

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0050.01 Bob Lackner

HOUSE BILL 06-1099

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 CONCERNING A LIMITATION ON THE EXERCISE OF THE POWER OF
102 EMINENT DOMAIN BY PUBLIC ENTITIES.

Bill Summary

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

Prohibits the state or any political subdivision from exercising the power of eminent domain, or allowing the exercise of such power by any person or entity to whom it has delegated the power, except where the exercise of the power is for a public use as defined in the act.

Defines the term "public use" to mean a use of the power of eminent domain consistent with state constitutional requirements as interpreted by judicial case law, except to the extent that case law permits

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.

the exercise of the power of eminent domain:

Primarily for the purpose of upgrading the beneficial uses of the property at issue by creating jobs, generating tax revenue, attracting new commerce, improving the aesthetics or appearance of the environment surrounding the property, or creating leisure and recreational opportunities in the context of retail, office, commercial, or residential development; and

In order to promote and further such development, ownership, a leasehold, or other interest in the property at issue that would be transferred to a private party, a nongovernmental entity, a public-private partnership, or a corporation or other form of business entity.

Makes legislative findings and declarations. Makes a conforming amendment. Defines an additional term.

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

2 **SECTION 1.** Article 1 of title 38, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **38-1-101.3. Eminent domain by the state or political**
5 **subdivisions - public use - limitations - legislative declaration -**

6 **definitions.** (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND
7 DECLARES THAT:

8 (I) THE FRAMERS OF THE UNITED STATES CONSTITUTION
9 UNDERSTOOD THAT THE RIGHT TO OWN PROPERTY IS THE CORNERSTONE
10 OF LIBERTY AND FREEDOM, IS ESSENTIAL TO LIFE, LIBERTY, AND THE
11 PURSUIT OF HAPPINESS, AND THAT THE PRIVATE OWNERSHIP OF PROPERTY
12 IS AN ESSENTIAL ELEMENT OF A FREE, INDEPENDENT, AND CIVIL SOCIETY.

13 (II) TO SECURE PROTECTION FOR THIS FUNDAMENTAL RIGHT
14 AGAINST GOVERNMENTAL INTERFERENCE, THE FIFTH AMENDMENT TO THE
15 UNITED STATES CONSTITUTION AND SECTION 15 OF ARTICLE II OF THE
16 STATE CONSTITUTION PROHIBIT THE TAKING OF PRIVATE PROPERTY BY A
17 GOVERNMENTAL ENTITY EXCEPT FOR A PUBLIC USE ACCOMPANIED BY THE

1 PAYMENT OF JUST COMPENSATION.

2 (III) HISTORICALLY, THE POWER OF EMINENT DOMAIN HAS BEEN
3 USED BY GOVERNMENTAL ENTITIES TO TAKE PRIVATE PROPERTY FOR THE
4 PURPOSE OF CONSTRUCTING PUBLIC FACILITIES OR INFRASTRUCTURE THAT
5 ARE OPEN TO OR MAY BE USED BY ALL MEMBERS OF THE PUBLIC.

6 (IV) IN THE CASE DENOMINATED *KELO, ET. AL., V. CITY OF NEW*
7 *LONDON, CONNECTICUT, ET. AL.*, NO. 04-108, 125 S. CT. 2655 (U.S. JUNE
8 23, 2005), THE UNITED STATES SUPREME COURT HELD THAT THE
9 PROMOTION OF ECONOMIC DEVELOPMENT BY A MUNICIPALITY SERVES A
10 PUBLIC PURPOSE WITHIN THE MEANING OF THE TAKINGS CLAUSE OF THE
11 FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND,
12 CONSEQUENTLY, THAT THE CONDEMNATION OF PRIVATE PROPERTY AS
13 PART OF AN ECONOMIC DEVELOPMENT PLAN ADOPTED BY THE
14 MUNICIPALITY IS A VALID PUBLIC USE WITHIN THE MEANING OF THE
15 TAKINGS CLAUSE.

16 (V) PRIOR TO THE *KELO* DECISION, IN A NUMBER OF DECISIONS
17 ADDRESSING PERMISSIBLE TAKINGS UNDER THE STATE CONSTITUTION
18 SUCH AS *BUCK V. DIST. CT.*, 199 COLO. 344, 608 P.2D 350 (1980); *DENVER*
19 *WEST METROPOLITAN DIST. V. GEUDNER*, 786 P.2D 434 (COLO. APP. 1989);
20 AND *STATE DEPT. OF HIGHWAYS V. DENVER AND RIO GRANDE WESTERN R.R.*
21 *Co.*, 757 P.2D 181 (COLO. APP. 1988), COLORADO APPELLATE COURTS
22 HAVE BROADLY CONSTRUED THE TERM "PUBLIC USE" TO MEAN A PUBLIC
23 BENEFIT. IN ADDITION, COLORADO APPELLATE COURTS HAVE UPHELD THE
24 TAKING OF PRIVATE PROPERTY FOR ULTIMATE TRANSFER TO ANOTHER
25 PRIVATE PARTY WHERE THE CONDEMNATION IS NECESSARY TO ELIMINATE
26 BLIGHT OR SLUM CONDITIONS IN CASES SUCH AS *INTERSTATE TRUST*
27 *BUILDING Co. V. DENVER URBAN RENEWAL AUTHORITY*, 172 COLO. 427, 473

1 P.2D 978 (1970); *RABINOFF V. DIST. CT.*, 145 COLO. 225, 360 P.2D 114
2 (1961); AND *TRACY V. CITY OF BOULDER*, 635 P.2D 907 (COLO. APP. 1981).

3 (VI) THE *KELO* DECISION AND SUPPORTIVE COURT DECISIONS
4 UNDER COLORADO LAW MAKE IT EASIER FOR GOVERNMENTAL ENTITIES TO
5 SEIZE PRIVATE PROPERTY FOR TRANSFER TO OTHER PRIVATE PARTIES FOR
6 THE PURPOSE OF CREATING JOBS, GENERATING TAX REVENUE, ATTRACTING
7 NEW COMMERCE, OR OTHERWISE PROMOTING ECONOMIC DEVELOPMENT.

8 (VII) IN ITS *KELO* DECISION, THE UNITED STATES SUPREME COURT
9 EXPRESSLY NOTED THAT INDIVIDUAL STATES ARE FREE TO PLACE FURTHER
10 RESTRICTIONS ON THE MANNER IN WHICH THE TAKINGS POWER IS
11 EXERCISED IN EACH STATE AS A MATTER OF STATE CONSTITUTIONAL OR
12 STATUTORY LAW.

13 (b) IN LIGHT OF THE *KELO* DECISION AND ITS PROGENY UNDER
14 COLORADO LAW, THE GENERAL ASSEMBLY FINDS IT NECESSARY, AND
15 INTENDS BY THE ENACTMENT OF THIS SECTION, TO:

16 (I) REAFFIRM AND REQUIRE THAT PRIVATE PROPERTY SHALL ONLY
17 BE TAKEN BY GOVERNMENTAL ENTITIES UNDER STATE CONSTITUTIONAL
18 OR STATUTORY LAW TO FURTHER A VALID PUBLIC USE; AND

19 (II) DEFINE THE TERM "PUBLIC USE" FOR PURPOSES OF COLORADO
20 LAW SO AS TO PROVIDE GREATER PROTECTION TO THE HOLDERS OF
21 PRIVATE PROPERTY RIGHTS.

22 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NEITHER
23 THE STATE NOR ANY POLITICAL SUBDIVISION SHALL EXERCISE THE POWER
24 OF EMINENT DOMAIN, OR ALLOW THE EXERCISE OF SUCH POWER BY ANY
25 PERSON OR ENTITY TO WHOM IT HAS DELEGATED SUCH POWER, EXCEPT
26 WHERE THE EXERCISE OF THE POWER IS FOR A PUBLIC USE AS DEFINED IN
27 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION.

1 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
2 REQUIRES:

3 (a) "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY AND
4 COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL
5 IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, CITY OR
6 COUNTY HOUSING AUTHORITY, A WATER, SANITATION, FIRE PROTECTION,
7 METROPOLITAN, IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT, OR
8 ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC
9 CORPORATION ORGANIZED PURSUANT TO LAW.

10 (b) "PUBLIC USE" MEANS A USE OF THE POWER OF EMINENT
11 DOMAIN CONSISTENT WITH THE REQUIREMENTS OF SECTION 15 OF ARTICLE
12 II OF THE STATE CONSTITUTION AS INTERPRETED BY JUDICIAL CASE LAW,
13 EXCEPT TO THE EXTENT THAT CASE LAW PERMITS THE EXERCISE OF THE
14 POWER OF EMINENT DOMAIN FOR THE FOLLOWING:

15 (I) PRIMARILY FOR THE PURPOSE OF UPGRADING THE BENEFICIAL
16 USES OF THE PROPERTY AT ISSUE BY CREATING JOBS, GENERATING TAX
17 REVENUE, ATTRACTING NEW COMMERCE, IMPROVING THE AESTHETICS OR
18 APPEARANCE OF THE ENVIRONMENT SURROUNDING THE PROPERTY, OR
19 CREATING LEISURE AND RECREATIONAL OPPORTUNITIES IN THE CONTEXT
20 OF RETAIL, OFFICE, COMMERCIAL, OR RESIDENTIAL DEVELOPMENT; AND

21 (II) IN ORDER TO PROMOTE AND FURTHER THE DEVELOPMENT
22 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), OWNERSHIP, A
23 LEASEHOLD, OR OTHER INTEREST IN THE PROPERTY AT ISSUE WOULD BE
24 TRANSFERRED TO A PRIVATE PARTY, A NONGOVERNMENTAL ENTITY, A
25 PUBLIC-PRIVATE PARTNERSHIP, A CORPORATION, OR OTHER FORM OF
26 BUSINESS ENTITY.

27 **SECTION 2.** 31-25-105 (1) (e), Colorado Revised Statutes, is

1 amended to read:

2 **31-25-105. Powers of an authority.** (1) Every authority has all
3 the powers necessary or convenient to carry out and effectuate the
4 purposes and provisions of this part 1, including, but not limited to, the
5 following powers in addition to others granted in this part 1:

6 (e) To enter, with the consent of the owner, upon any building or
7 property in order to make surveys or appraisals and to obtain an order for
8 this purpose from a court of competent jurisdiction in the event entry is
9 denied or resisted; to acquire any property by purchase, lease, option, gift,
10 grant, bequest, devise, or otherwise to acquire any interest in property by
11 condemnation, including a fee simple absolute title thereto, in the manner
12 provided by the laws of this state for the exercise of the power of eminent
13 domain by any other public body, INCLUDING, WITHOUT LIMITATION,
14 SECTION 38-1-101.3, C.R.S. (and property already devoted to a public use
15 may be acquired in a like manner except that no property belonging to the
16 federal government or to a public body may be acquired without its
17 consent); except that any acquisition of any interest in property by
18 condemnation by an authority must be approved as part of an urban
19 renewal plan or substantial modification thereof, as provided in section
20 31-25-107, by a majority vote of the governing body of the municipality
21 in which ~~such~~ THE property is located, and the acquisition of property by
22 condemnation by an authority shall also satisfy the requirements of
23 section 31-25-105.5; to hold, improve, clear, or prepare for
24 redevelopment ~~any such~~ THE property; to mortgage, pledge, hypothecate,
25 or otherwise encumber or dispose of its property; and to insure or provide
26 for the insurance of ~~any~~ THE property or operations of the authority
27 against any risks or hazards; except that no provision of any other law

1 with respect to the planning or undertaking of projects or the acquisition,
2 clearance, or disposition of property by public bodies shall restrict an
3 authority exercising powers under this part 1 in the exercise of ~~such~~ THE
4 functions with respect to a project of ~~such~~ THE authority unless the
5 general assembly specifically so states;

6 **SECTION 3. Effective date - applicability.** This act shall take
7 effect July 1, 2006, and shall apply to condemnation actions commenced
8 on or after said date.

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