

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0346.01 Bob Lackner x4350

SENATE BILL 15-093

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SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

(None),

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Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

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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.

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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.*

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



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 OF  
22      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" HAS THE SAME MEANING AS SET FORTH IN SECTION  
10 34-60-103 (7), C.R.S.

11 **29-20-403. Compensation to owners of mineral interests.**

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

22 **29-20-404. Process for awarding compensation.** (1) EXCEPT AS  
23 EXPRESSLY PROVIDED IN THIS PART 4, THIS PART 4 IS INTENDED TO  
24 SUPPLEMENT AND IS NOT INTENDED TO DISPLACE OR SUPERSEDE EXISTING  
25 RIGHTS, POWERS, AND RESPONSIBILITIES PROVIDED BY LAW FOR THE  
26 PAYMENT OF COMPENSATION WHERE PRIVATE PROPERTY IS TAKEN FOR A  
27 PUBLIC USE.

1           (2) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2),  
2 NOT LESS THAN SIXTY-THREE DAYS BEFORE AN OWNER INTENDS TO  
3 UNDERTAKE NEW MINERAL EXTRACTION OPERATIONS WITHIN THE  
4 TERRITORIAL BOUNDARIES OF A LOCAL GOVERNMENT, THE OWNER MUST  
5 NOTIFY IN WRITING ANY SUCH LOCAL GOVERNMENT OF ITS INTENT TO SO  
6 ACT.

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

22           (b) THE HEARING REFERENCED IN PARAGRAPH (a) OF THIS  
23 SUBSECTION (3) MUST BE SET NOT LESS THAN SEVEN DAYS FOLLOWING  
24 SERVICE OF THE NOTICE REFERENCED IN SUBSECTION (2) OF THIS SECTION.  
25 THE LOCAL GOVERNMENT SHALL NOTIFY IN WRITING ANY OWNERS WITH  
26 A POTENTIAL CLAIM IN THE MATTER OF THE HEARING. ANY SUCH OWNER  
27 MAY BE HEARD AT THE HEARING ON THE DETERMINATION OF VALUE.

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

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

21           (6) THE LOCAL GOVERNMENT MAY APPEAL THE PRELIMINARY  
22 VALUE DETERMINATION IF IT POSTS A BOND FOR THE FULL AMOUNT OF THE  
23 AWARD OR DEPOSITS WITH A FINANCIAL INSTITUTION THE FULL AMOUNT  
24 OF THE DAMAGES AWARD IN ESCROW IN AN INTEREST-BEARING ACCOUNT.

25           **SECTION 2. Act subject to petition - effective date -**  
26 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
27 the expiration of the ninety-day period after final adjournment of the

1 general assembly (August 5, 2015, if adjournment sine die is on May 6,  
2 2015); except that, if a referendum petition is filed pursuant to section 1  
3 (3) of article V of the state constitution against this act or an item, section,  
4 or part of this act within such period, then the act, item, section, or part  
5 will not take effect unless approved by the people at the general election  
6 to be held in November 2016 and, in such case, will take effect on the  
7 date of the official declaration of the vote thereon by the governor.

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