Second Regular Session

Sixty-second General Assembly
LLS NO. 00-0347.01 Bob Lackner SENATE BILL 00-001

STATE OF COLORADO

BY SENATOR Hillman;
also REPRESENTATIVES Stengel and Witwer.

A BILL FOR AN ACT

CONCERNING THE ACQUISITION OF DEVELOPMENT RIGHTS BY LOCAL GOVERNMENTAL AUTHORITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Committee on Development and Growth in Colorado. Authorizes counties and municipalities to acquire, by purchase or other means, development rights to preserve open space or agricultural land within their boundaries for public use and enjoyment. Specifies the nature of the interests acquired and retained in connection with such development rights and the manner by which such rights are to be created. Specifies that such development rights are perpetual unless terminated upon approval of the voters of the county or municipality that acquired such right. Prohibits such rights from being assigned or otherwise transferred.

Directs that instruments conveying such development rights are to be recorded. Clarifies that the acquisition of the development rights shall not impair conflicting interests in real property or the ability of private parties to transfer development rights otherwise permissible. Specifies that nothing shall be construed to restrict in any manner the methods and funds otherwise available to the county or municipality to finance the purchase or other acquisition of development rights.

Defines terms.

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

SECTION 1. 30-11-107 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

30-11-107. Powers of the board. (1) The board of county commissioners of each county has power at any meeting:

(hh) TO ACQUIRE, BY PURCHASE, GIFT, DEVISE, BEQUEST, GRANT, LEASE, EXCHANGE, OR OTHERWISE, THE FEE SIMPLE OR ANY LESSER INTEREST, DEVELOPMENT RIGHT, EASEMENT, COVENANT, OR OTHER CONTRACTUAL RIGHT NECESSARY TO PRESERVE OPEN SPACE OR AGRICULTURAL LAND PURSUANT TO THE PROVISIONS OF ARTICLE 30.7 OF TITLE 38, C.R.S.

SECTION 2. 31-15-101 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

31-15-101. Municipalities bodies politic - powers. (1) Municipalities:

(g) MAY ACQUIRE, BY PURCHASE, GIFT, DEVISE, BEQUEST, GRANT, LEASE, EXCHANGE, OR OTHERWISE, THE FEE SIMPLE OR ANY LESSER INTEREST, DEVELOPMENT RIGHT, EASEMENT, COVENANT, OR OTHER CONTRACTUAL RIGHT NECESSARY TO PRESERVE OPEN SPACE OR AGRICULTURAL LAND PURSUANT TO THE PROVISIONS OF ARTICLE 30.7 OF TITLE 38, C.R.S.

SECTION 3. Title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 30.7

County and Municipal Development Rights

38-30.7-101. Legislative declaration. THE GENERAL ASSEMBLY FINDS AND DECLARES THAT URBAN DEVELOPMENT IS ENCROACHING UPON, OR ELIMINATING, NUMEROUS OPEN AREAS AND SPACES OF VARIED SIZE AND CHARACTER, INCLUDING MANY DEVOTED TO AGRICULTURE AND OTHER

PRODUCTIVE ACTIVITIES, AND MANY OTHERS HAVING SIGNIFICANT RECREATIONAL, SOCIAL, SCENIC, OR AESTHETIC VALUES. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT SUCH AREAS AND SPACES, IF PRESERVED AND MAINTAINED IN THEIR PRESENT OPEN CONDITION, WILL CONSTITUTE IMPORTANT ASSETS TO EXISTING AND FUTURE URBAN DEVELOPMENT AND, AT THE SAME TIME, WILL CONTINUE TO CONTRIBUTE TO THE WELFARE AND WELL-BEING OF THE CITIZENS OF THE STATE AS A WHOLE. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT IT IS IN THE PUBLIC INTEREST TO ALLOW COUNTIES AND MUNICIPALITIES TO ACQUIRE DEVELOPMENT RIGHTS AS A MEANS WHEREBY SUCH OPEN SPACES AND AGRICULTURAL LANDS MAY BE PRESERVED AND MAINTAINED FOR FUTURE GENERATIONS WHILE RETAINING OWNERSHIP OF THE MEANS OF PRODUCTION IN THE PRIVATE SECTOR.

38-30.7-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AGRICULTURAL LAND" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-1-102 (1.6), C.R.S.

(2) "DEVELOPMENT RIGHT" MEANS ANY FEE SIMPLE OR LESSER INTEREST, DEVELOPMENT RIGHT, EASEMENT, COVENANT, OR OTHER CONTRACTUAL RIGHT NECESSARY TO PROTECT, RESERVE, MAINTAIN, IMPROVE, RESTORE, LIMIT THE FUTURE USE OF, OR OTHERWISE CONSERVE OPEN SPACE OR AGRICULTURAL LAND.

(3) "OPEN SPACE" MEANS A LAND OR WATER AREA OR AIRSPACE ABOVE THE LAND OR WATER, INCLUDING IMPROVEMENTS, MAINTAINED PREDOMINATELY IN A NATURAL, SCENIC, OR OPEN CONDITION, OR FOR WILDLIFE HABITAT, OR FOR AGRICULTURAL, HORTICULTURAL,

RECREATIONAL, FOREST, OR OTHER USE OR CONDITION CONSISTENT WITH THE PROTECTION OF OPEN LAND HAVING WELL-PRESERVED ENVIRONMENTAL QUALITY OR LIFE-SUSTAINING ECOLOGICAL DIVERSITY.

38-30.7-103. Authorization to acquire open space and agricultural land through development rights. ANY COUNTY, WITH RESPECT TO UNINCORPORATED AREAS OF REAL PROPERTY WITHIN ITS BOUNDARIES CONTAINING OPEN SPACE OR AGRICULTURAL LAND, AND ANY MUNICIPALITY, WITH RESPECT TO AREAS OF REAL PROPERTY WITHIN ITS BOUNDARIES CONTAINING OPEN SPACE OR AGRICULTURAL LAND, MAY ACQUIRE, BY PURCHASE, GIFT, DEVISE, BEQUEST, GRANT, LEASE, EXCHANGE, OR OTHERWISE, EXCEPT BY EMINENT DOMAIN, ANY FORM OF DEVELOPMENT RIGHT NECESSARY TO PROTECT AND CONSERVE SUCH OPEN SPACE OR AGRICULTURAL LAND FOR PUBLIC USE OR ENJOYMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE. A MUNICIPALITY MAY ALSO ACQUIRE, BY PURCHASE, GIFT, DEVISE, BEQUEST, GRANT, LEASE, EXCHANGE, OR OTHERWISE, A DEVELOPMENT RIGHT WITH RESPECT TO AREAS OF REAL PROPERTY CONTAINING OPEN SPACE OR AGRICULTURAL LAND THAT IS OUTSIDE OF ITS MUNICIPAL BOUNDARIES WITH THE CONSENT OF ALL COUNTIES IN WHICH SUCH OPEN SPACE OR AGRICULTURAL LAND IS LOCATED.

38-30.7-104. Nature of development rights. (1) THE PARTICULAR CHARACTERISTICS OF A DEVELOPMENT RIGHT ACQUIRED BY A COUNTY OR MUNICIPALITY SHALL BE THOSE GRANTED OR SPECIFIED IN THE INSTRUMENT BY WHICH SUCH RIGHT IS ACQUIRED.

(2) A DEVELOPMENT RIGHT SHALL BE PERPETUAL UNLESS TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

(3) A DEVELOPMENT RIGHT SHALL NOT BE ASSIGNED OR OTHERWISE TRANSFERRED BY THE COUNTY OR MUNICIPALITY OF SUCH DEVELOPMENT RIGHT TO ANY OTHER PERSON, PARTY, OR ENTITY.

38-30.7-105. Creation of development rights. A DEVELOPMENT RIGHT MAY ONLY BE CREATED BY THE RECORD OWNER OF THE OPEN SPACE OR AGRICULTURAL LAND TO BE SUBJECT TO SUCH RIGHT BY A CONTRACT OR OTHER INSTRUMENT SPECIFICALLY EVIDENCING THE OWNER'S INTENTION TO SELL OR OTHERWISE TRANSFER SUCH DEVELOPMENT RIGHT TO A COUNTY OR MUNICIPALITY AS MAY BE AUTHORIZED BY THIS ARTICLE. THE PROVISIONS OF THIS ARTICLE SHALL NOT LIMIT IN ANY WAY THE ABILITY OF A LANDOWNER OR PRIVATE PARTY TO TRANSFER DEVELOPMENT RIGHTS IN AND TO REAL PROPERTY OTHERWISE PERMISSIBLE.

38-30.7-106. Residual interest. ALL RIGHTS, TITLE, AND INTEREST IN AND TO THE OPEN SPACE OR AGRICULTURAL LAND NOT TRANSFERRED AND CONVEYED BY THE INSTRUMENT CREATING THE DEVELOPMENT RIGHT SHALL REMAIN WITH THE RECORD OWNER OF SUCH OPEN SPACE OR AGRICULTURAL LAND, INCLUDING THE RIGHT TO ENGAGE IN ALL USES OF THE OPEN SPACE OR AGRICULTURAL LAND AFFECTED BY THE DEVELOPMENT RIGHT THAT ARE NOT INCONSISTENT WITH SUCH DEVELOPMENT RIGHT OR PROHIBITED BY THE DEVELOPMENT RIGHT OR BY LAW.

38-30.7-107. Recordation upon public records. INSTRUMENTS CREATING OR ACQUIRING DEVELOPMENT RIGHTS MUST BE RECORDED UPON THE PUBLIC RECORDS AFFECTING THE OWNERSHIP OF REAL PROPERTY IN ORDER TO BE VALID AND SHALL BE SUBJECT TO THE LAWS RELATING TO SUCH RECORDATION.

38-30.7-108. Termination - abandonment. A DEVELOPMENT RIGHT ACQUIRED BY A COUNTY OR MUNICIPALITY MAY ONLY BE TERMINATED OR ABANDONED BY APPROVAL OF THE VOTERS OF SUCH COUNTY OR MUNICIPALITY THAT ACQUIRED SUCH RIGHT.

38-30.7-109. Other interests not impaired. NO INTEREST IN REAL PROPERTY COGNIZABLE UNDER THE STATUTES, COMMON LAW, OR CUSTOM IN EFFECT IN THIS STATE PRIOR TO THE EFFECTIVE DATE OF THIS ACT, NOR ANY LEASE OR SUBLEASE THEREOF AT ANY TIME, NOR ANY TRANSFER OF A WATER RIGHT OR ANY CHANGE OF A POINT OF DIVERSION AT ANY TIME SHALL BE IMPAIRED, INVALIDATED, OR IN ANY WAY ADVERSELY AFFECTED BY REASON OF ANY PROVISION OF THIS ARTICLE. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED SO AS TO IMPAIR THE RIGHTS OF A PUBLIC UTILITY, AS THAT TERM IS DEFINED BY SECTION 40-1-103, C.R.S., WITH RESPECT TO RIGHTS-OF-WAY, EASEMENTS, OR OTHER PROPERTY RIGHTS UPON WHICH FACILITIES, PLANTS, OR SYSTEMS OF A PUBLIC UTILITY ARE LOCATED OR ARE TO BE LOCATED.

38-30.7-110. No restrictions on funding. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT IN ANY MANNER THE METHODS AND FUNDS OTHERWISE AVAILABLE TO ANY COUNTY OR MUNICIPALITY FOR FINANCING THE PURCHASE OR OTHER ACQUISITION OF DEVELOPMENT RIGHTS IN ACCORDANCE WITH THE AUTHORITY CONFERRED BY THIS ARTICLE.

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state

constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.