

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0402.01 Esther van Mourik x4215

SENATE BILL 18-106

SENATE SPONSORSHIP

Tate, Martinez Humenik, Moreno, Zenzinger

HOUSE SPONSORSHIP

Thurlow, Arndt, Gray, Hooton, McKean

Senate Committees

Local Government

House Committees

A BILL FOR AN ACT

101 **CONCERNING OBSOLETE STATUTORY PROVISIONS RELATED TO A**
102 **LOCAL GOVERNMENT'S PLEDGING OF SALES OR USE TAX**
103 **REVENUES TO PAY FOR REVENUE BONDS ISSUED FOR THE**
104 **PURPOSE OF FINANCING CAPITAL IMPROVEMENTS.**

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/>.)

Statutory Revision Committee. Current law specifies that a county, city, or incorporated town may include the creation of a sales and use tax capital improvement fund (special fund) when the county, city, or

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.

SENATE
Amended 2nd Reading
February 15, 2018

incorporated town seeks voter approval to levy a sales or use tax. Before the adoption of section 20 of article X of the state constitution (TABOR), the statute provided that a county, city, or incorporated town needed to create the special fund in order to issue revenue bonds payable solely from the fund for financing capital improvements.

Current law also specifies that if a county, city, or incorporated town wishes to create a special fund after it has already obtained voter approval for the levying of a sales or use tax, then the county, city, or incorporated town must seek voter approval for the creation of the special fund.

The creation of the special fund does not have a purpose for a county, city, or incorporated town post-TABOR because the question of using sales or use tax revenues for financing capital improvements is asked when the county, city, or incorporated town seeks voter approval for the bond issuance. Thus, the language regarding the creation of the fund is unnecessary.

Furthermore, the requirement to seek voter approval for the creation of the special fund after a county, city, or incorporated town has already obtained voter approval for the levying of a sales or use tax predates the adoption of TABOR. Because TABOR requires any district, including a county, city, or incorporated town, to seek voter approval for the issuance of any revenue bonds, the requirement to seek voter approval for the creation of the special fund is unnecessary and duplicative.

The bill repeals the unnecessary and duplicative law and clarifies that the use of sales and use tax revenue bonds for capital improvements requires voter approval under TABOR.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 declares that the purpose of Senate Bill 18-106, enacted in 2018, is to
4 effect a nonsubstantive change in statute to repeal section 29-2-111,
5 Colorado Revised Statutes, concerning a local government's pledging of
6 sales or use tax revenues to pay for revenue bonds issued for the purpose
7 of financing capital improvements. The general assembly further declares
8 that the repeal of this statutory section does not in any way alter the scope
9 or applicability of the remaining statutory sections and in fact clarifies
10 that section 20 of article X of the state constitution (TABOR) applies

1 when a local government seeks to issue revenue bonds for the purpose of
2 financing capital improvements.

3 **SECTION 2.** In Colorado Revised Statutes, **repeal** 29-2-111 as
4 follows:

5 **29-2-111. Pledging of sales and use tax for capital**
6 **improvements.** ~~(1) A sales or use tax proposal made pursuant to this~~
7 ~~article by, or on behalf of, any county, city, or incorporated town may~~
8 ~~contain a provision for the creation of a special fund, to be known as a~~
9 ~~"sales and use tax capital improvement fund", for the deposit of all or any~~
10 ~~part of the revenue from the sales or use tax, or both, and to be used~~
11 ~~solely to provide capital improvements. A sales or use tax proposal of any~~
12 ~~county, city, or incorporated town which has been approved by the~~
13 ~~registered electors and which does not contain a provision for the creation~~
14 ~~of such a special fund may be subsequently amended by ordinance or~~
15 ~~resolution of the governing body to provide for such a special fund. Any~~
16 ~~such amendment shall take effect only after approval by a majority of the~~
17 ~~registered electors of the county, city, or town voting at a regular or~~
18 ~~special election, but no election shall be required in order to create a~~
19 ~~capital improvement fund for the deposit of any portion of sales or use tax~~
20 ~~revenue allocated for capital improvement purposes in a sales or use tax~~
21 ~~proposal previously approved by the voters.~~

22 ~~(2) A city or town by ordinance adopted by the governing body~~
23 ~~may pledge all or any part of the sales or use tax revenue, or both, it~~
24 ~~receives from the countywide sales or use tax for capital improvement~~
25 ~~purposes. Any such pledge shall take effect only after approval by a~~
26 ~~majority of the registered electors of the city or town voting at a regular~~
27 ~~or special election.~~

1 ~~(3) When sales or use tax revenue, or both, is pledged solely for~~
2 ~~capital improvement purposes, it shall be deposited immediately upon~~
3 ~~being received or collected into the sales and use tax capital improvement~~
4 ~~fund. Upon deposit in this fund, such revenue is thereafter not available~~
5 ~~to be pledged or expended for any general municipal or county purpose.~~

6 ~~(4) For purposes of this section and section 29-2-112, "capital~~
7 ~~improvement purposes" include:~~

8 ~~(a) Paying the costs of acquiring or constructing any capital~~
9 ~~improvement;~~

10 ~~(b) Acquiring land or equipment;~~

11 ~~(c) The costs of issuing bonds;~~

12 ~~(d) The costs of capitalized interest and reserves; and~~

13 ~~(e) The costs of operating and maintaining the capital~~
14 ~~improvements to be financed.~~

15 ~~(5) Notwithstanding any other provision to the contrary, no sales~~
16 ~~or use tax revenues in the sales and use tax capital improvement fund may~~
17 ~~be expended in any year for the purposes specified in subsection (4) of~~
18 ~~this section unless said fund contains sufficient revenues to pay the~~
19 ~~anticipated annual debt service on any sales and use tax revenue bonds for~~
20 ~~which moneys in the fund have been pledged.~~

21 **SECTION 3.** In Colorado Revised Statutes, 29-2-112, **amend** (1),
22 (2), and (9) as follows:

23 **29-2-112. Sales and use tax revenue bonds.** (1) SUBJECT TO THE
24 APPROVAL OF THE REGISTERED ELECTORS OF A COUNTY, CITY, OR
25 INCORPORATED TOWN PURSUANT TO SECTION 20 OF ARTICLE X OF THE
26 STATE CONSTITUTION, any county, city, or incorporated town ~~which has~~
27 ~~pledged sales or use tax revenue, or both, solely for capital improvement~~

1 ~~purposes and has created a sales and use tax capital improvement fund~~
2 may, in anticipation of collection of sales or use tax revenues, issue
3 revenue bonds payable ~~solely from the fund~~ THE REVENUES for the
4 purpose of financing capital improvements.

5 (2) The revenue bonds may be authorized and issued by ordinance
6 or resolution of the governing body of the county, city, or incorporated
7 town. ~~without further election.~~

8 (9) The revenue bonds shall not constitute an indebtedness of the
9 county, city, or incorporated town within the meaning of any
10 constitutional or statutory debt limitation or provision. Each bond issue
11 under this section shall recite in substance that said bonds, including the
12 interest thereon, are payable solely from ~~a special fund~~ THE SALES AND
13 USE TAX REVENUES and that said bonds do not constitute a debt within the
14 meaning of any constitutional or statutory limitation.

15 **SECTION 4. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2018 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.