

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0442.01 Megan McCall x4215

SENATE BILL 22-063

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SENATE SPONSORSHIP

Liston, Cooke, Hisey, Holbert, Lundeen, Sonnenberg, Woodward

HOUSE SPONSORSHIP

Pico,

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE "PROPERTY OWNERSHIP FAIRNESS ACT".

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://leg.colorado.gov>.)*

The bill enacts the "Property Ownership Fairness Act" (act). The bill entitles a property owner to seek just compensation from a governmental entity that enacts a land use law reducing the right of a property owner to use, divide, sell, or possess their property and reducing the fair market value of the property. The bill sets forth the procedure by which a property owner can demand just compensation and sets forth exceptions where a property owner is not entitled to seek just compensation for a land use law. Additionally, the bill prohibits a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

governmental entity from enacting a land use law that caps residential building permits issued in a single or multi-year period with the intent of limiting growth or development.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** article 2.5 to title  
3 38 as follows:

4   **ARTICLE 2.5**

5   **Property Ownership Fairness Act**

6           **38-2.5-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 2.5 IS  
7 THE "PROPERTY OWNERSHIP FAIRNESS ACT".

8           **38-2.5-102. Legislative declaration.** (1) THE GENERAL  
9 ASSEMBLY FINDS AND DECLARES THAT:

10           (a) A RELIABLE PUBLIC POLICY ENVIRONMENT THAT SUPPORTS AN  
11 ADEQUATE AND AFFORDABLE HOUSING SUPPLY IS A MATTER OF  
12 STATEWIDE CONCERN, AND A HEALTHY SUPPLY OF HOUSING UNITS TO  
13 MATCH BOTH CURRENT DEMAND AND FUTURE DEMAND DRIVEN BY  
14 POPULATION GROWTH IS CRITICAL FOR JOB CREATION, HOUSING STABILITY,  
15 AFFORDABILITY, AND THE OVERALL ECONOMIC WELL-BEING OF  
16 COLORADANS;

17           (b) THE LACK OF AFFORDABLE HOUSING IN COLORADO IS DIRECTLY  
18 ATTRIBUTABLE TO THE SCARCITY OF HOUSING UNITS;

19           (c) ACCORDING TO A STUDY OF HOUSING DEVELOPMENT IN  
20 COLORADO, THE STATE HAS OVER ONE HUNDRED SEVENTY-FIVE  
21 THOUSAND FEWER HOUSING UNITS THAN NEEDED TO RESTORE ITS  
22 HISTORICAL (1986-2008) POPULATION-TO-HOUSING RATIO;

23           (d) TO CLOSE THE DEFICIT AND ACCOUNT FOR PROJECTED  
24 POPULATION GROWTH, THE STATE WILL NEED TO ADD OVER FIFTY-FOUR

1 THOUSAND HOUSING UNITS A YEAR BY 2026;

2 (e) THE ENACTMENT OF "ANTI-GROWTH" LAND USE LAWS BY  
3 LOCAL GOVERNMENTS SEVERELY UNDERMINES THE ABILITY TO  
4 CONSTRUCT THE ADDITIONAL HOUSING UNITS COLORADANS NEED;

5 (f) "ANTI-GROWTH" LAND USE LAWS DO IRREPARABLE ECONOMIC  
6 HARM TO WORKING CLASS COLORADANS BY LIMITING THE HOUSING  
7 SUPPLY AND DRIVING UP HOUSING PRICES AND RENTS. FURTHERMORE,  
8 SUCH LAND USE LAWS THREATEN THE LIVELIHOOD OF COLORADANS  
9 EMPLOYED IN CONSTRUCTION AND OTHER BUILDING TRADES AS WELL AS  
10 BUSINESSES ACROSS THE STATE THAT RELY ON THE COMMERCE  
11 ASSOCIATED WITH HOME BUILDING.

12 (g) OTHER TYPES OF LAND USE POLICIES THAT DO NOT CONCERN  
13 THE PROMOTION OF PUBLIC HEALTH OR SAFETY PLACE UNDULY  
14 BURDENSOME RESTRICTIONS ON LAND USE, FURTHER HINDER THE  
15 CONSTRUCTION OF NEW HOUSING UNITS, AND DEPRIVE PROPERTY OWNERS  
16 OF THEIR CONSTITUTIONAL RIGHTS; AND

17 (h) IT IS THEREFORE NECESSARY FOR THE GENERAL ASSEMBLY TO  
18 PROHIBIT THE ENACTMENT OF "ANTI-GROWTH" LAND USE LAWS AND TO  
19 ENSURE THAT PROPERTY OWNERS SUBJECT TO UNDULY BURDENSOME  
20 LAND USE LAWS ARE COMPENSATED FOR REGULATORY TAKINGS.

21 **38-2.5-103. Definitions.** AS USED IN THIS ARTICLE 2.5, UNLESS  
22 THE CONTEXT OTHERWISE REQUIRES:

23 (1) "FAIR MARKET VALUE" MEANS THE MOST LIKELY MONETARY  
24 VALUE WHICH THE PROPERTY WOULD BRING IF EXPOSED FOR SALE IN THE  
25 OPEN MARKET, WITH REASONABLE TIME ALLOWED IN WHICH TO FIND A  
26 PURCHASER BUYING WITH KNOWLEDGE OF ALL THE USES AND PURPOSES  
27 TO WHICH THE PROPERTY IS ADAPTED AND FOR WHICH IT IS CAPABLE.

1 (2) "GOVERNMENTAL ENTITY" MEANS:

2 (a) THE STATE, A COUNTY, A CITY AND COUNTY, OR A  
3 MUNICIPALITY; AND

4 (b) ANY SPECIAL DISTRICT OR AGENCY, AUTHORITY, POLITICAL  
5 SUBDIVISION, OR INSTRUMENTALITY OF THE STATE, OR OF A COUNTY, OR  
6 OF A CITY AND COUNTY, OR OF A MUNICIPALITY THAT IS LEGALLY  
7 AUTHORIZED TO ENACT A LAND USE LAW.

8 (3) "JUST COMPENSATION" MEANS, IN AN ACTION BROUGHT  
9 PURSUANT TO SECTION 38-2.5-104, THE SUM OF MONEY THAT IS EQUAL TO  
10 THE REDUCTION IN FAIR MARKET VALUE OF THE PROPERTY RESULTING  
11 FROM THE ENACTMENT OF THE LAND USE LAW AS OF THE ENACTMENT  
12 DATE.

13 (4) "LAND USE LAW" MEANS ANY STATUTE, RESOLUTION,  
14 ORDINANCE, CODE, RULE, REGULATION, PLAN, POLICY, PROCEDURE,  
15 STANDARD, OR LAW ENACTED BY A GOVERNMENTAL ENTITY THAT  
16 REGULATES THE USE OR DIVISION OF PROPERTY OR ANY INTEREST IN  
17 PROPERTY OR THAT REGULATES ACCEPTED FARMING OR FORESTRY  
18 PRACTICES.

19 (5) "PROPERTY" MEANS REAL PROPERTY LOCATED WITHIN THE  
20 STATE THAT IS NOT PUBLICLY OWNED.

21 (6) "PROPERTY OWNER" MEANS A PERSON HOLDING RECORD FEE  
22 TITLE TO PROPERTY.

23 **38-2.5-104. Just compensation required when - exceptions -**  
24 **procedure.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION,  
25 IF A GOVERNMENTAL ENTITY ENACTS ANY LAND USE LAW THAT REDUCES  
26 THE RIGHT OF A PROPERTY OWNER TO USE, DIVIDE, SELL, OR POSSESS THEIR  
27 PROPERTY AND THE LAND USE LAW REDUCES THE FAIR MARKET VALUE OF

1 THE PROPERTY, A PROPERTY OWNER IS ENTITLED TO JUST COMPENSATION  
2 FROM THE GOVERNMENTAL ENTITY THAT ENACTED THE LAND USE LAW. A  
3 GOVERNMENTAL ENTITY SHALL NOT REQUIRE A PROPERTY OWNER TO  
4 SUBMIT A LAND USE APPLICATION TO REMOVE, MODIFY, VARY, OR  
5 OTHERWISE ALTER THE APPLICABILITY OF THE LAND USE LAW TO THE  
6 PROPERTY AS A PREREQUISITE TO SEEKING JUST COMPENSATION UNDER  
7 THIS SECTION.

8 (2) A PROPERTY OWNER IS NOT ENTITLED TO JUST COMPENSATION  
9 FOR A LAND USE LAW THAT REDUCES THE RIGHT OF THE PROPERTY OWNER  
10 TO USE, DIVIDE, SELL, OR POSSESS THEIR PROPERTY AND REDUCES THE FAIR  
11 MARKET VALUE OF THE PROPERTY IF THE LAND USE LAW:

12 (a) PROTECTS THE PUBLIC HEALTH AND SAFETY, INCLUDING RULES  
13 AND REGULATIONS RELATING TO FIRE AND BUILDING CODES, HEALTH AND  
14 SANITATION, TRANSPORTATION OR TRAFFIC CONTROL, SOLID OR  
15 HAZARDOUS WASTE, AND POLLUTION CONTROL;

16 (b) LIMITS OR PROHIBITS THE USE OR DIVISION OF REAL PROPERTY  
17 COMMONLY AND HISTORICALLY RECOGNIZED AS A PUBLIC NUISANCE  
18 UNDER COMMON LAW;

19 (c) IS REQUIRED BY FEDERAL LAW;

20 (d) LIMITS OR PROHIBITS THE USE OR DIVISION OF REAL PROPERTY  
21 FOR THE PURPOSE OF HOUSING SEX OFFENDERS, SELLING ILLEGAL DRUGS,  
22 LIQUOR CONTROL, PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS  
23 DANCING, AND OTHER ADULT-ORIENTED BUSINESSES WHEN CONSISTENT  
24 WITH THE STATE AND FEDERAL CONSTITUTIONS;

25 (e) ESTABLISHES LOCATIONS FOR UTILITY FACILITIES;

26 (f) DOES NOT DIRECTLY REGULATE A PROPERTY OWNER'S  
27 PROPERTY; OR

1 (g) WAS ENACTED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE  
2 2.5.

3 (3) (a) IF A PROPERTY OWNER MAKES A WRITTEN DEMAND IN A  
4 SPECIFIC AMOUNT FOR JUST COMPENSATION FROM A GOVERNMENTAL  
5 ENTITY THAT HAS ENACTED A LAND USE LAW, AND IF AFTER NINETY DAYS  
6 OF THE DEMAND BEING MADE THE GOVERNMENTAL ENTITY AND THE  
7 PROPERTY OWNER HAVE NOT REACHED AN AGREEMENT ON THE AMOUNT  
8 OF JUST COMPENSATION TO BE PAID OR THE GOVERNMENTAL ENTITY HAS  
9 NOT AMENDED, REPEALED, OR ISSUED TO THE PROPERTY OWNER A BINDING  
10 WAIVER OF ENFORCEMENT OF THE LAND USE LAW TO THE PROPERTY, THE  
11 PROPERTY OWNER MAY FILE AN ACTION FOR JUST COMPENSATION WITH  
12 THE DISTRICT COURT OF THE COUNTY IN WHICH THE PROPERTY IS  
13 LOCATED. THE WRITTEN DEMAND FOR JUST COMPENSATION SUPERSEDES  
14 ANY OTHER STATUTORY NOTICE OR DEMAND REQUIREMENTS FOR FILING  
15 AN ACTION WITH THE DISTRICT COURT. A WRITTEN DEMAND FOR JUST  
16 COMPENSATION AND ANY WAIVER GRANTED BY A GOVERNMENTAL ENTITY  
17 IN LIEU OF JUST COMPENSATION AS DESCRIBED IN THIS SUBSECTION (3)(a)  
18 RUNS WITH THE LAND AND SHALL BE RECORDED IN THE REAL PROPERTY  
19 RECORDS OF THE CLERK AND RECORDER OF THE COUNTY WHERE THE  
20 PROPERTY IS LOCATED.

21 (b) AN ACTION IN DISTRICT COURT FOR JUST COMPENSATION  
22 PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION MUST BE BROUGHT  
23 WITHIN THREE YEARS OF THE EFFECTIVE DATE OF THE LAND USE LAW OR  
24 THE FIRST DATE THE REDUCTION OF THE EXISTING RIGHTS TO USE, DIVIDE,  
25 SELL, OR POSSESS THE PROPERTY APPLIES TO THE PROPERTY, WHICHEVER  
26 IS LATER; EXCEPT THAT A WRITTEN DEMAND FOR JUST COMPENSATION  
27 PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION TOLLS THE THREE-YEAR

1 TIME PERIOD FOR NINETY DAYS OR THE LENGTH OF TIME IT TAKES THE  
2 GOVERNMENTAL ENTITY TO DENY THE WRITTEN DEMAND, WHICHEVER IS  
3 LESS.

4 (c) IN AN ACTION FOR JUST COMPENSATION PURSUANT TO THIS  
5 SUBSECTION (3)(c), THE DETERMINATION OF WHETHER THE LAND USE LAW  
6 MEETS AN EXEMPTION SET FORTH IN SUBSECTION (2) OF THIS SECTION  
7 SHALL BE MADE BY THE DISTRICT COURT AND MUST BE DETERMINED  
8 WITHOUT REGARD TO ANY LEGISLATIVE ASSERTION THAT THE LAND USE  
9 LAW MEETS ONE OR MORE OF THE EXEMPTIONS SET FORTH IN SUBSECTION  
10 (2) OF THIS SECTION.

11 (d) (I) A PROPERTY OWNER IS NOT LIABLE TO A GOVERNMENTAL  
12 ENTITY FOR ATTORNEY FEES OR COSTS IN ANY ACTION FOR JUST  
13 COMPENSATION BROUGHT PURSUANT TO THIS SECTION.

14 (II) A PREVAILING PLAINTIFF IN AN ACTION FOR JUST  
15 COMPENSATION BROUGHT PURSUANT TO THIS SECTION MAY BE AWARDED  
16 COSTS, EXPENSES, AND REASONABLE ATTORNEY FEES.

17 (4) THE REDRESS AVAILABLE TO A PROPERTY OWNER FOR A LAND  
18 USE LAW THAT REDUCES THE RIGHT OF THE PROPERTY OWNER TO USE,  
19 DIVIDE, SELL, OR POSSESS THEIR PROPERTY AND REDUCES THE FAIR  
20 MARKET VALUE OF THE PROPERTY CREATED BY THIS SECTION IS IN  
21 ADDITION TO ANY REDRESS OR REMEDY THE PROPERTY OWNER MAY HAVE  
22 AS OTHERWISE PROVIDED BY THE LAWS AND CONSTITUTION OF THE STATE  
23 OR ANY FEDERAL LAW AND IS NOT INTENDED TO MODIFY OR REPLACE ANY  
24 OTHER REMEDY. IN THE EVENT OF A CONFLICT BETWEEN THIS ARTICLE 2.5  
25 AND ANY OTHER STATE LAW, THIS ARTICLE 2.5 CONTROLS.

26 (5) NOTHING IN THIS SECTION IS INTENDED TO PROHIBIT A  
27 GOVERNMENTAL ENTITY FROM REACHING AN AGREEMENT WITH A

1 PROPERTY OWNER TO WAIVE THE PROPERTY OWNER'S CLAIM FOR JUST  
2 COMPENSATION AS SET FORTH IN SUBSECTION (3) OF THIS SECTION IF THE  
3 CLAIM IS THE DIRECT RESULT OF A GOVERNMENTAL ENTITY'S ACTION THAT  
4 WAS REQUESTED BY THE PROPERTY OWNER.

5 (6) IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2-4-204,  
6 THE PROVISIONS OF THIS ARTICLE 2.5 ARE SEVERABLE.

7 **38-2.5-105. Prohibition of land use law that limits**  
8 **development.** A GOVERNMENTAL ENTITY SHALL NOT ENACT A LAND USE  
9 LAW THAT PLACES ANY LIMITATION ON THE NUMBER OF LAND USE  
10 APPLICATIONS ACCEPTED, OR BUILDING PERMITS ISSUED, BY THE  
11 GOVERNMENTAL ENTITY FOR RESIDENTIAL DEVELOPMENT OR  
12 CONSTRUCTION PROJECTS FOR ANY PERIOD.

13 **SECTION 2. Act subject to petition - effective date.** This act  
14 takes effect at 12:01 a.m. on the day following the expiration of the  
15 ninety-day period after final adjournment of the general assembly; except  
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
17 of the state constitution against this act or an item, section, or part of this  
18 act within such period, then the act, item, section, or part will not take  
19 effect unless approved by the people at the general election to be held in  
20 November 2022 and, in such case, will take effect on the date of the  
21 official declaration of the vote thereon by the governor.