

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0676.01 Bob Lackner

HOUSE BILL 11-1215

HOUSE SPONSORSHIP

Ryden,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES DESIGNED TO IMPROVE THE ACCOUNTABILITY
102 TO THE PUBLIC OF SPECIAL PURPOSE AUTHORITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Applicability of specified laws to special purpose authorities.

The bill makes a special purpose authority (authority) subject to the following statutory provisions to the same extent as any other political subdivision of the state that is also subject to the administrative direction of any department, commission, bureau, or agency of the state:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! Statutory provisions addressing open meetings; and
- ! The "Colorado Open Records Act".

Covered persons' conflicting interest transactions.

! The bill prohibits an authority from making any loans to a member of the board of directors or comparable governing body of a special purpose authority or an officer or employee of such authority (covered person). Any covered person who assents to or participates in the making of any such loan is liable to the authority for the amount of such loan until the loan has been repaid.

! The bill specifies circumstances in which a contract, transaction, or other financial relationship is permitted between an authority and a covered person, between the authority and a party related to a covered person, or between the authority and an entity in which a covered person is a director or officer or has a financial interest.

Removal of board member of special purpose authority for cause. In the case of any board member of an authority who was appointed by the governor, the bill authorizes the governor to remove such board member for malfeasance in office, for failure to regularly attend meetings, or for any other cause that renders the member incapable or unfit to discharge the duties of his or her office. Any such removal shall not be subject to review.

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

2 **SECTION 1.** Title 24, Colorado Revised Statutes, is amended BY
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 19.9**

5 **Accountability of Special Purpose Authorities**

6 **24-19.9-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "CONFLICTING INTEREST TRANSACTION" MEANS A CONTRACT,
9 TRANSACTION, OR OTHER FINANCIAL RELATIONSHIP BETWEEN AN
10 AUTHORITY AND A COVERED PERSON, BETWEEN THE AUTHORITY AND A
11 PARTY RELATED TO A COVERED PERSON, OR BETWEEN THE AUTHORITY
12 AND AN ENTITY IN WHICH A COVERED PERSON IS A DIRECTOR OR OFFICER

1 OR HAS A FINANCIAL INTEREST.

2 (2) "COVERED PERSON" MEANS A MEMBER OF THE BOARD OF
3 DIRECTORS OR COMPARABLE GOVERNING BODY OF A SPECIAL PURPOSE
4 AUTHORITY OR AN OFFICER OR EMPLOYEE OF SUCH AUTHORITY.

5 (3) "OFFICIAL ACT" OR "OFFICIAL ACTION" MEANS ANY VOTE,
6 DECISION, RECOMMENDATION, APPROVAL, DISAPPROVAL, OR OTHER
7 ACTION, INCLUDING INACTION, THAT INVOLVES THE USE OF
8 DISCRETIONARY AUTHORITY.

9 (4) "SPECIAL PURPOSE AUTHORITY" OR "AUTHORITY" SHALL HAVE
10 THE SAME MEANING AS SET FORTH IN SECTION 24-77-102 (15).

11 **24-19.9-102. Applicability of specified statutes to special**
12 **purpose authorities.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF
13 LAW, AN AUTHORITY SHALL BE SUBJECT TO THE FOLLOWING STATUTORY
14 PROVISIONS TO THE SAME EXTENT AS ANY OTHER POLITICAL SUBDIVISION
15 OF THE STATE THAT IS ALSO SUBJECT TO THE ADMINISTRATIVE DIRECTION
16 OF ANY DEPARTMENT, COMMISSION, BUREAU, OR AGENCY OF THE STATE:

17 (a) STATUTORY PROVISIONS ADDRESSING OPEN MEETINGS,
18 CODIFIED IN PART 4 OF ARTICLE 6 OF THIS TITLE; AND

19 (b) THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72
20 OF THIS TITLE.

21 **24-19.9-103. Covered persons' conflicting interest**
22 **transactions.** (1) NO LOANS SHALL BE MADE BY AN AUTHORITY TO A
23 COVERED PERSON. ANY COVERED PERSON WHO ASSENTS TO OR
24 PARTICIPATES IN THE MAKING OF ANY SUCH LOAN SHALL BE LIABLE TO THE
25 AUTHORITY FOR THE AMOUNT OF SUCH LOAN UNTIL THE REPAYMENT
26 THEREOF.

27 (2) NO CONFLICTING INTEREST TRANSACTION SHALL BE VOID OR

1 VOIDABLE OR BE ENJOINED, SET ASIDE, OR GIVE RISE TO AN AWARD OF
2 DAMAGES OR OTHER SANCTIONS IN A PROCEEDING BY A COVERED PERSON
3 OR BY OR IN THE RIGHT OF THE AUTHORITY, SOLELY BECAUSE THE
4 CONFLICTING INTEREST TRANSACTION INVOLVES A COVERED AUTHORITY
5 OR A PARTY RELATED TO A COVERED PERSON OR AN ENTITY IN WHICH A
6 COVERED PERSON IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL
7 INTEREST OR SOLELY BECAUSE THE COVERED PERSON IS PRESENT AT OR
8 PARTICIPATES IN THE MEETING OF THE AUTHORITY'S BOARD OF DIRECTORS
9 OR OF THE COMMITTEE OF THE BOARD OF DIRECTORS THAT AUTHORIZES,
10 APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION OR
11 SOLELY BECAUSE THE COVERED PERSON'S VOTE IS COUNTED FOR SUCH
12 PURPOSE IF:

13 (a) THE MATERIAL FACTS AS TO THE COVERED PERSON'S
14 RELATIONSHIP OR INTEREST AND AS TO THE CONFLICTING INTEREST
15 TRANSACTION ARE DISCLOSED OR ARE KNOWN TO THE BOARD OF
16 DIRECTORS OR THE COMMITTEE, AND THE BOARD OF DIRECTORS OR
17 COMMITTEE IN GOOD FAITH AUTHORIZES, APPROVES, OR RATIFIES THE
18 CONFLICTING INTEREST TRANSACTION BY THE AFFIRMATIVE VOTE OF A
19 MAJORITY OF THE DISINTERESTED DIRECTORS, EVEN THOUGH THE
20 DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM;

21 (b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
22 INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE
23 DISCLOSED OR ARE KNOWN TO THE MEMBERS ENTITLED TO VOTE THEREON,
24 AND THE CONFLICTING INTEREST TRANSACTION IS SPECIFICALLY
25 AUTHORIZED, APPROVED, OR RATIFIED IN GOOD FAITH BY A VOTE OF THE
26 MEMBERS ENTITLED TO VOTE THEREON; OR

27 (c) THE CONFLICTING INTEREST TRANSACTION IS FAIR AS TO THE

1 AUTHORITY.

2 (3) COMMON OR INTERESTED DIRECTORS MAY BE COUNTED IN
3 DETERMINING THE PRESENCE OF A QUORUM AT A MEETING OF THE BOARD
4 OF DIRECTORS OR OF A COMMITTEE THAT AUTHORIZES, APPROVES, OR
5 RATIFIES THE CONFLICTING INTEREST TRANSACTION.

6 (4) FOR PURPOSES OF THIS SECTION, A "PARTY RELATED TO A
7 DIRECTOR" MEANS A SPOUSE, A DESCENDENT, AN ANCESTOR, A SIBLING,
8 THE SPOUSE OR DESCENDENT OF A SIBLING, AN ESTATE OR TRUST IN WHICH
9 THE DIRECTOR OR A PARTY RELATED TO A DIRECTOR HAS A BENEFICIAL
10 INTEREST, OR AN ENTITY IN WHICH A PARTY RELATED TO A DIRECTOR IS A
11 DIRECTOR, OFFICER, OR HAS A FINANCIAL INTEREST.

12 **24-19.9-104. Removal of board members for cause.**
13 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY MEMBER OF THE
14 BOARD OF DIRECTORS OF AN AUTHORITY WHO WAS APPOINTED TO THE
15 BOARD OF SUCH AUTHORITY BY THE GOVERNOR MAY BE REMOVED BY THE
16 GOVERNOR FOR MALFEASANCE IN OFFICE, FOR FAILURE TO REGULARLY
17 ATTEND MEETINGS, OR FOR ANY OTHER CAUSE THAT RENDERS THE
18 MEMBER INCAPABLE OR UNFIT TO DISCHARGE THE DUTIES OF HIS OR HER
19 OFFICE. ANY SUCH REMOVAL, WHEN MADE, SHALL NOT BE SUBJECT TO
20 REVIEW.

21 **SECTION 2. Effective date.** This act shall take effect July 1,
22 2011.

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