Colorado bill letting metro district developers buy their own bonds passes Senate committee; showdown possible

Denver Gazette · 14 Feb 2023 · David Migoya

Metro district developers on Tuesday rallied around a bill that would in part provide greater financial disclosures to homebuyers but also continue to allow the builders to buy their own public financing — a direct salvo at another bill that aims to prevent it.

The most contentious portion of Senate Bill 23-110 squarely aims to legitimize metro district developers' practice of purchasing portions of the tax-free municipal bonds they approved as members of a metro district board of directors.

Another bill on the other side of the Capitol, House Bill 23-1090, calls it a blatant conflict of interest and looks to stop it.

The competing bills could result in a legislative showdown, with proponents and critics on both sides of the issue vying for control over how metro district financing gets handled for decades. Whatever the decision, homeowners in the state's more than 2,000 metro districts representing tens of thousands of Coloradans would end up footing the property tax bills that would have to pay for it all.

Currently it's estimated that metro district residents are responsible for repaying about $10 billion in public financing costs, most of it owned by investors such as pension funds, with nearly $1 billion of it paid directly to developers.

SB 23-110 passed the Senate committee on local government and housing in a 7-1 vote following nearly three hours of testimony and debate. Committee member Sen. Julie Gonzales, D-Denver, was the lone dissenter and initially offered, then rescinded, a number of amendments – including stripping the portion about developer-owned financing – promising to press for them on the Senate floor, where the bill heads next.

Several proponents testified that allowing developers to purchase their own bonds is a critical tool in ensuring the independent, quasi-governmental metro districts – the primary method used to build new residential housing in Colorado – are able to build the infrastructure for new developments.

SB 23-110 also looks to shore up several transparency practices within metro districts, including requiring annual meetings where managers must tell homeowners the status of the development as well as its financing. Additionally, the bill would require a metro district homeowner selling their property to let buyers know where to find information about the district.

Other items in the bill – disclosing mill levy maximums as part of service plans initially approved by cities and counties – are already a required practice and, according to one critic, "a waste of legislative time."

"This is a silly and pointless bill, except for the section which legitimizes developer junk bond debt … for 40 years," attorney Brian Matise, a metro district expert and board member, said. "The stuff about mill levies and transparency is already done. Basically, it seems like a bill that the industry can point to and say, 'See, look at all this transparency,' when in fact there is nothing really that is being done."

The bill's section dealing with developer-purchased bonds drew the most testimony, with builders saying it was critical financial tool for their work and residents and critics calling it a one-sided windfall riddled with conflicts of interest.

The bill would limit developers to an interest rate return that is at or below market rates and require a financial adviser to file an opinion about it.

Developers frequently purchase a portion of municipal bonds that a metro district's board of directors approves for sale. The money is to repay developers for the infrastructure – sewers, sidewalks, roadways – necessary for the project. Bonds are approved long before a single home is built, yet homeowners are required to pay them back through property taxes that can extend for decades.

Financial experts testified Tuesday that when it appears the bond market cannot handle the entire amount in bonds to be sold publicly, smaller portions are cut off for the developers to purchase for themselves.

"I don't think you need to enable them to buy their own bonds," said Karen Morgan, a metro district resident. "It sounds horrible to say the project might not go forward, but if no one else believes in making the project go … why should residents be required to pay that back? It's so (the developers) can live off of that financing. Stop the conflict of interest."

Several developers repeatedly said projects can be difficult to finance, which in turn affects their ability to address Colorado's housing crisis – a recurring theme in their testimony.

But none gave specific examples about why buying bonds they approved as metro district managers was necessary or beneficial. The bonds often take the place of reimbursement agreements the developers signed with the metro district they created. Those taxable deals, some have said, are risky because future resident-controlled boards might choose not to repay them. Swapping them for municipal bonds tied to property taxes is more secure and nearly impossible to undo.

Bill sponsors said the measure puts "guardrails" on areas that appear to need them and offer additional consumer protections.

"This bill answers (concerns) that developers simply set their own interest rates … and are padding their pockets," bill sponsor Sen. Rachel Zenzinger, D-Arvada, said. "This is a precise way to allow finance tools to function. This brings it to the open."

She noted that developer-owned bonds would be limited to a maximum repayment term of 40 years.

HB 23-1090, the bill that would prohibit developer-purchased bonds, last week passed that branch’s Transportation, Housing and Local Government committee and is awaiting a vote on the full floor of the House.

Another relevant bill, HB 23-1065, which would place metro districts under the authority of the Colorado Ethics Commission – a nod to the developer-purchased bonds – last week passed the same committee and is headed to the House committee on appropriations.