

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

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 07-0511.01 Bob Lackner

**HOUSE BILL 07-1036**

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**HOUSE SPONSORSHIP**

**Sonnenberg,**

**SENATE SPONSORSHIP**

**Shaffer,**

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

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**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.**

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**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.*

HOUSE  
Amended 2nd Reading  
February 23, 2007

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

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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) (a) 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           (b) IN CONNECTION WITH THE LAWFUL EXERCISE OF THE POWER OF  
15 EMINENT DOMAIN BY HOME RULE MUNICIPALITIES, THE TERM "WATER  
16 WORKS" AS CONTAINED IN SECTION 1 OF ARTICLE XX OF THE STATE  
17 CONSTITUTION SHALL NOT BE CONSTRUED TO INCLUDE APPROPRIATED  
18 WATER RIGHTS.

19           (5) For purposes of this section, unless the context otherwise  
20 requires:

21           (b) "Political subdivision" means a county; city and county; city;  
22 town; service authority; school district; local improvement district; law  
23 enforcement authority; urban renewal authority; city or county housing  
24 authority; water, sanitation, fire protection, metropolitan, irrigation,  
25 drainage, or other special district; or any other kind of municipal,  
26 quasi-municipal, or public corporation organized pursuant to law. FOR  
27 PURPOSES OF THIS PARAGRAPH (b), "POLITICAL SUBDIVISION" SHALL

1 INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY THAT HAS CHOSEN TO  
2 ADOPT A HOME RULE CHARTER PURSUANT TO THE PROVISIONS OF ARTICLE  
3 XX OF THE STATE CONSTITUTION.

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

6 38-1-202. Governmental entities, corporations, and persons  
7 authorized to use eminent domain - definitions.

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

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

24 SECTION 5. 27-1-103 (2), Colorado Revised Statutes, is  
25 amended to read:

26 27-1-103. Duties of executive director - governor acquire  
27 water rights. (2) On behalf of the state of Colorado, the governor is

1 authorized to acquire water and water rights for the operation of the  
2 Colorado mental health institute at Fort Logan. Title to such property  
3 may be acquired in fee simple absolute by purchase OR donation ~~or the~~  
4 ~~exercise of the power of eminent domain through condemnation~~  
5 ~~proceedings in accordance with law~~ from funds made available by the  
6 general assembly.

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

9 **29-1-204.2. Establishment of separate governmental entity to**  
10 **develop water resources, systems, facilities, and drainage facilities.**

11 (10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO  
12 POLITICAL SUBDIVISION OTHERWISE POSSESSING THE POWER OF EMINENT  
13 DOMAIN AS PROVIDED BY LAW SHALL EXERCISE SUCH POWER THAT  
14 RESULTS IN THE ACQUISITION OF APPROPRIATED WATER RIGHTS. FOR  
15 PURPOSES OF THIS SECTION, "MUNICIPALITIES" AND "POLITICAL  
16 SUBDIVISIONS" 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 7.** 31-15-708 (1) (b), Colorado Revised Statutes, is  
20 amended, and the said 31-15-708 is further amended BY THE  
21 ADDITION OF A NEW SUBSECTION, to read:

22 **31-15-708. Water and water systems.** (1) The governing body  
23 of each municipality has the power:

24 (b) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (b),  
25 to take water in sufficient quantity, for the purpose provided in paragraph  
26 (a) of this subsection (1), from any stream, creek, gulch, or spring in this  
27 state. If the taking of such water in such quantity materially interferes

1 with or impairs the vested right of any person residing upon such creek,  
2 gulch, or stream or doing any milling or manufacturing business thereon,  
3 the governing body shall first obtain the consent of such person or acquire  
4 the right of domain by condemnation as prescribed by law and make full  
5 compensation or satisfaction for all the damages thereby occasioned to  
6 such person.

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

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

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

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

23 **31-35-101. Powers - canals - water rights - diversion -**  
24 **ratification of prior rights.** (1) Any municipality in this state, for the  
25 purpose of supplying said municipality and the inhabitants thereof with  
26 water, has the power under this part 1:

27 (c) To ~~purchase~~ ACQUIRE water and water rights ~~in all cases where~~

1 ~~condemnation would lie to obtain the same under section 31-15-708 (1)~~  
2 ~~(b) BY MEANS OTHER THAN BY THE EXERCISE OF THE POWER OF EMINENT~~  
3 ~~DOMAIN;~~

4 (4) FOR PURPOSES OF THIS SECTION, "MUNICIPALITY" SHALL  
5 INCLUDE ANY CITY, TOWN, OR CITY AND COUNTY THAT HAS CHOSEN TO  
6 ADOPT A HOME RULE CHARTER PURSUANT TO THE PROVISIONS OF ARTICLE  
7 XX OF THE STATE CONSTITUTION.

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

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

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

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