

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 11-0284  
**Prime Sponsor(s):** Rep. McKinley

**Date:** February 16, 2011  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Harry Zeid (303-866-4753)

**TITLE:** CONCERNING THE REINFORCEMENT OF THE PROHIBITION ON GOVERNMENTAL TAKINGS OF CERTAIN TYPES OF PROPERTY WITHOUT PROVIDING PROCEDURAL DUE PROCESS TO THE PROPERTY OWNER.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>State Revenue</b>		
<b>State Expenditures</b> General Fund	See the State Expenditures section.	
<b>FTE Position Change</b>		
<b>Effective Date:</b> August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed.		
<b>Appropriation Summary for FY 2011-2012:</b> None required.		
<b>Local Government Impact:</b> None.		

*\* The bill does not require an appropriation for FY 2011-12. However, a supplemental General Fund appropriation may be requested if legal expenses are incurred.*

**Summary of Legislation**

The bill reinforces a property owner's right to procedural due process in eminent domain proceedings. Specifically, the bill prohibits governmental takings of:

- livestock without compensation;
- airspace up to 500 feet above real property by publicly owned aircraft; and
- seepage water that has been used for irrigation purposes continuously by a landowner for at least 25 years.

The bill also reinforces the requirement that a person authorized to take such property must follow applicable court procedures required by statute.

**State Expenditures**

The bill could increase state expenditures, but the actual cost is unknown. While procedural due process is already legally required in government takings cases, the bill adds provisions to existing law by declaring it unlawful to take livestock without compensation, to use airspace over private land up to 500 feet by publically owned aircraft, and to take away the right to use seepage water for irrigation purposes under certain conditions.

***Department of Natural Resources.*** The Division of Water Resources (DWR), also known as the Office of the State Engineer, does not exercise power of condemnation or eminent domain. However, the administration of water rights, which often takes the form of preventing a water user from diverting water out of priority could lead to an increase in the number of lawsuits filed against the DWR. This could occur if a water user interprets a curtailment of diversion of water as an exercise of eminent domain without due process. In these circumstances, DWR would need additional legal representation from the Department of Law to defend administrative actions. This fiscal note estimates that as much as \$66,150 General Fund may be required annually for 900 hours of legal support. The Department of Law charges its client agencies for its services at the current hourly rate of \$73.37. If legal expenses are incurred by the Department of Natural Resources, a supplemental appropriation will be necessary to pay for the cost of defending the state.

***Department of Agriculture.*** Current law gives the Commissioner of Agriculture the authority to care for or remove animals found to be mistreated, neglected, or abandoned in any circumstance that affects the health or life of an animal. An agent of the Bureau of Animal Protection or a peace officer may also euthanize an animal in his or her charge if a licensed veterinarian deems the animal to be in extreme pain or severely injured and past the point of recovery.

The bill may conflict with authority provided in current law to prevent the spread of contagious and infectious diseases, and to care for or remove mistreated, neglected, or abandoned animals. This may lead to additional legal expenses if the department must defend its actions in court. Since the number of cases cannot be estimated, the amount of potential legal resources cannot be determined.

***Judicial Branch.*** It is assumed that governmental entities will generally follow the law. Therefore, the number of cases that will reach the courts is assumed to be minimal, and can be addressed within the existing budgeted resources of the trial courts.

## **State Appropriations**

The bill does not require an appropriation for FY 2011-12. However, if legal expenses are incurred by the Department of Natural Resources, the Department of Agriculture, or any other department to defend the bill, a supplemental General Fund appropriation may be requested.

## **Departments Contacted**

Law

Judicial

Local Affairs

Agriculture