

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 15-0346.01 Bob Lackner x4350

SENATE BILL 15-093

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Becker J.,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING COMPENSATION TO BE AWARDED TO OWNERS OF**
102 **MINERAL INTERESTS FOR A DIMINUTION IN THE VALUE OF THEIR**
103 **PROPERTY RIGHTS CAUSED BY REGULATORY RESTRICTIONS ON**
104 **MINERAL EXTRACTION OPERATIONS.**

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://www.leg.state.co.us/billsummaries>.)

Whenever a local government adopts or implements an ordinance, resolution, rule, regulation, or other form of official policy concerning mineral extraction operations that has the effect of reducing the fair

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.*

SENATE
3rd Reading Unamended
February 24, 2015

SENATE
Amended 2nd Reading
February 20, 2015

market value of the owner's mineral interest by at least 60%, the bill specifies that the owner's interest is deemed to have been taken for a public use. In such circumstances, the bill allows the owner to obtain compensation from the local government for the full diminution in the fair market value of the owner's interest caused by the regulatory impairment of the local government.

The procedures under the bill are intended to supplement and are not intended to displace or supersede existing rights, powers, and responsibilities provided by law for the payment of compensation where private property is taken for a public use.

Not less than 63 days before an owner intends to undertake new mineral extraction operations within the territorial boundaries of a local government, the owner must notify in writing the local government of its intent to so act. Upon receiving the notice, if the local government intends to adopt or implement an ordinance, resolution, rule, regulation, or other form of official policy concerning mineral extraction operations that has the likely effect of reducing the fair market value of the owner's mineral interest by at least 60%, the matter is to be set for a hearing before a board of commissioners or a jury in accordance with existing procedures for resolving claims for compensation where private property is taken for a public use. Any owner with a potential claim in the matter may elect to have the matter resolved by a district court if the owner does not want to have the matter resolved by a board of commissioners or jury. The purpose of the hearing is to make a preliminary value determination of the owner's interest.

The hearing must be set not less than 7 days following service of the notice. Not less than 10 days following the hearing, the board of commissioners, jury, or district court, as applicable, is required to issue a preliminary value determination of the owner's interest that has been affected as a result of the regulatory impairment. The owner may challenge the preliminary value determination on the basis that the award is too low, but the local government is not permitted to challenge the preliminary value determination on the basis that the award is too high.

The local government may proceed with implementing the ordinance, resolution, rule, regulation, or other form of official policy concerning mineral extraction operations that constitutes the regulatory impairment if it tenders the full amount of the preliminary value determination to the owner within 7 business days after the hearing. The amount tendered must also include the owner's reasonable attorney fees and costs. If the local government fails to tender the full amount by that date, the local government is precluded from implementing such ordinance, resolution, rule, regulation, or other form of official policy.

The bill permits the local government to appeal the preliminary value determination if it posts a bond for the full amount of the award or deposits with a financial institution the full amount of the damages award

in escrow in an interest-bearing account.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 4 to article
3 20 of title 29 as follows:

4 PART 4

5 COMPENSATION FOR REGULATORY IMPAIRMENTS ON
6 MINERAL EXTRACTION OPERATIONS

7 **29-20-401. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 HEREBY FINDS, DETERMINES, AND DECLARES THAT:

9 (a) THE RIGHT TO OWN AND USE PRIVATE PROPERTY, INCLUDING
10 THE RIGHT TO EXTRACT MINERALS, IS A FUNDAMENTAL RIGHT THAT IS
11 ENSHRINED IN THE FEDERAL AND STATE CONSTITUTIONS AND INTEGRAL TO
12 THE WELL-BEING OF A FREE SOCIETY;

13 (b) OVER THE PAST FEW YEARS, A NUMBER OF LOCAL
14 GOVERNMENTS ACROSS THE STATE HAVE ENACTED VARIOUS REGULATORY
15 RESTRICTIONS ON MINERAL EXTRACTION OPERATIONS WITHIN THEIR
16 TERRITORIAL BOUNDARIES, INCLUDING, IN SOME INSTANCES, A BAN ON
17 THE CONDUCT OF SUCH OPERATIONS ALTOGETHER;

18 (c) GOVERNMENT REGULATION OF MINERAL EXTRACTION
19 OPERATIONS, WHILE MOTIVATED BY A DESIRE TO PROTECT THE PUBLIC
20 HEALTH AND SAFETY, MUST BE CARRIED OUT IN A MANNER THAT
21 APPROPRIATELY BALANCES THE NEEDS OF THE PUBLIC WITH THE RIGHTS
22 AND LEGITIMATE EXPECTATIONS OF INDIVIDUAL PROPERTY OWNERS; AND

23 (d) THE VARIOUS REGULATORY RESTRICTIONS ON MINERAL
24 EXTRACTION OPERATIONS ALREADY IMPOSED OR CONTEMPLATED WILL
25 REDUCE THE FAIR MARKET VALUE OF THE OWNERS OF MINERAL INTERESTS

1 AFFECTED BY SUCH REGULATIONS.

2 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
3 THE OWNER OF MINERAL INTERESTS SHOULD NOT BE REQUIRED, AS A
4 CONSEQUENCE OF POLICE POWER REGULATION, TO BEAR BURDENS FOR THE
5 PUBLIC GOOD THAT SHOULD BE BORNE MORE APPROPRIATELY BY THE
6 PUBLIC AT LARGE. ACCORDINGLY, IT IS FAIR AND APPROPRIATE THAT THE
7 LOCAL GOVERNMENT COMPENSATE THE OWNER OF MINERAL INTERESTS
8 FOR THE DIMINUTION IN THE VALUE OF THE OWNER'S MINERAL INTERESTS
9 CAUSED BY THE REGULATORY IMPAIRMENT OF THE OWNER'S PROPERTY
10 RIGHTS.

11 (3) BY ENACTING THIS PART 4, THE GENERAL ASSEMBLY INTENDS
12 TO ESTABLISH A FAIR AND EQUITABLE PROCESS TO COMPENSATE THE
13 OWNERS OF MINERAL INTERESTS FOR THE DIMINISHMENT IN THE VALUE OF
14 THEIR MINERAL INTEREST CAUSED BY REGULATORY RESTRICTIONS ON
15 MINERAL EXTRACTION OPERATIONS. IT IS THE INTENT OF THE GENERAL
16 ASSEMBLY THAT THIS PART 4 BE LIBERALLY CONSTRUED TO PROTECT AND
17 PRESERVE THE FUNDAMENTAL CONSTITUTIONAL RIGHTS OF INDIVIDUALS
18 WHEN THEIR PROPERTY RIGHTS ARE DIMINISHED BY REGULATORY
19 OVERREACH ON THE PART OF LOCAL GOVERNMENTS.

20 (4) IN THE ALTERNATIVE TO THE CREATION OF A FAIR, CONSISTENT,
21 AND EXPEDITIOUS PROCESS FOR AWARDED COMPENSATION TO OWNERS
22 OF MINERAL INTERESTS AFFECTED BY REGULATORY IMPAIRMENTS ON
23 MINERAL EXTRACTION OPERATIONS, THE INDUSTRY AND OWNERS OF
24 PROPERTY RIGHTS WILL CONTINUE TO BE BUFFETED BY INCONSISTENT
25 LOCAL REGULATORY RESTRICTIONS THAT WILL INHIBIT THE DEVELOPMENT
26 OF NATURAL RESOURCES AND THAT WILL UNFAIRLY DIMINISH THE
27 FUNDAMENTAL PROPERTY RIGHTS AT ISSUE. ACCORDINGLY, THE FAIR,

1 CONSISTENT, AND EXPEDITIOUS PROCEDURES FOR ADDRESSING THIS ISSUE
2 AT THE STATE LEVEL IN THE MANNER CONTEMPLATED BY THIS PART 4
3 MAKE THIS A MATTER OF STATEWIDE CONCERN.

4 **29-20-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
5 CONTEXT OTHERWISE REQUIRES:

6 (1) "LOCAL GOVERNMENT" MEANS A COUNTY, HOME RULE OR
7 STATUTORY CITY, TOWN, TERRITORIAL CHARTER CITY, COUNTY, OR CITY
8 AND COUNTY.

9 (2) "OWNER" MEANS ANY PERSON POSSESSING A RIGHT TO A SHARE
10 OF THE REVENUES GENERATED FROM THE PRODUCTION OR POTENTIAL
11 PRODUCTION OF OIL, GAS, AND ASSOCIATED HYDROCARBONS, INCLUDING,
12 WITHOUT LIMITATION, ANY OWNER OF A WORKING INTEREST, ROYALTY
13 INTEREST, OVERRIDING ROYALTY INTEREST, NET PROFITS INTEREST, OR
14 VOLUMETRIC PRODUCTION INTEREST.

15 **29-20-403. Compensation to owners of mineral interests.**
16 WHENEVER A LOCAL GOVERNMENT ADOPTS OR IMPLEMENTS AN
17 ORDINANCE, RESOLUTION, RULE, REGULATION, OR OTHER FORM OF
18 OFFICIAL POLICY CONCERNING MINERAL EXTRACTION OPERATIONS THAT
19 HAS THE EFFECT OF REDUCING THE FAIR MARKET VALUE OF THE OWNER'S
20 MINERAL INTEREST BY AT LEAST SIXTY PERCENT, THE OWNER'S INTEREST
21 IS DEEMED TO HAVE BEEN TAKEN FOR A PUBLIC USE. IN SUCH
22 CIRCUMSTANCES, THE OWNER HAS THE RIGHT TO OBTAIN COMPENSATION
23 FROM THE LOCAL GOVERNMENT FOR THE FULL DIMINUTION IN THE FAIR
24 MARKET VALUE OF THE OWNER'S INTEREST CAUSED BY THE REGULATORY
25 IMPAIRMENT OF THE LOCAL GOVERNMENT.

26 **29-20-404. Process for awarding compensation.** (1) EXCEPT AS
27 EXPRESSLY PROVIDED IN THIS PART 4, THIS PART 4 IS INTENDED TO

1 SUPPLEMENT AND IS NOT INTENDED TO DISPLACE OR SUPERSEDE EXISTING
2 RIGHTS, POWERS, AND RESPONSIBILITIES PROVIDED BY LAW FOR THE
3 PAYMENT OF COMPENSATION WHERE PRIVATE PROPERTY IS TAKEN FOR A
4 PUBLIC USE.

5 (2) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2),
6 NOT LESS THAN SIXTY-THREE DAYS BEFORE AN OWNER INTENDS TO
7 UNDERTAKE NEW MINERAL EXTRACTION OPERATIONS WITHIN THE
8 TERRITORIAL BOUNDARIES OF A LOCAL GOVERNMENT, THE OWNER MUST
9 NOTIFY IN WRITING ANY SUCH LOCAL GOVERNMENT OF THE PROPOSED
10 EXTRACTION OPERATIONS.

11 (3) (a) UPON RECEIVING THE NOTICE SPECIFIED IN SUBSECTION (2)
12 OF THIS SECTION, IF THE LOCAL GOVERNMENT HAS ADOPTED OR
13 IMPLEMENTED OR INTENDS TO ADOPT OR IMPLEMENT AN ORDINANCE,
14 RESOLUTION, RULE, REGULATION, OR OTHER FORM OF OFFICIAL POLICY
15 CONCERNING MINERAL EXTRACTION OPERATIONS THAT HAS THE LIKELY
16 EFFECT OF REDUCING THE FAIR MARKET VALUE OF THE OWNER'S MINERAL
17 INTEREST BY AT LEAST SIXTY PERCENT, THE MATTER MUST BE SET FOR A
18 HEARING BEFORE A BOARD OF COMMISSIONERS OR A JURY IN ACCORDANCE
19 WITH EXISTING PROCEDURES FOR RESOLVING CLAIMS FOR COMPENSATION
20 WHERE PRIVATE PROPERTY IS TAKEN FOR A PUBLIC USE. ANY MINERAL
21 INTEREST OWNER WITH A POTENTIAL CLAIM IN THE MATTER MAY ELECT TO
22 HAVE THE MATTER RESOLVED BY A STATE DISTRICT COURT WITH
23 APPROPRIATE JURISDICTION IF THE OWNER DOES NOT WANT TO HAVE THE
24 MATTER RESOLVED BY A BOARD OF COMMISSIONERS OR JURY. THE
25 PURPOSE OF THE HEARING IS TO MAKE A PRELIMINARY VALUE
26 DETERMINATION OF THE OWNER'S INTEREST.

27 (b) THE HEARING REFERENCED IN PARAGRAPH (a) OF THIS

1 SUBSECTION (3) MUST BE SET NOT LESS THAN SEVEN DAYS FOLLOWING
2 SERVICE OF THE NOTICE REFERENCED IN SUBSECTION (2) OF THIS SECTION.
3 THE LOCAL GOVERNMENT SHALL NOTIFY IN WRITING ANY OWNERS WITH
4 A POTENTIAL CLAIM IN THE MATTER OF THE HEARING. ANY SUCH OWNER
5 MAY BE HEARD AT THE HEARING ON THE DETERMINATION OF VALUE.

6 (4) NOT LESS THAN TEN DAYS FOLLOWING THE HEARING
7 REFERENCED IN PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION, THE
8 BOARD OF COMMISSIONERS, JURY, OR DISTRICT COURT, AS APPLICABLE,
9 SHALL ISSUE A PRELIMINARY VALUE DETERMINATION OF THE OWNER'S
10 INTEREST THAT HAS BEEN AFFECTED AS A RESULT OF THE REGULATORY
11 IMPAIRMENT. THE OWNER MAY CHALLENGE THE PRELIMINARY VALUE
12 DETERMINATION ON THE BASIS THAT THE AWARD IS TOO LOW, BUT THE
13 LOCAL GOVERNMENT SHALL NOT CHALLENGE THE PRELIMINARY VALUE
14 DETERMINATION ON THE BASIS THAT THE AWARD IS TOO HIGH.

15 (5) THE LOCAL GOVERNMENT MAY PROCEED WITH IMPLEMENTING
16 THE ORDINANCE, RESOLUTION, RULE, REGULATION, OR OTHER FORM OF
17 OFFICIAL POLICY CONCERNING MINERAL EXTRACTION OPERATIONS THAT
18 CONSTITUTES THE REGULATORY IMPAIRMENT IF IT TENDERS THE FULL
19 AMOUNT OF THE PRELIMINARY VALUE DETERMINATION TO THE OWNER
20 WITHIN SEVEN BUSINESS DAYS AFTER THE HEARING. THE AMOUNT
21 TENDERED MUST ALSO INCLUDE THE OWNER'S REASONABLE ATTORNEY
22 FEES AND COSTS. IF THE LOCAL GOVERNMENT FAILS TO TENDER THE FULL
23 AMOUNT BY THE DATE SPECIFIED IN THIS SUBSECTION (5), THE LOCAL
24 GOVERNMENT IS PRECLUDED FROM IMPLEMENTING SUCH ORDINANCE,
25 RESOLUTION, RULE, REGULATION, OR OTHER FORM OF OFFICIAL POLICY.

26 (6) THE LOCAL GOVERNMENT MAY APPEAL THE PRELIMINARY
27 VALUE DETERMINATION IF IT POSTS A BOND FOR THE FULL AMOUNT OF THE

1 AWARD OR DEPOSITS WITH A FINANCIAL INSTITUTION THE FULL AMOUNT
2 OF THE DAMAGES AWARD IN ESCROW IN AN INTEREST-BEARING ACCOUNT.

3 (7) IF THERE ARE MULTIPLE OWNERS IN A SINGLE PARCEL, THE
4 FULL AMOUNT OF THE COMPENSATION TO BE AWARDED SUCH OWNERS
5 MUST BE EQUITABLY APPORTIONED BETWEEN OR AMONG THE MINERAL
6 INTERESTS OWNERS TAKING INTO ACCOUNT EACH PARTY'S OWNERSHIP
7 INTEREST IN THE MINERAL ESTATE AND ANY EXISTING OIL AND GAS LEASE
8 TERMS. IF ADDITIONAL ANALYSIS OF THE PRELIMINARY VALUE
9 DETERMINATION IS NECESSARY TO MAKE AN EQUITABLE APPORTIONMENT
10 OF THE COMPENSATION DUE TO SUCH OWNERS, ANY ADDITIONAL COST OR
11 EXPENSE IN PERFORMING THE ANALYSIS MUST BE INCURRED BY THE
12 OWNERS OF THE MINERAL ESTATE.

13 **SECTION 2. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly (August 5, 2015, if adjournment sine die is on May 6,
17 2015); except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within such period, then the act, item, section, or part
20 will not take effect unless approved by the people at the general election
21 to be held in November 2016 and, in such case, will take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) This act applies to any ordinance, resolution, rule, regulation,
24 or other form of official policy adopted or implemented by a local
25 government concerning mineral extraction operations on or after the
26 applicable effective date of this act.