

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0076.01 Jason Gelender x4330

SENATE BILL 22-048

SENATE SPONSORSHIP

Scott,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE IMPROVEMENT OF THE DISPUTE REVIEW BOARD**
102 **STAGE OF THE PROCESS USED TO RESOLVE CONTRACTUAL**
103 **DISPUTES BETWEEN CONTRACTORS AND THE DEPARTMENT OF**
104 **TRANSPORTATION.**

Bill Summary

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

The bill requires the department of transportation (CDOT) to contract with a private sector expert to review the dispute review board stage of the process used to resolve contractual disputes between CDOT

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

and contractors and complete a report making recommendations for best practices and improvements to CDOT by December 15, 2022. CDOT and the contractor must then present the report as part of CDOT's "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation to its legislative oversight committees. CDOT is also required to convene a committee of a contractor, CDOT, and legislative members to oversee the work of the expert.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 43-1-131 as
3 follows:

4 **43-1-131. Contract dispute resolution - review of dispute**
5 **resolution board process - report - legislative declaration - repeal.**

6 (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

7 (a) IN ITS "STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE
8 CONSTRUCTION" DOCUMENT, THE DEPARTMENT SETS FORTH AN
9 EXTENSIVE PROCESS FOR RESOLVING CONTRACTUAL DISPUTES BETWEEN
10 THE DEPARTMENT AND A CONTRACTOR THAT MUST BE EXHAUSTED IN ITS
11 ENTIRETY PRIOR TO THE INITIATION OF LITIGATION OR ARBITRATION;

12 (b) ONE STAGE OF THE DISPUTE RESOLUTION PROCESS INVOLVES
13 THE USE OF A DISPUTE REVIEW BOARD, WHICH IS DESCRIBED IN PART IN
14 THE STANDARD SPECIFICATIONS AS AN INDEPENDENT THIRD PARTY THAT
15 WILL ASSIST IN AND FACILITATE THE TIMELY AND EQUITABLE RESOLUTION
16 OF DISPUTES BETWEEN THE DEPARTMENT AND THE CONTRACTOR IN AN
17 EFFORT TO AVOID ANIMOSITY AND CONSTRUCTION DELAYS AND RESOLVE
18 DISPUTES AS CLOSE TO THE PROJECT LEVEL AS POSSIBLE;

19 (c) AS EVIDENCED IN PART BY THE GRANTING OF A CONTRACTOR'S
20 MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST THE DEPARTMENT IN
21 *HAMON INFRASTRUCTURE, INC. V. COLORADO DEPARTMENT OF*
22 *TRANSPORTATION*, CASE NO. 2020 CV 31028 (DENVER DIST CT. AUG. 5,

1 2021), WHICH WAS BASED ON THE COURT'S FINDINGS THAT THE
2 DEPARTMENT HAD BREACHED A CONTRACT FOR A LARGE HIGHWAY
3 CONSTRUCTION PROJECT BY ENGAGING IN EX PARTE COMMUNICATIONS
4 WITH THE CHAIR OF A DISPUTE REVIEW BOARD AND OTHERWISE ACTING IN
5 A MANNER THAT COMPROMISED THE INTEGRITY OF THE BOARD AND
6 THEREBY BREACHED AN IMPLIED COVENANT OF GOOD FAITH AND FAIR
7 DEALING, AT TIMES THE DISPUTE REVIEW BOARD PROCESS DOES NOT WORK
8 AS INTENDED, WHICH IS DETRIMENTAL TO BOTH CONTRACTORS AND THE
9 STATE; AND

10 (d) IT IS NECESSARY AND APPROPRIATE TO REQUIRE A THOROUGH
11 REVIEW OF THE DISPUTE REVIEW BOARD STAGE OF THE DEPARTMENT'S
12 DISPUTE RESOLUTION PROCESS TO ESTABLISH BEST PRACTICES AND
13 DETERMINE WHAT IMPROVEMENTS CAN BE MADE.

14 (2) THE DEPARTMENT SHALL CONTRACT WITH A PRIVATE SECTOR
15 CONTRACTOR THAT HAS EXTENSIVE KNOWLEDGE AND EXPERTISE
16 REGARDING BOTH PUBLIC CONSTRUCTION CONTRACTING AND CONTRACT
17 DISPUTE RESOLUTION TO REVIEW THE DISPUTE REVIEW BOARD STAGE OF
18 THE PROCESS USED TO RESOLVE CONTRACTUAL DISPUTES BETWEEN THE
19 DEPARTMENT AND CONTRACTORS AND MAKE RECOMMENDATIONS FOR
20 BEST PRACTICES AND IMPROVEMENTS TO THE DEPARTMENT AND THE
21 GENERAL ASSEMBLY. NO LATER THAN DECEMBER 15, 2022, THE
22 CONTRACTOR SHALL COMPLETE A WRITTEN REPORT THAT DETAILS THE
23 RESULTS OF ITS REVIEW AND ITS RECOMMENDATIONS FOR BEST PRACTICES
24 AND IMPROVEMENTS. THE DEPARTMENT AND THE CONTRACTOR SHALL
25 PRESENT THE REPORT TO THE HOUSE OF REPRESENTATIVES
26 TRANSPORTATION AND LOCAL GOVERNMENT COMMITTEE AND THE SENATE
27 TRANSPORTATION AND ENERGY COMMITTEE, OR THEIR SUCCESSOR

1 COMMITTEES, AS PART OF THE DEPARTMENT'S PRESENTATION REQUIRED BY
2 SECTION 2-7-203 (2).

3 (3) THE DEPARTMENT SHALL CONVENE A COMMITTEE TO OVERSEE
4 THE CONTRACTOR CONDUCTING THE WORK REQUIRED BY SUBSECTION (2)
5 OF THIS SECTION. THE COMMITTEE CONSISTS OF THE FOLLOWING
6 MEMBERS:

7 (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE
8 EXECUTIVE DIRECTOR'S DESIGNEE;

9 (b) THE DIRECTOR OF THE HIGH-PERFORMANCE TRANSPORTATION
10 ENTERPRISE CREATED IN SECTION 43-4-806 (2)(a)(I) OR THE DIRECTOR'S
11 DESIGNEE;

12 (c) TWO MEMBERS OF THE COMMISSION, ONE OF WHOM SHALL
13 ALSO BE A MEMBER OF THE BOARD OF THE HIGH-PERFORMANCE
14 TRANSPORTATION ENTERPRISE;

15 (d) THE EXECUTIVE DIRECTOR OF THE COLORADO CONTRACTOR'S
16 ASSOCIATION OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

17 (e) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES APPOINTED
18 BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES; AND

19 (f) ONE MEMBER OF THE SENATE APPOINTED BY THE PRESIDENT OF
20 THE SENATE.

21 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

22 **SECTION 2. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly; except
25 that, if a referendum petition is filed pursuant to section 1 (3) of article V
26 of the state constitution against this act or an item, section, or part of this
27 act within such period, then the act, item, section, or part will not take

1 effect unless approved by the people at the general election to be held in
2 November 2022 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.