

Second Regular Session

Sixty-second General Assembly

LLS NO. 00-0702.01 Pam Cybyske

HOUSE BILL 00-1277

STATE OF COLORADO

BY REPRESENTATIVE Dean; also SENATOR Sullivant.

REENGROSSED

A BILL FOR AN ACT

101 CONCERNING THE EMINENT DOMAIN PROCEEDINGS BY THE BOARD OF A
102 PARK AND RECREATION DISTRICT, AND, IN CONNECTION
103 THEREWITH, REQUIRING THE COURT TO APPOINT AN ARBITRATOR
104 IF REQUESTED BY ALL OF THE OWNERS OF A PARCEL OF REAL
105 PROPERTY BEING CONDEMNED BY A PARK AND RECREATION
106 DISTRICT.

Bill Summary

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

Expands the authority of the board of a park and recreation district (board) to condemn property within the boundaries of the district. In such cases, requires the district court in which a condemnation petition is filed to appoint an arbitrator instead of a panel of commissioners to determine compensation for the property being condemned if:

- The owners of the parcel of real property being condemned petition the district court within 20 days after service of the petition of condemnation; and
The district court finds that all of the owners of the parcel of real property being condemned have joined in the petition to request an arbitrator.

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment. Capital letters indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
February 22, 2000

HOUSE
2nd Reading Unamended
February 21, 2000

1 **SECTION 1.** 32-1-1005 (1) (c), Colorado Revised Statutes, is
2 amended to read:

3 **32-1-1005. Park and recreation districts - additional powers -**
4 **limitations.** (1) In addition to the powers specified in section 32-1-1001,
5 the board of any park and recreation district has the following powers for
6 and on behalf of such district:

7 (c) To have and exercise the power of eminent domain and, in the
8 manner provided by article 1 of title 38, C.R.S., to take any property
9 necessary to the exercise of the powers granted, both within and without
10 the special district, only for the purposes of television relay and translator
11 facilities, and, within the boundaries of the district, ~~only for the purpose~~
12 ~~of easements and rights-of-way for access to park and recreational~~
13 ~~facilities operated by the special district and only where no other access~~
14 ~~to such facilities exists or can be acquired by other means~~ TO TAKE ANY
15 PROPERTY NECESSARY TO THE EXERCISE OF THE POWERS GRANTED IN THIS
16 PART 10 TO PARK AND RECREATION DISTRICTS; EXCEPT THAT THE COURT
17 SHALL APPOINT AN ARBITRATOR AS A SUBSTITUTE FOR THE PANEL OF
18 COMMISSIONERS APPOINTED PURSUANT TO SECTION 38-1-105, C.R.S., TO
19 HAVE AND EXERCISE ALL OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES
20 OF THE PANEL OF COMMISSIONERS IF:

21 (I) WITHIN TWENTY DAYS AFTER SERVICE OF THE PETITION FOR
22 CONDEMNATION PROCEEDINGS FILED PURSUANT TO SECTION 38-1-102,
23 C.R.S., UPON EVERY OWNER OF A PARCEL OF REAL PROPERTY TO BE
24 CONDEMNED BY THE BOARD PURSUANT TO THIS PARAGRAPH (c), ALL
25 OWNERS OF SUCH PARCEL OF REAL PROPERTY PETITION THE COURT TO
26 ASSIGN THE DUTIES OF THE COMMISSIONERS TO AN ARBITRATOR; AND

1 (II) THE COURT FINDS AFTER THE FILING OF THE PETITION FOR THE
2 APPOINTMENT OF AN ARBITRATOR PURSUANT TO SUBPARAGRAPH (I) OF
3 THIS PARAGRAPH (C) THAT ALL OF THE OWNERS OF THE PARCEL OF REAL
4 PROPERTY TO BE CONDEMNED BY THE BOARD HAVE JOINED IN SUCH
5 PETITION.

6 **SECTION 2.** 38-1-101, Colorado Revised Statutes, is amended
7 to read:

8 **38-1-101. Compensation - commission - jury - court.** Private
9 property shall not be taken or damaged for public or private use without
10 just compensation. In all cases in which compensation is not made by the
11 state in its corporate capacity, such compensation shall be ascertained by
12 a board of commissioners of not less than three disinterested and
13 impartial freeholders pursuant to section 38-1-105 (1), BY AN
14 ARBITRATOR APPOINTED BY THE COURT PURSUANT TO SECTION 32-1-1005
15 (1) (c), C.R.S., or by a jury when required by the owner of the property
16 as prescribed in section 38-1-106. All questions and issues, except the
17 amount of compensation, shall be determined by the court unless all
18 parties interested in the action stipulate and agree that the compensation
19 may be so ascertained by the court. In the event of such stipulation and
20 agreement, the court shall proceed as provided in this article for the trial
21 of such causes by a board of commissioners, AN ARBITRATOR, or A jury.

22 **SECTION 3.** 38-1-105 (1), Colorado Revised Statutes, is
23 amended to read:

24 **38-1-105. Adjournment - commission - compensation -**
25 **defective title - withdrawal of deposit.** (1) The court may adjourn the
26 proceedings from time to time and shall direct any further notice thereof

1 to be given that may seem proper. The court shall hear proofs and
2 allegations of all parties interested touching the regularity of the
3 proceedings and shall rule upon all objections thereto. Unless a jury is
4 requested by the owner of the property as provided in section 38-1-106
5 OR AN ARBITRATOR IS APPOINTED PURSUANT TO SECTION 32-1-1005(1)(c),
6 C.R.S., the court shall appoint a board of commissioners of not less than
7 three disinterested and impartial freeholders to determine compensation
8 in the manner provided in this article to be allowed to the owner and
9 persons interested in the lands, real estate, claims, or other property
10 proposed to be taken or damaged in such county for the purposes alleged
11 in the petition. The court shall fix the time and place for the first meeting
12 of such commissioners. Such meeting shall be held at least thirty days
13 prior to the date scheduled for the trial to determine compensation. At
14 the meeting, a voir dire examination shall be conducted by the court and
15 the parties to determine whether the proposed commissioners are
16 disinterested and impartial freeholders. If the court determines that any
17 of the proposed commissioners is not disinterested and impartial, the
18 court shall replace such person and appoint another commissioner, who
19 shall also be subject to voir dire examination. At the hearing to determine
20 compensation, the court shall administer an oath to the commissioners,
21 shall instruct them in writing as to their duties, and, at the conclusion of
22 the testimony, shall instruct them in writing as to the applicable and
23 proper law to be followed by them in arriving at their ascertainment. The
24 court shall fix reasonable compensation for the services and expenses of
25 said commissioners and shall provide the services of a court reporter to
26 record all proceedings had by the commissioners.

1 **SECTION 4.** 38-1-106, Colorado Revised Statutes, is amended
2 to read:

3 **38-1-106. Jury.** The owner of the property involved in any
4 proceeding brought under the provisions of this article, before the
5 appointment of commissioners, as provided in section 38-1-105, OR
6 BEFORE THE APPOINTMENT OF AN ARBITRATOR, AS PROVIDED IN SECTION
7 32-1-1005 (1) (c), C.R.S., and before the expiration of the time for the
8 defendant to appear and answer, may demand a jury of freeholders
9 residing in the county in which the petition is filed to determine the
10 compensation to be allowed in the manner provided in this article. Such
11 demand may be made in the pleadings or by a separate writing filed with
12 the clerk. Such jury shall consist of six persons, unless a larger number
13 is demanded by any party to the proceeding. In no case shall the number
14 of jurors exceed twelve. Any party so demanding a larger number than
15 six jurors shall advance the fees for such additional jurors for one day's
16 service according to the rate allowed jurors in the district court.

17 **SECTION 5.** 38-1-115, Colorado Revised Statutes, is amended
18 to read:

19 **38-1-115. Contents of report or verdict.** (1) Except as provided
20 in this section, the report of the commissioners OR THE ARBITRATOR or the
21 verdict of the jury shall contain:

- 22 (a) An accurate description of the land taken;
- 23 (b) The value of the land or property actually taken;
- 24 (c) The damages, if any, to the residue of such land or property;
- 25 and
- 26 (d) The amount and value of the benefit.

1 (2) No findings as to damages and benefits as provided in
2 paragraphs (c) and (d) of subsection (1) of this section shall be required
3 in cases involving the total taking of property, nor shall either or both of
4 such findings be required in cases involving the partial taking of property
5 unless evidence thereof has been received by the commissioners,
6 ARBITRATOR, or jury.

7 (3) The report of the commissioners OR THE ARBITRATOR or the
8 verdict of the jury may also contain such other findings or answers to
9 interrogatories as the court in its discretion may require to establish the
10 value of the property condemned on an undivided basis.

11 **SECTION 6.** 38-1-116, Colorado Revised Statutes, is amended
12 to read:

13 **38-1-116. Interest on award.** The court shall forthwith cause the
14 report of the commissioners OR THE ARBITRATOR or the verdict of the jury
15 to be entered upon the records of the court, and, where possession of the
16 property has been previously taken by the petitioner pursuant to section
17 38-1-105 (6), it shall add to the amount of any such award interest at the
18 rate established pursuant to section 5-12-106 (2), C.R.S., on and after the
19 date of such possession until the date such award of the commissioners
20 OR THE ARBITRATOR or verdict of the jury is filed with the clerk of the
21 court. No interest shall be allowed on that portion of the award which the
22 owner and others interested received or could have received as a partial
23 payment by withdrawal from the deposit as provided in section 38-1-105
24 (6), nor shall interest be allowed for the period wherein the trial of the
25 case is delayed or continued by or at the request of the respondent.

26 **SECTION 7. Effective date - applicability.** (1) This act shall

1 take effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly that is
3 allowed for submitting a referendum petition pursuant to article V,
4 section 1 (3) of the state constitution; except that, if a referendum petition
5 is filed against this act or an item, section, or part of this act within such
6 period, then the act, item, section, or part, if approved by the people, shall
7 take effect on the date of the official declaration of the vote thereon by
8 proclamation of the governor.

9 (2) The provisions of this act shall apply to all petitions for
10 condemnation filed by the board of a park and recreation district on or
11 after the applicable effective date of this act.