TITLE 41

AERONAUTICS: AIRCRAFT AND AIRPORTS

AIRCRAFT

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AIRCRAFT

ARTICLE 1

Aeronautics Act of 1937

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41-1-101. Short title.

This article shall be known and may be cited as the "Aeronautics Act of 1937".

Source: L. 37: p. 250, § 1. **CSA:** C. 17, § 9. **CRS 53:** § 5-1-1. **C.R.S. 1963:** § 5-1-1.

Cross references: For use of an aircraft in hunting wildlife, see § 33-6-124; for the establishment of the Colorado division of civil air patrol within the department of military and veterans affairs, see § 28-1-101.

41-1-102. Interpretation.

This article shall be so interpreted and construed as to effect its general purpose and to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

Source: L. 37: p. 254, § 13. **CSA:** C. 17, § 21. **CRS 53:** § 5-1-8. **C.R.S. 1963:** § 5-1-8.

41-1-103. Navigation of aircraft.

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it is unlawful for any person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force.

Source: L. 37: p. 251, § 3. **CSA:** C. 17, § 11. **CRS 53:** § 5-1-2. **C.R.S. 1963:** § 5-1-2.

41-1-104. License for navigation.

The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating aircraft designated in section 41-1-103 in any form of navigation for which license to operate such aircraft would be required by the United States government shall have the qualifications necessary for obtaining and holding the class of license required by the United States

government. It is unlawful for any person to engage in operating such aircraft within this state in any form of navigation unless he has such a license.

Source: L. 37: p. 251, § 4. **CSA:** C. 17, § 12. **CRS 53:** § 5-1-3. **C.R.S. 1963:** § 5-1-3.

41-1-105. Display of license.

The certificate of the license shall be kept in the personal possession of the licensee when he is operating aircraft within this state, and must be presented for inspection upon the demand of any passenger, any official of the United States department of commerce, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he lands.

Source: L. 37: p. 251, § 5. **CSA:** C. 17, § 13. **CRS 53:** § 5-1-4. **C.R.S. 1963:** § 5-1-4.

41-1-106. Sovereignty in space in state.

Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by United States law.

Source: L. 37: p. 251, § 6. **CSA:** C. 17, § 14. **CRS 53:** § 5-1-5. **C.R.S. 1963:** § 5-1-5.

ANNOTATION

Law reviews. For article, "From the Floor of Hell to the Ceiling of Heaven", see 16 Dicta 125 (1939).

41-1-107. Ownership of space.

The ownership of space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight of aircraft.

Source: L. 37: p. 251, § 7. **CSA:** C. 17, § 15. **CRS 53:** § 5-1-6. **C.R.S. 1963:** § 5-1-6.

Cross references: For estates above the surface, see article 32 of title 38.

ANNOTATION

Law reviews. For article, "From the Floor of Hell to the Ceiling of Heaven", see 16 Dicta 125 (1939). 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). For article, "Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law", see 84 U. Colo. L. Rev. 97 (2013). For article, "Privacy in a Time of Drones", see 50 Colo. Law. 38 (June 2021).

Landowner can exclude public from waters of nonnavigable stream crossing his lands. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

"Breaking the close" deemed trespass. Whoever "breaks the close"—intrudes upon the space above the surface of the land—without the permission of the owner, whether it be for fishing or for other recreational purposes, such as floating, commits a trespass. People v. Emmert, 198 Colo. 237, 597 P.2d 1025 (1979).

Owner of stream bed in exclusive control of everything above. The ownership of the bed of a nonnavigable stream vests in the owner the exclusive right of control of everything above the stream bed, subject only to constitutional and statutory limitations, restrictions and regulations. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

Applied in Thompson v. City and County of Denver, 958 P.2d 525 (Colo. App. 1998).

41-1-108. Penalty for violation.

Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 37: p. 251, § 12. **CSA:** C. 17, § 20. **CRS 53:** § 5-1-7. **C.R.S. 1963:** § 5-1-7.

ARTICLE 2

Operating an Aircraft under the Influence of Alcohol or Drugs

41-2-101. Definitions.

41-2-102. Operating an aircraft under the influence - operating an aircraft with excessive alcohol content - tests - penalties - useful public service program - definition.

41-2-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Aircraft" means any vehicle used or designed for carrying any person, persons, or freight and used or designed for aviation or flight in the air in control of a crew member, whether it is or is not a certificated vehicle under the rules of the federal aviation administration, and the federal department of transportation, or its successor.

(2) "Controls" means the wheel, yoke, stick, cyclic, collective, throttle, mixture, propeller, lever, switch, gage, circuit breaker, doors, emergency exits, or any other thing that pertains to the safe operation of an aircraft.

(3) "Crewmember" means any person assigned to perform any duty in an aircraft during flight time.

(4) "Flight time" means any time from the moment an aircraft is occupied and in control.

(5) "Operating an aircraft" means being in actual physical control or having immediate access to the controls of an aircraft, or being involved in the safe operation of any part of an aircraft as a crewmember.

Source: L. 90: Entire article RC&RE, p. 1769, § 1, effective July 1.

41-2-102. Operating an aircraft under the influence - operating an aircraft with excessive alcohol content - tests - penalties - useful public service program - definition.

(1) (a) It is a misdemeanor for any person who is under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, to operate any aircraft in this state.

(b) Repealed.

(c) For the purposes of this subsection (1), "one or more drugs" shall mean all substances defined as a drug in section 27-80-203 (13), C.R.S., and all controlled substances, as defined in section 18-18-102 (5), C.R.S.

(d) The fact that any person charged with a violation of this subsection (1) is or has been entitled to use one or more drugs under the laws of this state shall not constitute a defense against any charge of violating this subsection (1).

(e) "Operating an aircraft under the influence" means operating an aircraft when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs affects him to a degree that he is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of an aircraft.

(f) Pursuant to section 16-2-106, C.R.S., in charging a violation of paragraph (a) of this subsection (1), it shall be sufficient to describe the offense charged as "operated an aircraft under the influence of alcohol or drugs or both".

(2) (a) It is a class 1 misdemeanor for any person to operate any aircraft in this state when the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, is 0.04 or more grams of alcohol per hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of operating an aircraft or within two hours after such operation. During a trial, if the state's evidence raises the issue, or if a defendant presents some credible evidence, that the defendant consumed alcohol between the time that the defendant stopped operating an aircraft and the time that testing occurred, such issue shall be an affirmative defense, and the prosecution must establish beyond a reasonable doubt that the minimum 0.04 blood or breath alcohol content required in this subsection (2)(a) was reached as a result of alcohol consumed by the defendant before the defendant stopped operating an aircraft.

(b) In any prosecution for a violation of this subsection (2), the defendant shall be entitled to offer direct and circumstantial evidence to show that there is a disparity between what the tests show and other facts so that the trier of fact could infer that the tests were in some way defective or inaccurate. Such evidence may include testimony of nonexpert witnesses relating to the absence of any or all of the common symptoms or signs of intoxication for the purpose of impeachment of the accuracy of the analysis of the person's blood or breath.

(c) Pursuant to section 16-2-106, C.R.S., in charging a violation of this subsection (2), it shall be sufficient to describe the offense charged as "operated an aircraft with excessive alcohol content".

(3) Notwithstanding the provisions of section 18-1-408, C.R.S., during a trial of any person accused of violating subsection (1) and subsection (2) of this section, the court shall not require the prosecution to elect between the two violations. The court or a jury may consider and convict

the person of a violation of either subsection (1) or subsection (2), or both subsection (1) and subsection (2), of this section. If the person is convicted of more than one violation, the sentences imposed shall run concurrently.

(4) (a) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the presumption that the defendant was under the influence of alcohol if:

(I) There was at such time 0.04 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood; or

(II) There was at such time 0.04 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath.

(b) The limitations of this subsection (4) shall not be construed as limiting the introduction, reception, or consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or whether or not his ability to operate an aircraft was impaired by the consumption of alcohol.

(5) Following the lawful contact with a person who has been operating an aircraft, and when a law enforcement officer reasonably suspects that a person was operating an aircraft while under the influence of alcohol, such law enforcement officer may conduct a preliminary screening test using a device approved by the executive director of the department of public health and environment after first advising the operator that the operator may either refuse or agree to provide a sample of the operator's breath for such preliminary test. The results of this preliminary screening test may be used by a law enforcement officer in determining whether probable cause exists to believe such person was operating an aircraft in violation of subsection (1) or (2) of this section and whether to administer a test pursuant to paragraph (a) of subsection (6) of this section. Neither the results of such preliminary screening test nor the fact that the person refused such test shall be used in any court action except in a hearing outside of the presence of a jury, when such hearing is held to determine if a law enforcement officer had probable cause to believe that the operator committed a violation of subsection (1) or (2) of this section. The results of such preliminary screening test shall be made available to the operator or his attorney on request. The preliminary screening test shall not substitute for or qualify as the test or tests required by paragraph (a) of subsection (6) of this section.

(6) (a) (I) On and after July 1, 1990, any person who operates an aircraft anywhere in this state shall be deemed to have expressed his consent to the provisions of this paragraph (a).

(II) Any person who operates an aircraft anywhere in this state shall be required to take and complete, and to cooperate in the taking and completing of, any test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood or breath when so requested and directed by a law enforcement officer having probable cause to believe that the

person was operating an aircraft in violation of subsection (1) or (2) of this section. Except as otherwise provided in this section, if such person requests that said test be a blood test, then the test shall be of his blood; but, if such person requests that a specimen of his blood not be drawn, then a specimen of his breath shall be obtained and tested. If such person elects either a blood test or a breath test, such person shall not be permitted to change such election, and, if such person fails to take and complete, and to cooperate in the completing of, the test elected, such failure shall be deemed to be a refusal to submit to testing. If such person is unable to take, or to complete, or to cooperate in the completing of a breath test because of injuries, illness, disease, physical infirmity, or physical incapacity, or if such person is receiving medical treatment at a location at which a breath testing instrument certified by the department of public health and environment is not available, the test shall be of such person's blood.

(III) Any person who operates an aircraft anywhere in this state shall be required to submit to and to complete, and to cooperate in the completing of, a test or tests of his blood, saliva, and urine for the purpose of determining the drug content within his system when so requested and directed by a law enforcement officer having probable cause to believe that the person was operating an aircraft in violation of subsection (1) of this section and when it is reasonable to require such testing of blood, saliva, and urine to determine whether such person was under the influence of, or impaired by, one or more drugs, or one or more controlled substances, or a combination of both alcohol and one or more drugs, or a combination of both alcohol and one or more controlled substances.

(IV) Any person who is required to take and to complete, and to cooperate in the completing of, any test or tests shall cooperate with the person authorized to obtain specimens of his blood, breath, saliva, or urine, including the signing of any release or consent forms required by any person, hospital, clinic, or association authorized to obtain such specimens. If such person does not cooperate with the person, hospital, clinic, or association authorized to obtain such specimens, including the signing of any release or consent forms, such noncooperation shall be considered a refusal to submit to testing. No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of his blood, breath, saliva, or urine for testing except when the officer has probable cause to believe that the person has committed a violation of section 18-3-105, 18-3-106, 18-3-204, 18-3-205, or 18-3-208, C.R.S., and the person is refusing to take or to complete, or to cooperate in the completing of, any test or tests, then, in such event, the law enforcement officer may require a blood test. Evidence acquired through such involuntary blood test shall be admissible in any prosecution for a violation of subsection (1) or (2) of this section and for a violation of section 18-3-105 or 18-3-204, C.R.S.

(b) (I) The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person had been operating an aircraft in violation of subsection (1) or (2) of this section and in accordance with rules and regulations prescribed by the state board of health concerning the health of the person being tested and the accuracy of such testing. Strict compliance with such rules and regulations shall not be a prerequisite to the admissibility

of test results at trial unless the court finds that the extent of noncompliance with a board of health rule has so impaired the validity and reliability of the testing method and the test results as to render the evidence inadmissible. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test results. It shall not be a prerequisite to the admissibility of test results at trial that the prosecution present testimony concerning the composition of any kit used to obtain blood, urine, saliva, or breath specimens. A sufficient evidentiary foundation concerning the compliance of such kits with the rules and regulations of the department of public health and environment shall be established by the introduction of a copy of the manufacturer's or supplier's certificate of compliance with such rules and regulations if such certificate specifies the contents, sterility, chemical makeup, and amounts of chemicals contained in such kit.

(II) No person except a physician, a registered nurse, an emergency medical service provider, as defined in part 1 of article 3.5 of title 25 and as certified or licensed under part 2 of article 3.5 of title 25 who is authorized within his or her scope of practice to draw blood, or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse shall withdraw blood to determine the alcohol or drug content of the blood for purposes of this section. In a trial for a violation of subsection (1) or (2) of this section, the testimony of a law enforcement officer that the officer witnessed the taking of a blood specimen by a person who the officer reasonably believed was authorized to withdraw a blood specimen is sufficient evidence that the person was authorized, and testimony from the person who obtained the blood specimens concerning the person's authorization to obtain blood specimens is not a prerequisite to the admissibility of test results concerning the blood specimen obtained. Civil liability does not attach to a person authorized to obtain blood, breath, saliva, or urine specimens or to a hospital, clinic, or association in or for which the specimens are obtained as provided in this subsection (6) as a result of the act of obtaining the specimens from any person submitting thereto if the specimens were obtained according to the rules of the state board of health; except that this subsection (6)(b)(II) does not relieve the person from liability for negligence in obtaining any specimen sample.

(c) Any person who is dead or unconscious must be tested to determine the alcohol or drug content of the person's blood or any drug content within the person's system as provided in this subsection (6). If a test cannot be administered to a person who is unconscious, hospitalized, or undergoing medical treatment because the test would endanger such person's life or health, the law enforcement agency must be allowed to test any blood, urine, or saliva which was obtained and not utilized by a health-care provider and must have access to that portion of the analysis and results of any tests administered by such provider which shows the alcohol or drug content of the person's blood, urine, or saliva or any drug content within the person's system. Such test results are not privileged communications, and the provisions of section 13-90-107 relating to the physician-patient privilege do not apply. Any person who is dead, in addition to the tests prescribed, must also have the person's blood checked for carbon monoxide content and for the

presence of drugs, as prescribed by the department of public health and environment. Such information obtained must be made a part of the crash report.

(d) If a person refuses to take or to complete, or to cooperate with the completing of, any test or tests as provided in this subsection (6) and such person subsequently stands trial for a violation of subsection (1) of this section, the refusal to take or to complete, or to cooperate with the completing of, any test or tests shall be admissible into evidence at the trial, and a person may not claim the privilege against self-incrimination with regard to admission of refusal to take or to complete, or to cooperate with the completing of, any test or tests.

(7) (a) (I) Every person who is convicted of a violation of subsection (1) of this section shall be punished by imprisonment in the county jail for not less than five days nor more than one year, and, in addition, the court may impose a fine of not less than three hundred dollars nor more than one thousand dollars. Except as provided in subsection (7)(d)(II) of this section, the minimum period of imprisonment provided for such violation shall be mandatory. In addition to any other penalty that is imposed, every person who is convicted of a violation to which this subsection (7)(a)(I) applies shall perform not less than forty-eight hours nor more than ninety-six hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) Upon a conviction of a violation of subsection (1) of this section, which violation occurred within five years of the date of a previous violation, for which there has been a conviction, of subsection (1) or (2) of this section, the offender shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year, and, in addition, the court may impose a fine of not less than five hundred dollars nor more than one thousand five hundred dollars. The minimum period of imprisonment as provided for such violation shall be mandatory, but the court may suspend up to eighty-three days of the period of imprisonment if the offender complies with the provisions of subsection (7)(d)(I) of this section. In addition to any other penalty that is imposed, every person who is convicted of a violation to which this subsection (7)(a)(I) applies shall perform not less than sixty hours nor more than one hundred twenty hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(b) The provisions of this subsection (7) relating to the performance of useful public service are also applicable to any defendant who receives a diversion in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

(c) For the purposes of paragraph (a) of this subsection (7), a person shall be deemed to have a previous conviction of subsection (1) or (2) of this section if such person has been convicted of an act under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed within this state, would be a violation of subsection (1) or (2) of this section.

(d) (I) Upon conviction of a violation of subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of subsection (7)(a) of this section. The court shall consider the alcohol and drug evaluation required pursuant to subsection (8) of this section prior to sentencing; except that the court may proceed to immediate sentencing without considering such alcohol and drug evaluation if the defendant has no prior or pending charges under this section and neither the defendant nor the prosecuting attorney objects. If the court proceeds to immediate sentencing, without considering such alcohol and drug evaluation, such alcohol and drug evaluation shall be conducted after sentencing, and the court shall order the defendant to complete the education and treatment program recommended in such alcohol and drug evaluation. If the defendant disagrees with the education and treatment program recommended in such alcohol and drug evaluation, the defendant may request the court to hold a hearing to determine which education and treatment program should be completed by the defendant.

(II) For sentencing purposes concerning convictions for second and subsequent offenses, prima facie proof of a defendant's previous convictions shall be established when the prosecuting attorney and the defendant stipulate to the existence of the prior conviction or convictions or the prosecuting attorney presents to the court a copy of the court record of such conviction in this state or some other state. The court shall not proceed to immediate sentencing when there is not a stipulation to prior convictions or if the prosecution requests an opportunity to obtain a conviction record. The prosecuting attorney shall not be required to plead or prove any previous convictions at trial, and sentencing concerning convictions for second and subsequent offenses shall be a matter to be determined by the court at sentencing.

(e) The sentence of any person subject to the provisions of subparagraph (II) of paragraph (a) of this subsection (7) may be suspended to the extent provided for in said subparagraph (II) if the offender receives a presentence alcohol and drug evaluation; based on that evaluation, satisfactorily completes an appropriate level I or level II alcohol and drug education or treatment program; and abstains from the use of alcohol for a period of one year from the date of sentencing. Such abstinence shall be monitored by the treatment facility by the administration of disulfiram or by any other means that the director of the treatment facility deems appropriate. If, at any time during the one-year period, the offender does not satisfactorily comply with the conditions of the suspension, that sentence shall be reimposed, and the offender shall spend that portion of his sentence which was suspended in the county jail.

(f) In addition to the penalties prescribed in this subsection (7), persons convicted of violations of subsection (1) or (2) of this section are subject to the costs imposed by section 24-4.1-119 (1)(c), C.R.S., relating to the crime victim compensation fund.

(g) In addition to any other penalty provided by law, the court may sentence a defendant who is convicted pursuant to this section to a period of probation for purposes of treatment not to exceed two years. As a condition of probation, the defendant shall be required to make restitution in accordance with the provisions of section 18-1.3-205, C.R.S.

(h) The provisions of section 42-4-1301.4, C.R.S., shall apply to this article.

(8) The behavioral health administration in the department of human services shall provide presentence alcohol and drug evaluations on all persons convicted of a violation of subsection (1) or (2) of this section, in the same manner as described in section 42-4-1301.3.

(9) Upon a plea of guilty, or a verdict of guilty by the court or a jury, to any offense specified in subsection (1) or (2) of this section, the court shall order the defendant to immediately report to the sheriff's department in the county where the defendant was convicted, at which time the defendant's fingerprints and photographs shall be taken and returned to the court, which fingerprints and photographs shall become a part of the court's official documents and records pertaining to the defendant's conviction and the defendant's identification in association with such conviction. On any trial for a violation of any of the offenses specified in subsection (1) or (2) of this section, a duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the party indicted or informed against shall be prima facie evidence of such convictions and may be used in evidence against such party. Identification photographs and fingerprints that are part of the record of such former convictions and judgments of any court of record or that are part of the record at the place of such party's incarceration after sentencing for any of such former convictions and judgments shall be prima facie evidence of the identity of such party and may be used in evidence against him. Any person who fails to immediately comply with the court's order to report to the sheriff's department, to furnish fingerprints, or to have his photographs taken may be held in contempt of court.

(10) As used in this section, "convicted" includes a plea of no contest accepted by the court.

Source: L. 90: Entire article RC&RE, p. 1770, § 1, effective July 1. **L. 93:** (5) and (8) amended, p. 1124, § 44, effective July 1, 1994. **L. 94:** (6)(a)(II), (6)(b)(I), and (6)(c) amended, p. 2806, § 597, effective July 1; (7)(h) and (8) amended, p. 2571, § 97, effective January 1, 1995. **L. 2002:** (7)(h) and (8) amended, p. 1921, § 14, effective July 1; (7)(b) and (7)(g) amended, p. 1559, § 361, effective October 1. **L. 2008:** (4) amended, p. 1915, § 134, effective August 5. **L. 2011:** (8) amended, (HB11-1303), ch. 264, p. 1177, § 98, effective August 10. **L. 2012:** (1)(b) and (1)(c) amended, (HB 12-1311), ch. 281, p. 1631, § 86, effective July 1; (6)(b)(II) amended, (HB 12-1059), ch. 271, p. 1439, § 24, effective July 1. **L. 2013:** (7)(b) amended, (HB 13-1156),

ch. 336, p. 1960, § 12, effective August 7. **L. 2017:** (8) amended, (SB 17-242), ch. 263, p. 1257, § 18, effective May 25. **L. 2019:** (6)(b)(II) amended, (SB 19-242), ch. 396, p. 3531, § 25, effective May 31. **L. 2021:** (2)(a), (7)(a), and (7)(d)(I) amended, (SB 21-271), ch. 462, p. 3298, § 704, effective March 1, 2022; (1)(b)(II) added by revision, (SB 21-271), ch. 462, pp. 3298, 3331, §§ 704, 803. **L. 2022:** (8) amended, (HB 22-1278), ch. 222, p. 1577, § 198, effective July 1. **L. 2026:** (6)(c) amended, (HB 26-1237), ch. 117, p. 472, § 29, effective August 12.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective March 1, 2022. (See L. 2021, pp. 3298, 3331.)

Cross references: For the legislative declaration contained in the 1993 act amending subsections (5) and (8) of this section, see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act amending subsections (6)(a)(II), (6)(b)(I), and (6)(c), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsections (7)(b) and (7)(g), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in the 2012 act amending subsection (6)(b)(II), see section 26 of chapter 271, Session Laws of Colorado 2012. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

AIRPORTS

Generally

ARTICLE 3

Public Airport Authority Law

41-3-101. Short title.
41-3-102. Legislative declaration.
41-3-103. Definitions.
41-3-104. Creation of authorities.
41-3-105. Board of commissioners.
41-3-106. Powers of an authority.
41-3-107. Legal status of authorities - tax exemption.
41-3-108. Legal investments and securities.

41-3-101. Short title.

This article shall be known and may be cited as the "Public Airport Authority Act".

Source: L. 65: p. 164, § 1. **C.R.S. 1963:** § 5-5-1.

ANNOTATION

Applied in Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

41-3-102. Legislative declaration.

The purpose of this article is to authorize the creation by cities and towns, and counties, and the state of Colorado, through their joint action, and by counties acting by independent action or jointly with the state, of airport authorities, corporate and politic, and constituting political subdivisions of the state of Colorado, for the purpose of acquiring and improving airports, air navigation facilities, and related facilities, and the financing of the cost of such acquisition by the issuance of bonds or other obligations of such authorities payable from the income of any such authorities and otherwise secured to the extent permitted by law without the incurrence of an indebtedness by the state of Colorado, or by any of its political subdivisions, thereby promoting and facilitating transportation by air from or to points located within the state of Colorado, all to the benefit and general welfare of the state of Colorado, its political subdivisions, and the inhabitants thereof.

Source: L. 65: p. 164, § 2. **C.R.S. 1963:** § 5-5-2. **L. 69:** pp. 100, 105, §§ 1, 1.

ANNOTATION

It is state's policy to finance and operate airport facilities on self-paying basis. Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

City and county may be forced to cosponsor airport program. The secretary of transportation has the power to negate the state policy to finance and operate airport facilities on a self-paying basis by forcing a city and county to cosponsor an airport authority program. Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

41-3-103. Definitions.

As used in this article 3, unless the context otherwise requires:

(1) "Air navigation facility" means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(2) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon however financed. Such facilities may also include land and buildings, together with all appurtenances necessary or convenient thereto for the accommodation or convenience of the public, whether or not the members of the public so accommodated are directly or indirectly engaged in transportation by air, including, but not limited to, parking, dining, recreational, and hotel facilities.

(3) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport, or is otherwise hazardous to such landing or taking off of aircraft.

(4) "Authority" means a body corporate and politic and constituting a political subdivision of the state created for airport purposes under the provisions of this article.

(5) "Board", as distinguished from the governing board defined in subsection (11) of this section, means the board of commissioners of any airport authority created pursuant to the provisions of this article.

(6) "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this article.

(7) "Clerk" means the custodian of the official records of a municipality or county.

(8) "Combination" means any combination comprised of two or more municipalities, two or more counties, or any combination of one or more municipalities and one or more counties.

(9) "County" means any county organized under the laws of the state of Colorado or an adjoining state and includes public entities which are both cities and counties.

(10) "Federal government" means the United States, or any of its officers, agencies, boards, or commissions.

(11) "Governing board" means the officials authorized by law to exercise by ordinance or resolution the lawmaking powers of a municipality or county.

(12) "Income of the authority" means all revenues derived directly or indirectly by the authority from the use and operation of the airport, including, but not limited to, interest on investments and all rentals, fees, rates, or other charges for the use of the airport, or for any services rendered by the authority in the operation thereof, but excluding, if necessary or appropriate, money received as grants or gifts from the federal government or the state or other sources, the use of which is limited by the grantor or donor to the construction of capital improvements to an airport.

(12.5) "Inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its successor index.

(13) "Municipality" means any city or town, whether incorporated under the general laws of the state of Colorado or an adjoining state, article XX of the state constitution, or acts of the council and house of representatives of the territory of Colorado, but does not include local entities which are both cities and counties.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic; and the term includes any trustee, receiver, assignee, or other similar representative thereof.

(15) "Resolution" means a resolution of the board of county commissioners of a county or ordinance of a city, city and county, or town, whichever form of action is necessary or appropriate under the laws of the state of Colorado or an adjoining state, or under the charter of a city, or city and county, incorporated pursuant to article XX of the state constitution.

(16) "State" means the state of Colorado or any of its agencies.

Source: L. 65: p. 164, § 3. **C.R.S. 1963:** § 5-5-3. **L. 69:** pp. 100, 105, §§ 2, 2. **L. 2016:** (9), (13), and (15) amended, (SB 16-168), ch. 164, p. 522, § 1, effective August 10. **L. 2023:** IP amended and (12.5) added, (HB 23-1156), ch. 60, p. 211, § 1, effective August 7.

41-3-104. Creation of authorities.

(1) Any combination, or any county in this state acting independently, may create an authority that is authorized to operate an airport in this state and exercise the functions conferred by the provisions of this article, upon the issuance by the director of the division of local government in the department of local affairs of a certificate reciting that the authority has been duly organized according to the laws of the state of Colorado. Such certificate shall be issued by

the director of said division upon the filing with him or her of a certified copy of the resolution of the county acting independently and, in the case of a combination, of each county or municipality joining therein, duly certified as correct by the clerk of the municipality or county. In the case of a combination, there shall also be filed with the director of said division a joint certificate of the clerks of any county or municipality joining therein, certifying that such counties or municipalities, and listing them, constitute all of the counties or municipalities joining in the formation of the authority. At the time of filing such resolutions, there shall also be filed a designation of the official name of the authority.

(2) Any combination creating an authority may be increased from time to time to include one or more additional counties or municipalities, if each additional municipality or county and the members then included in the authority and the board of commissioners of the authority, respectively, adopt a resolution consenting thereto. Any authority which was created by a county acting independently may be increased from time to time to include one or more additional counties or municipalities, if each additional municipality or county and the county creating the authority and the board of commissioners of the authority, respectively, adopt a resolution consenting thereto. Upon the inclusion of any county or municipality in an authority initially created by a county acting independently, such authority shall be deemed to have been created by a combination for purposes of this article. Upon the inclusion of any county or municipality in the authority so created, either initially or as an additional member later, all rights, contracts, obligations, and property, both real and personal, of such municipality or county used for or in relation to transportation by air shall vest in the authority created pursuant to this section, unless otherwise specifically provided by the resolution including such municipality or county in the authority.

(3) Any combination formed to create an authority may be decreased if each of the members then included therein and the board of the authority consent to the decrease and make provision for the retention or disposition of the assets and liabilities of the county or municipality, as the case may be; but, if the authority has any bonds outstanding, no such decrease shall be effective until at least seventy-five percent of the holders of the outstanding bonds of the authority consent thereto in writing, or unless the board determines that such decrease will not affect adversely the rights of the holders of such outstanding bonds.

(4) A municipality or a county in this state shall not adopt a resolution authorized by this section without a public hearing thereon. Notice shall be given at least ten days prior to the date of the hearing in a newspaper having a general circulation in the municipality or county, as the case may be.

(5) All commissioners of an authority shall be appointed for a term of four years each; except that a vacancy occurring other than by the expiration of term shall be filled for the unexpired term in the same manner as the original appointments.

(6) A county, a municipality, or a combination may adopt a resolution terminating the existence of an authority. A terminating resolution must require the county, the municipality, or the combination terminating the authority to:

(a) Assume the repayment obligations of any of the authority's outstanding bonds;

(b) Assume the obligations of any of the authority's outstanding contracts entered into pursuant to this article 3;

(c) Assume the operation and maintenance of the airport that the authority was authorized to operate and maintain; and

(d) Receive and hold title to the real property on which the airport is located and that the authority is authorized to operate and maintain.

(7) Notwithstanding any other provision of this article to the contrary, the general assembly may, by law, authorize the governor, on behalf of the state, to join in the creation of any airport authority authorized by this article or to join any existing airport authority created pursuant to this article.

Source: L. 65: p. 166, § 4. **C.R.S. 1963:** § 5-5-4. **L. 69:** pp. 101, 105, §§ 3, 3. **L. 76:** (1) and (6) amended, p. 607, § 34, effective July 1. **L. 85:** (2) amended, p. 1310, § 1, effective March 10. **L. 2016:** (1) and (4) amended, (SB 16-168), ch. 164, p. 522, § 2, effective August 10. **L. 2023:** (6) amended, (HB 23-1156), ch. 60, p. 211, § 2, effective August 7.

Cross references: For publication of legal notices, see article 70 of title 24.

ANNOTATION

Subsection (2) provision is constitutional. Provision in subsection (2) vesting in an airport authority "all rights, contracts, obligations, and property, both real and personal" belonging to a county or municipality included in the authority does not attempt to grant special privileges in contravention of § 11 of art. II, Colo. Const. Enger v. Walker Field, 181 Colo. 253, 508 P.2d 1245 (1973).

The provision in subsection (2) for the vesting in an airport authority "all rights, contracts, obligations, and property, both real and personal", belonging to a city and a county without the approval of the taxpaying electors in the respective political entities did not constitute the taking of property without due process of law, contrary to § 25 of art. II, Colo. Const. Enger v. Walker Field, 181 Colo. 253, 508 P.2d 1245 (1973).

Provision in subsection (2) vesting in an airport authority "all rights, contracts, obligations, and property, both real and personal" belonging to a county or municipality included in the authority is not vague, indefinite, and uncertain. Enger v. Walker Field, 181 Colo. 253, 508 P.2d 1245 (1973).

Constitutionality of subsection (7) was not relevant to class action challenge of validity of revenue bonds issued by an airport authority. Enger v. Walker Field, 181 Colo. 253, 508 P.2d 1245 (1973).

Applied in Walker Field v. Adams, 606 F.2d 290 (10th Cir. 1979).

41-3-105. Board of commissioners.

(1) All powers, privileges, and duties vested in or imposed upon any authority organized pursuant to the provisions of this article shall be exercised and performed by and through the board except as otherwise provided by law; but the exercise of any and all executive, administrative, and ministerial powers may be by said board delegated and redelegated to any of the officers created or by the board acting under this article.

(2) The board of an authority created by the formation of a combination consists of at least five members, but no more than nine members, representing the counties or municipalities participating in the combination. The authorizing resolution, filed with the director of the division of local government pursuant to section 41-3-104 (1), must contain a provision as to the representation of the counties and municipalities participating in the combination. The members of the board of an authority created by a combination must be appointed by resolution of the governing boards of the counties or municipalities that are members of the combination, with the initial appointments, at the election of such municipality or county, to be made by the authorizing resolution filed with the director of the division of local government. If the county in which the airport is to be located is not a member of the combination, then the member or members, if any, to which the county is entitled shall be appointed by the board of county commissioners of the county. The board created by the independent action of a county consists of five members who shall be appointed by the board of county commissioners of the county, and initial appointments to the board, at the election of the board of county commissioners, may be made in the authorizing resolution filed with the director of the division of local government. Board members from municipalities and counties in this state must be taxpaying electors, as defined in section 1-1-104 (49), at the time of appointment and must reside in the municipality or county from which appointed. After an authority is organized by the formation of a combination, the inclusion of additional counties or municipalities entitles the included municipalities or counties to representation on the same basis as other counties or municipalities. A member of the board does not receive compensation for the member's service on the board. No member of the board shall be interested in any contract or transaction with the authority except in the member's official

respective capacity. Members of the board are subject to the standards of conduct for local government officials specified in article 18 of title 24.

(3) The term of each member is four years; except that the terms of the members of the first board are adjusted so that the terms of one-half of the members expire after two years. At the first meeting of the board of a newly formed authority, the commissioners shall determine by lot which members serve two-year terms and which serve four-year terms. At the expiration of the term of any commissioner, a new appointment shall be made by the appropriate governing board, and any member, including a member appointed to fill a vacancy, may be appointed to serve a successive term.

(4) A change of residence of a member of the board from a municipality or county in the state to a place outside the municipality that he or she represents, or the county from which he or she is appointed, automatically creates a vacancy on the board as to such municipality or county. Vacancies which may occur on the board through death or resignation of one of the members, or for any other reason, shall be filled in the same manner as provided for the appointment of original members of the board.

(5) The board, in addition to any other powers conferred by this article, has the following powers:

(a) To fix the time and place at which its regular meetings are held, which place may be located within any municipality or county forming a part of an authority created by a combination or within the county independently creating such authority; to organize, adopt bylaws and rules of procedure, and select a chairperson and pro tem chairperson. A special meeting may be called by any officer or member of the board by informing the other members of the date, time, and place of the special meeting and the purpose for which it is called. All regular or special meetings are subject to the open meeting and notice requirements of section 24-6-402.

(b) To make and pass resolutions and orders not repugnant to the constitution of the United States; the state; an adjoining state, if a combination includes a municipality or county from the adjoining state; or other provisions of this article necessary for the government and management of the affairs of the authority and the execution of the powers vested in the authority and for carrying into effect the provisions of this article. On all resolutions the rolls shall be called and the ayes and nays recorded. Resolutions and orders may be adopted by viva voce vote, but on demand of any member the roll shall be called.

(c) To record all resolutions, as soon as may be after their passage, in a book kept for that purpose and authenticate them by the signature of the presiding officer of the board and the clerk thereof. Any resolution may at the election of the board be published in a newspaper of general circulation in the county wherein the airport is located within ten days of the date of passage and adoption and shall become effective, if so provided, upon the date of such publication.

(d) To transact business only if a quorum of fifty percent of the board is present at a regular or special meeting. The board may take action or approve any matter by a majority of a quorum; except that all questions involving the inclusion or exclusion of a municipality or county in or from the authority or authorizing any expenditures in excess of two hundred fifty thousand dollars must be approved by a majority of the members of the board. Beginning January 1, 2029, and every five years thereafter, the two hundred fifty thousand dollar figure specified in this subsection (5)(d) is adjusted for inflation.

(e) To fix the location of the principal place of business of the authority and the location of all offices and departments maintained thereunder, the location thereof to be at such place as the board deems best;

(f) To prescribe by resolution a system of business administration, to create any and all necessary offices, to establish and reestablish the powers and duties and compensation of all officers and employees, and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the authority;

(g) To employ clerical, legal, consulting, and engineering assistance and labor, and to delegate and redelegate to such employees the powers conferred by this article, under such conditions and restrictions as shall be fixed by the board to authorize such employees to bind the authority by contract;

(h) To prescribe a method of auditing and allowing or rejecting claims and demands and a method for procuring contracts to carry out the authority's purposes pursuant to this article 3, including contracts for the construction of works and structures, equipment, the performance of labor or services, or the furnishing of supplies or materials. The board shall comply with the requirements of article 91 of title 24 when procuring and entering into a construction contract. For any contract involving federal funds, the board shall comply with all applicable federal statutes, regulations, guidelines, and policies. For all capital improvement projects and the purchase of new vehicles and new equipment, the board shall:

(I) Solicit the contract by an invitation for bids. An invitation for bids may include criteria for the board to determine acceptability of a bid, including inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Any criteria that the board considers in evaluating the bid must be objectively measurable.

(II) Include in an invitation for bids a purchase description and all contractual terms and conditions applicable to the procurement;

(III) Provide adequate public notice of the invitation for bids within a reasonable time prior to the time the board sets for the opening of bids;

(IV) Record the amount of each bid and the name of each bidder, which the board shall keep open for public inspection;

(V) Allow the withdrawal of an inadvertently erroneous bid before the bid is awarded if the bidder submits documentary evidence that clearly and convincingly demonstrates an error was made;

(VI) Award the contract with reasonable promptness to the low responsible bidder whose bid meets the criteria set forth in the invitation for bids; except that the board shall resolve any tie in accordance with section 24-103-902; and

(VII) Maintain for public inspection all bids and bid documents in accordance with sections 24-72-203 and 24-72-204.

(i) To constitute and appoint an official newspaper in this state to be used for the official publications of the authority, but nothing in this section shall prevent the board from directing publication in additional newspapers or other periodicals which public necessity may so require or indicate.

(6) Where the state, pursuant to section 41-3-104 (7), joins in the creation of an airport authority authorized by this article or joins an existing airport authority created pursuant to this article, the state shall be entitled to such number of members of the board of commissioners as may be agreed upon by the creating parties or present parties of the authority and the state, as the case may be, but in no case shall the state be entitled to less than one member of the board of commissioners. The state member or members of the board of commissioners shall be appointed by the governor, with the consent of the senate.

Source: L. 65: p. 168, § 5. **C.R.S. 1963:** § 5-5-5. **L. 69:** pp. 102, 106, §§ 4, 5, 4. **L. 73:** p. 192, § 1. **L. 76:** (1) and (2) amended, p. 608, § 35, effective July 1. **L. 80:** (2) amended, p. 417, § 37, effective January 1, 1981. **L. 93:** (2) amended, p. 1794, § 94, effective June 6. **L. 2004:** (5)(h) amended, p. 54, § 1, effective August 4. **L. 2016:** (2), (4), (5)(b), and (5)(i) amended, (SB 16-168), ch. 164, p. 523, § 3, effective August 10. **L. 2023:** (2), (3), (5)(a), (5)(d), and (5)(h) amended, (HB 23-1156), ch. 60, p. 212, § 3, effective August 7.

ANNOTATION

Constitutionality of subsection (6) was not relevant to class action challenge of validity of revenue bonds issued by an airport authority. Enger v. Walker Field, 181 Colo. 253, 508 P.2d 1245 (1973).

41-3-106. Powers of an authority.

(1) An authority has the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued and be a party to suits, actions, and proceedings;

(d) To enter into contracts and agreements affecting the affairs of the authority, including, but not limited to, contracts with the United States; the state of Colorado; an adjoining state, if a combination includes a municipality or county from the adjoining state; and any county or municipality from which the authority originated;

(e) To borrow money and to issue bonds payable in whole or in part from the income of the authority and otherwise secured to the extent permitted by law, but, before any money shall be borrowed or any bonds issued, such borrowing or sale shall first be approved by the board of county commissioners of any county independently creating an authority under the provisions of this article. Said bonds shall be authorized by resolution of said board without the necessity of submitting the question of their issuance to the qualified electors of the municipalities or counties constituting members of the authority. Said 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 authority 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 the security for their payment, may authorize the issuance of additional bonds having a lien on a parity with or junior thereto on the income of the authority, provide for the redemption of said bonds prior to their respective maturities with or without premium, and direct that said bonds shall be sold at public or private sale at or below par, but such 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. The board shall prescribe other details in connection with the issue of bonds. The bonds so authorized shall mature serially over a period not exceeding thirty years and shall bear interest at a net effective interest rate not exceeding the maximum net effective interest rate authorized. Said resolution and bonds may also include such other terms or recitals which in the judgment of the board are necessary or proper to render the same marketable. Nothing in this article shall be construed as authorizing the authority or any county to assess and levy taxes for the payment of said bonds, nor shall said bonds be construed to be an indebtedness of the municipalities or counties constituting members of the authority or of the county independently creating such authority within the meaning of any constitutional, charter, or statutory limitation.

(f) To purchase, trade, exchange, acquire, buy, sell, and otherwise dispose of and encumber real and personal property of the authority and any interest therein, including leases and easements;

(g) To refund any bonds of the authority as the same become due at stated maturities, or as a result of the exercise of the privilege of calling bonds for prior redemption, and to refund any

such bonds in advance of such maturities or redemption dates in accordance with the laws of the state then in effect and applicable to municipalities. The terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds.

(h) To regulate, when acting singly, or by agreement, when acting jointly with any other municipality or county, the receiving, deposit, and removal and the embarkation of passengers or property to or from the airport; to regulate or prohibit any airport hazard in the same manner that a county or municipality is authorized to remove a hazard pursuant to section 41-4-108 or an encroachment pursuant to section 41-4-109; to impose charges, fees, and rentals on users of the authority's airport and facilities to defray the costs of operating, maintaining, and improving the airport; to lease or assign for operation any space, area, appurtenances, appliances, or other conveniences necessary or useful in connection with operating the airport; except as related to the price, route, or service of an air carrier, to regulate a commercial activity that any person conducts at an airport; to own and operate aircraft; to employ pilots; to provide rules and regulations governing the use of the airport and facilities and the use of other property and means of transportation within or over the airport, landing field, and navigation facilities; to perform any duties necessary or consistent with the regulation of air traffic; and to exercise such powers as may be required or consistent with the promotion of aeronautics and the furtherance of commerce and navigation by air;

(i) To pledge all or a part of the income of the authority to the payment of the bonds authorized to be issued pursuant to the terms of this article and to otherwise secure the payment of said bonds to the extent permitted by law, including, but not limited to, a conveyance in trust of any or all of the properties or facilities of the authority as a part of such security;

(j) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use and to take any property necessary to exercise the powers in this article granted, either within or without the boundaries of the municipalities or counties constituting members of the authority. In exercising the power of eminent domain, the procedure established and prescribed by articles 1 to 7 of title 38, C.R.S., shall be followed. Nothing in this article shall be construed to limit the power of a county otherwise to acquire property through the exercise of the power of eminent domain under and in accordance with the laws of the state.

(k) To construct and maintain works and establish and maintain facilities, within or without the boundaries of the municipalities or counties constituting members of the authority or within or without the boundaries of the county independently creating an authority pursuant to the provisions of this article, across or along any public street or highway or in, upon, under, or over any vacant public lands, which public lands are now, or may become, the property of the state, but the authority shall promptly restore any street or highway to its former state of usefulness as nearly as may be and shall not use the street or highway in such manner as to completely or unnecessarily impair the usefulness of the street or highway. When exercising its power pursuant

to this subsection (1)(k), an authority shall comply with all applicable local zoning and building regulations, except to the extent that any zoning or building regulations are preempted by federal law, and all guidelines and regulations of the United States department of transportation, federal aviation administration.

(l) To invest any surplus money in the treasury of the authority, including money in any sinking or trust fund established for the purpose of retiring bonds at or prior to maturity not required for the immediate necessities of the authority, in any local government investment pool trust fund pursuant to part 7 of article 75 of title 24, or in securities meeting the investment requirements established in part 6 of article 75 of title 24. Any investment in securities may be made by direct purchase of any issue of securities, or part thereof, at the original sale of the securities or by the subsequent purchase of the securities. Any securities purchased and held by an authority may be sold, unless the sale is prohibited by any agreement under which the securities have been or will be deposited and the proceeds of the securities reinvested in securities as provided in this subsection (1)(l). The sale of any securities purchased and held by the authority must be made at a time when the proceeds may be applied to the purposes that the money with which the securities were originally purchased was placed in the treasury of the authority.

(m) Notwithstanding subsection (1)(e) of this section, to request that a county or municipality in which the authority is located levy a tax within that county or municipality for the authority's benefit that is consistent with the Colorado constitution and the power of a county or municipality to levy a tax; and

(n) To request, consistent with all applicable guidelines and regulations of the United States department of transportation, federal aviation administration, that a county or municipality adopt or modify existing zoning regulations regarding:

(I) The prevention or elimination of hazards to air navigation;

(II) The installation, operation, and maintenance of navigational marking and lighting on structures or trees in areas surrounding the airport an authority operates;

(III) Compatible land uses in areas immediately surrounding the airport the authority operates; or

(IV) The criteria for areas surrounding airports specified in section 24-65.1-202 (5)(a).

Source: L. 65: p. 171, § 6. **C.R.S. 1963:** § 5-5-6. **L. 69:** p. 103, § 6. **L. 70:** p. 108, § 1. **L. 89:** (1)(l) amended, p. 1127, § 57, effective July 1. **L. 2016:** (1)(d) and (1)(h) amended, (SB 16-168), ch. 164, p. 524, § 4, effective August 10. **L. 2023:** (1)(d), (1)(h), (1)(k), and (1)(l) amended and (1)(m) and (1)(n) added, (HB 23-1156), ch. 60, p. 214, § 4, effective August 7.

ANNOTATION

Imposition of user fee by airport authority upon rental car company which is based upon portion of gross revenues of company attributable to customers picked up at airport does not constitute an illegal income tax. Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991).

Distinction between fee and tax based upon nature and function of the charge rather than by its label. Fees charged for use of public facility owned by municipal corporation are not taxes if purpose is to defray expenses for operating and improving facility and if fees are only imposed on users of facility. Taxes are not based on amount of use and the proceeds thereof are used to defray general municipal expenses. Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991).

Since this section does not impose requirement of reasonableness for imposition of fees by airport authorities, such authorities have broad discretion regarding imposition of such fees which is subject only to constitutional and federal statutory limitations. Absent any express statutory limitations, judicial deference will be given to the sound discretion of airport authority imposing such fees. Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991).

User fee imposed by airport authority upon rental car company which is based upon portion of gross revenues of company attributable to customers picked up at airport is not arbitrary or confiscatory since the fee is rationally related to a legitimate governmental interest in providing airport facilities and since the fee is not prohibitive of an entire industry. Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991).

Authority's ban on scheduled passenger service is a valid exercise of proprietary powers that is not preempted by federal law pursuant to the powers granted to the authority under this section. Arapahoe County Airport Auth. v. Centennial Express Airlines, 956 P.2d 587 (Colo. 1998).

41-3-107. Legal status of authorities - tax exemption.

(1) An authority created pursuant to this article is hereby declared to be a political subdivision of the state, exercising essential governmental powers for a public purpose. The general assembly, therefore, finds:

(a) That no authority or county independently creating an authority is required to pay any general ad valorem taxes upon an airport or any facilities connected therewith located within the state nor upon the interest of the authority therein;

(b) That bonds issued under this article and the income therefrom are free and exempt from taxation by the state, or any political subdivision of the state, with the exception of transfer, inheritance, and estate taxes; and

(c) The tax exemptions specified in this section do not apply to any tenants or users of the airport that an authority operates.

Source: L. 65: p. 174, § 7. **C.R.S. 1963:** § 5-5-7. **L. 2023:** Entire section amended, (HB 23-1156), ch. 60, p. 216, § 5, effective August 7.

Cross references: For the taxation of bonds issued by counties pursuant to article 5 of this title, see § 41-5-105.

ANNOTATION

Section constitutional. There is no reason why the property of a political subdivision of the state should not be exempt from taxation under art. X, § 4, Colo. Const., as "property . . . of the state". Denver Beechcraft v. Bd. of Assess. Appeals, 681 P.2d 945 (Colo. 1984).

41-3-108. Legal investments and securities.

It shall be legal for any bank, trust company, banker, savings bank, or banking institution, any building and loan association, savings and loan association, investment company, and other person carrying on a banking or investment business, any insurance company, insurance association, or other person carrying on an insurance business, and any executor, administrator, trustee, or fiduciary to invest funds or moneys in their custody in any of the bonds authorized to be issued pursuant to the provisions of this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such bonds shall be authorized security for public deposit. Nothing in this section shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

Source: L. 65: p. 174, § 8. **C.R.S. 1963:** § 5-5-8. **L. 89:** Entire section amended, p. 1132, § 76, effective July 1.

ARTICLE 4

Airports

PART 1
COUNTY AIRPORTS

41-4-101. Operation a governmental function.
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PART 2
AIRPORTS - CITIES AND TOWNS

41-4-201. Power to establish airports.
41-4-202. How lands acquired.
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PART 1

COUNTY AIRPORTS

41-4-101. Operation a governmental function.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities; and the exercise of any other powers granted in this part 1 to any county, city and county, city, or town are hereby declared to be public governmental functions, exercised for a public purpose, and matters of public necessity; and such lands and other property, easements, and privileges acquired and used in the manner and for the purposes enumerated in this part 1 are hereby declared to be acquired and used for public purposes and as a matter of public necessity.

Source: L. 45: p. 38, § 1. **CSA:** C. 45, § 242. **CRS 53:** § 5-4-1. **C.R.S. 1963:** § 5-4-1.

ANNOTATION

Operation of airport is governmental function. A city, in voluntarily assuming a power and exercising a function for the benefit of the municipality and extending aid toward the promotion and accommodation of air commerce and travel, did so in its municipal or proprietary capacity as distinguished from a governmental function assigned to it to enforce the general policy of the state in the administration of general laws. However, if the operation of the municipal airport by the city is in keeping with the declared policy of the general assembly to be a governmental function, then the power of the city to act for the purpose of the promotion and convenience of travel by air is further amplified, instead of restricted, by this section. Rocky Mt. Motor Co. v. Airport Transit Co., 124 Colo. 147, 235 P.2d 580 (1951).

City elected to provide certain necessary services and supplies by leasing portions of the airport to a fixed base operator, which would in turn provide those supplies and services to the airport users. The operation of the airport with respect to such essential functions is not for the particular benefit of the citizens of the municipality, but, rather, for the public good in general. Under these circumstances, the city was operating in its governmental capacity. Cherry Creek Aviation v. City of Steamboat Springs, 958 P.2d 511 (Colo. App. 1998).

Immunity from federal antitrust laws. The operation of a municipal airport pursuant to this section is immune from federal antitrust laws. Pueblo Aircraft Serv., Inc. v. City of Pueblo, 679 F.2d 805 (10th Cir. 1982).

The ownership and operation of an airport by a county pursuant to this section is immune from the federal antitrust laws. Rocky Mtn. Airways, Inc. v. Pitkin County, 674 F. Supp. 312 (D. Colo. 1987).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise, as defined by § 20 of article X of the state constitution, and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. Bd. of Comm'rs v. Fixed Base Operators, 939 P.2d 464 (Colo. App. 1997).

Applied in Duff v. City & County of Denver, 147 Colo. 123, 362 P.2d 1049 (1961); Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n, 655 P.2d 831 (Colo. 1982).

41-4-102. Authority to establish.

The board of county commissioners in any county in this state either singly or jointly with any other county, city and county, city, or town has the power to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the

use of airplanes and other aircraft and to contract or otherwise provide, by condemnation if necessary, for the removal of any airport hazard, or the removal or the relocation of all private structures, railways, mains, pipes, conduits, wires, cables, poles, and all other facilities and equipment which may interfere with the location, expansion, development, or improvement of such airports, restricted landing areas, and other air navigation facilities or with the safe approach thereto or takeoff therefrom by aircraft, and to pay the cost of removal or relocation.

Source: L. 45: p. 38, § 2. **CSA:** C. 45, § 243. **CRS 53:** § 5-4-2. **C.R.S. 1963:** § 5-4-2.

Cross references: For other authority to establish airports, see § 30-11-107 (1)(j).

41-4-103. Joint action by corporate authority.

(1) All of the powers, rights, and authority granted to counties by this part 1 and to cities and towns by any other law may be exercised and enjoyed by such counties, cities and counties, cities, and towns, acting jointly, either within or without the territorial limits thereof, without regard to the distance said airport may be located from the boundary of any such city or town.

(2) (a) Any two or more of such counties, cities and counties, cities, or towns may enter into agreements with each other duly authorized by resolution or ordinance for joint action pursuant to the provisions of this part 1. Each such agreement shall specify the proportionate interest which each county, city and county, city, or town has in the property, facilities, and privileges involved and the proportion of costs of acquisition, establishment, construction, enlargement, improvement, equipment, and expenses of maintenance, operation, and regulation to be borne by each, and it shall make such other provisions as may be necessary to carry out the provisions of this part 1 for the amendment thereof and the conditions and terms upon which such agreement may be terminated.

(b) A county or two or more of such counties, cities and counties, cities, or towns that entered into an agreement under paragraph (a) of this subsection (2) may enter into an agreement under section 29-1-203, C.R.S., with a county or municipality of an adjoining state to jointly operate an airport in this state created pursuant to this part 1. The agreement must include the same information for an agreement described in said paragraph (a).

Source: L. 45: p. 39, § 3. **CSA:** C. 45, § 244. **CRS 53:** § 5-4-3. **C.R.S. 1963:** § 5-4-3. **L. 2016:** (2) amended, (SB 16-168), ch. 164, p. 525, § 5, effective August 10.

Cross references: For authority of local governments to contract with each other, see § 29-1-203.

41-4-104. Acquisition.

Real property needed by any county, either acting singly or jointly, shall be acquired by purchase or by condemnation in the manner provided by law for acquiring real property for public purposes. The political subdivision exercising such power in addition to the damage for the taking, injury, or destruction of property shall also pay the cost of the removal and relocation of any structures, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be moved to a new location.

Source: L. 45: p. 39, § 4. **CSA:** C. 45, § 245. **CRS 53:** § 5-4-4. **C.R.S. 1963:** § 5-4-4.

Cross references: For condemnation proceedings, see articles 1 to 7 of title 38.

41-4-105. Authority to incur indebtedness.

The board of county commissioners of any county, either acting singly or jointly with any other county, city and county, city, or town, has the power to incur indebtedness on its behalf for any of the purposes mentioned in this part 1 and to issue bonds for the acquisition, construction, and improvement of airports, landing fields, air navigation facilities, and airport protection privileges in the same form and manner as debt is incurred and bonds issued for other county purposes; except that such indebtedness may also be approved at a special election called for that purpose by the board of county commissioners, which election shall be conducted insofar as practicable in the manner set forth in section 30-26-101, C.R.S.

Source: L. 45: p. 39, § 5. **CSA:** C. 45, § 246. **CRS 53:** § 5-4-5. **C.R.S. 1963:** § 5-4-5. **L. 76:** Entire section amended, p. 789, § 1, effective February 24.

Cross references: For the constitutional provision that establishes limitations on the incurring of debt, see § 20 of article X, Colorado Constitution; for authority of local governments to contract debts, see § 6 of article XI, Colorado Constitution; for creation of a debt by a county for acquiring or building airports and landing strips, see § 30-26-301.

41-4-106. Operation of airports.

In connection with the erection, maintenance, and operation of any such airport or navigation facilities, any county has the power and jurisdiction, when acting singly, or by agreement, when acting jointly with any other county, city and county, city, or town, to regulate the receipt, deposit, and removal and the embarkation of passengers or property to or from such airports; to exact and require charges, fees, and tolls, together with a lien to enforce their payment; to lease or assign for operation such space or area, appurtenances, appliances, or other conveniences necessary or useful in connection therewith; to own and operate aircraft; to employ pilots; to provide rules and regulations governing the use of such airport and facilities and the use of other property and means of transportation within or over said airport, landing field, and navigation facilities; to perform any duties necessary or consistent for the regulation of air traffic; to enter into contracts or otherwise cooperate with the federal government or other public or private agencies; and to exercise such powers as may be required or consistent in the promotion of aeronautics and the furtherance of commerce and navigation by air.

Source: L. 45: p. 40, § 6. **CSA:** C. 45, § 247. **CRS 53:** § 5-4-6. **C.R.S. 1963:** § 5-4-6.

ANNOTATION

This section gave the city and county of Denver the authority to require rental car companies operating at Stapleton international airport and at Denver international airport to impose a daily usage fee on their car rental customers. It is reasonably foreseeable that implementation of that authority could displace competition in the area of car rental services. The rental car companies are entitled to state action immunity from antitrust claims. Zimomra v. Alamo Rent-A-Car, Inc., 111 F.3d 1495 (10th Cir. 1997).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise, as defined by § 20 of article X of the state constitution, and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. Bd. of Comm'rs v. Fixed Base Operators, 939 P.2d 464 (Colo. App. 1997).

41-4-107. Appropriation for airports.

The board of county commissioners of any county is hereby authorized to annually appropriate from the county general fund the sum sufficient to carry out the provisions of this part 1 relating to airports.

Source: L. 45: p. 40, § 7. **CSA:** C. 45, § 248. **L. 51:** p. 296, § 6. **CRS 53:** § 5-4-7. **C.R.S. 1963:** § 5-4-7.

41-4-108. Removal of airport hazards.

Where necessary, in order to provide unobstructed airspace for the landing and taking off of aircraft utilizing airports or landing fields acquired or operated under the provisions of this part 1, any such county, city and county, city, or town, either singly or jointly, is authorized to contract or otherwise provide, by condemnation if necessary, for the removal of any airport hazard or the removal or the relocation of all private structures, railways, mains, pipes, conduits, wires, cables, poles, and other facilities and equipment which may interfere with the location, expansion, development, or improvement of such airports, restricted landing areas, and other air navigation facilities or with the safe approach thereto or takeoff therefrom by aircraft and to pay the cost of removal or relocation. A county, city and county, city, or town may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in airspaces over land or water, interests in airport hazards outside the boundaries of the airports or landing fields, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of said airports or landing fields and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime markings and suitable lights for the nighttime markings of airport hazards, and including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power, or authority to zone property adjacent to airports and landing fields, under the provisions of any law of this state.

Source: L. 45: p. 40, § 8(a). **CSA:** C. 45, § 249. **CRS 53:** § 5-4-8. **C.R.S. 1963:** § 5-4-8.

41-4-109. Encroachment a nuisance.

It is unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object or plant or cause to be planted or permit to grow higher any tree or other vegetation which shall encroach upon any airport protection privileges acquired pursuant to the provisions of section 41-4-108, but it is lawful to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances; or the county, city and county, city, or town or the

board in charge of the airport or landing field for which airport protection privileges have been acquired may go upon the land of others and remove any such encroachment without being liable for damages.

Source: L. 45: p. 41, § 8(b). **CSA:** C. 45, § 250. **CRS 53:** § 5-4-9. **C.R.S. 1963:** § 5-4-9.

41-4-110. Previous acts legalized.

Any acquisition of property made prior to April 3, 1945, by any county for the purposes specified in this part 1 and any bonds issued before said date by any such county for such purposes or any election held before said date by such county for the purpose of authorizing the issuance of bonds for any of the provisions specified in this part 1 are hereby legalized and made valid and effective.

Source: L. 45: p. 41, § 9. **CSA:** C. 45, § 251. **CRS 53:** § 5-4-10. **C.R.S. 1963:** § 5-4-10.

41-4-111. Federal aid.

Any county, city and county, city, or town is authorized to accept, receive, and receipt for federal moneys for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, landing fields, air navigation facilities, or airport protection privileges under such terms and conditions as may be agreed to by such county, city and county, city, or town.

Source: L. 45: p. 41, § 10. **CSA:** C. 45, § 252. **CRS 53:** § 5-4-11. **C.R.S. 1963:** § 5-4-11.

41-4-112. Additional powers.

The board of county commissioners of any county is authorized to rent or lease or lease and convey any lands or interest in lands acquired by the county for the purposes set forth in this part 1 to any person, partnership, association, or corporation, either public or private, for commercial, industrial, or other purposes, for such periods of years and upon such terms and conditions as are deemed in the best interests of the county by the board of county commissioners, and the terms thereof shall be binding upon succeeding boards of county commissioners. Any such instruments made and entered into before March 25, 1963, by the board of county commissioners of any

county are hereby confirmed, validated, and declared to be legal and valid insofar as the authority of such board is concerned.

Source: L. 63: p. 154, § 1. **CRS 53:** § 5-4-12. **C.R.S. 1963:** § 5-4-12.

41-4-113. County airport fund.

(1) A fund to be known as the county airport fund is hereby created and established in each of the counties of the state of Colorado, to which shall be credited all moneys received from state and federal sources, and appropriations thereto by the board of county commissioners, and any levies imposed by the board of county commissioners for the construction or maintenance of airports.

(2) The board of county commissioners shall appropriate from said fund for construction, maintenance, and operation of either a county airport or a municipal airport in the manner which in its judgment shall best serve the public interest.

Source: L. 63: p. 152, § 9. **C.R.S. 1963:** § 5-4-13. **L. 88:** (1) amended, p. 1094, § 13, effective January 1, 1989.

PART 2

AIRPORTS - CITIES AND TOWNS

41-4-201. Power to establish airports.

The city councils and boards of trustees in towns have the power to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft either within or without such municipalities or may set apart and use for such purpose real property owned by such cities and towns. Any lands previously acquired by any town or city in the state of Colorado for park purposes may be used for any of the purposes specified in this section. On any airports so established, city councils and boards of trustees in towns shall grant no exclusive concession, license, or lease agreement relating to the business of servicing, repairing, or furnishing supplies for aircraft.

Source: L. 31: p. 788, § 1. **CSA:** C. 163, § 42. **L. 47:** p. 877, § 1. **CRS 53:** § 139-55-1. **C.R.S. 1963:** § 139-55-1.

Cross references: For joint action with counties, see § 41-4-103.

ANNOTATION

Construction and operation is a municipal purpose. The fact that the general assembly has authorized cities and towns generally to construct, operate, and maintain airports within or without their boundaries makes their construction, operation, and maintenance within such limits a municipal purpose. City & County of Denver v. Bd. of Comm'rs, 113 Colo. 150, 156 P.2d 101 (1945).

City of Pueblo, in dealings with fixed base operators at Pueblo airport, acts in governmental capacity and not in a proprietary capacity. Pueblo Aircraft Serv., Inc. v. City of Pueblo, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982).

Lands traversed by county roads. A city has the power to acquire lands for an airport which are traversed by county roads. City & County of Denver v. Bd. of Comm'rs, 113 Colo. 150, 156 P.2d 101 (1945).

41-4-202. How lands acquired.

Real property needed by a city or town for an airport or landing field shall be acquired by purchase if the city or town is able to agree with the owners on the terms thereof and otherwise by condemnation in the manner provided by law for acquiring real property for public purposes.

Source: L. 31: p. 788, § 2. **CSA:** C. 163, § 43. **CRS 53:** § 139-55-2. **C.R.S. 1963:** § 139-55-2.

Cross references: For condemnation proceedings, see articles 1 to 7 of title 38.

41-4-203. Power to incur indebtedness and issue bonds.

The city councils or boards of trustees in towns have the power to incur indebtedness for any of the purposes mentioned in this part 2 and to issue bonds for the acquisition, construction, and improvements of airports and landing fields and appurtenances thereto, in the same form and manner as debt is incurred and bonds are issued for other municipal purposes.

Source: L. 31: p. 789, § 3. **CSA:** C. 163, § 44. **CRS 53:** § 139-55-3. **C.R.S. 1963:** § 139-55-3.

Cross references: For the constitutional provision that establishes limitations on the incurring of debt, see § 20 of article X, Colorado Constitution; for authority of local governments to contract debts, see § 6 of article XI, Colorado Constitution; for general authority of cities and towns to issue bonds, see article 21 of title 31.

41-4-204. Jurisdiction to regulate use.

In connection with the erection or maintenance of any such airport or air navigation facilities, any city or town, or any municipal corporation, has the power and jurisdiction to regulate the receipt, deposit, and removal and the embarkation of passengers or property to and from such landing places or moorage as may be provided; to exact and require charges, fees, and tolls, together with a lien to enforce their payment; to lease or assign for operation such space or area, appurtenances, appliances, or other conveniences necessary or useful in connection therewith; to own and operate municipal aircraft; to employ pilots; to provide rules and regulations covering the use of such airport and facilities and the use of other property or means of transportation within or over the airport; to perform any duties necessary or convenient for the regulation of air traffic; to enter into contracts or otherwise cooperate with the federal government or other public or private agencies; and otherwise to exercise such powers as may be required or convenient in the promotion of aeronautics and the furtherance of commerce and navigation by air.

Source: L. 31: p. 789, § 4. **CSA:** C. 163, § 45. **CRS 53:** § 139-55-4. **C.R.S. 1963:** § 139-55-4.

ANNOTATION

Section clearly and affirmatively expresses a state policy to displace competition in the operation of airports and related activities including off-airport shuttle bus parking. Allright Colo. v. City & County of Denver, 937 F.2d 1502 (10th Cir. 1991).

City of Denver's activities regulating off-airport shuttle services were immune from federal antitrust laws. Allright Colo. v. City amp; County of Denver, 937 F. 2d 1502 (10th Cir. 1991).

41-4-205. Funds may be raised by taxation.

The city council or board of trustees may annually appropriate and cause to be raised by taxation in such city or town a sum sufficient to carry out the provisions of this part 2.

Source: L. 31: p. 790, § 5. **CSA:** C. 163, § 46. **CRS 53:** § 139-55-5. **C.R.S. 1963:** § 139-55-5.

Airport Revenue Bonds

ARTICLE 5

Airport Revenue Bonds - County

41-5-101. Powers.
41-5-102. Authorization - airport facilities and bonds.
41-5-103. Sinking fund - indebtedness.
41-5-104. Signatures of county commissioners.
41-5-105. Bonds - exempt from taxation.
41-5-106. Rights of holders.
41-5-107. Powers supplemental.
41-5-108. Refunding.
41-5-109. Citation to this article - incontestability of bonds.

41-5-101. Powers.

(1) In addition to the powers which it may now have, any county without any election of the taxpaying or qualified electors thereof has the power under this article:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend airport facilities, including any of them within the boundaries of any said county, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of an airport;

(c) To accept loans or grants or both from the United States under any federal law in force for the construction or improvement of such airport or airport facilities or both;

(d) To prescribe, revise, and collect in advance or otherwise from any user of such facility or occupant of any real property connected therewith rentals, rates, fees, tolls, and charges, or any combination thereof, for the use of such airport facilities, including, without limiting the generality of the foregoing, landing fees, office rentals, franchise fees, and land and airport rentals; and, in anticipation of the collection of the revenues of such airport facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of an airport;

(e) To pledge to the punctual payment of said bonds and interest thereon all or any part of the gross revenues arising from such airport facilities;

(f) To enter into and perform contracts or agreements concerning the planning, construction, lease, or other acquisition and the financing of airport facilities, and the maintenance and operation thereof;

(g) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section or in the performance of its duties or in order to secure the payment of its bonds; but no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the county is created thereby no property, other than money, of the county is liable to be forfeited or taken in payment of said bonds, and no debt on the credit of the county is thereby incurred in any manner for any purpose.

Source: L. 65: p. 466, § 1. **C.R.S. 1963:** § 36-21-1.

41-5-102. Authorization - airport facilities and bonds.

(1) The acquisition, construction, reconstruction, lease, improvement, or betterment of any airport or airport facilities, or both, and the issuance of bonds in anticipation of the collection of revenues of such facility to provide funds to pay the cost thereof may be authorized by a vote of a majority of the members of the board of county commissioners at a regular or special meeting thereof. The board shall establish a maximum net effective interest rate for the issue of bonds.

(2) The board of county commissioners, in determining such cost, may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal, and legal expenses, all preliminary planning expenses and interest which it is estimated will accrue during the construction or other acquisition period or a period not exceeding two years thereafter on money borrowed or which it is estimated will be borrowed pursuant to this article; any discount on the sale of the bonds; costs of financial, professional, and other estimates and advice; contingencies; any administrative, operating, and other expenses of the county prior to and during such acquisition period and for a period not exceeding two years thereafter, as may be determined by the board of county commissioners; and all such other expenses as may be

necessary or incident to the financing, acquisition, improvement, and completion of any airport facility, and the placing of the same in operation, and also such provision or reserves for working capital, operation, or maintenance, or for payment or security of principal of or interest on any bonds during or after such an acquisition or improvement as the board of county commissioners may determine, and also reimbursements to the federal government, or any agency, instrumentality, or corporation thereof, of any moneys theretofore expended for or in connection with any such airport facilities.

(3) All revenue bonds issued under the provisions of this article shall bear interest at a rate such that the net effective interest rate for the issue of bonds does not exceed the maximum net effective interest rate authorized, and shall be executed in such a manner and be payable serially in annual installments beginning not later than two years and extending not more than forty years from the date thereof, and may be made payable at such place as the board of county commissioners determines. Said bonds may be made callable for redemption prior to maturity in such manner, at such time, and in such amounts, upon payment of a premium not exceeding three percent of the principal, as may be determined by the board of county commissioners.

(4) Said bonds may be sold at, above, or below their par values, 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.

(5) Said bonds may be sold at private sale to the United States or any agency, instrumentality, or corporation thereof or to the state of Colorado or any agency or instrumentality thereof. Unless sold to the United States or any agency, instrumentality, or corporation thereof or to the state of Colorado or any agency or instrumentality thereof, said bonds shall be sold at public sale after notice of such sale published once at least five days prior to such sale in a newspaper of general circulation in said county or in a financial newspaper.

(6) The revenue bonds issued under this article shall be serially numbered and shall be paid off and retired in the order in which they were issued, but such order of payment shall not apply to warrants or bonds made callable for redemption prior to maturity in the inverse order of their numbers.

(7) Subject to the payment provisions in this article specifically provided, said bonds and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all purposes of article 8 of title 4, C.R.S., pertaining to investment securities, except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S., pertaining to investment securities.

(8) If lost or completely destroyed, any security authorized by this article may be reissued in the form and tenor of the lost or destroyed security upon the owner's furnishing, to the

satisfaction of the governing body, the following: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(9) The resolution authorizing any bonds or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds.

Source: L. 65: p. 467, § 1. **C.R.S. 1963:** § 36-21-2. **L. 70:** p. 139, § 7. **L. 75:** (7) amended, p. 227, § 92, effective July 16.

Cross references: For the definition of "net effective interest rate", as used in subsections (1), (3), and (4) of this section, see § 30-26-301 (2)(d)(I).

41-5-103. Sinking fund - indebtedness.

(1) The board of county commissioners of any county is authorized to set aside a special sinking fund in the office of the county treasurer for the payment of revenue bonds authorized by and issued under the provisions of this article and for the payment of interest due on such bonds, but the general income of the county shall not be pledged for the payment of the principal of the bonds and interest thereon. The county treasurer shall deposit in said sinking fund all rents, royalties, fees, rates, and charges derived from or rendered by the airport or airport facilities, and the board of county commissioners of any county may pledge any or all moneys in said sinking fund to the payment of bonds authorized under this article and the interest thereon.

(2) Revenue bonds issued under this article shall not constitute an indebtedness of the county within the meaning of any constitutional or statutory limitations. Each bond issued under this article shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that said bond does not constitute a debt of the county within the meaning of any constitutional or statutory limitations.

Source: L. 65: p. 469, § 1. **C.R.S. 1963:** § 36-21-3.

41-5-104. Signatures of county commissioners.

The bonds and any coupons bearing the signatures of county commissioners in office on the date of the signing thereof shall be valid and binding obligations of the county, notwithstanding

that, before the delivery thereof and payment thereof, any of the persons whose signatures appear thereon have ceased to be county commissioners of the county issuing the same.

Source: L. 65: p. 470, § 1. **C.R.S. 1963:** § 36-21-4.

41-5-105. Bonds - exempt from taxation.

The bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 65: p. 470, § 1. **C.R.S. 1963:** § 36-21-5.

Cross references: For the taxation of bonds issued pursuant to the "Public Airport Authority Act", see § 41-3-107.

41-5-106. Rights of holders.

(1) Any holder of any issue of bonds or any holder of bonds, subject to any contractual limitations therein, and for the equal benefit and protection of all holders of bonds similarly situated, has the following rights and powers:

(a) By mandamus or other suit, action, or proceeding at law or in equity, to enforce his and other such holders' rights against the county and its governing body to require and compel such county or governing body to perform and carry out its duties and obligations under this article and its covenants and agreements with the bondholders; and

(b) By action or suit in equity, to require the county and the governing body thereof to account as if they were the trustee of an express trust.

(2) No right or remedy conferred by this article upon any holder of bonds is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this article or by any other law.

Source: L. 65: p. 470, § 1. **C.R.S. 1963:** § 36-21-6.

41-5-107. Powers supplemental.

The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, any other law, and the limitations imposed by this article shall not affect any powers conferred by any other such law. Bonds may be issued under this article without regard to the provisions of any other law. The airport facilities may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this article for said purposes, notwithstanding that any law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of an airport, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including, but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

Source: L. 65: p. 470, § 1. **C.R.S. 1963:** § 36-21-7.

41-5-108. Refunding.

Revenue bonds issued pursuant to the provisions of this article may be refunded in the manner provided by the "Refunding Revenue Securities Law", as set forth in article 54 of title 11, C.R.S.

Source: L. 65: p. 471, § 1. **C.R.S. 1963:** § 36-21-8.

41-5-109. Citation to this article - incontestability of bonds.

Any resolution authorizing any bonds under this article may provide that each bond therein authorized shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all of the provisions of this article, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 65: p. 471, § 1. **C.R.S. 1963:** § 36-21-9.

AEROSPACE

ARTICLE 6

Aerospace

41-6-101. Limited liability for spaceflight activities - definitions - agreement and warning.

41-6-101. Limited liability for spaceflight activities - definitions - agreement and warning.

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

(a) "Spaceflight activity" means launch services or reentry services as those terms are defined in 51 U.S.C. sec. 50902.

(b) "Spaceflight entity" means any public or private entity holding a United States federal aviation administration launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles, which manufacturer or supplier has been reviewed by the United States federal aviation administration as part of issuing such a license, permit, or authorization.

(c) "Spaceflight participant" means any spaceflight participant as that term is defined in 51 U.S.C. sec. 50902.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), a spaceflight entity is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities so long as the agreement and warning contained in paragraph (b) of subsection (3) of this section is distributed and signed as required. Except as provided for in paragraph (b) of this subsection (2), a spaceflight participant or his or her representative may not maintain an action against or recover from a spaceflight entity for any loss, damage, injury, or death of the spaceflight participant resulting exclusively from any of the inherent risks of spaceflight activities.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2) to the contrary, this subsection (2) does not limit liability if the spaceflight entity does one or more of the following:

(I) Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the spaceflight participant and that act or omission proximately causes loss, damage, injury, or death to the spaceflight participant;

(II) Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the spaceflight activities and the danger proximately causes injury, damage, or death to the spaceflight participant; or

(III) Intentionally injures the spaceflight participant.

(3) (a) Every spaceflight entity providing spaceflight activities to a spaceflight participant, whether such activities occur on or off the site of a facility capable of launching a suborbital flight, shall have each spaceflight participant sign the agreement and warning statement specified in paragraph (b) of this subsection (3).

(b) The agreement shall include the following language and any other language required by federal law:

AGREEMENT AND WARNING

Under Colorado law, there is no liability for any loss, damage, injury to, or death of a spaceflight participant in a spaceflight activity provided by a spaceflight entity if such loss, damage, injury, or death results from the inherent risks of the spaceflight activity to the spaceflight participant. Injuries caused by the inherent risks of spaceflight activities may include, among others, death or injury to person or property. I, the undersigned spaceflight participant, assume the inherent risk of participating in this spaceflight activity.

_____

(signed)

_____

(witnessed)

(c) Failure to comply with the warning statement requirements in this section prevents a spaceflight entity from invoking the privileges of immunity provided by this section.

Source: L. 2012: Entire article added, (SB 12-035), ch. 126, p. 431, § 2, effective August 8.

Cross references: For the legislative declaration in the 2012 act adding this article, see section 1 of chapter 126, Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "A Space Law Primer for Colorado Lawyers: Part 2: U.S. Space Law", see 47 Colo. Law. 43 (May 2018).