

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0425.01 Bob Lackner

SENATE BILL 09-063

SENATE SPONSORSHIP

Brophy,

HOUSE SPONSORSHIP

Gardner C.,

Senate Committees
Transportation

House Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON THE EXERCISE OF THE POWER OF**
102 **EMINENT DOMAIN BY RAILROADS.**

Bill Summary

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

Except in limited circumstances, prohibits a corporation formed for the purpose of constructing a railroad line, or for operating such a line, (railroad) from condemning real estate or rights-of-way. Prohibits a railroad from transferring ownership of property or rights-of-way acquired through the exercise of eminent domain to any other person or entity.

Requires a railroad to comply to the extent practicable with all

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.

laws that govern the use of eminent domain by the department of transportation for state highway purposes. In connection with proceedings for the acquisition or condemnation of property by a railroad, in addition to any compensation awarded to the owner in an eminent domain proceeding, requires the railroad to reimburse the owner whose property is being acquired or condemned for all of the owner's reasonable attorney fees and court costs incurred by the owner in connection with such proceedings.

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

2 **SECTION 1.** 38-2-101 (1), Colorado Revised Statutes, is
3 amended to read:

4 **38-2-101. Who may condemn real estate, rights-of-way, or**
5 **other rights - additional requirements for private toll roads and toll**
6 **highways.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, if any
7 corporation formed for the purpose of constructing a road, ditch,
8 reservoir, pipeline, bridge, ferry, tunnel, telegraph line, railroad line,
9 electric line, electric plant, telephone line, or telephone plant is unable to
10 agree with the owner for the purchase of any real estate or right-of-way
11 or easement or other right necessary or required for the purpose of any
12 such corporation for transacting its business or for any lawful purpose
13 connected with the operations of the company, the corporation may
14 acquire title to such real estate or right-of-way or easement or other right
15 in the manner provided by law for the condemnation of real estate or
16 right-of-way. Any ditch, reservoir, or pipeline company, in the same
17 manner, may condemn and acquire the right to take and use any water not
18 previously appropriated. NOTWITHSTANDING ANY OTHER PROVISION OF
19 THIS SECTION, EXCEPT AS NECESSARY TO SATISFY THE REQUIREMENTS OF
20 SECTION 38-2-104, A CORPORATION FORMED FOR THE PURPOSE OF
21 CONSTRUCTING A RAILROAD LINE, OR FOR OPERATING SUCH A LINE, MAY

1 NOT CONDEMN REAL ESTATE OR RIGHTS-OF-WAY. NOTWITHSTANDING
2 ANY OTHER PROVISION OF LAW, ON OR AFTER THE EFFECTIVE DATE OF THIS
3 SUBSECTION (1), AS AMENDED, A CORPORATION FORMED FOR THE PURPOSE
4 OF CONSTRUCTING A RAILROAD LINE, OR FOR OPERATING SUCH A LINE,
5 MAY NOT TRANSFER OWNERSHIP OF PROPERTY OR RIGHTS-OF-WAY
6 ACQUIRED THROUGH THE EXERCISE OF EMINENT DOMAIN AS AUTHORIZED
7 BY THIS SECTION TO ANY OTHER PERSON OR ENTITY.

8 **SECTION 2.** 38-1-114, Colorado Revised Statutes, is amended
9 BY THE ADDITION OF A NEW SUBSECTION to read:

10 **38-1-114. Formula for computing compensation - attorney fees**
11 **- definitions.** (2.5) IN EXERCISING THE POWER OF EMINENT DOMAIN IN
12 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, TO THE EXTENT NOT
13 OTHERWISE ADDRESSED IN SUBSECTION (2) OF THIS SECTION, A
14 CORPORATION FORMED FOR THE PURPOSE OF CONSTRUCTING A RAILROAD
15 LINE, OR FOR OPERATING SUCH A LINE, SHALL COMPLY TO THE EXTENT
16 PRACTICABLE WITH ALL LAWS THAT GOVERN THE USE OF EMINENT DOMAIN
17 BY THE DEPARTMENT OF TRANSPORTATION FOR STATE HIGHWAY
18 PURPOSES. IN CONNECTION WITH PROCEEDINGS FOR THE ACQUISITION OR
19 CONDEMNATION OF PROPERTY BY SUCH CORPORATION, IN ADDITION TO
20 ANY COMPENSATION AWARDED TO THE OWNER IN AN EMINENT DOMAIN
21 PROCEEDING, THE CORPORATION SHALL REIMBURSE THE OWNER WHOSE
22 PROPERTY IS BEING ACQUIRED OR CONDEMNED FOR ALL OF THE OWNER'S
23 REASONABLE ATTORNEY FEES AND COURT COSTS INCURRED BY THE
24 OWNER IN CONNECTION WITH SUCH PROCEEDINGS.

25 **SECTION 3.** 38-1-122 (1.5), Colorado Revised Statutes, is
26 amended to read:

27 **38-1-122. Attorney fees.** (1.5) In connection with proceedings

1 for the acquisition or condemnation of property in which the award
2 determined by the court exceeds ten thousand dollars, in addition to any
3 compensation awarded to the owner in an eminent domain proceeding,
4 the condemning authority shall reimburse the owner whose property is
5 being acquired or condemned for all of the owner's reasonable attorney
6 fees incurred by the owner where the award by the court in the
7 proceedings equals or exceeds one hundred thirty percent of the last
8 written offer given to the property owner prior to the filing of the
9 condemnation action. The provisions of this subsection (1.5) shall not
10 apply to any condemnation proceeding seeking to acquire rights-of-way
11 under article 4, 5, or 5.5 of this title, article 45 of title 37, C.R.S., or
12 section 7 of article XVI of the Colorado constitution. NOTWITHSTANDING
13 ANY OTHER PROVISION OF THIS SUBSECTION (1.5), THE PROVISIONS OF THIS
14 SUBSECTION (1.5) SHALL NOT APPLY IN CONNECTION WITH PROCEEDINGS
15 FOR THE ACQUISITION OR CONDEMNATION OF PROPERTY BY A
16 CORPORATION FORMED FOR THE PURPOSE OF CONSTRUCTING A RAILROAD
17 LINE, OR FOR OPERATING SUCH A LINE, IN WHICH CASE REIMBURSEMENT
18 FOR ATTORNEY FEES AND COURT COSTS SHALL BE MADE IN ACCORDANCE
19 WITH THE PROVISIONS OF SECTION 38-1-114 (2.5).

20 **SECTION 4. Act subject to petition - effective date -**
21 **applicability.** (1) This act shall take effect September 1, 2009.

22 (2) However, if a referendum petition is filed against this act or
23 an item, section, or part of this act during the ninety-day period after final
24 adjournment of the general assembly that is allowed for submitting a
25 referendum petition pursuant to article V, section 1 (3) of the state
26 constitution, then the act, item, section, or part, shall not take effect unless
27 approved by the people at a biennial regular general election and shall

1 take effect on the date specified in subsection (1) or on the date of the
2 official declaration of the vote thereon by proclamation of the governor,
3 whichever is later.

4 (3) The provisions of this act shall apply to condemnation
5 proceedings filed on or after the applicable effective date of this act.