

Second Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 06-1058.02 Bob Lackner

**HOUSE BILL 06-1411**

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**HOUSE SPONSORSHIP**

**White and Weissmann, Paccione**

**SENATE SPONSORSHIP**

**Tochtrop,**

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**House Committees**

State, Veterans, & Military Affairs

**Senate Committees**

State, Veterans & Military Affairs

SENATE  
Amended 3rd Reading  
May 5, 2006

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**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.**

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SENATE  
Amended 2nd Reading  
May 4, 2006

HOUSE  
3rd Reading Unamended  
May 2, 2006

HOUSE  
Amended 2nd Reading  
May 1, 2006

**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.*

*(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.

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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) (I) 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.

9 (II) BY ENACTING SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE  
10 GENERAL ASSEMBLY DOES NOT INTEND TO CREATE A NEW PROCEDURAL  
11 MECHANISM TO BRING ABOUT THE CONDEMNATION OF PRIVATE PROPERTY.  
12 BY ENACTING SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE GENERAL  
13 ASSEMBLY INTENDS TO LIMIT ONLY AS PROVIDED IN SUBPARAGRAPH (I) OF  
14 THIS PARAGRAPH (b), AND NOT EXPAND, THE DEFINITION OF "PUBLIC USE".

15 (c) NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF A  
16 PRIVATE PARTY TO CONDEMN PROPERTY AS OTHERWISE PROVIDED BY  
17 LAW.

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

1 commissioners or jury.

2 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ANY  
3 CONDEMNATION ACTION, WITHOUT THE CONSENT OF THE OWNER OF THE  
4 PROPERTY, THE BURDEN OF PROOF IS ON THE CONDEMNING ENTITY TO  
5 DEMONSTRATE, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE  
6 TAKING OF PRIVATE PROPERTY IS FOR A PUBLIC USE, UNLESS THE  
7 CONDEMNATION ACTION INVOLVES A TAKING FOR THE ERADICATION OF  
8 BLIGHT, IN WHICH CASE THE BURDEN OF PROOF IS ON THE CONDEMNING  
9 ENTITY TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE, THAT  
10 THE TAKING OF THE PROPERTY IS NECESSARY FOR THE ERADICATION OF  
11 BLIGHT.

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

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

18 (5) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT  
19 OTHERWISE REQUIRES:

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

22 (b) "POLITICAL SUBDIVISION" MEANS A COUNTY; CITY AND  
23 COUNTY; CITY; TOWN; SERVICE AUTHORITY; SCHOOL DISTRICT; LOCAL  
24 IMPROVEMENT DISTRICT; LAW ENFORCEMENT AUTHORITY; URBAN  
25 RENEWAL AUTHORITY; CITY OR COUNTY HOUSING AUTHORITY; WATER,  
26 SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE,  
27 OR OTHER SPECIAL DISTRICT; OR ANY OTHER KIND OF MUNICIPAL,

1 QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO  
2 LAW.

3 **SECTION 2.** Part 1 of article 25 of title 31, Colorado Revised  
4 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
5 read:

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

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

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