

CHAPTER 349

PROPERTY

HOUSE BILL 06-1411

BY REPRESENTATIVE(S) White, Weissmann, Paccione, Carroll M., Coleman, Garcia, Green, Hall, Hefley, Jahn, Kerr J., Knoedler, Liston, Penry, Rose, Stafford, Todd, and Witwer;
also SENATOR(S) Tochtrop, Brophy, Dyer, Johnson, Owen, Taylor, Teck, and Wiens.

AN ACT

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

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

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

38-1-101. Compensation - public use - commission - jury - court - prohibition on elimination of nonconforming uses or nonconforming property design by amortization - limitation on extraterritorial condemnation by municipalities - definitions. (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ORDER TO PROTECT PROPERTY RIGHTS, 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.

(b) (I) FOR PURPOSES OF SATISFYING THE REQUIREMENTS OF THIS SECTION, "PUBLIC USE" SHALL NOT INCLUDE THE TAKING OF PRIVATE PROPERTY FOR TRANSFER TO A PRIVATE ENTITY FOR THE PURPOSE OF ECONOMIC DEVELOPMENT OR ENHANCEMENT OF TAX REVENUE. PRIVATE PROPERTY MAY OTHERWISE BE TAKEN SOLELY FOR THE PURPOSE OF FURTHERING A PUBLIC USE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

(b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ANY CONDEMNATION ACTION, WITHOUT THE CONSENT OF THE OWNER OF THE PROPERTY, 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 BURDEN OF PROOF IS ON THE CONDEMNING ENTITY TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE, THAT THE TAKING OF THE PROPERTY IS NECESSARY FOR THE ERADICATION OF BLIGHT.

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

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

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

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

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

SECTION 2. Part 1 of article 25 of title 31, Colorado Revised Statutes, is

amended BY THE ADDITION OF A NEW SECTION to read:

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

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

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

Approved: June 6, 2006