

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0814.01 Bob Lackner x4350

HOUSE BILL 14-1217

HOUSE SPONSORSHIP

Rankin,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A CLARIFICATION OF THE LEGAL RIGHTS OF A COUNTY
102 GOVERNMENT IN CONNECTION WITH PROPERTY OWNED BY THE
103 COUNTY.

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>.)

The bill clarifies the legal rights of county governments in connection with real property owned by the county in the following respects:

! **Section 1** of the bill modifies existing statutory provisions

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.

pertaining to county powers in connection with the purchase and possession of real and personal property to clarify that the county may own, besides purchasing and holding, such property and expressly specifies that such property includes oil, gas, mineral, and other property interests for county revenue generation and other county government operations, projects, or purposes.

- ! **Section 2** of the bill clarifies requirements relating to the publication of notice of a sale by the county of mineral rights. This section of the bill clarifies that oil and gas reserved rights are included within the mineral rights that the board of county commissioners (board) may lease for exploration, development, and production purposes. The bill deletes language placing a time limit on a lease of mineral rights by the county and clarifies that leases entered by the board prior to January 1, 2014, are legal and within the board's authority.
- ! **Section 3** of the bill clarifies that revenue generation is among the purposes for which the county may lease real estate or other interests and that the board has authority to approve the terms and conditions of such leases. This section of the bill also deletes existing statutory requirements imposing time limits on the length of a lease of oil and gas rights and imposing other conditions on the lease.
- ! **Section 4** of the bill adds oil, gas, and minerals to modify the word "lands" in the definition of "public projects". This section of the bill also provides that a public project may be acquired, owned, held, or developed by a county to generate county revenue.
- ! Existing statutory provisions hold that certain places designated as public use on a map or plat are the public property of a city or town and that fee title is vested in the city or town. **Sections 5 and 6** of the bill add counties and city and counties to the list of local governments whose interests are protected under these provisions.
- ! **Section 7** of the bill eliminates outmoded legal language from an existing statutory provision specifying when a fee simple estate of land is a fee simple estate of inheritance.
- ! **Section 9** of the bill clarifies that, whenever land is acquired for road, transit, or mass transit purposes, the right to subsurface support of the land surface is deemed to be acquired as well regardless of whether a fee, limited fee, or right-of-way is acquired. This section of the bill also deletes existing statutory language denying a governmental

entity the right to acquire certain mineral resources beneath the real property through condemnation under certain circumstances.

! **Sections 10 and 12** of the bill modify existing statutory provisions allowing the acquisition by counties of land for highways including by means of condemnation to specify that nothing in these provisions modifies or restricts the powers or authority conferred on counties or the board with respect to county roads or revenue generation.

! **Section 11** of the bill addresses existing statutory provisions governing the declaration of certain land as public highways. This section specifies that public highways include all lands dedicated to public use by deed conveying a fee simple, limited fee, easement, or right-of-way, filed with the county clerk and recorder of the county in which the land is located, when the dedication has been accepted by the board and board has approved the surface of the land for use as a public road. The bill goes on to clarify that the fee or other estate conveyed from the grantor to the grantee is conclusively established by the language in the deed of conveyance that is pre-printed or inserted by the grantor or the grantee. This section also clarifies that roads include certain strips of land, and that the acquiring government also owns in fee simple mineral rights under such strips of land.

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

2 **SECTION 1.** In Colorado Revised Statutes, 30-11-101, **amend**

3 (1) introductory portion and (1) (b) as follows:

4 **30-11-101. Powers of counties.** (1) Each organized county
5 within the state ~~shall~~ MUST be a body corporate and politic and as such
6 ~~shall be~~ IS empowered for the following purposes:

7 (b) To purchase, OWN, and hold real and personal property, ~~for the~~
8 ~~use of the county~~ INCLUDING OIL, GAS, MINERAL, AND OTHER PROPERTY
9 INTERESTS FOR COUNTY REVENUE GENERATION AND OTHER COUNTY
10 GOVERNMENT OPERATIONS, PROJECTS, OR PURPOSES, and acquire lands
11 sold for taxes, as provided by law;

1 **SECTION 2.** In Colorado Revised Statutes, **amend** 30-11-302 as
2 follows:

3 **30-11-302. Oil, gas, and mineral rights - reservation of - sale.**

4 (1) In any sale of county lands made by any county acting through its
5 board of county commissioners, a valid reservation of oil and gas and
6 other minerals in such lands may be made when in the opinion of the
7 board of county commissioners it is deemed to be for the best interest of
8 the county. Oil and gas and other mineral rights or any of them thus
9 reserved by a county upon the sale of such real estate may be sold by
10 order of the board of county commissioners at public sale to the highest
11 and best bidder after ~~four weeks' prior~~ notice by publication, MADE two
12 times DURING THE FOURTH WEEK PRIOR TO THE SALE, in a newspaper of
13 general circulation in the county in which the land is situated, ~~said~~ AND
14 THE notice ~~to~~ MUST describe the oil and gas or other mineral rights to be
15 sold, the location of the land involved, and the date, time, and place of
16 such sale. ~~but~~ IF THE SURFACE RIGHTS ARE NOT OWNED BY THE COUNTY,
17 a copy of ~~said~~ THE notice ~~shall~~ MUST be mailed, postage prepaid, by the
18 board of county commissioners to the owner of the surface at the time of
19 such notice as shown by the records in the office of the county assessor
20 of the county in which such lands are situated at the last known address
21 of such owner as shown by said books of the county assessor, and ~~that~~
22 a copy of ~~said~~ THE notice ~~shall~~ MUST be mailed, postage prepaid, by the
23 board of county commissioners to the person in possession of the surface.

24 (2) In the sale of COUNTY reserved oil and gas rights under any
25 ~~tract of~~ land, the number of acres contained in any one parcel or unit of
26 sale of such rights shall not exceed the total number of acres of such
27 surface land sold by the county to the purchaser thereof at the time of

1 reservation therefrom of the oil and gas rights thus offered for sale.
2 Nothing contained in this section ~~shall prevent~~ PREVENTS a county from
3 selling any number of such units or parcels at any public sale. The board
4 of county commissioners ~~has the right to~~ MAY reject any and all bids.

5 (3) Mineral rights, ~~other than~~ INCLUDING oil and gas reserved, as
6 ~~provided in this section~~ may be leased for exploration, development, and
7 production purposes upon such terms and conditions as may be prescribed
8 and contracted by the board of county commissioners in the exercise of
9 its best judgment and as such board deems to be for the best interests of
10 the county. ~~Any such lease of mineral rights, other than oil and gas, shall~~
11 ~~be for a term not to exceed twenty-five years and as long thereafter as~~
12 ~~such minerals are produced.~~ Leases of any such mineral rights,
13 INCLUDING OIL AND GAS, made or entered into by the board in conformity
14 with the provisions of this section ~~prior to February 25, 1955~~ JANUARY 1,
15 2014, are hereby confirmed, validated, and declared to be legal, ~~and~~ valid,
16 ~~insofar as~~ AND WITHIN the authority of ~~any such~~ THE board is concerned
17 OF COUNTY COMMISSIONERS.

18 **SECTION 3.** In Colorado Revised Statutes, **amend** 30-11-303 as
19 follows:

20 **30-11-303. Oil and gas rights - leases - royalties.** (1) Any
21 county acting by its board of county commissioners may lease any real
22 estate or any interest therein owned by the county for oil and gas
23 exploration, development, ~~and~~ production, AND REVENUE GENERATION
24 purposes upon such terms and conditions as may be prescribed and
25 ~~contracted~~ APPROVED by the board of county commissioners in the
26 exercise of its best judgment, and as such board deems to be for the best
27 interests of the county.

1 (2) ~~Any such lease of oil and gas rights shall be for a term not to~~
2 ~~exceed five years and as long thereafter as oil or gas is produced and shall~~
3 ~~provide for a royalty of not less than twelve and one-half percent of all oil~~
4 ~~and gas produced, saved, and marketed, or the equivalent market value~~
5 ~~thereof, which royalty may be reduced proportionately under appropriate~~
6 ~~provision in such lease if the interest of the county is less than a full~~
7 ~~interest in the land or oil and gas rights in the land described in such~~
8 ~~lease.~~

9 (3) ~~When, in the opinion of the board of county commissioners~~
10 ~~and because of the size, shape, or current use of any tract of county real~~
11 ~~estate, the public interest so requires, any lease of such tract may provide~~
12 ~~that no drilling shall be conducted on the land covered thereby, in which~~
13 ~~case such lease shall be for a term not to exceed ten years and so long~~
14 ~~thereafter as the county may share in royalties payable on account of~~
15 ~~production of oil or gas from lands adjacent to such tract of county land~~
16 ~~so leased.~~

17 **SECTION 4.** In Colorado Revised Statutes, 30-20-301, **amend**
18 (2) as follows:

19 **30-20-301. Definitions.** As used in this part 3, unless the context
20 otherwise requires:

21 (2) "Public project" means any lands, INCLUDING OIL, GAS, AND
22 MINERALS, buildings, structures, works, machinery, equipment, or
23 facilities suitable for and intended for use as public property for public
24 purposes or suitable for and intended for use in the promotion of the
25 public health, public education (where county boundaries and school
26 district boundaries are coterminous), public welfare, or the conservation
27 of natural resources, including the planning of any such lands, buildings,

1 improvements, structures, works, machinery, equipment, or facilities, and
2 shall also include existing lands, buildings, improvements, structures,
3 works, and facilities, as well as improvements, renovations, or additions
4 to any such lands, buildings, improvements, structures, works, or
5 facilities. A PUBLIC PROJECT MAY BE ACQUIRED, OWNED, HELD, OR
6 DEVELOPED BY A COUNTY TO GENERATE COUNTY REVENUE.

7 **SECTION 5.** In Colorado Revised Statutes, 31-2-106, **amend** (3)
8 as follows:

9 **31-2-106. Legal incorporation - validation - dedication of**
10 **public property.** (3) All streets, parks, and other places designated or
11 described as for public use on the map or plat of any city, ~~or~~ town, CITY
12 AND COUNTY, OR COUNTY are public property, and the fee title thereto is
13 vested in such city, ~~or~~ town, CITY AND COUNTY, OR COUNTY.

14 **SECTION 6.** In Colorado Revised Statutes, **amend** 31-23-107 as
15 follows:

16 **31-23-107. Public property dedicated.** All streets, parks, and
17 other places designated or described as for public use on the map or plat
18 of any city, ~~or~~ town, CITY AND COUNTY, OR COUNTY or of any addition
19 made to such city, ~~or~~ town, CITY AND COUNTY, OR COUNTY are public
20 property and the fee title thereto IS vested in such city, ~~or~~ town, CITY AND
21 COUNTY, OR COUNTY.

22 **SECTION 7.** In Colorado Revised Statutes, **amend** 38-30-107 as
23 follows:

24 **38-30-107. Estate granted deemed fee simple unless limited.**
25 Every estate in land which is granted, conveyed, or devised, ~~to one~~
26 although other words necessary to transfer an estate of inheritance are not
27 added, ~~shall be deemed~~ IS a fee simple estate of inheritance if a lesser

1 estate is not limited by express words or ~~does not appear to be granted,~~
2 ~~devised, or conveyed~~ IS NOT LIMITED BY THE GRANT, DEVISE, OR
3 CONVEYANCE by operation of law.

4 **SECTION 8.** In Colorado Revised Statutes, **amend** 43-1-203 as
5 follows:

6 **43-1-203. Definitions.** As used in this part 2, unless the context
7 otherwise requires:

8 (1) "Highway" includes bridges, ~~on the roadway and~~ culverts,
9 sluices, drains, ditches, waterways, embankments, retaining walls, trees,
10 shrubs, and fences WITHIN, along, or upon the ~~same and within the~~
11 ROADWAYLAND OR right-of-way, and any subsurface support acquired in
12 accordance with section 43-1-209.

13 **SECTION 9.** In Colorado Revised Statutes, **amend** 43-1-209 as
14 follows:

15 **43-1-209. Subsurface support deemed acquired.** Whenever real
16 ~~property~~ LAND is acquired for road, highway, or mass transit purposes,
17 whether such acquisition is by purchase, lease, or other means or by
18 eminent domain, REGARDLESS OF WHETHER A FEE, LIMITED FEE, OR
19 RIGHT-OF-WAY IS ACQUIRED, the right to subsurface support of ~~such real~~
20 ~~property~~ THE LAND SURFACE is deemed to be acquired therewith. ~~except~~
21 ~~that no right to oil, natural gas, or other mineral resources beneath such~~
22 ~~real property shall be acquired by a governmental entity through~~
23 ~~condemnation unless the acquiring authority determines that such~~
24 ~~acquisition is required for subsurface support.~~ In the event the acquiring
25 authority determines that public convenience, necessity, and safety do not
26 require such subsurface support or determines that only a part of such
27 subsurface support is required for public convenience, necessity, and

1 safety, such acquiring authority may specifically exclude OR REMOVE such
2 subsurface support, either in whole or in part, in such acquisition in
3 accordance with said determination.

4 **SECTION 10.** In Colorado Revised Statutes, 43-2-112, **amend**
5 (2) as follows:

6 **43-2-112. Condemnation for county roads.** (2) The board of
7 county commissioners shall tender to each landowner the amount of
8 damages as estimated and approved by the board, and the board may
9 designate any person to act as its agent in making such tender. In
10 estimating the amount of damages to be tendered, due account shall be
11 taken of any benefits which will accrue to the landowner by the proposed
12 action; but the amount of benefit shall not in any case exceed the amount
13 of damages awarded. Any person owning land or having interest in land
14 over which any proposed county road extends, who is of the opinion that
15 such tender is inadequate, may personally, or by agent or attorney, on or
16 before ten days from the date of such tender, file a written request
17 addressed to the board of county commissioners of said county for a jury
18 to ascertain the compensation which he may be entitled to by reason of
19 damages sustained therefrom. Thereupon, the board of county
20 commissioners shall proceed in the acquisition of such premises under
21 articles 1 to 7 of title 38, C.R.S. The board of county commissioners also
22 has the power and is authorized to proceed in the acquisition of lands of
23 private persons for county roads, under and according to articles 1 to 7 of
24 title 38, C.R.S., in the first instance without tender or other proceedings
25 under this part 1. NOTHING IN THIS SECTION MODIFIES OR RESTRICTS THE
26 POWERS OR AUTHORITY CONFERRED ON COUNTIES OR THE BOARD OF
27 COUNTY COMMISSIONERS WITH RESPECT TO COUNTY ROADS OR REVENUE

1 GENERATION.

2 **SECTION 11.** In Colorado Revised Statutes, **amend** 43-2-201 as
3 follows:

4 **43-2-201. Public highways.** (1) The following are declared to be
5 public highways:

6 (a) All ~~roads over private~~ lands dedicated to the public use by
7 deed ~~to that effect~~ CONVEYING A FEE SIMPLE, LIMITED FEE, EASEMENT, OR
8 RIGHT-OF-WAY, filed with the county clerk and recorder of the county in
9 which such ~~roads are~~ LAND IS situate, when such dedication has been
10 accepted by the board of county commissioners AND, NOTWITHSTANDING
11 THE FEE OR OTHER ESTATE CONVEYED, THE SURFACE OF THE LAND IS
12 APPROVED BY THAT BOARD FOR USE AS A PUBLIC ROAD. THE FEE OR OTHER
13 ESTATE CONVEYED FROM THE GRANTOR TO THE GRANTEE IS
14 CONCLUSIVELY ESTABLISHED BY THE LANGUAGE IN THE DEED OF
15 CONVEYANCE THAT IS PRE-PRINTED OR INSERTED BY THE GRANTOR OR THE
16 GRANTEE. A certificate of the county clerk and recorder with whom such
17 deed is filed, showing the date of the dedication and the lands so
18 dedicated, shall be filed with the county assessor of the county in which
19 such ~~roads are~~ ROAD IS situate.

20 (b) All ~~roads over private or~~ other lands dedicated to public uses
21 by due process of law and not heretofore vacated by an order of the board
22 of county commissioners duly entered of record in the proceedings of said
23 board;

24 (c) All ~~roads over private lands~~ STRIPS OF LAND that have been
25 used adversely without interruption or objection on the part of the owners
26 of such lands for twenty consecutive years, WHICH LAND, INCLUDING OIL,
27 GAS, AND OTHER MINERALS THEREUNDER, SHALL THEREAFTER BE OWNED

1 BY THE ACQUIRING GOVERNMENT IN FEE SIMPLE;

2 (d) All toll roads or portions thereof ~~which~~ THAT may be
3 purchased by the board of county commissioners of any county from the
4 incorporators or charter holders thereof and thrown open to the public;

5 (e) All roads over the public domain, whether agricultural or
6 mineral.

7 **SECTION 12.** In Colorado Revised Statutes, **amend** 43-2-204 as
8 follows:

9 **43-2-204. Commissioners authorized to acquire property for**
10 **highways.** Boards of county commissioners, acting for their respective
11 counties, ~~are authorized to~~ MAY acquire by donation, by purchase, or by
12 eminent domain proceedings in the name of such boards any private or
13 public property necessary for the improvement or construction of state
14 highways. ~~Said~~ THE boards ~~have authority to~~ MAY contract with the
15 department of transportation to pay for all or any part of such property so
16 acquired. NOTHING IN THIS SECTION MODIFIES OR RESTRICTS THE POWERS
17 OR AUTHORITY CONFERRED ON COUNTIES OR THE BOARD OF COUNTY
18 COMMISSIONERS WITH RESPECT TO COUNTY ROADS OR REVENUE
19 GENERATION AUTHORITIES.

20 **SECTION 13.** In Colorado Revised Statutes, 43-5-201, **add** (2.5)
21 as follows:

22 **43-5-201. Definitions.** As used in this part 2, unless the context
23 otherwise requires:

24 (2.5) "MAINTENANCE" MEANS PRESERVING OR REPAIRING A
25 PREVIOUSLY CONSTRUCTED EXISTING STRUCTURE, BUT DOES NOT INCLUDE
26 BUILDING OR REPLACING, IN WHOLE OR IN PART, THE EXISTING STRUCTURE.

27 **SECTION 14. Act subject to petition - effective date.** This act

1 takes effect September 1, 2014; except that, if a referendum petition is
2 filed pursuant to section 1 (3) of article V of the state constitution against
3 this act or an item, section, or part of this act within the ninety-day period
4 after final adjournment of the general assembly, then the act, item,
5 section, or part will not take effect unless approved by the people at the
6 general election to be held in November 2014 and, in such case, will take
7 effect on the date of the official declaration of the vote thereon by the
8 governor.