

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 23-0343.01 Megan McCall x4215

SENATE BILL 23-035

SENATE SPONSORSHIP

Bridges and Moreno, Exum, Hinrichsen, Marchman

HOUSE SPONSORSHIP

Herod,

Senate Committees

Local Government & Housing
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE OPERATION OF THE MIDDLE-INCOME HOUSING**
102 **AUTHORITY, AND, IN CONNECTION THEREWITH, ADDING**
103 **MEMBERS TO THE BOARD OF DIRECTORS AND EXPANDING THE**
104 **POWER OF THE AUTHORITY TO ENTER INTO PUBLIC-PRIVATE**
105 **PARTNERSHIPS.**

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>.)

Under current law, the middle-income housing authority (authority) has the power to make and enter into contracts or agreements

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

SENATE
3rd Reading Unamended
February 22, 2023

SENATE
Amended 2nd Reading
February 21, 2023

with public or private entities to facilitate public-private partnerships. The bill clarifies this power of the authority to enter into public-private partnerships by specifying that:

- The affordable rental housing component of a public-private partnership is exempt from state and local taxation;
- A public-private partnership may provide for the transfer of the interest in an affordable rental housing project to an entity other than the authority;
- The authority may issue bonds to finance the affordable rental housing component in a public-private partnership; and
- Bonds issued by the authority may be payable from the revenue and assets of the affordable rental housing component of a public-private partnership or solely from the revenue or assets of the authority as current law requires.

Additionally, the bill expands the board of directors of the authority from 14 to 16 by adding 2 nonvoting members. The senate majority leader and the house majority leader will each appoint a member of the general assembly from their respective chambers to serve as the 2 new nonvoting members, unless the senate majority leader and the house majority leader are from the same political party in which case the house minority leader will appoint the member to the board of directors from the house.

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

2 **SECTION 1.** In Colorado Revised Statutes, 29-4-1102, **amend**
3 (1)(g) and (1)(h); and **add** (1)(i) as follows:

4 **29-4-1102. Legislative declaration.** (1) The general assembly
5 finds and declares that:

6 (g) The authority's housing units will remain affordable with
7 stable rents because they will be owned by the authority and operated by
8 experienced and competent operators at the authority's direction, in
9 perpetuity; **and**

10 (h) Increasing affordable rental workforce housing through the
11 activities of the authority and the exercise of its plenary powers pursuant

1 to this part 11 is in the public interest and is a matter of statewide
2 concern. The activities of the authority will comply with fair housing laws
3 and promote a substantial, legitimate, and nondiscriminatory interest of
4 the state that cannot be served by another practice that has a less
5 discriminatory effect; AND

6 (i) A PUBLIC-PRIVATE PARTNERSHIP ENTERED INTO BY THE
7 AUTHORITY IN CONNECTION WITH AN AFFORDABLE RENTAL HOUSING
8 PROJECT OR IN CONNECTION WITH PROVIDING HOUSING ASSISTANCE TO
9 TENANTS OF AN AFFORDABLE RENTAL HOUSING PROJECT IN ACCORDANCE
10 WITH THIS PART 11 SERVES A PUBLIC PURPOSE AND DOES NOT, THEREFORE,
11 VIOLATE SECTION 2 OF ARTICLE XI OF THE STATE CONSTITUTION.

12 **SECTION 2.** In Colorado Revised Statutes, 29-4-1103, **amend**
13 (1); and **add** (1.5) and (8) as follows:

14 **29-4-1103. Definitions.** As used in this part 11, unless the context
15 otherwise requires:

16 (1) ~~(a) "Affordable rental housing project" means real property~~
17 ~~that has the primary purpose of providing rental housing for~~
18 ~~middle-income individuals and families, which property is selected by the~~
19 ~~authority and owned by the authority in accordance with the provisions~~
20 ~~set forth in section 29-4-1107.~~

21 ~~(b) An "affordable rental housing project" may include~~
22 ~~commercial space if the board determines that the commercial space is~~
23 ~~incidental to the housing component of the project. "AFFORDABLE RENTAL~~
24 ~~HOUSING COMPONENT" MEANS THE PROPERTY AND ACTIVITIES INCLUDED~~
25 ~~IN A PUBLIC-PRIVATE PARTNERSHIP THAT ARE PART OF AN AFFORDABLE~~
26 ~~RENTAL HOUSING PROJECT OR ARE RELATED TO PROVIDING HOUSING~~
27 ~~ASSISTANCE TO TENANTS OF AN AFFORDABLE RENTAL HOUSING PROJECT.~~

1 (1.5) (a) "AFFORDABLE RENTAL HOUSING PROJECT" MEANS
2 PROPERTY THAT HAS THE PRIMARY PURPOSE OF PROVIDING RENTAL
3 HOUSING FOR MIDDLE-INCOME INDIVIDUALS AND FAMILIES, WHICH
4 PROPERTY IS SELECTED BY THE AUTHORITY IN ACCORDANCE WITH THE
5 PROVISIONS SET FORTH IN SECTION 29-4-1107 AND IS OWNED BY THE
6 AUTHORITY OR IS OWNED AND OPERATED PURSUANT TO A PUBLIC-PRIVATE
7 PARTNERSHIP.

8 (b) AN "AFFORDABLE RENTAL HOUSING PROJECT" MAY INCLUDE
9 COMMERCIAL SPACE IF THE BOARD DETERMINES THAT THE COMMERCIAL
10 SPACE IS INCIDENTAL TO THE HOUSING COMPONENT OF THE PROJECT.

11 (8) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A CONTRACT OR
12 AGREEMENT BETWEEN THE AUTHORITY AND ONE OR MORE PUBLIC OR
13 PRIVATE ENTITIES OR PERSONS TO WORK TOGETHER TO ACQUIRE,
14 CONSTRUCT, FINANCE, OR OPERATE AN AFFORDABLE RENTAL HOUSING
15 PROJECT AND TO ALLOCATE OBLIGATIONS, INTERESTS, RIGHTS, AND
16 REVENUES TO, IN, AND FROM THE AFFORDABLE RENTAL HOUSING PROJECT
17 AMONG THE PARTIES TO THE CONTRACT OR AGREEMENT. A
18 "PUBLIC-PRIVATE PARTNERSHIP" MAY INCLUDE AN AGREEMENT TO WORK
19 TOGETHER TO ACQUIRE, CONSTRUCT, FINANCE, OR OPERATE COMMERCIAL
20 PROPERTY IN CONNECTION WITH THE AFFORDABLE RENTAL HOUSING
21 PROJECT, AS PERMITTED IN SUBSECTION (1.5)(b) OF THIS SECTION, AND TO
22 ALLOCATE OBLIGATIONS, INTERESTS, RIGHTS, AND REVENUES TO, IN, AND
23 FROM THE COMMERCIAL PROPERTY AMONG THE PARTIES TO THE
24 AGREEMENT OR CONTRACT AND MAY INCLUDE AN AGREEMENT TO
25 PROVIDE HOUSING ASSISTANCE TO THE TENANTS OF AN AFFORDABLE
26 RENTAL HOUSING PROJECT.

27 **SECTION 3.** In Colorado Revised Statutes, 29-4-1104, **amend**

1 (2)(b), (3), (12)(a), and (12)(b); and **add** (2)(d.5) as follows:

2 **29-4-1104. Middle-income housing authority - creation - board**
3 **of directors - meetings - records - tax exempt - audit - report.**

4 (2) (b) The board consists of ~~fourteen~~ SIXTEEN persons, INCLUDING TWO
5 NONVOTING MEMBERS PURSUANT TO SUBSECTION (2)(d.5) OF THIS
6 SECTION.

7 (d.5) IN ADDITION TO THE APPOINTMENTS SET FORTH IN
8 SUBSECTIONS (2)(c) AND (2)(d) OF THIS SECTION, THE SENATE MAJORITY
9 LEADER AND THE HOUSE MAJORITY LEADER SHALL EACH APPOINT A
10 REPRESENTATIVE FROM THE GENERAL ASSEMBLY FROM THEIR RESPECTIVE
11 CHAMBERS TO BE NONVOTING BOARD MEMBERS; EXCEPT THAT, IF THE
12 SENATE MAJORITY LEADER AND THE HOUSE MAJORITY LEADER ARE FROM
13 THE SAME POLITICAL PARTY, THEN THE SENATE MAJORITY LEADER AND
14 THE HOUSE MINORITY LEADER SHALL EACH APPOINT THE REPRESENTATIVE
15 FROM THEIR RESPECTIVE CHAMBERS.

16 (3) (a) The governor shall make initial appointments of board
17 members in accordance with subsection (2)(b) of this section on or before
18 September 1, 2022, and shall appoint one of the members to serve as the
19 initial chairperson. The initial chairperson has the authority to establish
20 and administer matters related to the initial set up of the authority,
21 including staffing, legal services, or to coordinate with the office of
22 economic development, created in section 24-48.5-101 (1), or the
23 department of local affairs, created in section 24-1-125 (1), on
24 administrative matters and other matters related to the initial set up and
25 operation of the authority, which contracts shall be for a term of no longer
26 than one year from September 1, 2022, and shall be ratified by the board
27 at its initial meeting set forth in subsection (4)(a) of this section.

1 (b) The authority may hire staff as it deems necessary or
2 convenient to administer this part 11, and the office of economic
3 development or the department of local affairs may assist the authority
4 with administering this part 11. The authority may cooperate and enter
5 into contracts with the office of economic development or the department
6 of local affairs, or with another agency or entity, for administrative or
7 operations matters, including for staffing. The authority shall pay the
8 office of economic development, the department of local affairs, or
9 another agency or entity that the authority has entered into a contract with
10 for all costs incurred for services, staffing, and administrative costs that
11 are approved by the initial chairperson and ratified by the board or that
12 are approved by the authority. NOTHING IN THIS PART 11 PRECLUDES THE
13 AUTHORITY FROM HIRING STAFF AND ENTERING INTO CONTRACTS
14 CONCURRENTLY AS THE AUTHORITY DEEMS NECESSARY OR CONVENIENT
15 FOR ADMINISTRATION OR OPERATIONS MATTERS.

16 (12) (a) The income and revenue of the authority, all property at
17 any time owned by the authority, THE AFFORDABLE RENTAL HOUSING
18 COMPONENT OF PROPERTY IN A PUBLIC-PRIVATE PARTNERSHIP, all bonds
19 issued by the authority, the interest on and other income from such bonds,
20 and the transfer of such bonds are exempt from income taxation, real and
21 personal property taxation, and all other taxation and assessments in the
22 state. The purchase and use of property by or for the benefit of the
23 authority AND THE PURCHASE AND USE OF PROPERTY THAT IS THE
24 AFFORDABLE RENTAL HOUSING COMPONENT OF A PUBLIC-PRIVATE
25 AGREEMENT are exempt from sales and use taxes imposed by the state, a
26 county, a city and county, a city, any other political subdivision of the
27 state, or local government entity. In the resolution or indenture

1 authorizing bonds, the authority may waive the exemption from federal
2 income taxation for interest on the bonds. The authority may agree to
3 make payments in lieu of property or sales and use taxes to the state, a
4 county, a city and county, a city, any political subdivision of the state, or
5 local government entity.

6 (b) Property sold by the authority or otherwise not owned by the
7 authority, a controlled entity, or other governmental entity exempt from
8 taxation AND PROPERTY THAT IS NOT THE AFFORDABLE RENTAL HOUSING
9 COMPONENT IN A PUBLIC-PRIVATE PARTNERSHIP shall be subject to all
10 taxation and assessments imposed by the state, a city, a county, a city and
11 county, any other political subdivision of the state, or a local
12 governmental entity.

13 **SECTION 4.** In Colorado Revised Statutes, 29-4-1106, **amend**
14 (1)(d) as follows:

15 **29-4-1106. Additional powers - affordable workforce housing**
16 **projects.** (1) In addition to the powers specified in section 29-4-1105,
17 the authority has the following powers:

18 (d) To ~~make and enter into contracts or agreements with any~~
19 ~~private or public entity to facilitate~~ a public-private partnership;
20 ~~including:~~

21 ~~(I) An agreement for the authority to acquire, construct, finance,~~
22 ~~or operate property or services in connection with an affordable rental~~
23 ~~housing project or housing assistance consistent with the provisions of~~
24 ~~this part 11; or~~

25 ~~(II) An agreement for a private entity to acquire, construct,~~
26 ~~finance, or operate property or services in connection with an affordable~~
27 ~~rental housing project or housing assistance consistent with the provisions~~

1 of this part 11;

2 **SECTION 5.** In Colorado Revised Statutes, 29-4-1107, **amend**
3 (6) as follows:

4 **29-4-1107. Powers of the board - selection of projects -**
5 **ownership - report.** (6) All interests of the person or group whose
6 proposal for an affordable rental housing project is selected will be
7 transferred to the authority OR TRANSFERRED AS OTHERWISE PROVIDED IN
8 A PUBLIC-PRIVATE PARTNERSHIP; except that, and subject to approval by
9 the authority, a housing authority whose proposal is selected may retain
10 a portion of interest in the affordable rental housing project.
11 Notwithstanding the provisions of this subsection (6), the person or group
12 of a selected affordable rental housing project shall not retain or
13 otherwise be entitled to any interest in the affordable rental housing
14 project or any right to payments from the revenues from the affordable
15 rental housing project transferred to the authority OR OTHERWISE
16 TRANSFERRED IN ACCORDANCE WITH A PUBLIC-PRIVATE PARTNERSHIP,
17 except for the person's or group's right to compensation and to
18 reimbursement for expenses, which shall be clearly detailed in the
19 contract between the authority and the person or group set forth in
20 subsection (5) of this section. A PUBLIC-PRIVATE PARTNERSHIP MAY ALSO
21 PROVIDE FOR A PERSON'S OR GROUP'S RIGHT TO COMPENSATION AND TO
22 REIMBURSEMENT FOR EXPENSES IN CONNECTION WITH AN AFFORDABLE
23 RENTAL HOUSING PROJECT.

24 **SECTION 6.** In Colorado Revised Statutes, 29-4-1109, **amend**
25 (1)(a) and (1)(b) as follows:

26 **29-4-1109. Bonds.** (1) (a) The authority may issue bonds to
27 finance its affordable rental housing projects, TO FINANCE THE

1 AFFORDABLE RENTAL HOUSING COMPONENT IN A PUBLIC-PRIVATE
2 PARTNERSHIP, or to accomplish or further any of its powers or duties
3 relating to affordable rental housing projects.

4 (b) Bonds must be issued pursuant to resolution of the board, are
5 payable solely from all or a specified portion of the revenues or assets of
6 the authority OR THE REVENUES AND ASSETS OF THE AFFORDABLE RENTAL
7 HOUSING COMPONENT OF A PUBLIC-PRIVATE PARTNERSHIP, and may be
8 secured by a mortgage, deed of trust, pledge, other security interest in or
9 encumbrance on any of the revenue, property, or assets of the authority
10 OR THE REVENUE, PROPERTY, OR ASSETS OF THE AFFORDABLE RENTAL
11 HOUSING COMPONENT OF A PUBLIC-PRIVATE PARTNERSHIP.

12 **SECTION 7. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, or safety.