

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

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.

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

15 **37-90-137. Permits to construct wells outside designated**
16 **basins - fees - permit no ground water right - evidence - time**
17 **limitation - well permits - repeal.** (15) NOTWITHSTANDING ANY OTHER
18 PROVISION OF THIS ARTICLE, NEITHER THE STATE NOR ANY POLITICAL
19 SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT DOMAIN AS
20 PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT RESULTS IN THE
21 ACQUISITION OF APPROPRIATED WATER RIGHTS. NOTHING IN THIS
22 SUBSECTION (15) SHALL BE CONSTRUED TO AFFECT THE LAWFUL EXERCISE
23 OF THE POWER OF EMINENT DOMAIN PURSUANT TO WHICH ANY WATER
24 RIGHTS ACQUIRED ARE INCIDENT TO THE OWNERSHIP OF THE OVERLYING
25 SURFACE INTERESTS IN THE PROPERTY BEING CONDEMNED.

1 **SECTION 3.** 38-1-101, Colorado Revised Statutes, is amended
2 BY THE ADDITION OF A NEW SUBSECTION to read:

3 **38-1-101. Compensation - public use - commission - jury -**
4 **court - prohibition on elimination of nonconforming uses or**
5 **nonconforming property design by amortization - prohibition on the**
6 **exercise of eminent domain to acquire certain water rights -**
7 **limitation on extraterritorial condemnation by municipalities -**
8 **definitions.** (3.5) NOTWITHSTANDING ANY OTHER PROVISION OF
9 ARTICLES 1 TO 7 OF THIS TITLE, NEITHER THE STATE NOR ANY POLITICAL
10 SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT DOMAIN AS
11 PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT RESULTS IN THE
12 ACQUISITION OF APPROPRIATED WATER RIGHTS. NOTHING IN THIS
13 SUBSECTION (3.5) SHALL BE CONSTRUED TO AFFECT THE LAWFUL EXERCISE
14 OF THE POWER OF EMINENT DOMAIN PURSUANT TO WHICH ANY WATER
15 RIGHTS ACQUIRED ARE INCIDENT TO OWNERSHIP OF THE OVERLYING
16 SURFACE INTERESTS IN THE PROPERTY BEING CONDEMNED OR THE LAWFUL
17 EXERCISE OF THE POWER OF EMINENT DOMAIN BY A DISTRICT ORGANIZED
18 UNDER TITLE 37, C.R.S.

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

21 **38-1-202. Governmental entities, corporations, and persons**
22 **authorized to use eminent domain - definitions.**
23 (3) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
24 NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OTHERWISE
25 POSSESSING THE POWER OF EMINENT DOMAIN AS PROVIDED BY LAW SHALL
26 EXERCISE SUCH POWER THAT RESULTS IN THE ACQUISITION OF
27 APPROPRIATED WATER RIGHTS. NOTHING IN THIS SUBSECTION (3) SHALL

1 BE CONSTRUED TO AFFECT THE LAWFUL EXERCISE OF THE POWER OF
2 EMINENT DOMAIN PURSUANT TO WHICH ANY WATER RIGHTS ACQUIRED
3 ARE INCIDENT TO THE OWNERSHIP OF THE OVERLYING SURFACE INTERESTS
4 IN THE PROPERTY BEING CONDEMNED.

5 (b) FOR PURPOSES OF THIS SUBSECTION (3), "POLITICAL
6 SUBDIVISION" MEANS A COUNTY, CITY AND COUNTY, CITY, TOWN, SERVICE
7 AUTHORITY, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, LAW
8 ENFORCEMENT AUTHORITY, CITY OR COUNTY HOUSING AUTHORITY, ANY
9 SPECIAL DISTRICT SUCH AS WATER, SANITATION, FIRE PROTECTION,
10 METROPOLITAN, IRRIGATION, OR DRAINAGE, OR ANY OTHER KIND OF
11 MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED
12 PURSUANT TO LAW. "POLITICAL SUBDIVISION" SHALL NOT INCLUDE A
13 DISTRICT ORGANIZED UNDER TITLE 37, C.R.S.

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

16 **27-1-103. Duties of executive director - governor acquire**
17 **water rights.** (2) On behalf of the state of Colorado, the governor is
18 authorized to acquire water and water rights for the operation of the
19 Colorado mental health institute at Fort Logan. Title to such property
20 may be acquired in fee simple absolute by purchase OR donation ~~or the~~
21 ~~exercise of the power of eminent domain through condemnation~~
22 ~~proceedings in accordance with law~~ from funds made available by the
23 general assembly.

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

26 **29-1-204.2. Establishment of separate governmental entity to**
27 **develop water resources, systems, facilities, and drainage facilities.**

1 (10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO
2 POLITICAL SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT
3 DOMAIN AS PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT
4 RESULTS IN THE ACQUISITION OF APPROPRIATED WATER RIGHTS. NOTHING
5 IN THIS SUBSECTION (10) SHALL BE CONSTRUED TO AFFECT THE LAWFUL
6 EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO WHICH ANY
7 WATER RIGHTS ACQUIRED ARE INCIDENT TO THE OWNERSHIP OF THE
8 OVERLYING SURFACE INTERESTS IN THE PROPERTY BEING CONDEMNED.

9 **SECTION 7.** 31-15-708 (1) (b), Colorado Revised Statutes, is
10 amended to read:

11 **31-15-708. Water and water systems.** (1) The governing body
12 of each municipality has the power:

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

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

1 public or private use.

2 (III) NO MUNICIPALITY OTHERWISE POSSESSING THE POWER OF
3 EMINENT DOMAIN AS PROVIDED BY LAW SHALL EXERCISE SUCH POWER
4 THAT RESULTS IN THE ACQUISITION OF APPROPRIATED WATER RIGHTS.
5 NOTHING IN THIS SUBPARAGRAPH (III) SHALL BE CONSTRUED TO AFFECT
6 THE LAWFUL EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO
7 WHICH ANY WATER RIGHTS ACQUIRED ARE INCIDENT TO THE OWNERSHIP
8 OF THE OVERLYING SURFACE INTERESTS IN THE PROPERTY BEING
9 CONDEMNED.

10 **SECTION 8.** 31-35-101 (1) (c), Colorado Revised Statutes, is
11 amended to read:

12 **31-35-101. Powers - canals - water rights - diversion -**
13 **ratification of prior rights.** (1) Any municipality in this state, for the
14 purpose of supplying said municipality and the inhabitants thereof with
15 water, has the power under this part 1:

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

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

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

24 (2) However, if a referendum petition is filed against this act or
25 an item, section, or part of this act during the 90-day period after final
26 adjournment of the general assembly that is allowed for submitting a
27 referendum petition pursuant to article V, section 1 (3) of the state

1 constitution, then the act, item, section, or part, shall not take effect unless
2 approved by the people at a biennial regular general election and shall
3 take effect on the date specified in subsection (1) or on the date of the
4 official declaration of the vote thereon by proclamation of the governor,
5 whichever is later.

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