

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 06-1058.02 Bob Lackner

HOUSE BILL 06-1411

HOUSE SPONSORSHIP

White and Weissmann, Paccione

SENATE SPONSORSHIP

Tochtrop,

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CIRCUMSTANCES UNDER WHICH PRIVATE PROPERTY**
102 **MAY BE ACQUIRED BY PUBLIC ENTITIES THROUGH EXERCISE OF**
103 **THE POWER OF EMINENT DOMAIN IN FURTHERANCE OF A PUBLIC**
104 **USE, AND, IN CONNECTION THEREWITH, PROHIBITING PRIVATE**
105 **PROPERTY FROM BEING TAKEN BY THE STATE OR ANY POLITICAL**
106 **SUBDIVISION UNLESS THE CONDEMNING ENTITY ESTABLISHES**
107 **THAT THE TAKING IS FOR A PUBLIC USE, EXCLUDING TAKINGS**
108 **FOR ECONOMIC DEVELOPMENT OR TAX REVENUE ENHANCEMENT**
109 **FROM THE MEANING OF PUBLIC USE, AND REQUIRING THAT A**
110 **CONDEMNATION ACTION SATISFY A HIGHER DEGREE OF PROOF**
111 **WHEN THE TAKING IS FOR THE ERADICATION OF BLIGHT.**

Bill Summary

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
May 1, 2006

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

Clarifies that, without the consent of the owner of the property, private property shall not be taken or damaged by the state or any political subdivision for a public or private use without just compensation.

Excludes from the meaning of "public use" the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenue. Specifies that private property may otherwise be taken solely for the purpose of furthering a public use as that term is understood as of the effective date of the act.

Specifies that, in any condemnation action, the burden of proof is on the condemning entity to demonstrate, by a preponderance of the evidence, that the taking of private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the act requires the condemning entity to demonstrate, by clear and convincing evidence, that the taking of the property is for a public use.

In the case of a conflict between the provisions of the urban renewal law and the provisions of the act, specifies that the provisions of the act shall control.

Makes a conforming amendment. Defines terms.

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

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

5 **38-1-101. Compensation - public use - commission - jury -**
6 **court - prohibition on elimination of nonconforming uses or**
7 **nonconforming property design by amortization - limitation on**
8 **extraterritorial condemnation by municipalities - definitions.**

9 (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ORDER TO
10 PROTECT PROPERTY RIGHTS, WITHOUT THE CONSENT OF THE OWNER OF
11 THE PROPERTY, private property shall not be taken or damaged BY THE

1 STATE OR ANY POLITICAL SUBDIVISION for A public or private use without
2 just compensation.

3 (b) FOR PURPOSES OF SATISFYING THE REQUIREMENTS OF THIS
4 SECTION, "PUBLIC USE" SHALL NOT INCLUDE THE TAKING OF PRIVATE
5 PROPERTY FOR TRANSFER TO A PRIVATE ENTITY FOR THE PURPOSE OF
6 ECONOMIC DEVELOPMENT OR ENHANCEMENT OF TAX REVENUE. PRIVATE
7 PROPERTY MAY OTHERWISE BE TAKEN SOLELY FOR THE PURPOSE OF
8 FURTHERING A PUBLIC USE AS THAT TERM IS UNDERSTOOD AS OF THE
9 EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED.

10 (c) PRIVATE PROPERTY SHALL NOT BE TAKEN BY A PRIVATE PARTY
11 EXCEPT AS A PRIVATE WAY OF NECESSITY AS PROVIDED UNDER SECTION 14
12 OF ARTICLE II OF THE STATE CONSTITUTION, FOR A RIGHT-OF-WAY FOR A
13 DITCH, CANAL, OR FLUME AS PROVIDED UNDER SECTION 7 OF ARTICLE XVI
14 OF THE STATE CONSTITUTION, OR FOR OTHER PURPOSES AS AUTHORIZED BY
15 PARAGRAPH (b) OF THIS SUBSECTION (1).

16 (2) (a) In all cases in which compensation is not made by the state
17 in its corporate capacity, such compensation shall be ascertained by a
18 board of commissioners of not less than three disinterested and impartial
19 freeholders pursuant to section 38-1-105 (1) or by a jury when required
20 by the owner of the property as prescribed in section 38-1-106. All
21 questions and issues, except the amount of compensation, shall be
22 determined by the court unless all parties interested in the action stipulate
23 and agree that the compensation may be so ascertained by the court. In
24 the event of such stipulation and agreement, the court shall proceed as
25 provided in this article for the trial of such causes by a board of
26 commissioners or jury.

27 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ANY

1 CONDEMNATION ACTION, WITHOUT THE CONSENT OF THE OWNER OF THE
2 PROPERTY, THE BURDEN OF PROOF IS ON THE CONDEMNING ENTITY TO
3 DEMONSTRATE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE
4 TAKING OF PRIVATE PROPERTY IS FOR A PUBLIC USE, UNLESS THE
5 CONDEMNATION ACTION INVOLVES A TAKING FOR THE ERADICATION OF
6 BLIGHT, IN WHICH CASE THE BURDEN OF PROOF IS ON THE CONDEMNING
7 ENTITY TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE, THAT
8 THE TAKING OF THE PROPERTY IS FOR A PUBLIC USE.

9 (3) (a) Notwithstanding any other provision of law to the contrary,
10 a local government shall not enact or enforce an ordinance, resolution, or
11 regulation that requires a nonconforming property use that was lawful at
12 the time of its inception to be terminated or eliminated by amortization.

13 (b) ~~For purposes of this subsection (3), "local government" means~~
14 ~~a county, city and county, town, or home rule or statutory city.~~

15 (5) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
16 OTHERWISE REQUIRES:

17 (a) "LOCAL GOVERNMENT" MEANS A COUNTY, CITY AND COUNTY,
18 TOWN, OR HOME RULE OR STATUTORY CITY.

19 (b) "POLITICAL SUBDIVISION" MEANS A COUNTY; CITY AND
20 COUNTY; CITY; TOWN; SERVICE AUTHORITY; SCHOOL DISTRICT; LOCAL
21 IMPROVEMENT DISTRICT; LAW ENFORCEMENT AUTHORITY; URBAN
22 RENEWAL AUTHORITY; CITY OR COUNTY HOUSING AUTHORITY; WATER,
23 SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE,
24 OR OTHER SPECIAL DISTRICT; OR ANY OTHER KIND OF MUNICIPAL,
25 QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO
26 LAW.

27 **SECTION 2.** Part 1 of article 25 of title 31, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **31-25-105.7. Condemnation actions by authorities - effect of**
4 **other provisions.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
5 ANY CONDEMNATION ACTION COMMENCED BY AN AUTHORITY ON OR
6 AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL SATISFY THE
7 REQUIREMENTS SPECIFIED IN SECTION 38-1-101, C.R.S. TO THE EXTENT
8 THERE IS ANY CONFLICT BETWEEN THE PROVISIONS OF THIS PART 1 AND
9 THE PROVISIONS OF SECTION 38-1-101, C.R.S., THE PROVISIONS OF
10 SECTION 38-1-101, C.R.S., SHALL CONTROL.

11 **SECTION 3. Applicability.** This act shall apply to any
12 condemnation action commenced on or after the effective date of this act.

13 **SECTION 4. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.