

First Regular Session
Sixty-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 01-0434.01 Bob Lackner

HOUSE BILL 01-1092

HOUSE SPONSORSHIP

Johnson

SENATE SPONSORSHIP

(None)

House Committees

Senate Committees

Local Government

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION OF THE RIGHTS OF OWNERS OF PRIVATE**
102 **REAL PROPERTY AGAINST REGULATORY IMPAIRMENTS, AND, IN**
103 **CONNECTION THEREWITH, PROVIDING A CAUSE OF ACTION TO**
104 **PRIVATE REAL PROPERTY OWNERS FOR REGULATORY ACTION BY**
105 **GOVERNMENTAL ENTITIES BURDENING THE PROPERTY THAT**
106 **MAY NOT CLEARLY AMOUNT TO A TAKING UNDER EXISTING LAW.**

Bill Summary

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

Expresses the intention of the general assembly that this act provide a cause of action to the owners of private real property for

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.

regulatory action by governmental entities burdening the property that may not clearly amount to a taking under the Colorado or United States constitutions.

Allows the owner of private real property to file a claim with a governmental entity whose action may have inordinately burdened the property. Defines "inordinate burden" to include action of a governmental entity that has directly restricted or limited the use of private real property as a whole such that the property owner is permanently unable to attain either the reasonable investment-backed expectation for the existing use of the property or a vested right to a specified use of the real property that would otherwise exist in the absence of the governmental action.

Specifies procedures for the filing of the owner's claim. Requires the governmental entity to make a written response to the owner within a specified period after the submission of the owner's claim. Specifies the types of action the governmental entity may take in response to the owner's claim.

Within a specified number of days after the completion of the response period, requires the governmental entity to issue a written ripeness decision identifying the allowable uses to which the subject property may be put. Provides that the ripeness decision is a prerequisite to judicial review.

If the owner rejects the written response and ripeness decision from the governmental entity, allows the owner to commence a civil action in the appropriate district court seeking a determination as to whether the governmental action has resulted in an inordinate burden. Specifies procedures to be followed in connection with the commencement of the action. Requires the district court in the action who determines that an inordinate burden has occurred to enter judgment in favor of the owner and order the governmental entity to rescind the governmental action within a specified number of days after the judgment.

Allows the governmental entity to pay damages as compensation to the owner of the private real property who prevails in a judicial proceeding. Specifies procedures to be followed in connection with a damages award. Provides that the district court shall withdraw the rescission order where the governmental entity elects to pay compensation to the property owner.

Provides that enforcement of the governmental action at issue shall be enjoined pending appeal of a district court judgment in favor of the landowner. Requires the district court to award a prevailing owner the owner's reasonable attorney fees and costs.

Defines terms.

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

1 **SECTION 1.** Article 20 of title 29, Colorado Revised Statutes, is
2 amended BY THE ADDITION OF A NEW PART to read:

3 PART 3

4 REGULATORY IMPAIRMENT OF PROPERTY RIGHTS
5 THAT MAY NOT CLEARLY AMOUNT TO A TAKING

6 **29-20-301. Legislative declaration.** (1) THE GENERAL ASSEMBLY
7 HEREBY FINDS AND DECLARES THAT THE STATE HAS AN IMPORTANT
8 INTEREST IN PROTECTING THE INTERESTS OF THE OWNERS OF PRIVATE REAL
9 PROPERTY FROM INORDINATE BURDENS, RESTRICTIONS, AND LIMITS ON
10 SUCH PROPERTY CAUSED BY REGULATORY IMPAIRMENTS THAT MAY NOT
11 CLEARLY AMOUNT TO A "TAKING" AS THAT TERM IS CURRENTLY
12 CONSTRUED UNDER THE COLORADO OR UNITED STATES CONSTITUTIONS.

13 (2) IN ENACTING THIS PART 3, IT IS THE INTENT OF THE GENERAL
14 ASSEMBLY THAT:

15 (a) WHEN THE STATE OR A POLITICAL SUBDIVISION WITHIN THE
16 STATE PROMULGATES A NEW LAW, REGULATION, RULE, OR ORDINANCE
17 THAT INORDINATELY BURDENS THE EXISTING USE OF PROPERTY OR A
18 VESTED RIGHT TO A SPECIFIC USE OF REAL PROPERTY, THE OWNER OF THE
19 PROPERTY SHALL BE ENTITLED TO RELIEF, WHETHER IN THE FORM OF A
20 COMPENSATORY PAYMENT FOR THE ACTUAL LOSS TO THE MARKET VALUE
21 OF THE PROPERTY CAUSED BY THE GOVERNMENTAL ACTION OR OTHERWISE;

22 (b) THE RELIEF PROVIDED BY THIS PART 3 BE MADE AVAILABLE TO
23 OWNERS OF PRIVATE REAL PROPERTY SUFFERING FROM REGULATORY
24 IMPAIRMENTS THAT MAY NOT CLEARLY AMOUNT TO A TAKING UNDER THE
25 COLORADO AND UNITED STATES CONSTITUTIONS; AND

26 (c) THE RELIEF AFFORDED BY THIS PART 3 SHALL BE SEPARATE AND
27 DISTINCT FROM ANY RELIEF PROVIDED AN AGGRIEVED LANDOWNER UNDER

1 EXISTING LAW GOVERNING TAKINGS.

2 **29-20-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "ACTION OF A GOVERNMENTAL ENTITY" MEANS SPECIFIC
5 ACTION OF A GOVERNMENTAL ENTITY THAT AFFECTS PRIVATE REAL
6 PROPERTY, INCLUDING, WITHOUT LIMITATION, ACTION ON AN APPLICATION
7 OR PERMIT.

8 (2) "EXISTING USE" MEANS AN ACTUAL, PRESENT USE OR ACTIVITY
9 OF OR ON PRIVATE REAL PROPERTY. "EXISTING USE" INCLUDES:

10 (a) PERIODS OF INACTIVITY THAT ARE NORMALLY ASSOCIATED
11 WITH, OR ARE INCIDENTAL TO, THE PREDOMINANT NATURE, TYPE OF USE,
12 OR ACTIVITY OF OR ON THE PRIVATE REAL PROPERTY; OR

13 (b) SUCH REASONABLY FORESEEABLE, NONSPECULATIVE LAND USES
14 THAT ARE SUITABLE FOR THE PRIVATE REAL PROPERTY, COMPATIBLE WITH
15 ADJACENT LAND USES, AND THAT HAVE CREATED AN EXISTING MARKET
16 VALUE IN THE SUBJECT PROPERTY GREATER THAN THE MARKET VALUE OF
17 THE ACTUAL, PRESENT USE OR ACTIVITY OF OR ON THE PRIVATE REAL
18 PROPERTY.

19 (3) "GOVERNMENTAL ENTITY" MEANS:

20 (a) A BOARD, COMMISSION, COUNCIL, DEPARTMENT, OR OTHER
21 AGENCY OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT THAT IS
22 CREATED BY CONSTITUTION OR STATUTE, INCLUDING AN INSTITUTION OF
23 HIGHER EDUCATION OR ANY OTHER ENTITY THAT INDEPENDENTLY
24 EXERCISES GOVERNMENTAL AUTHORITY; OR

25 (b) ANY POLITICAL SUBDIVISION WITHIN THE STATE.

26 (4) (a) "INORDINATE BURDEN" MEANS AN ACTION OF A
27 GOVERNMENTAL ENTITY THAT:

1 (I) HAS DIRECTLY RESTRICTED OR LIMITED THE USE OF PRIVATE
2 REAL PROPERTY AS A WHOLE SUCH THAT THE OWNER OF THE PROPERTY IS
3 PERMANENTLY UNABLE TO ATTAIN EITHER THE REASONABLE,
4 INVESTMENT-BACKED EXPECTATION FOR THE EXISTING USE OF THE
5 PROPERTY OR A VESTED RIGHT TO A SPECIFIC USE OF THE PROPERTY THAT
6 WOULD OTHERWISE EXIST IN THE ABSENCE OF THE GOVERNMENTAL
7 ACTION;

8 (II) HAS DIRECTLY RESTRICTED OR LIMITED THE USE OF PRIVATE
9 REAL PROPERTY AS A WHOLE SUCH THAT THE OWNER OF THE PROPERTY IS
10 LEFT WITH EXISTING OR VESTED USES THAT ARE UNREASONABLE IN THAT
11 THE OWNER PERMANENTLY BEARS A DISPROPORTIONATE SHARE OF A
12 BURDEN IMPOSED FOR THE GOOD OF THE PUBLIC THAT AS A MATTER OF
13 EQUITY SHOULD BE BORNE BY THE PUBLIC AT LARGE; OR

14 (III) IS THE PRINCIPAL CAUSE OF A REDUCTION OF AT LEAST TWENTY
15 PERCENT IN THE MARKET VALUE OF THE PRIVATE REAL PROPERTY AS
16 DETERMINED BY COMPARING THE MARKET VALUE OF THE PROPERTY IF THE
17 GOVERNMENTAL ACTION WERE NOT IN EFFECT AND THE MARKET VALUE OF
18 THE PROPERTY DETERMINED WITH THE GOVERNMENTAL ACTION IN EFFECT.

19 (b) "INORDINATE BURDEN" DOES NOT INCLUDE TEMPORARY
20 IMPACTS TO PRIVATE REAL PROPERTY, IMPACTS TO PRIVATE REAL
21 PROPERTY OCCASIONED BY GOVERNMENTAL ABATEMENT, THE
22 PROHIBITION, PREVENTION, OR REMEDIATION OF A PUBLIC NUISANCE OR A
23 NOXIOUS USE OF PRIVATE REAL PROPERTY, OR IMPACTS TO PRIVATE REAL
24 PROPERTY CAUSED BY AN ACTION OF A GOVERNMENTAL ENTITY TAKEN TO
25 GRANT RELIEF TO AN OWNER UNDER THIS PART 3.

26 (5) "MARKET VALUE" MEANS THE PRICE A WILLING BUYER WOULD
27 PAY A WILLING SELLER FOR PRIVATE REAL PROPERTY ACCORDING TO

1 COLORADO JURY INSTRUCTIONS AFTER CONSIDERING ALL FACTORS IN THE
2 MARKETPLACE THAT INFLUENCE THE PRICE OF PROPERTY.

3 (6) "OWNER" MEANS A PERSON HOLDING LEGAL OR EQUITABLE
4 TITLE TO PRIVATE REAL PROPERTY AT THE TIME OF THE ACTION OF A
5 GOVERNMENTAL ENTITY GIVING RISE TO A CLAIM FOR RELIEF UNDER THIS
6 PART 3. "OWNER" DOES NOT INCLUDE A GOVERNMENTAL ENTITY.

7 (7) "PRIVATE REAL PROPERTY" MEANS ANY INTEREST IN REAL
8 PROPERTY THAT IS RECOGNIZED UNDER COMMON LAW AND THE LEGAL OR
9 EQUITABLE OWNERSHIP OF WHICH IS NOT HELD BY THE UNITED STATES,
10 THE STATE OF COLORADO, OR ANY POLITICAL SUBDIVISION OF THIS STATE.
11 "PRIVATE REAL PROPERTY" INCLUDES, WITHOUT LIMITATION, ANY
12 APPURTENANCES AND IMPROVEMENTS TO THE SUBJECT PROPERTY AND ANY
13 GROUNDWATER OR SURFACE WATER RIGHT OR MINERAL RIGHT THAT GOES
14 WITH THE SUBJECT PROPERTY.

15 **29-20-303. Applicability.** (1) THIS PART 3 APPLIES ONLY TO THE
16 FOLLOWING GOVERNMENTAL ACTIONS:

17 (a) THE ADOPTION OR ISSUANCE OF AN ORDINANCE, RULE,
18 REGULATORY REQUIREMENT, RESOLUTION, POLICY, GUIDELINE, OR SIMILAR
19 MEASURE BY A GOVERNMENTAL ENTITY;

20 (b) AN ACTION OF A GOVERNMENTAL ENTITY THAT IMPOSES A
21 PHYSICAL INVASION OR REQUIRES A DEDICATION OR EXACTION OF PRIVATE
22 REAL PROPERTY;

23 (c) ENFORCEMENT OF ACTION OF A GOVERNMENTAL ENTITY BY
24 MEANS OF PERMITTING, CITATIONS, ORDERS, JUDICIAL OR QUASI-JUDICIAL
25 PROCEEDINGS, OR OTHER SIMILAR MEANS; OR

26 (d) ENACTMENT OR ENFORCEMENT BY A MUNICIPALITY OF AN
27 ORDINANCE, RULE, REGULATION, OR PLAN THAT HAS AN EFFECT IN SOME

1 PORTION OF THE MUNICIPALITY'S EXTRATERRITORIAL AREA WHERE THE
2 MUNICIPALITY DOES NOT IMPOSE AN IDENTICAL REQUIREMENT OR
3 RESTRICTION IN ITS ENTIRE EXTRATERRITORIAL AREA. FOR PURPOSES OF
4 THIS PARAGRAPH (d), "EXTRATERRITORIAL AREA" MEANS AN AREA BEYOND
5 ITS EXISTING TERRITORIAL BOUNDARIES THAT THE MUNICIPALITY PROPOSES
6 TO ANNEX OR OVER WHICH THE MUNICIPALITY EXERCISES SOME DEGREE OF
7 DOMINION OR CONTROL RECOGNIZED AT LAW PURSUANT TO AN
8 INTERGOVERNMENTAL AGREEMENT. "EXTRATERRITORIAL AREA" DOES NOT
9 INCLUDE ANY PORTION OF AN AREA THAT IS THE SUBJECT OF A COMPLETED
10 ANNEXATION PETITION.

11 **29-20-304. Process for owner to submit claim for relief - notice**
12 **period - written ripeness decision.** (1) AN OWNER MAY FILE A CLAIM
13 FOR RELIEF WITH A GOVERNMENTAL ENTITY IN ACCORDANCE WITH THE
14 REQUIREMENTS OF THIS PART 3 TO DETERMINE WHETHER AN ACTION OF THE
15 GOVERNMENTAL ENTITY HAS RESULTED IN AN INORDINATE BURDEN TO THE
16 PROPERTY.

17 (2) A CLAIM FOR RELIEF SHALL BE FILED WITH THE GOVERNMENTAL
18 ENTITY NO LATER THAN ONE YEAR AFTER THE DATE THE OWNER KNEW OR
19 SHOULD HAVE KNOWN THAT THE GOVERNMENTAL ACTION INORDINATELY
20 BURDENED THE PROPERTY.

21 (3) THE OWNER SHALL SUBMIT, ALONG WITH THE CLAIM, A BONA
22 FIDE, VALID APPRAISAL THAT SUPPORTS THE CLAIM AND DEMONSTRATES
23 THE LOSS IN MARKET VALUE TO THE PROPERTY. IF THE ACTION OF THE
24 GOVERNMENT IS THE CULMINATION OF A PROCESS THAT INVOLVES MORE
25 THAN ONE GOVERNMENTAL ENTITY, OR IF THE RESOLUTION OF ALL
26 RELEVANT ISSUES REQUIRES THE ACTIVE PARTICIPATION OF MORE THAN
27 ONE GOVERNMENTAL ENTITY, THE OWNER SHALL FILE A CLAIM WITH EACH

1 OF THE INVOLVED GOVERNMENTAL ENTITIES.

2 (4) THE GOVERNMENTAL ENTITY SHALL PROVIDE WRITTEN NOTICE
3 OF THE CLAIM TO ANY OTHER PERSON INVOLVED IN THE UNDERLYING
4 REGULATORY OR LEGAL PROCEEDING GIVING RISE TO THE CLAIM AND TO
5 OWNERS OF REAL PROPERTY CONTIGUOUS TO THE OWNER'S PROPERTY AT
6 THE ADDRESSES LISTED ON THE MOST RECENT TAX ROLLS. WITHIN FIFTEEN
7 DAYS AFTER THE CLAIM IS FILED, THE GOVERNMENTAL ENTITY SHALL
8 PUBLICLY REPORT THE CLAIM IN WRITING AND SHALL PROVIDE THE NAME,
9 ADDRESS, AND TELEPHONE NUMBER OF THE EMPLOYEE OF THE
10 GOVERNMENTAL ENTITY FROM WHOM ADDITIONAL INFORMATION MAY BE
11 OBTAINED ABOUT THE CLAIM DURING THE PENDENCY OF THE CLAIM AND
12 ANY SUBSEQUENT JUDICIAL PROCEEDINGS.

13 (5) UPON SUBMISSION OF A CLAIM IN ACCORDANCE WITH THE
14 REQUIREMENTS OF THIS SECTION, THE GOVERNMENTAL ENTITY SHALL HAVE
15 ONE HUNDRED EIGHTY DAYS, UNLESS EXTENDED BY AGREEMENT OF THE
16 PARTIES, TO MAKE A WRITTEN RESPONSE TO THE OWNER. IN ITS RESPONSE,
17 THE GOVERNMENTAL ENTITY MAY OFFER TO UNDERTAKE ONE OR MORE OF
18 THE FOLLOWING COURSES OF ACTION, SINGLY OR IN COMBINATION,
19 WITHOUT LIMITATION, TO ADDRESS THE OWNER'S CLAIM:

20 (a) AN OFFER TO SWAP OR EXCHANGE THE SUBJECT PROPERTY FOR
21 OTHER PROPERTY THAT THE GOVERNMENTAL ENTITY IS ABLE TO OFFER THE
22 OWNER;

23 (b) THE TRANSFER OF DEVELOPMENT RIGHTS IN OTHER PRIVATE
24 REAL PROPERTY IN EXCHANGE FOR DEVELOPMENT RIGHTS IN AND TO THE
25 SUBJECT PROPERTY;

26 (c) A CHANGE OR MODIFICATION IN REGULATORY REQUIREMENTS
27 AFFECTING DENSITY, INTENSITY, OR DEVELOPMENTAL USE AS APPLIED TO

1 THE SUBJECT PROPERTY;

2 (d) ISSUANCE BY THE GOVERNMENTAL ENTITY OF A DEVELOPMENT
3 ORDER, VARIANCE, SPECIAL EXCEPTION, PERMIT OR ANY RELATED OR
4 SIMILAR RELIEF;

5 (e) THE PURCHASE OF THE SUBJECT PROPERTY, OR AN INTEREST
6 THEREIN, BY ANY APPROPRIATE GOVERNMENTAL ENTITY;

7 (f) NO CHANGE TO THE ACTION OF THE GOVERNMENTAL ENTITY; OR

8 (g) RESCISSION OF THE GOVERNMENTAL ACTION THAT BROUGHT
9 FORTH THE CLAIM BY THE OWNER AND REIMBURSE TO THE OWNER THE
10 OWNER'S REASONABLE COSTS INCURRED IN SUBMITTING THE CLAIM.

11 (6) NO LATER THAN TEN DAYS FOLLOWING THE COMPLETION OF THE
12 ONE HUNDRED EIGHTY DAY RESPONSE PERIOD REQUIRED BY SUBSECTION
13 (5) OF THIS SECTION, UNLESS AN OFFER IS MADE BY THE GOVERNMENTAL
14 ENTITY AND ACCEPTED BY THE PROPERTY OWNER THAT RESOLVES THE
15 OWNER'S CLAIM FOR RELIEF UNDER THIS PART 3, EACH GOVERNMENTAL
16 ENTITY THAT PROVIDED NOTICE PURSUANT TO SUBSECTION (4) OF THIS
17 SECTION SHALL ISSUE A WRITTEN RIPENESS DECISION IDENTIFYING THE
18 ALLOWABLE USES TO WHICH THE SUBJECT PROPERTY MAY BE PUT. THE
19 FAILURE OF A GOVERNMENTAL ENTITY TO ISSUE A WRITTEN RIPENESS
20 DECISION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION
21 (6) SHALL BE DEEMED TO RIPEN THE PRIOR ACTION OF THE GOVERNMENTAL
22 ENTITY AND SHALL OPERATE AS A RIPENESS DECISION THAT HAS BEEN
23 REJECTED BY THE OWNER IN ACCORDANCE WITH SECTION 29-20-305 (1).
24 THE RIPENESS DECISION SHALL CONSTITUTE THE LAST PREREQUISITE TO
25 JUDICIAL REVIEW, AND THE MATTER SHALL BE DEEMED RIPE OR FINAL FOR
26 THE PURPOSES OF JUDICIAL PROCEEDINGS IN ACCORDANCE WITH SECTION
27 29-20-305.

1 (7) FOR PURPOSES OF THIS PART 3, THE EXISTENCE OF A "VESTED
2 RIGHT" IS TO BE DETERMINED BY APPLYING THE PRINCIPLES OF EQUITABLE
3 ESTOPPEL OR SUBSTANTIVE DUE PROCESS UNDER THE COMMON LAW OR
4 STATUTORY LAW OF THIS STATE.

5 **29-20-305. Judicial proceedings.** (1) IF THE OWNER REJECTS THE
6 RESPONSE OF THE GOVERNMENTAL ENTITY SUBMITTED IN ACCORDANCE
7 WITH SECTION 29-20-304 (5) AND THE RIPENESS DECISION OF THE
8 GOVERNMENTAL ENTITY SUBMITTED IN ACCORDANCE WITH SECTION
9 29-20-304 (6), THE OWNER MAY BRING A CIVIL ACTION IN ACCORDANCE
10 WITH THE REQUIREMENTS OF THIS SECTION SEEKING A DETERMINATION OF
11 WHETHER THE ACTION OF THE GOVERNMENTAL ENTITY HAS RESULTED IN
12 AN INORDINATE BURDEN TO THE SUBJECT PROPERTY.

13 (2) A CIVIL ACTION UNDER THIS SECTION SHALL COMMENCE WITH
14 THE FILING BY THE OWNER OF A COMPLAINT IN THE DISTRICT COURT FOR
15 THE COUNTY IN WHICH THE SUBJECT PROPERTY IS LOCATED. IF THE
16 SUBJECT PROPERTY IS LOCATED IN MORE THAN ONE COUNTY, THE OWNER
17 MAY FILE THE ACTION IN ANY COUNTY IN WHICH THE PROPERTY IS
18 LOCATED. A COPY OF THE OWNER'S COMPLAINT SHALL BE SERVED
19 CONTEMPORANEOUSLY UPON EACH OF THE GOVERNMENTAL ENTITIES THAT
20 MADE A WRITTEN RESPONSE AND RIPENESS DECISION THAT WAS REJECTED
21 BY THE OWNER.

22 (3) IF THE DISTRICT COURT FINDS THAT AN INORDINATE BURDEN
23 HAS OCCURRED, IT SHALL ENTER JUDGMENT IN FAVOR OF THE OWNER AND
24 SHALL ORDER THAT THE ACTION OF THE GOVERNMENTAL ENTITY GIVING
25 RISE TO THE OWNER'S CLAIM BE RESCINDED NOT MORE THAN THIRTY DAYS
26 AFTER THE DATE OF THE ENTRY OF JUDGMENT.

27 (4) A JUDGMENT ENTERED IN FAVOR OF THE OWNER UNDER THIS

1 SECTION SHALL INCLUDE FINDINGS OF FACT BY THE DISTRICT COURT
2 CONCERNING THE MONETARY DAMAGES SUFFERED BY THE OWNER AS A
3 RESULT OF THE GOVERNMENTAL ACTION. THE AMOUNT OF THE DAMAGES
4 SHALL BE DETERMINED FROM THE DATE THE GOVERNMENTAL ACTION THAT
5 GAVE RISE TO THE JUDICIAL PROCEEDINGS BEGAN.

6 (5) A GOVERNMENTAL ENTITY MAY ELECT TO PAY THE DAMAGES
7 DETERMINED BY THE COURT PURSUANT TO SUBSECTION (4) OF THIS SECTION
8 AS COMPENSATION TO THE OWNER WHO PREVAILS IN A JUDICIAL
9 PROCEEDING BROUGHT UNDER THIS SECTION. NOTWITHSTANDING ANY
10 OTHER PROVISION OF LAW, SOVEREIGN IMMUNITY AS TO A DETERMINATION
11 OF LIABILITY IS WAIVED TO THE EXTENT THE GOVERNMENTAL ENTITY
12 ELECTS TO PAY COMPENSATION TO THE OWNER. IF A GOVERNMENTAL
13 AGENCY ELECTS TO PAY COMPENSATION TO THE OWNER:

14 (a) THE DISTRICT COURT THAT RENDERED THE JUDGMENT IN THE
15 JUDICIAL PROCEEDINGS SHALL WITHDRAW THAT PORTION OF THE
16 JUDGMENT OR ORDER RESCINDING THE ACTION OF THE GOVERNMENTAL
17 ENTITY;

18 (b) THE GOVERNMENTAL ENTITY SHALL PAY AS COMPENSATION TO
19 THE OWNER THE AMOUNT OF DAMAGES AS DETERMINED BY THE DISTRICT
20 COURT PURSUANT TO SUBSECTION (4) OF THIS SECTION NOT LATER THAN
21 SIXTY DAYS AFTER THE DATE OF THE ENTRY OF JUDGMENT;

22 (c) COMPENSATION TO THE OWNER PURSUANT TO THIS SECTION
23 SHALL BE PAID FROM FUNDS APPROPRIATED TO THE GOVERNMENTAL
24 ENTITY.

25 (6) IF, AFTER THE GOVERNMENTAL ENTITY ELECTS TO PAY
26 COMPENSATION TO THE OWNER IN ACCORDANCE WITH PARAGRAPH (b) OF
27 SUBSECTION (5) OF THIS SECTION, THE GOVERNMENTAL ENTITY FAILS TO

1 PAY COMPENSATION TO THE OWNER, THE COURT SHALL REINSTATE THAT
2 PART OF THE JUDGMENT OR ORDER WITHDRAWN BY THE DISTRICT COURT
3 PURSUANT TO PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION.

4 (7) ANY PARTY AGGRIEVED BY A JUDGMENT RENDERED UNDER THIS
5 SECTION MAY APPEAL THE JUDGEMENT AS PROVIDED BY LAW.

6 (8) IF AN OWNER PREVAILS IN AN ACTION BROUGHT BEFORE THE
7 DISTRICT COURT PURSUANT TO THIS SECTION AND THE GOVERNMENTAL
8 ENTITY APPEALS, THE COURT SHALL ENJOIN THE GOVERNMENTAL ENTITY
9 FROM ENFORCING, MAINTAINING, OR IMPLEMENTING THE GOVERNMENTAL
10 ACTION THAT GAVE RISE TO THE JUDICIAL PROCEEDING DURING THE
11 PENDENCY OF THE APPEAL.

12 (9) THE DISTRICT COURT SHALL AWARD AN OWNER WHO PREVAILS
13 IN AN ACTION BROUGHT UNDER THIS SECTION THE OWNER'S REASONABLE
14 ATTORNEY FEES, APPRAISAL FEES, AND COSTS OF THE ACTION.

15 **29-20-306. Exceptions.** (1) EXCEPT AS EXPRESSLY PROVIDED,
16 THIS PART 3 DOES NOT AFFECT THE SOVEREIGN IMMUNITY THAT ANY
17 GOVERNMENTAL ENTITY MAY POSSESS UNDER LAW.

18 (2) THIS PART 3 SHALL NOT BE CONSTRUED TO AFFECT EXISTING
19 STATUTORY PROVISIONS REGARDING GOVERNMENTAL POWERS OF EMINENT
20 DOMAIN FOR TRANSPORTATION PURPOSES.

21 (3) THIS PART 3 SHALL NOT BE CONSTRUED TO SUPERCEDE OR
22 REPLACE METHODS AGREED TO BY PARTIES TO A DISPUTE AND LAWFULLY
23 AVAILABLE FOR ARBITRATION, MEDIATION, OR OTHER FORMS OF
24 ALTERNATIVE DISPUTE RESOLUTION, AND GOVERNMENTAL ENTITIES ARE
25 ENCOURAGED TO UTILIZE SUCH METHODS TO AUGMENT OR FACILITATE THE
26 PROCESSES AND ACTIONS CONTEMPLATED BY THIS PART 3.

27 **SECTION 2. Effective date - applicability.** (1) This act shall

1 take effect September 1, 2001, unless a referendum petition is filed during
2 the ninety-day period after final adjournment of the general assembly that
3 is allowed for submitting a referendum petition pursuant to article V,
4 section 1 (3) of the state constitution. If such a referendum petition is
5 filed against this act or an item, section, or part of this act within such
6 period, then the act, item, section, or part, if approved by the people, shall
7 take effect on the date of the official declaration of the vote thereon by
8 proclamation of the governor.

9 (2) The provisions of this act shall apply to any law, rule,
10 regulation, ordinance, plan, or other governmental action adopted on or
11 after the effective date of this act. A subsequent amendment to any law,
12 rule, regulation, ordinance, plan, or other governmental action in effect as
13 of the effective date of this act shall only give rise to a cause of action
14 under part 3 of article 20 of title 29, Colorado Revised Statutes, to the
15 extent that the application of the amendatory language imposes an
16 inordinate burden apart from the law, rule, regulation, ordinance, plan, or
17 other governmental action being amended.