83-1011 and House Bill 83-1405 were harmonized.

(3) Subsection (1.3)(c) provided for the repeal of subsection (1.3), effective June 30, 1991. (See L. 88, p. 1279.) Subsection (5)(c) provided for the repeal of subsection (5), effective January 1, 1991. (See L. 88, p. 1268.)

(4) Amendments to subsection (1) by Senate Bill 88-184, House Bill 88-1016, and Senate Bill 88-126 were harmonized.

(5) Amendments to subsection (1.3) by House Bill 88-1016 and Senate Bill 88-184 were harmonized.

Annotation

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, § 600.

C.J.S. See 20 C.J.S., Counties, §§ 230, 231; 64 Municipal Corporations, § 1986.

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For comment, "Colorado Public School Financing: Constitutional Issues", see 59 U. Colo. L. Rev. 149 (1988).

Decreased debt service not offset against revenue increase to reduce increase and avoid special election. Any decrease in a district's debt service is a separate matter and cannot be offset against the increase in general revenue so as to reduce the percentage increase for purposes of determining whether a special election is required for a proposed tax levy. Stegon v. Pueblo W. Metro. Dist., 198 Colo. 128, 596 P.2d 1206 (1979).

County exempt from the five and one half percent revenue limitation of this section where voters had approved a ballot question allowing the county to keep all property tax revenues generated by its existing mill levy even though the ballot question did not specifically refer to that limitation. Wilber v. Bd. of County Comm'rs of County of La Plata, 42 P.3d 49 (Colo. App. 2001).

Applied in Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978); Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

29-1-301.1. Levies reduced – limitation – 1988. (Repealed)

Source: L. 86: Entire section added, p. 1020, § 1, effective January 1, 1987. L. 87: (2) amended, p. 1187, § 1, effective March 12; (1) amended, p. 1179, § 2, effective April 16; (1) amended, p. 1181, § 2, effective April 30.

Editor's note: (1) Amendments to subsection (1) by House Bill 87-1011 and House Bill 87-1140 were harmonized.

(2) Subsection (3) provided for the repeal of this section, effective January 1, 1988. (See L. 86, p. 1020.)

29-1-302. Increased levy – submitted to people at election.

(1) If the board of any special district authorized to levy a tax or any officer charged with the duty of levying a tax in any special district is of the opinion that the amount of tax limited by section 29-1-301 will be insufficient for the needs of such special district for the current year, the question of an increased levy may be submitted to the division of local government in the department of local affairs, and it is the duty of said division to consider the public awareness of the question, the public support therefor, and the public objection thereto and to examine the needs of such special district and ascertain from such examination the financial condition thereof, and, if in the opinion of the division such special district is in need of additional funds, the said division may grant an increased levy for such special district above the limits specified in this part 3, and such special district is authorized to make such excess levy. The division of local government shall not under any circumstance grant an increased levy based upon increased valuation for assessment purposes from reappraisals. As used in this section, "special district" means any district organized pursuant to law, except school districts operating pursuant to title 22, C.R.S., which is authorized to levy an ad valorem tax on property within its boundaries, and the term includes, but is not

limited to, districts organized under article 20 of title 30, C.R.S., articles 25 and 35 of title 31, C.R.S., and titles 32 and 37, C.R.S.

(1.5) (a) The general assembly recognizes the need for periodic increased levies in order to finance capital projects and purchases of capital assets which are a one-time, nonrecurring expenditure. It is the intent of the general assembly that the division of local government may grant an increased levy for such expenditures if, in its opinion, a special district, to which section 29-1-301 (1.2) (a) does not apply, is in need of additional funds for such expenditures. Any increased levy granted by the division of local government in a given year which is designated by it as a capital expenditure shall not be included in determining the limitation in the following year. If the division is of the opinion that such additional funds will be needed for two or more years after reviewing the long-range plan of the special district concerning the expenditure of such funds, it may grant an increased levy, and such increased levy shall automatically be allowed for each year during which such additional funds will be needed. During such years, the increased levy for each year shall not be included in determining the limitation in the following year.

(b) Repealed.

(2) (a) In case the division of local government, after consideration of the public awareness of the question, the public support therefor, and the public objection thereto, refuses or fails within ten days after submission to it of an adopted budget to grant an increased levy to a special district pursuant to subsection (1) or (1.5) of this section, the question may be submitted to the qualified electors of said district at a general or special election called for the purpose and in the manner provided by law for calling special elections in such special district.

(b) Any taxing entity to which section 29-1-301 (1) applies may, at its discretion, submit the question of an increased levy directly to an election of the qualified electors without first submitting the question of an increased levy to the division of local government.

(c) In lieu of utilizing the provisions of section 29-1-303, any city or town having a population of two thousand or less, based upon the latest estimates of the department of local affairs, may utilize the provisions of subsections (1) and (1.5) of this section and paragraph (a) of this subsection (2).

(3) Due notice of submission of the question of whether to grant the increased levy shall be given as required by articles 1 to 13 of title 1, C.R.S. If a majority of the votes cast at any such election is in favor of the increased levy, then the officers charged with levying taxes may make such increased levy for the year or years voted upon.

(4) to (6) Repealed.

Source: L. 13: p. 560, § 12. C.L. § 7216. CSA: C. 142, § 41. L. 52: p. 142, § 2. CRS 53: § 36-3-5. L. 55: p. 253, § 2. C.R.S. 1963: § 88-3-2. L. 69: p. 1053, § 25. L. 70: p. 378, § 4. L. 71: p. 957, § 2. L. 72: p. 611, § 127. L. 76: (1) and (2) amended, p. 685, § 2, effective July 1. L. 77: (3) added, p. 1748, § 21, effective January 1, 1978. L. 81: (1) amended, p. 1388, § 1, effective May 27; (6) added, p. 1390, § 1, effective June 19; (1.5) added, p. 1397, § 6, effective June 1. L. 83: (1.5) R&RE, p. 1201, § 3, effective May 25; (1.5) amended, p. 1203, § 1, effective April 29; (1) amended, p. 2072, § 1, effective October 13. L. 85: (1.5)(b) and (3) amended, p. 1025, § 2, effective May 22; (4) repealed, p. 1363, § 26, effective June 28. L. 86: (1), (1.5)(a), and (2) amended and (1.5)(b), (5), and (6) repealed, pp. 1024, 1027, §§ 4, 8, effective January 1, 1987. L. 87: (3) amended, p. 1181, § 3, effective April 30; (3) amended, p. 1185, § 2, effective May 1. L. 94: (3) amended, p. 1187, § 82, effective July 1.

Editor's note: (1) Amendments to subsection (3) by House Bill 87-1011 and House Bill 87-1012 were harmonized.

(2) The internal reference in subsection (2)(c) to section 29-1-303 refers to that section as it existed prior to its repeal on January 1, 1990.

Annotation

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983).

This section is not opposed to § 7 of art. X, Colo. Const. This provision of the fundamental law has not the effect of prohibiting legislation to limit the tax which may be imposed for county purposes. Tallon v. Vindicator Consol., Gold Mining Co., 59 Colo. 316, 149 P. 108 (1915).

Notice requirements for special elections should be construed more strictly than for general elections. Stegon v. Pueblo W. Metro. Dist., 198 Colo. 128, 596 P.2d 1206 (1979).

Statutory language requiring 30 days notice is mandatory and should be strictly construed. Stegon v. Pueblo W. Metro. Dist., 198 Colo. 128, 596 P.2d 1206 (1979).

County not required to lower existing mill levy where voters had approved ballot question to allow the county to keep all property tax revenues generated by its existing mill levy. Approval of the ballot question exempted the county from the five and one half percent revenue limitation of § 29-1-301 (1) even though the ballot question did not specifically refer to that limitation. Wilber v. Bd. of County Comm'rs of County of La Plata, 42 P.3d 49 (Colo. App. 2001).

Applied in Colo. & S. Ry. v. Bd. of Comm'rs, 70 Colo. 8, 196 P. 331 (1921).

29-1-302. Revenue – raising limitation exemption – public disclosure of tax levy. (Repealed)

Source: L. 81: Entire section added, p. 1392, § 1, effective January 1, 1995. L. 82: (2)(b) amended, p. 457, § 1, effective March 15. L. 83: (2)(b) amended, p. 2073, § 2, effective October 13. L. 85: (1)(b) and (4) amended, p. 1026, § 3, effective July 1. L. 86: (1)(a), (2), and (10) amended, p. 1025, § 5, effective May 16; (9) repealed, p. 1027, § 8, effective January 1, 1987. L. 87: (2)(b) amended, p. 1187, § 2, effective March 12; (1)(b) and (4) amended, p. 1185, § 3, effective May 1. L. 89: (2) amended, p. 1464, § 28, effective June 7.

Editor's note: Subsection (10) provided for the repeal of this section, effective January 1, 1990. (See L. 86, p. 1025.)

29-1-304. Funding for state-mandated programs. (Repealed)

Source: L. 81: Entire section added, p. 1394, § 2, effective June 19. L. 86: Entire section amended, p. 1026, § 6, effective January 1, 1987. L. 91: Entire section repealed, p. 914, § 4, effective June 7.

29-1-304.5. State mandates – prohibition – exception.

(1) No new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service. In the event that such additional moneys for reimbursement are not provided, such mandate or increased level of service for an existing state mandate shall be optional on the part of the local government.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of federal law;

(b) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of a final state or federal court order;

(c) Any modification in the share of school districts for financing the state public school system;

(d) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level or service which is the result of any state law enacted prior to the second regular session of the fifty-eighth general assembly or any rule or regulation promulgated thereunder;

(e) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is undertaken at the option of a local government which results in additional requirements or standards; and

(f) Any order from the state board of education pertaining to the establishment, operation, or funding of a charter school or any modification of the statutory or regulatory responsibilities of school districts pertaining to charter schools.

(3) For purposes of this section:

(a) "Increase in the level of service for an existing state mandate" does not include any increase in expenditures necessary to offset an increase in costs to provide such service due to inflation or any increase in the number of recipients of such service unless such increase results from any requirement of law which either enlarges an existing class of recipients or adds a new class of recipients.

(b) "Local government" means any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state.

(c) "Requirement of federal law" means any federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which either requires the state to take action or does not directly require the state to take action but will, according to federal law, result in the loss of federal funds if state action is not taken to comply with such federal action.

(d) "State mandate" means any legal requirement established by statutory provision or administrative rule or regulation which requires any local government to undertake a specific activity or to provide a specific service which satisfies minimum state standards, including, but not limited to:

(I) Program mandates which result from orders or conditions specified by the state as to what activity shall be performed, the quality of the program, or the quantity of services to be provided; and
(II) Procedural mandates which regulate and direct the behavior of any local government in providing programs or services, including, but not limited to, reporting, fiscal, personnel, planning and evaluation, record-keeping, and performance requirements.

Source: L. 91: Entire section added, p. 912, § 3, effective June 7. L. 2004: (2)(f) added, p. 1591, § 23, effective June 3.

29-1-304.7. Programs delegated by the general assembly – termination or reduction- requirements.

(1) Any local government which, pursuant to section 20 (9) of article X of the state constitution, intends to reduce or terminate its subsidy to any program delegated to such local government by the general assembly for administration shall provide written notice of such intention to the governor, the president of the senate, the speaker of the house of representatives, the chairman of the joint budget committee of the general assembly, and the head of any state department or agency affected.

(2) The notice required by this section shall contain information sufficient to identify the program and shall state whether the local government intends to reduce or terminate its subsidy to the program. If a reduction is intended, the notice shall also specify the amount of such reduction.

(3) The notice may specify an effective date for such reduction or termination; except that in no event shall the reduction or termination take effect prior to ninety days after receipt of the notice by all of the parties named in subsection (1) of this section.

(4) Any reduction or termination for which notice is given pursuant to this section shall take place over a three-year period in three equal annual amounts.

(5) The director of the division of local government of the department of local affairs is authorized and empowered, after consultation with the affected departments or agencies, if any, to promulgate, adopt, amend, and repeal such rules and regulations, as may be necessary for the implementation and administration of this section.

Source: L. 93: Entire section added, p. 5, § 1, effective February 16.

29-1-304.8. Programs not delegated by the general assembly.

(1) A local district, within the meaning of section 20 (2) of article X of the state constitution, shall not reduce or end its subsidy pursuant to section 20 (9) of said article to any program if:

(a) The program is one of the inherent powers, duties, or functions of an officer whose office is created as a county office by the state constitution, including but not limited to the county clerk and recorder, the county sheriff, the county coroner, the county treasurer, the county surveyor, the county assessor, and the county attorney; or

(b) The program is required by the state constitution to be administered by the local district, including but not limited to duties related to the maintenance of the state court system and the equalization of property tax assessments.

(2) Nothing in the general assembly's enactment of a requirement that a local district contribute toward the funding of a program operated by an agency or officer which is not under the jurisdiction of that local district, including but not limited to the requirement that counties pay a portion of the costs of maintaining the office of the district attorney, shall imply that the general assembly has delegated the program to the local district for administration within the meaning of section 20 (9) of article X of the state constitution.

(3) A board of county commissioners shall not cease exercising or performing its inherent legislative, executive, or quasi-judicial powers, duties, or functions in the guise of reducing or ending its subsidy to a program pursuant to the provisions of section 20 (9) of article X of the state constitution.

(4) As used in this section:

(a) "Administration" means the executive management or superintendence of public affairs, as distinguished from policy-making.

(b) "Inherent" means in the essential character of or belonging by nature or settled habit to.

Source: L. 93: Entire section added, p. 1517, § 21, effective June 6.

29-1-305. Mill levy limits – temporary exceptions – repeal. (Repealed)

Source: L. 83: Entire section added, p. 1197, § 2, effective June 3. L. 86: Entire section repealed, p. 1027, § 8, effective January 1, 1987.

PART 4 ASSOCIATIONS OF POLITICAL SUBDIVISIONS

29-1-401. Associations formed – purpose.

Two or more of the political subdivisions of the state may, in their discretion and in addition to powers granted before April 22, 1957, form and maintain associations for the purposes of promoting through investigation, discussion, and cooperative effort interests and welfare of the several political subdivisions of the state of Colorado and to promote a closer relation between the several political subdivisions of the state

Source: L. 57: p. 522, § 1. CRS 53: § 88-3-1. C.R.S. 1963: § 88-4-1.

29-1-402. Instrumentality of subdivision.

Any such association so formed shall be an instrumentality of the political subdivisions which are members thereof.

Source: L. 57: p. 522, § 2. CRS 53: § 88-3-2. C.R.S. 1963: § 88-4-2.

29-1-403. Legislative representation – expenses – definitions.

(1) The legislative bodies of local, political subdivisions may enter into associations and, through a representative of the association, attend the general assembly of the state of Colorado and the United States Congress and any committees thereof, and present information to aid the passage of legislation which the association deems beneficial to the local agencies in the association or to prevent the passage of legislation which the association deems detrimental to the local agencies in the association. The cost and expense incident thereto are proper charges against the local agencies comprising the association; but proper expenditures of the association shall include only the actual and necessary expenses for one representative of each association and shall not include any expenditures for expenses, travel, or entertainment of any persons other than the representative of the association.

(2) "Local agency", as used in this part 4, means county, city, or city and county. "Legislative body", as used in this part 4, means board of county commissioners in the case of a county or city and county and city council or board of trustees in the case of a city or town.

Source: L. 57: p. 522, § 3. CRS 53: § 88-3-3. C.R.S. 1963: § 88-4-3. L. 72: p. 611, § 128.

PART 5 LOCAL GOVERNMENT UNIFORM ACCOUNTING LAW

29-1-501. Short title.

This part 5 shall be known and may be cited as the "Colorado Local Government Uniform Accounting Law".

Source: L. 65: p. 857, § 1. C.R.S. 1963: § 88-5-1.

29-1-502. Definitions.

As used in this part 5, unless the context otherwise requires:

(2) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado, any institution, department, agency, or authority of any of the foregoing, including any county or municipal housing authority; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. Effective January 1, 1990, the office of the county public trustee shall be deemed an agency of the county for the purposes of this part 5. "Local government" does not include the fire and police pension association, any public entity insurance pool formed pursuant to state law, the university of Colorado hospital authority created in section 23-21-503, C.R.S., or any association of political subdivisions formed pursuant to section 29-1-401.

Source: L. 65: p. 857, § 2. C.R.S. 1963: § 88-5-2. L. 81: (2)(e) added, p. 1401, § 1, effective April 24. L. 89: (2) R&RE, p. 1256, § 3, effective May 2. L. 91: (2) amended, p. 588, § 13, effective October 1.

Cross references: For the legislative declaration contained in the act amending subsection (2), see section 1 of chapter 99, Session Laws of Colorado 1991.

29-1-503. Appointment of advisory committee – powers and duties – sunset review.

(1) The governor, with the advice and consent of the senate, shall appoint an advisory committee on governmental accounting to assist the auditor in formulating and prescribing a classification of accounts which shall consist of six members, one of whom shall be a member of the Colorado society of certified public accountants and the remaining five of whom shall be active in finance matters either as elected officials or finance officers employed by a unit of local government as defined in section 29-1-502 and each of whom shall represent one of the following levels of local government: Counties, cities and counties, cities and towns, school districts and junior college districts, and local improvement or special service districts and other local entities having authority under the general laws of this state to levy taxes or impose assessments.

(2) Prior to June 15, 1987, the terms of the members shall be six years, except for initial appointments when two members shall be appointed for terms of two years, two members shall be appointed for terms of four years, and two members shall be appointed for terms of six years. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, members shall be appointed for terms of four years each.

(3) The state auditor and the controller shall be ex officio nonvoting members of the advisory committee on governmental accounting; except that the state auditor shall act as chairman of the committee and shall cast a vote only in the case of a tie.

(4) Any decision shall be adopted only upon the majority vote of the members present.

(5) (Deleted by amendment, L. 93, p. 674, § 10, effective May 1, 1993.)

Source: L. 65: p. 857, § 3. C.R.S. 1963: § 88-5-3. L. 86: (5) added, p. 423, § 51, effective March 26. L. 87: (2) amended, p. 912, § 24, effective June 15. L. 93: (5) amended, p. 674, § 10, effective May 1.

29-1-504. Auditor – powers and duties.

(1) The auditor shall formulate, prescribe, and publish a classification of accounts with the approval of the advisory committee on governmental accounting which shall be uniform for every level of local government as defined in section 29-1-502; except that each level of government may be classified

according to population, and, in that event, each classification of accounts shall be uniform within each class; and except that the classification of accounts prescribed for the purpose of public schools shall be subject to the approval of the state board of education; and further except that the classification of accounts prescribed for the purpose of junior college districts shall be subject to the approval of the state board for community colleges and occupational education.

(2) Upon completion of the classification of accounts for each level of government, the auditor shall distribute the published copies of the classification of accounts promulgated by his office to each unit of local government defined in section 29-1-502 and may distribute such copies to other interested parties. Any amendments or alterations to the original published copies shall also be distributed to each unit of local government in the same manner.

(3) Upon request of the local government officials, the auditor shall assist local government officials in implementing the classification of accounts promulgated under the provisions of this section. Any travel and subsistence expense incurred by the auditor in performing such requests shall be paid by the local government.

(4) In accordance with the provisions of subsection (1) of this section, the auditor shall formulate classifications of inventory accounts for local governments; such accounts shall be required to be kept only with respect to items of property having an original cost that equals or exceeds an amount established by the governing body of each local government, unless such items having a value of less than the amount established by such governing body are required to be inventoried by directive of the state auditor. In no event shall the amount established by the governing body of any local government pursuant to this subsection (4) exceed the amount specified in rules promulgated by the state controller pursuant to section 24-30-202, C.R.S., regarding inventory accounts for items of state property.

Source: L. 65: p. 858, § 4. C.R.S. 1963: § 88-5-4. L. 69: p. 698, § 2. L. 75: (1) amended, p. 787, § 12, effective July 1. L. 98: (4) amended, p. 140, § 1, effective August 5.

Annotation

C.J.S. See 20 C.J.S., Counties, §§ 134, 135.

29-1-505. Annual compendium.

(1) Upon completion of the first calendar year following the completion of the classification of accounts and at the close of each calendar year thereafter, the division of local government in the department of local affairs shall publish or cause to be published an annual compendium of local government as derived from the annual audit reports filed under the provisions of the Colorado local government audit law and shall include audit reports for any fiscal years ending within the calendar year. The compendium shall be arranged by the type of local government and by classes within each type as required by the classification of accounts promulgated under section 29-1-5042; but, if an annual compendium of any type of local government is published by any state agency, such compendium may be accepted by the division of local government as a part of the annual compendium set out in this section.

(2) The division, with the approval of the executive director of the department of local affairs, may include such other information as may be deemed important for use by local government officials to promote and encourage sound fiscal management.

Source: L. 65: p. 859, § 5. C.R.S. 1963: § 88-5-5. L. 71: p. 959, § 1.

29-1-506. Continuing inventory.

(1) The governing body of each local government shall make or cause to be made an annual inventory of property, both real and personal, belonging to such political subdivision; except that an inventory shall be required only with respect to items of property having an original cost that equals or exceeds an amount established by the governing body of each local government, unless such items having a value of less than the amount established by such governing body are required to be inventoried by directive of the state auditor. In no event shall the amount established by the governing body of any local government pursuant to this subsection (1) exceed the amount specified in rules promulgated by the state controller pursuant to section 24-30-202, C.R.S., regarding inventory accounts for items of state property.

(2) Repealed.

Source: L. 69: p. 698, § 1. C.R.S. 1963: § 88-5-6. L. 75: Entire section amended, p. 707, § 7, effective July 14. L. 88: Entire section amended, p. 821, § 31, effective May 24. L. 89: (1) amended and (2) repealed, pp. 1259, 1260, §§ 10, 11, effective May 3. L. 98: (1) amended, p. 140, § 2, effective August 5.

Part 6 Local Government Audit Law

29-1-601. Short title.

This part 6 shall be known and may be cited as the "Colorado Local Government Audit Law".

Source: L. 65: p. 860, § 1. C.R.S. 1963: § 88-6-1.

29-1-602. Definitions.

As used in this part 6, unless the context otherwise requires:

(1) "All funds and activities" means all financial activities of the reporting local government as those activities are defined by generally accepted accounting principles for governments.

(2) "Auditor" means a certified public accountant licensed to practice in Colorado as an individual, partnership, or professional corporation pursuant to article 2 of title 12, C.R.S., who makes an audit and prepares a report thereon as provided in this part 6.

(3) "Financial statement" means a report made by a local government summarizing the results of all funds and activities of the local government for a particular period, the duration of that period to be determined by the local government.

(4) "Fiscal year" means the period commencing January 1 and ending December 31; except that, for school districts and junior college districts, "fiscal year" means the period commencing July 1 and ending June 30, and "fiscal year" may mean the federal fiscal year for water conservancy districts which have contracts with the federal government.

(5) (a) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. Effective January 1, 1990, the office of the county public trustee shall be deemed an agency of the county for the purposes of this part 6.

(b) Except for purposes of section 29-1-603 (4), "local government" does not include the fire and police pension association, any county or municipal housing authority, any public entity insurance pool formed

pursuant to state law, the Colorado sheep and wool authority, the Colorado beef council authority, the Colorado horse development authority, the statewide internet portal authority, or any association of political subdivisions formed pursuant to section 29-1-401.

Source: L. 65: p. 860, § 2. C.R.S. 1963: § 88-6-2. L. 69: p. 699, §§ 1, 2. L. 89: Entire section R&RE, p. 1256, § 4, effective May 2. L. 92: (4) amended, p. 550, § 27, effective May 28. L. 93: (5)(b) amended, pp. 1846, 1856, §§ 4, 5, effective July 1. L. 95: (5)(b) amended, p. 1001, § 3, effective July 1. L. 98: (5)(b) amended, p. 1262, § 9, effective June 1. L. 2007: (5)(b) amended, p. 702, § 1, effective May 3.

Editor's note: (1) Amendments to subsection (5)(b) by Senate Bill 93-240 and Senate Bill 93-243 were harmonized.

(2) Section 2 of chapter 191, Session Laws of Colorado 2007, provides that the act amending subsection (5)(b) applies to the statewide internet portal authority and audits made thereof before, on, or after May 3, 2007.

29-1-603. Audits required. (1) The governing body of each local government in the state shall cause to be made an annual audit of the financial statements of the local government for each fiscal year. To the extent that the financial activities of any local government, or of any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among local governments, are fully reported in the audit or audits of a parent local government or governments, a separate audit is not required. Such audit shall be made as of the end of the fiscal year of the local government, or, at the option of the governing body, audits may be made at more frequent intervals. As part of the audit of a school district, the auditor shall ensure that the school district is complying with the provisions of section 22-44-204 (3), C.R.S., concerning the use of the financial policies and procedures handbook adopted by the state board of education. The audit report shall contain a fiscal year report of receipts and expenditures of each fund with designated program reports in accordance with the financial policies and procedures handbook. The supplemental schedules of receipts and expenditures for each fund shall be in the format prescribed by the state board of education and shall be in agreement with the audited financial statements of the school district. The department of education shall provide assistance to auditors and school districts in implementing and following these requirements.

(2) The audits of each local government shall be conducted in accordance with generally accepted auditing standards by an auditor, as defined in section 29-1-602, but in no event shall any auditor audit the records, books, or accounts which he has maintained.

(3) The expenses of audits required by this part 6, whether ordered by the local government or the state auditor, shall be paid by the local government for which the audit is made. It is the duty of the governing body of the local government to make provision for payment of said expenses.

(4) The entities listed in section 29-1-602 (5) (b) shall annually have an audit made by a certified public accountant and shall file a copy of the audit report made pursuant to such audit with the state auditor no later than thirty days after the report is received by such entity.

(5) For the audit for the 1994-95 budget year and budget years thereafter, the audit report of each school district shall include a calculation of the school district's fiscal year spending under section 20 of article X of the state constitution; except that, if a school district has received voter approval to retain revenues in excess of its spending limits under said section 20 (7), the school district shall include a calculation of its fiscal year spending for the first fiscal year following said voter approval but need not include such calculation for fiscal years thereafter.

Source: L. 65: p. 860, § 3. C.R.S. 1963: § 88-6-3. L. 75: (2) amended, p. 960, § 1, effective June 16; (1) amended, p. 708, § 8, effective July 14. L. 88: (1) amended, p. 822, § 32, effective May 24. L. 89: (1) and

(2) amended and (4) added, p. 1257, § 5, effective May 2. L. 91: (1) amended, p. 1918, § 43, effective June 1. L. 95: (5) added, p. 619, § 21, effective May 22. L. 99: (5) amended, p. 177, § 6, effective March 30.

ANNOTATION

C.J.S. See 20 C.J.S., Counties, § 136.

29-1-604. Exemptions.

(1) Any local government where neither revenues nor expenditures exceed one hundred thousand dollars in any fiscal year commencing on or after January 1, 1998, may, with the approval of the state auditor, be exempt from the provisions of section 29-1-603.

(2) Any local government where revenues or expenditures for any fiscal year commencing on or after January 1, 2004, are at least one hundred thousand dollars but not more than five hundred thousand dollars may, with the approval of the state auditor, be exempt from the provisions of section 29-1-603.

(3) The governing body of any local government wishing to claim exemption from the audit requirements pursuant to subsection (1) or (2) of this section shall file an application for exemption from audit. Any application filed pursuant to subsection (1) of this section shall be prepared by a person skilled in governmental accounting. Any application filed pursuant to subsection (2) of this section shall be prepared by an independent accountant with knowledge of governmental accounting. Any application filed pursuant to this subsection (3) shall be completed in accordance with regulations issued by the state auditor and shall be personally reviewed, approved, and signed by a majority of the members of the governing body. The application is to be filed with the state auditor within three months after the close of the local government's fiscal year. No exemption shall be granted prior to the close of said fiscal year. Failure to file such application shall cause the local government to lose its exemption from the provisions of section 29-1-603 for that fiscal year and the ensuing fiscal year.

Source: L. 65: p. 861, § 4. C.R.S. 1963: § 88-6-4. L. 77: Entire section amended, p. 1397, § 1, effective March 16. L. 83: Entire section amended, p. 1206, § 1, effective March 22. L. 85: (3) amended, p. 1019, § 3, effective July 1. L. 89: (1) and (3) amended, p. 1258, § 6, effective May 2. L. 98: Entire section amended, p. 292, § 1, effective August 5. L. 2004: (2) amended, p. 186, § 1, effective August 4.

29-1-605. Contents of report.

(1) All reports on audits of local governments shall contain at least the following:

(a) Financial statements which shall be prepared, insofar as possible, in conformity with generally accepted governmental accounting principles setting forth the financial position and results of operation of each fund and activity of the local government and a comparison of actual figures with budgeted figures for each fund or activity for which a budget has been prepared, which financial statements shall be the representations of the local government;

(b) The unqualified opinion of the auditor with respect to the financial statements of the local government or, if an unqualified opinion cannot be expressed, a qualified opinion or disclaimer of opinion containing an explanation of the reasons therefor;

Source: L. 65: p. 861, § 5. C.R.S. 1963: § 88-6-5.

29-1-606. Submission of reports.

(1) (a) Except as otherwise required in paragraph (b) of this subsection (1), each audit required by this part 6 shall be completed and the audit report thereon submitted by the auditor to the local government within six months after the close of the fiscal year of the local government.

(2) One copy of the audit report shall be maintained by the local government as a public record for public inspection at all reasonable times at the principal office of the local government.

(3) The local government shall forward a copy of the audit report to the state auditor within thirty days after receipt of said audit. The state auditor shall retain such copy in his office as a public record where it shall be available for public inspection at all reasonable times. In the case of a school district, a copy of the audit report shall also be submitted to the commissioner of education within thirty days after the audit report is received.

(4) If within one month after the time period provided in subsection (1) of this section the local government is unable to file an audit report with the state auditor, the governing body of the local government shall submit to the state auditor a written request for extension of time to file. Such request for extension shall be submitted no later than one month after the time period provided in subsection (1) of this section. The state auditor may authorize an extension of such time for not more than sixty days.

(5) (a) If the audit report of a local government is not filed with the state auditor within two months after the time period provided in subsection (1) of this section and the local government has not been granted an extension or exemption from the filing requirement, the state auditor shall make written notice to the local government of its delinquent status.

(b) If the audit report of a local government is not filed with the state auditor within three months after the time period provided in subsection (1) of this section, the state auditor shall either:

(I) Notify any county treasurer holding moneys of the local government which were generated pursuant to the taxing authority of such local government of the delinquent audit status of such local government and authorize such county treasurer to prohibit the release of any such moneys until the local government submits an audit report to the state auditor; or

(II) Make or cause such audit to be made at the expense of the local government. The local government shall reimburse the state auditor for all amounts advanced for the making of such audit, including any legal and court costs incurred in the making of such audit.

(6) Repealed.

Source: L. 65: p. 862, § 6. C.R.S. 1963: § 88-6-6. L. 75: (1) amended, p. 708, § 9, effective July 14. L. 85: (4) and (5) amended and (6) added, p. 1019, § 4, effective March 1; (6) amended, p. 1372, § 53, effective July 1. L. 88: (1) amended, p. 822, § 33, effective May 24. L. 89: (1) and (4) amended, (5) R&RE, and (6) repealed, pp. 1258, 1259, 1260, §§ 7, 8, 11, effective May 2. L. 93: (1), (4), (5)(a), and IP(5)(b) amended, p. 889, § 14, effective May 6.

29-1-607. Duties of state auditor.

(1) The state auditor shall examine all reports submitted to him to determine whether the provisions of this part 6 have been complied with. If the state auditor finds that they have not been complied with, he shall notify the governing body of the local government and the auditor who submitted said audit report by submitting to them a statement of deficiencies. If the deficiencies are not corrected within ninety days from the date of the statement of deficiencies or within twelve months after the end of the fiscal year of the local government, whichever is later, the state auditor shall proceed in the same manner as provided in section 29-1-606 (5) as though no report had been filed.

(2) If the state auditor, in examining any audit report, finds an indication of violation of state law, he shall, after making such investigation as he deems necessary, consult with the attorney general, and if after such investigation and consultation he has reason to believe that there has been a violation of state law on the part of any person, he shall certify the facts to the district attorney of the judicial district in which the alleged violation occurred who shall cause appropriate proceedings to be brought.

(3) The auditor shall formulate classifications of inventory accounts for local governments, which accounts shall be required to be kept only with respect to items of property having an original cost that equals or exceeds an amount established by the governing body of each local government, unless such items having a value of less than the amount established by such governing body are required to be inventoried by directive of the state auditor. In no event shall the amount established by the governing body of any local government pursuant to this subsection (3) exceed the amount specified in rules promulgated by the state controller pursuant to section 24-30-202, C.R.S., regarding inventory accounts for items of state property.

Source: L. 65: p. 862, § 7. C.R.S. 1963: § 88-6-7. L. 69: p. 698, § 3. L. 89: (3) amended, p. 1259, § 9, effective May 2. L. 98: (3) amended, p. 141, § 3, effective August 5.

29-1-608. Violations – penalties.

(1) If it appears that an auditor has knowingly issued an audit report under the provisions of this part 6 containing any false or misleading statement, the state auditor shall report the matter in writing to the state board of accountancy and to the local government.

(2) Any member of the governing body of the local government or any member, officer, employee, or agent of any department, board, commission, or other agency who knowingly and willfully fails to perform any of the duties imposed upon him by this part 6, or who knowingly and willfully violates any of the provisions of this part 6, or who knowingly and willfully furnishes to the auditor or his employee any false or fraudulent information is guilty of malfeasance and, upon conviction thereof, the court shall enter judgment that such person be removed from office or employment. It is the duty of the court rendering such judgment to cause immediate notice of such removal from office or employment to be given to the proper officer of the local government so that the vacancy thus caused may be filled.

Source: L. 65: p. 863, § 8. C.R.S. 1963: § 88-6-8.

PART 7 CONSTRUCTION BIDDING FOR STATE-FUNDED LOCAL PROJECTS

29-1-701. Short title.

This part 7 shall be known and may be cited as the "Construction Bidding for State-funded Local Projects Act".

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 64, § 21, effective January 1, 1990.

29-1-702. Legislative declaration.

The general assembly hereby declares that the procedures for procurement by local government of construction projects which will be funded in whole or in part by the state through the highway users tax fund is a matter of statewide concern; that the identification and widespread publication of such projects will increase the competition for such projects leading to a decreased cost to taxpayers throughout the state; that increased privatization of such projects by local governments will aid in the development and retention of local small businesses, industries, and construction firms, will broaden the economic base of

local areas, and will contribute to increased economic vitality throughout the state; and that the provisions of this part 7 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and welfare of the people of this state.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 64, § 21, effective January 1, 1990.

29-1-703. Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "Agency of local government" means any municipality, county, home rule county, or home rule city or any agency, department, division, board, bureau, commission, institution, or other authority thereof which is a budgetary unit exercising construction contracting authority or discretion and which is located in a county of thirty thousand persons or more, or a city or town of thirty thousand persons or more, according to the state demographer.

(2) "Construction contract" or "contract" means any agreement to construct, alter, improve, repair, or demolish any state-funded public project of any kind.

(3) "Cost" means the total cost of labor, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, supervision, engineering, and clerical and accounting services; the reasonable value of the use of equipment, including its replacement value, owned by the agency; and the reasonable estimates of other administrative or indirect costs not otherwise directly attributable to the state-funded public project which may be reasonably apportioned to such project in accordance with generally accepted cost-accounting principles and standards. To determine the reasonable value of the use of equipment owned by the agency, the agency may utilize rates established in the department of transportation's published equipment rate schedule in force at the time of the estimate or rates established in any other similar, generally accepted, published equipment rate schedule. To determine administrative and indirect costs, the agency may utilize a good faith percentage estimate of not less than fifteen percent of the total direct costs.

(4) "Defined maintenance project" means any project that involves a significant reconstruction, alteration, or improvement of any existing road, highway, bridge, structure, facility, or other public improvement, including but not limited to repairing or seal coating of roads or highways or major internal or external reconstruction or alteration of existing structures. "Defined maintenance project" does not include routine maintenance activities such as snow removal, minor surface repair of roads or highways, cleaning of ditches, regrading of unsurfaced roads, repainting, replacement of floor coverings, or minor reconstruction or alteration of existing structures.

(5) "State-funded public project" means any construction, alteration, repair, demolition, or improvement by any agency of local government of any land, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any defined maintenance project, which are funded in whole or in part from the highway users tax fund and which may be reasonably expected to exceed one hundred fifty thousand dollars in the aggregate for any fiscal year.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 64, § 21, effective January 1, 1990. L. 91: (3) amended, p. 1069, § 41, effective July 1.

29-1-704. Construction of public projects – competitive sealed bidding.

(1) All construction contracts for state-funded public projects shall be awarded by competitive sealed bidding except as provided in subsection (2) of this section.

(2) Competitive sealed bidding shall not be required for:

(a) A state-funded public project for which the agency of local government receives no bids or for which all bids have been rejected;

(b) A state-funded public project for which the responsible officer determines it is necessary to make emergency procurements or contracts because there exists a threat to public health, welfare, or safety under emergency conditions, but such emergency procurements or contracts shall be made with such competition as is practicable under the circumstances; however, a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(3) Nothing in this part 7 shall be construed to affect or limit any additional requirements imposed upon an agency of local government for awarding contracts for state-funded public projects.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

29-1-705. Agency of local government to submit cost estimate.

(1) Whenever an agency of local government proposes to undertake the construction of a state-funded public project, by any means or method other than by a contract awarded by competitive bid, it shall prepare and submit a cost estimate in the same manner as other bidders. Such agency of government itself may not undertake the proposed state-funded public project unless it shows the lowest and most responsive cost estimate.

(2) Agencies of local government shall not be required to be bonded when performing the work on a state-funded public project.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

29-1-706. Finality of determinations.

The determinations required by section 29-1-704 (2) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law or are not supported by substantial evidence.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

29-1-707. Prohibition of dividing work of state-funded public project.

It is unlawful for any person to divide a work of a state-funded public project into two or more separate projects for the sole purpose of evading or attempting to evade the requirements of this part 7.

Source: L. 89, 1st Ex. Sess.: Entire part added, p. 65, § 21, effective January 1, 1990.

PART 8 LAND DEVELOPMENT CHARGES

Law reviews: For article, "Developer Exactions and Impact Fees", see 19 Colo. Law. 67 (1990).

29-1-801. Legislative declaration.

The general assembly hereby finds and determines that statewide standards governing accountability for land development charges imposed by local governments to finance capital facilities and services are necessary and desirable to ensure reasonable certainty, stability, and fairness in the use to which moneys generated by such charges are put and to promote public confidence in local government finance. The general assembly therefore declares that this part 8 is a matter of statewide concern.

Source: L. 90: Entire part added, p. 1438, § 1, effective January 1, 1991.

29-1-802. Definitions.

As used in this part 8, unless the context otherwise requires:

(1) "Capital expenditure" means any expenditure for an improvement, facility, or piece of equipment necessitated by land development which is directly related to a local government service, has an estimated useful life of five years or longer, and is required by charter or general policy of a local government pursuant to resolution or ordinance.

(2) "Land development" means any of the following:

(3) "Land development charge" means any fee, charge, or assessment relating to a capital expenditure which is imposed on land development as a condition of approval of such land development, as a prerequisite to obtaining a permit or service. Nothing in this section shall be construed to include sales and use taxes, building or plan review fees, building permit fees, consulting or other professional review charges, or any other regulatory or administrative fee, charge, or assessment.

(4) "Local government" means a county, city and county, municipality, service authority, school district, local improvement district, law enforcement district, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, any other kind of municipal, quasi-municipal, or public corporation, or any agency or instrumentality thereof organized pursuant to law.

(5) "Service unit" means a standard unit of measure of consumption, use, generation, or discharge of the services provided by a local government.

Source: L. 90: Entire part added, p. 1438, § 1, effective January 1, 1991.

ANNOTATION

Law reviews. For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

29-1-803. Deposit of land development charge.

(1) Except as otherwise provided in this section, all moneys from land development charges collected, including any such moneys collected but not expended prior to January 1, 1991, shall be deposited or, if collected for another local government, transmitted for deposit, in an interest-bearing account which clearly identifies the category, account, or fund of capital expenditure for which such charge was imposed. Each such category, account, or fund shall be accounted for separately. The determination as to whether the accounting requirement shall be by category, account, or fund and by aggregate or individual land development shall be within the discretion of the local government. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account.

(2) Any county, city and county, or municipality shall be required to comply with the provisions of subsection (1) of this section requiring the deposit or transmittal of land development charges collected but not expended prior to January 1, 1991, only if such land development charges were collected on or after January 1, 1986.

Source: L. 90: Entire part added, p. 1439, § 1, effective January 1, 1991.

ANNOTATION

This section contains no substantive authority for the imposition of fees, but rather the accounting and reporting requirements for local governments that receive a fee. County Comm'rs of Douglas County v. Bainbridge, 929 P.2d 691 (Colo. 1996).

29-1-804. Exceptions – state-mandated charges.

This part 8 shall not apply to rates, fees, charges, or other requirements which a local government is expressly required to collect by state statute and which are not imposed to fund programs, services, or facilities of the local government.

Source: L. 90: Entire part added, p. 1439, § 1, effective January 1, 1991.

PART 9 LOCAL GOVERNMENT-FINANCED ENTITY

29-1-901. Definitions.

As used in this part 9, unless the context otherwise requires:

(1) "Local government-financed entity" means any organization, group, or entity other than a political subdivision that:

(a) Is composed of members that are political subdivisions or who are officials or employees of political subdivisions; and

(b) Derives any of its annual operating budget from dues, contributions, or other payments received from political subdivisions.

(2) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: L. 96: Entire part added, p. 140, § 1, effective April 8.

29-1-902. Local government-financed entity – records – public inspection.

(1) A local government-financed entity shall make the following information available for public inspection and copying during regular business hours:

(a) A list of the members of the entity;

(b) The annual operating budget of the entity that is government financed;

(c) The compensation paid to officers and employees of and to any other person performing services for the entity, including expense allowances and benefits;

(d) The name of any person lobbying, as defined in section 24-6-301 (3.5), C.R.S., on behalf of the entity and the total amount expended by the entity for lobbying over the previous twelve months;

(e) The most recent disclosure statement filed by the entity or by any person lobbying on behalf of the entity pursuant to section 24-6-302, C.R.S.

Source: L. 96: Entire part added, p. 140, § 1, effective April 8.

PART 10 LIMITATIONS ON SOURCES OF REVENUE

29-1-1001. Monatorium on taxes, fees, and charges – interest and on-line services – definitions.

(1) (a) From May 1, 1998, to and including April 30, 2001, there shall be a temporary moratorium during which no statutory or home rule city and county, county, city, or town, nor any political subdivision of the state, including, without limitation, a special purpose authority, special district, or school district, shall impose, assess, or collect any tax, fee, or charge, however designated, upon the direct charges for provision of internet access services.

(b) Paragraph (a) of this subsection (1) shall not apply to taxes on internet access services actually collected and enforced by a home rule city on or before April 15, 1998.

(c) Paragraph (a) of this subsection (1) shall not apply to any franchise fee on interactive computer services delivered via a cable television system unless the federal communications commission or a court of competent jurisdiction determines that such services are not cable services within the meaning of 47 U.S.C. sec. 522 (6).

(1.5) (a) On and after April 30, 2001, no statutory or home rule city and county, county, city, or town, or any political subdivision of the state, including, without limitation, a special purpose authority, special district, or school district, shall impose, assess, or collect any tax, fee, or charge, however designated, upon the direct charges for provision of internet access services, whether offered separately or as part of a package or bundle of services.

(b) Paragraph (a) of this subsection (1.5) shall not apply to taxes on internet access services actually collected and enforced by a home rule city on or before April 15, 1998.

(c) Paragraph (a) of this subsection (1.5) shall not apply to any franchise fee on interactive computer services delivered via a cable television system unless the federal communications commission or a court of competent jurisdiction determines that such services are not cable services within the meaning of 47 U.S.C. sec. 522 (6).

(2) From May 1, 1998, to and including April 30, 2001, there shall be a temporary moratorium during which no provider of internet access services shall be required to collect sales or use taxes from persons who purchase taxable property or services through use of the internet unless such provider acts as a vendor of taxable property or services.

(2.5) On and after April 30, 2001, no provider of internet access services shall be required to collect sales or use taxes from persons who purchase taxable property or services through use of the internet unless such provider acts as a vendor of taxable property or services.

(3) As used in this section:

(a) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled, switched data networks.

(b) "Internet access services" means services that provide or enable computer access by multiple users to the internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

(4) (a) The general assembly hereby finds, determines, and declares that:

(I) Access to the internet insures access to information and government services, therefore, it is crucial that all people living in Colorado have equal access to the internet regardless of economic standing, educational background, or location. It is in the state's interest to ensure that local governments do not impose taxes on internet access, as such local taxation would inhibit equal access to the internet and the accessibility of on-line services for the people living in any local jurisdiction that imposes an internet access tax.

(II) Any tax on internet access imposed by a local government would present unique administrative challenges for the internet service providers required to collect that tax. Such issues include, but are not limited to, tracking which local governments impose a tax, ascertaining the location of every customer, and determining the customers from which a tax must be collected. These logistical concerns may result in an internet service provider refusing to offer service to customers living in local jurisdictions that impose a tax on internet access, thus reducing competition and disenfranchising certain localities from affordable on-line services.

(III) The promotion of economic development is of the utmost importance for Colorado. To foster the state's economic growth, Colorado strives to become a center for electronic commerce and taxing internet access on the state or local level would impede that goal.

(b) The general assembly further finds, determines, and declares that the imposition, assessment, or collection of any tax, fee, or charge, however designated, upon the direct charges for the provision of internet access service is a matter of statewide concern and the provisions of this section shall preempt any provisions of any local government ordinance, resolution, regulation, or other restriction to the contrary.

Source: L. 98: Entire part added, p. 735, § 2, effective May 18. L. 2000: (1.5), (2.5), and (4) added and (3)(b) amended, p. 735, § 2, effective August 2.

29-1-1002. Mobile telecommunications services – taxation by local governments – remedies – definitions.

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

(a) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(b) "Customer" means customer as defined in section 124 (2) of the act.

(c) "Home service provider" means home service provider as defined in section 124 (5) of the act.

(d) "Local government" means any statutory or home rule city and county, county, city, or town, and any political subdivision of the state, including, without limitation, any authority, special district, or school district.

(e) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(f) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(g) "Taxing jurisdiction" means taxing jurisdiction as defined in section 124 (12) of the act.

(2) (a) On and after August 1, 2002, any local government that imposes a sales tax pursuant to section 39-26-104 (1) (c), C.R.S., on a mobile telecommunications service shall impose such tax in accordance with the provisions of the act.

(b) Pursuant to section 117 (b) of the act, mobile telecommunications service taxable by a local government on or after August 1, 2002, may be subject to any sales tax or other charge imposed by said local government on the service only if the customer's place of primary use is within the geographical boundaries of the local government.

(3) (a) If a customer believes that a tax, charge, or fee assessed by a local government in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider may require.

(b) No later than sixty days after receipt of notice from a customer pursuant to paragraph (a) of this subsection (3), the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer.

(c) Any customer that believes a tax, charge, or fee assessed by a local government in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect may file a claim in the appropriate district court only after complying with the provisions of this subsection (3).

Source: L. 2002: Entire section added, p. 251, § 2, effective April 12.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 92, Session Laws of Colorado 2002.

PART 11 LOCAL GOVERNMENT DELINQUENCY CHARGES

29-1-1101. Definitions.

As used in this part 11, unless the context otherwise requires:(1) "Amount due" means the amount of a fee, fine, penalty, or other separate charge due and owing to a local government.

(2) "Delinquency charge" means a separate fee, fine, or penalty levied as a result of the late payment of an amount due. For purposes of this part 11, a delinquency charge shall not include any fee, fine, or other penalty imposed:

(a) In accordance with the express terms of a written contractual provision;

(b) As a result of the late payment of a tax;

(c) By a state, county, municipal, or other court;

(d) As a result of a check, draft, or order for the payment of money that is not paid upon presentment;

(e) In connection with the unlawful stopping, standing, or parking of a motor vehicle;

(f) By a public library upon overdue, damaged, or destroyed materials; and

(g) By a local liquor licensing authority pursuant to article 47 of title 12, C.R.S.

(3) "Local government" shall have the same meaning as defined in section 29-1-602 (5) (a).

Source: L. 99: Entire part added, p. 1334, § 3, effective January 1, 2000.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 320, Session Laws of Colorado 1999.

29-1-1102. Delinquency charges.

(1) Notwithstanding any other provision to the contrary, no local government shall impose a delinquency charge except as provided in this section.

(2) No delinquency charge may be collected by a local government on any amount due that is paid in full within five days after the scheduled due date.

(3) No delinquency charge shall exceed the amount of fifteen dollars or up to five percent per month, or fraction thereof, not to exceed a total of twenty-five percent of the amount due, whichever is greater.

(4) No more than the amount set forth in subsection (3) of this section shall be collected by a local government on any amount due regardless of the period of time during which the amount due remains in default.

(5) In the event that an amount due is one of a series of payments to be made toward the satisfaction of a single fee, fine, penalty, or other charge assessed by a local government, no more than the amount set forth in subsection (3) of this section shall be collected by a local government on any one of such payments regardless of the period of time during which the payment remains in default.

(6) No interest shall be assessed on a delinquency charge.

(7) Nothing in this section shall be construed to prohibit a local government from charging interest on an amount due. In no event shall such interest be charged upon a delinquency charge or any amount other than the amount due. In no event shall any such interest charge exceed an annual percentage rate of eighteen percent or the equivalent for a longer or shorter period of time. The provisions of this subsection

(7) restricting the charging of interest shall not apply to delinquent interest imposed after a tax lien is sold at a tax lien sale pursuant to article 11 of title 39, C.R.S.

(8) Nothing in this section shall be construed to prohibit a local government from recovering the costs of collection, including but not limited to disconnection or reconnection fees, reinstatement charges, or penalties assessed where fraud is involved.

Source: L. 99: Entire part added, p. 1335, § 3, effective January 1, 2000.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 320, Session Laws of Colorado 1999.

Part 12 PROHIBITION OF LOCAL LIMITS ON THE FREQUENCY OF RELIGIOUS MEETINGS IN HOMES

29-1-1201. Legislative declaration – matter of statewide concern.

The general assembly hereby finds, determines, and declares that the imposition of restrictions by a local government upon when or how often individuals may meet upon private residential property to pray, worship, or otherwise study or discuss issues relating to religious beliefs infringes upon the fundamental right to the free exercise of religion. The general assembly further finds and declares that such restrictions are of significant interest to people living outside the jurisdiction of the local government. In addition, the ability of individuals to freely determine when and how often they wish to meet for such purposes should be uniform throughout the state. Accordingly, the general assembly finds that restrictions that specifically limit when or how often individuals may meet upon private residential property to pray, worship, or otherwise study or discuss issues relating to religious beliefs are a matter of statewide concern and the provisions of this section shall preempt any provisions of any local government ordinance, resolution, regulation, or other restriction to the contrary.

Source: L. 2000: Entire part added, p. 26, § 1, effective August 2.

29-1-1202. Local limits on time or frequency of religious meetings – definitions.

On or after August 2, 2000, a local government shall be prohibited from enacting or enforcing any ordinance, resolution, regulation, or other restriction that specifically limits when or how frequently individuals in the state may meet upon private residential property to pray, worship, or otherwise study or discuss issues related to religious beliefs. For the purposes of this part 12, the term "local government" shall mean any county, city and county, city, or town, including any county, city and county, city, or town that has adopted a home rule charter.

Source: L. 2000: Entire part added, p. 27, § 1, effective August 2.

29-1-1203. Applicability to other local laws.

This part 12 shall not be construed to affect the enactment or enforcement of laws generally regulating traffic, parking, excessive noise, or other adverse conditions affecting the health, welfare, and safety of citizens of a local government.

Source: L. 2000: Entire part added, p. 27, § 1, effective August 2.

ANNOTATION

Section does not apply to ordinance to restrict parking because the ordinance not only regulates parking but also establishes a land use regulation. Town of Foxfield v. Archdiocese of Denver, 148 P.3d 339 (Colo. App. 2006).

Article 2 COUNTY AND MUNICIPAL SALES OR USE TAX

29-2-101. Legislative declaration.

The general assembly hereby declares that the imposition of sales or use taxes, or both, by counties, cities, and incorporated towns in this state affects the flow of commerce within this state and the welfare of the people of this state. The purpose of the general assembly in the enactment of this article is to provide a higher degree of uniformity in any sales taxes imposed by such entities.

Source: L. 67: p. 660, § 1. C.R.S. 1963: § 138-10-1. L. 73: p. 1477, § 1. L. 75: Entire section amended, p. 961, § 1, effective July 14.

ANNOTATION

State's interest in uniformity does not outweigh the home rule city's interest in preventing tax avoidance. Where a home rule city's excise tax is intended to collect only the difference between what it would have collected in sales tax had the purchase been made locally and any sales or use tax previously paid to another municipality, the state's interest in uniformity does not outweigh the home rule city's interest in preventing tax avoidance by purchasing outside of the city limits. Winslow Constr. Co. v. City & County of Denver, 960 P.2d 685 (Colo. 1998).

Applied in Deluxe Theatres, Inc. v. City of Englewood, 198 Colo. 85, 596 P.2d 771 (1979).

29-2-102. Municipal sales or use tax - referendum

(1) Any incorporated town or city in this state may adopt a municipal sales or use tax, or both, by ordinance in accordance with the provisions of this article, but only if the ordinance provides for the submission of the tax proposal to an election by the registered electors of the town or city for their approval or rejection at a regular municipal election or at a special election called for the purpose if no regular municipal election will be held within ninety days after the adoption of the ordinance. The election shall be conducted in the manner provided in the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.

(2) (a) No incorporated town or city shall adopt a sales or use tax ordinance pursuant to subsection (1) of this section on or after the date of the adoption of a resolution for a countywide sales tax, use tax, or both by the board of county commissioners of the county in which all or any portion of the town or city is located until after the date of the election on the county proposal.

(b) Paragraph (a) of this subsection (2) shall not apply to any incorporated town or city that has been incorporated for less than five years as of the date of adoption of the sales or use tax ordinance.

(c) Nothing in this article shall preclude the initiation of a sales or use tax proposal by the registered electors of any incorporated town or city pursuant to section 31-11-104, C.R.S.

Source: L. 67: p. 660, § 2. C.R.S. 1963: § 138-10-2. L. 73: p. 1477, § 2. L. 75: Entire section amended, p. 961, § 2, effective July 14. L. 79: Entire section amended, p. 1126, § 1, effective April 25. L. 87: Entire section amended, p. 322, § 67, effective July 1. L. 93: Entire section amended, p. 697, § 4, effective May 4. L. 95: Entire section amended, p. 440, § 25, effective May 8. L. 2003: Entire section amended, p. 2581, § 1, effective June 5.

ANNOTATION

Am. Jur.2d. See 68 Am. Jur.2d, Sale and Use Taxes, § 8.

29-2-103. Countrywide sales or use tax – multiple-county municipality excepted.

(1) Each county in this state is authorized to levy a county sales tax, use tax, or both in accordance with the provisions of this article. No proposal for a county sales tax, use tax, or both shall become effective until approved by a majority of the registered electors of the county voting on such proposal pursuant to section 29-2-104. Such a proposal for a sales tax, use tax, or both, upon approval by a majority of the registered electors voting thereon, shall be effective throughout the incorporated and unincorporated portions of the county except when less than countywide application is authorized pursuant to subsection (2) of this section.

(2) A county may levy a sales tax, use tax, or both, in whole or in part, in less than the entire county when the following conditions are met:

(a) All municipalities located entirely within the county have agreed to lower their tax rates in order to allow the county tax to be levied within the limitations of section 29-2-108;

(b) The area to be excluded from the tax levy is comprised solely of a portion of a municipality whose boundaries are located in more than one county, and the total sales tax, use tax, or both in that municipality would exceed the limitations specified in section 29-2-108, if the county tax were collected in that municipality; and

(c) All other counties in which a portion of the municipality described in paragraph (b) of this subsection (2) is located have agreed to provide fair compensation to the county for any services extended to such municipality as a result of revenues derived from the county tax levy from which the municipality is excluded.

(3) The approval provisions of subsection (1) of this section, the restrictions on contents of sales or use tax proposals set forth in section 29-2-105, and the collection procedures of section 29-2-106 shall apply to county sales or use taxes or both levied pursuant to subsection (2) of this section.

Source: L. 67: p. 660, § 3. C.R.S. 1963: § 138-10-3. L. 75: Entire section amended, p. 962, § 3, effective July 14. L. 79: Entire section amended, p. 1126, § 2, effective April 25. L. 85: Entire section amended, p. 1028, § 1, effective May 2.

ANNOTATION

Am. Jur.2d. See 68 Am. Jur.2d, Sales and Use Taxes, § 8.

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982).

29-2-103.5 Sales tax for mass transit.

(1) (a) Except as provided in paragraph (b) of this subsection (1), in addition to any sales tax imposed pursuant to section 29-2-103, each county in this state which lies outside the jurisdiction of the regional transportation district is authorized to levy a county sales tax, use tax, or both of up to one-half of one percent for the purpose of financing, constructing, operating, or maintaining a mass transportation system within the county.

(b) On and after July 1, 2001, in addition to any sales tax imposed pursuant to section 29-2-103, each county in this state that lies outside the jurisdiction of the regional transportation district is authorized to levy a county sales tax, use tax, or both of up to one percent for the purpose of financing, constructing, operating, or maintaining a mass transportation system within the county.

(2) (a) Any county in which such mass transportation system is based may enter into intergovernmental agreements with any municipality or other county or may enter into contractual agreements with any private carrier for the purpose of providing mass transportation services either within the county or in a county in which the county mass transportation system is permitted to operate.

(b) Any county which uses sales tax revenues which are imposed pursuant to this section for the provision of mass transportation services shall establish standards for such service.

(c) The county shall issue a request for proposals for such service in order to compare the costs of a private carrier in providing such service with the costs of the county, as determined in accordance with generally accepted accounting principles, in providing such service directly.

(d) If the costs to the county are less when the service is provided by the private carrier, the county shall contract with the private carrier for the mass transportation service.

(e) Any private carrier selected to provide mass transportation service pursuant to this subsection (2) shall provide such performance bond or other surety as the county may reasonably require.

(f) In the event that no private carriers are able to provide mass transportation services, the county shall provide such services.

(g) In contracting with a private carrier, the county shall require that the carrier not use the contract to cross-subsidize any other services provided by the carrier.

(3) (a) No sales tax, use tax, or both shall be levied pursuant to the provisions of subsection (1) of this section until such proposal has been referred to and approved by the registered electors of the county in accordance with the provisions of this article. The ballot question for any proposal for a sales or use tax increase pursuant to this section shall clearly state that the approval of such sales or use tax may result in a sales or use tax rate in excess of the current limitation imposed by section 29-2-108.

(b) During the calendar year 1990, the proposal for a sales or use tax increase pursuant to this section may be submitted at the primary election held on the first Tuesday in August of each even-numbered year or at the next general election. For any year thereafter, such sales and use tax increase proposal may only be submitted on the first Tuesday after the first Monday in November of each year and shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) The provisions of this section shall not be construed to expand the use tax base of any county in this state as such base is described in section 29-2-109 (1).

(5) All revenues collected from such county sales tax shall be credited to a special fund in the county treasury known as the county mass transportation fund. The fund shall be used only for the financing, constructing, operating, or maintaining of a mass transportation system within the county.

Source: L. 90: Entire section added, p. 1440, § 1, effective May 4. L. 92: (3)(b) amended, p. 873, § 99, effective January 1, 1993. L. 2001: (1) amended, p. 1519, § 1, effective June 8. L. 2002: (3)(a) amended, p. 1035, § 80, effective June 1.

29-2-103.7. Special taxes for water rights.

(1) On and after July 1, 2003, in addition to any sales tax imposed pursuant to section 29-2-103, counties are authorized to levy a county sales tax, use tax, or any combination of such taxes of up to one percent for the purposes of purchasing, adjudicating changes of, leasing, using, banking, and selling water rights that have been adjudicated for use within such county or in a municipality or county that is subject to an intergovernmental agreement concerning such tax pursuant to subsection (2) of this section.

(2) (a) A county may enter into an intergovernmental agreement with any municipality or other county or may enter into a contractual agreement with any private entity to facilitate the achievement of the purposes enumerated in subsection (1) of this section.

(b) Any county that uses tax revenues imposed pursuant to this section shall establish standards for the use of such revenues.

(3) (a) No sales tax, use tax, or combination of such taxes shall be levied pursuant to subsection (1) of this section until a ballot proposal for the levying of such taxes has been referred to and approved by the registered electors of the county in accordance with this article. The ballot question for any proposal for a sales or use tax increase pursuant to this section shall clearly state that the approval of such sales or use tax may result in a sales or use tax rate in excess of the current limitation contained in section 29-2-108 (1).

(b) The proposal for a tax pursuant to this section may be submitted only on the first Tuesday after the first Monday in November of each year and shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) This section shall not be construed to expand the use tax base of any county in this state, as such base is described in section 29-2-109 (1).

(5) All revenues collected from such county taxes shall be credited to a special fund in the county treasury known as the county water fund. The county water fund shall be used only for the purposes enumerated in subsection (1) of this section.

Source: L. 2003: Entire section added, p. 884, § 5, effective August 6.

29-2-103.8. Sales tax for health care services.(1) In addition to any sales tax imposed pursuant to section 29-2-103, each county in the state is authorized to levy a county sales tax for the purpose of providing, directly or indirectly, health care services to residents of the county who are in need of health care services.

(2) (a) Any county in which health care services are provided may enter into intergovernmental agreements with any municipality or other county or may enter into contractual agreements with any private provider or health service district, as defined in section 32-1-103 (9), C.R.S., for the purpose of providing health care services within the county.

(b) Any county that uses sales tax revenues imposed pursuant to this section for the provision of health care services shall establish standards for such services.

(3) (a) No sales tax shall be levied pursuant to the provisions of subsection (1) of this section until the proposal has been referred to and approved by the eligible electors of the county in accordance with the provisions of this article. The ballot question for any proposal for a sales tax increase pursuant to this section shall clearly state that the approval of the sales tax may result in a sales tax rate in excess of the current limitation imposed by section 29-2-108.

(b) Any proposal for the levy of a sales tax in accordance with paragraph (a) of this subsection (3) shall only be submitted to the eligible electors of the county on the date of the state general election or on the first Tuesday in November of an odd-numbered year, and any election on the proposal shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) All revenues collected from a county sales tax imposed pursuant to this section shall be credited to a special fund in the county treasury known as the county health care services fund. The fund shall be used only for the purpose of providing health care services in accordance with this section.

Source: L. 2007: Entire section added, p. 1200, § 16, effective July 1.

Editor's note: Section 20 of chapter 283, Session Laws of Colorado 2007, provides that the act enacting this section applies to service plans and petitions for health service districts and health assurance districts filed on or after July 1, 2007.

29-2-103.9. Sales tax for mental health care services.

(1) In addition to any sales tax imposed pursuant to section 29-2-103, each county in this state is authorized to levy a county sales tax of up to one-quarter of one percent for the purpose of providing, directly or indirectly, mental health care services to residents of the county who are in need of mental health care services and to family members of such residents.

(2) (a) Any county in which mental health care services are provided may enter into intergovernmental agreements with any municipality or other county or may enter into contractual agreements with any private provider for the purpose of providing mental health care services within the county.

(b) Any county that uses sales tax revenues imposed pursuant to this section for the provision of mental health care services shall establish standards for such services.

(3) (a) No sales tax shall be levied pursuant to the provisions of subsection (1) of this section until the proposal has been referred to and approved by the eligible electors of the county in accordance with the provisions of this article. The ballot question for any proposal for a sales tax increase pursuant to this section shall clearly state that the approval of the sales tax may result in a sales tax rate in excess of the current limitation imposed by section 29-2-108.

(b) Any proposal for the levy of a sales tax in accordance with paragraph (a) of this subsection (3) shall only be submitted to the eligible electors of the county on the first Tuesday after the first Monday in November of each year and any election on the proposal shall be conducted by the county clerk and recorder in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(4) All revenues collected from a county sales tax imposed pursuant to this section shall be credited to a special fund in the county treasury known as the county mental health care services fund. The fund shall be used only for the purpose of providing mental health care services in accordance with this section.

Source: L. 2005: Entire section added, p. 1042, § 5, effective June 2.

29-2-104. Adoption procedures.

(1) A proposal for a countywide sales tax, use tax, or both shall be referred to the registered electors of the county either by resolution of the board of county commissioners or by petition initiated and signed by five percent of the registered electors of the county. The right of petition allowed pursuant to this subsection (1) shall extend only to the initial proposal of a tax and shall not extend to the extension of an expiring tax, use of tax revenues, or changes in distribution of tax revenues among local governments.

(2) Such proposal shall contain a description of the tax in accordance with the provisions of this article and shall make provision for any distribution of revenue collections between the county and the incorporated cities and towns within the county. Such proposal shall also state the amount of tax to be imposed. Unless otherwise agreed to by the governing bodies of the county and municipalities within the county, any use tax proceeds shall be distributed among such county and municipalities in the same proportion as the sales tax proceeds distributed to each jurisdiction.

(3) A proposal for a countywide sales tax, use tax, or both, by resolution of the board of county commissioners, shall be submitted at the next regular general election if there is one within the next succeeding one hundred twenty days after the adoption of such resolution. If no general election is scheduled within such time, the board of county commissioners, in its resolution, shall submit the same to the registered electors of the county at a special election called for the purpose, to be held not less than thirty days nor more than ninety days after the adoption of such resolution.

(4) Upon being presented with a petition requesting a proposal for a countywide sales tax, use tax, or both signed by five percent of the registered electors of the county, the board of county commissioners shall, upon certification of the signatures on the petition, submit such proposal to the registered electors of the county. The proposal shall be submitted at the next general election if there is one within one hundred twenty days of the filing of the petition. If no general election is scheduled within one hundred twenty days following the date of filing of the petition, the board of county commissioners shall submit such proposal at a special election called not less than thirty days nor more than ninety days from the date of filing of the petition.

(5) Upon the adoption of a resolution by the board of county commissioners as provided in subsection (3) of this section or upon the filing of a proper petition as provided in subsection (4) of this section, the county clerk and recorder shall publish the text of such proposal for a sales tax, use tax, or both four separate times, a week apart, in the official newspaper of the county and each city and incorporated town within the county. The cost of the election shall be paid from the general fund of the county. The conduct of the election shall conform, so far as practicable, to the general election laws of the state.

(6) If approved by a majority of the registered electors voting thereon, the countywide sales tax, use tax, or both shall become effective as provided by section 29-2-106 (2).

(7) If a majority of the registered electors voting thereon fail to approve the countywide sales tax, use tax, or both at any election, the question shall not be submitted again to the registered electors for a period of one year three hundred fifty days.

Source: L. 67: p. 660, § 4. C.R.S. 1963: § 138-10-4. L. 75: Entire section amended, p. 962, § 4, effective July 14. L. 79: (1)(d) amended, p. 1127, § 3, effective July 3. L. 81: (7) amended, p. 1402, § 1, effective June 9. L. 2002: (1) amended, p. 1944, § 1, effective August 7.

ANNOTATION

Prior to the submission of a proposal initiated pursuant to subsection (1) to the electorate, a county has a discretionary duty to review the proposal for compliance with the procedural requirements of the county sales tax act and a court has jurisdiction to determine whether such an initiative complies with those procedural requirements. In contrast to a municipal or statewide initiative explicitly allowed by the Colorado Constitution, a statutorily authorized county initiative is limited and defined by the procedural and substantive provisions of the authorizing statute and the exercise of the statutory power of the initiative must comply with that statute. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Writ of mandamus ordering a county to submit a proposal initiated pursuant to subsection (1) to the electorate was inappropriate where the proposal failed to comply with the procedural requirements of the county sales tax act. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Distribution to all municipalities within a county is not required by subsection (2). Orchard City v. Delta County Comm'rs, 751 P.2d 1003 (Colo. 1988).

Any distribution of sales tax revenue by a county may not arbitrarily exclude an incorporated municipality within the county. Orchard City v. Delta County Comm'rs, 751 P.2d 1003 (Colo. 1988).

29-2-105. Contents of sales tax ordinances and proposals.

(1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1). Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(a) A provision imposing a tax on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1);

(b) A provision that, for the purpose of the sales tax ordinance or proposal enacted in accordance with this article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the local taxing entity or to a common carrier for delivery to a destination outside the limits of the incorporated town, city, or county. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by article 26 of title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in such incorporated town, city, or county, or has more than one place of business, the place at which the retail sales are consummated for the purpose of a sales tax imposed by ordinance pursuant to this article shall be determined by the provisions of article 26 of title 39, C.R.S., and by rules and regulations promulgated by the department of revenue.

(c) A provision that the amount subject to tax shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S.;

(d) A provision that the tangible personal property and services taxable pursuant to this article shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., except as otherwise provided in this paragraph (d). The tangible personal property and services taxable

pursuant to this article are subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39, C.R.S., except the exemption allowed by section 39-26-709 (1), C.R.S., for purchases of machinery or machine tools, the exemption of sales and purchases of those items in section 39-26-715 (1) (a) (II), C.R.S., the exemption for sales of food specified in section 39-26-707 (1) (e), C.R.S., the exemption for vending machine sales of food set forth in section 39-26-714 (2), C.R.S., the exemption for occasional sales by a charitable organization set forth in section 39-26-718 (1) (b), C.R.S., the exemption for sales and purchases of farm equipment and farm equipment under lease or contract specified in section 39-26-716 (2) (b) and (2) (c), C.R.S., and the exemption for sales of low-emitting motor vehicles, power **Source**s, or parts used for converting such power **Source**s as specified in section 39-26-719 (1), C.R.S. Sales of food, as defined in section 39-26-102 (4.5), C.R.S., exempted from the state sales tax pursuant to section 39-26-707 (1) (e), C.R.S., vending machine sales of food as described in section 39-26-714 (2), C.R.S., sales and purchases of those items exempted from the state sales tax pursuant to section 39-26-715 (1) (a) (II), C.R.S., purchases of machinery or machine tools as provided in section 39-26-709 (1), C.R.S., occasional sales by a charitable organization as provided in section 39-26-718 (1) (b), C.R.S., sales and purchases of farm equipment or farm equipment under lease or contract exempted from the state sales tax pursuant to section 39-26-716 (2) (b) and (2) (c), C.R.S., or sales of low-emitting motor vehicles, power **Source**s, or parts used for converting such power **Source**s as specified in section 39-26-719 (1), C.R.S., may be exempted from said town, city, or county sales tax only by the express inclusion of such exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto. Any such amendment shall be adopted in the same manner as the initial ordinance or resolution. In the absence of an express provision for the exemption for sales of food, as defined in section 39-26-102 (4.5), C.R.S., or for the exemption of vending machine sales of food as provided in section 39-26-714 (2), C.R.S., or for the exemption of purchases of machinery or machine tools as provided in section 39-26-709 (1), C.R.S., or for the exemption of sales and purchases of those items in section 39-26-715 (1) (a) (II), C.R.S., or for the exemption of occasional sales by a charitable organization as provided in section 39-26-718 (1) (b) (I), C.R.S., or exemption of sales and purchases of farm equipment or farm equipment under lease or contract as provided in section 39-26-716 (2) (b) and (2) (c), C.R.S., or exemption of sales of low-emitting motor vehicles, power **Source**s, or parts used for converting such power **Source**s as specified in section 39-26-719 (1), C.R.S., all sales tax ordinances or resolutions, whether adopted prior to, on, or subsequent to July 1, 1979, which provide in substance that the tangible personal property and services taxed shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., or any predecessor statute, except as otherwise provided in this paragraph (d), and subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39, C.R.S., or any predecessor statute, shall be construed as imposing or continuing to impose the town, city, or county sales tax on food, as defined in section 39-26-102 (4.5), C.R.S., vending machine sales of food as described in section 39-26-714 (2), C.R.S., purchases of machinery and machine tools as described in section 39-26-709 (1), C.R.S., sales or purchases of those items described in section 39-26-715 (1) (a) (II), C.R.S., occasional sales by a charitable organization as described in section 39-26-718 (1) (b), C.R.S., sales and purchases of farm equipment and farm equipment under lease or contract as described in section 39-26-716 (2) (b) and (2) (c), C.R.S., and sales of low-emitting motor vehicles, power **Source**s, or parts used for converting such power **Source**s as specified in section 39-26-719 (1), C.R.S. Any incorporated town, city, or county that adopts or has adopted a sales tax ordinance or resolution pursuant to this article shall levy a sales tax on pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S., notwithstanding the removal of such pesticides from the state sales tax base pursuant to House Bill 99-1381, enacted at the first regular session of the sixty-second general assembly, unless exempted by local ordinance or resolution. Any incorporated town, city, or county that adopts or has adopted a sales tax ordinance or resolution pursuant to this article shall levy a sales tax upon all sales and purchases of parts used in the repair or maintenance of farm equipment, all shipping pallets or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications, notwithstanding the removal of such items from the state sales tax base pursuant to House Bill 00-1162, enacted at the second regular session of the sixty-second general assembly, unless exempted by local ordinance or resolution. Any incorporated town, city, or county that adopts or has adopted a sales tax ordinance or resolution pursuant

to this article shall levy a sales tax upon all sales and purchases of dairy equipment, notwithstanding the removal of such items from the state sales tax base pursuant to House Bill 01-1256, enacted at the first regular session of the sixty-third general assembly, unless exempted by local ordinance or resolution. The regional transportation district may, in its discretion, continue to levy a sales tax on vending machine sales of food as described in section 39-26-714 (2), C.R.S., and on purchases of machinery or machine tools, as provided in section 39-26-709 (1), C.R.S.

(e) A provision that all sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from said county, town, or city sales tax when such sales meet both of the following conditions:

(I) The purchaser is a nonresident of or has his principal place of business outside of the local taxing entity; and

(II) Such personal property is registered or required to be registered outside the limits of the local taxing entity under the laws of this state;

(f) A provision that, in the event the limitation provided in section 29-2-108 is to be exceeded in any municipality within the county by a proposed county sales or use tax, such limitation shall be exceeded by a stated rate in the named municipality.

(1.5) (a) All sales tax ordinances or resolutions adopted by a county, town, or city prior to, on, or after August 1, 2002, that impose a sales tax pursuant to section 39-26-104 (1) (c), C.R.S., on a mobile telecommunications service shall impose such tax in accordance with the provisions of the act, and, pursuant to section 117 (b) of the act, mobile telecommunications service taxable by the county, town, or city on or after August 1, 2002, may be subject to any sales tax or other charge imposed by said entity on the service only if the customer's place of primary use is within the geographical boundaries of the entity.

(b) As used in this subsection (1.5), unless the context otherwise requires:

(I) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(II) "Customer" means customer as defined in section 124 (2) of the act.

(III) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(IV) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(2) No sales tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of construction and building materials, as the term is used in section 29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.

(3) No sales tax of any statutory or home rule county shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the subsequent statutory or home rule county. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule county with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the

purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule county.

(4) No sales tax of any statutory or home rule city and county, city, or town shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by the subsequent statutory or home rule city and county, city, or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city, or town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city, or town.

(5) The following provision shall apply in defining the applicability of its higher rate to the sales tax ordinance or resolution of any statutory or home rule city, town, city and county, or county which provides a higher rate of taxation on prepared food or food for immediate consumption than its general rate of taxation: Prepared food or food for immediate consumption shall exclude any food for domestic home consumption.

(6) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with food stamps. For the purposes of this subsection (6), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(7) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. sec. 1786. For the purposes of this subsection (7), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(8) Any statutory or home rule city, town, city and county, or county which provides an exemption for the sale of food shall define "food" as defined in section 39-26-102 (4.5), C.R.S.

Source: L. 67: p. 661, § 5. C.R.S. 1963: § 138-10-5. L. 69: pp. 1145, 1146, §§ 1, 1. L. 73: p. 343, § 26. L. 77: (1)(b) amended, p. 1398, § 1, effective July 1. L. 79: (1)(d) amended, p. 1429, § 13, effective July 3. L. 80: (1)(d) amended, p. 684, § 7, effective May 1; (1)(d) amended, p. 734, § 4, effective May 2; (1)(d) amended, p. 799, § 68, effective June 5. L. 81: (1) amended and (1)(f) added, p. 1402, § 2, effective June 9. L. 83: (1)(d) amended, p. 1208, § 1, effective April 28. L. 85: (2), (3), and (4) added, p. 1030, § 1, effective January 1, 1986. L. 87: (5) to (8) added, p. 1462, effective October 1. L. 94: (1)(d) amended, p. 1325, § 7, effective May 25. L. 95: (1)(d) amended, p. 329, § 2, effective April 27. L. 99: (1)(d) amended, p. 980, § 3, effective May 28; (1)(d) amended, p. 1324, § 5, effective July 1; (1)(d) amended, p. 1275, § 3, effective July 1; (1)(d) amended, p. 1356, § 4, effective January 1, 2000. L. 2000: (1)(d) amended, p. 550, § 5, effective July 1. L. 2001: (1)(d) amended, p. 382, § 3, effective July 1. L. 2002: (1.5) added, p. 253, § 3, effective April 12; (1)(f) amended, p. 1036, § 81, effective June 1. L. 2004: (1)(d) amended, p. 1036, § 3, effective July 1.

Editor's note: Amendments to subsection (1)(d) by House Bill 99-1002, House Bill 99-1015, House Bill 99-1271, and House Bill 99-1381 were harmonized.

Cross references: (1) For the legislative declaration contained in the 1999 act amending subsection (1)(d), see section 1 of chapter 318, Session Laws of Colorado 1999.

(2) For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 92, Session Laws of Colorado 2002.

ANNOTATION

Prior to the submission of a proposal initiated pursuant to subsection (1) to the electorate, a county has a discretionary duty to review the proposal for compliance with the procedural requirements of the county sales tax act and a court has jurisdiction to determine whether such an initiative complies with those procedural requirements. In contrast to a municipal or statewide initiative explicitly allowed by the Colorado Constitution, a statutorily authorized county initiative is limited and defined by the procedural and substantive provisions of the authorizing statute and the exercise of the statutory power of the initiative must comply with that statute. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Writ of mandamus ordering a county to submit a proposal initiated pursuant to subsection (1) to the electorate was inappropriate where the proposal failed to comply with the procedural requirements of the county sales tax act. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Applicability of use tax to rotable aircraft parts held constitutional and not violative of the commerce clause of the federal constitution. United Air v. City and County of Denver, 973 P.2d 647 (Colo. App. 1998).

This section cannot be extended by statutory construction to allow the regional transportation district to impose sales or use tax on transactions exempt from state taxation other than transactions exempted from state taxation pursuant to § 39-26-114 (11)(d). Ball Corp. v. Fisher, 51 P.3d 1053 (Colo. App. 2001).

Applied in Associated Dry Goods Corp. v. City of Arvada, 197 Colo. 491, 593 P.2d 1375 (1979).

29-2-106. Collection – administration – enforcement.

(1) The collection, administration, and enforcement of any countywide or any city or town sales tax adopted pursuant to this article shall be performed by the executive director of the department of revenue in the same manner as the collection, administration, and enforcement of the Colorado state sales tax. Unless otherwise provided in this article, the provisions of article 26 of title 39, C.R.S., shall govern the collection, administration, and enforcement of sales taxes authorized under this article.

(2) The effective date of any countywide sales tax or city or town sales tax adopted under the provisions of this article shall be either January 1 or July 1 following the date of the election in which such county sales tax proposal is approved; and notice of the adoption of any county sales tax proposal shall be submitted by the county clerk and recorder or by the clerk of the city council or board of trustees of a city or town to the executive director of the department of revenue at least forty-five days prior to the effective date of such tax. If such a sales tax proposal is approved at an election held less than forty-five days prior to the January 1 or July 1 following the date of election, such tax shall not be effective until the next succeeding January 1 or July 1.

(3) (a) The executive director of the department of revenue shall, at no charge, except as provided in paragraph (b) of this subsection (3), administer, collect, and distribute any sales tax imposed in conformity with this article. The executive director shall make monthly distributions of sales tax collections to the appropriate official in each county and in each incorporated city or town in the amount determined under the distribution formula established in accordance with this article. Except as provided in section 39-26-208, C.R.S., any use tax imposed pursuant to section 29-2-109 shall be collected, administered, and enforced by the city, town, or county as provided by ordinance or resolution.

(b) The executive director is hereby authorized to contract and enter into agreements with the county clerk and recorder and municipalities for the collection of state, county, and city or town use taxes upon motor vehicles, and the county clerk and recorder may charge and retain a fee as the director may approve to fully cover the cost of such collection by the county clerk and recorder.

(c) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to any vendor or retailer that is liable and responsible for collecting and remitting any countywide sales tax or city or town sales tax imposed on any sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received in good faith from a qualified purchaser a direct payment permit number shall not be liable or responsible for collection and remittance of any sales tax imposed on such sale that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax imposed on any sale made to the qualified purchaser pursuant to this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(4) (a) The executive director of the department of revenue shall, at no charge, administer, collect, and distribute the sales tax of any home rule municipality, upon request of the governing body of such municipality, if the provisions of the sales tax ordinance of said municipality, other than those provisions relating to local procedures followed in adopting the ordinance and whether or not the ordinance applies the sales tax to the sale of food, as defined in section 39-26-102 (4.5), C.R.S., or purchases of machinery or machine tools as provided in section 39-26-709 (1), C.R.S., or sales or purchases of electricity, coal, wood, gas, fuel oil, or coke as provided in section 39-26-715 (1) (a) (II), C.R.S., or vending machine sales of food as described in section 39-26-714 (2), C.R.S., or sales or purchases of farm equipment or farm equipment under lease or contract, parts used in the repair or maintenance of farm equipment, all shipping pallets, crates, or aids paid for by a farm operation, as defined in section 39-26-716 (1) (e), C.R.S., aircraft designed or adapted to undertake agricultural applications, and dairy equipment as provided in section 39-26-716, C.R.S., or sales of low-emitting motor vehicles, power **Source**s, or parts used for converting such power **Source**s as specified in section 39-26-719 (1), C.R.S., or to pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S., as provided in section 29-2-105 (1) (d), correspond to the requirements of this article for sales taxes imposed by counties, towns, and cities and if no use tax is to be collected by the department except as provided in section 39-26-208, C.R.S. At the time of making such request, said governing body shall certify to the executive director a true copy of said sales tax ordinance.

(b) The executive director of the department of revenue shall furnish the governing body of each municipality and county a monthly listing of all returns filed by the retailers in such municipality or county. The governing body of such municipality or county shall notify the executive director of the department of revenue of any retailers omitted from this listing as soon as practicable, but in no event more than one hundred eighty days after receiving said monthly listing. Failure of the governing body of such municipality or county to notify the executive director of the department of revenue of any omitted retailers, within such period, shall preclude the municipality or county from making any further claims based upon such omissions. Neither the executive director of the department of revenue nor any municipality or county shall be held liable for any omissions which have not been called to the executive director's attention within this period.

(c) (I) Notwithstanding the provisions of section 39-21-113, C.R.S., the executive director of the department of revenue shall report monthly to each municipality and county for which the department of revenue collects a sales tax information identifying licensed vendors within the municipality or county and, where the chief administrative officer or his designee has executed a memorandum of understanding with

the department of revenue providing for control of confidential data, the status of each vendor's account including the amount of such municipality's or county's sales tax collected and paid by each such vendor. The executive director of the department may, in his discretion, provide additional information to a municipality or county concerning collection and administration of such municipality's or county's sales tax if such a memorandum has been executed.

(II) Except in accordance with judicial order or as otherwise provided by law, no official or employee of a municipality or county receiving sales tax information from the department of revenue pursuant to this paragraph (c) shall divulge or make known to any person not an official or employee of such municipality or county any information which identifies or permits the identification of the amount of sales taxes collected or paid by any individual licensed vendor. The municipal or county officials or employees charged with the custody of such sales tax information shall not be required to produce any such information in any action or proceeding in any court except in an action or proceeding under the provisions of this article to which the municipality or county having custody of the information is a party, in which event the court may require the production of, and may admit in evidence, so much of said sales tax information as is pertinent to the action or proceeding. Any municipal or county official or employee who willfully violates any of the provisions of this paragraph (c) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and shall be dismissed from office.

(5) The executive director of the department of revenue may promulgate rules and regulations to carry out the provisions of this article.

(6) The executive director of the department of revenue may, in his discretion, exchange information with the proper official of any home rule city which imposes a sales and use tax relative to gross sales reported, changes in gross sales resulting from audits, and other information concerning licensed vendors within the jurisdiction of the home rule city.

(7) For the purpose of the administration by the state of the provisions of this article, as well as any other state or federal program, each county, home rule county, statutory town or city, home rule town or city, city and county, or territorial charter town or city shall file, pursuant to section 29-2-110, with the executive director of the department of revenue a copy of each sales or use tax ordinance or resolution, or any amendment thereto, no later than ten days after the effective date thereof. A copy of any sales or use tax ordinance or resolution in effect on March 11, 1982, shall be filed no later than July 1, 1982. The failure to file a copy of any such ordinance or resolution shall not give rise to any claim for refund by any taxpayer, other than for overpayment which is determined to be allowable under such ordinance or resolution.

(8) Uniform collection procedures. Each home rule city, town, and city and county shall follow, and conform its ordinances where necessary to, the statute of limitations applicable to the enforcement of state sales and use tax collections, the statute of limitations applicable to refunds of state sales and use taxes, the amount of penalties and interest payable on delinquent remittances of state sales and use taxes, and the posting of bonds pursuant to section 39-21-105 (4), C.R.S.

(9) Standard sales and use tax reporting form. (a) The executive director of the department of revenue shall adopt, by regulation, a standard municipal sales and use tax reporting form. Such form shall be separate from the state form and shall be the only sales and use tax reporting form required to be used by any person collecting the sales or use tax of any home rule city, town, or city and county which collects its own sales or use tax.

(b) Such form shall be designed so as to permit reporting of variations in base, rate, and vendor's fee, and shall contain adequate location coding and use tax remittance items. Prior to the adoption of and any revision to the form, each home rule city, town, and city and county which collects its own sales tax shall be given the opportunity to comment on the proposed form or revision to the form.

(c) Such standard form and any subsequent revisions shall be used by each home rule city, town, and city and county which collects its own sales tax by the first full month commencing one hundred twenty days after the effective date of the regulation adopting or revising the standard form.

(d) (I) In addition to the standard municipal sales and use tax form set forth in paragraph (a) of this subsection (9), on or before December 1, 1994, the executive director of the department of revenue shall cooperate with and assist local governments in the development of a common local sales and use tax form. For purposes of this paragraph (d), "local government" means a city, home rule city, town, city and county, or other political subdivision of the state which collects its own sales or use tax.

(II) The common local sales and use tax form shall:

(A) Allow a person collecting the sales and use tax of any local government to report all sales and use taxes collected for a local government on the common local sales and use tax reporting form;

(B) Be accepted by all local governments; and

(C) Be made available at all state and local sales and use tax reporting locations.

(III) The executive director of the department of revenue shall cooperate with and assist local governments in the development of a uniform local government sales and use tax license application form. Any uniform local government sales and use tax license application form developed shall be made available at all state and local sales and use tax reporting locations.

(IV) The provisions of paragraph (a) of this subsection (9) notwithstanding, in addition to the standard sales and use tax form set forth in paragraph (a) of this subsection (9), the common local sales and use tax form developed pursuant to this paragraph (d) may be used by a person collecting the sales or use tax of any city, home rule city, town, city and county, or other political subdivision of the state which collects its own sales or use tax.

(10) Delayed distributions. (a) If any sales tax to be distributed pursuant to this section is not distributed within sixty days after the processing date, interest shall be added to the undistributed amount from the sixtieth day after the processing date until the date such sales tax is distributed. The rate of said interest shall be equal to the average rate, rounded to one-thousandth of a percent, being earned by the investment of moneys in the state treasury for the same period.

(b) The provisions of this subsection (10) shall apply only to sales tax collected by the department of revenue with a processing date occurring on or after January 1, 2001. The provisions of this subsection (10) shall not apply in the event that the distribution of sales tax was delayed as a result of unforseen circumstances or caused primarily by an entity other than the department of revenue. Such determination shall be made in good faith by the department.

Source: L. 67: p. 662, § 6. C.R.S. 1963: § 138-10-6. L. 71: p. 1267, § 1. L. 73: p. 1478, § 3. L. 75: (3)(a) amended, p. 963, § 5, effective July 14. L. 77: (4) amended, p. 1400, § 1, effective May 26. L. 79: (4)(a) amended, p. 1430, § 14, effective July 3. L. 80: (2) amended, p. 728, § 26, effective May 1; (4)(a) amended, p. 735, § 5, effective May 2. L. 81: (3)(b) amended, p. 1404, § 1, effective July 1. L. 82: (7) added, p. 460, § 1, effective March 11. L. 85: (8) and (9) added, p. 1031, § 2, effective January 1, 1986. L. 90: (3)(a) amended, p. 1746, § 2, effective May 8. L. 94: (9)(d) added, p. 1314, § 1, effective May 25. L. 97: (9)(d)(I) and (9)(d)(III) amended, p. 527, § 10, effective July 1. L. 99: (4)(a) amended, p. 981, § 4, effective May 28; (4)(a) amended, p. 1276, § 4, effective July 1; (4)(a) amended, p. 1326, § 6, effective July 1; (3)(c) added, p. 13, § 5, effective January 1, 2000; (4)(a) amended, p. 1357, § 5, effective January 1, 2000. L. 2000: (4)(a) amended, p. 552, § 6, effective July 1; (4)(b) amended and (10) added, p. 421, § 1, effective August 2. L. 2001: (4)(a) amended, p. 163, § 3, effective July 1; (4)(a) amended, p. 384, § 4,

effective July 1. L. 2002: (3)(a) amended, p. 1036, § 82, effective June 1. L. 2004: (4)(a) amended, p. 1038, § 4, effective July 1.

Editor's note: (1) Amendments to subsection (4)(a) by House Bill 99-1002, House Bill 99-1015, House Bill 99-1271, and House Bill 99-1381 were harmonized.

(2) Amendments to subsection (4)(a) by Senate Bill 01-055 and House Bill 01-1256 were harmonized.

ANNOTATION

Am. Jur.2d. See 68 Am. Jur.2d, Sales and Use Taxes, § 246.

Applied in Rancho Colo., Inc. v. City of Broomfield, 196 Colo. 444, 586 P.2d 659 (1978).

29-2-106.1. Deficiency notice – dispute resolution.

(1) The general assembly hereby finds, determines, and declares that the enforcement of sales and use taxes can affect persons and entities across the jurisdictional boundaries of taxing jurisdictions and that dispute resolution is a matter of statewide concern for which the procedures set forth in this section shall be applied uniformly throughout the state.

(2) (a) When a local government asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, such local government shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional local sales and use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a hearing on the deficiency pursuant to subsection (3) of this section.

(b) The taxpayer shall also have the right to elect a hearing pursuant to subsection (3) of this section on a local government's denial of such taxpayer's claim for a refund of sales or use tax paid.

(c) The taxpayer shall request the hearing pursuant to subsection (3) of this section within thirty days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this subsection (2). For purposes of this subsection (2), "exhaustion of local remedies" means:

(I) The taxpayer has timely requested in writing a hearing before the local government, and such local government has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief. Such hearing shall be held and the final decision thereon issued within ninety days after the local government's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, such hearing shall be held and the decision thereon issued within one hundred eighty days of the taxpayer's request in writing therefor.

(II) The taxpayer has timely requested in writing a hearing before the local government and such local government has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in subparagraph (I) above.

(3) (a) If a taxpayer has exhausted his local remedies as provided in paragraph (c) of subsection (2) of this section, the taxpayer may request the executive director of the department of revenue to conduct a hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing

shall be conducted in the same manner as set forth in section 39-21-103, C.R.S. Any local government to which the deficiency notice being appealed claims taxes are due, or, in the case of a claim for refund, the local government which denied such claim, shall be notified by the executive director that a hearing is scheduled and shall be allowed to participate in the hearing as a party.

(b) If the taxpayer requests a hearing before the executive director, then the local government whose decision is being appealed may not require a bond or payment of tax in lieu thereof until thirty days after the final decision of the executive director or his delegate; but such local government may require a bond or payment of tax in lieu thereof in the manner provided in section 39-21-111, C.R.S., prior to the hearing before such local government or the executive director if either such local government reasonably finds that collection of the tax will be jeopardized by delay or the taxpayer requests a postponement of the hearing before such local government or the executive director, other than on account of a death, physical illness or injury, or catastrophe, which substantially impairs the taxpayer's ability to present his case. Any such bond or payment of tax in lieu thereof shall be filed with and payable to the local government whose decision is being appealed, and such bond shall be filed or such tax shall be paid in the manner provided in section 39-21-105, C.R.S. In the event that payment of the tax or posting of a bond is required by the local government, the taxpayer, after payment of the tax or posting of the bond, may appeal such decision of the local government to the executive director and shall be granted an expedited hearing on such appeal pursuant to section 39-21-103 (6), C.R.S., and the executive director may affirm, reverse, or modify such decision.

(c) If the taxpayer appeals the decision of the executive director on the hearing pursuant to subsection (3) of this section to the district court in the manner provided in section 39-21-105, C.R.S., then the tax shall be paid to or a bond shall be posted with the local government whose decision is being appealed in the manner provided in that section, unless payment of tax or posting of bond was previously required, in which case such previous payment or posting shall continue in effect.

(d) Any hearings before the executive director of the department of revenue or his delegate shall be de novo, without regard to the decision of the local government. The taxpayer shall have the burden of proof in any such hearings.

(4) In the event that all parties to a hearing arrive at a settlement prior to the hearing, such parties may agree to cancel such hearing. No party shall thereafter have a right to a hearing before the executive director on the deficiency notice or claim for refund. By agreement of all parties to the hearing, the hearing may be cancelled and the matter may be determined by the executive director upon written briefs submitted by the parties in the same manner as provided in section 39-21-103 (7) and (8), C.R.S.

(5) If the taxpayer asserts that all or part of a sales or use tax which is the subject of the hearing has been paid to or is due to another local government, then such other local government shall be joined as a party to the hearing. The taxpayer need not file a claim for refund in order to pursue the remedy provided by this subsection (5). If the executive director determines that the disputed tax was paid, but to the wrong local government, then the taxpayer shall be relieved of the tax due up to the amount paid together with an abatement of interest thereon and all penalties.

(6) If the amount paid exceeds the tax found to be due, then the government in receipt of such payment shall refund the overpayment to the taxpayer within thirty days of the executive director's decision, together with interest thereon from the date the taxpayer made the payment until the date the overpayment is refunded, unless a timely appeal is taken by such government pursuant to subsection (7) of this section. If the amount paid is found to be less than the taxes due, then the taxpayer shall pay the deficiency, less any amount paid in lieu of bond, to the appropriate local government within thirty days of the executive director's decision with interest from the date full payment was due until the date that the deficiency is paid, unless a timely appeal is taken by the taxpayer pursuant to subsection (7) of this section. A local government which is found to have erroneously received payment from the taxpayer shall forward such payment to the appropriate local government within thirty days of the executive director's

decision with interest from the date the amount was received from the taxpayer until the date the amount was forwarded to the appropriate local government, unless a timely appeal is taken pursuant to subsection (7) of this section by a local government which is found to have erroneously received payment from the taxpayer. All interest payable pursuant to this subsection (6) shall be at the same rate which applies to deficiency payments.

(7) Appeals from the final determination of the executive director may be taken in the same manner as provided in and shall be governed by section 39-21-105, C.R.S., by any party bound by the executive director's decision. Any such appeal shall be heard de novo and shall be heard as provided in section 39-21-105, C.R.S., except as follows: If the appellant is a local government, the taxpayer shall have the burden of proof as to all factual matters, and the appellant shall have the burden with respect to any legal determination of the executive director of the department of revenue which the appellant seeks to reverse; except that the local government shall always have the burden of proof with respect to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax and with respect to the issue of whether the taxpayer is liable as a transferee of property of another taxpayer, but not to show that the transferor taxpayer was liable for the tax; and except that the executive director may, at his request, be a party to any such appeal.

(8) (a) If a deficiency notice or claim for refund involves only one local government, in lieu of requesting a hearing pursuant to subsection (3) of this section, the taxpayer may appeal such deficiency or denial of a claim for refund to the district court.

(b) The taxpayer shall appeal to the district court pursuant to this subsection (8) within thirty days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this subsection (8). For purposes of this subsection (8), "exhaustion of local remedies" means:

(I) The taxpayer has timely requested in writing a hearing before the local government, and such local government has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief. Such hearing shall be held and the final decision thereon issued within ninety days after the local government's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, such hearing shall be held and the decision thereon issued within one hundred eighty days of the taxpayer's request in writing therefor.

(II) The taxpayer has timely requested in writing a hearing before the local government and such local government has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in subparagraph (I) of this paragraph (b).

(c) Such appeal shall be conducted in the same manner as provided in section 39-21-105, C.R.S.; except that venue shall be in the district court of the county wherein the local government whose decision is being appealed is located.

(9) In lieu of electing a hearing pursuant to this section on a notice of deficiency or claim for refund, a taxpayer may pursue judicial review of a local government's final decision thereon as otherwise provided in such local government's ordinance.

(10) As used in this section, "local government" means home rule and statutory cities, towns, cities and counties, and counties.

(11) If any local government which collects its own sales or use tax to which the deficiency notice claims taxes are due reasonably finds that the collection of the tax will be jeopardized by delay, it may utilize the procedures set forth in section 39-21-111, C.R.S.; however, utilization of such procedures shall not preclude the taxpayer from appealing to the executive director pursuant to subsection (3) of this section.

Source: L. 85: Entire section added, p. 1032, § 3, effective January 1, 1996.

ANNOTATION

Party claiming that administrative methods for challenging municipal sales and use tax as set forth in municipal code were unconstitutional and conflicted with provisions of this section is not required to exhaust all administrative remedies prior to seeking declaratory judgment on issue. Fred Schmid Appliance and Tel. v. Denver, 811 P.2d 31 (Colo. 1991).

A local government cannot undercut or supplant the right to judicial review afforded by this section by precluding de novo review. Service Merch. Co., Inc. v. Schwartzberg, 971 P.2d 654 (Colo. App. 1997).

Appeals taken from locally imposed use or sales taxes are a matter of statewide concern, and therefore subject to the appellate procedures of this section rather than the appellate procedures of local rules. Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991).

In appeal involving challenge to sales and use tax provisions of municipal code, appropriate remedy on appeal is not to remand to district court for de novo review under this section since taxpayer pursued review under municipal code. Arapahoe Roofing & Sheet Metal v. Denver, 831 P.2d 451 (Colo. 1992).

Challenge of sufficiency of notice of assessment issued pursuant to this section is moot issue when taxpayer failed to timely file petition for hearing to challenge sufficiency. Am. Drug Store v. Denver, 831 P.2d 465 (Colo. 1992).

29-2-106.2. Location guides – precinct locators.

(1) Each home rule city, town, and city and county collecting its own sales or use tax shall make available to any requesting vendor a map or other location guide showing the boundaries of the municipality. The requesting vendor may rely on the map or other location guide and any update thereof available to the vendor in determining whether to collect a sales or use tax, or both, of the municipality. No penalty shall be imposed or action for deficiency maintained if the requesting vendor in good faith complies with the most recent map or other location guide available to it.

(2) (a) As used in this subsection (2), unless the context otherwise requires:

(I) "Local taxing entity" means a home rule or statutory municipality, county, city and county, or any other local governmental entity that imposes a sales or use tax.

(II) "Precinct locator" means the record regularly maintained by a county clerk and recorder and used to determine within which jurisdiction or jurisdictions an address is located for voting purposes and, for determining the location of commercial or industrial addresses, shall include the record regularly maintained by the county clerk and recorder and used to determine within which jurisdiction or jurisdictions an address is located for the purpose of properly remitting sales or use tax on motor vehicles.

(b) Any public utility may rely upon the precinct locator maintained by the county clerk and recorder for the county or counties in which a local taxing entity is located in determining whether to collect a sales or use tax, or both, of the local taxing entity.

(c) No penalty shall be imposed upon, interest charged to, or action for deficiency maintained against a public utility in connection with the collection of a sales or use tax, or both, by the public utility if, in determining whether to collect the tax, the public utility relied in good faith upon the most recently updated version of a precinct locator in existence at the time of the taxable transaction. The provisions of this paragraph (c) shall not apply to the extent that the local entity has informed the public utility in writing prior to a taxable transaction that the most recently updated version of the precinct locator is inaccurate and, in such writing, provides the public utility with a corrected copy of the precinct locator information.

Source: L. 85: Entire section added, p. 1032, § 3, effective January 1, 1986. L. 97: Entire section amended, p. 555, § 1, effective April 24.

29-2-107. Limitation on applicability.

(1) Nothing in this article shall be construed to apply to, affect, or limit the powers of home rule municipalities organized under article XX of the state constitution to impose, administer, or enforce any local sales or use tax except those provisions which specifically refer to "home rule".

(2) No provision of this article shall be construed to require any incorporated town or city or any county to impose any sales tax or to increase any sales tax imposed prior to July 1, 1967.

(3) Nothing in this article shall be construed to invalidate any sales or use tax adopted by ordinance or resolution by any town, city, city and county, or county, whether home rule or statutory, prior to January 1, 1986. Except as provided in subsection (1) of this section, no sales or use tax of any such local government shall conflict with the provisions of this article after January 1, 1986.

Source: L. 67: p. 663, § 7. C.R.S. 1963: § 138-10-7. L. 85: Entire section added, p. 1036, § 4, effective January 1, 1986.

ANNOTATION

Municipal ordinance creating a lien for the collection of its sales taxes that is superior to a lien held by a bank was a proper exercise of the municipality's authority under § 6 of article XX of the state constitution and especially § 6(g). The priority of local liens for unpaid sales taxes, at least with respect to their superiority over private commercial liens, is a local and municipal concern for which the municipality may legislate, even if such legislation were to conflict with a state statute. Given that the levy and collection of a local sales tax by a home-rule municipality is a local and municipal concern, it would be anomalous to conclude that, while the general assembly may grant priority to the sales tax liens of statutory cities and towns, a home rule municipality may not makes its sales tax lien superior to the commercial lien of a private lender. Town of Avon v. Weststar Bank, 151 P.3d 601 (Colo. App. 2006).

29-2-108. Limitation on amount.

(1) In no case shall the total sales tax or total use tax imposed by the state of Colorado, any county, and any city or town in any locality in the state of Colorado exceed six and ninety one-hundredths percent; except that this limitation shall not preclude a county sales tax or use tax at a rate not to exceed one percent.

(2) Repealed.

(3) A tax imposed pursuant to section 24-90-110.7 (3) (f), 29-1-204.5 (3) (f.1), 29-2-103.7, 29-2-103.8, 29-2-103.9, 29-25-112, 30-11-107.5, 30-11-107.7, 30-11-107.9, 32-18-107, or 37-50-110, C.R.S., and the

additional tax authorized by section 30-20-604.5, C.R.S., if imposed, shall be exempt from the six and ninety one-hundredths percent limitation imposed by subsection (1) of this section.

(4) Any additional increment of sales tax or total use tax which may be imposed by any county pursuant to the provisions of section 29-2-103.5 shall be exempt from the six and ninety one-hundredths percent limitation imposed by subsection (1) of this section.

(5) Any additional increment of sales tax or use tax imposed by any category IV or category V county, as defined in section 30-2-102, C.R.S., for the specific purpose of funding the operations of any health service district created within such county pursuant to the "Special District Act", article 1 of title 32, C.R.S., shall be exempt from the six and ninety one-hundredths percent limitation imposed by subsection (1) of this section. In no case shall such additional increment of sales tax or use tax exceed a rate of one percent. Any tax imposed pursuant to this subsection (5) may be terminated by the board of county commissioners of any such county after notice to the health service district and a public hearing thereon. If any such tax is terminated, the effective date of such termination shall be not less than six months after the decision thereon by the board of county commissioners.

(5.5) (a) (I) Any increment of sales tax or use tax imposed by any county for the specific purpose of funding the acquisition, and any costs related to the acquisition, of land or interests in land within such county for open space, parks, or the management of such lands shall be exempt from the six and ninety one-hundredths percent limitation imposed by subsection (1) of this section.

(II) In no case shall such additional increment of sales tax or use tax exempted pursuant to this subsection (5.5) exceed a rate of one-half of one percent.

(b) (I) Nothing in this subsection (5.5) shall be construed to limit the amount of sales tax or use tax that any county may levy, collect, or expend in accordance with any provision other than this subsection (5.5) for the purpose of funding the acquisition of land or interests in land within such county for open space, parks, or the management of such lands.

(II) Any additional increment of sales tax or use tax imposed by a county as provided for in this subsection (5.5) shall supplement and shall not supplant any other county moneys budgeted for similar programs or purposes prior to voter approval of the additional increment of sales tax or use tax.

(c) Nothing in this subsection (5.5) shall be construed to allow any county to impose an additional increment of sales tax or use tax without the approval of the eligible electors in the county.

(6) When calculating the total sales tax or total use tax for purposes of this section, any extension of an expiring tax shall be deemed to be in effect from the date of the first imposition of such tax, if the eligible electors of the state, county, city, town, or locality, as applicable, have approved the extension of such tax prior to the expiration of such tax. Nothing in this subsection (6) shall be construed to allow the extension of an expiring tax without the approval of eligible electors in the state, county, city, town, or locality as applicable.

(7) Any petition measure, to the extent authorized by law, including a measure to extend an expiring tax, that changes the distribution of tax revenue among local governments as provided in a preexisting revenue-sharing ballot measure shall be deemed to be a new tax in effect from the date of the change in the distribution of the tax revenues and shall be subject to any other validly adopted sales or use tax proposal.

Source: L. 67: p. 663, § 8. C.R.S. 1963: § 138-10-8. L. 73: p. 1479, § 4. L. 81: Entire section amended, p. 1402, § 3, effective June 9. L. 83: Entire section amended, p. 1519, § 5, effective March 22; (3) added, p. 917, § 3, effective April 28; (2) amended, p. 2098, § 8, effective October 13. L. 84: (2) amended, p. 1141,

§ 2, effective June 7. L. 86: (2) repealed, p. 1220, § 28, effective May 30. L. 87: (3) amended, p. 1206, § 2, effective May 6; (3) amended, p. 1215, § 12, effective May 7; (3) amended, p. 987, § 13, effective July 1. L. 90: (4) added, p. 1441, § 2, effective May 4. L. 91: (3) amended, p. 1982, § 3, effective April 20. L. 97: (5) added, p. 1424, § 1, effective June 3. L. 2000: Entire section amended, p. 1430, § 1, effective May 31. L. 2001: (3) amended, p. 1275, § 40, effective June 5; (3) amended, p. 973, § 2, effective August 8. L. 2002: (6) and (7) added, p. 1944, § 2, effective August 7. L. 2003: (3) amended, p. 884, § 6, effective August 6; (3) amended, p. 2475, § 30, effective August 15. L. 2004: (3) amended, p. 1931, § 3, effective August 4. L. 2005: (3) amended, p. 1043, § 6, effective June 2. L. 2007: (5.5) added, p. 305, § 1, effective March 30; (3) amended, p. 430, § 3, effective April 9; (3) amended, p. 584, § 1, effective April 19; (3) amended, p. 1201, § 17, effective July 1; (3) amended, p. 1460, § 3, effective August 3.

Editor's note: (1) Amendments to subsection (3) by House Bill 87-1214, Senate Bill 87-23, and House Bill 87-1210 were harmonized.

(2) Amendments to subsection (3) by House Bill 01-1172 and Senate Bill 01-138 were harmonized.

(3) Amendments to subsection (3) by Senate Bill 03-115 and Senate Bill 03-326 were harmonized.

(4) Amendments to subsection (3) by Senate Bill 07-111, House Bill 07-1168, House Bill 07-1219, and House Bill 07-1344 were harmonized.

(5) Subsection (3) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

(6) Section 20 of chapter 283, Session Laws of Colorado 2007, provides that the act amending subsection (3) applies to service plans and petitions for health service districts and health assurance districts filed on or after July 1, 2007.

ANNOTATION

Am. Jur.2d. See 68 Am. Jur.2d, Sales and Use Taxes, § 172.

29-2-109. Contents of use tax ordinances and proposals.

(1) The use tax ordinance, resolution, or proposal of any town, city, or county adopted pursuant to this article shall be imposed only for the privilege of using or consuming in the town, city, or county any construction and building materials purchased at retail or for the privilege of storing, using, or consuming in the town, city, or county any motor and other vehicles, purchased at retail on which registration is required, or both. For the purposes of this subsection (1), the term "construction and building materials" shall not include parts or materials utilized in the fabrication, construction, assembly, or installation of passenger tramways, as defined in section 25-5-702 (4), C.R.S., by any ski area operator, as defined in section 33-44-103 (7), C.R.S., or any person fabricating, constructing, assembling, or installing a passenger tramway for a ski area operator. The ordinance, resolution, or proposal shall recite that the use tax shall not apply:

(a) To the storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the town, city, or county;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the town, city, or county, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(c) To the storage, use, or consumption of tangible personal property brought into the town, city, or county by a nonresident thereof for his own storage, use, or consumption while temporarily within the town, city, or county; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state;

(d) To the storage, use, or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(e) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof;

(f) (I) With respect to the use tax of a town or city, to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule town, city, or city and county equal to or in excess of that imposed by this article. A credit shall be granted against the use tax imposed by this article with respect to a person's storage, use, or consumption in the town or city of tangible personal property purchased by him in a previous statutory or home rule town, city, or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this article.

(II) With respect to the use tax of a statutory or home rule county, to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by this article. A credit shall be granted against the use tax imposed by this article with respect to a person's storage, use, or consumption in the subsequent statutory or home rule county of tangible personal property purchased by him in a previous statutory or home rule county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this article.

(g) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the town, city, or county and brought into it by a nonresident acquiring residency;

(h) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the town, city, or county and he purchased the vehicle outside of the town, city, or county for use outside the town, city, or county and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of the town, city, or county;

(i) To the storage, use, or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of such use tax;

(j) To the storage, use, or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to the effective date of such use tax ordinance, resolution, or proposal.

(2) No use tax of any town shall be imposed with respect to the use or consumption of taxable tangible personal property within the town that occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

(3) Construction equipment which is located within the boundaries of a home rule city, town, or city and county for a period of thirty consecutive days or less shall be subjected to the use tax of such home rule city, town, or city and county in an amount which does not exceed the amount calculated as follows: The purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by the use tax rate of the home rule city, town, or city and county. Where the provisions of this subsection (3) are utilized, the credit provisions of subsection (6) of this section shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule cities, towns, and cities and counties on any such equipment equal the full use tax of the subsequent home rule city, town, or city and county.

(4) In order to avail himself of the provisions of subsection (3) of this section, the taxpayer shall comply with the following procedure:

(a) Prior to or on the date the equipment is located within the boundaries of a home rule city, town, or city and county, the taxpayer shall file with such home rule city, town, or city and county an equipment declaration on a form provided by such home rule city, town, or city and county. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the home rule city, town, or city and county, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the home rule city, town, or city and county.

(b) The taxpayer shall file with the home rule city, town, or city and county an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the boundaries of such home rule city, town, or city and county or, for equipment which is brought into the boundaries of a home rule city, town, or city and county for a project of less than ninety days duration, no later than ten days after substantial completion of the project.

(c) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under two thousand five hundred dollars. If such equipment declaration is given, then as to any item of construction equipment for which the customary purchase price is under two thousand five hundred dollars which was brought into the boundaries of the home rule city, town, or city and county temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as that of such home rule city, town, or city and county where the construction takes place and that such sales or use tax was previously paid. In such case the burden of proof in any proceeding before such city, town, or city and county, the executive director of the department of revenue, or the district court, shall be on such home rule, city, town, or city and county where the construction takes place to prove such local sales or use tax was not paid.

(5) If the taxpayer fails to comply with the provisions of subsection (4) of this section, the taxpayer may not avail himself of the provisions of subsection (3) of this section. However, substantial compliance with the provisions of subsection (4) of this section shall allow the taxpayer to avail himself of the provisions of subsection (3) of this section.

(6) No use tax of any home rule city, town, or city and county shall apply to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule city, town, or city and county legally imposed on the purchaser or user equal to or in excess of that imposed by the subsequent home rule city,

town, or city and county. A credit shall be granted against the use tax of the home rule city, town, or city and county with respect to the person's storage, use, or consumption in the home rule city, town, or city and county of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the subsequent home rule city, town, or city and county.

(7) The use tax of any town, city, city and county, or county, whether home rule or statutory, shall not apply to the storage of construction and building materials.

Source: L. 73: p. 1479, § 5. C.R.S. 1963: § 138-10-10. L. 75: Entire section R&RE, p. 963, § 6, effective July 14. L. 85: IP(1) and (1)(f) amended and (2), (3), and (4) added, p. 1036, § 5, effective January 1, 1986. L. 99: (2) amended, p. 1338, § 1, effective August 4. L. 2000: IP(1) amended, p. 1163, § 2, effective May 26.

Cross references: For the legislative declaration contained in the 2000 act amending the introductory portion to subsection (1), see section 2 of chapter 260, Session Laws of Colorado 2000.

ANNOTATION

State statute prohibiting the imposition of local use taxes on tangible personal property purchased more than three years prior to its use is inapplicable where it is in conflict with a home rule city use tax that deals with a matter of local concern such as an excise tax constituting a one time use fee imposed on a privilege at the time the privilege is exercised. Winslow Constr. Co. v. City and County of Denver, 960 P.2d 685 (Colo. 1998).

Applied in Rancho Colo., Inc. v. City of Broomfield, 196 Colo. 444, 586 P.2d 659 (1978); Associated Dry Goods Corp. v. City of Arvada, 197 Colo. 491, 593 P.2d 1375 (1979).

29-2-110. Filing with executive director – when deemed to have been made.

(1) Any report, claim, tax return, statement, or other document required or authorized under this article to be filed with or any payment made to the executive director of the department of revenue which:

(a) Is transmitted through the United States mails shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed;

(b) Is mailed but not received by the executive director, or is received and the cancellation mark is not legible or is erroneous or omitted, shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

Source: L. 77: Entire section added, p. 1403, § 1, effective July 1.

29-2-111. Pledging of sales and use tax for capital improvements.

(1) A sales or use tax proposal made pursuant to this article by, or on behalf of, any county, city, or incorporated town may contain a provision for the creation of a special fund, to be known as a "sales and use tax capital improvement fund", for the deposit of all or any part of the revenue from the sales or use tax, or both, and to be used solely to provide capital improvements. A sales or use tax proposal of any county, city, or incorporated town which has been approved by the registered electors and which does not contain a provision for the creation of such a special fund may be subsequently amended by ordinance or resolution of the governing body to provide for such a special fund. Any such amendment shall take effect only after approval by a majority of the registered electors of the county, city, or town voting at a regular or special election, but no election shall be required in order to create a capital improvement fund for the deposit of any portion of sales or use tax revenue allocated for capital improvement purposes in a sales or use tax proposal previously approved by the voters.

(2) A city or town by ordinance adopted by the governing body may pledge all or any part of the sales or use tax revenue, or both, it receives from the countywide sales or use tax for capital improvement purposes. Any such pledge shall take effect only after approval by a majority of the registered electors of the city or town voting at a regular or special election.

(3) When sales or use tax revenue, or both, is pledged solely for capital improvement purposes, it shall be deposited immediately upon being received or collected into the sales and use tax capital improvement fund. Upon deposit in this fund, such revenue is thereafter not available to be pledged or expended for any general municipal or county purpose.

(4) For purposes of this section and section 29-2-112, "capital improvement purposes" include:

(a) Paying the costs of acquiring or constructing any capital improvement;

(b) Acquiring land or equipment;

(c) The costs of issuing bonds;

(d) The costs of capitalized interest and reserves; and

(e) The costs of operating and maintaining the capital improvements to be financed.

(5) Notwithstanding any other provision to the contrary, no sales or use tax revenues in the sales and use tax capital improvement fund may be expended in any year for the purposes specified in subsection (4) of this section unless said fund contains sufficient revenues to pay the anticipated annual debt service on any sales and use tax revenue bonds for which moneys in the fund have been pledged.

Source: L. 81: Entire section added, p. 1405, § 1, effective July 1. L. 2001: (4) and (5) added, p. 244, § 1, effective August 8.

ANNOTATION

Language of ballot question that specified financing of capital improvements would be accomplished by increasing sales and use taxes is not clearly misleading even though it did not state that bonds could be issued and secured by a fund containing the increased taxes. Leek v. City of Golden, 870 P.2d 580 (Colo. App. 1993).

29-2-112. Sales and use tax revenue bonds.

(1) Any county, city, or incorporated town which has pledged sales or use tax revenue, or both, solely for capital improvement purposes and has created a sales and use tax capital improvement fund may, in anticipation of collection of sales or use tax revenues, issue revenue bonds payable solely from the fund for the purpose of financing capital improvements.

(2) The revenue bonds may be authorized and issued by ordinance or resolution of the governing body of the county, city, or incorporated town, without further election.

(3) The revenue bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and such interest shall be evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the county, city, or incorporated town; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The resolution or ordinance authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued in one or more series, may bear such date, may mature at such time as determined by the governing body but in no event beyond thirty years from their respective dates, may be in such denomination, may be payable in such medium of payment, at such place within or without the state, including but not limited to the office of the county treasurer, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by the governing body.

(4) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) The revenue bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) The revenue bonds may be sold at either public or private sale.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds under this section may:

(a) Provide for the initial issuance of one or more bonds, referred to in this subsection (5) as a "bond", aggregating the amount of the entire issue;

(b) Make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) Provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or interest or both and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond; and

(d) Make further provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest, or both.

(6) (a) The revenue bonds and any coupons bearing the facsimile or manual signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the county, city, or incorporated town, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the entity issuing the same.

(b) Any officer authorized or permitted to sign any bond or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt, as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon the bond or coupons appertaining thereto, or upon both the bond and such coupons.

(7) The clerk of the county, city, or incorporated town may cause the seal of such entity to be printed, engraved, stamped, or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(8) The revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(9) The revenue bonds shall not constitute an indebtedness of the county, city, or incorporated town within the meaning of any constitutional or statutory debt limitation or provision. Each bond issue under this section shall recite in substance that said bonds, including the interest thereon, are payable solely from a special fund and that said bonds do not constitute a debt within the meaning of any constitutional or statutory limitation.

(10) Any ordinance or resolution authorizing any bonds under this section may provide that each bond therein authorized shall recite that it is issued under authority of this section. Such recital shall conclusively impart full compliance with all of the provisions of this section, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

(11) A home rule municipality may elect to issue sales or use tax revenue bonds pursuant to this section unless a provision of the municipal charter prohibits the issuance of such bonds.

Source: L. 81: Entire section added, p. 1406, § 1, effective July 1.

ANNOTATION

Language of ballot question that specified financing of capital improvements would be accomplished by increasing sales and use taxes is not clearly misleading even though it did not state that bonds could be issued and secured by a fund containing the increased taxes. Leek v. City of Golden, 870 P.2d 580 (Colo. App. 1993).

Suppression doctrine. City charter provision that gives city power to issue bonds is not inconsistent with § 29-2-112, so the suppression doctrine of article XX, § 6 of the Colorado Constitution does not apply. Leek v. City of Golden, 870 P.2d 580 (Colo. App. 1993).

29-2-113. Sales and use tax simplification task force – repeal of section. (Repealed)

Source: L. 85: Entire section added, p. 1038, § 6, effective July 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective January 1, 1986. (See L. 85, p. 1038.)

ARTICLE 3 COUNTY AND MUNICIPALITY DEVELOPMENT REVENUE BOND ACT

29-3-101. Short title.

This article shall be known and may be cited as the "County and Municipality Development Revenue Bond Act".

Source: L. 67: p. 671, § 1. C.R.S. 1963: § 36-24-1. L. 73: p. 475, § 1.

ANNOTATION

Law reviews. For article, "Financing Real Estate Developments", see 11 Colo. Law. 2093 (1982).

This section does not contravene § 1 of art. XI, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Revenue bond financing, as authorized by this section, does not constitute the pledging of credit for a private corporation and does not subject the county to the debt, contract, and liability of a private corporation in contravention of § 1 of art. XI, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Nor § 6 of art. XI, Colo. Const. Revenue bond financing authorized by this statute does not unlawfully create county debt without the required election and for unauthorized purposes in contravention of § 6 of art. XI, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Since there is no pledge of the credit of the county for the payment of revenue bonds, no "debt" is thereby created, and, consequently, the issuance of such bonds has no effect whatsoever on the debt limitations prescribed in § 6 of art. XI, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The provisions of this section do not contain delegations of power in contravention of § 35 of art. V, Colo. Const., and § 8 of art. XIV, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Not violative of substantive due process. The revenue bond financing authorized by this section serves a bona fide public purpose and thereby does not deprive taxpayers of substantive due process of law in contravention of § 25 of art. II, Colo. Const., and of the fourteenth amendment to the United States Constitution. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The argument under the "due process" clauses of the state and federal constitutional provisions that the revenue bond financing authorized by this statute favors one private enterprise over another engaged, or wishing to engage, in the same business in the same locality (in short, that the financing is for the private benefit of a private enterprise); that there is no assurance a competitor would receive the same consideration; and consequently that the project is not for a public purpose is without merit. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Public project not necessarily municipal. The fact that project financed by revenue bonds is for a "public purpose" does not necessarily make its existence or its function municipal in nature. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

But its effect may fulfill public purpose. It is the effect of, or the benefits flowing from, the completed project and its operation by private enterprise that fulfills the "public purpose" requirement and not, "per se", the county's participation therein. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The mechanics of securing obligations are constitutionally immaterial. Since revenue bonds do not create a "debt" within the meaning of that term as used in § 6 of art. XI, Colo. Const., the mechanics of securing the obligations of those who advance the funds for the project are constitutionally immaterial. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Under Colorado law, public revenue bonds do not create debt, if there is no pledge of public property. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

No monetary liability of county. A county is not authorized to, and could not under the law, use general county funds, nor is it in any manner responsible for any shortages or deficiencies which may occur as the result of the development or the operation of the project financed with revenue bonds. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Purchaser on notice as to no such liability. If a bond purchaser sees fit to purchase revenue bonds of a project for the sake of a federal tax advantage, he certainly will be on notice of the fact that there will never be any pecuniary liability against the city, and that he will be able to look only to the revenues of the project and the project property itself for payment of his bonds. With it expressed clearly in the law and on the face of each bond that neither the credit nor taxing power of the municipality is pledged, no bondholder will ever be heard to say he was deceived or that he thought otherwise. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The participation of a county as a "lessor" under this section does not constitute a "municipal function". Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Validity sustained by weight of authority. The employment of public revenue bonds to foster the promotion of local industry is not a new concept, and the weight of authority sustains the validity of laws such as this statute. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Law cognizant of supreme court decisions. This section was passed with full knowledge by the general assembly of the decisions of the supreme court approving revenue bond financing. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Supreme court would not determine the constitutionality of this section when requested by the governor, stating that the question should only be answered after thorough analysis and study, with full opportunity for those who may be affected to be heard. In re House Bill No. 1503 of the Forty-sixth General Assembly, 163 Colo. 45, 428 P.2d 75 (1967).

29-3-102. Legislative declaration.

(1) It is the intent of the general assembly by the passage of this article to authorize counties and municipalities to finance, acquire, own, lease, improve, and dispose of properties to the end that such counties and municipalities may be able to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporations, federal governmental offices, hospitals, and agricultural, forestry, fisheries, mining, construction, manufacturing, transportation, communications, public utilities, wholesale and retail trade, finance, education, insurance, real estate, technology, and any related small business enterprises to locate, expand, or remain in this state, to mitigate the serious threat of extensive unemployment in parts of this state, to secure and maintain a balanced and stable economy in all parts of this state, or to further the use of its agricultural products or natural resources.

(2) It is the further intent of the general assembly to authorize counties and municipalities to finance, refinance, acquire, own, lease, improve, and dispose of properties to the end that pollution may be ameliorated and controlled, more adequate hospital care may be provided, more adequate residential housing facilities for low- and middle-income families and persons may be provided, more adequate facilities for disposing of sewage and solid waste and furnishing water, energy, and gas may be provided, more adequate facilities for sports events and activities and recreation activities, conventions, and trade shows may be provided, more adequate airports, mass commuting facilities, parking facilities, or storage or training facilities may be provided, and more adequate research, product-testing, and administrative facilities may be provided, all of which promote the public health, welfare, safety, convenience, and prosperity.

(3) It is therefore the intention of the general assembly to vest such counties and municipalities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of this state for the promotion of their health, safety, welfare, convenience, and prosperity.

(4) It is not intended by this article to authorize any county or municipality to operate any manufacturing, industrial, commercial, or business enterprise, or any research, product-testing, or administrative facilities of such enterprise, nor to prohibit the operation of utility plants, residential housing facilities, hospitals, sewage or solid waste disposal facilities, facilities for the furnishing of water, energy, or gas, sports and recreation facilities, convention or trade show facilities, airports, mass commuting facilities, parking facilities, or storage or training facilities by any county or municipality.

(5) This article shall be liberally construed in conformity with this legislative declaration.

Source: L. 67: p. 671, § 3. C.R.S. 1963: § 36-24-3. L. 73: p. 476, § 3. L. 74: (1) amended, p. 408, § 24, effective April 11. L. 75: (1), (2), (3), and (4) amended, p. 966, § 1, effective July 14. L. 77: (1) and (2) amended, p. 1408, § 1, effective June 20. L. 2003: (1) amended, p. 726, § 1, effective July 1.

ANNOTATION

Valid public purpose. The general assembly's desire to afford a vehicle to aid in the relief of extensive unemployment, to maintain a balanced and stable economy, and to promote the use of the state's agricultural products represents a valid public purpose. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Weight given legislative intent. Although the expressed intent of the general assembly under this section has no magical quality which validates the invalid, it is entitled to reverent weight in determining whether this article promotes a public purpose. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

This section and § 29-3-119 prohibit county operation of the project. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Bonds" or "revenue bonds" means bonds, notes, or other securities evidencing an obligation and issued under this article by a county or municipality.

(2) "County" means any county within this state.

(3) "Finance" or "financing" means the issuing of bonds by a county or municipality and the use of substantially all of the proceeds therefrom pursuant to a financing agreement with the user to pay (or to reimburse the user or its designee) for the costs of the acquisition or construction of a project, whether these costs are incurred by the county, the municipality, the user, or a designee of the user. Title to or in the project may at all times remain in the user, and, in such case, the bonds of the county or municipality may be secured by mortgage or other lien upon the project or upon any other property of the user, or both, granted by the owner or by a pledge of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the user, as the governing body deems advisable, but no county or municipality shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds with its property; except that the county or municipality may pledge the property of the project or revenues therefrom.

(4) "Financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase, or any other agreement, or any combination thereof, entered into in connection with the financing or refinancing of a project pursuant to this article.

(5) "Mortgage" means a deed of trust or any other security device for both real and personal property.

(6) "Municipality" means any city, including without limitation any city or city and county operating under a home rule or special legislative charter, or town within this state.

(7) "Ordinance" means an ordinance of a city, town, or city and county.

(8) "Pollution" means any form of environmental pollution, including but not limited to water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation contamination, or noise pollution.

(9) "Pollution control facilities" means any land, building, or other improvement and all real or personal property, and any undivided or other interest in any of the foregoing, including without limitation structures, equipment, pipes, pumps, dams, reservoirs, improvements, or other facilities useful for the purpose of reducing, abating, preventing, controlling, or eliminating pollution caused or produced by the operation of any manufacturing, industrial, or commercial enterprise or any utility plant or useful for the purpose of removing or treating any substance in processed material, which material would cause pollution if used without such removal or treatment.

(10) "Project" means any land, building, or other improvement and all real or personal properties, and any undivided or other interest in any of the foregoing, except inventories and raw materials, whether or not in existence, suitable or used for or in connection with any of the following:

(a) Manufacturing, industrial, commercial, agricultural, or business enterprises (including, without limitation, enterprises engaged in storing, warehousing, distributing, selling, or transporting any products of agriculture, industry, commerce, manufacturing, or business), or any utility plant;

(b) Hospital, health-care, or nursing-home facilities (including, without limitation, clinics and out-patient facilities and facilities for the training of hospital, health-care, or nursing-home personnel);

(c) Pollution control facilities;

(d) Residential facilities for low- and middle-income families or persons intended for use as the sole place of residence by the owners or intended occupants. "Low- and middle-income persons and families" means persons and families determined by a county or municipality (which determination shall be conclusive) to lack the financial ability to pay prices or rentals sufficient to induce private enterprise in

such county or municipality to build a sufficient supply of adequate, safe, and sanitary dwellings without the special assistance afforded by this article.

(e) Sewage or solid waste disposal facilities;

(f) Facilities for the furnishing and storage of water;

(g) Facilities for the furnishing of energy or gas;

(h) Sports and recreational facilities available for use by members of the general public either as participants or spectators and functionally related and subordinate residential housing facilities, including residential facilities, without regard to the limitations contained in paragraph (d) of this subsection (10), for employees of the persons or entities owning or operating such sports and recreational facilities and facilities located in proximity to and in connection with sports and recreational facilities providing treatment, therapy, or recreational opportunities for persons with mental and physical disabilities and families of such persons;

(i) Convention or trade show facilities;

(j) Airports, facilities for the loading or unloading of unprocessed agricultural products or raw materials, mass commuting facilities, railroad facilities, parking facilities, or storage or training facilities directly related to any of the foregoing;

(k) Research, product-testing, and administrative facilities; and

(l) Facilities for private and not-for-profit institutions of higher education.

(10.5) "Refinance" or "refinancing" means the issuing of bonds by a county or municipality and the use of all or substantially all of the proceeds therefrom pursuant to a financing agreement with the user to liquidate any obligations previously incurred to finance or aid in financing of a project specified in paragraphs (b) to (l) of subsection (10) of this section which would constitute such a project had it been originally undertaken and financed by a county or municipality pursuant to this article. Title to or in the project may remain at all times in the user, and in such case, the bonds of the county or municipality may be secured by mortgage or other lien upon the project granted by the owner or by a pledge of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the user, as the governing body deems advisable.

(11) "Resolution" means a resolution of a county.

(12) "State" means the state of Colorado.

(13) "User" means one or more persons who enter into a financing agreement with any county or municipality relating to a project; except that the user need not be the person actually occupying, operating, or maintaining the project.

(14) "Utility plant" means any facility used for or in connection with the generation, production, transmission, or distribution of electricity; the production, manufacture, storage, or distribution of gas; the transportation or conveyance of gas, oil, or other fluid substance by pipeline; or the diverting, developing, pumping, impounding, distributing, or furnishing of water.

Source: L. 67: p. 671, § 2. C.R.S. 1963: § 36-24-2. L. 73: p. 475, § 2. L. 74: (8) amended, p. 229, § 1, effective February 7; (10) and (11) amended, p. 408, § 23, effective April 11. L. 75: (3), (10), and (13)

amended, p. 967, §§ 2, 3, effective July 14. L. 77: (4), (10)(j), and (10)(k) amended and (10.5) added, p. 1409, §§ 2, 3, effective June 20. L. 81: (10)(h) amended, p. 1409, § 1, effective May 27. L. 93: (10)(h) amended, p. 1669, § 83, effective July 1. L. 2003: IP(10), (10)(f), and (10)(l) amended, p. 726, § 2, effective July 1.

29-3-104. General powers.

(1) In addition to any other powers, each county and municipality has the following powers:

(a) To acquire, whether by construction, purchase, gift, devise, lease, or sublease; to improve and equip; and to finance, refinance, sell, lease, or otherwise dispose of one or more projects or part thereof. If a county issues revenue bonds as provided in this article to finance, refinance, or acquire projects, such projects shall be located within said county, or, if a municipality issues revenue bonds as provided in this article to finance, refinance, or acquire projects, such projects shall be located within the municipality or within eight miles from the nearest point of its corporate limits.

(b) To enter into financing agreements with others for the purpose of providing revenues to pay the bonds authorized by this article; to lease, sell, or otherwise dispose of any or all of its projects to others for such revenues and upon such terms and conditions as the governing body may deem advisable; and to grant options to renew any lease or other agreement with respect to the project and to grant options to buy any project at such price as the governing body deems desirable;

(c) To issue revenue bonds for the purpose of defraying the cost of financing, refinancing, acquiring, improving, and equipping any project, including the payment of principal and interest on such bonds for not exceeding three years, funding any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds or the maintenance of the project, and all other incidental expenses incurred in issuing such bonds;

(d) To secure payment of such bonds as provided in this article.

(2) To further implement section 18 of article XIV of the state constitution and to supplement part 5 of article 25 of title 31, C.R.S., any county or municipality may delegate, by resolution or ordinance as the case may be, to any other county or municipality authority to act on its behalf in the financing, refinancing, acquisition, leasing, ownership, improvement, and disposal of projects. Any such delegation may be general or limited in scope and time and may be irrevocable for the term or terms of any financing agreement or bond issue, all as provided in said ordinance or resolution.

Source: L. 67: p. 672, § 4. C.R.S. 1963: § 36-24-4. L. 73: p. 477, § 4. L. 77: (1)(a) and (1)(c) amended and (2) R&RE, pp. 1409, 1410, §§ 4, 5, effective June 20.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, §§ 50, 101, 102.

C.J.S. See 20 C.J.S., Counties, § 218; 64 C.J.S., Municipal Corporations, §§ 1902, 1905.

29-3-105. Bonds to be special obligations.

(1) All bonds issued by a county or municipality under the authority of this article shall be special, limited obligations of the county or municipality. Except as provided in section 29-3-116, the principal of and interest on such bonds shall be payable, subject to the mortgage provisions in this article, solely out of the

revenues derived from the financing, refinancing, sale, or leasing of the project with respect to which the bonds are issued.

(2) The bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the county or municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter, and shall not constitute nor give rise to a pecuniary liability of the county or municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each bond.

Source: L. 67: p. 672, § 5. C.R.S. 1963: § 36-24-5. L. 73: p. 478, § 5. L. 77: (1) amended, p. 1410, § 6, effective June 20.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, § 52.

C.J.S. See 20 C.J.S., Counties, § 219.

Applied in Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970); Weed v. City of Pueblo, 197 Colo. 52, 591 P.2d 80 (1979).

29-3-106. Form and terms of bonds – exemption from Colorado income tax.

(1) The bonds shall be authorized by resolution of the county commissioners or by ordinance of the municipality; shall be subject to such maximum net effective interest rate; and shall be in such denominations, bear such date, mature at such time not exceeding forty years from their respective dates, bear such interest at a rate, be in such form, carry such registration privileges, be executed in such manner, be payable at such place within or without the state, and be subject to such terms of redemption as the authorizing resolution or supplemental resolution of the county commissioners or the ordinance or supplemental resolution of the municipality may provide.

(2) The bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the county or municipality, in its discretion, shall determine; but the county or municipality shall not sell such bonds at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized. As an incidental expense of the project, the county or municipality, in its discretion, may employ financial and legal consultants in regard to the financing of the project.

(3) The county or municipality may exchange all or a part of its bonds for all or an equivalent part of the project for which the bonds are issued, the exchange to be preceded by determination of the fair value of the project or part of the project exchanged for the bonds. Such determination shall be by ordinance of the municipality or by resolution of the governing body of the county and shall be conclusive.

(4) The bonds shall be fully negotiable under the terms of article 8 of title 4, C.R.S.

(5) Interest on bonds issued on or after July 1, 1979, pursuant to this article shall be exempt from Colorado income tax.

Source: L. 67: p. 672, § 6. C.R.S. 1963: § 36-24-6. L. 70: pp. 109, 140, §§ 2, 8. L. 73: p. 478, § 6. L. 79: (5) added, p. 1128, § 1, effective June 22.

Cross references: For the definition of "net effective interest rate", as used in subsections (1) and (2), see § 30-26-301 (2)(d).

ANNOTATION

Am. Jur.2d. See 63C Am. Jur.2d, Public Funds, §§ 16, 17; 64 Am. Jur.2d, Public Securities and Obligations, §§ 165, 166, 196, 205.

C.J.S. See 20 C.J.S., Counties, § 221; 64 C.J.S., Municipal Corporations, § 1915.

29-3-107. Bond Security

The principal of, the interest on, and any prior redemption premiums due in connection with the bonds shall be payable from, secured by a pledge of, and constitute a lien on the revenues out of which such bonds shall be made payable. In addition, they may be secured by a mortgage covering all or any part of the project or upon any other property of the user, or both, by a pledge of the revenues from or a financing agreement for such project, or both, as the governing body in its discretion may determine, but no county or municipality shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds with its property; except that the county or municipality may pledge the property of the project or revenues therefrom.

Source: L. 67: p. 673, § 7. C.R.S. 1963: § 36-24-7. L. 73: p. 478, § 7. L. 75: Entire section amended, p. 968, § 4, effective July 14.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, § 177.

It is solely to the bond security which bondholders may look for payment of interest and redemption of their investment. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-108. Terms of proceedings and instruments.

(1) The proceedings under which the bonds are authorized to be issued and any mortgage or trust indenture given to secure the same may contain any provisions customarily contained in instruments securing bonds and constituting a covenant with the bondholders, including, but not limited to:

(a) Provisions respecting custody of the proceeds from the sale of the bonds, including their investment and reinvestment until used to defray the cost of the project;

(b) Provisions respecting the fixing and collection of revenues from the project;

(c) The terms to be incorporated in the financing agreement and any mortgage or trust indenture for the project, including without limitation provision for subleasing;

(d) The maintenance and insurance of the project;

(e) The creation of funds and accounts into which any bond proceeds, revenues, and income may be deposited or credited;

(f) Limitation on the purpose to which the proceeds of any bonds then or thereafter to be issued may be applied;

(g) Limitation on the issuance of additional bonds, the terms upon which additional bonds are issued and secured, the refunding of bonds, and the replacement of bonds;

(h) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated;

(i) Vesting in a trustee such properties, rights, powers, and duties in trust as the county or municipality determines and limiting the rights, duties, and powers of such trustees;

(j) The rights and remedies available in case of a default to the bondholders or to any trustee under the financing agreement, a mortgage, or a trust indenture for the project.

Source: L. 67: p. 673, § 8. C.R.S. 1963: § 36-24-8. L. 73: p. 478, § 8.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, § 166.

C.J.S. See 20 C.J.S., Counties, § 221; 64 C.J.S., Municipal Corporations, § 1915.

29-3-109. Investments and bank deposits.

(1) The county or municipality may provide that proceeds from the sale of bonds and special funds from the revenues of the project shall be invested and reinvested in such securities and other investments, whether or not any such investment or reinvestment is authorized under any other law of this state, as may be provided in the proceedings under which the bonds are authorized to be issued, including but not limited to:

(a) Bonds or other obligations of the United States;

(b) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(c) Obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;

(d) Obligations issued or guaranteed by any state of the United States or any political subdivision of any such state;

(e) Prime commercial paper;

(f) Prime finance company paper;

(g) Bankers acceptances drawn on and accepted by commercial banks;

(h) Repurchase agreements fully secured by obligations issued or guaranteed as to principal and interest by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;

(i) Certificates of deposit issued by commercial banks.

(2) The county or municipality may also provide that the proceeds, funds, or investments and the revenues payable under the financing agreement shall be received, held, and disbursed by one or more trust companies located within or without this state or in any depository authorized in section 24-75-603, C.R.S.

Source: L. 67: p. 674, § 9. C.R.S. 1963: § 36-24-9. L. 73: p. 479, § 9. L. 79: (2) amended, p. 1617, § 12, effective June 8.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, § 1881.

29-3-110. Acquisition of project.

(1) The county or municipality may also provide that:

(a) The project and improvements to be constructed, if any, shall be constructed by the county or municipality, the user, the user's designee, or any one or more of them on real estate owned by the county or municipality, the user, or the user's designee, as the case may be;

(b) The bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order, or certificate of the user or the user's designee.

(2) The project, if and to the extent constructed on real estate not owned by the county or municipality, may be conveyed or leased or an easement therein granted to the county or municipality at any time.

Source: L. 67: p. 674, § 10. C.R.S. 1963: § 36-24-10. L. 73: p. 479, § 10.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 491.

C.J.S. See 63 C.J.S., Municipal Corporations, § 951.

29-3-111. Limited obligation.

In making such agreements or provisions, a county or municipality shall not obligate itself, except with respect to the project and the application of the revenues therefrom and bond proceeds therefor.

Source: L. 67: p. 674, § 11. C.R.S. 1963: § 36-24-11.

29-3-112. Rights upon default.

(1) The proceedings authorizing any bonds, or any mortgage securing such bonds, may provide that if there is a default in the payment of the principal of, the interest on, or any prior redemption premiums due

in connection with the bonds or in the performance of any agreement contained in such proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with the proceedings or the provisions of the mortgage.

(2) Any mortgage to secure bonds issued thereunder may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the mortgage it may be foreclosed and there may be a sale under proceedings in equity or in any other manner permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder and may apply toward the purchase price unpaid bonds at the face value thereof.

Source: L. 67: p. 674, § 12. C.R.S. 1963: § 36-24-12.

29-3-113. Determination of revenue.

(1) Prior to entering into a financing agreement for the project and the issuance of bonds in connection therewith, the governing body must determine:

(a) The amount necessary in each year to pay the principal of and the interest on the first bonds proposed to be issued to finance such project;

(b) The amount necessary to be paid each year into any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project;

(c) The estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms under which the project is to be financed provide that the user shall maintain the project and carry all proper insurance with respect thereto.

(2) The determination and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued; but the foregoing amounts need not be expressed in dollars and cents in the financing agreement and proceedings under which the bonds are authorized to be issued.

Source: L. 67: p. 675, § 13. C.R.S. 1963: § 36-24-13. L. 73: p. 479, § 11.

29-3-114. Financing of project.

Prior to the issuance of any bonds authorized by this article, the county or municipality shall enter into a financing agreement with respect to the project with a user providing for payment to the county or municipality of such revenues as, upon the basis of such determinations and findings, will be sufficient to pay the principal of and interest on the bonds issued to finance the project, to build up and maintain any reserves deemed advisable by the governing body in connection therewith, and to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the financing agreement obligates the user to pay for the maintenance of and insurance on the project.

Source: L. 67: p. 675, § 14. C.R.S. 1963: § 36-24-14. L. 73: p. 480, § 12.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 513.

Law reviews. For article, "Financing Real Estate Developments", see 11 Colo. Law. 2093 (1982).

29-3-115. Option to purchase.

(1) A lease may grant the user of a project an option to purchase all or a part of the project at a stipulated purchase price or at a price to be determined upon appraisal as is provided in the lease.

(2) The option may be exercised at such time as the lease may provide.

(3) The county or municipality and the user may agree and provide in the lease that all or a part of the rentals paid by the user prior to and at the time of the exercise of such option shall be applied toward the purchase price and shall be in full or partial satisfaction thereof.

Source: L. 67: p. 675, § 15. C.R.S. 1963: § 36-24-15. L. 73: p. 480, § 13.

ANNOTATION

Section held constitutional under § 2 art. XI, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Authorization. This section authorizes the county to grant the lessee an option to purchase the project at a stipulated price, and it also authorizes the county, as lessor, and the lessee to agree that the rentals paid by the lessee prior to and at the time of the exercise of such an option be applied toward the purchase price and that such rentals shall be in full or partial satisfaction thereof. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The option to purchase a project financed with revenue bonds is an appropriate and integral part of the entire transaction between the county and the lessee. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-116. Refunding.

(1) Any bonds issued pursuant to the provisions of this article and at any time outstanding may be refunded at any time and from time to time by a county or municipality by the issuance of its refunding bonds in such amount as the governing body may determine to refund the principal of the bonds to be so refunded, all accrued and unaccrued interest thereon to the normal maturity dates of such bonds or to the prior redemption dates selected by the county or municipality in accordance with the proceedings under which the bonds to be refunded were issued, including any mortgage or trust indenture given to secure the same, and any premiums and incidental expenses necessary to be paid in connection therewith. The principal amount of any such refunding bonds may be equal to, less than, or greater than the principal amount of the bonds to be so refunded. The net effective interest rate on any such refunding bonds may be equal to, less than, or greater than the net effective interest rate on the bonds to be so refunded.

(2) Any such refunding may be effected, whether the bonds to be refunded have matured or shall mature thereafter, either by sale of the refunding bonds and the application of the proceeds thereof, directly or indirectly, to the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable at normal maturity date or prior redemption date selected by the county or municipality in accordance with the proceedings under which the bonds to be refunded were issued, including any mortgage or trust indenture given to secure the same.

(3) The proceeds of the refunding bonds shall either be immediately applied to the retirement of the bonds to be so refunded or be placed in escrow in any state or national bank within or without this state which possesses and is exercising trust powers to be applied to the payment of the bonds being refunded or the refunding bonds or both upon their presentation therefor, to the extent, in such priority, and otherwise in the manner in which the county or municipality may determine. Except to the extent expressly inconsistent with the provisions of this article, the proceedings under which the bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the issuance of such refunding bonds, the establishment of any escrow in connection therewith, and the investment and reinvestment of any escrowed proceeds.

(4) All refunding bonds issued under authority of this article shall be payable solely from revenues out of which the bonds to be refunded thereby are payable or from revenues out of which bonds of the same character may be made payable under this article or any other law in effect at the time of the refunding or from the escrowed proceeds of such refunding bonds, including any proceeds realized from the investment and reinvestment of such escrowed proceeds.

Source: L. 67: p. 676, § 16. C.R.S. 1963: 36-24-16. L. 77: Entire section R&RE, p. 1410, § 7, June 20.

Cross references: For the definition of "net effective interest rate", as used in subsection (1), see § 30-26-301 (2)(d); for the "Refunding Revenue Securities Law", see § 11-54-101 et seq.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, §§ 224, 225.

C.J.S. See 20 C.J.S., Counties, § 218; 64 C.J.S., Municipal Corporations, § 1910.

29-3-117. Application of proceeds.

(1) The proceeds from the sale of any bonds shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds are not needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

(2) The cost of acquiring any project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of a project which may be constructed (including architects' and engineers' fees), the purchase price of any part of a project that may be acquired by purchase, and all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition.

Source: L. 67: p. 676, § 17. C.R.S. 1963: § 36-24-17.

29-3-118. No payment by county or municipality.

(1) No county or municipality has the power to pay out of its general fund or otherwise contribute any part of the costs of acquiring a project and, unless specifically acquired for uses of the character described in this article or unless the land is determined by the governing body to be no longer necessary for other county or municipal purposes, shall not have the power to use land already owned by the county or municipality, or in which the county or municipality has an equity, for the construction thereon of a project or any part thereof.

(2) The entire cost of acquiring any project must be paid out of the proceeds from the sale of the bonds, but this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

Source: L. 67: p. 676, § 18. C.R.S. 1963: § 36-24-18.

ANNOTATION

Applied in Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-119. No county or municipal operation.

(1) When all principal of, interest on, and any prior redemption premium due in connection with the bonds issued for a project leased to a user have been paid in full and in the event the option to purchase or option to renew the lease, if any, contained in the lease has not been exercised as to all of the property contained in the project, the lease shall terminate and the county or municipality shall sell such remaining property or devote the same to county or municipal purposes other than manufacturing, commercial, or industrial.

(2) Any such sale which is not made pursuant to the exercise of an option to purchase by the user of a project shall be conducted in the same manner as is then provided by law governing the issuer's sale of surplus property.

Source: L. 67: p. 677, § 19. C.R.S. 1963: § 36-24-19. L. 73: p. 480, § 14.

ANNOTATION

This section and § 29-3-102 prohibit county operation of the project. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-120. Payment in lieu of taxes.

(1) Pursuant to section 4 of article X of the state constitution, all property owned by a county or municipality pursuant to this article shall be and remain exempt from taxation. Nevertheless, any county or municipality acquiring or extending any project as provided in this article shall annually pay, solely out of the revenues from the project and not from any other **Source**, to the state of Colorado and to the city, town, school district, and any other political subdivision or public body corporate wherein such project is located, authorized to levy taxes, a sum equal to the amount of tax which the taxing entity would annually receive if the property were owned by any private person or corporation, any other statute to the contrary notwithstanding. In addition to the requirements of sections 29-3-113 and 29-3-114, the governing body, before entering into a financing agreement pursuant to this article, shall make a prior determination of sufficiency of revenues for the purposes of this section, and each financing agreement shall provide for revenues sufficient to meet the payments required by this section.

(2) If and to the extent the proceedings under which the bonds so provide, the county or municipality may agree to cooperate with the user of a project in connection with any administrative or judicial proceedings for determining the validity or amount of any such payments and may agree to appoint or designate and reserve the right in and for such user to take all action which the county or municipality may lawfully take in respect of such payments and all matters relating thereto, but such user shall bear and pay all costs and expenses of the county or municipality thereby incurred at the request of such user or by reason of any such action taken by such user in behalf of the county or municipality.

(3) Any user of a project which has paid, as revenues additional to those required to be paid pursuant to section 29-3-114, the amounts required by subsection (1) of this section to be paid by the county or municipality shall not be required to pay taxes on such property to the state or to any county, city, town, school district, or other political subdivision, any other statute to the contrary notwithstanding. In the event the project is owned by a private person or corporation, the financing agreement shall require such private person or corporation to pay the taxes which such taxing entity or entities are entitled to receive from such private person or corporation with respect to the project.

Source: L. 67: p. 677, § 20. C.R.S. 1963: § 36-24-20. L. 73: pp. 480, 482, §§ 15, 18.

ANNOTATION

The property of a county is specifically exempted from tax. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

It is the interest of the lessee -- the leasehold -- upon which the charge in lieu of taxes is made under this section. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

This section makes it clear that it was designed to fully comply with §§ 3, 4, 8, 9, and 10 of art. X, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The obligation imposed by this section is constitutional. The obligation under this section to make annual payments "in lieu of", but in the same amount as, taxes on the county-owned project does not violate §§ 3, 4, 8, 9, or 10 of art. X, Colo. Const. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

If rentals "in lieu of taxes", can be considered taxes, there is no lack of uniformity under this section, which authorizes the taxing of all lessees of "projects" on the same basis, as the tax on other property and the rents on municipal property for industrial uses operate equally and uniformly on all persons and corporations in like circumstances. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

This section is intended to apply only to ad valorem property taxes, not to any excise taxes. City of Pueblo v. Weed, 39 Colo. App. 415, 570 P.2d 15 (1977), rev'd on other grounds, 197 Colo. 52, 591 P.2d 80 (1979).

29-3-121. Eminent domain not available.

No land acquired by a county or municipality by the exercise of condemnation through eminent domain can be used for the project to effectuate the purposes of this article.

Source: L. 67: p. 677, § 21. C.R.S. 1963: § 36-24-21.

ANNOTATION

Applied in Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

29-3-122. Limitation of actions.

No action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding, or bonds executed in connection with any project or improvements authorized by this article on and after thirty days from the effective date of the resolution or ordinance authorizing the issuance of such bonds.

Source: L. 67: p. 678, § 22. C.R.S. 1963: § 36-24-22. L. 73: p. 481, § 16.

29-3-123. Sufficiency of article.

(1) This article, without reference to other statutes of the state, constitutes full authority for the exercise of powers granted in this article, including but not limited to the authorization and issuance of bonds under this article.

(2) No other act or law with regard to the authorization or issuance of bonds that provides for an election requiring an approval or in any way impeding or restricting the carrying out of the acts authorized in this article to be done shall be construed as applying to any proceedings taken under this article or acts done pursuant to this article.

(3) The provisions of no other law, either general or local, shall apply to the things authorized to be done in this article, and no board, agency, bureau, commission, or official not designated in this article has any authority or jurisdiction over any of the acts authorized in this article to be done.

(4) No notice, consent, or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any bonds, the making of any contract or financing agreement, or the exercise of any other power under this article, except as provided in this article.

(5) The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law.

(6) No part of this article shall repeal or affect any other law or part thereof except to the extent that this article is inconsistent with any other law, it being intended that this article shall provide a separate method of accomplishing its objectives and not an exclusive one; and this article shall not be construed as repealing, amending, or changing any such other law except to the extent of such inconsistency.

Source: L. 67: p. 678, § 23. C.R.S. 1963: § 36-24-23. L. 73: p. 481, § 17. L. 77: (2) and (3) amended, p. 1411, § 8, effective June 20.

ARTICLE 3.5 STATE GRANTS TO LOCAL GOVERNMENTS

29-3.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Eligible applicant" means an applicant under a local government assistance program which meets all statutory requirements for eligibility and which complies with all applicable regulations, ordinances, and resolutions.

(2) "Local government assistance program" means any program under which a state agency furnishes a grant or loan of state money, or state property in lieu of money, to units of local government for the purpose of financing or otherwise assisting in any local or regional project.

(3) "State agency" means any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except state educational institutions administered pursuant to title 23, C.R.S., (except articles 8 and 9, parts 2 and 3 of article 21, and parts 2 to 4 of article 30), and part 3 of article 33.5 of title 24, C.R.S.

(4) "Unit of local government" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: L. 81: Entire article added, p. 1410, § 1, effective June 2. L. 83: (3) amended, p. 962, § 8, effective July 1, 1984.

29-3.5-102. Selection criteria.

Every state agency which administers a local government assistance program shall approve or deny every application for competitively awarded programs filed after July 1, 1981, from an eligible applicant under such program solely on the basis of criteria established by statute and any regulations authorized by statute.

Source: L. 81: Entire article added, p. 1411, § 1, effective June 2.

HOUSING

Cross references: For cooperation with the federal government regarding housing projects, see article 55 of title 24; for relocation assistance and land acquisition policies, see article 56 of title 24.

PART 1 CITY HOUSING LAW - SLUM CLEARANCE

29-4-101. Short title.

This part 1 shall be known and may be cited as the "City Housing Law".

Source: L. 35: p. 498, § 1. CSA: C. 82, § 4. CRS 53: § 69-2-1. C.R.S. 1963: § 69-2-1.

ANNOTATION

Law reviews. For article, "Municipal Powers and the Public Purpose Doctrine", see 21 Rocky Mt. L. Rev. 277 (1949).

Section is constitutional. This section does not violate article XX, Colo. Const., since it is of public concern within the police power of the state. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

And was enacted to make federal funds and credits available. To take advantage of the funds and credit provided by the United States Housing Act, 42 U.S.C.A. §§ 1401-1436, our general assembly enacted this article. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

29-4-102. Legislative declaration.

(1) It is hereby declared:

(a) That unsanitary or unsafe dwelling accommodations exist in the various cities and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(b) That in all such cities persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in various cities there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and that consequently persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(c) That these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values; that these conditions cannot be remedied by the ordinary operations of private enterprises;

(d) That the clearance, replanning, and reconstruction of areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations, at such rentals that persons who now live in unsafe or unsanitary dwelling accommodations or in overcrowded and congested dwelling accommodations can afford to live in safe or sanitary or uncongested dwelling accommodations, are public uses and purposes for which public money may be spent and private property acquired;

(e) That in order to remedy these conditions it is necessary that the powers provided in this part 1 be conferred upon each city; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency.

(2) The necessity in the public interest for the provisions enacted in this part 1 is hereby declared as a matter of legislative determination.

Source: L. 35: p. 498, § 2. CSA: C. 82, § 5. L. 37: p. 656, § 1. CRS 53: § 69-2-2. L. 61: p. 419, § 2. C.R.S. 1963: § 69-2-2.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

29-4-103. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Authority" or "housing authority" means an authority established in accordance with the provisions of part 2 of this article and any amendments or supplements thereto.

(2) "Bonds" means bonds, interim receipts, or other obligations of a city issued by its council pursuant to this part 1 or pursuant to any other law as supplemented by or in conjunction with this part 1.

(3) "City" means any city or incorporated town which is included within the boundaries of a housing authority.

(4) "Community facilities" means real and personal property, buildings and equipment for recreational or social assemblies, for educational, health, or welfare purposes, and necessary utilities, when designed primarily for the benefit and use of the occupants of dwelling accommodations.

(5) "Contract" means any agreement of a city with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(6) "Council" means the council, legislative body, board of commissioners, board of trustees, or other body, board, or commission charged with the governing of any city.

(7) "Federal government" means the United States, the federal emergency administration of public works, or any agency or instrumentality, corporate or otherwise, of the United States.

(8) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(9) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired, constructed, or to be acquired or constructed pursuant to a single plan or undertaking to demolish, clear, remove, alter, or repair unsafe, unsanitary, or substandard housing or to provide dwelling accommodations at rentals within the means of persons of low income. The term "housing project" also means the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

(10) "Law" means any act or statute, general, special, or local, of the state, including, without being limited to, the charter of any city.

(11) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(12) "Obligee of the city" or "obligee" means any bondholder, trustee for any bondholders, any lessor demising property to the city used in connection with a housing project, or any assignee of such lessor's interest or any part thereof, and the United States, when it is a party to any contract with the city.

(13) "Real property" means lands, lands under water, structures, and any easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(14) "State" means the state of Colorado.

(15) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

Source: L. 35: p. 500, § 3. CSA: C. 82, § 6. L. 37: p. 658, § 2. CRS 53: § 69-2-3. L. 61: p. 420, § 3. C.R.S. 1963: § 69-2-3.

29-4-104. Powers of cities to undertake projects.

(1) Every city has power and is authorized:

(a) To construct any housing project within the city;

(b) To contract debts for the construction of any housing project within the city, to borrow money, to issue its bonds to finance such construction, and to provide for the rights of obligees as provided in this part 1;

(c) To assess, levy, and collect unlimited ad valorem taxes on all property subject to taxation to pay the bonds and the interest thereon issued to finance any housing project of the city, and to pay the obligations incurred by the city in connection with any lease to it of a housing project or of real or personal property for the purposes of a housing project;

(d) To acquire by purchase, gift, or the exercise of the power of eminent domain and to hold and dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any housing project of the city, whether subject to mortgages, liens, charges, or other encumbrances;

(e) To enter on any lands, buildings, or property for the purpose of making surveys, soundings, and examinations in connection with the planning or construction of any housing project of the city;

(f) To insure or provide for the insurance of any housing project of the city against such risks as the city may deem advisable and to procure or agree to the procurement of insurance or guarantees from a government of the payment of any debts or parts thereof incurred by the city in connection with a housing project, including the power to pay premiums on any such insurance;

(g) (I) To borrow money and accept grants from the federal government for or in aid of the construction of a housing project of the city; to take over any land acquired by the federal government for the construction of a housing project; to take over or lease any housing project constructed or owned by the federal government in the city; and to such ends to enter into such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require including an agreement that the federal government has the right to supervise and approve the construction, maintenance, and operation of such housing project;

(II) All cities are authorized to take over any housing project constructed or owned by the federal government located within ten miles of the boundaries of said city, provided said project is not located within any other city, town, county, or city and county without the prior approval of the governing body of such other city, town, county, or city and county. The authority in this subparagraph (II) conferred to all such cities shall be in addition to all of the authorities and powers in this part 1 granted to cities and shall include, without restrictions, the right to enter into leases for the land upon which said housing projects are located. Notwithstanding any of the provisions of this part 1, said cities may operate, maintain, rent, and terminate the housing projects taken over in such manner and upon such terms as their city councils or other governing bodies, by a majority vote thereof, may determine, subject only to the terms and conditions imposed by the federal government at the time the projects are taken over but without restriction as to the method and manner of operation provided in this part 1.

(h) To exercise, for the purpose of obtaining from the federal government a grant, loan, or other financial assistance or cooperation in the construction, maintenance, and operation of a housing project of the city, any power conferred by this part 1 independently or in conjunction with any other power conferred by this part 1 or conferred by any other law; and to do all things necessary in order to secure such aid, assistance, or cooperation from the federal government;

(i) To act as agent for the federal government in connection with the acquisition or construction of a federal housing project or any part thereof;

(j) To arrange with a government or an authority, upon such terms and for such consideration as it may determine, for the acquisition by such government or authority of property, options, or property rights, or for the furnishing of property or services, in connection with a housing project of the city;

(k) To do all acts and things necessary or convenient to carry out the powers expressly given in this part 1.

(2) Notwithstanding anything to the contrary contained in this part 1 or in any other law, a city may include in any contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply

with any conditions which the federal government may have attached to its financial aid of the housing project.

Source: L. 35: p. 502, § 4. CSA: C. 82, § 7. L. 37: p. 661, § 3. L. 53, 1st Ex. Sess.: p. 21, § 1. CRS 53: § 69-2-4. C.R.S. 1963: § 69-2-4.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., §§ 167-169.

C.J.S. See 64 C.J.S., Municipal Corporations, § 1831.

29-4-105. Eminent domain.

(1) Every city has the right to acquire by eminent domain any property, real or personal, which it may deem necessary to carry out the purposes of this part 1 after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. Every city may exercise the power of eminent domain pursuant to the provisions of either sections 38-1-101 to 38-1-115, article 3 of title 38, and section 38-5-106 or article 6 of title 38, C.R.S.

(2) Property already devoted to a public use may be acquired, but no property belonging to any government may be acquired without its consent and no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission or other officer or tribunal having regulatory power over such corporation.

Source: L. 35: p. 504, § 5. CSA: C. 82, § 8. L. 37: p. 663, § 4. CRS 53: § 69-2-5. C.R.S. 1963: § 69-2-5.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Eminent Domain, §§ 26-28; 56 Am. Jur.2d, Municipal Corporations, Etc., § 167, 168.

C.J.S. See 29A C.J.S., Eminent Domain, §§ 21-23; 63 C.J.S., Municipal Corporations, § 953.

29-4-106. Acquisition of land for government.

A city may acquire by purchase or by the exercise of the power of eminent domain any property, real or personal, which it may deem necessary for any housing project being constructed or operated by a government or an authority. The city, upon such terms and conditions and for such consideration as it may determine, may convey title or deliver possession of such property so acquired or purchased to such government or authority for use in connection with such housing project.

Source: L. 35: p. 505, § 6. CSA: C. 82, § 9. CRS 53: § 69-2-6. C.R.S. 1963: § 69-2-6.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 491.

C.J.S. See 29A C.J.S., Eminent Domain, §§ 21-24.

29-4-107. Management of housing projects.

(1) The city shall deliver possession of any housing projects constructed, acquired, or leased by it to the authority within the boundaries of which the city is included, but the title to all property comprising such housing projects shall remain in the city. The authority shall operate and maintain all such housing projects of the city and shall fix, levy, and collect such rents, fees, or other charges for the use and occupancy of such housing projects as such authority determines; but if there are any agreements of the city with an obligee, the authority shall fix, levy, collect, and revise such rents, fees, and other charges in accordance with such agreements and subject thereto. All rents, fees, and other charges received by the authority from any such housing project shall not be commingled with any moneys of the authority and shall be deposited in a special account in any depository authorized in section 24-75-603, C.R.S.

(2) After the payment of the cost of operation and maintenance of such housing project, the net receipts of such project shall be paid by the authority to the city at monthly or longer intervals as the city may determine or at such intervals as shall be provided for in any agreement by the city with an obligee.

Source: L. 35: p. 505, § 7. CSA: C. 82, § 10. L. 37: p. 664, § 5. CRS 53: § 69-2-7. C.R.S. 1963: § 69-2-7. L. 79: (1) amended, p. 1617, § 13, effective June 8.

ANNOTATION

Am. Jur.2d. See 40 Am. Jur.2d, Housing Laws, Etc., §§ 9, 12; 56 Am. Jur.2d, Municipal Corporations, Etc., § 504.

C.J.S. See 64 C.J.S., Municipal Corporations, § 1831.

29-4-108. Moneys of city.

All proceeds received from the sale of the bonds, all moneys received from the federal government, and all revenues received by any city from any housing project shall be paid to the financial officer of the city designated for such purposes, who shall not commingle any such money received with any other moneys but shall deposit same in a separate account in the name of the city in any depository authorized in section 24-75-603, C.R.S.

Source: L. 35: p. 506, § 8. CSA: C. 82, § 11. CRS 53: § 69-2-8. C.R.S. 1963: § 69-2-8. L. 79: Entire section amended, p. 1617, § 14, effective June 8.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, § 1884.

29-4-109. Construction contracts and costs.

(1) Any contract for the construction of a housing project or any part thereof may be awarded by the city upon any day at least five days, excluding Sundays, after at least one publication of notice requesting bids upon such contract in a newspaper circulating in the city, or if there is no such newspaper, after a posting of such notice in three public places in such city on a date at least five days previous to the award of such contract.

(2) In determining the cost of any housing project, the following items may be included as a part of the cost of such housing project and financed by the issuance of bonds:

(a) Engineering, inspection, accounting, fiscal, and legal expenses;

(b) The cost of issuance of the bonds, including engraving, printing, advertising, accounting, and other similar expenses;

(c) Any interest costs on money borrowed or estimated to be borrowed during the period of construction of the housing project and for six months thereafter.

Source: L. 35: p. 507, § 10. CSA: C. 82, § 13. CRS 53: § 69-2-9. C.R.S. 1963: § 69-2-9.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., §§ 440-443.

C.J.S. See 63 C.J.S., Municipal Corporations, § 999.

29-4-110. Bonds secured by taxes - maturity.

(1) The council shall submit to an election the question of the authorization of the issuance of bonds payable from taxes or additionally secured by taxes. Such bonds shall mature at such times, not exceeding fifteen years from their respective dates, as the council provides. Such election shall be called by the council which shall adopt a resolution, called the "election resolution" in this section, which shall state in substance:

(a) The amount or maximum amount of bonds to be issued;

(b) The housing project for the financing of which such bonds are to be issued;

(c) The rate or maximum rate of interest which such bonds are to bear;

(d) A brief concise statement, which need not go into any detail other than the mere statement of the fact, showing whether such bonds will be payable from taxes, be additionally secured by a pledge of the revenues or a mortgage on any housing project, or be payable from taxes only in the event of a deficiency in the revenues or other sources of payment;

(e) The date on which such election will be held;

(f) The places where votes may be cast; and

(g) The hours between which such polling places will be open.

(2) Such election resolution shall be published in full at least once, not less than ten days nor more than thirty days prior to the date fixed for such election, in a newspaper published in the county and circulating in the city, or, if there is no such newspaper, such election resolution shall be printed in full and posted in three public places in such city not less than ten days nor more than thirty days prior to the date fixed for such election. At such election the ballot shall contain the words "for the bonds" and "against the bonds". Opposite each of said phrases shall be a hollow square, each side of which shall be not less than one-quarter inch nor more than one inch. The elector shall indicate his vote "for the bonds" or "against the bonds" by inserting a mark in the square opposite such phrase. It shall not be necessary to print any question or any other words or figures on any ballot, nor need the ballot be of any particular size, color, or quality, nor need sample ballots be printed, posted, or distributed. At or before the regular meeting of the council next succeeding the date of such election, such council shall canvass the returns and determine and declare the results of the election. Except as otherwise provided in this section, and as far as may be necessary or convenient, the manner of conducting such election, keeping the poll lists, counting and canvassing the votes, certifying the returns, declaring the results, and doing all acts relating to such election shall conform to the mode or method of procedure provided by the laws of the state of Colorado for the qualification of voters and the holding of general elections.

Source: L. 35: p. 508, § 11. CSA: C. 82, § 14. CRS 53: § 69-2-10. C.R.S. 1963: § 69-2-10.

Cross references: For the general election laws, see § 1-1-101 et seq.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, §§ 130, 147.

C.J.S. See 20 C.J.S., Counties, §§ 221, 222; 64 C.J.S., Municipal Corporations, §§ 1916, 1920-1929.

29-4-111. Bonds not secured by taxes authorized by resolution.

(1) The council may authorize the issuance of bonds not payable from or additionally secured by taxes by a resolution which shall state in substance:

(a) The amount or maximum amount of bonds to be issued;

(b) The housing projects for the financing of which such bonds are to be issued;

(c) The rate or maximum rate of interest which such bonds are to bear;

(d) A brief concise statement, which need not go into any detail other than the mere statement of the fact, showing the **Source** of payment and security for such bonds.

(2) Such bonds shall mature at such times, not to exceed sixty years from their respective dates, as the council may provide.

Source: L. 35: p. 509, § 12. CSA: C. 82, § 15. CRS 53: § 69-2-11. C.R.S. 1963: § 69-2-11.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, § 1916.

29-4-112. Tax resolution - payment of bonds.

(1) Before delivering any bonds payable from or additionally secured by taxes and authorized to be issued pursuant to this part 1, the council shall adopt a resolution, referred to in this part 1 as the "tax resolution", which shall recite in substance that adequate provision will be made for raising annually a tax upon all property subject to taxation by the city of a sum sufficient to pay the interest on and principal of such bonds as the same become due. A tax sufficient to pay, when due, such principal and such interest shall be levied annually and assessed, collected, and paid in like manner with the other taxes of such city and shall be in addition to and exclusive of the maximum of all other taxes which such city is authorized or required by law to levy and assess upon the property subject to taxation.

(2) It is the duty of the tax collector of the county in which such city is located, upon the filing in the office of such county clerk of the county wherein such city is located of a duly certified copy of such tax resolution, to levy and assess a tax sufficient to pay the interest on and principal of such bonds as the same become due; but if the bonds are payable from taxes only in the event of a deficiency in revenues or are payable from taxes and additionally secured by a pledge of revenues and if the tax resolution so provides, then, in such events, the tax to be levied and assessed by such county clerk may be reduced by such amount and under such conditions as may be determined in such tax resolution. When for any reason all or any part of the principal of or interest on any bonds payable from or additionally secured by taxes and issued by any city pursuant to this part 1 is paid when due, there shall be levied and assessed by the county clerk and collected by the proper collecting officers a tax sufficient to pay the same.

Source: L. 35: p. 510, § 13. CSA: C. 82, § 16. CRS 53: § 69-2-12. C.R.S. 1963: § 69-2-12.

Cross references: For the power of county commissioners to levy taxes, see § 39-1-111.

ANNOTATION

C.J.S. See 20 C.J.S., Counties, § 226; 64 C.J.S., Municipal Corporations, § 1916.

29-4-113. Form of bonds - rate of interest.

(1) The bonds of the city shall be issued in one or more series and shall bear such dates, bear interest at such rates, be in such denominations which may be made interchangeable, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms and redemption, with or without premium, as the council by resolution or its trust indenture or mortgage may provide. The bonds authorized to be issued by this part 1 shall be sold at public sale held after notice of such sale published once at least ten days prior to such sale in a newspaper circulating in the city, if there is one, and in a financial newspaper published in the city of San Francisco, California, or in the city of Chicago, Illinois; except that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold in such blocks as the council may by resolution determine, but no bonds shall be sold at less than par. The bonds may be purchased by the city at a price not more than the principal amount thereof plus the accrued interest, and all bonds so purchased shall be cancelled. The bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., pertaining to investment securities.

(2) The validity of the authorization and issuance of the bonds authorized under this part 1 shall not be dependent on or affected in any way by proceedings taken, contracts made, acts performed, or things done in connection with the construction of any housing project. Bonds issued under this part 1 bearing the signature of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof any persons whose signatures appear thereon shall have ceased to be officers of the city issuing the same. Pending the authorization, preparation, execution, or delivery of the definitive bonds for the purpose of financing the construction of a housing project, interim certificates or other temporary obligations may be issued by the city to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form and contain such terms, conditions, and provisions as the council of the city issuing the same may determine.

Source: L. 35: p. 511, § 14. CSA: C. 82, § 17. CRS 53: § 69-2-13. C.R.S. 1963: § 69-2-13. L. 70: p. 111, § 6. L. 75: (1) amended, p. 218, § 58, effective July 16.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Securities and Obligations, § 165.

C.J.S. See 20 C.J.S., Counties, § 222; 64 C.J.S., Municipal Corporations, § 1930.

29-4-114. Provisions of bonds, mortgages, or trust indentures.

(1) In connection with the issuance of bonds or the incurring of any obligations under a lease, and in order to secure the payment of such bonds or obligations, the city has power:

(a) To pledge by resolution, trust indenture, mortgage subject to the limitations imposed in this part 1, or other contract all or any part of the rents, fees, or revenues of its housing projects;

(b) To covenant against mortgaging all or any part of its housing projects, then owned or thereafter acquired, or against permitting or suffering any lien thereon;

(c) To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing projects or any part thereof, or with respect to limitations on its right to undertake additional housing projects;

(d) To covenant against pledging all or any part of the rents, fees, and revenues of housing projects to which its right then exists or the right to which may thereafter come into existence, or against permitting or suffering any lien thereon;

(e) To provide for the release of property, rents, fees, and revenues from any pledge or mortgage, and to reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(f) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument, as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

(g) To covenant as to what other or additional debt may be incurred by it to finance housing projects or otherwise;

(h) To provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(i) To provide for the replacement of lost, destroyed, or mutilated bonds;

(j) To covenant that it warrants the title to the premises;

(k) To covenant as to the fees and rentals to be charged, the amount, calculated as may be determined, to be raised each year or other period of time by fees, rentals, and other revenues, and as to the use and disposition to be made thereof;

(l) To covenant as to the use of any or all of its housing projects;

(m) To create or to authorize the creation of special funds in which there are segregated:

(I) All the proceeds of any loan or grant;

(II) All of the rents, fees, and revenues of any housing project or parts thereof;

(III) All of the taxes collected for the payment of such bonds;

(IV) Any moneys held for the payment of the costs of operation and maintenance of such housing project or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(V) Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payment; and

(VI) Any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds;

(n) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(o) To covenant against extending the time for the payment of bond interest, directly or indirectly, by any means or in any manner;

(p) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holder of which must consent thereto, and the manner in which such consent may be given;

(q) To covenant as to the maintenance of its housing projects, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(r) To vest in an obligee of the city the right, in the event of the failure of the city to observe or perform any covenant on its part, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the city with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the city with reference thereto;

(s) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(t) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(u) To covenant to surrender possession of all or any part of any housing project in the event of default, as defined in the trust indenture, mortgage, lease, or contract with reference thereto, and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such housing projects or any part thereof, and to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the city and the authority might do, and to dispose of the moneys collected in accordance with the agreement of the city with such obligee;

(v) To vest in a trustee the right to enforce any covenant made to secure, to pay, or, in relation to the bonds, to provide for the powers and duties of such trustee, to limit liabilities thereof, and to provide the terms and conditions upon which the trustee or the holders of bonds or any proportion of them may enforce any such covenant;

(w) To make covenants in addition to the covenants expressly authorized by this section, of like or different character;
(x) To execute all instruments necessary or convenient in the exercise of the powers granted in this section or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the city may reasonably require;

(y) To make such covenants and to do all such acts and things as are necessary, convenient, or desirable in order to secure its bonds, or in the absolute discretion of the city tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section. It is the intention of this section to give the city power to do all things in the issuance of bonds and in the provision for their security that are not inconsistent with the constitution of Colorado, and no consent or approval of any judge or court shall be required thereof; but the city has no power to mortgage all or any part of its property, real or personal, except as provided in section 29-4-115.

Source: L. 35: p. 512, § 15. CSA: C. 82, § 18. CRS 53: § 69-2-14. C.R.S. 1963: § 69-2-14.

ANNOTATION

C.J.S. See 20 C.J.S., Counties, § 218; 64 C.J.S., Municipal Corporations, § 1902.

29-4-115. Mortgage when financed by government.

(1) In connection with any housing project financed in whole or in part by a government, every city also has power to mortgage all or any part of such housing project, the construction of which was financed with the proceeds of its bonds or with such proceeds supplemented by the proceeds of a grant from the federal government, and by such mortgage:

(a) To vest in a government the right, in the event of default as defined in such mortgage, to foreclose the mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings as long as the government is the holder of any of the bonds secured by such mortgage;

(b) To vest in a trustee the right, in the event of default as defined in such mortgage, to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the project;

(c) To vest in an obligee other than a government the right, but only with the consent of the government which aided in financing the project involved, to foreclose such mortgage by judicial proceedings;

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid to foreclose such mortgage as to all or such part of the property covered by such mortgage as such obligee, in its absolute discretion, elects; such institution, prosecution, and conclusion of any such proceedings or the sale of such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold.

Source: L. 35: p. 517, § 16. CSA: C. 82, § 19. CRS 53: § 69-2-15. C.R.S. 1963: § 69-2-15.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., § 513.

C.J.S. See 63 C.J.S., Municipal Corporations, § 963.

29-4-116. Remedies of an obligee of city.

(1) Any obligee of the city has the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action, or proceeding in law or equity, all of which may be joined in one action, to compel the performance by the city and any officer, agent, or employee of the city of every term, provision, and covenant contained in any trust indenture, mortgage, lease, or other agreement relating to a housing project to which the city is a party, and to require the carrying out of any or all covenants and agreements and the fulfillment of all duties imposed upon the city by this part 1;

(b) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the city;

(c) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any mortgage, lease, or contract with the city.

Source: L. 35: p. 518, § 17. CSA: C. 82, § 20. CRS 53: § 69-2-16. C.R.S. 1963: § 69-2-16.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, § 2140.

29-4-117. Additional remedies.

(1) Any city has power by its trust indenture, mortgage, lease, or other contract relating to a housing project to confer upon any obligee holding or representing a specified amount in bonds, leases, or other obligations, the right, in the event of default, as defined in such instrument:

(a) By suit, action, or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the city or any part thereof. If such receiver is appointed, he may enter and take possession of such project or any part thereof, operate and maintain the same, collect and receive all fees, rents, revenues, or other charges arising therefrom in the same manner as the city or the authority might do, and shall keep all such moneys in a separate account and apply the same in accordance with the obligations of the city as the court directs.

(b) By suit, action, or proceeding in any court of competent jurisdiction to require the city and the officers thereof to account as if they were the trustees of an express trust.

Source: L. 35: p. 519, § 18. CSA: C. 82, § 21. CRS 53: § 69-2-17. C.R.S. 1963: § 69-2-17.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, § 2193.

29-4-118. Remedies cumulative.

All the rights and remedies conferred by this part 1 shall be cumulative and in addition to all other rights and remedies that are conferred upon such obligee of the city by law or by any agreement with the city.

Source: L. 35: p. 519, § 19. CSA: C. 82, § 22. CRS 53: § 69-2-18. C.R.S. 1963: § 69-2-18.

29-4-119. Limitations on remedies of obligee.

No interest of the city in any housing project shall be subject to sale by the foreclosure of a mortgage thereon either through judicial proceedings or the exercise of a power of sale contained in such mortgage except in the case of mortgages not provided for in section 29-4-115. No judgment against a city shall be a charge upon the real or personal property of the city. The provisions of this section shall not apply to nor limit the rights of obligees to foreclose any of the mortgages of the city provided for in section 29-4-115, or to enforce any pledges or rights conferred by any contract, trust indenture, mortgage, lease, or other agreement of the city relating to a housing project by any appropriate suit, action, or proceeding.

Source: L. 35: p. 520, § 20. CSA: C. 82, § 23. CRS 53: § 69-2-19. C.R.S. 1963: § 69-2-19.

29-4-120. Foreclosure sale subject to government agreement.

Notwithstanding anything in this part 1 to the contrary, any purchaser at a sale of real or personal property constituting part of a housing project of a city pursuant to any foreclosure of a mortgage of the city shall obtain title subject to any contract between the authority and the government relating to the supervision by the government of the operation and maintenance of the property and the construction of improvements thereon.

Source: L. 35: p. 520, § 21. CSA: C. 82, § 24. CRS 53: § 69-2-20. C.R.S. 1963: § 69-2-20.
29-4-121. Action by resolution.

Except as otherwise provided in this part 1, all action required or authorized to be taken under this part 1 by the council of any city may be by resolution adopted by a majority of all the members of such council, which resolution may be adopted at the meeting of the council at which such resolution is introduced and shall take effect immediately upon such adoption. Except as otherwise provided in this part 1, no resolution under this part 1 need be published or posted, nor shall any such resolution be subject to veto by the chief executive officer of the city or presiding officer of a council.

Source: L. 35: p. 520, § 22. CSA: C. 82, § 25. CRS 53: § 69-2-21. C.R.S. 1963: § 69-2-21.

ANNOTATION

C.J.S. See 62 C.J.S., Municipal Corporations, §§ 391, 404.

29-4-122. Tax exemptions.

(1) In connection with any housing project, the city shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof, or to any officer or employee of the state or any subdivision thereof. The property of the city constituting a part of any housing project shall be exempt from all taxes. Bonds, notes, debentures, and other evidences of indebtedness of a city issued under this article are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

(2) A city is also exempt from the payment of any special assessments to the state or any subdivision thereof which it otherwise would be required to pay because of its ownership of a housing project. The property of a city used for housing purposes shall be exempt from all local and municipal special assessments. All property leased to the city for housing purposes shall likewise be exempt from special assessments.

Source: L. 35: p. 521, § 24. CSA: C. 82, § 27. L. 37: p. 665, § 6. CRS 53: § 69-2-22. C.R.S. 1963: § 69-2-22.

29-4-123. Supplemental nature of article.

The powers conferred by this part 1 shall be in addition and supplemental to the powers conferred by any other law and not in substitution for the powers conferred by any other law. Bonds may be issued under this part 1 for any housing project notwithstanding that any other law may provide for the issuance of bonds by the city or an authority for like purposes and without regard to the requirements, restrictions, or procedural provisions contained in any other law. Bonds may be issued under this part 1 notwithstanding any debt or other limitation prescribed by any other law. Any proceedings taken prior to April 19, 1935, by any municipality relating to the subject matters of this part 1, whether or not commenced under any other law, may be continued under this part 1, or, at the option of the council, may be discontinued and new proceedings instituted under this part 1.

Source: L. 35: p. 521, § 25. CSA: C. 82, § 28. CRS 53: § 69-2-23. C.R.S. 1963: § 69-2-23.

PART 2 CREATING HOUSING AUTHORITIES

29-4-201. Short title.

This part 2 shall be known and may be cited as the "Housing Authorities Law".

Source: L. 35: p. 523, § 1. CSA: C. 82, § 29. CRS 53: § 69-3-1. C.R.S. 1963: § 69-3-1.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For article, "Municipal Powers and the Public Purpose Doctrine", see 21 Rocky Mt. L. Rev. 277 (1949). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

Section is constitutional. This section does not violate article XX, Colo. Const., since it is of public concern within the police power of the state. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

And was enacted to make federal funds and credits available. To take advantage of the funds and credit provided by the United States Housing Act, 42 U.S.C.A. §§ 1401-1436, our general assembly enacted this article. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

Housing authority created pursuant to the Housing Authorities Law is a distinct, independent governmental entity from the city within which it operates. Roe v. Housing Auth. of City of Boulder, 909 F. Supp. 814 (D. Colo. 1995).

29-4-202. Legislative declaration.

(1) It is hereby declared:

(a) That unsanitary or unsafe dwelling accommodations exist in various cities and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(b) That in all such cities persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in various cities there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(c) That these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state, and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities, and that these conditions cannot be remedied by the ordinary operations of private enterprises;

(d) That the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations on such financial terms that enable persons who now live in unsafe or unsanitary dwelling accommodations or in overcrowded and congested dwelling accommodations to afford to live in safe and sanitary or uncongested dwelling accommodations, are public uses and purposes for which public money may be spent and private property acquired;

(e) That, in order to remedy these conditions, a housing authority with the boundaries, powers, and duties provided in this part 2 shall be established for each city and that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency.

(2) The necessity in the public interest for the provisions enacted in this part 2 is hereby declared as a matter of legislative determination.

Source: L. 35: p. 523, § 2. CSA: C. 82, § 30. L. 37: p. 667, § 1. CRS 53: § 69-3-2. L. 61: p. 420, § 4. C.R.S. 1963: § 69-3-2. L. 2000: (1)(d) amended, p. 880, § 1, effective August 2.

29-4-203. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Authority" or "housing authority" means a corporate body organized in accordance with the provisions of this part 2 for the purposes, with the powers, and subject to the restrictions set forth in this part 2.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this part 2.

(3) "City" means any city or incorporated town included in the territorial boundaries of the authority.

(4) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part 2.

(5) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(6) "Community facilities" means real and personal property, buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes, and necessary utilities when designed primarily for the benefit and use of the occupants of the dwelling accommodations.

(7) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(8) "Federal government" means the United States, the federal emergency administrator of public works, or any agency or instrumentality, corporate or otherwise, of the United States.

(9) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(11) "Obligee of the authority" or "obligee" means any bondholder, trustee for any bondholders, any lessor demising property to the authority used in connection with the project, or any assignee of such lessor's interest or any part thereof, and the United States when it is a party to any contract with the authority.

(12) "Project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, commercial facilities, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to demolish, clear, remove, alter, or repair unsanitary or unsafe housing or to provide dwelling accommodations on financial terms within the means of persons of low income. The term "project" also applies to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements and all other work in connection therewith. The term "project" also applies to the provision of dwelling accommodations to persons, without regard to income, as long as the project substantially benefits persons of low income as determined by an authority.

(13) "Real property" means lands, lands under water, structures, and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(14) "State" means the state of Colorado.

(15) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

Source: L. 35: p. 525, § 3. CSA: C. 82, § 31. CRS 53: § 69-3-3. L. 61: p. 421, § 5. C.R.S. 1963: § 69-3-3. L. 2000: (12) amended, p. 880, § 2, effective August 2.

29-4-204. Petition for creation of authority - notice - hearing.

(1) Any twenty-five residents of the city may file a petition with the city clerk setting forth that there is a need for an authority to function in the city. Upon the filing of such a petition, the city clerk shall give notice of the time, place, and purposes of a public hearing at which the council will determine the need for such an authority in the city. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city, or, if there is no such newspaper, by posting such a notice in at least three public places within the city at least ten days preceding the day on which the hearing is to be held.

(2) Upon the date fixed for said hearing, held upon notice as provided in this section, a full opportunity to be heard shall be granted to all residents and taxpayers of the city and to all other interested persons. After such a hearing, the council shall determine:

(a) Whether unsanitary or unsafe inhabited dwelling accommodations exist in the city; or

(b) Whether there is a lack of safe or sanitary dwelling accommodations in the city available for all the inhabitants thereof.

(3) In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire.

(4) If it determines that either of the conditions enumerated in subsection (2) of this section exist, the council shall adopt a resolution so finding and shall cause notice of such determination to be given to the mayor or such other appointing authority as is otherwise provided by charter or ordinance who shall thereupon appoint, as provided in section 29-4-205, no more than nine commissioners to act as an authority; except that, in any city and county having a population of more than three hundred thousand, the mayor or such other appointing authority as is otherwise provided by charter or ordinance shall appoint nine commissioners to act as an authority whose appointments shall be conditioned upon confirmation by the council. The number of commissioners shall be specified by the council in the resolution. A certificate signed by such commissioners shall then be filed with the division of local government in the department of local affairs and there remain of record, setting forth that a notice has been given and public hearing has been held, that the council made a determination after such hearing and that the mayor or such other appointing authority as is otherwise provided by charter or ordinance has appointed them as commissioners. Upon the filing of such certificates with said division, the commissioners and their successors shall constitute a housing authority, which shall be a body corporate and politic.

(5) The boundaries of such authority shall include the same geographical area as is then or thereafter included within the boundaries of the city which caused such authority to be created.

(6) If the council determines after a hearing that neither of the conditions enumerated in subsection (2) of this section exist, it shall adopt a resolution denying the petition. After three months have expired from the date of the denial of such petition, subsequent petitions may be filed and new hearings and determinations made thereon.

(7) In any suit, action, or proceeding involving the validity or enforcement of any bond, contract, mortgage, trust indenture, or other agreement of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part 2 upon proof of the filing of the aforesaid certificate. A copy of such certificate, duly certified by the division of local government, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

(8) If the council of any city denies any petition filed for the creation of a housing authority, in accordance with the provisions of subsection (6) of this section, and the residents of such city determine that there is in fact a shortage of decent, safe, and sanitary dwelling accommodations in the city, a petition may be filed with the council requesting that the question of the approval or disapproval of creating a housing authority be submitted to a vote of the registered electors of such city. If the petition, which may consist of one or more separate copies, contains the signatures and residence addresses of registered electors of such city equal in number to not less than five percent of the votes cast for governor or for president and vice-president of the United States at the last preceding general election held within such city, the council shall cause a special election to be held on the question of the creation of a housing authority. All registered electors within the city shall be eligible to vote at said election, which shall be conducted insofar as possible in accordance with the provisions of sections 29-4-604 to 29-4-607; except that the question to be voted on shall be the creation of a housing authority.

Source: L. 35: p. 527, § 4. CSA: C. 82, § 32. CRS 53: § 69-3-4. L. 63: p. 557, § 2. C.R.S. 1963: § 69-3-4. L. 65: p. 727, § 2. L. 76: (4) and (7) amended, p. 596, § 9, effective July 7. L. 87: (8) amended, p. 323, § 68, effective July 1. L. 91: (4) amended, p. 725, § 1, effective April 20. L. 99: (4) amended, p. 128, § 2, effective March 24. L. 2000: (4) amended, p. 881, § 3, effective August 2.

ANNOTATION

Am. Jur.2d. See 40 Am. Jur.2d, Housing Laws, Etc., § 10.

For the application of this section to the Denver housing authority, see People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

29-4-205. Appointment of commissioners.

(1) The authority shall consist of commissioners selected by the council in the manner provided in either subsection (2) or (3) of this section.

(2) The council may provide that all members of the governing body of the city shall ex officio be appointed the commissioners of the authority. The terms of office of such commissioners shall be coterminous with their terms of office on the governing body. For the purposes of this subsection (2), the term "governing body" means the mayor and council, board of trustees, board of commissioners, legislative body, or other body charged with governing the city. The mayor or, if the city has no mayor, the president of the council or such other presiding officer of the council shall ex officio be chairman of the commissioners. The commissioners shall select from among their members a vice-chairman.

(3) (a) The council may provide that an authority shall consist of no more than nine commissioners appointed by the mayor or such other appointing authority as is otherwise provided by charter or ordinance; except that the council of a city and county having a population of more than three hundred thousand may provide that such authority shall consist of nine commissioners appointed by the mayor or such other appointing authority as is otherwise provided by charter or ordinance. The council may also provide that the mayor or such other appointing authority as is otherwise provided by charter or ordinance shall designate the first chairman. Not more than one of such commissioners may be a city official. In the event that a city official is appointed as a commissioner of an authority, acceptance or retention of such appointment shall not be deemed a forfeiture of his or her office, or incompatible therewith, or affect his or

her tenure or compensation in any way. The term of office of a commissioner of an authority who is a city official shall not be affected or curtailed by the expiration of the term of his or her city office.

(b) The commissioners who are appointed under the provisions of this subsection (3) shall be designated by the mayor or such other appointing authority as is otherwise provided by charter or ordinance to serve for terms that are staggered from the date of their appointment such that, to the extent possible, the terms of an equal number of commissioners end each year. Thereafter, the term of office shall be five years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies other than by reason of expiration of terms shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor or such other appointing authority as is otherwise provided by charter or ordinance shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The authority shall select from its members a vice-chairman and a chairman when the office of the first chairman becomes vacant.

(c) Until such time as the council takes action pursuant to subsection (6) of this section, all appointments of the commissioners appointed pursuant to this subsection (3) shall be conditioned upon confirmation by the council as required by section 29-4-204 (4). This paragraph (c) shall apply to original and successor appointments and to appointments to fill vacancies.

(3.5) Notwithstanding any other provision to the contrary, commencing on and after August 2, 2000, as new appointments are made to authorities pursuant to subsection (3) of this section, such appointments shall be made so that not less than one commissioner of each authority shall be an individual who is directly assisted by the authority and who may, if provided in a plan of the authority, be elected by individuals directly assisted by the authority. This subsection (3.5) shall not apply to any authority with fewer than three hundred public housing units if the authority provides reasonable notice to the resident advisory board of the opportunity for not less than one individual to serve as a commissioner of the authority as provided in this subsection (3.5) and, within a reasonable time after receipt by such board of the notice, the authority is not notified of the intention of any such individual to serve as a commissioner.

(4) A commissioner shall receive no compensation for his services but shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties.

(5) An authority may employ a secretary who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it deems proper.

(6) (a) Any council may, by resolution, change the method of appointment of commissioners after a proper notice and hearing and set a date for the changed method to become effective.

(b) Subsequent to the appointment of nine commissioners by the mayor and their confirmation by the council pursuant to section 29-4-204 (4), any council of a city and county having a population of more than three hundred thousand may, by resolution, change the number of commissioners after a proper notice and hearing and set a date for the changed number to become effective.

(7) The terms of office of present commissioners of authorities created under this section shall expire July 1, 1973. Prior to such date, the council shall appoint new commissioners, as provided in either subsection (2) or (3) of this section, such appointments to be effective July 1, 1973.

Source: L. 35: p. 530, § 5. CSA: C. 82, § 33. CRS 53: § 69-3-5. C.R.S. 1963: § 69-3-5. L. 73: p. 799, § 1. L. 91: (3) and (6) amended, p. 725, § 2, effective April 20; (6)(b) amended, p. 1926, § 60, effective June

1. L. 93: Entire section amended, p. 1462, § 9, effective June 6. L. 99: (3) amended, p. 129, § 3, effective March 24. L. 2000: (3.5) added, p. 881, § 4, effective August 2.

ANNOTATION

Am. Jur.2d. See 40 Am. Jur.2d, Housing Laws, Etc., § 11.

29-4-206. Duty of the authority and commissioners.

Duty of the authority and its commissioners are under a statutory duty to comply or to cause strict compliance with all provisions of this part 2 and the laws of the state of Colorado, and, in addition thereto, with each term, provision, and covenant in any contract, on the part of the authority to be kept or performed by the authority.

Source: L. 35: p. 531, § 6. CSA: C. 82, § 34. CRS 53: § 69-3-6. C.R.S. 1963: § 69-3-6.

29-4-207. Interested commissioners or employees.

No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

Source: L. 35: p. 531, § 7. CSA: C. 82, § 35. CRS 53: § 69-3-7. C.R.S. 1963: § 69-3-7.

ANNOTATION

C.J.S. See 62 C.J.S., Municipal Corporations, § 508.

29-4-208. Removal of commissioners.

(1) The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner has been given a copy of the charges, which may be made by the mayor against him and has had an opportunity to be heard in person or by counsel.

(2) Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges and an opportunity to be heard in person or by counsel and, within fifteen days after receipt of such charges, shall remove any commissioners of the authority who have been found to have acquiesced in any such willful violation.

(3) A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if he has not filed a written statement with the authority of his objections to such violation prior to the filing or making of such charges.

(4) In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and findings thereon.

Source: L. 35: p. 532, § 8. CSA: C. 82, § 36. CRS 53: § 69-3-8. C.R.S. 1963: § 69-3-8.

ANNOTATION

C.J.S. See 62 C.J.S., Municipal Corporations, §§ 505-515.

29-4-209. Powers of authority.

(1) An authority shall constitute a body both corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 2, including the following powers in addition to others granted in this section:

(a) To investigate living, dwelling, and housing conditions and the means and methods of improving such conditions;

(b) To determine where unsafe, unsanitary, or substandard dwelling or housing conditions exist;

(c) To study and make recommendations concerning the city plan in relation to the problem of clearing, replanning, and reconstruction of areas in which unsafe, unsanitary, or substandard dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city or regional planning agency;

(d) To prepare, carry out, and operate projects and to provide for the construction, reconstruction, improvement, alteration, or repair of any project or any part thereof;

(d.3) To grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof;

(d.5) To pledge or otherwise encumber any of its moneys in support of or in connection with a project;

(d.7) To establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project;

(e) To take over by purchase, lease, or otherwise any project undertaken by any government or by the city;

(f) To manage as agent of the city any project constructed or owned by the city;

(g) To act as agent for the federal government in connection with the acquisition, construction, operation, or management of a project or any part thereof;

(h) To arrange with the city or with a government for the furnishing, planning, replanning, opening, or closing of streets, roads, roadways, alleys, or other places or facilities for the acquisition by the city or a government of property, options, or property rights, or for the furnishing of property or services in connection with a project;

(i) To lease or rent any of the dwellings or other accommodations, or any of the lands, buildings, structures, or facilities embraced in any project, and to establish and revise the rents or charges therefor;

(j) To enter upon any buildings or property in order to conduct investigations or to make surveys or soundings;

(k) To purchase, lease, obtain options upon, or acquire by eminent domain, gift, grant, bequest, devise, or otherwise any property, real or personal, or any interest therein from any person, firm, corporation, the city, or a government;

(l) To sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person, firm, corporation, the city, or a government;

(m) To own, hold, clear, and improve property and to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(n) To procure assurance from a government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any project;

(o) To borrow money upon its bonds, notes, debentures, or other evidences of indebtedness, and to secure the same by pledges of its revenues and, subject to the limitations imposed by this part 2, by mortgages upon property held or to be held by it, or in any other manner:

(I) In connection with any loan, to agree to limitations upon its right to dispose of any project or part thereof, or to undertake additional projects;

(II) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this part 2;

(p) To invest any moneys held in reserve or sinking funds or any moneys not required for immediate disbursement in property or in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., or to deposit the same or any part thereof in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits as provided in this paragraph (p), the commissioners may appoint, by written resolution, one or more persons to act as custodians of the moneys of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the authority requires.

(q) To sue and be sued;

(r) To have a seal and to alter the same at pleasure;

(s) To have perpetual succession;

(t) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(u) To make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with this part 2, to carry into effect the powers and purposes of the authority;

(v) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(w) To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state, unable to attend before the authority, or excused from attendance;

(x) To make available to such agencies, boards, or commissions as are charged with the duty of abating nuisances or demolishing unsafe structures within its territorial limits its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare; and

(y) To do all things necessary or convenient to carry out the powers given in this part 2.

(2) Any of the investigations or examinations provided for in this part 2 may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination has the power to administer oaths, take affidavits, and issue subpoenas or commissions. An authority may exercise any of the powers conferred upon it by this section, either generally or with respect to any specific project through or by any agent which it may designate, including any corporation formed under the laws of this state, and, for such purposes, an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which is owned by the authority or its nominee, to the extent permitted by law, may exercise any of the powers conferred upon the authority.

(3) In addition to all of the other powers conferred upon it by this section, an authority may do all things necessary and convenient to carry out the powers expressly given in this part 2. No provisions with respect to the acquisition, operation, or disposition of property by public bodies shall be applicable to an authority unless the legislature specifically so states.

Source: L. 35: 533, § 9. CSA: C. 82, § 37. CRS 53: § 69-3-9. C.R.S. 1963: § 69-3-9. L. 79: (1)(p) amended, p. 1617, § 15, effective June 8. L. 89: (1)(p) amended, p. 1113, § 20, effective July 1. L. 2000: (1)(d.3), (1)(d.5), and (1)(d.7) added, p. 882, § 6, effective August 2.

29-4-210. Rentals and tenant selection.

(1) In the operation or management of housing projects, any housing authority at all times shall observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease dwelling accommodations therein only to persons of low income, being persons receiving incomes less than the incomes which, according to the determination of the authority, persons must receive to enable them to pay the rent necessary to secure safe and sanitary dwelling accommodations within the boundaries of the authority, except such dwelling accommodations as are provided by the authority or the city.

(a.5) Notwithstanding the limitations of paragraph (a) of this subsection (1), a housing authority may rent or lease dwelling accommodations therein to:

(I) Persons who, by virtue of age or disability, have special housing needs or requirements that cannot reasonably be met by existing housing available within the boundaries of the authority; and

(II) Other persons, without regard to income, in a manner consistent with the provisions of section 29-4-203 (12).

(b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of such persons of low income.

(c) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms, but no greater number than that which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding.

(d) It shall not accept any family as a tenant in dwelling accommodations that are provided for persons of low income if the family who would occupy the dwelling accommodations has a net annual income in excess of five times the annual rental of the dwelling accommodations to be furnished, after allowing all exemptions available to families occupying dwellings in low rent housing authorized under the act of Congress of the United States known as the "United States Housing Act of 1937", as amended. In computing such rental, for the purpose of selecting tenants, there shall be included in the rental the average annual cost to the occupant, as determined by the authority, of heat, water, electricity, gas, and

other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

(2) Nothing in this part 2 shall be construed as limiting the power of an authority:

(a) To vest in an obligee the right, in the event of default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this part 2 with respect to rentals, tenant selection, manner of operation, or otherwise;

(b) To vest in obligees, pursuant to section 29-4-217, the right, in the event of default by the authority, to acquire title to a housing project or the property mortgaged by the housing authority, free from all the restrictions imposed by this part 2 except those imposed by sections 29-4-217 and 29-4-222.

Source: L. 35: p. 536, § 10. CSA: C. 82, § 38. L. 37: p. 669, § 2. CRS 53: § 69-3-10. L. 59: p. 488, § 1. C.R.S. 1963: § 69-3-10. L. 89: (1)(a.5) added, p. 1263, § 1, effective March 21. L. 2000: (1)(a.5) and (1)(d) amended, p. 882, § 7, effective August 2.

ANNOTATION

Am. Jur.2d. See 40 Am. Jur.2d, Housing Laws, Etc., § 33.

C.J.S. See 64 C.J.S., Municipal Corporations, § 1831.

29-4-211. Eminent domain.

(1) The authority has the right to acquire by eminent domain any property, real or personal, which it may deem necessary to carry out the purposes of this part 2 after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either sections 38-1-101 to 38-1-115, article 3 of title 38, and section 38-5-106 or article 6 of title 38, C.R.S.

(2) Property already devoted to a public use may be acquired; but no property belonging to the city or to any government may be acquired without its consent, and no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal having regulatory power over such corporation.

Source: L. 35: p. 537, § 11. CSA: C. 82, § 39. CRS 53: § 69-3-11. C.R.S. 1963: § 69-3-11.

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

Authority restricted to property within city. The manifest intention of the general assembly, under the circumstances described above, was to restrict the authority to condemn property to that which was located within the limits of the city. Robison v. Housing Auth., 165 Colo. 469, 439 P.2d 732 (1968).

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Source: L. 35: p. 537, § 11. CSA: C. 82, § 39. CRS 53: § 69-3-11. C.R.S. 1963: § 69-3-11.

ANNOTATION

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29-4-213. Zoning and building laws.

All projects of an authority are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated.

Source: L. 35: p. 538, § 13. CSA: C. 82, § 41. CRS 53: § 69-3-13. C.R.S. 1963: § 69-3-13.

Cross references: For construction requirements, see § 9-1-101 et seq.; for county planning and building codes, see § 30-28-101 et seq.; for municipal zoning restrictions, see § 31-23-301 et seq.

29-4-214. Types of bonds.

(1) The authority has the power and is authorized from time to time in its discretion to issue for any of its corporate purposes:

(a) Bonds on which the principal and interest are payable:

(I) Exclusively from the income and revenues of the project financed with the proceeds of such bonds, or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof; or

(II) Exclusively from the income and revenues of certain designated projects, whether or not they were financed in whole or in part with the proceeds of such bonds. The full faith and credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only, and the bonds shall so state on their face, from the revenues of the designated project and the funds received from the sale or disposal thereof, and, if the authority so determines, by a trust indenture pledging such revenues, or, in certain instances as provided in this part 2 by a mortgage of the property comprising such designated project and the revenues therefrom.

(b) Bonds for payment of the principal and interest to which the full faith and credit of the authority is pledged and for which the revenues of the authority or any part thereof may be pledged by a resolution or trust indenture of the authority; in certain instances as provided in this part 2, such bonds may be additionally secured by a mortgage on the property and revenues of the authority or any part thereof.

(2) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. The bonds and other obligations of the authority shall not be a debt of the state or the city and neither the state nor the city shall be liable thereon, nor in any event shall they be payable out of any funds other than those of the authority.

Source: L. 35: p. 538, § 14. CSA: C. 82, § 42. CRS 53: § 69-3-14. C.R.S. 1963: § 69-3-14.

29-4-215. Form of bonds.

(1) The bonds of the authority shall be authorized by its resolution and issued in one or more series, and they shall bear such dates; mature at such times, not exceeding sixty years from their respective dates; bear interest at such rate, payable semiannually; be in such denominations, which may be made interchangeable; be in such form, either coupon or registered; carry such registration privileges; be executed in such manner; be payable in such medium of payment, at such places; and be subject to such terms of redemption, with or without premium, as such resolution or its trust indenture or mortgage may provide. The bonds may be sold at public or private sale, upon such terms and conditions as the authority shall determine. The bonds may be sold at such price as the authority shall determine.

(2) Pending the authorization, preparation, execution, or delivery of definite bonds, the authority may issue interim certificates or other temporary obligations to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form, contain such terms, conditions, and provisions, bear such dates, and evidence such agreements relating to their discharge or payment or the delivery of definite bonds as the authority may by resolution, trust indenture, or mortgage determine.

(3) In case any of the officers whose signatures appear on any bonds or coupons cease to be such officers before the delivery of such bonds, such signatures nevertheless shall be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

(4) The authority has power, out of any funds available therefor, to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest. All bonds so purchased shall be cancelled. This subsection (4) shall not apply to the redemption of bonds.

(5) Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., pertaining to investment securities.

Source: L. 35: p. 539, § 15. CSA: C. 82, § 43. CRS 53: § 69-3-15. C.R.S. 1963: § 69-3-15. L. 70: p. 111, § 7. L. 75: (5) amended, p. 218, § 59, effective July 16. L. 89: (1) amended, p. 1263, § 2, effective March 21.

29-4-216. Provisions of bond or mortgage.

(1) In connection with the issuance of bonds or the incurring of any obligation under a lease, and in order to secure the payment of such bonds or obligations, the authority has the power:

(a) To pledge by resolution, trust indenture, mortgage subject to the limitations imposed in this section, or by other contract all or any part of its rents, fees, or revenues;

(b) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired or against permitting or suffering any lien thereon;

(c) To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any project or any part thereof or with respect to limitations on its right to undertake additional projects;

(d) To covenant against pledging all or any part of its rents, fees, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(e) To provide for the release of property, rents, fees, and revenues from any pledge or mortgage and to reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(f) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage, or other instrument and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof;

(g) To covenant as to what other or additional debt may be incurred by it;

(h) To provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(i) To provide for the replacement of lost, destroyed, or mutilated bonds;

(j) To covenant that the authority warrants the title to the premises;

(k) To covenant as to the fees and rentals to be charged, the amount, calculated as may be determined to be raised each year or other period of time by fees, rentals, and other revenues, and as to the use and disposition to be made thereof;

(l) To covenant as to the use of any or all of its property, real or personal;

(m) To create or to authorize the creation of special funds in which there shall be segregated:

(I) The proceeds of any loan or grant;

(II) All of the rents, fees, and revenues of any project or parts thereof;

(III) Any moneys held for the payment of the costs of operation and maintenance of such project or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(IV) Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and

(V) Any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds;

(n) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(o) To covenant against extending the time for the payment of bond interest, directly or indirectly, by any means or in any manner;

(p) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(q) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(r) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the authority with reference thereto;

(s) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(t) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(u) To covenant to surrender possession of all or any part of any project upon the happening of an event of default, as defined in the trust indenture, mortgage, lease, or contract with reference thereto and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such projects or any part thereof, to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the authority itself might do, and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee;

(v) To vest in a trustee the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee, to limit liabilities thereof, and to provide the terms and conditions upon which the trustee or the holders of bonds or any proportion of them may enforce any such covenant;

(w) To make covenants other than and in addition to the covenants expressly authorized by this section, of like or different character;

(x) To execute all instruments necessary or convenient in the exercise of the powers granted in this section or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government or any purchaser of the bonds of the authority may reasonably require;

(y) To make such covenants and to do all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of the authority, tend to make the bonds more marketable; notwithstanding that such covenants, acts, or things may not be enumerated in this section. It is the intention of this section to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of Colorado, and no consent or approval of any judge or court shall be required thereof; except that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in section 29-4-217.

Source: L. 35: p. 541, § 16. CSA: C. 82, § 44. CRS 53: § 69-3-16. C.R.S. 1963: § 69-3-16.

29-4-217. Power to mortgage, when.

(1) In connection with any project, the authority also has the power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(a) To vest in a government the right, upon the happening of an event of default as defined in such mortgage, to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government is the holder of any of the bonds secured by such mortgage;

(b) To vest in a trustee the right, upon the happening of an event of default as defined in such mortgage, to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government, if any, which aided in financing the project involved;

(c) To vest in other obligees the right, but only with the consent of such government, if any, which aided in financing the project involved, to foreclose such mortgage by judicial proceedings;

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid to foreclose such mortgage as to all or such part of the property covered thereby as such obligee, in its absolute discretion, shall elect; such institution, prosecution, and conclusion of any such foreclosure proceedings or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold.

Source: L. 35: p. 545, § 17. CSA: C. 82, § 45. CRS 53: § 69-3-17. C.R.S. 1963: § 69-3-17. L. 89: IP(1), (1)(b), and (1)(c) amended, p. 1264, § 3, effective March 21.

ANNOTATION

C.J.S. See 63 C.J.S., Municipal Corporations, § 963.

29-4-218. Remedies of an obligee of authority.

(1) Any obligee of the authority has the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action, or proceeding in law or equity, all of which may be joined in one action, to compel the performance by the authority and the commissioners thereof, and any officer, agent, or employee of the authority of each and every term, provision, and covenant contained in any trust indenture, mortgage, lease, or other agreement to which the authority is a party, and to require the carrying out of any or all covenants and agreements and the fulfillment of all duties imposed upon the authority by this part 2;

(b) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority;

(c) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any mortgage, lease, or contract of the authority.

Source: L. 35: p. 547, § 18. CSA: C. 82, § 46. CRS 53: § 69-3-18. C.R.S. 1963: § 69-3-18.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, § 2140.

29-4-219. Additional remedies.

(1) Any authority has the power, by its trust indenture, mortgage, lease, or other contract, to confer upon any obligee holding or representing a specified amount in bonds, lease, or other obligations the right, upon the happening of an event of default as defined in such instrument:

(a) By suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of any project of the authority or any part thereof. If such receiver is appointed, he may enter and take possession of such project or any part thereof and operate and maintain the same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do, and to keep such moneys in a separate account and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners thereof to account as if they were the trustees of an express trust.

Source: L. 35: p. 547, § 19. CSA: C. 82, § 47. CRS 53: § 69-3-19. C.R.S. 1963: § 69-3-19.

29-4-220. Remedies cumulative.

All the rights and remedies conferred by this part 2 are cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any agreement with the authority.

Source: L. 35: p. 548, § 20. CSA: C. 82, § 48. CRS 53: § 69-3-20. C.R.S. 1963: § 69-3-20.

29-4-221. Limitations on remedies of obligee.

No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in section 29-4-217. All property of the authority is exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the rights of obligees to foreclose any mortgage of the authority provided for in section 29-4-217, and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby which was issued on the full faith and credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

Source: L. 35: p. 548, § 21. CSA: C. 82, § 49. CRS 53: § 69-3-21. C.R.S. 1963: § 69-3-21.

29-4-222. Sale subject to government agreement.

Notwithstanding anything in this part 2 to the contrary, any purchaser at a sale of real or personal property of the authority pursuant to any foreclosure of a mortgage of the authority shall obtain title subject to any contract between the authority and the government relating to the supervision by the government of the operation and maintenance of such property and the construction of improvements thereon.

Source: L. 35: p. 549, § 22. CSA: C. 82, § 50. CRS 53: § 69-3-22. C.R.S. 1963: § 69-3-22.

29-4-223. Contracts with federal government.

(1) In addition to the powers conferred upon the authority by other provisions of this part 2, the authority is empowered:

(a) To borrow money from the federal government to finance the construction of any project which such authority is authorized by this part 2 to undertake;

(b) To take over any land acquired by the federal government for the construction of a project; and

(c) To take over, lease, or manage any project so constructed or owned by the federal government and, to that end, to enter into any such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require in such connection.

(2) Such contracts, mortgages, trust indentures, leases, or other agreements may provide that the federal government has the right to supervise and approve the construction, maintenance, and operation of such project.

(3) It is the purpose and intent of this part 2 to authorize such authority to accept the cooperation of the federal government in the construction, maintenance, and operation and in the financing of the construction of any project which the authority is empowered by this part 2 to undertake. Such authority has full power to do all things necessary in order to secure such aid, assistance, and cooperation.

Source: L. 35: p. 549, § 23. CSA: C. 82, § 51. CRS 53: § 69-3-23. C.R.S. 1963: § 69-3-23.

29-4-224. Wage and labor conditions.

Notwithstanding anything to the contrary contained in the housing authorities law or in any other provision of law, any housing authority is empowered to include in any construction contract let in connection with a housing project, as defined in said housing authorities law, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor and with any conditions or regulations which the federal government has imposed as a condition to its financial aid to said housing project.

Source: L. 37: p. 670, § 3. CSA: C. 82, § 55(1). CRS 53: § 69-3-24. C.R.S. 1963: § 69-3-24.

29-4-225. Insurance.

A housing authority, in addition to its other powers, has the power to procure or agree to the procurement of insurance or guarantees from the federal government for the payment of any debts or parts thereof incurred by said authority, including the power to pay premiums on any such insurance.

Source: L. 37: p. 670, § 4. CSA: C. 82, § 55(2). CRS 53: § 69-3-25. C.R.S. 1963: § 69-3-25.

29-4-226. Exemption from special assessments.

(1) The following shall be exempt from the payment of any special assessments to the state, any county, city and county, municipality, or other political subdivision of the state:

(a) A housing authority;

(b) The property of a housing authority;

(c) All property leased to a housing authority; and

(d) The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity:

(I) That is wholly owned by an authority;

(II) In which an authority has an ownership interest; or

(III) In which an entity wholly owned by an authority has an ownership interest.

Source: L. 37: p. 671, § 5. CSA: C. 82, § 55(3). CRS 53: § 69-3-26. C.R.S. 1963: § 69-3-26. L. 2000: Entire section amended, p. 883, § 8, effective August 2.

29-4-227. Tax exemptions.

The authority is exempt from the payment of any taxes or fees to the state or any subdivision thereof, or to any officer or employee of the state or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures, and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instruments,

and, together with interest thereon, shall be exempt from taxes. All property leased to the authority for the purposes of a project shall likewise be exempt from taxation, as shall the income derived from the authority by the lessor under such lease. The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity that is wholly owned by an authority, an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority has an ownership interest shall likewise be exempt from taxation, and the income derived from the above entities by the lessor under a lease shall likewise be exempt from taxation.

Source: L. 35: p. 552, § 28. CSA: C. 82, § 56. CRS 53: § 69-3-27. C.R.S. 1963: § 69-3-27. L. 2000: Entire section amended, p. 883, § 9, effective August 2.

29-4-228. Reports.

The authority shall, at least once a year, file with the mayor of the city a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part 2.

Source: L. 35: p. 552, § 29. CSA: C. 82, § 57. CRS 53: § 69-3-28. C.R.S. 1963: § 69-3-28.

29-4-229. Low rentals.

It is the purpose and intent of this part 2 to authorize and impose a duty on the authority to provide safe and sanitary dwelling accommodations at such rentals that persons of low income can afford to live in such dwelling accommodations. To this end, the authority from time to time shall reduce its rents and other charges for such dwelling accommodations to the extent that it deems such action expedient; but the authority shall not reduce its rents or other charges if such action is in violation of any contract between the authority and an obligee or would result in an insufficiency of revenues from the project to meet the costs of the operation and maintenance thereof, to meet all obligations of the authority as same mature, and to create reasonable reserves for such contingencies as the authority determines.

Source: L. 35: p. 552, § 30. CSA: C. 82, § 58. CRS 53: § 69-3-29. C.R.S. 1963: § 69-3-29.
29-4-230. Previous housing authorities validated.

The creation and organization of housing authorities pursuant to this part 2 together with all proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, with reference thereto are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 417, § 1. CSA: C. 82, § 59. CRS 53: § 69-3-30. C.R.S. 1963: § 69-3-30.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

29-4-231. Contracts and undertakings validated.

All contracts, agreements, obligations, and undertakings of such housing authorities entered into prior to May 17, 1939, relating to financing or aiding in the development, construction, maintenance, or operation of any housing project, or to obtaining aid therefor from the United States housing authority including, without limiting the generality of the foregoing, loan and annual contributions contracts with the United States housing authority, agreements with municipalities or other public bodies, including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds relating to cooperation and contributions in aid of housing projects, payments, if any, in lieu of

taxes, furnishing of municipal services and facilities, and the elimination of unsafe and unsanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, with reference thereto, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 417, § 2. CSA: C. 82, § 60. CRS 53: § 69-3-31. C.R.S. 1963: § 69-3-31.

29-4-232. Notes and bonds validated.

All proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, in or for the authorization, issuance, execution, and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project and all notes and bonds issued by housing authorities prior to May 17, 1939, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 418, § 3. CSA: C. 82, § 61. CRS 53: § 69-3-32. C.R.S. 1963: § 69-3-32.

29-4-230. Previous housing authorities validated.

The creation and organization of housing authorities pursuant to this part 2 together with all proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, with reference thereto are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 417, § 1. CSA: C. 82, § 59. CRS 53: § 69-3-30. C.R.S. 1963: § 69-3-30.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

29-4-231. Contracts and undertakings validated.

All contracts, agreements, obligations, and undertakings of such housing authorities entered into prior to May 17, 1939, relating to financing or aiding in the development, construction, maintenance, or operation of any housing project, or to obtaining aid therefor from the United States housing authority including, without limiting the generality of the foregoing, loan and annual contributions contracts with the United States housing authority, agreements with municipalities or other public bodies, including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds relating to cooperation and contributions in aid of housing projects, payments, if any, in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and unsanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, with reference thereto, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 417, § 2. CSA: C. 82, § 60. CRS 53: § 69-3-31. C.R.S. 1963: § 69-3-31.

29-4-232. Notes and bonds validated.

All proceedings, acts, and things undertaken, performed, or done prior to May 17, 1939, in or for the authorization, issuance, execution, and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project and all notes and

bonds issued by housing authorities prior to May 17, 1939, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein.

Source: L. 39: p. 418, § 3. CSA: C. 82, § 61. CRS 53: § 69-3-32. C.R.S. 1963: § 69-3-32.

MISCELLANEOUS

ARTICLE 5 -PEACE OFFICERS AND FIREFIGHTERS

29-5-101. Peace officers must be residents - exception.

No sheriff, mayor of a city, or other person authorized by law to appoint special deputy sheriffs, marshals, policemen, or other peace officers in the state to preserve the public peace and prevent or quell public disturbances shall hereafter appoint as such special deputy sheriff, marshal, policeman, or other peace officer any person who is not at the time of the appointment a bona fide resident of the state of Colorado, and no person shall assume or exercise the functions, powers, duties, or privileges incident and belonging to the office of special deputy sheriff, marshal, policeman, or other peace officer without having first received his appointment in writing from the lawfully constituted authorities of the state. Notwithstanding the residency requirement stated in this section, a person may be deputized or otherwise assigned to law enforcement duty pursuant to section 29-5-104 (2) although such person is not a bona fide resident of this state.

Source: L. 1891: p. 20, § 1. R.S. 08: § 4675. C.L. § 7954. CSA: C. 116, § 1. CRS 53: § 99-2-1. L. 64: p. 296, § 243. C.R.S. 1963: § 99-2-1. L. 93: Entire section amended, p. 245, § 2, effective March 31.

Cross references: For the description of peace officer in the criminal code, see § 16-2.5-101.

ANNOTATION

Am. Jur.2d. See 70 Am. Jur.2d, Sheriffs, Police, and Constables, § 10.

C.J.S. See 62 C.J.S., Municipal Corporations, Etc., § 571; 80 C.J.S., Sheriffs and Constables, §§ 22, 37.

29-5-102. Impersonating an officer - penalty. (Repealed)

Source: L. 1891: p. 21, § 3. R.S. 08: § 4677. C.L. § 7956. L. 29: p. 306, § 1. CSA: C. 116, § 3. CRS 53: § 99-2-3. L. 63: p. 339, § 55. C.R.S. 1963: § 99-2-3. L. 64: p. 297, § 245. L. 2004: Entire section repealed, p. 1081, § 3, effective July 1.

29-5-103. Assignment of police officers or deputy sheriffs for temporary duty.

The chief of police or person performing the functions thereof of any town, city, or city and county or the sheriff of any county may in his discretion, upon request of the chief of police or person exercising the functions thereof in any other town, city, or city and county or the sheriff of any other county, assign police officers or deputies under his control, together with any equipment he deems proper, to perform temporary duty within the jurisdiction of the requesting chief of police or sheriff and under the direction and command of such requesting chief of police or sheriff; but the chief of police or sheriff so assigning such officers or deputies may provide that such officers or deputies shall be under the immediate command of a superior officer designated by such assigning chief of police or sheriff, which superior officer shall be under the direct supervision and command of the requesting chief of police or sheriff. Nothing contained in sections 29-5-103 to 29-5-110 shall be construed to limit the power of any town, city,

or city and county to prohibit or limit by ordinance the exercise by a chief of police or sheriff of the discretion granted in sections 29-5-103 to 29-5-110.

Source: L. 63: p. 729, § 1. CRS 53: § 99-2-5. C.R.S. 1963: § 99-2-4.

ANNOTATION

Am. Jur.2d. See 70 Am. Jur.2d, Sheriffs, Police, and Constables, § 26.

C.J.S. See 62 C.J.S., Municipal Corporations, Etc., § 575.

When death of off-duty policeman within workmen's compensation coverage. The death of an off-duty city police officer killed outside the city limits while directing traffic in an emergency situation is compensable under the workmen's compensation act. Conley v. Indus. Comm'n, 43 Colo. App. 10, 601 P.2d 648 (1979).

29-5-104. Request for temporary assignment of police officers or deputy sheriffs - authority.

(1) The chief of police, or person performing the functions thereof, of any town, city, or city and county and the sheriff of any county may, when in his opinion the same is required to quell disturbances or riots or in any other situation wherein he deems that an emergency exists within his jurisdiction, request the chief of police or person performing the function thereof of any other city, town, or city and county or the sheriff of any other county to assign officers or deputy sheriffs under their respective commands to perform temporary duty within the jurisdiction of such requesting chief of police or sheriff and under the direction and control of such requesting chief of police or sheriff under such terms and conditions as shall be agreed upon between the requesting and assigning chiefs of police or sheriffs. Such officers or deputy sheriffs shall, while so assigned and performing duties subject to the direction and control of the requesting chief of police or sheriff, have the same power within the jurisdiction of the requesting chief of police or sheriff as do regular officers or deputies, as the case may be, of such requesting chief of police or sheriff.

(2) Where, under the provisions of section 29-1-206, a county or municipality in this state enters into an intergovernmental agreement for reciprocal law enforcement with a bordering county or with a municipality within a bordering county that is located in another state, the law enforcement agency head of either county or municipality may, pursuant to the provisions of such intergovernmental agreement, request the law enforcement agency head of the other county or municipality to assign deputy sheriffs or other peace officers to perform law enforcement duties within the jurisdiction of such requesting law enforcement agency head and under such terms and conditions as are stated in the intergovernmental agreement. Prior to such assignment, such deputy sheriffs or other peace officers shall obtain recognition as peace officers in this state as provided for in section 29-1-206. Such deputy sheriffs or other peace officers shall, while so assigned and performing duties subject to the direction and control of the requesting law enforcement agency head, have the same power within the jurisdiction of the requesting law enforcement agency head as do regular deputies or other peace officers of such requesting law enforcement agency head.

Source: L. 63: p. 730, § 2. CRS 53: § 99-2-6. C.R.S. 1963: § 99-2-5. L. 93: Entire section amended, p. 246, § 3, effective March 31. L. 96: (2) amended, p. 1574, § 8, effective June 3. L. 2000: (2) amended, p. 44, § 5, effective March 10.

ANNOTATION

When death of off-duty policeman within workmen's compensation coverage. The death of an off-duty city police officer killed outside the city limits while directing traffic in an emergency situation is compensable under the workmen's compensation act. Conley v. Indus. Comm'n, 43 Colo. App. 10, 601 P.2d 648 (1979).

29-5-105. Assignment of firefighters for temporary duty.

The chief of the fire department of any town, city, city and county, or fire protection district may, in his or her discretion and upon request therefor by the chief of any fire department of any other town, city, city and county, or fire protection district, assign members of his or her department or companies thereof, together with such equipment as the fire chief determines to be proper, to perform temporary fire fighting or other duties under the direction and control of the requesting fire chief; except that the assigning fire chief may require that such firefighters, fire companies, and equipment shall be under the immediate direction and control of a superior officer of the assigning fire department, which superior officer shall be, during such temporary assignment, under the direction and control of the requesting fire chief. Nothing contained in sections 29-5-103 to 29-5-110 shall be construed to limit the power of any town, city, or city and county or fire protection district to prohibit or limit by ordinance or regulation the exercise by a fire chief of the discretion granted in sections 29-5-103 to 29-5-110.

Source: L. 63: p. 730, § 3. CRS 53: § 99-2-7. C.R.S. 1963: § 99-2-6. L. 97: Entire section amended, p. 1025, § 50, effective August 6.

29-5-106. Temporary assignment to labor dispute area.

Police or sheriffs' officers may be assigned to any duties provided for in sections 29-5-103 and 29-5-104 in an area where there is a labor dispute so long as the situation or incident for which such temporary assignment has been requested is not directly the result of a labor dispute and does not involve those individuals participating in the labor dispute. In a case where the temporary assignment of police or sheriffs' officers is deemed necessary as the direct result of a labor dispute, such temporary assignment may be made only after authorization by the governor or his designee.

Source: L. 63: p. 730, § 4. CRS 53: § 99-2-8. C.R.S. 1963: § 99-2-7. L. 89: Entire section R&RE, p. 1267, § 1, effective April 23.

29-5-107. Request for temporary assignment of firefighters.

The chief of the fire department of any town, city, city and county, or fire protection district may, when in his or her opinion the same is required by any conflagration, fire, or other such emergency, request the chief of the fire department of any other town, city, city and county, or fire protection district to assign to him or her firefighters, fire companies, and equipment of such other fire department to perform temporary duty within the boundaries of such requesting town, city, city and county, or fire protection district, under the direction and control of such requesting fire chief and under such terms and conditions as shall be agreed upon between the requesting and assigning fire chiefs. Such firefighters shall, while so assigned and performing duties subject to the direction and control of the requesting fire chief, have the same power as regular firefighters and fire companies of the requesting town, city, city and county, or fire protection district.

Source: L. 63: p. 730, § 5. CRS 53: § 99-2-9. C.R.S. 1963: § 99-2-8. L: 97: Entire section amended, p. 1025, § 51, effective August 6.

29-5-108. Liability of requesting jurisdiction.

During the time that a policeman, deputy sheriff, or firefighter of a town, city, city and county, county, or fire protection district is assigned to temporary duty within the jurisdiction of another town, city, city and county, county, or fire protection district, as provided in sections 29-5-103 to 29-5-107, any liability which accrues under the provisions of article 10 of title 24, C.R.S., on account of the negligent or otherwise tortious act of any such police officer, deputy sheriff, or firefighter while performing such duty shall be imposed upon the requesting town, city, city and county, county, or fire protection district and not upon the assigning jurisdiction.

Source: L. 63: p. 731, § 6. CRS 53: § 99-2-10. C.R.S. 1963: § 99-2-9. L. 71: p. 1215, § 11. L. 97: Entire section amended, p. 1025, § 52, effective August 6.

29-5-109. Workers' compensation coverage.

The coverage of any police officer, deputy sheriff, or firefighter of any town, city, city and county, county, or fire protection district under the "Workers' Compensation Act of Colorado" shall not be affected by reason of the performance of temporary duties in a requesting town, city, city and county, county, or fire protection district under the provisions of sections 29-5-103 to 29-5-107, and such police officers, deputy sheriffs, and firefighters shall remain covered by such workers' compensation insurance while performing such temporary duty as fully as if they were performing their regular duties within the assigning jurisdiction.

Source: L. 63: p. 731, § 7. CRS 53: § 99-2-11. C.R.S. 1963: § 99-2-10. L. 90: Entire section amended, p. 571, § 61, effective July 1. L. 97: Entire section amended, p. 1026, § 53, effective August 6.

Cross references: For the "Workers' Compensation Act of Colorado", see articles 40 to 47 of title 8.

ANNOTATION

When death of off-duty policeman within workmen's compensation coverage. The death of an off-duty city police officer killed outside the city limits while directing traffic in an emergency situation is compensable under the workmen's compensation act. Conley v. Indus. Comm'n, 43 Colo. App. 10, 601 P.2d 648 (1979).

And off-duty status prior to emergency not bar to claim. The fact that decedent police officer was off duty prior to the onset of the emergency does not bar a claim for compensation. Conley v. Indus. Comm'n, 43 Colo. App. 10, 601 P.2d 648 (1979).

29-5-110. Pension fund payments.

If any police officer, deputy sheriff, or firefighter of any town, city, city and county, county, or fire protection district should become disabled or be killed by reason of the performance of temporary duty within the jurisdiction of another town, city, city and county, county, or fire protection district, as provided in sections 29-5-103 to 29-5-107, and such disability would entitle him or her or such death would entitle his or her survivor to payment from any police or firefighters' pension fund of the town, city, city and county, county, or fire protection district assigning him or her to temporary duty in another such jurisdiction, had the injury occurred during the performance of his or her duties within the assigning town, city, city and county, county, or fire protection district, such police officer, deputy sheriff, or firefighter, or his or her survivor shall be entitled to the same payment from the pension fund of the assigning town, city, city and county, county, or fire protection district as he or she would have been entitled to receive if the injury or death had occurred within the assigning town, city, city and county, county, or fire protection district, and he or she shall be entitled to receive no payment from any police or firefighters' pension fund of the jurisdiction in which he or she performed such temporary duties.

Source: L. 63: p. 731, § 8. CRS 53: § 99-2-12. C.R.S. 1963: § 99-2-11. L. 97: Entire section amended, p. 1026, § 54, effective August 6.

29-5-111. Liability of peace officers.

(1) Notwithstanding the doctrines of sovereign immunity and respondeat superior, a city, town, county, city and county, or other political subdivision of the state shall indemnify its paid peace officers and reserve officers, as defined in section 16-2.5-110, C.R.S., while such reserve officers are on duty for any liability incurred by them and for any judgment, except a judgment for exemplary damages, entered

against them for torts committed within the scope of their employment if the person claiming damages serves such political subdivision with a copy of the summons within ten days from the date when a copy of the summons is served on such peace officer. In no event shall any such political subdivision be required so to indemnify its peace officers in excess of one hundred thousand dollars for one person in any single occurrence or three hundred thousand dollars for two or more persons for any single occurrence; except that, in such instance no indemnity shall be allowed for any person in excess of one hundred thousand dollars. It is the duty of the city, town, county, city and county, or other political subdivision to provide the defense handled by the legal staff of the public entity or by other counsel, in the discretion of the public entity, for any such peace officer in such claim or civil action. However, in the event that the court determines that a reserve officer, as defined in section 16-2.5-110, C.R.S., incurred such liability while acting outside the scope of his or her assigned duties or that such reserve officer acted in a willful and wanton manner in incurring such liability, the court shall order such reserve officer to reimburse the political subdivision for reasonable costs and reasonable attorney fees expended for the defense of such reserve officer. With the approval of the governing body of the city, town, county, city and county, or other political subdivision, such claim or civil action may be settled or compromised. A city, town, county, city and county, or other political subdivision may carry liability insurance to insure itself and its peace officers. If such political subdivision purchases insurance which provides substantial coverage for such peace officers with a policy limitation of at least one hundred thousand dollars for one person in any single occurrence and three hundred thousand dollars for two or more persons for any single occurrence (except that in such instance no indemnity shall be allowed for any person in excess of one hundred thousand dollars), then such political subdivision shall be liable under this section to indemnify any such peace officers only to the extent of the limits and for such torts as are covered by the policy and only to the extent of the coverage of the policy. Nothing in this section shall be deemed to condone the conduct of any peace officer who uses excessive force or who violates the statutory or constitutional rights of any person.

(2) This section shall apply only with respect to causes of action accruing on or after July 1, 1972.

Source: L. 71: pp. 1048, 1049, §§ 1, 2. C.R.S. 1963: § 99-2-12. L. 72: p. 612, § 135. L. 88: (1) amended, p. 723, § 5, effective July 1. L. 2003: (1) amended, p. 1618, § 26, effective August 6.

ANNOTATION

Am. Jur.2d. See 70 Am. Jur.2d, Sheriffs, Police, and Constables, §§ 158, 159, 209-218.

C.J.S. See 62 C.J.S., Municipal Corporations, Etc., § 575.

Annotator's note. For further Annotations dealing with public entity liability, immunity, and duty of care, see §§ 24-10-106 and 24-10-106.5.

This section provides citizens a remedy for torts committed by police officers. Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981).

This section provides indemnification for liability incurred by peace officers and for judgments filed against them for torts committed within the scope of their employment. An action filed by the plaintiff seeking declaratory judgment and injunctive relief may not be so characterized and does not entitle a peace officer to indemnification. City and County of Denver v. Blatnik, 32 P.3d 593 (Colo. App. 2001).

The clause "Notwithstanding the doctrines of sovereign immunity . . ." clearly operates as a waiver of immunity. Brown v. Gray, 227 F.3d 1278 (10th Cir. 2000).

Requirements of the immunity act, § 24-10-101 et seq., are extraneous to town's liability under this section. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

Liability different from that under immunity act. Secondary liability of a governmental entity as an indemnitor under this section is different and distinct from the direct liability imposed by the immunity act, § 24-10-101 et seq. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

This section and § 24-10-109 are not to be read together. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

This section and § 24-10-110 conflict regarding the reimbursement of defense costs for level I peace officers. The Governmental Immunity Act pertains to governmental employees generally, while this section defines the rights of police officers specifically. It is well settled that, in the event of apparent statutory conflict, specific language overrides general language. Therefore, in light of the conflict between the two statutes, this section takes precedence. Brown v. Gray, 227 F.3d 1278 (10th Cir. 2000).

Time limitations. The only time limitation, other than the statute of limitations, imposed upon one seeking to hold a governmental entity secondarily liable is the requirement contained within this section. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

Immunity for tortious act of municipal officer deemed matter of concurrent local and state concern. Governmental immunity for tortious acts of municipal police officers and, specifically, limitations on compensatory damages for personal injuries in actions against municipal governments, based on such tortious conduct, are matters of concurrent local and statewide concern. Frick v. Abell, 198 Colo. 508, 602 P.2d 852 (1979).

And municipality may increase compensation to tort victims. A municipality may provide greater monetary compensation to victims of torts committed by the municipality's own police officers than is provided under state statutes. Frick v. Abell, 198 Colo. 508, 602 P.2d 852 (1979).

Whether a municipality provides its police officers with defense costs against tort actions is a matter of both state and local concern. Therefore, to the extent, if any, that the municipal charter conflicts with state law, this section supersedes the charter. Brown v. Gray, 227 F.3d 1278 (10th Cir. 2000).

Applied in Forrest v. County Comm'rs, 629 P.2d 1105 (Colo. App. 1981); Beacom v. Bd. Of County Comm'rs, 657 P.2d 440 (Colo. 1983); Nowakowski v. Dist. Court, 664 P.2d 709 (Colo. 1983).

ARTICLE 5.5 POLITICAL SUBDIVISION VETERAN'S PREFERENCE ENFORCEMENT ACT

29-5.5-101. Short title.

This article shall be known and may be cited as the "Colorado Political Subdivision Veteran's Preference Enforcement Act".

Source: L. 98: Entire article added, p. 666, § 1, effective May 18.

29-5.5-102. Legislative declaration.

The general assembly hereby finds, determines, and declares that the public policy of this state is to encourage, wherever and whenever possible at both the state and local level, the hiring of veterans of the United States armed services. This policy has been expressed through the adoption of article XII, section 15 of the Colorado constitution and is a matter of statewide concern.

Source: L. 98: Entire article added, p. 666, § 1, effective May 18.

29-5.5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Political subdivision of the state" shall have the same meaning as in article XII, section 15 of the Colorado constitution including, but not limited to, the regional transportation district.

(2) "Veterans preference points" means those points to be awarded pursuant to article XII, section 15 of the Colorado constitution to veterans applying for public employment.

Source: L. 98: Entire article added, p. 666, § 1, effective May 18.

29-5.5-104. Veterans preference points.

Each applicant for appointment or employment in any civil service, merit, or personnel system of a political subdivision of the state that is comparable to that of the state shall be awarded, at a minimum, the appropriate veterans preference points pursuant to article XII, section 15 of the Colorado constitution.

Source: L. 98: Entire article added, p. 667, § 1, effective May 18.

29-5.5-105. Appeals.

(1) An applicant who believes that the applicant is entitled to, but has not received, the veterans preference points required by article XII, section 15 of the Colorado constitution may, within thirty days after the notice of the hiring decision, submit to the hiring authority of the political subdivision of the state a written request for a notice of whether the applicant has been awarded the veterans preference points. The hiring authority of the political subdivision of the state shall respond within fifteen days to the request.

(2) The hiring authority of the political subdivision of the state or, at the political subdivision of the state hiring authority's discretion, a three-member panel shall hear any appeal concerning the awarding of veterans preference points as required by the article XII, section 15 of the Colorado constitution. Such hearing shall be conducted in accordance with the provisions of this section.

(3) The selection and examination process action shall be overturned if the hiring authority of the political subdivision of the state finds that:

(a) The applicant has not been awarded the preference points specified in article XII, section 15 of the Colorado constitution; and

(b) The applicant, if awarded the preference points specified in article XII, section 15 of the Colorado constitution would have otherwise obtained the position.

Source: L. 98: Entire article added, p. 667, § 1, effective May 18.

ARTICLE 6 MEMORIALS

29-6-101. Erection of memorial buildings.

Any county, city and county, city, or town of the state of Colorado, including any city under special charter, has the power, by a vote of the taxpayers, to purchase or condemn ground for, erect and equip, or purchase and equip a building as a soldiers', sailors', and marines' memorial, commemorative of their military and naval service. Such building may be or include military headquarters, memorial rooms, library, assembly hall, gymnasium, natatorium, club rooms, and rest rooms. It may include a city hall and offices for any county or municipal purpose, community house, or recreation center; or it may be a memorial hospital; or it may be for any one or more of such purposes; and for similar or appropriate purposes may be extended to general community and neighborhood uses, all under the control and regulation as to charges and otherwise of the city or town council, or the board of county commissioners

of a county. Such buildings may be erected as an appropriate annex to any other city or public building or by reconstructing the same.

Source: L. 21: p. 599, § 1. C.L. § 8247. CSA: C. 154, § 32. CRS 53: § 131-4-1. C.R.S. 1963: § 131-4-1.

ANNOTATION

Am. Jur.2d. See 63C Am. Jur.2d, Public Funds, § 73.

29-6-102. Bond issue.

For the purpose of providing for the acquisition of necessary ground therefor and purchasing, erecting, constructing, or reconstructing such building and for the necessary equipment therefor, the county, city and county, city, or town may issue bonds to be known as liberty memorial bonds, to be issued and sold as provided by law; and the county, city and county, city, or town shall provide for portions of such bonds to become due at different, definite periods, but none in less than five nor more than fifty years from the date of issue.

Source: L. 21: p. 600, § 2. C.L. § 8248. CSA: C. 154, § 33. CRS 53: § 131-4-2. C.R.S. 1963: § 131-4-2.

ANNOTATION

C.J.S. See 64 C.J.S., Municipal Corporations, Etc., § 1906.

29-6-103. Gifts and bequests authorized.

Gifts and bequests to the county, city and county, city, or town for any of the purposes provided in this article are authorized. The same shall be used and applied as provided in this article and as especially stipulated by the donor.

Source: L. 21: p. 600, § 3. C.L. § 8249. CSA: C. 154, § 34. CRS 53: § 131-4-3. C.R.S. 1963: § 131-4-3.

ARTICLE 7 RECREATIONAL FACILITIES DISTRICTS

29-7-101. City or county may own and operate.

(1) Any city, town, village, county, metropolitan recreational district, or park and recreation district organized under article 1 of title 32, C.R.S., may acquire, sell, own, exchange, and operate public recreation facilities, open space and parklands, playgrounds, and television relay and translator facilities; acquire, equip, and maintain land, buildings, or other recreational facilities either within or without the corporate limits of such city, town, village, or county; and expend funds therefor and for all purposes connected therewith.

(2) Any county through its board of county commissioners shall have the power, authority, and jurisdiction to regulate and control public recreation lands and facilities owned or operated by the county by the promulgation of rules and regulations pursuant to a lawfully adopted resolution. The rules and regulations may include but are not limited to the following: Removal, destruction, mutilation, or defacing of any natural object or man-made object owned by the county; explosives or any form of firearm; animal control; any public use, including boating, fishing, camping, or hunting; and polluting or littering. Any person violating any rule or regulation lawfully adopted pursuant to this subsection (2) commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars. It is the duty of the sheriff and the sheriff's undersheriff and deputies, in their respective counties, as well as any county enforcement personnel authorized and appointed as described in subsection (3), to enforce the rules and regulations adopted pursuant to this subsection (2), and the county courts in their respective counties have jurisdiction in the prosecution of any violation of a rule or regulation adopted

pursuant to this subsection (2). If authorized by resolution, the penalty assessment procedure provided in section 16-2-201, C.R.S., may be followed by any arresting law enforcement officer for any violation of a rule or regulation adopted pursuant to this subsection (2). As part of a resolution authorizing the penalty assessment procedure, the board of county commissioners may adopt a graduated fine schedule for violations. The graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same person. All fines and forfeitures for the violation of county regulations adopted pursuant to this subsection (2) shall be paid into the treasury of the county at such times and in such manner as may be prescribed by resolution; or, if there is no resolution providing for the payment, it shall be paid to the county treasurer at once.

(3) (a) In addition to the enforcement of the rules and regulations by the sheriff, an undersheriff, or a deputy sheriff, a board of county commissioners may by resolution designate specific other county personnel, however titled or administratively assigned, to enforce rules and regulations duly adopted by the county to control and regulate the use of county public lands and recreation facilities, by issuance of citations or summonses and complaints.

(b) Personnel designated pursuant to this subsection (3):

(I) Shall not be subject to peace officer certification or any other requirements of part 3 of article 31 of title 24, C.R.S.;

(II) Shall be included within the definition of "peace officer or firefighter engaged in the performance of his or her duties" found in section 18-3-201 (2), C.R.S.; and

(III) Shall not have the power to arrest or to execute warrants and shall not have authority to enforce any other resolution, ordinance, or statute, unless otherwise provided by law.

Source: L. 35: p. 1115, § 1. CSA: C. 136, § 1. L. 47: p. 696, § 1. CRS 53: § 114-1-1. L. 60: p. 180, § 1. C.R.S. 1963: § 114-1-1. L. 75: Entire section amended, p. 987, § 1, effective July 14. L. 81: (1)(b) amended, p. 1413, § 1, effective May 18; (1)(a) amended, p. 1612, § 7, effective June 19. L. 96: (2) amended and (3) added, p. 587, § 1, effective May 1. L. 97: (3)(b)(II) amended, p. 1026, § 55, effective August 6.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., §§ 185,186.

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For comment, "People v. Emmert (198 Colo. 137, 597 P.2d 1025 (1979)): A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981).

County has implied power to sell beer as part of operation of golf clubhouse, as this is incident to the expressly conferred power to operate a public recreational facility, the golf course. Adams County Golf, Inc. v. Colo. Dept. of Rev., 199 Colo. 423, 610 P.2d 97 (1980).

Statute does not explicitly or implicitly authorize extraterritorial condemnation of stream fishing rights. Aurora v. Commerce Groups Corp., 694 P.2d 382 (Colo. App. 1984).

29-7-102. School district may own and operate.

(1) Any school district may operate a system of public recreation and playgrounds and television relay translator facilities and may exercise all other powers enumerated in section 29-7-101.

(2) (a) In addition to all other powers and duties that may be conferred by subsection (1) of this section and section 29-7-101, the board of education of a school district that is also a special district, as defined in section 29-21-101 (1) (g), and that began levying a tax for the operation and maintenance of a system

of public recreation and playgrounds prior to August 4, 1999, may continue to levy such tax for said purposes, subject to the limitations set forth in paragraph (b) of this subsection (2).

(b) The board of education of a school district that is also a special district, as defined in section 29-21-101 (1) (g), shall submit, after notice, the question of either an imposition of a new tax after August 4, 1999, or any increase in the existing tax levy after said date for the operation and maintenance of a system of public recreation and playgrounds not previously established by resolution or ordinance, nor previously approved by a vote of the registered electors residing in the school district, to a vote of said registered electors at the next general election or the first Tuesday in November of odd-numbered years or on the school district's biennial election date.

(c) Following a vote by the registered electors residing in the school district that sets a maximum tax levy for the operation and maintenance of a system of public recreation and playgrounds, such tax levy shall remain in effect, subject to the requirements of section 29-1-301, until the registered electors residing in the school district have established a change in the levy by subsequent vote pursuant to the provisions of this section. A school district that is also a special district, as defined in section 29-21-101 (1) (g), and that began levying a tax for the operation and maintenance of a system of public recreation and playgrounds prior to August 4, 1999, may continue such levy until the registered electors residing in the school district have established a change in the levy by subsequent vote pursuant to the provisions of this section.

Source: L. 35: p. 1115, § 2. CSA: C. 136, § 2. L. 47: p. 696, § 2. CRS 53: § 114-1-2. L. 60: p. 180, § 2. C.R.S. 1963: § 114-1-2. L. 99: Entire section amended, p. 38, § 2, effective August 4.

Cross references: For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 15, Session Laws of Colorado 1999.

ANNOTATION

C.J.S. See 78 C.J.S., Schools and School District, §§ 369-371; 79 C.J.S., Schools and School Districts, § 324.

29-7-103. Operation - admission fees.

Any city, town, village, county, or school district may operate such a system independently or may cooperate in its conduct in any manner which is mutually agreed upon or may delegate the operation of the system to a recreation board created by any or all of them and appropriate money voted for this purpose to such board, and it may make charges and require the payment of fees for the admission to and use and enjoyment of such recreation facilities and playgrounds.

Source: L. 35: p. 1115, § 3. CSA: C. 136, § 3. L. 47: p. 696, § 3. CRS 53: § 114-1-3. C.R.S. 1963: § 114-1-3.

ANNOTATION

Am. Jur.2d. See 59 Am. Jur.2d, Parks, Squares, and Playgrounds, § 6.

C.J.S. See 64 C.J.S., Municipal Corporation, Etc., § 1818.

29-7-104. Powers - eminent domain.

Any municipal corporation or board given charge of the recreation system is authorized to conduct its activities on property under its custody and management; other public property under the custody of other municipal corporations or boards with the consent of such corporations or boards; and private property with the consent of the owners or without such consent as provided in this section. It has authority to accept gifts and bequests for the benefit of the recreational service, employ supervisors and directors of

the recreational service and employ supervisors and directors of recreational work, take private property for the aforesaid purposes without the owner's consent upon payment of just compensation, and exercise the right of eminent domain in accordance with the provisions of articles 1 to 7 of title 38, C.R.S., and other applicable laws and statutes.

Source: L. 35: p. 1116, § 4. CSA: C. 136, § 4. L. 47: p. 696, § 4. CRS 53: § 114-1-4. C.R.S. 1963: § 114-1-4.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Eminent Domain, § 28.

C.J.S. See 29A C.J.S., Eminent Domain, §§ 22-24.

Law reviews. For article, "Water for Recreation: A Plea for Recognition", see 44 Den. L.J. 288 (1967).

Statute does not explicitly or implicitly authorize extraterritorial condemnation of stream fishing rights. Aurora v. Commerce Group Corp., 694 P.2d 382 (Colo. App. 1984).

Parking lots and transit facilities are not recreational uses of land; therefore, a county does not have authority pursuant to this section to condemn private property for parking facilities that may be used by people seeking access to recreational lands. Dept. of Transp. v. Stapleton, 81 P.3d 1105 (Colo. App. 2003), rev'd on other grounds, 97 P.3d 938 (Colo. 2004).

29-7-105. Funds for television facilities.

Any county, city and county, city, town, village, school district, or recreational district may receive funds from any private or public **Source** for the purpose of constructing and operating such television transmission and relay booster facilities.

Source: L. 60: p. 181, § 4. CRS 53: § 114-1-5. C.R.S. 1963: § 114-1-5.

29-7-106. Tax limitations not to apply.

No tax levy for the purposes of television relay or translator facilities as specified in sections 29-7-101, 29-7-102, and 29-7-105 and 32-1-1005 (1) (a), C.R.S., shall be within the limitations prescribed for any county, city, city and county, town, village, school district, or recreation district.

Source: L. 60: p. 181, § 5. CRS 53: § 114-1-6. C.R.S. 1963: § 114-1-6. L. 81: Entire section amended, p. 1612, § 8, effective June 19.

29-7-107. Recreational facility defined.

"Recreational facility" or "recreational system" as used in this article includes such land or interest in land as may be necessary, suitable, or proper for park or recreational purposes or for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest. The term "interests in land" as used in this section means and includes all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land held pursuant to this article when recorded shall run with the land to which it pertains for the benefit of the political subdivision holding such interest and may be protected and enforced by such subdivision in any court of general jurisdiction by any proceeding known at law or in equity.

Source: L. 67: p. 290, § 3. C.R.S. 1963: § 114-1-7.

ANNOTATION

Law reviews. For comment, "People v. Emmert (198 Colo. 137, 597 P.2d 1025 (1979)): A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981).

29-7-108. Political subdivisions may unite in owning or operating recreational facilities.

Any political subdivision of this state authorized under this article to own or operate a recreational facility may unite with any other similarly authorized political subdivision in owning or operating any recreational facility.

Source: L. 67: p. 290, § 3. C.R.S. 1963: § 114-1-8.

ARTICLE 8 UNDERGROUND CONVERSION OF UTILITIES

29-8-101. Short title.

This article shall be known and may be cited as the "Colorado Underground Conversion of Utilities Act".

Source: L. 71: p. 987, § 1. C.R.S. 1963: § 89-23-1.

ANNOTATION

City ordinance requiring relocation underground of overhead electricity and communications facilities was not preempted by this act, which is not the exclusive means for relocating facilities underground. U S West Communications v. City of Longmont, 924 P.2d 1071 (Colo. App. 1995), aff'd on other grounds, 948 P.2d 509 (Colo. 1997).

29-8-102. Legislative declaration.

The general assembly finds that landowners, cities, towns, counties, public utilities, and cable operators in many areas of the state desire to convert existing overhead electric and communication facilities to underground locations. The general assembly further finds that the conversion of overhead electric and communication facilities to underground locations is a matter of statewide concern and interest. The general assembly declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken under this article, whether such areas are within the limits of a city or town or within a county. The general assembly further declares that all political subdivisions shall pursue such conversion only in accordance with this article; except that the use of the procedure set forth in this article is permissive and not mandatory for incidental and episodic conversions associated with public improvements such as street widening or sewer construction. Notwithstanding the provisions of this article, a political subdivision shall be able to perform such underground conversion without following the procedures outlined in this article if the political subdivision pays for all of the costs and expenses of such conversion from the political subdivision's own funds on the condition that the political subdivision does not seek to recover the costs or expenses of such conversion from the public utility or cable operator.

Source: L. 71: p. 987, § 1. C.R.S. 1963: § 89-23-2. L. 99: Entire section amended, p. 372, § 1, effective April 22.

29-8-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Cable operator" shall have the same meaning as set forth in the federal "Cable Communications Policy Act of 1984", as amended, 47 U.S.C. sec. 522.

(1.5) "Communication service" means the transmission of intelligence by electrical means, including, but not limited to, telephone, telegraph, messenger-call, block, police, fire alarm, and traffic control circuits or the transmission of television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

(4) "Electric service" means the transmission and distribution of electricity for heat, light, or power.

(5) "Governing body" means the board of county commissioners or city council or board of trustees, as may be appropriate, depending on whether the improvement district is located in a county or within a city or town.

(6) "Net effective interest rate" means the net interest cost of bonds divided by the sum of the products derived by multiplying the principal amounts of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(7.5) "Political subdivision" means a county, city and county, city, town, home rule city, home rule town, service authority, school district, local improvement district, law enforcement authority, any special district such as water, sanitation, fire protection, metropolitan, irrigation, or drainage, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(8) "Public utility" means one or more persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and shall include any city, county, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Resolution" means ordinance, where the governing body properly acts by ordinance, or resolution, where the governing body is authorized to act by resolution.

(10) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground, or facilities within the confines of a power substation. "Communication facilities" does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio or outdoor public telephones. "Underground facilities" includes certain facilities even though such facilities remain above the surface, in accordance with standard underground practices, such as transformers, pull boxes, service terminals, meters, pedestal terminals, splice closures, apparatus cabinets, and similar facilities.

Source: L. 71: p. 987, § 1. C.R.S. 1963: § 89-23-3. L. 99: (1) amended and (1.5) and (7.5) added, p. 373, § 2, effective April 22. L. 2001: (3) and (4) amended, p. 240, § 1, effective July 1.

29-8-104. Powers conferred.

(1) The governing body of every county is authorized to create local improvement districts under this article within the unincorporated portion of such county, and the governing body of every city and town is authorized to create local improvement districts under this article within its territorial limits to provide for the conversion of existing overhead electric or communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities which may be incidental thereto, under the provisions of this article.

(2) The governing body of every municipal utility may, by resolution or ordinance, impose a surcharge on those consumers within such municipal utility's service area who derive a direct benefit from the conversion of overhead electric and communication facilities to underground locations.

Source: L. 71: p. 988, § 1. C.R.S. 1963: § 89-23-4. L. 99: (2) added, p. 373, § 4, effective April 22.

29-8-105. Basis of assessments.

When any improvement authorized to be made by any governing body by the terms of this article is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in its judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous, and adjacent lots and lands, and to the lots and lands otherwise benefited and included within the improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet of such lands and lots abutting, adjoining, contiguous, and adjacent thereto or included in the improvement district, or assessed upon a frontage, zone, or other equitable basis, in accordance with the benefits, as the same may be determined by the governing body. The entire cost of the improvement may be assessed against the benefited property as provided in this article or if money for paying part of such cost is available from any other **Source**, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed as provided in this article shall include the cost of the improvement, engineering and clerical service, advertising, cost of inspection, cost of collecting assessments, and interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of public entities, such as the federal government, state of Colorado, or any county, city, or town, shall not be considered as lands or property benefited by any improvement district, and unless such public entity within the boundaries of an improvement district consents in writing, filed before the governing body adopts the resolution provided for in section 29-8-109, the lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

Source: L. 71: p. 989, § 1. C.R.S. 1963: § 89-23-5.

29-8-106. Resolution for cost and feasibility study.

(1) Any governing body may on its own initiative, or upon a petition signed by at least a majority of the property owners owning at least a majority of the assessable land of any proposed district requesting the creation of an improvement district as provided in this article, pass a resolution at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district for the purposes set out in this article will promote the public convenience, necessity, and welfare.

(2) The resolution must state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving such area by overhead electric or communication facilities shall make a study of the cost of conversion of its facilities in such area to underground service.

(3) The report of said study shall be provided to the governing body and made available in its office to all owners of land within the proposed improvement district. The resolution of the governing body shall

require that the public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known the description of the property and such other matters as may be required by the public utility in order to perform the work involved in the cost study.

(4) The resolution shall further state the governing body's preliminary determination as to the method of assessing each lot or parcel within the proposed improvement district area and shall provide the square feet or frontage feet of each lot or parcel, and zone or other information necessary for assessment in accordance with the governing body's preliminary determination. All public utilities serving such improvement district areas by overhead electric or communication facilities shall, within one hundred twenty days after receipt of the resolution, unless such time is extended, make a study of the costs of conversion of their facilities in such district to underground service, and the public utilities shall together provide to the governing body, and make available at their respective offices, a joint report as to the results of the study.

Source: L. 71: p. 989, § 1. C.R.S. 1963: § 89-23-6.

29-8-107. Bond of petitioners.

At the time that action is commenced under section 29-8-106, or at any time prior to the time of the hearing provided for in section 29-8-112, and if requested by the governing body or public utility, a bond shall be filed, with security approved by the governing body or cash deposit made sufficient to pay all expenses of the governing body connected with the proceedings and of the public utilities for actual time and expenses incurred in regard to the cost and feasibility study in case the organization of the district is not effected. If at any time during the organization proceedings the governing body is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it, on its own initiative or at the request of a public utility, may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 71: p. 990, § 1. C.R.S. 1963: § 89-23-7.

29-8-108. Costs and feasibility report.

(1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.
(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing its expertise in this area, and it may amend the boundaries of the proposed improvement district provided that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utility concerned on the basis of the amended district.

(3) The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six months of the submission of the estimate, for reasons not within the control of the public utility. Should such a delay result in a significant increase of the conversion cost, new hearings shall be held on the creation of the district. If only a minor increase results, only the hearing on the assessments need be held again.

Source: L. 71: p. 990, § 1. C.R.S. 1963: § 89-23-8.

29-8-109. Resolution declaring intention to create district.

On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, as provided in section 29-8-108 and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state: That the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and lands along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity, and welfare; and the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold a public hearing on the proposed improvement.

Source: L. 71: p. 991, § 1. C.R.S. 1963: § 89-23-9.

29-8-110. Notice of public hearing on proposed improvement - contents.

(1) Following the passage of the resolution in section 29-8-109, the governing body shall cause a notice of a public hearing on the proposed improvement to be given in the manner provided in section 29-8-111. Such notice shall:

(a) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(b) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(c) State the estimated cost, as determined from the costs and feasibility report, and including the cost of the improvement and the cost of engineering and clerical service, advertising, inspection, collection of assessments, interests upon bonds, if issued, and for legal services for preparing proceedings and advising in regard thereto;

(d) State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the benefits to be derived by each tract, block, lot, and parcel of land within the district, and the proposed means of apportioning such cost;

(e) State the time and place at which the governing body will conduct a public hearing upon the proposed improvement and on the question of benefits to be derived by the real property in the district;

(f) State that all interested persons will be heard and that any property owner will be heard on the question of whether his property will be benefited by the proposed improvement.

Source: L. 71: p. 991, § 1. C.R.S. 1963: § 89-23-10.

29-8-111. Notice of public hearing on proposed improvement - manner of giving.

Such notice shall be published in full one time in a newspaper of general circulation in the district or, if there is no such newspaper, by publication in a newspaper of general circulation in the county, city, or town in which said district is located. A copy of such notice shall be mailed to the last known address of each owner of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property records in the office of the county treasurer of the county wherein said property is located. In addition, a copy of such notice shall be addressed to "owner" and shall be so mailed, addressed to the street number of each piece of improved property to be affected by the assessment. Mailed notices and the published

notice shall state where a copy of the resolution creating the district will be available for inspection by any interested parties.

Source: L. 71: p. 992, § 1. C.R.S. 1963: § 89-23-11.

29-8-112. Public hearing - changes in proposed improvements and area to be included in district.

(1) On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all objections to the creation of the proposed district, the making of the proposed improvements, and the benefits accruing to any tract, block, lot, or parcel of land therein. Representatives of the public utility concerned shall be present at all such hearings. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings it appears to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utility concerned, appear to affect either the cost or feasibility of the improvements, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes.

(2) If action on the creation of the improvement district was initiated by petition as set forth in section 29-8-106, and if it appears that said petition is not signed by at least a majority of the property owners owning at least a majority of the assessable land of the proposed district, or if it is shown that the proposed improvement will not confer a general benefit on the district, or that the cost of the improvement would be excessive as compared with the value of the property in the district, the governing body shall thereupon dismiss the petition and adjudge the cost against those executing the bond filed to pay such costs. No appeal shall lie from the order dismissing said proceedings. Nothing in this section may prevent the filing of subsequent petitions for a similar district. The right to renew such a proceeding is expressly granted and authorized.

(3) After the hearing has been concluded and after all persons desiring to be heard have been heard, the governing body shall consider the arguments put forth and may make such changes in the area to be included in the district as it may consider desirable or necessary. However, no such changes shall be made unless a costs and feasibility report has been prepared on the basis of such changes.

(4) If at any time during the public hearing the governing body is presented with a petition signed by at least a majority of the property owners owning at least a majority of the assessable land of the proposed district protesting the proposed improvement, and such a petition is still outstanding at the close of the public hearing, the district and project shall be abandoned.

(5) If there is no such petition outstanding, the governing body, after consideration of matters brought forth at the public hearing, shall either abandon the district and project or adopt a resolution establishing the district and authorizing the project, either as described in the notice or with changes made as authorized in this section. Such resolution shall be published in the manner provided in section 29-8-111 but need not be mailed. If a resolution is adopted establishing the district, such resolution shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adopting of such resolution. Such action shall be subject to the provisions of section 29-8-113. Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding.

Source: L. 71: p. 992, § 1. C.R.S. 1963: § 89-23-12.

29-8-113. Waiver of objections.

Every person who has real property within the boundaries of the district and who fails to appear before the governing body at the hearing and make any objection he may have to the creation of the district, the making of the improvements, and the inclusion of his real property in the district shall be deemed to have

waived every such objection. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in section 29-8-117.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-13.

29-8-114. Proposed assessment list.

After a decision is made by a governing body to proceed with the district and project, it shall cause to be prepared an assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-14.

29-8-115. Proposed assessment resolution.

After the preparation of the proposed assessment list, the governing body shall cause to be prepared for adoption at the hearing provided for in section 29-8-117, a resolution declaring the entire cost of improvement, including the cost of construction as determined from the costs and feasibility report, other incidental costs, legal and fiscal fees and costs, the cost of the publication of notices, and all other costs properly incident to the construction of the improvement and the financing and collecting thereof. Such resolution shall specify what share, if any, of the total cost is payable from **Source**s other than the imposition of assessments, and shall incorporate the proposed assessment list provided for in section 29-8-114.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-15.

29-8-116. Notice of public hearing on proposed assessments.

(1) After the preparation of the aforesaid resolution, notice of a public hearing on the proposed assessments shall be given. Such notice shall be published one time in a newspaper in which the first notice of hearing was published at least twenty days before the date fixed for the hearing, and shall be mailed not less than fifteen days prior to the date fixed for such hearing to each owner of real property whose property will be assessed for part of the cost of the improvement at the last known address of such owner, using for such purpose the names and addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located. In addition, a copy of such notice shall be addressed to "owner" and shall be so mailed, addressed to the street number of each piece of improved property to be affected by such assessment.
(2) Each notice shall state that at the specified time and place the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the resolution will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.

(3) The notice shall further state where a copy of the resolution proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the resolution at the conclusion of the hearing.

(4) The public notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this article.

Source: L. 71: p. 993, § 1. C.R.S. 1963: § 89-23-16.

29-8-117. Public hearing on proposed assessment resolution.

(1) On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot, or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot, or parcel. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, may increase, or may decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard.

(2) After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

Source: L. 71: p. 994, § 1. C.R.S. 1963: § 89-23-17.

29-8-118. Adoption of the assessment resolution.

After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment resolution. The adoption of such resolution shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-18.

29-8-119. Assessment roll.

The clerk of the governing body shall prepare a local assessment roll in book form showing in suitable columns each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest if, in pursuance of this article, the same is payable in installments, and the date when each installment will become due, with suitable columns for use, in case of payment of the whole amount or of any installment or penalty, and he shall deliver the same, duly certified, under seal as appropriate, to the proper officer for collection.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-19.

29-8-120. Payment of assessment.

All assessments shall be due and payable within thirty days after the final publication of the assessing resolution without demand; except that all such assessments may be paid, at the election of the owner, in installments, with interest, as provided in section 29-8-121.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-20.

29-8-121. Installment payments.

Failure to pay the whole assessment within said period of thirty days shall be conclusively considered to be an election on the part of all persons interested, whether under disability or otherwise, to pay in such

installments. In case of such election, the assessment shall be payable in equal annual or semiannual installments of principal, the first of which installments shall be payable as prescribed by the governing body, and the last installment within not more than twenty years, with interest in all cases on the unpaid principal, payable annually or semiannually at a rate not exceeding the maximum net effective interest rate authorized by the governing body. The number of installments, the period of payments, the date of the initial payment, and the maximum net effective interest rate shall be determined by the governing body and set forth in the resolution required by section 29-8-115.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-21.

29-8-122. Failure to pay installments.

Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectable immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a month until the day of sale; but at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at one percent per month or fraction of a month, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if the default had not been suffered.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-22.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

29-8-123. Discount - assessment roll returned.

Payment may be made to the city or town treasurer at any time within thirty days after the final publication of the assessing resolution and an allowance of five percent shall be made on all payments made during such period, but not thereafter. In the case of cities and towns, at the expiration of said thirty-day period, the city or town treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon, with the date of each payment. Said roll shall be certified by the city or town clerk under the seal of the city or town, and be hand delivered to the county treasurer of the same county, with his warrant for the collection of the same. The county treasurer shall show receipt for the same and all such rolls shall be numbered for convenient reference.

Source: L. 71: p. 995, § 1. C.R.S. 1963: § 89-23-23.

29-8-124. Sale of property for nonpayment.

The county treasurer shall receive payment of all installment payments of assessments appearing upon the assessment roll, with interest. In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell any property concerning which such default is suffered for the payment of the whole of the unpaid assessment thereon. Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate in default of payment of general taxes.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-24.

29-8-125. Owner of interest may pay share.

The owner of any divided or undivided interest in the property assessed may pay his share of any assessment, upon producing evidence of the extent of his interest, satisfactory to the treasurer having the roll in charge.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-25.

29-8-126. When collections paid city.

In the case of improvement districts located within cities or towns, all collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the city or town treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement district.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-26.

29-8-127. Assessment lien.

All assessments made under this article, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing resolution, a perpetual lien in the several amounts assessed against each lot or tract of land, and shall have priority over all other liens excepting general tax liens. No sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-27.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

29-8-128. Advance payment of assessment installments.

The governing body may, in the resolution levying the assessments, provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due, if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the property owner must pay such additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance. If no bonds have been issued, then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

Source: L. 71: p. 996, § 1. C.R.S. 1963: § 89-23-28.

29-8-129. Issuance of bonds.

(1) After the expiration of thirty days from the effective date of the resolution levying the assessments, the governing body may borrow money and issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. The bonds shall be authorized by resolution of the governing body. The resolution shall prescribe the form of said bonds, the manner of their execution, which may be effected by the use of the facsimile signatures of the officers of the governing body in accordance with the laws of the state in effect at the time of their execution, shall provide for the terms

thereof, including the maximum net effective interest rate for the issue of bonds, and may direct that the bonds shall be sold at public or private sale at or below par. The bonds shall not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(2) The governing body shall prescribe other details in connection with the issue of bonds. The bonds so authorized shall mature serially over a period of not exceeding twenty years, but in no event shall such bonds extend over a longer period of time than the period of time over which such installments of special assessments are due and payable and ninety days thereafter.

(3) The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the irrevocable pledge and dedication of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Said resolution and bonds may also include such other terms or recitals which, in the judgment of the governing body, are necessary or proper to render the same marketable.

(4) Any premium received on the sale of the bonds may be applied as other bond proceeds or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds. The bonds shall be callable for redemption from the proceeds of the sale of any property sold for the nonpayment of special assessments, but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity. The governing body may provide that the bonds shall be redeemable on any interest payment date prior to maturity pursuant to such notice and at such premiums as it deems advisable. Interest may be evidenced by interest coupons attached to such bonds and signed with a facsimile signature, as above provided, of one of the individuals who signed the bonds.

(5) In connection with the issuance of bonds payable solely from special assessments, the governing body may provide for the submission of the question of issuing such bonds to the registered electors eligible to vote on the question. For local improvement districts created by the governing body of any county pursuant to this article, the governing body may provide that all registered electors of the county shall be eligible to vote on the question or that only registered electors who are owners of property within or residents of the district shall be eligible to vote. For local improvement districts created by the governing body of any city or town pursuant to this article, the governing body may provide that all registered electors of the city or town shall be eligible to vote on the question or that only registered electors who are owners of property within or residents of the district shall be eligible to vote.

(6) In connection with the issuance of bonds payable from special assessments which are additionally secured by a pledge of any other funds of the county, city, or town, the governing body may provide for the submission of the question of issuing the bonds to all registered electors of the county, city, or town.

Source: L. 71: p. 997, § 1. C.R.S. 1963: § 89-23-29. L. 87: (1) amended, p. 325, § 72, effective July 1. L. 94: (1) amended and (5) and (6) added, p. 1188, § 83, effective July 1.

29-8-130. Civil action - grounds.

(1) No civil action shall be brought or maintained to enjoin the collection of assessments or otherwise test the validity of assessments levied under this article except upon the following grounds:

(a) That notice of a hearing upon the amount of the assessment was not given as required in this article. Any person presenting objections to the governing body at or before the hearing on assessments shall be deemed to have waived this ground.

(b) That the hearing upon the amount of the assessment as provided in this article was not held;

(c) That the improvement ordered was not one authorized by this article;

(d) That the assessment levied exceeds the benefits received by the property assessed.

(2) Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessment to raise his objection to such assessment shall be deemed to have waived all objection to such assessment, except objections on grounds specified in subsections (1) (a) and (1) (b) of this section. Any action brought under this article shall be commenced within thirty days after the passage of the assessing resolution or else be thereafter perpetually barred. Any such action shall be given preference in the courts of the state. If such action is unsuccessful, the courts may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover such costs at the commencement of such action. The burden of proof to show that such special assessment or part thereof is invalid, inequitable, or unjust shall rest upon the party who brings such suit.

Source: L. 71: p. 998, § 1. C.R.S. 1963: § 89-23-30.

29-8-131. Conversion costs.

(1) In determining the conversion costs included in the costs and feasibility report required by section 29-8-108, the public utility shall be entitled to amounts sufficient to repay them, with a reasonable allowance for overhead expense, for the following, as computed and reflected by the uniform system of accounts approved by the public utilities commission or federal communications commission, or in the event the public utility is not subject to regulation by either of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of said public utility:

(a) The original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(b) The estimated costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed;

(c) If the estimated cost of constructing underground facilities exceeds the original cost of existing overhead electric and communication facilities, then the difference between the two;

(d) The cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for aboveground facilities, or where the preexisting easements are insufficient for the underground facilities.

(2) However, in the event that conversion costs are included in tariffs, rules, or regulations filed and in effect with the public utilities commission, such conversion costs shall be the cost included in the costs and feasibility report.

Source: L. 71: p. 998, § 1. C.R.S. 1963: § 89-23-31.

29-8-132. Maintenance, construction, and title to converted facilities.

The public utility has the duty to maintain, repair, and replace all underground facilities installed under this article. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible

benefits which come from converted facilities, that is, the removal of the overhead facilities and replacement by underground facilities.

Source: L. 71: p. 999, § 1. C.R.S. 1963: § 89-23-32.

29-8-133. Conversion costs and service connection.

(1) The public utility performing the conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution. This shall include the digging and the back filling of a trench upon such lot or parcel, unless the owner executes a written objection thereto and files the same with the clerk of the governing body not later than the date set for hearing objections to the improvement district as provided by law. Failure to file such written objection shall be taken as a consent and grant of easement to the public utility and shall be construed as express authority to the public utility and their respective officers, agents, and employees to enter upon such lot or parcel for such purpose, and, through failure to object, any right of protest or objection with respect to the doing of such work shall be waived. If an owner does file such written objection, he shall then be responsible for providing a trench which is in accordance with applicable rules, regulations, or tariffs from the owner's service entrance to a point designated by the public utility and for back filling a trench following installation of the underground service by the public utility involved.

(2) In any event, the cost of any work done by the public utility shall be included in the assessment to be levied upon such lot or parcel. Should a written objection be filed as provided in subsection (1) of this section, the owner involved shall be obligated for and the public utility involved shall be entitled to payment for the actual cost for such work accomplished upon the owner's property by the public utility; such amount shall be less than the cost if the public utility had performed the trenching and back filling.

(3) The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service.

Source: L. 71: p. 999, § 1. C.R.S. 1963: § 89-23-33.

29-8-134. Notice of possible disconnection.

There shall be included in the notice of the public hearing concerning the improvements required by section 29-8-110 notice that all owners of land within the local improvement district may file written requests for inclusion of the cost of conversion of utility facilities upon their property within the contemplation of section 29-8-133. Such notice shall further advise that any owner who does not execute the objections provided for in section 29-8-133, or otherwise provide for underground service connections to his property, in a manner satisfactory to the public utility involved, shall be subject to disconnection from the electric or communication facilities providing service to all buildings, structures, and improvements located upon the lot or parcel.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-34.

29-8-135. Notice of disconnection.

If the owner or person in possession of any lot or parcel of land prevents entrance upon the lot or parcel for conversion purposes, or fails to perform under section 29-8-133 and has not otherwise provided for underground service connections to the property in a manner satisfactory to the public utility involved, within sixty days from the time the converted facilities are ready for connection to the property, the electric or communication service shall be disconnected and removed and all overhead electric or communication facilities providing service to any building, structure, and improvement located upon such lot or parcel shall be disconnected. Written notice of disconnection shall be given at least twenty days prior to

disconnection by leaving a copy of such notice at the principal building, structure, or improvement located upon such lot or parcel.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-35.

29-8-136. Payment of public utility.

Upon completion of the conversion contemplated by this article, the public utility shall present the governing body with its verified bill for conversion costs, as computed under section 29-8-131, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In no event shall the bill for conversion cost presented by the public utility exceed the amount of estimated conversion costs by the public utility. In the event the conversion costs are less than the estimated conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such time as the governing body determines. The bill of the public utility shall be paid within thirty days by the governing body from the improvement district funds or such other **Source** as is properly designated by the governing body. In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission and as is in use at the time of the conversion by the public utility involved, as described in section 29-8-131.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-36.

29-8-137. Reinstallation of overhead facilities not permitted.

Once removed, no overhead electric or communication facilities may be installed in a local improvement district for conversion of overhead electric and communication facilities.

Source: L. 71: p. 1000, § 1. C.R.S. 1963: § 89-23-37.

29-8-138. No limitation on public utilities commission jurisdiction or franchises.

Nothing contained in this article shall vest any jurisdiction over any public utility in the governing bodies. The public utilities commission shall retain all jurisdiction conferred on it by law. Nothing contained in this article shall be interpreted in such a way as to be in conflict with franchises granted to any public utility, and in the event of any conflict, such franchises shall control over the requirements of this article.

Source: L. 71: p. 1001, § 1. C.R.S. 1963: § 89-23-38.

29-8-139. Nonseverability.

If any provision of this article is held invalid, such invalidity shall invalidate this article in its entirety, and to this end the provisions of this article are declared to be nonseverable.

Source: L. 71: p. 1001, § 1. C.R.S. 1963: § 89-23-39.

29-8-140. Abatement of construction.

If an improvement district is established under this article, the public utility involved shall not be required to commence conversion until the resolution, the assessment roll, and issuance of bonds have become final and no civil action has been filed, or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

Source: L. 71: p. 1001, § 1. C.R.S. 1963: § 89-23-40.

29-8-141. Early hearings.

All cases in which there may arise a question of validity of the organization of a district or a question of the validity of any proceeding under this article shall be advanced as a matter of immediate public interest and concern and heard at the earliest practicable moment. The courts shall be open at all times for the purpose of this article.

Source: L. 71: p. 1001, § 1. C.R.S. 1963: § 89-23-41.

29-8-142. Liberal construction.

This article, being necessary to secure and preserve the public health, safety, and general welfare, shall be liberally construed to effect its purpose.

Source: L. 71: p. 1001, § 1. C.R.S. 1963: § 89-23-42.

ARTICLE 10 SEALS

29-10-101. Seals.

Whenever this title requires the use of a seal in the performance of any duties, it shall be sufficient that a rubber stamp with a facsimile affixed thereon of the seal required to be used is placed or stamped upon the document requiring the seal with indelible ink.

Source: L. 75: Entire article added, p. 489, § 6, effective May 26.

ARTICLE 11 EMERGENCY TELEPHONE AND NONEMERGENCY REFERRAL SERVICES

PART 1 EMERGENCY TELEPHONE SERVICE

29-11-100.5. Legislative declaration - provision of emergency service to wireless and multi-line telephone service users.

(1) The general assembly hereby finds and declares that dialing 9-1-1 is the most effective and familiar way the public has of seeking emergency assistance. The amendments to this part 1 made in Senate Bill 97-132, enacted at the first regular session of the sixty-first general assembly, are intended to provide a funding mechanism for 9-1-1 and enhanced 9-1-1 service for wireless service users. Enhanced 9-1-1 permits rapid response in situations where callers are unable to relay their phone number or location. Public safety answering points will need to make extensive changes in, and additions to, existing equipment to provide enhanced 9-1-1 service to wireless service users. To do so, public safety answering points must have the re**Source**s to purchase and update equipment, software, and training. A mechanism for recovery of costs reasonably incurred by wireless carriers, service suppliers, and basic emergency service providers in the acquisition and transmission of 9-1-1 information to public safety answering points is necessary to ensure that wireless service users receive the same level of 9-1-1 service as wireline service users.

(2) The general assembly further finds and declares that public safety agencies increasingly rely on enhanced 9-1-1 to provide dependable and precise information about the 9-1-1 caller's location and an accurate telephone number to reach the caller. Many multi-line telephone systems do not provide precise information about the 9-1-1 caller's location or telephone number. Inadequate location information can be life threatening if the caller is unable to verbalize the correct location. Not knowing an accurate location for a caller can result in a delay in service. In addition, many end-use customers of multi-line telephone systems do not know how to dial a 9-1-1 call from such telephones. Disclosure about 9-1-1 dialing and

about the location identification capability of multi-line telephone systems are necessary first steps to ensure that multi-line telephone system service users can obtain emergency assistance by dialing 9-1-1.

(3) Nothing in this part 1 should be construed to alter the method of regulation or deregulation of providers of telecommunications service as set forth in article 15 of title 40, C.R.S.

Source: L. 97: Entire section added, p. 571, § 1, effective April 30. L. 2001: Entire section amended, p. 64, § 1, effective August 8. L. 2004: (1) and (3) amended, p. 13, § 2, effective February 20.

29-11-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Automatic location identification" ("ALI") means the automatic display, on equipment at the PSAP, of the location of the caller's telephone number, the address for the telephone, including non-listed and non-published numbers and addresses, and other information about the caller's precise location.

(1.1) "Automatic number identification" ("ANI") means the automatic display, on equipment at the PSAP, of the caller's telephone number.

(1.2) "Basic emergency service provider" ("BESP") means any person authorized by the commission to undertake the aggregation and transportation of 9-1-1 calls to a PSAP.

(1.3) "Commission" or "public utilities commission" means the public utilities commission of the state of Colorado, created in section 40-2-101, C.R.S.

(1.5) "Emergency notification service" means an informational service that, upon activation by a public safety agency, uses the 9-1-1 database or a database derived from the 9-1-1 database to rapidly notify all telephone customers within a specified geographic area of hazardous conditions or emergent events that threaten their lives or property, including, without limitation, floods, fires, and hazardous materials incidents.

(1.6) "Emergency service provider" means a primary provider of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services.

(1.7) "Emergency telephone charge" means a charge to pay the equipment costs, the installation costs, and the directly-related costs of the continued operation of an emergency telephone service according to the rates and schedules filed with the public utilities commission, if applicable.

(2) "Emergency telephone service" means a telephone system utilizing the single three-digit number 9-1-1 for reporting police, fire, medical, or other emergency situations.

(2.5) "Equipment supplier" means any person providing telephone or other equipment necessary for an emergency telephone service to any public agency or governing body in this state, through lease or sale.

(3) "Exchange access facilities" means the access, as defined in the tariffs approved by the public utilities commission, from a specific customer's premises to the telecommunications network to effect the transfer of information.

(4) "Governing body" means the board of county commissioners of a county or the city council or other governing body of a city, city and county, or town or the board of directors of a special district.

(4.5) "MLTS operator" means the person that operates an MLTS from which an end-user may place a 9-1-1 call through the public switched network.

(4.6) "Multi-line telephone system" ("MLTS") means a system comprised of common control units, telephones, and control hardware and software providing local telephone service to multiple end-use customers in businesses, apartments, townhouses, condominiums, schools, dormitories, hotels, motels, resorts, extended care facilities, or similar entities, facilities, or structures. "Multi-line telephone system" includes:

(a) Network and premises-based systems such as centrex, pbx, and hybrid-key telephone systems; and

(b) Systems owned or leased by governmental agencies, nonprofit entities, and for-profit businesses.

(5) "Person" means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation (municipal or private and whether organized for profit or not), governmental agency, state, county, political subdivision, state department, commission, board, or bureau, fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee, or trustee in bankruptcy or any other service user.

(6) "Public agency" means any city, city and county, town, county, municipal corporation, public district, or public authority located in whole or in part within this state which provides or has the authority to provide fire fighting, law enforcement, ambulance, emergency medical, or other emergency services.

(6.5) "Public safety answering point" ("PSAP") means a facility equipped and staffed on a 24-hour basis to receive and process 9-1-1 calls.

(6.7) "Rates" means the rates billed by a service supplier pursuant to tariffs, price lists, or contracts, which rates represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses, or similar charges.

(7) "Service supplier" means any person providing exchange telephone services and any person providing telecommunications service via wireless carrier to any service user in this state, either directly or by resale.

(8) "Service user" means any person who is provided exchange telephone service and any person who is provided telecommunications service via wireless carrier in this state.

(9) (Deleted by amendment, L. 97, p. 572, § 2, effective April 30, 1997.)

(10) "Telecommunications service" has the meaning set forth in section 40-15-102 (29), C.R.S.

(11) "Wireless automatic location identification" ("wireless ALI") means the automatic display, on equipment at the PSAP, of the location of the wireless service user initiating a 9-1-1 call to the PSAP.

(12) "Wireless automatic number identification" ("wireless ANI") means the mobile identification number of the wireless service user initiating a 9-1-1 call to the PSAP.

(13) "Wireless carrier" means a cellular licensee, a personal communications service licensee, and certain specialized mobile radio providers designated as covered carriers by the federal communications commission in 47 CFR 20.18 and any successor to such rule.

(14) "Wireless communications access" means the radio equipment and assigned mobile identification number used to connect a wireless customer to a wireless carrier for two-way interactive voice or voice-capable services.

Source: L. 81: Entire article added, p. 1415, § 1, effective May 26. L. 85: (1) amended and (2.5) added, p. 1052, § 1, effective April 17. L. 97: (1), (2), (7), (8), and (9) amended and (1.3), (1.7), (6.5), (6.7), and (10) to (14) added, p. 572, § 2, effective April 30. L. 2001: (1) amended and (1.1), (1.2), (4.5), and (4.6) added,

p. 65, § 2, effective April 8. L. 2002: (1.5) added, p. 83, § 1, effective March 22. L. 2004: (1.6) added, p. 1879, § 1, effective July 1; (13) and (14) amended, p. 1202, § 70, effective August 4.

29-11-102. Imposition of charge - liability of user for charge - collection - uncollected amounts.

(1) (a) In addition to any other powers for the protection of the public health, a governing body may incur any equipment, installation, and other directly related costs for the continued operation of an emergency telephone service as further described in section 29-11-104, and may pay such costs by imposing an emergency telephone charge for such service in those portions of the governing body's jurisdiction for which emergency telephone service will be provided. The governing body may do such other acts as may be expedient for the protection and preservation of the public health and as may be necessary for the acquisition of equipment, for the provision of initial services, and for the operation of the emergency telephone service.

(b) If the emergency telephone service is to be provided for territory which is included in whole or in part in the jurisdiction of the governing bodies of two or more public agencies which are the primary providers of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services, the agreement for such service with a BESP or any equipment supplier shall be entered into by each such governing body unless any such body expressly excludes itself therefrom. Any such agreement shall provide that each governing body that is a customer of such service shall make payment therefor from charges imposed under paragraph (a) of this subsection (1), unless all such customers make payments therefor from general revenues. Nothing in this paragraph (b) shall be construed to prevent two or more such governing bodies from entering into a contract under part 2 of article 1 of this title and to establish a separate legal entity thereunder to enter into such an agreement as the customer of the BESP or any equipment supplier.

(2) (a) The governing body is hereby authorized, by ordinance in the case of cities and by resolution in the case of counties or special districts, to impose such charge in an amount not to exceed seventy cents per month per exchange access facility or per wireless communications access in those portions of the governing body's jurisdiction for which emergency telephone service will be provided.

(b) In the event the governing body determines that a charge in excess of seventy cents per month is necessary in order to provide continued and adequate emergency telephone service, the governing body shall obtain from the public utilities commission approval of such higher charge before the imposition thereof.

(c) Regardless of the level at which the charge is set, the amount of the charge imposed per exchange access facility and the amount of the charge imposed per wireless communications access shall be equal.

(d) The proceeds of the charge shall be utilized to pay for emergency telephone service, as set forth in section 29-11-104 (2), and may be imposed at any time after the governing body requests such service from the provider or, in the case of wireless carriers, at any time after the governing body requests wireless ANI or wireless ALI from the wireless carrier.

(3) Such charge shall be imposed only upon service users whose address is in those portions of the governing body's jurisdiction for which emergency telephone service shall be provided; however, such charge shall not be imposed upon any state or local governmental entity.

(4) Every billed service user shall be liable for any charge imposed under this article until it has been paid to the service supplier.

(5) The duty to collect any charge imposed under the authority of this article from a service user shall commence at such time as may be specified by the governing body. Charges imposed under the

authority of this article and required to be collected by the service supplier shall be added to and may be stated separately in the billings to the service user.

(6) The service supplier shall have no obligation to take any legal action to enforce the collection of any charge imposed under the authority of this article. Such action may be brought by or in behalf of the public agency imposing the charge or the separate legal entity formed pursuant to paragraph (b) of subsection (1) of this section. The service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users which carry a balance that can be determined by the service supplier to be the nonpayment of any charge imposed under the authority of this article. The service supplier shall not be held liable for such uncollected amounts.

(7) Any charge imposed under the authority of this article shall be collected insofar as practicable at the same time as, and along with, the charges for the rate in accordance with the regular billing practice of the service supplier. The rates determined by or stated on the billing of the service supplier are presumed to be correct if such charges were made in accordance with the service supplier's business practices. The presumption may be rebutted by evidence which establishes that an incorrect rate was charged.

Source: L. 81: Entire article added, p. 1416, § 1, effective May 26. L. 85: (1) amended and (2.5) added, p. 1052, § 2, effective April 17. L. 90: (2) and (3) amended, p. 1451, § 8, effective July 1. L. 97: (1)(b), (2), (3), and (7) amended, p. 573, § 3, effective April 30. L. 2004: (1)(a) amended, p. 1879, § 2, effective July 1.

29-11-103. Remittance of charge to governing body - administrative fee - establishment of rate of charge.

(1) Any charge imposed under the authority of this article and the amounts required to be collected are to be remitted monthly. The amount of the charge collected in one month by the service supplier shall be remitted to the governing body no later than thirty days after the close of that month. On or before the sixtieth day of each calendar quarter, a return for the preceding quarter shall be filed with the governing body in such form as the governing body and service supplier shall agree upon. The service supplier required to file the return shall deliver the return, together with a remittance of the amount of the charge payable, to the office of the governing body. The service supplier shall maintain a record of the amount of each charge collected pursuant to this article. Such record shall be maintained for a period of one year after the time the charge was collected.

(2) From every remittance to the governing body made on or before the date when the same becomes due, the service supplier required to remit the same shall be entitled to deduct and retain two percent of said remittance.

(3) (a) At least once each calendar year, the governing body shall establish a rate of charge, not to exceed the amount authorized, that together with any surplus revenues carried forward will produce sufficient revenues to fund the expenditures authorized by this article. Amounts collected in excess of such necessary expenditures within a given year shall be carried forward to subsequent years and shall be used in accordance with section 29-11-104 (2). The governing body shall make its determination of such rate each year no later than September 1 and shall fix the new rate to take effect commencing with the first billing period of each customer on or following the next January 1. Immediately upon its making such determination and fixing such rate, the governing body shall publish in its minutes the new rate, and it shall notify by registered mail every service supplier at least ninety days before such new rate will become effective.

(b) The governing body may, at its own expense, require an annual audit of the service supplier's books and records concerning the collection and remittance of the charge authorized by this article. Public inspection of the audit and of documents reviewed in the audit shall be subject to section 24-72-204, C.R.S.

Source: L. 81: Entire article added, p. 1417, § 1, effective May 26. L. 90: (1) and (2) amended, p. 1451, § 9, effective July 1. L. 97: (3) amended, p. 574, § 4, effective April 30.

29-11-104. Agreements or contracts for emergency telephone service - use of funds collected.

(1) Any governing body imposing the charge authorized by this article may enter into an agreement directly with the supplier of the emergency telephone service or may contract and cooperate with any public agency or with other states or their political subdivisions or with any association or corporation for their political subdivisions or with any association or corporation for the administration of emergency telephone service as provided by law.

(2) (a) (I) Except as otherwise provided in paragraph (b) of this subsection (2), funds collected from the charges imposed pursuant to this article shall be spent solely to pay for:

(A) Costs of equipment directly related to the receipt and routing of emergency calls and installation thereof;

(B) Monthly recurring charges of service suppliers and basic emergency service providers (BESPs) for the emergency telephone service, which charges shall be billed by the BESP to the governing body of each jurisdiction in which it provides service;

(C) Reimbursement of the costs of wireless carriers and BESPs for equipment changes necessary for the provision or transmission of wireless ANI or wireless ALI to a public safety answering point;

(D) Costs related to the provision of the emergency notification service and the emergency telephone service, including costs associated with total implementation of both services by emergency service providers, including costs for programming, radios, and emergency training programs; and

(E) Other costs directly related to the continued operation of the emergency telephone service and the emergency notification service.

(II) If moneys are available after the costs and charges enumerated in subparagraph (I) of this paragraph (a) are fully paid, such funds may be expended for emergency medical services provided by telephone or the necessary equipment to redirect calls for nonemergency telephone services.

(b) Funds collected from the charges imposed pursuant to this article may also be spent for personnel expenses necessarily incurred for a public safety answering point. As used in this paragraph (b), "personnel expenses necessarily incurred" includes only expenses incurred for:

(I) Persons employed to take emergency telephone calls and dispatch them appropriately; and

(II) Persons employed to maintain the computer data base of the public safety answering point.

(c) (Deleted by amendment, L. 2004, p. 1880, § 3, effective July 1, 2004.)

(3) Funds collected from the charges imposed pursuant to this article shall be credited to a cash fund, apart from the general fund of the public agency, for payments pursuant to subsection (2) of this section. Any moneys remaining in such cash fund at the end of any fiscal year shall remain therein for payments during any succeeding year; except that, if such emergency telephone service is discontinued, moneys remaining in the fund after all payments to the service suppliers, basic emergency service providers, and all equipment suppliers pursuant to subsection (2) of this section have been made shall be transferred to the general fund of the public agency or proportionately to the general fund of each participating public agency.

(4) A wireless carrier or BESP that provides wireless ALI or wireless ANI services at the request of a governing body, and pursuant to a contract between the wireless carrier or BESP and the governing body, shall be reimbursed by such governing body or its designee for the costs incurred in making any equipment changes necessary for the provision of such services.

Source: L. 81: Entire article added, p. 1418, § 1, effective May 26. L. 85: (2) and (3) amended, p. 1053, § 3, effective April 17. L. 92: (2) amended, p. 964, § 1, effective June 1. L. 95: (2) amended, p. 247, § 1, effective April 17. L. 97: (2) and (3) amended and (4) added, p. 575, § 5, effective April 30. L. 2002: (2)(a)(I)(C) and (2)(a)(I)(D) amended and (2)(a)(I)(E) added, p. 83, § 2, effective March 22. L. 2004: (2) amended, p. 1880, § 3, effective July 1.

29-11-105. Immunity of providers.

No basic emergency service provider or service supplier and no employee or agent thereof shall be liable to any person or entity for infringement or invasion of the right of privacy of any person caused or claimed to have been caused, directly or indirectly, by any act or omission in connection with the installation, operation, maintenance, removal, presence, condition, occasion, or use of emergency service features, automatic number identification (ANI), or automatic location identification (ALI) service and the equipment associated therewith, including without limitation the identification of the telephone number, address, or name associated with the telephone used by the party or parties accessing 9-1-1 service, wireless ANI service, or wireless ALI service, and that arise out of the negligence or other wrongful act of the provider or supplier, the customer, the governing body or any of its users, agencies, or municipalities, or the employee or agent of any of said persons and entities. In addition, no basic emergency service provider or service supplier or any employee or agent thereof shall be liable for any damages in a civil action for injuries, death, or loss to person or property incurred as a result of any act or omission of such provider, service supplier, employee, or agent in connection with developing, adopting, implementing, maintaining, enhancing, or operating an emergency telephone service unless such damage or injury was intentionally caused by or resulted from gross negligence of the provider, supplier, employee, or agent.

Source: L. 97: Entire section added, p. 576, § 6, effective April 30.

29-11-106. Disclosure of 9-1-1 dialing and calling capabilities.

(1) When the method of dialing a local call from an MLTS telephone requires the dialing of an additional digit to access the public switched network, MLTS operators shall provide written information to their end-users describing the proper method of dialing 9-1-1 from an MLTS telephone in an emergency. MLTS operators that do not give the ANI, the ALI, or both shall disclose such fact in writing to their end-users and instruct them to provide their telephone number and exact location when calling 9-1-1.

(2) (a) For purposes of this section,"end-user" means the person making telephone calls, including 9-1-1 calls, from the MLTS providing telephone service to the person's place of employment or to the person's permanent or temporary residence.

(b) For purposes of this section, "MLTS operator" means the person who has responsibility to the end-user to coordinate telephone line number and address location assignments.

(3) The public utilities commission may promulgate rules to implement this section in accordance with article 4 of title 24, C.R.S.

(4) Nothing in this section shall be construed to alter the method of regulation or deregulation of providers of telecommunications service by the public utilities commission as set forth in article 15 of title 40, C.R.S.

Source: L. 2001: Entire section added, p. 66, § 3, effective August 8.

PART 2 HUMAN SERVICES REFERRAL SERVICE

29-11-201. Legislative declaration.

The general assembly hereby finds and declares that obtaining access to appropriate community-based organizations and governmental agencies providing for human services is a critical first step for many individuals and families of Colorado to receiving the help and assistance they need. In 2000, in recognition of the need to promote effective access to human services, the federal communications commission reserved the three-digit telephone number of 2-1-1 for access to community health and human services information. The public utilities commission approved the use of a 2-1-1 number for Colorado in October of 2002, and while four pilot sites are operating in specified counties, there is a need for service in all counties of this state. The 2-1-1 human services referral service is dedicated to providing individuals and families with referral information to obtain non-emergency services such as food assistance, shelter, job assistance, and low-cost health care, for those in need. Due to the importance of the human services referral system and the need to assure that this system is enabled in all areas of the state of Colorado, the general assembly hereby finds and declares that the human services referral service providers should receive protection of immunity that is similar to the protection afforded to the 9-1-1 emergency service.

Source: L. 2004: Entire part added, p. 12, § 1, effective February 20.

29-11-202. Definitions.

For purposes of this part 2, unless the context otherwise requires:

(1) "Colorado 2-1-1 collaborative" means the group authorized by the public utilities commission to establish the provision of human services referral services in the state of Colorado.

(2) "Human services referral service provider" means a service that is authorized by the Colorado 2-1-1 collaborative to provide health and human services referral information.

Source: L. 2004: Entire part added, p. 13, § 1, effective February 20.

29-11-203. Human services referral service - immunity.

(1) No Colorado 2-1-1 collaborative, human services referral service provider, or employee, agent, or financial supporter thereof shall be liable to any person or entity for any damages in a civil action for injuries, death, or loss to person or property incurred as a result of any act or omission of the Colorado 2-1-1 collaborative, human services referral service provider, or any employee or agent thereof in connection with developing, adopting, authorizing, implementing, maintaining, enhancing, or operating a referral service unless such damage or injury was intentionally caused by or resulted from gross negligence of the Colorado 2-1-1 collaborative, human services referral service provider, employee, agent, or financial supporter in connection with the provision of human services referral service.

(2) No Colorado 2-1-1 collaborative, human services referral service provider or employee, agent, or financial supporter thereof shall be liable to any person or entity for infringement or invasion of the right of privacy of any person caused or claimed to have been caused, directly or indirectly, by any act or omission in connection with the provision of human service referral information to any person or entity unless the infringement or invasion of the right of privacy arose out of the gross negligence or other wrongful and intentional act of the Colorado 2-1-1 collaborative, human services referral service provider, employee, agent, or financial supporter thereof.

Source: L. 2004: Entire part added, p. 13, § 1, effective February 20.

ARTICLE 11.5 ALTERNATIVE FORMS OF PAYMENT TO LOCAL GOVERNMENTS

29-11.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Alternative forms of payment" means forms of payment, including but not limited to credit, charge, or debit cards, other than cash or check.

(2) "Collector local governmental entity" means any state or local governmental entity that collects moneys payable to a local governmental entity that the state or local governmental entity must remit to one or more other state or local governmental entities.

(3) "Local governmental entity" means any county, municipality, city and county, school district, special district, or other political subdivision of the state; any department, agency, institution, or authority of such a county, municipality, city and county, school district, special district, or other political subdivision; or an authorized agent of any of the foregoing.

(4) "Moneys payable to a local governmental entity" means moneys owed or paid to any local governmental entity other than bail bonds, judicial bonds, or other moneys that the local governmental entity must return to the payer upon the satisfaction of one or more specified conditions by the payer.

(5) "Provider of alternative forms of payment" means a person or entity, including but not limited to an issuer of credit, charge, or debit cards, that provides its customers the ability to use one or more alternative forms of payment.

Source: L. 99: Entire article added, p. 429, § 2, effective August 4.

29-11.5-102. Acceptance of alternative forms of payment for the payment of moneys payable to local governments - allocation of costs.

(1) Any local governmental entity responsible for the collection of moneys payable to a local governmental entity may accept one or more alternative forms of payment for the payment of such moneys in accordance with the provisions of this article.

(2) A collector local governmental entity that chooses to accept one or more alternative forms of payment for the payment of moneys payable to a local governmental entity that the collector local governmental entity must remit to one or more other governmental entities shall either:

(a) Remit to such other governmental entities the gross amount of any payments made by alternative forms of payment that the collector local governmental entity is required to remit to such other governmental entities notwithstanding the deduction of any moneys from such gross amount by any provider of alternative forms of payment pursuant to a master agreement or other agreement authorized by this article; or

(b) Enter into an intergovernmental agreement with each such other governmental entity regarding the allocation of the costs of accepting such alternative forms of payment.

Source: L. 99: Entire article added, p. 429, § 2, effective August 4.

29-11.5-103. Limitations on convenience fees for the use of alternative forms of payment.

(1) and (2) (Deleted by amendment, L. 2003, p. 1442, § 2, effective April 29, 2003.)

(3) A local governmental entity may impose a convenience fee on persons who use alternative forms of payment, but the amount of any convenience fee imposed on or after April 29, 2003, shall not exceed the actual additional cost incurred by the local governmental agency to process the transaction by alternative

form of payment. Any convenience fee on a transaction involving an alternative form of payment shall be imposed in accordance with the rules of the alternative payment provider.

Source: L. 99: Entire article added, p. 429, § 2, effective August 4. L. 2003: Entire section amended, p. 1442, § 2, effective April 29.

29-11.5-104. Legislative declaration - master agreements.

(1) The general assembly hereby finds and declares that it is in the best interests of all Coloradans that local governmental entities that choose to accept alternative forms of payment do so in the most consumer-oriented, cost-effective, and uniform manner possible. Accordingly, it is the intent of the general assembly to encourage local governmental entities to join with other local governmental entities in contractual arrangements with providers of alternative forms of payment or to join one or more master agreements entered into by the state treasurer pursuant to section 24-19.5-104, C.R.S.

(2) Any local governmental entity that accepts one or more alternative forms of payment for payments payable to a local governmental entity may:

(a) Join with one or more other local governmental entities in negotiating and entering into one or more contracts with one or more providers of alternative forms of payment; or

(b) Join in any master agreement entered into by the state treasurer pursuant to section 24-19.5-104, C.R.S., with the approval of the state treasurer or pursuant to any rules promulgated by the state treasurer.

Source: L. 99: Entire article added, p. 430, § 2, effective August 4.

ARTICLE 11.7 REGULATION OF FIREARMS

Law reviews: For article, "In the Crosshairs: Colorado's New Gun Laws", see 33 Colo. Law. 11 (January 2004).

29-11.7-101. Legislative declaration.

(1) The general assembly hereby finds that:

(a) Section 3 of article II of the state constitution, the article referred to as the state bill of rights, declares that all persons have certain inalienable rights, which include the right to defend their lives and liberties;

(b) Section 13 of article II of the state constitution protects the fundamental right of a person to keep and bear arms and implements section 3 of article II of the state constitution;

(c) The general assembly recognizes a duty to protect and defend the fundamental civil rights set forth in paragraphs (a) and (b) of this subsection (1);

(d) There exists a widespread inconsistency among jurisdictions within the state with regard to firearms regulations;

(e) This inconsistency among local government laws regulating lawful firearm possession and ownership has extraterritorial impact on state citizens and the general public by subjecting them to criminal and civil penalties in some jurisdictions for conduct wholly lawful in other jurisdictions;

(f) Inconsistency among local governments of laws regulating the possession and ownership of firearms results in persons being treated differently under the law solely on the basis of where they reside, and a

person's residence in a particular county or city or city and county is not a rational classification when it is the basis for denial of equal treatment under the law;
(g) This inconsistency places citizens in the position of not knowing when they may be violating the local laws and therefore being unable to avoid violating the law and becoming subject to criminal and other penalties.

(2) Based on the findings specified in subsection (1) of this section, the general assembly concludes that:

(a) The regulation of firearms is a matter of statewide concern;

(b) It is necessary to provide statewide laws concerning the possession and ownership of a firearm to ensure that law-abiding persons are not unfairly placed in the position of unknowingly committing crimes involving firearms.

Source: L. 2003: Entire article added, p. 652, § 2, effective March 18.

29-11.7-102. Firearms database - prohibited.

(1) A local government, including a law enforcement agency, shall not maintain a list or other form of record or database of:

(a) Persons who purchase or exchange firearms or who leave firearms for repair or sale on consignment;

(b) Persons who transfer firearms, unless the persons are federally licensed firearms dealers;

(c) The descriptions, including serial numbers, of firearms purchased, transferred, exchanged, or left for repair or sale on consignment.

Source: L. 2003: Entire article added, p. 653, § 2, effective March 18.

29-11.7-103. Regulation - type of firearm - prohibited.

A local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law. Any such ordinance, regulation, or other law enacted by a local government prior to March 18, 2003, is void and unenforceable.

Source: L. 2003: Entire article added, p. 653, § 2, effective March 18.

29-11.7-104. Regulation - carrying - posting.

A local government may enact an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area within the local government's jurisdiction. If a local government enacts an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area, the local government shall post signs at the public entrances to the building or specific area informing persons that the open carrying of firearms is prohibited in the building or specific area.

Source: L. 2003: Entire article added, p. 653, § 2, effective March 18.

ENERGY CONSERVATION

ARTICLE 12 ENERGY CONSERVATION STANDARDS FOR NONRESIDENTIAL BUILDINGS

ARTICLE 12.5 ENERGY CONSERVATION MEASURES

29-12.5-101. Definitions.

As used in this article:

(1) "Board" means a governing body of any municipality or home rule county, a board of county commissioners of any county, a special district, or a board of education of any school district.

(2) (Deleted by amendment, L. 2002, p. 1027, § 55, effective June 1, 2002.)

(3) "Energy performance contract" means a contract for evaluations, recommendations, or implementation of one or more energy saving measures designed to produce utility costs savings or operation and maintenance cost savings, which contract:

(a) Sets forth savings attributable to the calculated utility cost savings or operation and maintenance cost savings for each year during the contract period;

(b) Provides that the amount of actual savings for each year during the contract period shall exceed annual contract payments, including maintenance costs, to be made during such year by the board contracting for utility cost-savings measures;

(c) Requires the party entering into such contract with the board to provide a written guarantee that the sum of utility cost savings and operation and maintenance cost savings for each year during the first three years of the contract period shall not be less than the calculated savings for that year set forth pursuant to paragraph (a) of this subsection (3);

(d) (Deleted by amendment, L. 2001, p. 1093, § 4, effective August 8, 2001.)

(e) Provides that, if all payments, except payments for maintenance and repairs and obligations on the termination of the contract prior to expiration, made by such board during any year subject to the guarantee in paragraph (c) of this subsection (3) exceed the sum of utility cost savings and operation and maintenance savings for that year, such party shall forfeit to such board that portion of such moneys equal to the amount by which such payments exceeded such savings;

(f) Requires such board, upon termination or expiration of the contract, to return to such party any moneys deposited with such board that are not forfeited to such board pursuant to paragraph (e) of this subsection (3);

(g) Requires that not less than one-tenth of all payments, except payments for maintenance and repairs and obligations on the termination of the contract prior to expiration, to be made by such board shall be made within two years from the date of execution of the contract; and

(h) Requires that the remaining such payments to be made by such board shall be made within twelve years from the date of execution of the contract; except that the maximum term of the payments shall be less than the cost-weighted average useful life of utility cost-savings equipment for which the contract is made, not to exceed twenty-five years.

(4) "Energy saving measure" means:

(a) The acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of a utility cost-savings measure and any attendant architectural and engineering consulting services; or

(b) Architectural and engineering consulting services related to utility cost savings.

(4.5) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more utility cost savings measures. The savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(5) "Political subdivision" means a municipality, county, or school district.

(6) "Shared-savings contract" means a contract for one or more energy saving measures, which contract:

(a) Provides that all payments to be made by the board contracting for the energy saving measures shall be a stated percentage of calculated savings of energy costs attributable to such measures over a defined period of time and that such payments shall be made only to the extent that such savings occur; except that this paragraph (a) shall not apply to payments for maintenance and repairs and obligations on termination of the contract prior to its expiration;

(b) Provides for an initial contract period of no longer than ten years; and

(c) Requires no additional capital investment or contribution of funds from such board or the political subdivision, other than funds available from state or federal energy grants.

(7) "Utility cost savings" means:

(a) A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or utility resulting from the implementation of one or more utility cost savings measures when compared with an established baseline of usage; or

(b) A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs, excepting other available capital contributions provided by the political subdivision.

(8) "Utility cost-savings contract" means an energy performance contract or a shared-savings contract or any other agreement in which utility cost savings are used to pay for services or equipment.

(9) "Utility cost-savings measure" means an installation, modification, or service that is designed to reduce energy consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;
(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(g) Energy recovery systems;

(h) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(i) Renewable energy and alternate energy systems;

(j) Devices that reduce water consumption or sewer charges;

(k) Changes in operation and maintenance practices;

(l) Procurement of low-cost energy supplies of all types, including electricity, natural gas, and other fuel Sources, and water;

(m) Indoor air quality improvements that conform to applicable building code requirements;

(n) Daylighting systems;

(o) Building operation programs that reduce utility and operating costs including, but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;

(p) Services to reduce utility costs by identifying utility errors and optimizing rate schedules; or

(q) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the board.

Source: L. 91: Entire article added, p. 728, § 1, effective May 1. L. 92: (3)(d) amended, p. 548, § 22, effective May 28. L. 2001: (1), IP(2), (2)(a), (2)(d), (2)(i), IP(3), (3)(a), (3)(b), (3)(c), (3)(d), (3)(e), (3)(h), and (4) amended and (2)(j), (2)(k), (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), (2)(q), (4.5), (7), and (8) added, pp. 1093, 1096, §§ 4, 5, effective August 8. L. 2002: (2) amended and (9) added, p. 1027, § 55, effective June 1. L. 2004: (3)(f) amended, p. 1203, § 71, effective August 4.

29-12.5-102. Contract for analysis and recommendations.

(1) The board of any political subdivision may contract with an architect, professional engineer, or other person experienced in the design and implementation of utility cost-savings measures or energy saving measures for an analysis and recommendations pertaining to such measures that would significantly increase utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the political subdivision.

(2) Such analysis and recommendations shall include estimates of the amounts by which utility cost savings and operation and maintenance cost savings would increase and estimates of all costs of such utility cost-savings measures or energy saving measures including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service.

Source: L. 91: Entire article added, p. 731, § 1, effective May 1. L. 2001: Entire section amended, p. 1096, § 6, effective August 8.

29-12.5-103. Financing utility cost savings measures - exception to debt limitations.

(1) If the board, after receiving the analysis and recommendations pursuant to section 29-12.5-102, finds that the amount of money the political subdivision would spend on such utility cost-savings measures or energy saving measures is not likely to exceed the amount of money it would save in energy costs over the term of the contract, the board may:

(a) Enter into a utility cost-savings contract with any architect, professional engineer, or other person experienced in the design and implementation of energy saving measures for buildings or other facilities owned or rented by the political subdivision or with the entity or person who performed the energy analysis and provided recommendations pursuant to section 29-12.5-102; or

(b) Otherwise incur indebtedness to finance utility cost-savings measures or energy saving measures.

(2) (a) Except as provided in paragraph (b) of this subsection (2):

(I) No contract entered into or indebtedness incurred pursuant to this section shall constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or home rule debt limitation; and

(II) Any contract may be entered into and indebtedness incurred without approval of the qualified electors of the political subdivision.

(b) Paragraph (a) of this subsection (2) shall not apply to any indebtedness incurred by contract or otherwise under this section which exceeds or which causes the total outstanding indebtedness so incurred to exceed the following percentage of the latest valuation for assessment of the taxable property in the political subdivision:

(I) One percent for a school district;

(II) One-tenth of one percent for a county, except a home rule county;

(III) One-fifth of one percent for a home rule county; or

(IV) One-fifth of one percent for a municipality.

(3) When a utility cost-savings measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy.

Source: L. 91: Entire article added, p. 731, § 1, effective May 1. L. 2001: (1) and (3) amended, p.1096, § 7, effective August 8.

29-12.5-104. Monitoring and reporting of energy and cost savings.

The board shall monitor the reductions in energy consumption and cost savings attributable to the utility cost-savings measures and energy saving measures financed pursuant to section 29-12.5-103 and shall annually prepare a report documenting such reductions and savings for the first two years of the contract. The report shall be certified by an architect or engineer independent of any person, firm, or corporation that provided goods or services to the board in connection with the utility cost-savings measures or energy saving measures that are the subject of the report.

Source: L. 91: Entire article added, p. 732, § 1, effective May 1. L. 2001: Entire section amended, p. 1097, § 8, effective August

PROPERTY INSURANCE

ARTICLE 13 LOCAL GOVERNMENTS -AUTHORITY TO INSURE PROPERTY

29-13-101. Insurance on property of local governments.

(1) Any unit of local government, which for purposes of this article includes counties, municipalities, school and special districts, and every other type of local government having the power to own property and impose taxes, may insure its property against all types of risk of loss for which such insurance may be procured from insurance companies authorized to do such business in this state.

(2) The insurance authorized by subsection (1) of this section may be provided by:

(a) Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes;

(b) An insurance company authorized to do business in this state which meets all of the requirements of the division of insurance for that purpose;

(c) A combination of the methods of obtaining insurance authorized in paragraphs (a) and (b) of this subsection (2).

(3) A unit of local government other than a school district may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the local government such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301. In the event that a local government has no annual tax levy, it may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund. A school district shall establish and maintain an insurance reserve fund in accordance with the provisions of section 22-45-103 (1) (e), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. The fund established pursuant to this subsection (3) shall be kept separate and apart from all other funds and shall be used only for the payment of loss of or damage to the property of the unit of local government or to secure and pay for premiums on insurance as provided in this article.

Source: L. 79: Entire article added, p. 1131, § 1, effective May 25. L. 88: (3) amended, p. 823, § 34, effective May 24. L. 94: (3) amended, p. 823, § 52, effective April 27.

Cross references: For authority of a public entity other than the state to establish and maintain an insurance reserve fund for self-insurance purposes, see also § 24-10-115.

ANNOTATION

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, etc., § 189.

C.J.S. See 63 C.J.S., Municipal Corporations, § 890.

29-13-102. Authority for units of local government to pool insurance coverage.

(1) Units of local government may cooperate with one another to form a self-insurance pool to provide all or part of the insurance coverage authorized by this article. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(2) Any self-insurance pool authorized by subsection (1) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5) and (10), C.R.S.

(3) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, and capitalization of the pool. The commissioner shall

approve or disapprove such proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall submit written comments or recommendations regarding the proposal to the governing bodies of each participating unit of local government. If the commissioner approves the proposal, he shall issue a certificate of authority. If the commissioner disapproves the proposal, it may be resubmitted for approval after the necessary changes have been made in accordance with the written comments or recommendations of the commissioner. The costs of such review shall be paid by those units desiring to form such a pool. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(4) Each self-insurance pool for units of local government created in this state shall file, with the commissioner of insurance on or before March 30 of the next succeeding year, a written report, in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition. Such report shall include a detailed statement of assets and liabilities, the amount and character of the business transacted, and the moneys reserved and expended during the year. All such reports shall be transmitted to the governor and the local government committee of the house of representatives and the state, veterans, and military affairs committee of the senate, or any successor committees.

(5) The commissioner of insurance, or any person authorized by him, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(6) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any unit of local government which is a member of a self-insurance pool organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(7) In addition to property coverage pursuant to subsection (1) of this section and liability coverage pursuant to section 24-10-115.5, C.R.S., a self-insurance pool authorized by subsection (1) of this section may provide workers' compensation coverage pursuant to section 8-44-204, C.R.S.

Source: L. 79: Entire article added, p. 1132, § 1, effective May 25. L. 88: (1) amended, p. 428, § 3, effective April 20. L. 89: (7) added, p. 1019, § 2, effective April 4; (6) added, p. 1106, § 5, effective July 1. L. 90: (7) amended, p. 571, § 62, effective July 1. L. 92: (2) and (5) amended, pp. 1501, 1614, §§ 38, 172, effective July 1. L. 93: (5) amended, p. 1789, § 76, effective June 6. L. 2001: (4) amended, p. 1179, § 14, effective August 8. L. 2007: (4) amended, p. 2046, § 83, effective June 1.

ANNOTATION

Ambiguity in insurance contract with regard to the retroactive date of the contract must be resolved by giving effect to the intention of the parties, and, therefore, the date which the parties to the contract intended, based on undisputed testimony, is the date that coverage began. Bd. of County Comm'rs v. Colo., 888 P.2d 352 (Colo. App. 1994).

Court rejected county's contention that the policy was unconscionable as a matter of law because it had a short policy period and provided no coverage prior to its retroactive date since the county intended to obtain limited coverage, with no insurance during the gap period and was precisely in accord with the county's reasonable expectations. Bd. of County Comm'rs v. Colo., 888 P.2d 352 (Colo. App. 1994).

29-13-103. Grounds and procedure for suspension or revocation of certificate.

(1) The certificate of authority issued to a unit of local government under this article may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(a) Insolvency or impairment;

(b) Refusal or failure to submit an annual report as required by section 29-13-102 (4);

(c) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;

(d) Failure to submit to examination or any legal obligation relative thereto;

(e) Refusal to pay the cost of examination as required by section 29-13-102 (3);

(f) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(g) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(2) If the commissioner of insurance finds upon examination, hearing, or other evidence that any unit of local government has committed any of the acts specified in subsection (1) of this section or any act otherwise prohibited in this article, the commissioner may suspend or revoke such certificate of authority if he deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a unit of local government, the commissioner shall grant the unit of local government fifteen days in which to show cause why such action should not be taken.

Source: L. 79: Entire article added, p. 1133, § 1, effective May 25.

BOND ANTICIPATION NOTES

29-14-101. Short title.

This article shall be known and may be cited as the "Bond Anticipation Note Act".

Source: L. 81: Entire article added, p. 1419, § 1, effective July 1.

29-14-102. Legislative declaration.

The general assembly hereby declares that the issuance of bond anticipation notes by any public body as defined in section 29-14-103 (6), when advantageous to the public body or the citizens thereof, will serve a public use and will promote the health, safety, security, and general welfare of the citizens thereof and of the people of the state of Colorado.

Source: L. 81: Entire article added, p. 1419, § 1, effective July 1.

29-14-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Bond" means any bond, debenture, or other obligation authorized to be issued by a public body pursuant to any provision of law of the state.
(2) "Bond anticipation note" means any note, interim debenture, or other security evidencing an obligation and issued pursuant to this article.

(3) "Governing body" means a city council, board of trustees, commission, board of county commissioners, board of directors, or other legislative body of a public body in which the legislative powers of such public body are vested.

(4) "Indebtedness" means any bond issued by a public body pursuant to any law of this state which constitutes a debt for the purposes of section 6 of article XI of the state constitution, and the issuance of which must be submitted to a vote of the qualified electors of such public body pursuant to said section.

(5) "Legislative act" means an ordinance adopted by a governing body of a municipality or a resolution adopted by a governing body of any other public body.

(6) "Public body" means any county; any municipality as defined by section 31-1-101 (6), C.R.S.; any school district; any special district as defined in section 32-1-103 (20), C.R.S.; and any water conservancy district, city housing authority, county housing authority, urban renewal agency, downtown development authority, or community redevelopment agency, any corporate authority, any corporate commission, or any other political subdivision of this state constituting a body corporate.

Source: L. 81: Entire article added, p. 1419, § 1, effective July 1.

29-14-104. Issuance of bond anticipation notes.

(1) Any public body may issue from time to time its bond anticipation notes for any purposes lawfully authorized to be undertaken by such public body or to redeem outstanding bond anticipation notes. Such bond anticipation notes shall be issued in anticipation of the issuance of bonds by the public body.

(2) Except as provided in this article, the bond anticipation notes shall be issued pursuant to the provisions of law which govern the issuance of the bonds in anticipation of which the bond anticipation notes are being issued.

(3) Bond anticipation notes issued pursuant to this article shall be payable from the proceeds of the sale of additional bond anticipation notes or from the proceeds of the sale of the bonds of the public body or other moneys of the public body legally available for such purpose.

Source: L. 81: Entire article added, p. 1420, § 1, effective July 1.

29-14-105. Bond anticipation note details.

(1) Any bond anticipation notes may mature at such time not exceeding a period of time equal to the estimated time needed to effect the purpose for which they are issued, but not exceeding five years from the date or respective dates of the bond anticipation notes, as the governing body may determine. Bond anticipation notes may be issued in such denominations as determined by the governing body.

(2) The interest rate per annum on the bond anticipation notes shall be stated in the legislative act authorizing the issuance of the bond anticipation notes. Said interest rate may be evidenced by one or more set of coupons attached to said bond anticipation notes. Said interest rate need not be fixed at the time of the passage of such legislative act but may vary based on a fixed formula determined by the governing body and set forth in the legislative act authorizing the issuance of the bond anticipation notes. Said variable interest rate may not exceed the authorized maximum net effective interest rate.

(3) The bond anticipation notes may be sold, at, above, or below the principal amounts thereof, as may be in the public interest.

(4) The bond anticipation notes may be sold at either public or private sale, as determined by the governing body.

Source: L. 81: Entire article added, p. 1420, § 1, effective July 1.

29-14-106. Limitations on issuance.

(1) If the bond anticipation notes are being issued in anticipation of bonds which constitute an indebtedness, such bond anticipation notes shall not be issued:

(a) Unless the bonds have been authorized at an election as required by section 6 of article XI of the state constitution;

(b) In a principal amount in excess of the amount of bonds authorized to be issued at such election;

(c) At a maximum net effective interest rate higher than the maximum net effective interest rate at which such bonds may be issued;

(d) Unless the proceeds of such bond anticipation notes are to be used for the same purpose for which the bonds may be issued; and

(e) Unless the principal amount of the bond anticipation note together with the outstanding principal amount of other indebtedness of the public body is within the applicable limitation on the issuance of such indebtedness by the public body, if any.

(2) When bond anticipation notes are issued in anticipation of the issuance of bonds which constitute an indebtedness and which have been authorized at an election, a principal amount of the bonds so authorized equal to the original principal amount of the bond anticipation notes issued shall be issued solely for the purpose of retiring such bond anticipation notes. If such bond anticipation notes are retired from other legally available revenues of the public bonds, said bonds in such principal amount shall not be issued unless reauthorized at an election held in accordance with the state constitution and other laws of this state.

Source: L. 81: Entire article added, p. 1421, § 1, effective July 1.

29-14-107. No action maintainable.

No action or proceeding, at law or in equity, to review any acts or proceedings, or to question the validity or enjoin the performance of any act, or the issuance of any bond anticipation notes authorized by this article, or for any other relief against any acts or proceedings done or had under this article, whether based upon irregularities or jurisdictional defects, shall be maintained, unless commenced within thirty days after the performance of the act or the effective date of the legislative act complained of, or else be thereafter perpetually barred.

Source: L. 81: Entire article added, p. 1421, § 1, effective July 1.

29-14-108. Validation.

All bond anticipation notes and any coupons appertaining thereto issued or purportedly issued prior to July 1, 1981, and all acts or proceedings had or taken or purportedly had or taken prior to said date by or on behalf of public bodies, under law or under color of law, preliminary to and in the authorization, execution, sale, and issuance of all bond anticipation notes, including any coupons appertaining thereto,

and the exercise of other powers in this article are validated, ratified, approved, and confirmed by this section except as provided in section 29-14-109, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities other than constitutional, in such bond anticipation notes, acts, and proceedings, in such authorization, execution, sale, and issuance, and in such exercise of power; and such bond anticipation notes are and shall be binding, legal, valid, and enforceable obligations of such public body to which they appertain in accordance with their terms and their authorization proceedings.

Source: L. 81: Entire article added, p. 1421, § 1, effective July 1.

29-14-109. Effect of and limitations upon validation.

This article shall operate to supply such legislative authority as may be necessary to validate any such bond anticipation notes issued prior to July 1, 1981, of such public bodies and any acts and proceedings taken appertaining to the issuance of such bond anticipation notes by such public bodies or otherwise prior to said date which the general assembly could have supplied or provided for in the law under which such bond anticipation notes were issued or such other contracts were executed and such acts or proceedings where taken; but this article shall be limited to the validation of such bond anticipation notes, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. This article shall not operate to validate, ratify, approve, confirm, or legalize any bond anticipation note or coupon, act, proceeding, or other matter, the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined, and shall not operate to confirm, validate, or legalize any bond anticipation note or coupon, act, proceeding, or other matter which, prior to July 1, 1981, has been determined in any legal proceeding to be illegal, void, or ineffective.

Source: L. 81: Entire article added, p. 1422, § 1, effective July 1.

29-14-110. Application to certain public bodies.

It is the intent of the general assembly that the provisions of this article shall apply to home rule municipalities except insofar as superseded by charter or ordinance passed pursuant to such charter and shall apply to special territorial charter municipalities.

Source: L. 81: Entire article added, p. 1422, § 1, effective July 1.

TAX ANTICIPATION NOTES

29-15-101. Short title.

This article shall be known and may be cited as the "Tax Anticipation Note Act".

Source: L. 85: Entire article added, p. 1054, § 1, effective June 6.

29-15-102. Legislative declaration.

The general assembly hereby declares that the issuance of tax anticipation notes by any public body as defined in section 29-15-103 (3), when advantageous to the public body or the citizens thereof, will serve a public use and will promote the health, safety, security, and general welfare of the citizens thereof and of the people of the state of Colorado.

Source: L. 85: Entire article added, p. 1054, § 1, effective June 6.

29-15-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Governing body" means a city council, a board of trustees, a commission, a board of county commissioners, a board of directors, or any other legislative body in which the legislative powers of a public body are vested.

(2) "Legislative act" means an ordinance adopted by the governing body of a municipality or a resolution adopted by the governing body of any other public body.

(3) "Public body" means any county, any municipality as defined in section 31-1-101 (6), C.R.S., any school district or other district, or any public board, commission, authority, agency, political subdivision, or other public body in the state created pursuant to any general or special law or pursuant to any legislative or home rule charter.

(4) "Tax anticipation note" means any note, interim debenture, warrant, or other security evidencing an obligation and issued pursuant to this article.

(5) "Taxes" means ad valorem taxes on real or personal property.

Source: L. 85: Entire article added, p. 1054, § 1, effective June 6.

29-15-104. Issuance of tax anticipation notes.

(1) Any public body may issue, from time to time, tax anticipation notes without an election if its governing body determines that the taxes to be received by the public body will not be received in time to pay the public body's projected budgeted expenses. Such tax anticipation notes shall be issued in anticipation of the collection of taxes estimated by the governing body to be received within its then current fiscal year.

(2) (a) Tax anticipation notes shall be both issued and made payable within the fiscal year for which such taxes are levied.

(b) The provisions of this subsection (2) limiting the term of tax anticipation notes shall not apply to tax anticipation notes issued by school districts on and after January 1, 1992.

(3) Tax anticipation notes may be paid from the proceeds of ad valorem taxes on real and personal property, investment proceeds on the ad valorem taxes, or the proceeds from the tax anticipation notes.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6. L. 90: (2) amended, p. 1084, § 46, effective May 31.

29-15-105. Tax anticipation note details.

(1) Except as provided in subsection (2) of this section, any tax anticipation notes may be issued in one or more series, bear such dates, be in such denomination or denominations, mature on any date or dates occurring on or before the last day of the fiscal year of the public body in which the tax anticipation notes are issued, mature in such amount or amounts, bear interest at such rate or rates, be in such form, be payable at such place or places, and be subject to such terms of redemption with or without a premium as the legislative act of the governing body authorizing the issuance of the tax anticipation notes may provide. The tax anticipation notes may be sold at, above, or below the principal amounts thereof whenever such action is in the public interest, as determined by the governing body. The tax anticipation notes may be sold at either a public or a private sale, as determined by the governing body.

(2) Any tax anticipation notes issued by a school district may be issued in one or more series, bear such dates, be in such denomination or denominations, mature on or before August 31 of the fiscal year immediately following the fiscal year in which the tax anticipation notes were issued, mature in such

amount or amounts, bear interest at such rate or rates, be in such form, be payable at such place or places, and be subject to such terms of redemption with or without a premium as the legislative act of the governing body authorizing the issuance of the tax anticipation notes may provide. The tax anticipation notes may be sold at, above, or below the principal amounts thereof whenever such action is in the public interest, as determined by the governing body. The tax anticipation notes may be sold at either a public or a private sale, as determined by the governing body.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6. L. 95: Entire section amended, p. 608, § 6, effective May 22.

29-15-106. Limitation on issuance of tax anticipation notes.

(1) For all public bodies except school districts, the amount of tax anticipation notes issued by a public body in any fiscal year shall not exceed fifty percent of all taxes estimated to be received by such governing body in its current fiscal year, as shown by its then current budget.

(2) For school districts, the amount of tax anticipation notes issued by the school district in any fiscal year shall not exceed seventy-five percent of all taxes estimated to be received by such school district in its current fiscal year, as shown by its then current budget.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6. L. 94: Entire section amended, p. 809, § 16, effective April 27.

29-15-107. Payment of tax anticipation notes.

All ad valorem taxes on real and personal property, investment, proceeds on the ad valorem taxes, or the proceeds from tax anticipation notes received by the public body after the issuance of the tax anticipation notes, except taxes collected for retirement of existing debt, shall be paid into a special fund to be known as the tax anticipation note principal and interest redemption fund until such time as the moneys in such fund are sufficient to pay when due the principal of and the premiums, if any, and interest on the tax anticipation notes. All moneys in such fund not in excess of the amount required for such purpose shall be used to pay the principal of and the premiums, if any, and interest on the tax anticipation notes and shall be used for no other purpose.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6.

29-15-108. No impairment of contract.

As long as any tax anticipation notes are outstanding, this article and the provisions of law authorizing the levy of taxes shall not be repealed or amended in such a manner as would materially impair the contractual rights and remedies of the holders of the tax anticipation notes.

Source: L. 85: Entire article added, p. 1055, § 1, effective June 6.

29-15-109. No action maintainable.

No action or proceeding, at law or in equity, to review any act or proceeding, or to question the validity or enjoin the performance of any act or the issuance of any tax anticipation notes authorized by this article, or to obtain any other relief against any acts or proceedings done or had under this article, whether based upon irregularities or jurisdictional defects, shall be maintained unless such action or proceeding is commenced within thirty days after the performance of the act or the effective date of the legislative act complained of; otherwise, it shall be thereafter perpetually barred.

Source: L. 85: Entire article added, p. 1056, § 1, effective June 6.

29-15-110. Independent authority.

The authority granted by this article shall constitute separate and independent authority for the powers granted in this article and shall be effective without reference to the powers or limitations contained in any other law, and the provisions of this article shall not be deemed to constitute limitations on the powers granted to public bodies under any other law.

Source: L. 85: Entire article added, p. 1056, § 1, effective June 6.

29-15-111. Application to certain public bodies.

It is the intent of the general assembly that the provisions of this article shall apply to home rule municipalities except insofar as such provisions may be superseded by their charters or any legislative acts passed pursuant to such charters and also shall apply to special territorial charter municipalities.

Source: L. 85: Entire article added, p. 1056, § 1, effective June 6.

29-15-112. State treasurer may issue tax and revenue anticipation notes for school districts.

(1) The state treasurer is hereby authorized to issue tax and revenue anticipation notes for school districts in accordance with the provisions of this section for the purpose of alleviating temporary cash flow deficits of such school districts by making interest-free loans pursuant to section 22-54-110, C.R.S.

(2) In addition to powers otherwise granted to the state treasurer by law, the state treasurer shall have the following powers in connection with the issuance of tax and revenue anticipation notes pursuant to the provisions of this section:

(a) To use the seal of the state treasurer;

(b) To adopt resolutions or enter into indentures of trust or other instruments to provide for the issuance of the tax and revenue anticipation notes;

(c) To engage the services of consultants, financial advisors, underwriters, attorneys, trustees, paying agents, registrars, remarketing agents, indexing agents, depositaries, and other agents whose services may be required in connection with the issuance of the tax and revenue anticipation notes;

(d) To enter into contracts, agreements, and other instruments in connection with the issuance of the tax and revenue anticipation notes, including but not limited to contracts with persons specified in paragraph (c) of this subsection (2), contracts providing for the purchase or repurchase of the tax and revenue anticipation notes, agreements with school districts regarding the payment of loans and other matters relating to the issuance of the tax and revenue anticipation notes, and indentures of trust or other instruments providing for the issuance of the tax and revenue anticipation notes;

(e) To provide credit enhancement for the tax and revenue anticipation notes by:

(I) Entering into such agreements as may be necessary to obtain a credit facility with respect to any issue of notes;

(II) Pledging toward the payment of the premium, if any, and interest on the tax and revenue anticipation notes moneys from the state general fund in an amount not exceeding the amount of the premium, if any, and interest on such notes. The provisions of section 24-75-907 (2) and (3), C.R.S., that relate to the creation of a restricted account and to liens shall apply to the pledge of such moneys; except that the restricted account shall not exceed the amount of the premium, if any, and interest on the tax and revenue anticipation notes; and

(III) Pledging toward the payment of the principal on the tax and revenue anticipation notes moneys in the school district tax and revenue anticipation notes repayment account created pursuant to paragraph (b) of subsection (4) of this section.

(f) To assist a school district in determining whether it will have a cash flow deficit that will require a loan pursuant to section 22-54-110, C.R.S., and to determine the total amount of tax and revenue anticipation notes that should be issued on behalf of the district; and

(g) To do all other things necessary and convenient in connection with the issuance of tax and revenue anticipation notes pursuant to the provisions of this section and with the establishment of school district responsibilities relating to the tax and revenue anticipation notes and compliance with federal tax laws and regulations.

(3) (a) The proceeds of the tax and revenue anticipation notes may be used for the following purposes:

(I) To make interest-free loans to school districts pursuant to section 22-54-110, C.R.S., to alleviate cash flow deficits;

(II) To pay the costs of issuing the tax and revenue anticipation notes, including the cost of obtaining a credit facility;

(III) To pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes; and

(IV) To pay any other expense or charge incurred in connection with actions of the state treasurer authorized by the provisions of this section or section 22-54-110, C.R.S.

(b) Pending use of the proceeds of the tax and revenue anticipation notes in accordance with paragraph (a) of this subsection (3), such proceeds may be invested by the state treasurer in any investments that are legal investments for the state or may be deposited in any eligible public depository. The income from any such investment or deposit may be used for the following purposes:

(I) To pay the costs of issuing the tax and revenue anticipation notes, including the cost of obtaining a credit facility; and

(II) To pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes.

(4) (a) (I) Tax and revenue anticipation notes issued pursuant to the provisions of this section shall be payable from:

(A) One or more payments by the school district receiving a loan from the proceeds from such notes, which payment or payments by the school district shall be, in the aggregate, sufficient to pay the principal on the tax and revenue anticipation notes issued to fund such loan;

(B) Any moneys from the state general fund that are pledged pursuant to subparagraph (II) of paragraph (e) of subsection (2) of this section;

(C) Income earned from any investment or deposit pursuant to paragraph (b) of subsection (3) of this section and paragraph (b) of this subsection (4); and

(D) If a district fails to fully repay a loan made pursuant to section 22-54-110, C.R.S., from the proceeds of the tax and revenue anticipation notes, any funds that are on hand or in the custody or possession of the state treasurer and that are eligible for investment.

(II) The financial obligation of the state treasurer to pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes shall be deemed discharged on any date on which moneys or investments in an amount sufficient for the payment of the principal, premium, if any, and interest related to the notes on the date of their final maturity is on deposit in one or more segregated and restricted accounts that are pledged irrevocably for such purpose. Such segregated and restricted accounts shall be the school district tax and revenue anticipation notes repayment account or a special account created by the controller pursuant to subparagraph (II) of paragraph (e) of subsection (2) of this section or otherwise created at the request of the state treasurer. Following such deposit, the principal, premium, if any, and interest related to the notes shall be payable solely from the segregated and restricted accounts without further financial obligation whatsoever of the state treasurer or the state. Any moneys in the segregated and restricted accounts, pending use for their intended purpose, may be invested or reinvested only in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., as such investment requirements may otherwise be limited pursuant to the terms of the resolution, indenture of trust, or other instrument providing for the issuance of the notes.

(b) There is hereby created in the general fund an account that shall be known as the school district tax and revenue anticipation notes repayment account. All payments received from school districts pursuant to paragraph (a) of this subsection (4) shall be deposited by the state treasurer in the school district tax and revenue anticipation notes repayment account and may be invested by the state treasurer in any investments that are legal investments for the state or may be deposited in any eligible public depository. All moneys in the account that are not in excess of the amount required to pay the principal, premium, if any, and interest related to the tax and revenue anticipation notes are pledged irrevocably and shall be used for the purpose of paying the principal, premium, if any, and interest related to the tax and revenue anticipation notes for no other purpose.

(5) (a) Tax and revenue anticipation notes issued by the state treasurer pursuant to the provisions of this section shall be issued pursuant to a resolution or other authorizing instrument of the state treasurer. Notwithstanding any other provision of this article to the contrary, such notes may be issued in such aggregate principal amount, may be issued in one or more series, may bear such dates, may be in such denomination, may mature in such amount, may bear interest at such rate, may be in such form, may be payable at such place, and may be subject to such terms of redemption with or without a premium as the state treasurer by resolution or other authorizing instrument may provide. The rate of interest borne by the tax and revenue anticipation notes may be fixed, adjustable, or variable or any combination thereof. If any rate is adjustable or variable, the standard, index, method, or formula pursuant to which such rate is to be from time to time determined shall be set forth in the resolution or other authorizing instrument of the state treasurer. Such resolution or other authorizing instrument may also include a delegation of authority to an agent acting for and on behalf of the state treasurer to determine a rate within parameters, including a maximum interest rate, prescribed by the state treasurer. Tax and revenue anticipation notes issued pursuant to the provisions of this section may be sold at public or private sale and may be sold at, above, or below the principal amounts thereof.

(b) The tax and revenue anticipation notes shall mature on any date or dates occurring on or before August 31 of the fiscal year immediately following the fiscal year in which the notes are issued. In the event that the tax and revenue anticipation notes have a date of maturity that is after the end of the fiscal year in which the notes are issued, on or before the final day of the fiscal year in which the notes are issued there shall be deposited in one or more special segregated and restricted accounts and pledged irrevocably to the payment of the notes an amount sufficient to pay the principal, premium, if any, and interest related to the notes on their stated maturity date.

(6) (a) Tax and revenue anticipation notes issued pursuant to the provisions of this section shall be signed by the state treasurer and countersigned by the deputy state treasurer, and the seal of the state treasurer shall be affixed thereto.

(b) Pursuant to article 55 of title 11, C.R.S., any signature required by paragraph (a) of this subsection (6) may be a facsimile signature imprinted, engraved, stamped, or otherwise placed on the tax and revenue anticipation notes. If all signatures of public officials on the tax and revenue anticipation notes are

facsimile signatures, provisions shall be made for a manual authenticating signature on the tax and revenue anticipation notes by or on behalf of a designated authenticating agent. If an official ceases to hold office before delivery of the tax and revenue anticipation notes signed by such official, the signature or facsimile signature of the official is nevertheless valid and sufficient for all purposes. A facsimile of the seal of the state treasurer may be imprinted, engraved, stamped, or otherwise placed on the notes.

(7) Tax and revenue anticipation notes issued pursuant to the provisions of this section shall be payable solely from the revenues pledged thereto, and the owners or holders of the notes may not look to any other **Source** for repayment of the principal of or interest on the notes. Such tax and revenue anticipation notes shall not constitute a debt or an indebtedness of the state or any school district within the meaning of any applicable provision of the state constitution or state statutes.

(8) Any tax and revenue anticipation notes issued pursuant to the provisions of this section shall constitute a contract between the state treasurer and the owner or holder thereof, and neither the state nor any of its political subdivisions shall take any action impairing such contract.

(9) The tax and revenue anticipation notes issued pursuant to the provisions of this section shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the state of Colorado.

Source: L. 90: Entire section added, p. 1084, § 47, effective May 31. L. 91: Entire section amended, p. 531, § 1, effective March 28. L. 91, 2nd Ex. Sess.: (2)(f)(II) and (4) amended, p. 55, § 1, effective October 11. L. 95: (10) amended, p. 609, § 7, effective May 22. L. 2003: Entire section RC&RE, p. 2168, § 1, effective July 1.

Editor's note: Subsection (10) provided for the repeal of this section, effective July 31, 2000. (See L. 95, p. 609.)

LAND USE CONTROL AND CONSERVATION

Law reviews. For article, "Vested Property Rights in Colorado: The Legislature Rushes in Where ", see Den. U. L. Rev. 31 (1988); for article, "Cooperative Management of Urban Growth Areas Through IGAs", see 29 Colo. Law. 85 (November 2000); for article, "Transferable Development Rights and Their Application in Colorado: An Overview", see 34 Colo. Law. 75 (March 2005).

PART 1 LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT

29-20-101. Short title.

This article shall be known and may be cited as the "Local Government Land Use Control Enabling Act of 1974".

Source: L. 74: Entire article added, p. 353, § 1, effective May 17.

ANNOTATION

Law reviews. For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980).

29-20-102. Legislative declaration.

(1) The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local

governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

(2) The general assembly further finds and declares that local governments will be better able to properly plan for growth and serve new residents if they are authorized to impose impact fees as a condition of approval of development permits. However, impact fees and other development charges can affect growth and development patterns outside a local government's jurisdiction, and uniform impact fee authority among local governments will encourage proper growth management.
Source: L. 74: Entire article added, p. 353, § 1, effective May 17. L. 2001, 2nd Ex. Sess.: Entire section amended, p. 27, § 1, effective November 6.

ANNOTATION

Applied in City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).
29-20-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction.

(1.5) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

(2) "Power authority" means an authority created pursuant to section 29-1-204.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17. L. 2001: (2) added, p. 597, § 3, effective May 30. L. 2001, 2nd Ex. Sess.: (1) amended and (1.5) added, p. 27, § 2, effective November 6.

29-20-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction.

(1.5) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

(2) "Power authority" means an authority created pursuant to section 29-1-204.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17. L. 2001: (2) added, p. 597, § 3, effective May 30. L. 2001, 2nd Ex. Sess.: (1) amended and (1.5) added, p. 27, § 2, effective November 6.

29-20-104. Powers of local governments.

(1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section shall not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;

(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;

(c) Preserving areas of historical and archaeological importance;

(d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;

(e) Regulating the location of activities and developments which may result in significant changes in population density;

(f) Providing for phased development of services and facilities;

(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17. L. 2001, 2nd Ex. Sess.: IP(1) amended, p. 28, § 3, effective November 6.

Editor's note: 43 U.S.C. 932, as referenced in subsection (1)(d), was repealed in 1976 by section 706 (a) of Pub.L. 94-579, but said repeal does not terminate any land use right or authorization existing prior to the repeal. See section 701 (a) of Pub.L. 94-579.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

This section does not confer upon counties the authority to impose conditions for granting permits for exploratory oil well operation when such authority was granted exclusively to state oil and gas conservation commission under Oil and Gas Conservation Act. Oborne v. County Comm'rs of Douglas Cty., 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989).

The Land Use Act (§ 29-20-101, C.R.S., et seq.) and the County Planning Code (§ 30-28-101, C.R.S., et seq.) authorize county regulation of land use in the unincorporated areas of the county. Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

This section provides independent authority for local governments to regulate land use to protect wildlife habitat and wildlife species. Droste v. Bd. of County Comm'rs, 85 P.3d 585 (Colo. App. 2003).

No authority to adopt "subdivision" definition contrary to § 30-28-101. Sections 29-20-101 to 29-20-107 do not confer the authority upon a county to adopt a definition of "subdivision" in its regulations which is contrary to the express statutory definition found in § 30-28-101 (10). Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982).

Or to adopt regulations covering land specifically excluded. Sections 29-20-101 to 29-20-107 do not confer the authority to adopt subdivision regulations covering parcels of land which are specifically

excluded from the provisions of § 30-28-101 (10). Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982).

County regulations concerning wetlands protection and nuisance abatement were related to valid county concerns under this act for local governments to regulate land use and protect environment. Colo. Springs v. Eagle County Bd. of County Comm'rs, 895 P.2d 1105 (Colo. App. 1994).

The Local Government Land Use Control Enabling Act (enabling act) grants broad powers to local governments regulating use of lands within their respective jurisdictions for protecting wildlife, controlling population density and growth, and protecting the surrounding environment, among other things. In light of this broad grant of powers, reading the enabling act to deny local governments authority to conduct studies for overall development of lands within their jurisdiction and to impose reasonable moratoriums on development to conduct those studies would be anomalous and would contravene the apparent purpose and intent of the general assembly. Droste v. Bd. of County Comm'rs of Pitkin, 141 P.3d 852 (Colo. App. 2005).

County had authority under the enabling act to impose temporary moratorium on developmental approvals concerning certain land within county. The enabling act is designed to give local governments additional or supplemental powers for the purposes set forth in the act, including development in hazardous areas, protecting wildlife habitats, protecting areas of historical or archeological significance, controlling population density, and providing for the phasing in of infrastructure. These special considerations, in many instances, supplement those normally involved in creating a zoning master plan or administering a zoning regimen. Accordingly, the enabling act and the county planning statute, article 28 of title 30, have different, though complementary, purposes, and the limitation on temporary zoning in § 30-28-121 does not prohibit or limit a moratorium on development for the purpose of conducting studies under the enabling act. Droste v. Bd. of County Comm'rs of Pitkin, 141 P.3d 852 (Colo. App. 2005).

Applied in Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982); Bd. of County Comm'rs v. Bowen/Edwards Assoc., 830 P.2d 1045 (Colo. 1992).

29-20-104.5. Impact fees.

(1) Pursuant to the authority granted in section 29-20-104 (1) (g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government on capital facilities needed to serve new development. No impact fee or other similar development charge shall be imposed except pursuant to a schedule that is:

(a) Legislatively adopted;

(b) Generally applicable to a broad class of property; and

(c) Intended to defray the projected impacts on capital facilities caused by proposed development.

(2) A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development. No impact fee or other similar development charge shall be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.

(3) Any schedule of impact fees or other similar development charges adopted by a local government pursuant to this section shall include provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development charge is imposed.

(4) As used in this section, the term "capital facility" means any improvement or facility that:

(a) Is directly related to any service that a local government is authorized to provide;

(b) Has an estimated useful life of five years or longer; and

(c) Is required by the charter or general policy of a local government pursuant to a resolution or ordinance.

(5) Any impact fee or other similar development charge shall be collected and accounted for in accordance with part 8 of article 1 of this title. Notwithstanding the provisions of this section, a local government may waive an impact fee or other similar development charge on the development of low- or moderate- income housing or affordable employee housing as defined by the local government.

(6) No impact fee or other similar development charge shall be imposed on any development permit for which the applicant submitted a complete application before the adoption of a schedule of impact fees or other similar development charges by the local government pursuant to this section. No impact fee or other similar development charge imposed on any development activity shall be collected before the issuance of the development permit for such development activity. Nothing in this section shall be construed to prohibit a local government from deferring collection of an impact fee or other similar development charge until the issuance of a building permit or certificate of occupancy.

(7) Any person or entity that owns or has an interest in land that is or becomes subject to a schedule of fees or charges enacted pursuant to this section shall, by filing an application for a development permit, have standing to file an action for declaratory judgment to determine whether such schedule complies with the provisions of this section. An applicant for a development permit who believes that a local government has improperly applied a schedule of fees or charges adopted pursuant to this section to the development application may pay the fee or charge imposed and proceed with development without prejudice to the applicant's right to challenge the fee or charge imposed under rule 106 of the Colorado rules of civil procedure. If the court determines that a local government has either imposed a fee or charge on a development that is not subject to the legislatively enacted schedule or improperly calculated the fee or charge due, it may enter judgment in favor of the applicant for the amount of any fee or charge wrongly collected with interest thereon from the date collected.

(8) (a) The general assembly hereby finds and declares that the matters addressed in this section are matters of statewide concern.

(b) This section shall not prohibit any local government from imposing impact fees or other similar development charges pursuant to a schedule that was legislatively adopted before October 1, 2001, so long as the local government complies with subsections (3), (5), (6), and (7) of this section. Any amendment of such schedule adopted after October 1, 2001, shall comply with all of the requirements of this section.

(9) If any provision of this section is held invalid, such invalidity shall invalidate this section in its entirety, and to this end the provisions of this section are declared to be nonseverable.

Source: L. 2001, 2nd Ex. Sess.: Entire section added, p. 28, § 4, effective November 6.

ANNOTATION

Law reviews. For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

29-20-105. Intergovernmental cooperation.

(1) Local governments are authorized and encouraged to cooperate or contract with other units of government pursuant to part 2 of article 1 of this title for the purposes of planning or regulating the development of land including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.

(2) (a) Without limiting the ability of local governments to cooperate or contract with each other pursuant to the provisions of this part 1 or any other provision of law, local governments may provide through intergovernmental agreements for the joint adoption by the governing bodies, after notice and hearing, of mutually binding and enforceable comprehensive development plans for areas within their jurisdictions. This section shall not affect the validity of any intergovernmental agreement entered into prior to April 23, 1989.

(b) A comprehensive development plan may contain master plans, zoning plans, subdivision regulations, and building code, permit, and other land use standards, which, if set out in specific detail, may be in lieu of such regulations or ordinances of the local governments.

(c) Notwithstanding any other statutory provisions of article 28 of title 30, C.R.S., review of comprehensive development plans by the planning commissions of the local governments shall be discretionary, unless otherwise required by local ordinance. This subsection (2) shall not apply to the requirements of sections 30-28-110 and 30-28-127, C.R.S.

(d) An intergovernmental agreement providing for a comprehensive development plan may contain a provision that the plan may be amended only by the mutual agreement of the governing bodies of the local governments who are parties to the plan.

(e) In the event that a plan is silent as to a specific land use matter, existing local land use regulations shall control.

(f) (I) An intergovernmental agreement may contain provisions concerning annexation, including, but not limited to provisions:

(A) That a comprehensive development plan shall continue to control particular land areas even though the land areas are annexed or jurisdiction over the land areas is otherwise transferred pursuant to law between the local governmental entities who are parties to the agreement;

(B) For revenue sharing between local governments; and

(C) Concerning land areas that may be annexed by municipalities and the conditions related to such annexations as established in the comprehensive development plan.

(II) Nothing in this paragraph (f) shall be construed to render invalid any intergovernmental agreement or comprehensive development plan entered into prior to November 6, 2001.

(g) Each governing body that is a party to an intergovernmental agreement adopting a comprehensive development plan shall have standing in district court to enforce the terms of the agreement and the plan, including specific performance and injunctive relief. The district court shall schedule all actions to enforce an intergovernmental agreement and comprehensive development plan for expedited hearing.

(h) Local governments may, pursuant to an intergovernmental agreement, provide for revenue-sharing.

(i) Local governments shall not be required to enter into intergovernmental agreements or comprehensive development plans pursuant to this section.

Source: L. 74: Entire article added, p. 354, § 1, effective May 17. L. 89: Entire section amended, p. 1268, § 1, effective April 23. L. 99: (2)(a) amended, p. 590, § 2, effective July 1. L. 2001, 2nd Ex. Sess.: (2)(f) amended, p. 31, § 1, effective November 6.

ANNOTATION

Law reviews. For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002).

29-20-106. Receipt of funds.

Without limiting or superseding any authority presently exercised or previously granted, local governments are hereby authorized to receive and expend funds from other governmental and private **Source**s for the purposes of planning for or regulating the use of land within their respective jurisdictions.

Source: L. 74: Entire article added, p. 354, § 1, effective May 17.

29-20-107. Compliance with other requirements.

Except as provided in section 29-20-105 (2), where other procedural or substantive requirements for the planning for or regulation of the use of land are provided by law, such requirements shall control.

Source: L. 74: Entire article added, p. 354, § 1, effective May 17. L. 89: Entire section amended, p. 1269, § 2, effective April 23.

ANNOTATION

Under this section, a county cannot disregard a limitation of its authority found in another statute. The zoned land exemption contained in § 24-65.1-107 (1)(c)(II) is not, however, a "requirement" that is meant to "control" under this section. Droste v. Bd. of County Comm'rs, 85 P.3d 585 (Colo. App. 2003).

29-20-108. Local government regulation - location, construction, or improvement of major electrical or natural gas facilities - legislative declaration.

(1) The general assembly finds, determines, and declares that the location, construction, and improvement of major electrical and natural gas facilities are matters of statewide concern. The general assembly further finds, determines, and declares that:

(a) A reliable supply of electric power and natural gas statewide is of vital importance to the health, safety, and welfare of the people of Colorado;

(b) Electric power is transmitted by means of an interconnected grid system serving every area of the state, and natural gas is carried through a series of interconnected pipelines statewide;

(c) Impacts on the electric grid system or natural gas pipelines in one area of the state may have impacts on other areas of the state; and

(d) It is critical that public utilities and power authorities that supply electric or natural gas service maintain the ability to meet the demands for such service as growth continues to occur statewide.

(2) Local government land use regulations shall require final local government action on any application of a public utility or a power authority providing electric or natural gas service that relates to the location, construction, or improvement of major electrical or natural gas facilities within one hundred twenty days after the utility's or authority's submission of a preliminary application, if a preliminary application is required by the local government's land use regulations, or within ninety days after submission of a final

application. If the local government does not take final action within such time, the application shall be deemed approved. Within twenty-eight days of the submission by a utility or authority of an application pursuant to this subsection (2), the local government shall notify the utility or authority of any additional information that must be supplied by the utility or authority to complete the application. The notice shall specify the particular provisions of the local government's land use regulations that necessitate submission of the required information. The one hundred twenty- or ninety-day period, as applicable, during which the local government is to take action on an application shall commence on the date that the utility or authority provides the requested information to the local government in response to the notice required by this subsection (2). If the local government does not notify the utility or authority within twenty-eight days that additional information is required to complete the application, the one hundred twenty- or ninety-day period, as applicable, shall commence on the date of the submission by the utility or authority of its application, and any request by a local government for additional information after the completion of the twenty-eight-day period shall not extend the applicable deadline for final local government action in accordance with the requirements of this subsection (2). Nothing in this subsection (2) shall be construed to supersede any timeline set by agreement between a local government and a utility or authority applying for local government approval of location, construction, or improvement of major electrical or natural gas facilities as defined in subsection (3) of this section.

(3) As used in this section, "major electrical or natural gas facilities" includes one or more of the following:

(a) Electrical generating facilities;

(b) Substations used for switching, regulating, transforming, or otherwise modifying the characteristics of electricity;

(c) Transmission lines operated at a nominal voltage of sixty-nine thousand volts or above;

(d) Structures and equipment associated with such electrical generating facilities, substations, or transmission lines; or

(e) Structures and equipment utilized for the local distribution of natural gas service including, but not limited to, compressors, gas mains, and gas laterals.

(4) (a) A public utility or power authority shall notify the affected local government of its plans to site a major electrical or natural gas facility within the jurisdiction of the local government prior to submitting the preliminary or final permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or the filing of any annual filing with the public utilities commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a public utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or file annually with the public utilities commission to notify the public utilities commission of proposed construction of a new facility or the extension of an existing facility, then the public utility or power authority shall notify any affected local governments of its intention to site a major electrical or natural gas facility within the jurisdiction of the local government when such utility or authority determines that it intends to proceed to permit and construct the facility. Following such notification, the public utility or power authority shall consult with the affected local governments in order to identify the specific routes or geographic locations under consideration for the site of the major electrical or natural gas facility and attempt to resolve land use issues that may arise from the contemplated permit application.

(b) In addition to its preferred alternative within its permit application, the public utility or power authority shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.

(5) (a) If a local government denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of major electrical or natural gas facilities, or if the local

government imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the local government action to the public utilities commission for a determination under section 40-4-102, C.R.S., so long as one or more of the following conditions exist:

(I) The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to section 40-5-101, C.R.S., to construct the major electrical or natural gas facility that is the subject of the local government action;

(II) A certificate of public convenience and necessity is not required for the public utility or power authority to construct the major electrical or natural gas facility that is the subject of the local government action; or

(III) The public utilities commission has previously entered an order pursuant to section 40-4-102, C.R.S., that conflicts with the local government action.

(b) Any appeal brought by a public utility or power authority to the public utilities commission under this section shall be conducted in accordance with the procedural requirements of section 40-6-109.5, C.R.S. In addition to the formal evidentiary hearing on the appeal, conducted in accordance with the procedural requirements of section 40-6-109, C.R.S., the public utilities commission shall take statements from the public concerning the appealed local government action at an open hearing held at a location specified by the local government.

(c) An appeal brought pursuant to this subsection (5) shall include a statement of the reasons why the local government action would unreasonably impair the ability of a public utility or power authority to provide safe, reliable, and economical service to the public.

(d) The public utilities commission shall balance the local government interest with the statewide interest in the location, construction, or improvement of major electrical or natural gas facilities. In striking such balance, the public utilities commission shall render a decision that is consistent with article 65.1 of title 24, C.R.S., including section 24-65.1-105, C.R.S., and the commission shall consider the following factors:

(I) The demonstrated need for the major electrical or natural gas facility;

(II) The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans;

(III) Whether the proposed facility would exacerbate a natural hazard;

(IV) Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards;

(V) The relative merit of any reasonably available and economically feasible alternatives proposed by the public utility, the power authority, or the local government;

(VI) The impact that the local government action would have on the customers of the public utility or power authority who reside within and without the boundaries of the jurisdiction of the local government;

(VII) The basis for the local government's decision to deny the application or impose additional conditions to the application;

(VIII) The impact the proposed facility would have on residents within the local government's jurisdiction including, in the case of a right of way in which facilities have been placed underground, whether those

residents have already paid to place such facilities underground, and if so, shall give strong consideration to that fact; and

(IX) The safety of residents within and without the boundaries of the jurisdiction of the local government.

(e) The public utilities commission shall deny any appeal brought under this section unless the public utility or power authority has complied with the notification and consultation requirements of subsection (4) of this section.

(f) The public utilities commission may consult with the department of local affairs on land use issues in connection with any appeal. All information provided by the department of local affairs to the public utilities commission shall be part of the official record of the appeal and shall be subject to cross-examination or comments by the parties to the appeal.

(g) Unless otherwise specified in this subsection (5), the appeal shall be conducted in accordance with article 6 of title 40, C.R.S., including the provisions of section 40-6-116, C.R.S., concerning any stay or suspension of the final determination made by the public utilities commission.

(h) Nothing in this section shall be construed to limit or diminish the right of a public utility, power authority, or local government to appeal a local government, public utility, or power authority action, decision, or determination to a court of law pursuant to any other provision of law, or any appeal brought in connection with any decision by the public utilities commission under this subsection (5). Appeals brought under this paragraph (h) shall be given priority over other pending matters.

(i) Nothing in this section shall be construed to limit the authority of a municipal government to require or grant a public utility franchise.

Source: L. 2000: Entire section added, p. 1608, § 1, effective July 1. L. 2001: (1)(d) and (2) amended and (4) and (5) added, p. 593, § 2, effective May 30. L. 2005: (2) amended, p. 315, § 1, effective August 8.

PART 2 REGULATORY IMPAIRMENT OF PROPERTY RIGHTS

29-20-201. Legislative declaration.

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

(a) The right to own and use private property is a fundamental right, essential to the continued vitality of a democratic society;

(b) Governmental regulation of conduct, while equally essential to public order and the preservation of universally held values, must be carried out in a manner that appropriately balances the needs of the public with the rights and legitimate expectations of the individual; and

(c) This part 2 appropriately and necessarily underscores and reinvigorates the federal constitutional prohibition against taking private property for public use without just compensation and the state constitutional prohibitions against taking or damaging private property for public or private use.
(2) The general assembly further finds and declares that an individual private property owner should not be required, under the guise of police power regulation of the use and development of property, to bear burdens for the public good that should more properly be borne by the public at large.

(3) The general assembly intends, through the adoption of section 29-20-203, to codify certain constitutionally-based standards that have been established and applied by the courts. The fair, consistent, and expeditious adjudication of disputes over land use in state courts in accordance with constitutional standards is a matter of statewide concern.

Source: L. 99: Entire part added, p. 586, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Animus Over Animas?--Changes in Regulatory Takings Law in Colorado", see 31 Colo. Law. 69 (April 2002).

29-20-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Land-use approval" means any final action of a local government that has the effect of authorizing the use or development of a particular parcel of real property.

(2) "Local government" has the same meaning as set forth in section 29-20-103 (1.5).

Source: L. 99: Entire part added, p. 587, § 1, effective July 1. L. 2001, 2nd Ex. Sess.: (2) amended, p. 30, § 5, effective November 6.

29-20-203. Conditions on land-use approvals.

(1) In imposing conditions upon the granting of land-use approvals, no local government shall require an owner of private property to dedicate real property to the public, or pay money or provide services to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property. This section shall not apply to any legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners by a local government.

(2) No local government shall impose any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner.

Source: L. 99: Entire part added, p. 587, § 1, effective July 1. L. 2001, 2nd Ex. Sess.: (1) amended, p. 30, § 6, effective November 6.

ANNOTATION

Law reviews. For article, "Recent Developments in Regulatory Takings", see 28 Colo. Law. 83 (November 1999).

29-20-204. Remedy for enforcement against a private property owner.

(1) (a) Within thirty days after the date of a decision or action of a local government imposing a condition in granting a land-use approval, the owner of such property may notify the local government in writing of an alleged violation of section 29-20-203.

(b) Upon the filing of such written notice, the local government shall inform each member of the governing body in writing that the notice has been filed. The local government shall respond to such notice within thirty days after the date of such notice by informing the property owner whether such application or enforcement will proceed as proposed, will be modified, or will be discontinued. The filing of such notice shall be a condition precedent to the owner's right to proceed under subsection (2) of this section.

(2) (a) Within sixty days after the date the local government is required to respond under paragraph (b) of subsection (1) of this section, the property owner may file a petition in the district court for the judicial

district in which the subject property is located seeking relief from the enforcement or application of the local law, regulation, policy, or requirement on the basis of an alleged violation of section 29-20-203. Failure to file such a petition within said sixty-day period shall bar relief under this section.

(b) (I) Within thirty days after service on the local government of a petition pursuant to paragraph (a) of this subsection (2), the local government shall assemble and file with the clerk of the district court all documents in its possession concerning the enforcement or application of the local law, regulation, policy, or requirement, including the record of any hearing or proceeding concerning such enforcement or application. If there are no contested factual issues and if the court determines that the facts as reflected by the documents and record filed are sufficient to determine the case, the court shall proceed to determine the case in the most expeditious manner and shall issue appropriate procedural orders to facilitate such determination.

(II) If there are contested issues of fact, or if the court determines that additional evidence is necessary to determine the case, the court may order the parties to provide such additional facts and information as the court may deem appropriate. The court shall order a hearing as soon as its docket permits to resolve such issues of fact or hear such additional evidence.

(c) When it has been established that a required dedication of real property or payment of money as described in section 29-20-203 (1) has been or will be imposed, the burden shall be upon the local government to establish, based upon substantial evidence appearing in the record, that such dedication or payment is roughly proportional to the impact of the proposed use of the subject property.

(d) In determining whether the property owner should be granted relief from the local government's enforcement or application of the local law, regulation, policy, or requirement, the court shall include the following considerations:

(I) Whether such enforcement or application has been accomplished pursuant to a duly adopted law, regulation, policy, or requirement;

(II) Whether such enforcement or application advances a legitimate local government interest;

(III) Whether any required dedication of real property or payment of money as described in section 29-20-203 (1) required by such enforcement or application is roughly proportional to the impact of the proposed use of the subject property;

(IV) Whether there are adequate legislative standards and criteria to ensure that the local law, regulation, policy, or requirement is rationally and consistently applied.

(e) (I) If the court determines that local government enforcement or application of the local law, regulation, policy, or requirement to a specific parcel does not comply with section 29-20-203, the court shall grant appropriate relief to the property owner under the facts presented. Such relief may include, but shall not be limited to, ordering the local government to modify any required dedication of real property or payment of money as described in section 29-20-203 (1) to make it roughly proportional to the impact of the proposed use of the subject property in a manner consistent with the court's order.

(II) If the court determines that such enforcement or application is not based on a duly adopted law, regulation, policy, or requirement or that there are not adequate standards and criteria to ensure that such enforcement or application is rational and consistent, the court shall invalidate the enforcement or application of the law, regulation, policy, or requirement as applied to the subject property.

(f) In any proceeding under this subsection (2), the court may in its discretion award the prevailing party its costs and reasonable attorney fees.

(3) Nothing in this section shall affect:

(a) The ability to bring an action under any state statute relating to eminent domain or the exercise of eminent domain powers by the state or any local governmental entity in furtherance of section 15 of article II of the state constitution, nor shall these provisions limit any claim for compensation or other relief under any other provision of law prohibiting the taking or damaging of private property for public or private use.

(b) The right of an owner of private property to file an action for judicial review under rule 106 (a) (4) of the Colorado rules of civil procedure; except that, if a claim under this section is not included in such rule 106 (a) (4) action, it may be brought, if at all, only by amendment to the complaint in the rule 106 (a) (4) action. If the local government has answered the rule 106 (a) (4) complaint, the court may not deny amendment of the complaint to add a claim under this section unless the time requirements of paragraph (a) of subsection (2) of this section have not been met.

(4) An owner may proceed with development without prejudice to that owner's right to pursue the remedy provided by this section.

Source: L. 99: Entire part added, p. 587, § 1, effective July 1. L. 2001, 2nd Ex. Sess.: (4) added, p. 30, § 7, effective November 6.

ANNOTATION

Law reviews. For article, "Recent Developments in Regulatory Takings", see 28 Colo. Law. 83 (November 1999).

29-20-205. Limitation - scope of part.

Nothing in this part 2 shall be construed to affect the expressly granted land-use authority of any local government.

Source: L. 99: Entire part added, p. 589, § 1, effective July 1.

ARTICLE 21 CONSERVATION TRUST FUNDS

29-21-101. Conservation trust funds - definitions.

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

(a) "County" includes a city and county.

(a.5) "Division" means the division of local government in the department of local affairs.

(b) "Eligible entity" means a county, municipality, or special district which has created a conservation trust fund pursuant to this section and which has certified to the department of local affairs that it has created such fund.

(c) "Interests in land and water" means any and all rights and interests in land or water, or both, including fee interests and less than full fee interests such as future interests, developmental rights, easements, covenants, and contractual rights. Every interest in land or water may be in perpetuity or for a fixed term and shall be deemed to run with the land or water to which it pertains for the benefit of the citizens of this state.

(d) "Municipality" means a statutory or home rule city or town or a territorial charter city.

(e) "New conservation sites" means interests in land and water, acquired after establishment of a conservation trust fund pursuant to this section, for park or recreation purposes, for all types of open space, including but not limited to floodplains, greenbelts, agricultural lands, or scenic areas, or for any scientific, historic, scenic, recreational, aesthetic, or similar purpose.

(f) "Population" means the current population estimate prepared by the division of planning pursuant to section 24-32-204, C.R.S.

(g) "Special district" means:

(I) A special district organized under article 1 of title 32, C.R.S., which provides park or recreation facilities or programs pursuant to the district's service plan, which facilities or programs are open to public use; or

(II) A school district which owned or operated as a successor in interest to a previously established park and recreation district a system of public recreation and playgrounds prior to January 1, 1987, and who, prior to said date, collected moneys and separately accounted for and devoted such moneys exclusively to the operation of a system of public recreation and playgrounds.

(1.5) School districts which are special districts, as defined in paragraph (g) of subsection (1) of this section, are deemed to have been authorized to create conservation trust funds pursuant to this section, and any moneys, collected and separately accounted for and devoted exclusively to the operation of a system of public recreation and playgrounds prior to January 1, 1987, are deemed to be conservation trust funds. Nothing in this section shall be construed to entitle school districts which are special districts to the receipt of state conservation trust funds prior to April 22, 1987.

(2) (a) (I) There is hereby created in the division the conservation trust fund.

(II) Each county share shall be apportioned according to that percentage which the population of each county is to the total population of all counties, and, within each county, each municipality's share shall be apportioned according to the percentage which the population within each municipality is to the total population of the county in which such municipality is located. Each special district's share shall be determined as follows:

(A) The special district's share relating to the unincorporated area of the county in which all or part of such special district is located shall be apportioned according to one-half of the percentage which the population of the special district's unincorporated area is to the total population of the unincorporated area of the county.

(B) The special district's share relating to the incorporated area of the county in which all or part of such special district is located shall be one-half of the percentage which the population of the special district's incorporated area is to the total population of the municipality in which the special district's incorporated area is located. The population of any area which is located within a municipality or a city and county and has been excluded from a special district shall not be counted as part of the special district's population, even if the excluded area remains within the district for the purpose of paying outstanding debt.

(C) No special district which has been ordered dissolved shall receive any conservation trust fund money.

(b) (I) The division shall annually determine the eligible entities and shall distribute eligible entity shares as soon as possible after receiving distributions from the lottery fund pursuant to section 24-35-210 (10), C.R.S., in the following manner:

(A) To each eligible county, its share, less the share of all eligible municipalities and special districts located within the county;

(B) To each eligible municipality, its share of the county share, less the shares of any eligible special districts located within the municipality;

(C) To each eligible special district, its proportionate share of the county and municipal share; and

(D) To each eligible county, municipality, and special district, its proportionate share of any ineligible county share, less the shares of any eligible municipalities and special districts within the ineligible county.

(II) All moneys received from the state by any eligible entity pursuant to this section shall be accounted for separately from any other **Source** of moneys available to the entity for the acquisition of new conservation sites or recreational facilities as defined in this article. No moneys received from the state by any eligible entity pursuant to this section shall be used to acquire real property through condemnation by eminent domain.

(c) In the event that an eligible municipality's share is less than twenty dollars, such amount shall be distributed to the eligible county for the benefit of such municipalities as determined by the board of county commissioners.

(3) The division may utilize the fund to recover its direct and indirect costs in the administration of moneys pursuant to this section.

(4) All moneys received from the state by each eligible entity pursuant to this section shall be deposited in its conservation trust fund and shall be expended only for the acquisition, development, and maintenance of new conservation sites or for capital improvements or maintenance for recreational purposes on any public site. An eligible entity shall not deposit any other moneys in its conservation trust fund. All interest earned on the investment of moneys in a local conservation trust fund shall be credited to the fund and shall be expended only for purposes authorized by this article.

(5) In the utilization of moneys received pursuant to this section, each eligible entity may cooperate or contract with any other government or political subdivision, pursuant to part 2 of article 1 of this title. Subject to the separate accounting requirement of subparagraph (II) of paragraph (b) of subsection (2) of this section, such cooperation may include the sharing of moneys held by any such entities in their respective conservation trust funds for joint expenditures for the acquisition, development, and maintenance of new conservation sites.

(6) On forms supplied by the division, each eligible entity shall annually submit to the division a statement showing the total amount of state moneys in its local conservation trust fund, the amount of any state moneys encumbered or expended from such fund since the previous year's report, and the purpose of the encumbrance or expenditure.

Source: L. 74: Entire section added, p. 432, § 2, effective July 1. L. 77: (2)(a), (2)(b), (4), and (5) amended and (2)(c) and (6) added, pp. 1425, 1426, §§ 1, 3, 2, 4, effective June 19. L. 82: (1)(b), (2)(a), (2)(b), (4), (5), and (6) amended and (1)(g) added, pp. 385, 386, §§ 5, 6, 7, effective April 30. L. 87: (1)(g) amended and (1.5) added, p. 1200, § 1, effective April 22; (1)(g)(II) amended, p. 1589, § 68, effective July 10. L. 89: IP(2)(b) amended, p. 1053, § 2, effective April 7. L. 2004: (1)(a.5) added and (2)(a)(I), (2)(b), (3), (4), (5), and (6) amended, pp. 1886, 1887, §§ 3, 4, 2, effective July 1.

Editor's note: Section 4 of chapter 384, Session Laws of Colorado 2004 (Senate Bill 04-176), specified that the introductory portion to subsection (6) was amended; however, subsection (6) does not contain an introductory portion, and for clarity of the legislative intent, the entire subsection is set out with the amendments made in said bill.

Cross references: For the transfer of moneys from the state lottery fund to the conservation trust fund, see § 24-35-210 (4.1)(a).

29-21-102. Certification - monitoring - enforcement - rules.

(1) The treasurer of a municipality or special district, the chief financial officer, or the official custodian of the conservation trust fund of an eligible entity shall annually review and certify to the division that the eligible entity's self-reported conservation trust fund expenditures comply with the requirements of this article and of rules promulgated pursuant to this article.

(2) The division may require eligible entities to file such annual reports as it deems necessary, and shall review the annual reports submitted pursuant to this article. The review may be conducted by the division's own permanent staff, through a personal services contract, or by delegating responsibility to an independent third party. If the division determines that an eligible entity has violated this article, the division shall take such enforcement measures as it deems necessary to ensure compliance with this article.

(3) By September 1, 2004, the director of the division shall promulgate rules as necessary to carry out this article, including:

(a) Procedures necessary to allow the division or its agents to monitor eligible entities' compliance with the requirements of this article and of rules promulgated pursuant to this article, including annual reporting and entry and inspection of records regarding accounting and expenditures of revenues from the conservation trust fund;

(b) Procedures necessary to allow the division to enforce eligible entities' compliance with this article, including penalties, forfeiture of shares previously distributed, issuance of an order after a hearing held pursuant to section 24-4-105, C.R.S., to repay to a state or local conservation trust fund specific revenues from a conservation trust fund that were expended for purposes that are not authorized by this article, and, if the eligible entity fails to timely comply with the order, issuance of an order to the treasurer holding moneys of the eligible entity that were generated pursuant to the taxing authority of the eligible entity to prohibit the release of any such moneys until the eligible entity complies with the order, and the ability to treat a noncompliant eligible entity as though it were an ineligible entity; and

(c) Guidance regarding allowable expenditures of conservation trust fund revenues to facilitate eligible entities' compliance with this article.

(4) The division shall afford to any eligible entity written notice and an opportunity for a hearing before taking any enforcement action pursuant to this article.

Source: L. 2004: Entire section added, p. 1885, § 1, effective July 1.

HAZARDOUS SUBSTANCE INCIDENTS

Editor's note: This article was originally enacted in 1980. The substantive provisions of this article were repealed and reenacted in 1983, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws and annual supplements to the 1977 replacement volume prior to 1983. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

Law reviews: For article, "Municipal Regulation of the Transportation of Hazardous Material", see 18 Colo. Law. 651 (1989); for article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995).

29-22-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Hazardous substance" means any substance, material, waste, or mixture designated as a hazardous material, waste, or substance according to 49 Code of Federal Regulations Part 172, as amended, or by section 18-13-112 (2) (b), C.R.S., or as designated pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (PL 96-510) as in effect July 1, 1983.

(2) (a) "Hazardous substance incident" means any emergency circumstance involving the sudden discharge of a hazardous substance which threatens immediate and irreparable harm to the environment or the health and safety of any individual other than individuals exposed to the risks associated with hazardous substances in the normal course of their employment. "Hazardous substance incident" includes those incidents of spilling, dumping, or abandonment of a hazardous substance, whether or not such spilling, dumping, or abandonment is found to threaten immediate and irreparable harm, but such term does not include any discharge of a hazardous substance authorized pursuant to any federal, state, or local law or regulation. "Hazardous substance incident" includes those incidents which occur during transportation of a hazardous substance, in which a spill does not occur during the incident but is threatened prior to or during the cleanup period.

(b) As used in this section, "abandonment" means the act of leaving a thing with the intent not to retain possession of or assert ownership or control over it. The intent need not coincide with the act of leaving.

(3) "Person" means any individual, public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(4) "Private property" means any property under the control, management, or operation of any person other than a governmental agency.

Source: L. 83: Entire article R&RE, p. 1216, § 1, effective July 1. L. 92: (2)(a) amended, p. 1338, § 1, effective May 29. L. 93: (2)(a) amended, p. 1739, § 33, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is the same as 29-22-101 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the act amending subsection (2)(a) in 1993, see section 41 of chapter 292, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Local Governments and the Environment: Part I, CERCLA", see 17 Colo. Law. 1997 (1988). For article, "Local Governments and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988).

29-22-102. Hazardous substance incidents - response authorities - designation.

(1) It is the purpose of this section to provide for the designation of emergency response authorities for hazardous substance incidents. Every emergency response authority designated in or pursuant to this section shall be responsible for providing and maintaining the capability for emergency response to a hazardous substance incident occurring within its jurisdiction. An emergency response authority may provide and maintain the capability for such response directly or through mutual aid or other agreements. Subject to the provisions of local or regional response agreements for hazardous substance incidents, the first emergency response authority, or its public agency designee through mutual aid or otherwise, to arrive at the scene of the incident, regardless of whether the incident occurs within its jurisdiction, shall be responsible for the emergency response as incident commander until such time as the emergency response authority that has jurisdiction over the incident site has arrived, after which unified command

shall be followed until the emergency response has concluded. As used in this section, "emergency response to a hazardous substance incident" means taking the initial emergency action necessary to minimize the effects of a hazardous substance incident.

(2) If a hazardous substance incident occurs on private property and is otherwise reportable to any federal, state, or local agency, the owner of the property or person or entity operating on the property shall promptly report the incident to and coordinate a response with the appropriate emergency response authority designated in or pursuant to this section. If the owner or operator does not undertake or coordinate an emergency response or if, in the judgment of the designated emergency response authority, there exists an imminent danger to the public health and safety beyond such property, the designated emergency response authority may undertake the emergency response to such hazardous substance incident, as provided in this section. Nothing in this subsection (2) shall be construed to prohibit the owner of private property or a person or entity operating on such property from undertaking the emergency response to a hazardous substance incident occurring on the property.

(3) (a) The governing body of every town, city, and city and county shall designate by ordinance or resolution an emergency response authority or authorities for hazardous substance incidents occurring within the corporate limits of such town, city, and city and county. Unless otherwise designated by ordinance or resolution, the fire authority having responsibility for the corporate limits of such town, city, or city and county shall be the designated emergency response authority.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution the emergency response authority or authorities for hazardous substance incidents occurring within the unincorporated area of the county. Unless otherwise designated by ordinance or resolution, the county sheriff having responsibility for the unincorporated area of the county shall be the designated emergency response authority.

(c) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30, 1999.)

(4) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30, 1999.)

(5) (a) For the purposes of this section, if a hazardous substance incident occurs on any federal, state, or county highway located outside of municipal city limits, the Colorado state patrol shall be the emergency response authority for such hazardous substance incident.

(b) The Colorado state patrol may delegate such authority to the emergency response authority designated pursuant to subsection (3) of this section or to any public entity capable of performing the emergency response to a hazardous substance incident upon approval of the governing body of the entity receiving authority under such delegation.

(c) In performing its duties under this subsection (5), the Colorado state patrol shall, when practicable, locate its emergency response resources based upon its assessment of the hazardous substances emergency response needs of the different geographic areas of the state.

(d) The Colorado state patrol shall actively coordinate its emergency response capabilities and plans with local emergency response agencies.

(6) Each governing body identified in subsection (3) of this section and the Colorado state patrol shall, as necessary, exercise continuing supervisory authority in consultation with other federal, state, and local agencies having regulatory jurisdiction for the cleanup and removal of the hazardous substance involved in an incident.

Source: L. 83: Entire article R&RE, p. 1217, § 1, effective July 1. L. 99: Entire section amended, p. 432, § 1, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is similar to 29-22-102 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

29-22-103. Emergency response authority may request assistance.

(1) Any emergency response authority that, in its judgment, does not have the equipment, personnel, or expertise necessary to handle a particular hazardous substance incident may make a request to any public agency or private entity possessing such necessary equipment, personnel, or expertise to provide assistance to such emergency response authority.

(2) (a) Any emergency response authority designated in or pursuant to section 29-22-102 may request the department of public health and environment and the county or district health department to provide assistance. If there is no county or district health department for the area in which a hazardous substance incident occurs, such request may be made to the board of county commissioners in its capacity as the county board of health or to the mayor and council or trustees in their capacity as the municipal board of health. In addition, any other state or local agency with useful expertise shall have the authority, upon request, to provide assistance to and cooperate with the emergency response authority designated in or pursuant to section 29-22-102.

(b) The department of public safety is hereby authorized to organize, through mutual aid or other agreements, a state emergency response team and regional emergency response teams. The state team may consist of any federal, state, local, or private entities that have the appropriately trained personnel and the necessary equipment to respond on a statewide basis to a hazardous substance incident. The regional teams may consist of any federal, state, local, or private entities that have the appropriately trained personnel and the necessary equipment to respond on a regional basis to a hazardous substance incident and to assist the state team in responding on a statewide basis to a hazardous substance incident. The state and regional teams shall be available to respond to hazardous substance incidents upon request made to the department of public safety by an emergency response authority. The emergency response authority that requests a response by the state emergency response team, a regional emergency response team, or both shall assure that the reasonable and documented costs of the team's or teams' response are included in any reimbursement for costs sought in accordance with this article. The emergency response authority shall distribute any such reimbursement that is made to it on a pro rata basis to each entity that made up the emergency response team or teams that responded to a hazardous substance incident.

(3) Any municipal or county governing body, any emergency response authority, any private entity, the Colorado state patrol, or the department of public safety may enter into mutual aid or other agreements for the purpose of enhancing the response to hazardous substance incidents. Such agreements may include, but are not limited to, procedures for utilizing equipment, personnel, and technical assistance.

Source: L. 83: Entire article R&RE, p. 1218, § 1, effective July 1. L. 94: (2)(a) amended, p. 2797, § 553, effective July 1. L. 99: (1), (2)(b), and (3) amended, p. 434, § 2, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is the same as 29-22-103 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

29-22-104. Right to claim reimbursement - temporary committee on reimbursement.

(1) A public entity, political subdivision of the state, or unit of local government is hereby given the right to claim reimbursement from the person or persons who have care, custody, and control of the hazardous substance involved at the time of the incident for the reasonable, necessary, and documented costs resulting from action taken to remove, contain, or otherwise mitigate the effects of such incident. When the action to remove, contain, or otherwise mitigate the effects of such an incident also involves extinguishing a fire, the costs may only include the extraordinary expenses related to the hazardous substance and not any expense related to extinguishing the fire. If the property on which the hazardous substance incident occurred lies within an unincorporated area of a county and not otherwise within a fire protection district, then the costs may include any expense related to the hazardous substance incident or to extinguishing the fire. If any such person is the owner of property upon which the hazardous substance incident occurs, collection of such costs may be made pursuant to section 30-10-513.5 (1), C.R.S.

(2) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

(3) (a) The governing body of the emergency response authority designated in section 29-22-102 (3), or when the emergency response authority is the Colorado state patrol, the attorney general, shall be responsible for collecting any claims for reimbursement made pursuant to this section when more than one public entity, political subdivision of the state, or unit of local government has assisted in said removal, containment, or mitigation. Such responsibility shall include, when necessary, the filing of a civil action against the person responsible for the abandonment or spill. Any such agency which rendered assistance may also join any civil action as a party plaintiff or may assign any rights to the appropriate emergency response authority.

(b) Any collections or recovery made by the emergency response authority shall be distributed on a pro rata basis among the agencies which rendered assistance.

(c) The emergency response authority is entitled to recover its reasonable costs in collecting any reimbursement, including any attorney fees. If such costs are not included in a judgment rendered in a civil action, they shall be deducted from any recovery prior to the distribution provided for in paragraph (b) of this subsection (3).

(d) All moneys collected or recovered pursuant to the provisions of this section on behalf of the Colorado state patrol, except for moneys distributed to assisting agencies pursuant to paragraph (b) of this subsection (3) or to pay legal fees or costs pursuant to paragraph (c) of this subsection (3), shall be transmitted to the state treasurer who shall credit the same to the highway users tax fund established in section 43-4-201, C.R.S.
(4) The provisions of this section shall apply to any claim for reimbursement for costs related to a hazardous substance which is authorized by other provisions of law.

(5) (a) (I) No later than June 15, 1999, the executive director of the department of public safety shall appoint a temporary committee on reimbursement for the costs of hazardous substance incidents. The executive director shall appoint as committee members representatives of facilities and transportation companies that produce or handle hazardous substances, insurance companies, fire departments and other hazardous substance incident response agencies, municipal and county governments, the Colorado state patrol, the division of fire safety, and such other entities as the director deems necessary and appropriate. The director shall appoint equal numbers of representatives of private and public entities to the committee.

(II) The committee shall hold its first meeting no later than July 1, 1999, and shall elect a chairperson at the first meeting. Subsequently, the committee shall meet at least once each month until it has made the written recommendations required by subparagraph (I) of paragraph (b) of this subsection (5) and may meet as often as the chairperson deems necessary. Members of the committee shall not receive compensation of any kind.

(b) (I) No later than August 15, 1999, the temporary committee on reimbursement for the costs of hazardous substance incidents shall make written recommendations to the executive director of the department of public safety regarding guidelines for administering and resolving claims for reimbursement made pursuant to this section against any party or person responsible for a hazardous substance incident. Such recommendations may include recommendations for proposed legislation or administrative rules and shall include recommendations for an administrative process to ensure prompt mediation of disputes concerning claims for reimbursement made pursuant to this section by any public entity against any person or party responsible for a hazardous substance incident. Such recommendations shall be designed to provide public entities and persons or parties responsible for hazardous substance incidents with the opportunity to resolve claims for reimbursement that result from hazardous substance incidents in a timely and reasonable manner.

(II) No recommendation made by the temporary committee on reimbursement for the costs of hazardous substance incidents shall be implemented or have the force and effect of law or rule, or be considered by any court or arbiter unless such recommendation is enacted into law or adopted by administrative rule in accordance with article 4 of title 24, C.R.S.

(c) Repealed.

(6) (a) The executive director of the department of public safety shall adopt rules in accordance with article 4 of title 24, C.R.S., to create a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement pursuant to this section shall establish that the costs attributed to a hazardous substance incident are reasonable, necessary, and documented. Such rules shall provide for consideration of all appropriate cost factors including but not limited to acquisition and operation expenses for equipment, salaries and benefits, the cost of expendable supplies, the cost differences between rural and urban areas, and the cost differences between responding entities that utilize paid staff and entities that use volunteers.

(b) The executive director of the department of public safety shall create a list of qualified and knowledgeable persons who are willing to perform the role of voluntary ombudsman, mediator, or arbitrator to resolve disputes regarding claims for reimbursement made pursuant to this section and shall adopt rules in accordance with article 4 of title 24, C.R.S., to establish the process by which the parties involved in such a dispute may access and arrange for the assistance of persons on the list. Persons on the list shall not receive compensation for their services from the state and shall not be state employees. Persons on the list shall not be subject to civil liability for any actions taken in good faith pursuant to this paragraph (b) or any rule adopted by the executive director of the department of public safety in accordance with this section.

Source: L. 83: R&RE, p. 1218, § 1, July 1. L. 89: (1) amended, p. 1280, § 2, effective April 26. L. 99: (3)(d) added, p. 493, § 1, effective April 30; (5) added, p. 435, § 3, effective April 30. L. 2000: (1) amended and (6) added, p. 991, § 1, effective May 26. L. 2001: (5)(c) repealed, p. 1179, § 15, effective August 8.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is similar to 29-22-104 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

ANNOTATION

Law reviews. For article, "Local Governments and the Environment: Part I, CERCLA", see 17 Colo. Law. 1997 (1988). For article, "Local Governments and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988).

29-22-105. Additional reimbursement for costs of assistance - subrogation of rights - recovery of reimbursements by attorney general.

Whenever any fire department or other public agency provides assistance to a designated emergency response authority, as provided in section 29-22-103 or 29-22-104, outside of the area of its jurisdiction, whenever assistance to a designated emergency response authority is provided pursuant to a mutual aid agreement, or whenever the department of public health and environment or local health department provides services such as laboratory analyses, waste removal, transportation, storage, or disposal, the reasonable documented costs of the equipment, supplies, analyses, and personnel provided by such fire department or public agency may be reimbursed, subject to guidelines by the executive director of the department of public safety. Reimbursement shall be for costs not recovered pursuant to section 29-22-104 and shall be out of any moneys made available by legislative appropriation therefor. In the event of such reimbursement, the state of Colorado shall be subrogated to any rights of such fire department or public agency with respect to the amounts so reimbursed. The attorney general shall pursue all available remedies to recover any moneys paid out pursuant to this section from the person responsible for said incident. Any moneys recovered by the attorney general shall be transmitted to the state treasurer. Nothing in this article shall be construed to enlarge or impair any right of recovery or subrogation arising under any other provision of law. The attorney general shall not attempt to recover any moneys from any person responding to a hazardous substance incident pursuant to a mutual aid agreement or to any provision of this article.

Source: L. 83: Entire article R&RE, p. 1219, § 1, effective July 1. L. 91: Entire section amended, p. 721, § 3, effective April 11.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is the same as 29-22-105 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

29-22-106. Emergency response cash fund. (Repealed)

Source: L. 83: Entire article R&RE, p. 1220, § 1, effective July 1. L. 91: Entire section repealed, p. 720, § 1, effective April 11.

29-22-106.5. Hazardous substances planning and response assistance fund - creation - acceptance of gifts, grants, and donations - grants to local government. (Repealed)

Source: L. 99: Entire section added, p. 1106, § 1, effective June 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 2005. (See L. 99, p. 1106.)

29-22-107. Legislative finding - hazardous substance listing required.

(1) The general assembly finds, determines, and declares:

(a) That the protection of the public from the dangers of hazardous substance incidents occurring on private property, other than residential or agricultural property, is a matter of statewide concern;

(b) That, without the provisions of this section, such protection is inadequate; and

(c) That the provisions of this section are enacted in the exercise of the police powers of this state for the purpose of protecting the peace, health, safety, and welfare of the people of this state.

(2) (a) Upon the request of the designated emergency response authority, the department of public health and environment, or the local fire department, any person who, in accordance with the following table, possesses the specified quantity, or a quantity in excess of that specified, of any hazard type of hazardous substance on private property shall provide the designated emergency response authority and

the waste management division of the department of public health and environment and, when requested, the local fire department with a listing of the maximum quantity of each such hazard type reasonably anticipated to be present on the property at any time:

Hazard Type	Quantity
Class A or B explosive	Any quantity
Class C explosive	50 pounds
Etiological agent	Any quantity
Water reactive flammable solid	5 pounds
Pyrophoric material	5 pounds
Organic/inorganic	50 pounds
Poison A or poison B	100 pounds or 15 gallons
Flammable liquid other than a pyrophoric liquid	700 pounds or 120 gallons
Compressed flammable gas other than	3,000 cubic feet or more liquefied petroleum gases at one atmosphere at seventy degrees Fahrenheit
Liquefied petroleum gases	Any installation exceeding 18,000 gallon water capacity
Oxidizer	200 pounds or 120 gallons
Combustible liquid	
Class I	120 gallons
Class II	240 gallons
Class III	500 gallons
Corrosive material	200 pounds or 120 gallons (unless a lesser amount is specified in 49 Code of Federal Regulations Part 172.101)
Irritating material	200 pounds or 120 gallons

(b) With respect to the terms listed as hazard types in the table in paragraph (a) of this subsection

(2):

(I) "Pyrophoric material" means any material which ignites spontaneously in dry or moist air at or below one hundred thirty degrees Fahrenheit.

(II) The remaining terms shall have the meanings ascribed to them in 49 Code of Federal Regulations Subchapter C as in effect on July 1, 1983.

(c) (I) Any person requested to list pursuant to this subsection (2) shall update such list annually unless the designated response authority, the department of public health and environment, or the local fire department requests an updated list prior to the annual update.

(II) Except as to those authorities designated in paragraph (a) of this subsection (2), all information required to be provided under this subsection (2) shall be deemed privileged and shall not be released to any person or organization without the express written consent of the person providing the information.
(III) The person who, without the express written consent required in subparagraph (II) of this paragraph (c), releases information required to be provided by this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S
.
(d) The requirements of this subsection (2) shall not apply to:

(I) Motor fuel products in quantities less than forty-two thousand gallons in underground storage or less than six hundred twenty gallons in one tank or less than one thousand three hundred forty gallons in combination in above ground storage;

(II) Hazardous substances located on residential, personal, or agricultural property
;
(III) Any person who has specific arrangements with a designated emergency response authority for responding to hazardous substance incidents
;
(IV) Hazardous materials in transportation which are subject to the provisions of parts 1, 2, and 3 of article 20 of title 42, C.R.S.;

(V) The armed forces of the United States or the state militia;

(VI) Explosives in forms prescribed by the official United States pharmacopoeia;

(VII) The sale, possession, or use of fireworks;

(VIII) The possession, transportation, and use of small arms ammunition;

(IX) The possession, storage, and transportation of not more than fifty pounds of black powder and two thousand small arms primers for hand-loading of small arms ammunition for personal use unless otherwise regulated by the local jurisdiction;

(X) The transportation and use of explosives or blasting agents by the United States bureau of mines, the federal bureau of investigation, the United States secret service, the United States department of the treasury, or a police or fire department acting in its official capacity;

(XI) Special industrial explosive devices which in the aggregate contain less than fifty pounds of explosives.

(3) On or after October 1, 1983, any person failing to comply with the provisions of subsection (2) of this section shall be subject to a civil penalty of not more than one hundred dollars per day for each day during which said violation occurs. Such penalty shall be determined and collected by a court of competent jurisdiction upon an action instituted by the district attorney. Civil penalties collected shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 83: Entire article R&RE, p. 1220, § 1, effective July 1. L. 84: (2)(a) and (2)(c) amended, p. 811, § 1, effective July 1. L. 85: (2)(c)(II) amended, p. 1363, § 28, effective June 28. L. 91: (3) amended, p. 721, § 4, effective April 11. L. 94: (2)(a) and (2)(c)(I) amended, p. 2798, § 555, effective July 1. L. 2002: (2)(c)(III) amended, p. 1542, § 284, effective October 1. L. 2003: (2)(d)(IV) amended, p. 2001, § 61, effective May 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is the same as 29-22-107 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(c)(III), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

29-22-108. Criminal penalties.

(1) Any person who intentionally causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provision of this article commits a class 4 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully, recklessly, or with criminal negligence as defined in section 18-1-501, C.R.S., causes or substantially contributes to the occurrence of a hazardous substance incident in violation of the provisions of this article commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 83: Entire article R&RE, p. 1222, § 1, effective July 1. L. 2002: Entire section amended, p. 1542, § 285, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is the same as 29-22-108 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

Cross references: (1) For the penalty for abandonment of a vehicle containing hazardous waste or the intentional spilling of hazardous waste on streets or highways, see § 18-13-112; for the penalty for hazardous waste violations, see § 25-15-310; for the penalty for abandonment of a vehicle containing hazardous materials or the intentional spilling of hazardous materials on streets or highways, see § 42-20-113; for penalties for violations of the "Hazardous Materials Transportation Act of 1987", see §§ 42-20-106, 42-20-109, 42-20-111, 42-20-113, 42-20-204, and 42-20-305.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

29-22-109. Persons rendering assistance relating to hazardous substance incidents - legislative declaration - exemption from civil liability.

(1) The general assembly hereby finds and declares that knowledgeable individuals and organizations should be encouraged to lend expert assistance in the event of a hazardous substance incident. The purpose of this section is to so encourage such individuals and organizations to lend assistance by providing them with limited immunity from civil liability.

(2) As used in this section, "person" means individual, government or governmental subdivision or agency, corporation, partnership, or association or any other legal entity.

(3) (a) Notwithstanding any provision of law to the contrary, any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous substance incident, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up, or dispose of any such incident, shall not be subject to civil liability for such assistance or advice, except as provided in subsection (4) of this section.

(b) Notwithstanding any provision of law to the contrary, any person who provides assistance upon request of any emergency response authority, police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of hazardous substance, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance, except as provided in subsection (4) of this section.

(4) The exemption from civil liability provided for in this section shall not apply to:

(a) Any person whose act or omission caused in whole or in part such discharge and who would otherwise be liable therefor;

(b) Any person, other than the employee of a governmental subdivision or agency, who receives compensation other than reimbursement for out-of-pocket expenses for his assistance or advice;

(c) Any person's gross negligence or reckless, wanton, or intentional misconduct.

(5) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to article 10 of title 24, C.R.S., the "Colorado Governmental Immunity Act".

Source: L. 83: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1983. This section, as it existed in 1983, is the same as 29-22-109 as said section existed in 1982, the year prior to the repeal and reenactment of this article.

29-22-110. Colorado state patrol to provide information.

The Colorado state patrol shall compile and maintain information on the emergency response capabilities of public and private agencies throughout the state to enable the state patrol to answer any inquiry concerning the nearest agencies or entities available to contribute equipment and personnel to aid in the emergency response to any hazardous substance incident. The state patrol shall also compile and maintain information regarding which local, state, or federal agencies or entities should be notified of any hazardous substance incident. The state patrol shall establish, maintain, and publicize a telephone service to make such information available to the public twenty-four hours each day and shall notify each emergency response authority designated in or pursuant to section 29-22-102 as responsible for the emergency response to a hazardous substance incident of such service. With respect to the powers and duties specified in this section, the state patrol shall have no rule-making authority and shall avail itself of all available private resources. The state patrol shall coordinate its activities pursuant to this section with the department of public health and environment and the department of local affairs.

Source: L. 99: Entire section added, p. 437, § 6, effective April 30.

SPECIAL STATUTORY AUTHORITIES

ARTICLE 23 PUEBLO DEPOT ACTIVITY DEVELOPMENT AUTHORITY

29-23-101. Short title.

This article shall be known and may be cited as the "Pueblo Depot Activity Development Authority Act".

Source: L. 94: Entire article added, p. 954, § 1, effective April 28.

29-23-102. Legislative declaration.

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

(a) Changes in the world's political, social, and economic policies have resulted in changes in the military needs of the United States;

(b) Congress has ordered that certain military installations be closed or realigned pursuant to the "Defense Authorization and Base Realignment and Closure Act", 26 U.S.C. sec. 2687, as amended;

(c) Base closure or realignment has a severe and adverse impact on the economy of the community, region, and state where the installation is located;
(d) The installations ordered closed or realigned represent an investment of millions of dollars in the land, improvements, and equipment located on the installation by the taxpayers of the community, region, state, and nation; and

(e) The land, improvements, and equipment represent a potential economic re**Source** to promote new employment opportunities and, thereby, enhance the state and local tax base.

(2) The general assembly further finds and declares that:

(a) Congress has ordered the Pueblo depot activity to be realigned, then closed, pursuant to the "Defense Authorization and Base Realignment and Closure Act", 26 U.S.C. sec. 2687, as amended;

(b) The Pueblo depot activity encompasses some thirty-four and three-tenths square miles of land in Pueblo county and contains more than one thousand two hundred buildings; and

(c) The creation of a Pueblo depot activity development authority is necessary to provide a public entity which can secure from the Army of the United States the excess and surplus land, buildings, and equipment; enter into cooperative agreements; and acquire, construct, reconstruct, repair, alter, improve, extend, own, lease, operate, and dispose of properties, in an attempt to promote the development of the Pueblo depot activity for the people of this state.

(3) The general assembly further finds and declares that the Pueblo depot activity development authority is created for the benefit and advantage of and to promote the health, safety, and welfare of the people of the state of Colorado and that, as such, it is the intent of the general assembly that this article shall be liberally constructed to effect its purpose.

Source: L. 94: Entire article added, p. 954, § 1, effective April 28.

29-23-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Authority" means the Pueblo depot activity development authority created by this article.

(2) "Board" means the board of directors of the Pueblo depot activity development authority.

(3) "Bond" means any bond, note, interim certificate, contract, or other evidence of indebtedness of the authority authorized by this article.

(4) "Revenues" means any fees, rates, charges, assessments, grants, contributions, or other income and revenues received by the authority.

Source: L. 94: Entire article added, p. 955, § 1, effective April 28.

29-23-104. Authority - creation.

There is hereby created the Pueblo depot activity development authority which shall be a body corporate and politic and a political subdivision of the state. The authority shall not be an agency of state government. The authority shall have perpetual existence and succession.

Source: L. 94: Entire article added, p. 956, § 1, effective April 28.

Cross references: For the provisions that designate the Pueblo depot activity development authority as a "special purpose authority" for the purposes of section 20 of article X of the Colorado constitution, see § 24-77-102 (15).

29-23-105. Boundaries of the authority - inclusion - exclusion.

(1) The area comprising the authority shall consist of:

Township 19 South, Range 62 West of the 6th P.M., Pueblo County

Section 32 through 36: All

Section 31: Lots 1, 2, 3, and 4, E1/2 NW1/4 and S1/2

Township 20 South, Range 62 West of the 6th P.M., Pueblo County

Section 1 through 17 and 19 through 29: All

Section 18: All except the following described land:

Beginning at a point which is 244.2 feet North of the Southwest corner of said Section 18; thence East 1,320 feet, thence North 660 feet; thence West 1,320 feet; thence South 660 feet to point of beginning; and except SE1/4 SE1/4

Section 30: E1/2

Section 31: Portion NE1/4 lying North of the North right-of-way line of A.T.& S.F. Railroad; and all of the E1/2 E1/2 except the NE1/4 NE1/4 lying North of the North right-of-way of the A.T.& S.F. Railroad

Section 32: Portion beginning at the Northeast corner of Section 32; thence South to the Southeast corner of the NE1/4 of said Section; thence west along the East-West center line of said Section to a point which is 1,377.6 feet East of the center of said Section; thence North 990 feet; thence West 1,817.5 feet; thence South 990 feet to a point, which point is 425 feet West of the center of said Section; thence Southeasterly 711 feet to a point on the North-South center line of said Section, which point is South a distance of 570 feet from the center of said Section; thence Southeasterly 1,046.5 feet to a point on the Northerly right-of-way line of the A.T. & S.F. Railroad, which point is East a distance of 853.2 feet from the point of intersection of said right-of-way with the North-South center line of said section; thence Westerly along said right-of-way line to its point of intersection with the West line of said section; thence North to the Northwest corner of said Section; thence East to the point of beginning

Section 33: N1/2

Section 34: N1/2

Section 35: N1/2

(2) (a) Property may be included in the area comprising the authority upon satisfying the following requirements:

(I) The owner of the property considered for inclusion must file a written petition to include property with the board; and

(II) The Pueblo county board of county commissioners and the city council of the city of Pueblo must recommend to the board that the property be included; and

(III) There must be a public hearing on the petition, preceded by at least ten days' notice of the hearing published in a newspaper of general circulation in Pueblo county.

(b) Subject to the provisions of this section, the board may approve, modify, or deny the petition and may impose such terms and conditions as it deems appropriate to further its duties and responsibilities.

(c) To approve or modify the petition, the board must take all of the following actions:

(I) Five members of the board must vote in favor of the petition or modification.

(II) The board must find that the requirements of subparagraphs (I) to (III) of paragraph (a) of this subsection (2) have been met.

(III) The board must find that there exists or will exist in the foreseeable future an interrelationship between the authority and the property contained in the petition and that the inclusion of the property in the authority will contribute to the fulfillment of the authority's duties.

(3) Property may be excluded from the boundaries of the authority in the same manner as provided in subsection (2) of this section for the inclusion of property in the boundaries; except that, to approve a petition for exclusion, the board must find there does not exist or will not exist in the foreseeable future an interrelationship between the authority and the property contained in the petition for exclusion and that the exclusion of the property will not significantly adversely impact the authority's operating and bond retirement revenue.

Source: L. 94: Entire article added, p. 956, § 1, effective April 28.

29-23-106. Board of directors - membership.

(1) The authority shall be governed by a board of directors which shall consist of seven members. Three members shall be appointed by the Pueblo county board of county commissioners, three members shall be appointed by the city council of the city of Pueblo, and one shall be jointly appointed by the Pueblo county board of county commissioners and the Pueblo city council. The members shall serve for terms of four years; except that the members first appointed shall serve terms as follows:

(a) Of the members appointed by the Pueblo county board of county commissioners, one shall serve a term of one year, one shall serve a term of two years, and one shall serve a term of three years.

(b) Of the members first appointed by the city council of the city of Pueblo, one shall serve a term of one year, one shall serve a term of two years, and one shall serve a term of three years.

(c) The member first appointed jointly shall serve a term of four years.

(2) A member may be reappointed upon expiration of a term. The governing body making the original appointment shall fill any vacancy by appointment for the remainder of the unexpired term.

(3) The board may establish a citizens' commission whose members reflect the economic, racial, social, ethnic, and governmental diversity of Pueblo county and one or more technical committees. Any commission or committee established by the board shall serve solely in an advisory capacity to the board.

(4) The board may appoint such additional nonvoting members to the board as it deems necessary. Additional members shall not be included in determining whether a quorum is present.

Source: L. 94: Entire article added, p. 958, § 1, effective April 28.

29-23-107. Board of directors - organization.

(1) The member appointed jointly by the Pueblo county board of county commissioners and the city council of the city of Pueblo shall call and convene the initial organizational meeting of the board and shall serve as the initial chair. At such meeting, the board shall adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business.

(2) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of a majority of its members present. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(3) Members of the board shall receive no compensation but shall be reimbursed for reasonable and necessary actual expenses incurred in the performance of their official duties as members of the board.

Source: L. 94: Entire article added, p. 959, § 1, effective April 28.

29-23-108. Board of directors - powers and duties.

(1) The board shall have the power to promote the reuse and development of the Pueblo depot activity for the benefit of the community and the state.

(2) In addition to any other powers specifically granted to the board in this article, the board has the following powers and duties:

(a) To have and to use a seal and to alter the same at pleasure;

(b) To maintain an office at such place as it may designate;

(c) To borrow money and contract to borrow money for the purpose of issuing bonds, notes, bond anticipation notes, or other obligations for any of the authority's corporate purposes and to fund or refund such obligations as provided in this article;

(d) To sue and be a party to suits, actions, and proceedings;

(e) To enter into contracts and agreements affecting the affairs of the authority including, but not limited to, contracts with the United States and the state of Colorado and any of their agencies or instrumentalities, political subdivisions of the state of Colorado, corporations, limited liability companies, partnerships, limited partnerships, associations, organizations, or other legal entities and individuals;

(f) To acquire, hold, lease, and otherwise dispose of and encumber real and personal property and equipment;

(g) To acquire, lease, rent, manage, operate, construct, and maintain facilities and improvements of the Pueblo depot activity;

(h) To operate transportation systems, including but not limited to rail switching, van pools, and commuter shuttles for the direct benefit of the businesses, employees, and visitors of the Pueblo depot activity;

(i) To provide for utilities and related services for the Pueblo depot activity, including but not limited to potable water, wastewater, gas, electricity, fire protection, and security;

(j) To make and pass resolutions and orders which are necessary for the governance and management of the affairs of the authority, for the execution of the powers vested in the authority, and for carrying out the provisions of this article;

(k) To prescribe by resolution a system of business administration, to create any and all necessary offices, to establish the powers, duties, and compensation of all employees, and to require and set the amount of all official bonds necessary for the protection of the funds and property of the authority;

(l) To appoint and retain employees, agents, and consultants to make recommendations, coordinate authority activities, conduct routine business of the authority, and act on behalf of the authority under such conditions and restrictions as shall be fixed by the board;

(m) To adopt plans as guidance for the development and redevelopment of the Pueblo depot activity;

(n) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(o) To procure insurance against any loss in connection with its property and other assets including loans and loan notes in such amounts and from such insurers as it may determine;

(p) To procure insurance or guarantees from any public or private entity, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority, including the power to pay premiums on any such insurance;

(q) To receive and accept from any **Source** gifts or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article, including but not limited to gifts or grants from any department, agency, or instrumentality of the United states for any purpose consistent with the provisions of this article;

(r) To operate transportation systems, utilities, and other services directly related to the purposes of the authority and property outside the boundaries of the authority as are necessary to serve directly the Pueblo depot activity and promote its reuse and development; except that the authority shall not operate transportation systems, utilities, services, and properties in any territory located outside the boundaries of the authority and within the boundaries of a municipality without the consent of the governing body of such municipality or within the unincorporated boundaries of a county without the consent of the governing body of such county; and

(s) To have and exercise all rights and powers necessary to carry out the purposes and intent of this article, including any rights and powers incidental to or implied from the specific powers granted to the authority by this article.

Source: L. 94: Entire article added, p. 959, § 1, effective April 28.

29-23-109. Annual report.

The authority shall, in addition to any other required audit or reporting requirements, present an annual written program and financial report to the Pueblo county board of county commissioners and the city council of the city of Pueblo no later than ninety days after the close of the authority's fiscal year.

Source: L. 94: Entire article added, p. 961, § 1, effective April 28.

29-23-110. Bonds.

(1) The authority may, from time to time, issue bonds for any of its corporate purposes. The bonds shall be issued pursuant to resolution of the board and shall be payable solely out of all or a specified portion of the revenues of the authority as designated by the board.

(2) Bonds of the authority, as provided in the resolution of the authority under which the bonds are authorized or as provided in a trust indenture between the authority and any commercial or trust company having full trust powers, may:

(a) Be executed and delivered by the authority in the form, in denominations, upon the terms and maturities, and at the times established by the board;

(b) Be subject to optional or mandatory redemption prior to maturity with or without a premium;

(c) Be in fully registered form or bearer form registrable as to principal or interest or both;

(d) Bear such conversion privileges and be payable in such installments and at such times not exceeding forty years from the date of issuance as established by the board;

(e) Be payable at such place or places whether within or without the state as established by the board;

(f) Bear interest at such rate or rates per annum, which may be fixed or vary according to index, procedure, or formula or as determined by the authority or its agents without regard to any interest rate limitation appearing in any other law of the state;

(g) Be subject to purchase at the option of the holder or the board;

(h) Be evidenced in the manner established by the board, and executed by the officers of the authority, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either of an officer of the authority or of an agent authenticating the same;

(i) Be in the form of coupon bonds which have attached interest coupons bearing a manual of a facsimile signature of an officer of the authority; and

(j) Contain any other provisions not inconsistent with this article.

(3) The bonds may be sold at public or private sale at the price or prices, in the manner, and at the times as determined by the board, and the board may pay all fees, expenses, and commissions which it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the authority. Any outstanding bonds may be refunded by the authority pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments.

(4) The resolution or trust indenture authorizing the issuance of the bonds may pledge all or a portion of the property or revenues of the authority, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds as the authority deems appropriate, may set forth the rights and remedies of the holders of any of the bonds, and may contain provisions which the authority deems appropriate for the security of the holders of the bonds, including but not limited to provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds, including the redemption price or the purchase price.

(5) Any pledge of revenues or property made by the authority or by any person or governmental unit with which the authority contracts shall be valid and binding from the time the pledge is made. The revenues or property so pledged shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party, regardless of whether the party has notice of such lien. The instrument by which the pledge is created need not be recorded or filed.
(6) Neither the members of the board, employees of the authority, nor any person executing the bonds shall be liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

(7) The authority may purchase its bonds out of any available funds and may hold, pledge, cancel, or resell such bonds subject to and in accordance with agreements with the holders thereof.

Source: L. 94: Entire article added, p. 961, § 1, effective April 28.

29-23-111. Agreement of the state not to limit or alter rights of obligees.

The state hereby pledges and agrees with the holders of any bonds issued under this article and with those parties who enter into contract with the authority that the state will not limit, alter, restrict, or impair the rights vested in the authority or the rights or obligations of any person with which it contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of any bonds of the authority until such bonds have been paid or until adequate provision for payment has been made. The authority may include this provision and undertaking for the state in such bonds.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-112. Investments.

The authority may invest or deposit any funds in the manner provided by part 6 of article 75 of title 24, C.R.S. In addition, the authority may direct a corporate trustee which holds funds of the authority to invest or deposit such funds in investments or deposits other than those specified by such part 6 if the board determines, by resolution, that such investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits specified by such part 6, and such investment will assist the authority in the financing, construction, maintenance, or operation of the Pueblo depot activity.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-113. Bonds eligible for investment.

All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardian trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued under this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if such bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-114. Exemption from taxation - securities laws.

The income or other revenues of the authority, all property interests of the authority, any bonds issued by the authority, and the transfer of and the income from any bonds issued by the authority shall be exempt from all taxation and assessments of the state. Bonds issued by the authority shall be exempt from the provisions of article 51 of title 11, C.R.S.

Source: L. 94: Entire article added, p. 963, § 1, effective April 28.

29-23-115. Limitation of actions.

An action or proceeding, at law or in equity, to question the validity or enjoin the performance of any act or proceeding relating to the issuance of any bond of the authority shall be barred unless commenced within thirty days after the performance of the act or the effective date thereof, whichever is later.

Source: L. 94: Entire article added, p. 964, § 1, effective April 28.