Second Regular Session

Sixty-second General Assembly

LLS NO. 00-0354.01 Gregg Fraser HOUSE BILL 00-1015

STATE OF COLORADO

BY REPRESENTATIVES Gottlieb, Plant, Witwer, and Zimmerman.

A BILL FOR AN ACT

CONCERNING THE USE OF ALTERNATIVE DISPUTE RESOLUTION METHODS TO RESOLVE LAND USE DISPUTES BETWEEN LOCAL GOVERNMENTAL ENTITIES.

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. Requires the division of planning to maintain a list of individuals and organizations that are available to assist in resolving land use disputes between local governmental entities.

Provides a method for allowing specified local governments to engage in mediation and arbitration of land use disputes. Provides suggested methods for establishing deadlines and procedures, selecting mediators or arbitrators, and to conducting such arbitration or mediation.

If a local government refuses to engage in arbitration or mediation when requested by another local government to agree to engage in mediation or arbitration to resolve a land use dispute, the requesting local governmental entity may file a notice of such refusal with the division of planning. Requires the director of the division of planning to determine the validity of the notice. Requires the director of the division of planning, upon making a determination that the notice is valid, to advise the refusing local governmental entity that state agencies will be notified if it does not enter into mediation or arbitration. Notification of state agencies will include the request to withhold consideration of the refusing governmental entity from receiving discretionary services or funding or agency grants.

Defines terms.

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

SECTION 1. Part 2 of article 32 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-32-203.5. Local government land use dispute resolution - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

(b) "DIVISION" MEANS THE DIVISION OF PLANNING CREATED IN SECTION 24-32-202.

(c) "FAILURE TO ENGAGE IN MEDIATION OR ARBITRATION" INCLUDES, BUT IS NOT LIMITED TO, A FAILURE TO:

(I) AGREE EITHER TO ENGAGE IN MEDIATION OR ARBITRATION OF A LAND USE DISPUTE;

(II) AGREE TO AND USE A REASONABLE METHOD FOR SELECTING A MEDIATOR OR ARBITRATOR OR A PANEL OF MEDIATORS OR ARBITRATORS;

(III) AGREE TO AND FOLLOW REASONABLE PROCEDURES FOR CONDUCTING THE ARBITRATION OR MEDIATION;

(IV) AGREE TO AND MEET A REASONABLE DEADLINE FOR COMPLETING THE MEDIATION OR ARBITRATION; OR

(V) PREPARE FOR, ATTEND, OR OTHERWISE REASONABLY ENGAGE IN THE PROCESS OF MEDIATING OR ARBITRATING A LAND USE DISPUTE.

(d) "LAND USE DISPUTE" MEANS AN EXISTING OR IMPENDING DISAGREEMENT BETWEEN TWO OR MORE LOCAL GOVERNMENTAL ENTITIES CONCERNING A PLANNING, ZONING, SUBDIVISION, ANNEXATION,

TRANSPORTATION, STREET ACCESS, OR OTHER LAND USE DECISION OR GROUP OF RELATED DECISIONS.

(e) "LOCAL GOVERNMENTAL ENTITY" MEANS A CITY, COUNTY, CITY AND COUNTY, OR TOWN IN THE STATE DIRECTLY AFFECTED BY A LAND USE DISPUTE.

(2) THE DIVISION SHALL MAINTAIN A LIST OF MEDIATORS AND ARBITRATORS THAT ARE AVAILABLE TO ASSIST IN RESOLVING LAND USE DISPUTES ARISING BETWEEN LOCAL GOVERNMENTAL ENTITIES. SUCH LIST SHALL INCLUDE ONLY THOSE PERSONS OR ORGANIZATIONS THE DIVISION DETERMINES HAVE PROFESSIONAL EXPERTISE AND SKILLS IN LAND USE, PLANNING, ZONING, SUBDIVISION, ANNEXATION, REAL ESTATE, PUBLIC ADMINISTRATION, MEDIATION, ARBITRATION, OR OTHER RELATED DISCIPLINES. SUCH LIST SHALL BE MADE AVAILABLE TO GOVERNMENTAL ENTITIES AND TO THE PUBLIC FOR THE PURPOSE OF FACILITATING THE RESOLUTION OF DISAGREEMENTS ARISING FROM LAND USE DECISIONS.

(3) A LOCAL GOVERNMENTAL ENTITY MAY SUBMIT A NOTICE TO ANOTHER LOCAL GOVERNMENTAL ENTITY REQUESTING ITS PARTICIPATION IN MEDIATION OR ARBITRATION TO RESOLVE A LAND USE DISPUTE THAT AFFECTS THE ENTITIES. SUCH REQUEST MAY INCLUDE A DEADLINE OF NOT LESS THAN THIRTY DAYS FROM THE DATE OF THE REQUEST TO MUTUALLY AGREE TO MEDIATE OR TO ARBITRATE THE DISPUTE. IF THE PARTIES MUTUALLY AGREE TO MEDIATE OR ARBITRATE THE DISPUTE, THEY MAY FURTHER MUTUALLY AGREE UPON THE FOLLOWING:

(a) A METHOD FOR SELECTING A MEDIATOR OR ARBITRATOR OR A PANEL OF MEDIATORS OR ARBITRATORS;

(b) THE PROCEDURES FOR CONDUCTING THE MEDIATION OR

ARBITRATION; AND

(c) A DEADLINE NOT TO EXCEED NINETY DAYS FROM THE DATE OF THE WRITTEN REQUEST FOR COMPLETING THE MEDIATION OR ARBITRATION.

(4) IN THE EVENT THAT A LOCAL GOVERNMENTAL ENTITY RECEIVES A REQUEST TO ENTER INTO MEDIATION OR ARBITRATION OF A LAND USE DISPUTE PURSUANT TO SUBSECTION (3) OF THIS SECTION AND FAILS TO RESPOND TO THE REQUEST OR TO ENGAGE IN MEDIATION OR ARBITRATION OF THE DISPUTE, THE LOCAL GOVERNMENTAL ENTITY THAT MADE THE REQUEST MAY FILE A NOTICE OF SUCH FAILURE WITH THE DIVISION. THE NOTICE SHALL SPECIFY THE FOLLOWING:

(a) THE NATURE AND FACTUAL BACKGROUND OF THE LAND USE DISPUTE AND THE BASIS FOR ASSERTING A FAILURE TO MEDIATE OR ARBITRATE THE DISPUTE;

(b) A STATEMENT INDICATING WHY IT WOULD BE APPROPRIATE TO MEDIATE OR ARBITRATE THE DISPUTE; AND

(c) WHAT, IF ANY, INTERESTS THE STATE HAS IN HAVING THE DISPUTE RESOLVED BY MEDIATION OR ARBITRATION.

(5) THE LOCAL GOVERNMENTAL ENTITY THAT HAS ALLEGEDLY FAILED TO MEDIATE OR ARBITRATE A LAND USE DISPUTE SHALL HAVE THIRTY DAYS FROM THE DATE OF THE NOTICE OF FAILURE TO MEDIATE OR ARBITRATE A LAND USE DISPUTE TO FILE A RESPONSE WITH THE DIVISION. AFTER CONSIDERING THE NOTICE, ANY RESPONSE, AND ANY OTHER INFORMATION THE DIRECTOR DEEMS APPROPRIATE, THE DIRECTOR SHALL MAKE FINDINGS WITH RESPECT TO THE FOLLOWING:

(a) WHETHER THE LOCAL GOVERNMENTAL ENTITY HAS GROUNDS ON WHICH TO REFUSE TO ENTER ARBITRATION OR MEDIATION OF THE LAND

USE DISPUTE;

(b) WHETHER ARBITRATION OR MEDIATION WOULD BE AN APPROPRIATE RESPONSE TO RESOLUTION OF THE LAND USE DISPUTE; AND

(c) WHETHER THE STATE HAS AN INTEREST IN HAVING THE LAND USE DISPUTE RESOLVED BY MEDIATION OR ARBITRATION.

(6) PURSUANT TO SUBSECTION (5) OF THIS SECTION, IF THE DIRECTOR FINDS THAT A LOCAL GOVERNMENTAL ENTITY FAILED TO ENGAGE IN THE MEDIATION OR ARBITRATION OF A LAND USE DISPUTE, FINDS THAT IT WOULD BE APPROPRIATE TO ENGAGE IN THE MEDIATION OR ARBITRATION OF THE DISPUTE, AND FINDS THAT THE STATE HAS AN INTEREST IN HAVING THE LAND USE DISPUTE RESOLVED BY MEDIATION OR ARBITRATION, THE DIRECTOR SHALL PROVIDE HIS OR HER FINDINGS TO THE LOCAL GOVERNMENTAL ENTITIES AND ADVISE THE LOCAL GOVERNMENTAL ENTITIES IN WRITING TO ENGAGE IN THE MEDIATION OR ARBITRATION OF THE DISPUTE WITHIN SIXTY DAYS AFTER THE DATE OF SUCH NOTICE. THE DIRECTOR SHALL FURTHER ADVISE SUCH LOCAL GOVERNMENTAL ENTITIES THAT, IF THE REFUSING LOCAL GOVERNMENTAL ENTITY FAILS TO ENGAGE IN MEDIATION OR ARBITRATION WITHIN SUCH TIME PERIOD, THE DIRECTOR WILL PROVIDE A NOTICE TO STATE AGENCIES CONCERNING THE FAILURE TO ENGAGE IN MEDIATION OR ARBITRATION OF THE DISPUTE PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(7) IF THE DIRECTOR PROVIDES A WRITTEN ADVISEMENT PURSUANT TO SUBSECTION (6) OF THIS SECTION TO A LOCAL GOVERNMENTAL ENTITY TO ENGAGE IN THE MEDIATION OR ARBITRATION OF A LAND USE DISPUTE AND THE DIRECTOR DOES NOT RECEIVE WRITTEN CONFIRMATION THAT SUCH MEDIATION OR ARBITRATION HAS OCCURRED WITHIN SIXTY DAYS

AFTER THE DATE OF SUCH WRITTEN ADVISEMENT, THE DIRECTOR SHALL PROVIDE A NOTICE TO STATE AGENCIES ADVISING THEM THAT THE LOCAL GOVERNMENTAL ENTITY HAS FAILED TO ENGAGE IN THE MEDIATION OR ARBITRATION OF A LAND USE DISPUTE. SUCH NOTICE SHALL INCLUDE THE FINDINGS OF THE DIRECTOR MADE PURSUANT TO SUBSECTION (5) OF THIS SECTION. STATE AGENCIES SHALL TAKE INTO CONSIDERATION THE FAILURE OF THE LOCAL GOVERNMENTAL ENTITY TO ENGAGE IN THE MEDIATION OR ARBITRATION OF THE DISPUTE WHEN MAKING POLICY DECISIONS OR CONSIDERING THE EXPENDITURE OF DISCRETIONARY MONEYS FOR PROJECTS OR SERVICES AFFECTING THE LOCAL GOVERNMENTAL ENTITY. STATE AGENCIES SHALL HAVE THE AUTHORITY TO MAKE POLICIES OR REDUCE THE EXPENDITURES OF SUCH MONEYS FOR SUCH PROJECTS OR SERVICES BASED UPON THE FAILURE OF THE LOCAL GOVERNMENT TO MEDIATE OR ARBITRATE A LAND USE DISPUTE.

(8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT, DELAY, OR OTHERWISE INTERFERE WITH THE ABILITY OF A LOCAL GOVERNMENT TO BRING LEGAL OR OTHER ACTION TO ENFORCE ITS LEGAL RIGHTS.

SECTION 2. 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.