

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 07-0511.01 Bob Lackner

HOUSE BILL 07-1036

HOUSE SPONSORSHIP

Sonnenberg,

SENATE SPONSORSHIP

(None),

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING RESTRICTIONS ON THE ABILITY OF GOVERNMENTAL**
102 **BODIES TO ACQUIRE SPECIFIED WATER RIGHTS THROUGH THE**
103 **EXERCISE OF THE POWER OF EMINENT DOMAIN.**

Bill Summary

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

Prohibits the state and specified political subdivisions otherwise possessing the power of eminent domain as provided by law from exercising such power that results in the acquisition of appropriated water rights. Specifies that nothing in the act shall be construed to affect the lawful exercise of the power of eminent domain pursuant to which any water rights acquired are incident to the ownership of the overlying

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.

surface interests in the property being condemned.
Makes conforming amendments. Defines a term.

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

2 **SECTION 1.** 37-90-103, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **37-90-103. Definitions - repeal.** As used in this article, unless
5 the context otherwise requires:

6 (11.5) "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY AND
7 COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL
8 IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, CITY OR
9 COUNTY HOUSING AUTHORITY, ANY SPECIAL DISTRICT SUCH AS WATER,
10 SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, OR
11 DRAINAGE, OR ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR
12 PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW. FOR PURPOSES OF
13 THIS SUBSECTION (11.5), "POLITICAL SUBDIVISION" SHALL INCLUDE ANY
14 CITY, TOWN, OR CITY AND COUNTY THAT HAS CHOSEN TO ADOPT A HOME
15 RULE CHARTER PURSUANT TO THE PROVISIONS OF ARTICLE XX OF THE
16 STATE CONSTITUTION.

17 **SECTION 2.** 37-90-137, Colorado Revised Statutes, is amended
18 BY THE ADDITION OF A NEW SUBSECTION to read:

19 **37-90-137. Permits to construct wells outside designated**
20 **basins - fees - permit no ground water right - evidence - time**
21 **limitation - well permits - repeal.** (15) NOTWITHSTANDING ANY OTHER
22 PROVISION OF THIS ARTICLE, NEITHER THE STATE NOR ANY POLITICAL
23 SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT DOMAIN AS
24 PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT RESULTS IN THE
25 ACQUISITION OF APPROPRIATED WATER RIGHTS.

1 **SECTION 3.** 38-1-101 (5) (b), Colorado Revised Statutes, is
2 amended, and the said 38-1-101 is further amended BY THE ADDITION
3 OF A NEW SUBSECTION, to read:

4 **38-1-101. Compensation - public use - commission - jury -**
5 **court - prohibition on elimination of nonconforming uses or**
6 **nonconforming property design by amortization - prohibition on the**
7 **exercise of eminent domain to acquire certain water rights -**
8 **limitation on extraterritorial condemnation by municipalities -**
9 **definitions.** (3.5) NOTWITHSTANDING ANY OTHER PROVISION OF
10 ARTICLES 1 TO 7 OF THIS TITLE, NEITHER THE STATE NOR ANY POLITICAL
11 SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT DOMAIN AS
12 PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT RESULTS IN THE
13 ACQUISITION OF APPROPRIATED WATER RIGHTS.

14 (5) For purposes of this section, unless the context otherwise
15 requires:

16 (b) "Political subdivision" means a county; city and county; city;
17 town; service authority; school district; local improvement district; law
18 enforcement authority; urban renewal authority; city or county housing
19 authority; water, sanitation, fire protection, metropolitan, irrigation,
20 drainage, or other special district; or any other kind of municipal,
21 quasi-municipal, or public corporation organized pursuant to law. FOR
22 PURPOSES OF THIS PARAGRAPH (b), "POLITICAL SUBDIVISION" SHALL
23 INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY THAT HAS CHOSEN TO
24 ADOPT A HOME RULE CHARTER PURSUANT TO THE PROVISIONS OF ARTICLE
25 XX OF THE STATE CONSTITUTION.

26 **SECTION 4.** 38-1-202, Colorado Revised Statutes, is amended
27 BY THE ADDITION OF A NEW SUBSECTION to read:

1 **38-1-202. Governmental entities, corporations, and persons**
2 **authorized to use eminent domain - definitions.**

3 (3) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
4 NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OTHERWISE
5 POSSESSING THE POWER OF EMINENT DOMAIN AS PROVIDED BY LAW SHALL
6 EXERCISE SUCH POWER THAT RESULTS IN THE ACQUISITION OF
7 APPROPRIATED WATER RIGHTS. [REDACTED]

8 (b) FOR PURPOSES OF THIS SUBSECTION (3), "POLITICAL
9 SUBDIVISION" MEANS A COUNTY, CITY AND COUNTY, CITY, TOWN, SERVICE
10 AUTHORITY, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, LAW
11 ENFORCEMENT AUTHORITY, CITY OR COUNTY HOUSING AUTHORITY, ANY
12 SPECIAL DISTRICT SUCH AS WATER, SANITATION, FIRE PROTECTION,
13 METROPOLITAN, IRRIGATION, OR DRAINAGE, OR ANY OTHER KIND OF
14 MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED
15 PURSUANT TO LAW. FOR PURPOSES OF THIS PARAGRAPH (b), "POLITICAL
16 SUBDIVISION" SHALL INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY
17 THAT HAS CHOSEN TO ADOPT A HOME RULE CHARTER PURSUANT TO THE
18 PROVISIONS OF ARTICLE XX OF THE STATE CONSTITUTION.

19 **SECTION 5.** 27-1-103 (2), Colorado Revised Statutes, is
20 amended to read:

21 **27-1-103. Duties of executive director - governor acquire**
22 **water rights.** (2) On behalf of the state of Colorado, the governor is
23 authorized to acquire water and water rights for the operation of the
24 Colorado mental health institute at Fort Logan. Title to such property
25 may be acquired in fee simple absolute by purchase OR donation ~~or the~~
26 ~~exercise of the power of eminent domain through condemnation~~
27 ~~proceedings in accordance with law~~ from funds made available by the

1 general assembly.

2 **SECTION 6.** 29-1-204.2, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **29-1-204.2. Establishment of separate governmental entity to**
5 **develop water resources, systems, facilities, and drainage facilities.**

6 (10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO
7 POLITICAL SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT
8 DOMAIN AS PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT
9 RESULTS IN THE ACQUISITION OF APPROPRIATED WATER RIGHTS. FOR
10 PURPOSES OF THIS SECTION, "MUNICIPALITIES" AND "POLITICAL
11 SUBDIVISIONS" SHALL INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY
12 THAT HAS CHOSEN TO ADOPT A HOME RULE CHARTER PURSUANT TO THE
13 PROVISIONS OF ARTICLE XX OF THE STATE CONSTITUTION.

14 **SECTION 7.** 31-15-708 (1) (b), Colorado Revised Statutes, is
15 amended, and the said 31-15-708 is further amended BY THE
16 ADDITION OF A NEW SUBSECTION, to read:

17 **31-15-708. Water and water systems.** (1) The governing body
18 of each municipality has the power:

19 (b) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (b),
20 to take water in sufficient quantity, for the purpose provided in paragraph
21 (a) of this subsection (1), from any stream, creek, gulch, or spring in this
22 state. If the taking of such water in such quantity materially interferes
23 with or impairs the vested right of any person residing upon such creek,
24 gulch, or stream or doing any milling or manufacturing business thereon,
25 the governing body shall first obtain the consent of such person or acquire
26 the right of domain by condemnation as prescribed by law and make full
27 compensation or satisfaction for all the damages thereby occasioned to

1 such person.

2 (II) When it is deemed necessary by any municipality to enter
3 upon or take private property for any of the uses set forth in this section,
4 the property shall be examined and appraised and the damages thereon
5 assessed. The proceedings shall be in all respects the same as provided
6 by articles 1 to 7 of title 38, C.R.S., for the taking of private property for
7 public or private use.

8 (III) NO MUNICIPALITY OTHERWISE POSSESSING THE POWER OF
9 EMINENT DOMAIN AS PROVIDED BY LAW SHALL EXERCISE SUCH POWER
10 THAT RESULTS IN THE ACQUISITION OF APPROPRIATED WATER RIGHTS.

11 (2) FOR PURPOSES OF THIS SECTION, "MUNICIPALITY" SHALL
12 INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY THAT HAS CHOSEN TO
13 ADOPT A HOME RULE CHARTER PURSUANT TO THE PROVISIONS OF ARTICLE
14 XX OF THE STATE CONSTITUTION.

15 **SECTION 8.** 31-35-101 (1) (c), Colorado Revised Statutes, is
16 amended, and the said 31-35-101 is further amended BY THE
17 ADDITION OF A NEW SUBSECTION, to read:

18 **31-35-101. Powers - canals - water rights - diversion -**
19 **ratification of prior rights.** (1) Any municipality in this state, for the
20 purpose of supplying said municipality and the inhabitants thereof with
21 water, has the power under this part 1:

22 (c) To ~~purchase~~ ACQUIRE water and water rights ~~in all cases where~~
23 ~~condemnation would lie to obtain the same under section 31-15-708 (1)~~
24 ~~(b)~~ BY MEANS OTHER THAN BY THE EXERCISE OF THE POWER OF EMINENT
25 DOMAIN;

26 (4) FOR PURPOSES OF THIS SECTION, "MUNICIPALITY" SHALL
27 INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY THAT HAS CHOSEN TO

1 ADOPT A HOME RULE CHARTER PURSUANT TO THE PROVISIONS OF ARTICLE
2 XX OF THE STATE CONSTITUTION.

3 **SECTION 9. Repeal.** Part 2 of article 6 of title 38, Colorado
4 Revised Statutes, is repealed.

5 **SECTION 10. Effective date - applicability.** (1) This act shall
6 take effect September 1, 2007.

7 (2) However, if a referendum petition is filed against this act or
8 an item, section, or part of this act during the 90-day period after final
9 adjournment of the general assembly that is allowed for submitting a
10 referendum petition pursuant to article V, section 1 (3) of the state
11 constitution, then the act, item, section, or part, shall not take effect unless
12 approved by the people at a biennial regular general election and shall
13 take effect on the date specified in subsection (1) or on the date of the
14 official declaration of the vote thereon by proclamation of the governor,
15 whichever is later.

16 (3) The provisions of this act shall apply to eminent domain
17 actions commenced on or after the applicable effective date of this act.