

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0284.01 Troy Bratton

HOUSE BILL 11-1066

HOUSE SPONSORSHIP

McKinley, Vigil

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REINFORCEMENT OF THE PROHIBITION ON
102 GOVERNMENTAL TAKINGS OF CERTAIN TYPES OF PROPERTY
103 WITHOUT PROVIDING PROCEDURAL DUE PROCESS TO THE
104 PROPERTY OWNER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

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

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.

governmental takings of livestock, airspace, or seepage water rights without due process of law. The bill also reinforces the requirement that a person authorized to take such property must follow the applicable court procedures required by statute in such instances.

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

2 **SECTION 1. Legislative findings and intent.** (1) The general
3 assembly hereby finds and declares that:

4 (a) Owners of both personal and real property have a right to due
5 process before a governmental or any other entity takes private property
6 for public or private use;

7 (b) The receipt of notice and the opportunity to be heard are
8 minimal requirements of the due process afforded to the owner of
9 personal or real property prior to a governmental taking;

10 (c) Despite the statutory mandate that such procedural due process
11 be afforded, it is worth emphasizing that takings without notice and
12 without the opportunity to be heard violate the rights of property owners;
13 and

14 (d) Various levels and departments of federal, state, and local
15 governments have not acted in good faith and have executed takings of
16 certain types of property without providing just compensation including,
17 but not limited to, takings of:

18 (I) Livestock for various reasons without compensation;

19 (II) Airspace above a piece of real property effectuated by the
20 operation of publicly owned aircraft at low levels; and

21 (III) Rights to use seepage water for irrigation purposes that have
22 been exercised in an ongoing and continuous manner for a significant
23 period of time.

1 (2) Therefore, it is the intent of the general assembly to reinforce
2 the provisions of part 1 of article 1 of title 38, Colorado Revised Statutes,
3 that are intended to provide procedural due process to property owners.

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

6 **38-1-101. Compensation - public use - commission - jury -**
7 **court - prohibition on elimination of nonconforming uses or**
8 **nonconforming property design by amortization - limitation on**
9 **extraterritorial condemnation by municipalities - definitions.**

10 (1) (a) Notwithstanding any other provision of law, in order to protect
11 property rights, without the consent of the owner of the property, private
12 property shall not be taken or damaged by the state or any political
13 subdivision for a public or private use without:

- 14 (I) Just compensation; AND
- 15 (II) PROCEDURAL DUE PROCESS OF LAW, INCLUDING, BUT NOT
16 LIMITED TO, NOTICE AND THE OPPORTUNITY TO BE HEARD.

17 **SECTION 3.** Part 1 of article 1 of title 38, Colorado Revised
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
19 read:

20 **38-1-101.8. Limitations on taking of certain property.** (1) IN
21 ADDITION TO ANY OTHER PROTECTIONS AFFORDED TO PROPERTY OWNERS
22 BY LAW, IT SHALL BE UNLAWFUL FOR A GOVERNMENTAL ENTITY TO
23 EXERCISE POWER OF CONDEMNATION OR EMINENT DOMAIN OVER THE
24 FOLLOWING TYPES OF REAL OR PERSONAL PROPERTY WITHOUT AFFORDING
25 THE PROPERTY OWNER REASONABLE NOTICE AND THE OPPORTUNITY TO BE
26 HEARD:

- 27 (a) LIVESTOCK, AS DEFINED IN SECTION 35-50-103 (7), C.R.S.;

1 (b) AIRSPACE BETWEEN THE SURFACE OF REAL PROPERTY AND A
2 HEIGHT OF FIVE HUNDRED FEET ABOVE THE SURFACE; EXCEPT THAT SUCH
3 AIRSPACE MAY BE OCCUPIED BY AIRCRAFT THAT IS ORDINARILY USED FOR
4 EMERGENCY PURPOSES SUCH AS SEARCH AND RESCUE, ROUTINE
5 EXPLORATION AND MAINTENANCE OF INFRASTRUCTURE SUCH AS OIL AND
6 GAS PIPELINE, AND ROUTINE AGRICULTURAL PURPOSES SUCH AS CROP
7 DUSTING; AND

8 (c) SEEPAGE WATER THAT HAS BEEN USED FOR IRRIGATION
9 PURPOSES CONTINUOUSLY BY A LANDOWNER FOR A PERIOD OF NOT LESS
10 THAN TWENTY-FIVE YEARS.

11 **SECTION 4.** 38-1-102 (1), Colorado Revised Statutes, is
12 amended to read:

13 **38-1-102. Petition - contents - parties.** (1) In all cases where the
14 right to take private property for public or private use without the owner's
15 consent or the right to construct or maintain any railroad, spur or side
16 track, public road, toll road, ditch, bridge, ferry, telegraph, flume, or other
17 public or private work or improvement ~~which~~ THAT may damage property
18 not actually taken is conferred by general laws or special charter upon any
19 corporate or municipal authority, public body, officer or agent, person,
20 commissioner, or corporation and the compensation to be paid for, in
21 respect of property sought to be appropriated or damaged for the purposes
22 mentioned, cannot be agreed upon by the parties interested; or, in case the
23 owner of the property is incapable of consenting, or his name or residence
24 is unknown, or he is a nonresident of the state, ~~it is lawful for the party~~
25 authorized to take or damage the property so required ~~to~~ SHALL apply to
26 the judge of the district court where the property or any part thereof is
27 situate by filing with the clerk a petition, setting forth, by reference, his

1 OR HER authority in the premises, the purpose for which said property is
2 sought to be taken or damaged, a description of the property, the names
3 of all persons interested as owners or otherwise, as appearing of record,
4 if known, or, if not known, stating that fact, and praying such judge to
5 cause the compensation to be paid to the owner to be assessed. If the
6 proceedings seek to affect the property of persons under guardianship, the
7 guardians or conservators of persons having conservators shall be made
8 parties defendant. Persons interested whose names are unknown may be
9 made parties defendant by the description of the unknown owners. In all
10 such cases an affidavit shall be filed by or on behalf of the petitioner,
11 setting forth that the names of such persons are unknown.

12 **SECTION 5. Act subject to petition - effective date.** This act
13 shall take effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part shall not take effect
19 unless approved by the people at the general election to be held in
20 November 2012 and shall take effect on the date of the official
21 declaration of the vote thereon by the governor.