

CHAPTER 179

PROPERTY

SENATE BILL 08-041

BY SENATOR(S) Cadman, Boyd, Gibbs, Harvey, Isgar, Kester, McElhany, Penry, Schultheis, Shaffer, Spence, Taylor, Tochtrop, Ward, Wiens, Kopp, Mitchell S., and Romer;
also REPRESENTATIVE(S) Curry, Gallegos, Looper, McFadyen, McGihon, and Rice.

AN ACT

CONCERNING THE OWNERSHIP OF MINERALS BENEATH LAND ACQUIRED BY GOVERNMENTAL ENTITIES, AND, IN CONNECTION THEREWITH, CLARIFYING THAT A GOVERNMENTAL ENTITY MAY ACQUIRE INTERESTS IN SUCH MINERALS THROUGH CONDEMNATION ONLY TO THE EXTENT REQUIRED FOR SUBSURFACE SUPPORT.

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

SECTION 1. 38-1-105 (4), Colorado Revised Statutes, is amended to read:

38-1-105. Adjournment - commission - compensation - defective title - withdrawal of deposit. (4) Upon the entry of such rule, the petitioner shall become seized in fee unless a lesser interest has been sought, except as provided in this section, of all such lands, real estate, claims, or other property described in said rule as required to be taken, and may take possession and hold and use the same for the purposes specified in such petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate, or rule of said court. No right-of-way or easement acquired by condemnation shall ever give the petitioner any right, title, or interest to any vein, ledge, lode, ~~or~~ deposit, OIL, NATURAL GAS, OR OTHER MINERAL RESOURCE found or existing in the premises condemned, except insofar as the same may be required for subsurface support.

SECTION 2. 43-1-203 (1), Colorado Revised Statutes, is amended to read:

43-1-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Highway" includes bridges on the roadway and culverts, sluices, drains,

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

ditches, waterways, embankments, retaining walls, trees, shrubs, and fences along or upon the same and within the right-of-way, AND ANY SUBSURFACE SUPPORT ACQUIRED IN ACCORDANCE WITH SECTION 43-1-209.

SECTION 3. 43-1-208 (1), Colorado Revised Statutes, is amended, and the said 43-1-208 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

43-1-208. State highway - damages - eminent domain. (1) The chief engineer, when he deems it desirable to establish, open, relocate, widen, ADD MASS TRANSIT TO, or OTHERWISE alter a portion of a state highway or when so required by the commission, shall make a written report to the commission describing the portion of the highway to be established, opened, ADDED TO, or changed and the portions of land of each landowner to be taken for the purpose and shall accompany his report with a map showing the present and proposed boundaries of the portion of the highway to be established, opened, ADDED TO, or changed, together with an estimate of the damages and benefits accruing to each landowner whose land may be affected thereby.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE COMMISSION MAY NOT ACQUIRE THROUGH CONDEMNATION ANY INTEREST IN OIL, NATURAL GAS, OR OTHER MINERAL RESOURCES BENEATH LAND ACQUIRED AS AUTHORIZED BY THIS SECTION EXCEPT TO THE EXTENT REQUIRED FOR SUBSURFACE SUPPORT.

SECTION 4. 43-1-209, Colorado Revised Statutes, is amended to read:

43-1-209. Subsurface support deemed acquired. Whenever real property is acquired for road, or highway, OR MASS TRANSIT purposes, whether such acquisition is by purchase, lease, or other means or by eminent domain, the right to subsurface support of such real property is deemed to be acquired therewith; EXCEPT THAT NO RIGHT TO OIL, NATURAL GAS, OR OTHER MINERAL RESOURCES BENEATH SUCH REAL PROPERTY SHALL BE ACQUIRED BY A GOVERNMENTAL ENTITY THROUGH CONDEMNATION UNLESS THE ACQUIRING AUTHORITY DETERMINES THAT SUCH ACQUISITION IS REQUIRED FOR SUBSURFACE SUPPORT. In the event the acquiring authority determines that public convenience, necessity, and safety do not require such subsurface support or determines that only a part of such subsurface support is required for public convenience, necessity, and safety, such acquiring authority may specifically exclude such subsurface support, either in whole or in part, in such acquisition in accordance with said determination.

SECTION 5. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 25, 2008