

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003



John W. Hickenlooper
Governor

June 4, 2014

The Honorable Colorado Senate
Sixty-ninth General Assembly
State Capitol Building
Denver, Colorado 80203

Dear Colleagues:

This is to inform you that today at 2:27 p.m., I vetoed Senate Bill 14-197, "Transportation Enterprise Transparency Act." At the same time, I am issuing an executive order that will improve transparency, accountability, and openness relating to the Colorado Department of Transportation (CDOT) High-performance Transportation Enterprise (HPTE). This letter sets forth my reasons for vetoing the legislation and issuing the executive order. The bill and this letter are being filed today with the Secretary of State in accordance with Article IV, Section 11 of the Colorado Constitution.

We firmly believe that government should always strive to be transparent and accountable. We support SB 14-197's provisions that improve transparency, accountability, and openness in public-private partnerships (P3s), including hosting multiple town-hall meetings for P3 corridors; announcing online any changes in high-occupancy vehicle lane thresholds; considering transit alternatives, and providing more robust legislative reporting obligations. We appreciate the hard work and dedication of SB 14-197's sponsors and House and Senate leadership, who are tenacious advocates for promoting transparency and openness in our state government. In particular, Senate Majority Leader Heath worked tirelessly to move the bill from its original proposal to a much better final product.

Unfortunately, SB 14-197 is not just a transparency bill—it also inappropriately constrains the business terms of future P3 agreements. In response to Colorado's "quiet crisis in transportation" identified over five years ago, in 2009 the General Assembly directed the executive branch to aggressively pursue P3s for transportation infrastructure to address the state's ongoing inability to adequately fund transportation needs. While CDOT and HPTE have made great strides recently in this area, continued success depends on being able to access all of the tools in our transportation financing toolbox.

Senate Bill 14-197 departs from the state's policy of enabling P3s as a financing alternative. In so doing, it restricts future P3 opportunities by discouraging investment in Colorado, eliminating cost-saving alternatives for delivering core infrastructure, and curbing

economic development opportunities. The bill requires any future P3 with certain features (contract terms over 35 years, procurement disruptions, inappropriate linkage to municipal debt terms, abstract non-compete provisions, and compensation events) be pre-approved by the General Assembly. Yet, these material constraints on business terms (that are traditionally negotiated at arm's-length) would create a chilling component on future transactions, making investors unlikely or unwilling to bid on Colorado projects due to the increased risks this process would generate. These risks will translate into more expensive transportation infrastructure for Colorado and its residents.

We are also concerned that private sector and local government stakeholders were not adequately involved in SB 14-197's development. Legislation this complex – especially when introduced in the final weeks of session – deserves thorough scrutiny and input from all impacted parties. In committee, private sector representatives warned that the bill's rushed process and lack of business community input could result in unintended consequences. Those worries were shared by city and county officials concerned about limiting future P3s. We share those concerns. With legislation of this complexity, it is critical that all stakeholders and partners be actively engaged in a robust and thorough process to ensure good outcomes and good law; we fear that was not the case with SB 14-197.

Despite SB 14-197's unworkable provisions, we believe in its efforts to improve transparency and accountability. For this reason, today I am issuing Executive Order D 2014-010, which instructs HPTE, for all future P3 agreements, to implement SB 14-197's provisions that are focused on injecting transparency and openness into the HPTE process.

Colorado's transportation needs remain underfunded, and we must do more with less. P3s are a necessary tool the state can leverage to deliver important transportation projects. The ability to negotiate the best P3s for our state is critical for this method of project delivery, and should be preserved. Given the General Assembly's shared interest in successful and accountable P3 projects, we would like to work with members of the legislature to discuss concepts for creating a "Center of Excellence," which would establish P3 best practices, including programs for ensuring transparency and openness. This will help all of us be more deliberate about P3s moving forward, without sacrificing opportunities for economic development and investment. We stand ready to work with you toward the goal of finding a solution that will maximize the potential usefulness of P3s, while ensuring transparency and openness.

Sincerely,



Governor John Hickenlooper