

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 19-0188.01 Jason Gelender x4330

SENATE BILL 19-017

SENATE SPONSORSHIP

Zenzinger, Ginal, Todd

HOUSE SPONSORSHIP

Roberts, McLachlan

Senate Committees

Transportation & Energy
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXEMPTION OF THE DEPARTMENT OF**
102 **TRANSPORTATION FROM EXISTING REPORTING AND**
103 **TRANSPORTATION COMMISSION APPROVAL REQUIREMENTS**
104 **WHEN IT ACQUIRES LAND NEEDED FOR SPECIFIED**
105 **HIGHWAY-RELATED PURPOSES BY MEANS OTHER THAN**
106 **CONDEMNATION.**

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://leg.colorado.gov/>.)

Transportation Legislation Review Committee. Current law

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
February 12, 2019

provides that when the department of transportation (CDOT) needs to acquire land in order to establish, open, relocate, widen, add mass transit to, or otherwise alter a portion of a state highway, it may only acquire the land after:

! The chief engineer of CDOT has provided a written report to the transportation commission that describes the project and all land to be acquired for the project, includes a map of the existing and future boundaries of the highway, and estimates the damages and benefits to each affected landowner; and

! The transportation commission has determined that the project will serve public interest or convenience and adopted a resolution authorizing the chief engineer to offer affected landowners appropriate compensation.

The bill authorizes CDOT, acting through the chief engineer, to acquire land in such circumstances by purchase or exchange without providing the report or obtaining transportation commission approval. If CDOT needs to acquire land in such circumstances through condemnation, it must provide the report and obtain transportation commission approval.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Section 43-1-208, Colorado Revised Statutes, has for many
5 years specified that when the chief engineer of the department of
6 transportation deems it desirable to establish a state highway or make
7 specified types of changes to an existing state highway:

8 (I) The chief engineer must provide a written report to the
9 transportation commission that describes the project and all land to be
10 acquired for the project, includes a map of the existing and future
11 boundaries of the highway, and estimates the damages and benefits to
12 each affected landowner;

13 (II) The transportation commission must determine if the project
14 will serve public interest or convenience and adopt a resolution

1 authorizing the chief engineer to offer affected landowners appropriate
2 compensation before the chief engineer may acquire land; and

3 (III) The department of transportation may acquire any land
4 needed for the project by condemnation if the landowner declines the
5 chief engineer's offer of compensation;

6 (b) Because the department of transportation must regularly
7 acquire land adjacent to state highways and many acquisitions are routine,
8 the transportation commission adopted a resolution in 1994 that directed
9 the department to act on the transportation commission's behalf with
10 respect to both the approval for land acquisition actions and the tendering
11 of payments to landowners for damages in connection with previously
12 approved highway projects;

13 (c) Thereafter, believing that the transportation commission had,
14 through the 1994 resolution, authorized it to acquire land for the purposes
15 specified in section 43-1-208, Colorado Revised Statutes, without
16 obtaining additional commission approval for each acquisition, the
17 department of transportation regularly acquired land without such
18 additional approval for over twenty years; and

19 (d) In 2016, in *DOT v. Amerco Real Estate Co.*, 2016 CO 62, the
20 Colorado Supreme Court held that:

21 (I) The transportation commission cannot legally delegate its
22 section 43-1-208, Colorado Revised Statutes, obligations to make a
23 determination of public interest or convenience and approve the payment
24 of compensation to affected landowners before authorizing the
25 department of transportation to acquire land for the purposes specified in
26 the statute; and

27 (II) The 1994 resolution therefore did not grant the department of

1 transportation authority to acquire land for the purposes specified in the
2 statute without transportation commission approval and the transportation
3 commission must instead determine if a project that requires the
4 acquisition of land will serve public interest or convenience and adopt a
5 resolution authorizing the chief engineer to offer affected landowners
6 appropriate compensation as specified in the statute.

7 (2) The general assembly further finds and declares that:

8 (a) Because the department of transportation must regularly
9 acquire land for the purposes set forth in section 43-1-208, Colorado
10 Revised Statutes, and in most instances can do so with the agreement of
11 the affected landowner and because of the *Amerco* decision, the reporting
12 and transportation commission approval requirements of section
13 43-1-208, Colorado Revised Statutes, are, in most instances, unnecessary,
14 administratively burdensome, and inefficient; and

15 (b) Because instances in which a landowner does not agree to sell
16 the owner's land to the department of transportation are comparatively
17 infrequent, it is necessary, appropriate, and not unduly burdensome to the
18 state to continue to require reporting and transportation commission
19 approval as specified in section 43-1-208, Colorado Revised Statutes, for
20 those instances in which a petition in condemnation will be filed to
21 acquire land for the purposes specified in the statute.

22 **SECTION 2.** In Colorado Revised Statutes, 43-1-208, **amend** (1)
23 and (2); and **repeal** (3) as follows:

24 **43-1-208. State highway - damages - eminent domain.** (1) IF
25 the chief engineer ~~when he~~ deems it desirable to establish, open, relocate,
26 widen, add mass transit to, or otherwise alter a portion of a state highway,
27 NEGOTIATIONS TO ACQUIRE THE LAND HAVE FAILED, AND THE CHIEF

1 ENGINEER DETERMINES THAT FILING A PETITION IN CONDEMNATION
2 PURSUANT TO ARTICLE 1 OF TITLE 38 IS NECESSARY or ~~when so required~~
3 ~~by~~ IF THE COMMISSION OTHERWISE SO REQUIRES, THE CHIEF ENGINEER shall
4 make a written report to the commission describing the portion of the
5 highway to be established, opened, added to, or changed and the ~~portions~~
6 ~~of land of each landowner to be taken for the purpose and~~ ACQUIRED BY
7 A PETITION IN CONDEMNATION. THE CHIEF ENGINEER shall accompany ~~his~~
8 THE report with a map showing the present and proposed boundaries of
9 the portion of the highway to be established, opened, added to, or
10 changed, together with an estimate of the damages and benefits accruing
11 to each landowner ~~whose land may be affected thereby~~ AGAINST WHOSE
12 LAND A PETITION IN CONDEMNATION WILL BE FILED. THE CHIEF ENGINEER
13 MAY ALSO ACQUIRE LAND BY PURCHASE OR EXCHANGE OR THROUGH
14 NEGOTIATIONS PRIOR TO THE FILING OF A PETITION IN CONDEMNATION AND
15 IS NOT REQUIRED TO PROVIDE ANY INFORMATION ABOUT LAND SO
16 ACQUIRED TO THE COMMISSION UNDER THIS SECTION.

17 (2) If, upon receipt of ~~such~~ THE report AND AFTER PROVIDING TEN
18 DAYS WRITTEN NOTICE TO THE AFFECTED LANDOWNER OF THE DATE, TIME,
19 AND LOCATION OF THE COMMISSION MEETING AT WHICH A RESOLUTION TO
20 AUTHORIZE A PROPOSED ACTION AND THE FILING OF A PETITION IN
21 CONDEMNATION FOR LAND WILL BE CONSIDERED, WHICH NOTICE SHALL BE
22 SENT BY FIRST CLASS MAIL TO THE MAILING ADDRESS, IF ANY, OF THE LAND
23 THAT IS THE SUBJECT OF THE RESOLUTION AND ANY OTHER MAILING
24 ADDRESS OF THE LANDOWNER USED FOR PURPOSES OF NEGOTIATIONS WITH
25 THE LANDOWNER, AND PROVIDING THE LANDOWNER WITH AN
26 OPPORTUNITY TO BE HEARD AT THE MEETING, the commission decides that
27 public interest or convenience will be served by the proposed ~~change~~

1 ACTION AND THE FILING OF A PETITION IN CONDEMNATION FOR THE LAND
2 PURSUANT TO ARTICLE 1 OF TITLE 38, it shall ~~enter~~ ADOPT a resolution
3 ~~upon its minutes approving the same and authorizing the chief engineer~~
4 ~~to tender each landowner the amount of damages, as estimated by him~~
5 ~~and approved by the commission. In estimating the amount of damages~~
6 ~~to be tendered a landowner, due account shall be taken of any benefits~~
7 ~~which will accrue to such landowner by the proposed action. The amount~~
8 ~~of benefit shall not in any case exceed the amount of damages awarded.~~

9 ACTION AND THE FILING OF A PETITION IN CONDEMNATION FOR THE LAND.
10 THEREUPON THE COMMISSION, ACTING THROUGH THE DEPARTMENT,
11 SHALL PROCEED IN THE ACQUISITION OF THE LAND, UNDER ARTICLES 1 TO
12 7 OF TITLE 38, WITHOUT TENDER OR OTHER PROCEEDINGS UNDER THIS
13 PART 2.

14 (3) ~~Any person owning land or having an interest in any land over~~
15 ~~which any proposed state highway extends who is of the opinion that the~~
16 ~~tender made to him by the transportation commission is inadequate,~~
17 ~~personally or by agent or attorney on or before ten days from the date of~~
18 ~~such tender, may file a written request addressed to the transportation~~
19 ~~commission for a jury to ascertain the compensation which he may be~~
20 ~~entitled to by reason of damages sustained by altering, widening,~~
21 ~~changing, or laying out such state highway. Thereupon the transportation~~
22 ~~commission shall proceed in the acquisition of such premises, under~~
23 ~~articles 1 to 7 of title 38, C.R.S. The transportation commission also has~~
24 ~~the power and is authorized to proceed in the acquisition of the lands of~~
25 ~~private persons for state highway purposes, according to said articles 1 to~~
26 ~~7 of title 38, C.R.S., without tender or other proceedings under this part~~
27 ~~2.~~

1 **SECTION 3.** In Colorado Revised Statutes, 38-1-202, **amend** (1)
2 introductory portion and (1)(b)(IV)(I) as follows:

3 **38-1-202. Governmental entities, corporations, and persons**
4 **authorized to use eminent domain.** (1) The following governmental
5 entities, types of governmental entities, and public corporations, in
6 accordance with all procedural and other requirements specified in this
7 ~~article~~ ARTICLE 1 and articles 2 to 7 of this ~~title~~ TITLE 38 and to the extent
8 and within any time frame specified in the applicable authorizing statute,
9 may exercise the power of eminent domain:

10 (b) The state:

11 (IV) By action of the general assembly or by action of any of the
12 following officers and agencies of the state:

13 (I) The transportation commission created in section 43-1-106,
14 ~~C.R.S.~~, as authorized in ~~section 43-1-208 (3), C.R.S.~~ SECTION 43-1-208
15 (2);

16 **SECTION 4. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2020 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.