

Assembly Bill No. 143—Assemblymen Horne, Giunchigliani, Parks, Conklin, Allen, Arberry Jr., Atkinson, Buckley, Christensen, Denis, Gansert, Gerhardt, Goicoechea, Grady, Hardy, Hogan, Kirkpatrick, Leslie, Mabey, Manendo, McClain, Mortenson, Munford, Ocegüera, Ohrenschall, Parnell, Perkins, Pierce, Seale and Sibley

Joint Sponsors: Senators Amodei, Care, Carlton, Wiener, Beers, Cegavske, Hardy, Horsford, McGinness, Nolan, Titus and Washington

CHAPTER.....

AN ACT relating to property; establishing certain requirements that a redevelopment agency must meet before commencing an eminent domain proceeding against a property owner; making various changes concerning factors characterizing a blighted area for purposes of the Community Redevelopment Law; establishing certain requirements that a governmental entity must meet before exercising the power of eminent domain to acquire certain property for the purpose of open-space use; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows a redevelopment agency to exercise the power of eminent domain to acquire property for a redevelopment project. (Chapters 37 and 279 of NRS)

This bill requires a redevelopment agency to follow certain procedures before exercising the power of eminent domain to acquire property for a redevelopment project, such as negotiating in good faith with a property owner and attempting to reach an agreement with the owner regarding the amount of compensation to be paid for the property. A redevelopment agency is required to provide a written offer of compensation and notice to an owner that the property is necessary for redevelopment as well as other information.

This bill provides that an agency must give an owner at least 30 days to accept or reject a written offer of compensation before the agency may commence an eminent domain proceeding.

Existing law allows an agency to prepare plans for the redevelopment of a "blighted area," which is currently defined as an area characterized by at least one of several factors set forth in NRS 279.388. (NRS 279.468)

This bill adds the environmental contamination of buildings or property and the existence of an abandoned mine to the factors which characterize a blighted area and increases the number of factors necessary to constitute a blighted area from one or more to at least four. In addition, this bill adds various factors which characterize a blighted area if the subject of the redevelopment is an eligible railroad or facilities related to an eligible railroad.

Existing law provides that in certain larger counties a redevelopment agency may exercise the power of eminent domain for a redevelopment project only if: (1) necessary to carry out the redevelopment plan; (2) the agency adopts a resolution of necessity; and (3) the agency complies with certain other requirements.

This bill makes those provisions applicable to all counties in this State.

Existing law sets forth the public purposes for which the right of eminent domain may be exercised. (NRS 37.010)

This bill prohibits a governmental entity from exercising the power of eminent domain to acquire a parcel of property or group of contiguous parcels of property that is more than 40 acres in area for the purpose of open-space use unless certain conditions are met, such as an attempt by the entity to negotiate in good faith with the property owner for a period of not less than 24 months and that the use of the property conform to certain adopted plans and regulations. This bill also sets forth the conditions that an entity must meet in order to satisfy the requirement that the entity negotiate in good faith with the property owner.

Senate Bill No. 326 of this session established the requirement that if any governmental entity which has acquired property pursuant to chapter 37 of NRS fails to use the property for the public purpose for which it was acquired and seeks to sell the property within 15 years after the property is acquired, the person from whom the property was acquired or his successor in interest must be granted the right of first refusal to purchase the property for fair market value, which is deemed to be the amount paid for the acquisition of the property.

This bill amends this provision of Senate Bill No. 326 to provide that the provision does not apply to property that is acquired through the use of federal funds or purchased as an early or total acquisition at the request of the owner of the property. The amendment to this provision of Senate Bill No. 326 expires by limitation on July 1, 2007.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 279 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *“Eligible railroad” means a railroad in existence on or before July 1, 2005:*

1. That is located in a county whose population is less than 100,000; and

2. Of which not less than one-half of the ownership interest in the railroad is held by a governmental entity or nonprofit organization, or both.

Sec. 3. 1. *Before an agency may exercise the power of eminent domain to acquire property for a redevelopment project, the agency must:*

(a) Negotiate in good faith with the owner of the property and attempt to reach an agreement regarding the amount of compensation to be paid for the property;

(b) Provide the owner with a written offer of compensation in the manner set forth in subsection 2 and allow the owner at least 30 days after the date he receives the offer to respond to the offer, unless the offer is returned as undeliverable; and

(c) Provide the owner with a copy of the appraisal report upon which the offer of compensation is based at the time the offer is made.

2. A written offer of compensation required pursuant to subsection 1:

(a) Must include written notice to the owner of the property informing him of the following:

(1) That all or a portion of his property is necessary to carry out the redevelopment plan;

(2) The nature of the intended redevelopment, at the time of the written offer, for which the property is considered necessary;

(3) The parcel number or other reasonably detailed description of the property sought to be acquired;

(4) That the agency has provided a copy of the appraisal report upon which the offer of compensation is based;

(5) That the agency will provide copies, to the extent prepared, of any preliminary plans or redevelopment plans within 15 days upon request; and

(6) The rights and responsibilities of the owner pursuant to this section.

(b) Must include the value of the property sought to be acquired plus damages, if any, as appraised by the agency.

(c) Must be sent by certified mail, return receipt requested, to the last known address of the owner of the property as shown in the records of the county assessor or by personal delivery. If there is more than one owner of the property, notice must be sent to all owners of the property. If the written offer of compensation is returned as undeliverable, no additional notice is required. The agency is not required to provide an additional written offer of compensation to a person who acquires title to the property after the written offer of compensation has been provided in the manner required pursuant to this paragraph.

3. If the owner of the property has an appraisal performed on his own behalf, the owner must provide the agency with a copy of the appraisal report.

Sec. 4. Before a person who seeks to purchase, lease or otherwise acquire or increase an interest in any property within a redevelopment area may request an agency to exercise the power of eminent domain to acquire the property, the person requesting the redevelopment must negotiate in good faith with the owner of the property to reach an agreement to purchase the property from the owner of the property.

Sec. 5. NRS 279.382 is hereby amended to read as follows:

279.382 The provisions contained in NRS 279.382 to 279.685, inclusive, *and sections 2, 3 and 4 of this act* may be cited as the Community Redevelopment Law.

Sec. 6. NRS 279.384 is hereby amended to read as follows:

279.384 As used in NRS 279.382 to 279.685, inclusive, *and section 2 of this act*, unless the context otherwise requires, the

words and terms defined in NRS 279.386 to 279.414, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 279.388 is hereby amended to read as follows:

279.388 ~~["Blighted"]~~

1. Except as otherwise provided in subsection 2, "blighted area" means an area which is characterized by ~~[one or more]~~ at least four of the following factors:

~~[(1)]~~ (a) The existence of buildings and structures, used or intended to be used for residential, commercial, industrial or other purposes, or any combination thereof, which are unfit or unsafe for those purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime because of one or more of the following factors:

~~[(a)]~~ (1) Defective design and character of physical construction.

~~[(b)]~~ (2) Faulty arrangement of the interior and spacing of buildings.

~~[(c)] Overcrowding.~~

~~[(d)]~~ (3) Inadequate provision for ventilation, light, sanitation, open spaces and recreational facilities.

~~[(e)]~~ (4) Age, obsolescence, deterioration, dilapidation, mixed character or shifting of uses.

~~[(2)]~~ (b) An economic dislocation, deterioration or disuse . ~~[(3)] resulting from faulty planning.~~

~~—3.]~~ (c) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

~~[(4)]~~ (d) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.

~~[(5)]~~ (e) The existence of inadequate streets, open spaces and utilities.

~~[(6)]~~ (f) The existence of lots or other areas which may be submerged.

~~[(7)]~~ (g) Prevalence of depreciated values, impaired investments and social and economic maladjustment to such an extent that the capacity to pay taxes is *substantially* reduced and tax receipts are inadequate for the cost of public services rendered.

~~[(8)]~~ (h) A growing or total lack of proper utilization of some parts of the area, resulting in a stagnant and unproductive condition of land which is potentially useful and valuable for contributing to the public health, safety and welfare.

~~[(9)]~~ (i) A loss of population and a reduction of proper use of some parts of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

(j) The environmental contamination of buildings or property.

(k) *The existence of an abandoned mine.*

2. *If the subject of the redevelopment is an eligible railroad or facilities related to an eligible railroad, "blighted area" means an area which is characterized by at least four of the factors set forth in subsection 1 or characterized by one or more of the following factors:*

(a) *The existence of railroad facilities, used or intended to be used, for commercial, industrial or other purposes, or any combination thereof, which are unfit or unsafe for those purposes because of age, obsolescence, deterioration or dilapidation.*

(b) *A growing or total lack of proper utilization of the railroad facilities resulting in a stagnant and unproductive condition of land which is potentially useful and valuable for contributing to the public health, safety and welfare.*

(c) *The lack of adequate rail facilities has resulted or will result in an economic hardship to the community.*

Sec. 8. NRS 279.408 is hereby amended to read as follows:

279.408 1. "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction or rehabilitation, or any combination of these, of all or part of a redevelopment area, and the provision of such residential, commercial, industrial, public or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including:

(a) Recreational and other facilities appurtenant thereto.

(b) *Eligible railroads or facilities related to eligible railroads.*

(c) The alteration, improvement, modernization, reconstruction or rehabilitation, or any combination thereof, of existing structures in a redevelopment area.

~~[(e)]~~ (d) Provision for uses involving open space, such as:

- (1) Streets and other public grounds;
- (2) Space around buildings, structures and improvements;
- (3) Improvements of recreational areas; and
- (4) Improvement of other public grounds.

~~[(d)]~~ (e) The replanning, redesign or original development of undeveloped areas where:

(1) The areas are stagnant or used improperly because of defective or inadequate layouts of streets, faulty layouts of lots in relation to size, shape, accessibility or usefulness, or for other causes; or

(2) The areas require replanning and assembly of land for reclamation or development in the interest of the general welfare because of widely scattered ownership, tax delinquency or other reasons.

2. "Redevelopment" does not exclude the continuance of existing buildings or uses whose demolition and rebuilding or

change of use are not deemed essential to the redevelopment and rehabilitation of the area.

Sec. 9. NRS 279.470 is hereby amended to read as follows:

279.470 Within the redevelopment area or for purposes of redevelopment, an agency may:

1. Purchase, lease, obtain option upon ~~§~~ or acquire by gift, grant, bequest, devise or otherwise, any real or personal property, any interest in property and any improvements thereon.

2. Except as otherwise provided in NRS 279.471, *and section 3 of this act*, acquire real property by eminent domain.

3. Clear buildings, structures or other improvements from any real property acquired.

4. Sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed of trust or otherwise, or otherwise dispose of any real or personal property or any interest in property.

5. Insure or provide for the insurance of any real or personal property or operations of the agency against risks or hazards.

6. Rent, maintain, manage, operate, repair and clear such real property.

Sec. 10. NRS 279.471 is hereby amended to read as follows:

279.471 1. ~~[In a county whose population is 100,000 or more, an]~~ An agency may exercise the power of eminent domain to acquire property for a redevelopment project only if:

(a) The property sought to be acquired is necessary to carry out the redevelopment plan;

(b) The agency has adopted a resolution of necessity that complies with the requirements set forth in subsection 2; and

(c) The agency has ~~[made every reasonable effort to negotiate the purchase of the property.]~~ *complied with the provisions of section 3 of this act.*

2. A resolution of necessity required pursuant to paragraph (b) of subsection 1 must set forth:

(a) A statement that the property will be acquired for purposes of redevelopment as authorized pursuant to subsection 17 of NRS 37.010 and subsection 2 of NRS 279.470;

(b) A reasonably detailed description of the property to be acquired;

(c) A finding by the agency that the public interest and necessity require the acquisition of the property;

(d) A finding by the agency that acquisition of the property will be the option for redevelopment that is most compatible with the greatest public good and the least private injury; and

(e) A finding by the agency that acquisition of the property is necessary for purposes of redevelopment.

3. After an agency adopts a resolution of necessity, the resolution so adopted and the findings set forth in the resolution are

final and conclusive and are not subject to judicial review unless credible evidence is adduced to suggest that the resolution or the findings set forth therein were procured through bribery or fraud.

Sec. 11. NRS 279.519 is hereby amended to read as follows:

279.519 1. A redevelopment area need not be restricted to buildings, improvements or lands which are detrimental or inimical to the public health, safety or welfare, but may consist of an area in which such conditions predominate and injuriously affect the entire area. A redevelopment area may include, in addition to blighted areas, lands, buildings or improvements which are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part.

2. At least 75 percent of the area included within a redevelopment area must be improved land and may include, without limitation:

(a) Public land upon which public buildings have been erected or improvements have been constructed.

(b) Land on which an abandoned mine, landfill or other similar use is located and which is surrounded by or directly abuts the improved land.

3. The area included within a redevelopment area may be contiguous or noncontiguous.

4. *If the subject of the redevelopment is an eligible railroad or facilities related to an eligible railroad, the area included within a redevelopment area may consist of contiguous or noncontiguous vacant land that:*

(a) Is located near the eligible railroad; and

(b) May accommodate commercial or industrial facilities that may use the eligible railroad.

5. The taxable property in a redevelopment area must not be included in any subsequently created redevelopment area until at least 50 years after the effective date of creation of the first redevelopment area in which the property was included.

~~[5.]~~ 6. As used in this section, "improved land" means ~~[land]~~ :

~~(a)~~ Land that contains structures which:

~~(a)~~ (1) Are used for residential, commercial, industrial or governmental purposes; and

~~(b)~~ (2) Have been connected to water facilities, sewer facilities or roads, or any combination thereof ~~[~~

~~and any]~~ ;

(b) Any areas related to ~~[such—structures,]~~ the structures described in paragraph (a), including, without limitation, landscaping areas, parking areas, parks and streets ~~[~~ ; and

(c) If the subject of the redevelopment is an eligible railroad or facilities related to an eligible railroad:

- (1) Land on which the eligible railroad is located; and*
- (2) Any areas related to the eligible railroad, including, without limitation, land on which is located railroad tracks, a railroad right-of-way or a facility related to the eligible railroad.*

Sec. 12. NRS 279.586 is hereby amended to read as follows:

279.586 1. If the legislative body determines that:

(a) The redevelopment area includes a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in NRS 279.382 to 279.685, inclusive;

(b) The redevelopment plan would redevelop the area in conformity with NRS 279.382 to 279.685, inclusive, and is in the interests of the peace, health, safety and welfare of the community;

(c) The redevelopment plan conforms to the general plan of the community;

(d) The condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law;

(e) Adequate permanent housing is or will be made available in the community for displaced occupants of the redevelopment area at rents comparable to those in the community at the time of displacement, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing in the redevelopment area;

(f) All noncontiguous areas of a redevelopment area ~~are either~~ :

(1) Are blighted or necessary for effective redevelopment; or

(2) Satisfy the requirements set forth in subsection 4 of NRS 279.519;

(g) Inclusion of any lands, buildings or improvements which are not detrimental to the public health, safety or welfare is necessary for the effective redevelopment of the area of which they are a part; and

(h) Adequate provisions have been made for the payment of the principal of and interest on any bonds which may be issued by the agency, if provided for in the redevelopment plan,

↳ the legislative body may adopt, by ordinance, the plan as the official redevelopment plan for the redevelopment area.

2. The ordinance must:

(a) Contain a legal description of the boundaries of the redevelopment area covered by the redevelopment plan;

(b) Set forth the purposes and intent of the legislative body with respect to the redevelopment area;

(c) Designate the approved plan as the official redevelopment plan of the redevelopment area and incorporate it by reference; and

(d) Contain the determinations of the legislative body as set forth in subsection 1.

Sec. 13. Chapter 37 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law, an agency may not exercise the power of eminent domain to acquire a parcel of property or group of contiguous parcels of property that is more than 40 acres in area for the purpose of open-space use unless:

(a) Before the governing body of the agency votes to commence an action in eminent domain to acquire the property, the agency has negotiated with the owner of the property, in good faith, for a period of not less than 24 months beginning on the date on which the agency provided the written offer of compensation to the owner of the property pursuant to subsection 2, to reach an agreement regarding the amount of compensation to be paid for the property;

(b) The use of the property for the purpose of open-space use conforms with any applicable provisions of the applicable:

(1) Master plan adopted pursuant to chapter 278 of NRS;

(2) Zoning regulations adopted pursuant to chapter 278 of NRS; and

(3) Open-space plan adopted pursuant to chapter 376A of NRS;

(c) Each acre of the property is necessary for the purpose of open-space use and will be devoted to open-space use for not less than 50 years; and

(d) If the agency is seeking to acquire water rights appurtenant to the property, the agency uses the water beneficially on the property for the purpose of open-space use.

2. To satisfy the requirement to have negotiated with the owner of the property in good faith, pursuant to paragraph (a) of subsection 1, an agency must, at a minimum:

(a) Provide to the owner of the property, by personal delivery or by certified mail, return receipt requested, a written offer of compensation that includes:

(1) A copy of the appraisal report upon which the offer of compensation is based;

(2) A detailed description of the nature of the intended use of each acre of the property and the specific reasons for the necessity of acquiring each acre of the property for the purpose of open-space use;

(3) If the agency is seeking to acquire any water rights appurtenant to the property, a detailed description of the intended beneficial use of the water rights on the property and the specific reasons for the necessity of acquiring the water rights; and

(4) The value of the property, plus damages, if any, as appraised by the agency; and

(b) Attempt to engage in meaningful negotiations with the owner of the property at least once per calendar month during the period described in paragraph (a) of subsection 1.

3. As used in this section:

(a) "Agency" means the State of Nevada, any political subdivision of the State or any other governmental entity that possesses the power of eminent domain.

(b) "Open-space plan" has the meaning ascribed to it in NRS 376A.010.

(c) "Open-space use" means the use of property:

(1) To promote the conservation of open space and the protection of other natural and scenic resources from unreasonable impairment; or

(2) To protect, conserve or preserve wildlife habitat.

Sec. 13.5. Section 3 of Senate Bill No. 326 of this session is hereby amended to read as follows:

Sec. 3. ~~[Notwithstanding]~~

1. Except as otherwise provided in subsection 2, notwithstanding any other provision of law, if the State of Nevada, any political subdivision of the State or other governmental entity that has acquired property pursuant to the provisions of this chapter:

~~[1.]~~ *(a) Fails to use the property for the public purpose for which it was acquired; and*

~~[2.]~~ *(b) Seeks to convey the right, title or interest in all or part of that property to any person,*

↳ within 15 years after the property is acquired, the person from whom the property was acquired or his successor in interest must be granted the right of first refusal to purchase the right, title or interest in the property sought to be conveyed for fair market value which shall be deemed to be an amount which does not exceed the proportional amount paid by the State, political subdivision or other governmental entity for the acquisition of the property.

2. This section does not apply to property that is:

(a) Acquired through the use of federal funds; or

(b) Purchased as an early or total acquisition at the request of the owner of the property.

Sec. 14. The amendatory provisions of this act apply to an action in eminent domain that is filed on or after the effective date of this act.

Sec. 15. The amendatory provisions of section 7 of this act do not apply to a redevelopment area that is adopted by a governing body before October 1, 2005, but do apply to any annexations

thereto that are adopted by the governing body on or after October 1, 2005.

Sec. 16. 1. This act becomes effective upon passage and approval.

2. Section 13.5 of this act expires by limitation on July 1, 2007.

