

**STATE
FISCAL IMPACT**

Drafting Number: LLS 13-0111	Date: January 22, 2013
Prime Sponsor(s): Rep. Sonnenberg Sen. Baumgardner	Bill Status: House Agriculture
	Fiscal Analyst: Kirk Mlinek (303-866-2756)

TITLE: CONCERNING LIMITATIONS ON A LANDOWNER'S ABILITY TO IMPOSE CONDITIONS ON A WATER RIGHT OWNER AS A CONDITION OF PERMISSION TO USE LAND.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue	See State Revenue section.	
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: None.		

Summary of Legislation

This bill is recommended by the **Water Resources Review Committee**. The bill establishes that a landowner cannot demand as a condition of granting a right-of-way or special use permit, and a court cannot order as a condition of an eminent domain proceeding, that the owner of a water right assign to the landowner either partial or joint ownership of the water right. In the same context, neither a landowner nor a court can restrict the water right owner's ability to sell or transfer a water right. The bill goes on to state that any such condition is void and unenforceable as against public policy.

State Revenue

The bill could eliminate future opportunities for the State Land Board (SLB) in the Department of Natural Resources to negotiate water rights as a condition for a lease or an interest in real property if either of the terms "right-of-way" or "special use permit," as defined in the bill, is interpreted to include agricultural leases and other contracts. The standard agricultural lease used by the SLB requires lessees to put any water right developed on state trust land (*e.g.*, a water well drilled by the lessee for irrigation purposes) in the SLB's name. Further, the SLB requires lessees to grant the SLB a first right to acquire water rights used on state trust land. The revenue stream or other value from agricultural leases, water rights, and other opportunities to utilize SLB land foregone as a result of not being able to acquire and either hold or sell water rights in this manner has not been estimated, but could be significant.

State Expenditures

The bill may increase the SLB's workload, but not to the extent that an appropriation is required. If the terms "right-of-way" and "special use permit" include leases, then the SLB will be required to evaluate a possible modification to its standard lease forms. This review will include between 10 and 20 hours of legal services from the Department of Law, an amount absorbable within existing appropriations.

The public policy language in the bill creates a new cause of action for a lessee to bring suit to prevent the enforcement of existing lease language. This increase is expected to have a minimal impact on the courts' caseload and will be absorbed within existing appropriations. The Department of Law will represent the SLB in such actions and, if necessary, resources to pay for this representation will be sought through the annual budget process.

Departments Contacted

Natural Resources
Counties

Judicial
Municipalities

Law
Local Affairs