

ASSEMBLY BILL NO. 129—ASSEMBLYMEN OHRENSCHALL,
CARPENTER, GOICOECHEA, HOGAN, KIHUEN, MORTENSON,
OCEGUERA, SEGERBLOM, WEBER AND WOMACK

FEBRUARY 20, 2007

Referred to Committee on Judiciary

SUMMARY—Prohibits the use of eminent domain to acquire
property for economic development. (BDR 3-21)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets **omitted material** is material to be omitted.

AN ACT relating to eminent domain; prohibiting the use of eminent
domain to acquire property for the purpose of economic
development; requiring a court to order the payment of
certain costs, attorney's fees and damages under certain
circumstances; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

1 Existing law lists the purposes for which the power of eminent domain may be
2 exercised. (NRS 37.010) In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the
3 United States Supreme Court ruled that private property may be acquired by
4 eminent domain and transferred to a private party for the purpose of obtaining the
5 benefits of economic development if State law allows the exercise of eminent
6 domain for such a purpose. This bill prohibits the exercise of eminent domain to
7 acquire property if the entity acquiring the property plans to transfer any interest in
8 the property to a private entity and the primary public benefit of the acquisition is
9 economic development. In addition, this bill requires a court to award certain costs,
10 attorney's fees and damages to a person who successfully asserts a claim or defense
11 based on a violation of this prohibition against the exercise of eminent domain.



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

1 **Section 1.** NRS 37.0095 is hereby amended to read as follows:

2 37.0095 1. Except as otherwise provided in subsection 2,
3 only a public agency may exercise the power of eminent domain
4 pursuant to the provisions of this chapter.

5 2. Except as otherwise provided in NRS 37.0097, the power of
6 eminent domain may be exercised by a person who is not a public
7 agency pursuant to NRS 37.230 and ~~subsections 6, 8, 10, 13 and~~
8 ~~16~~ **paragraphs (f), (h), (j), (m) and (p) of subsection 1** of
9 NRS 37.010.

10 3. As used in this section, "public agency" means an agency or
11 political subdivision of this State or the United States.

12 **Sec. 2.** NRS 37.010 is hereby amended to read as follows:

13 37.010 1. Subject to the provisions of this chapter ~~H~~ **and the**
14 **limitation in subsection 2**, the right of eminent domain may be
15 exercised in behalf of the following public purposes:

16 ~~1-1~~ **(a)** Federal activities. All public purposes authorized by the
17 Government of the United States.

18 ~~1-2~~ **(b)** State activities. Public buildings and grounds for the use
19 of the State, the Nevada System of Higher Education and all other
20 public purposes authorized by the Legislature.

21 ~~1-3~~ **(c)** County, city, town and school district activities. Public
22 buildings and grounds for the use of any county, incorporated city or
23 town, or school district, reservoirs, water rights, canals, aqueducts,
24 flumes, ditches or pipes for conducting water for the use of the
25 inhabitants of any county, incorporated city or town, for draining
26 any county, incorporated city or town, for raising the banks of
27 streams, removing obstructions therefrom, and widening, deepening
28 or straightening their channels, for roads, streets and alleys, and all
29 other public purposes for the benefit of any county, incorporated
30 city or town, or the inhabitants thereof.

31 ~~1-4~~ **(d)** Bridges, toll roads, railroads, street railways and similar
32 uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll
33 roads, byroads, plank and turnpike roads, roads for transportation by
34 traction engines or locomotives, roads for logging or lumbering
35 purposes, and railroads and street railways for public transportation.

36 ~~1-5~~ **(e)** Ditches, canals, aqueducts for smelting, domestic uses,
37 irrigation and reclamation. Reservoirs, dams, water gates, canals,
38 ditches, flumes, tunnels, aqueducts and pipes for supplying persons,
39 mines, mills, smelters or other works for the reduction of ores, with
40 water for domestic and other uses, for irrigating purposes, for
41 draining and reclaiming lands, or for floating logs and lumber on
42 streams not navigable.



~~{6-}~~ (f) Mining, smelting and related activities. Mining, smelting and related activities as follows:

~~{a-}~~ (1) Mining and related activities, which are recognized as the paramount interest of this State.

~~{b-}~~ (2) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, reservoirs, dams, water gates, canals, aqueducts and dumping places to facilitate the milling, smelting or other reduction of ores, the working, reclamation or dewatering of mines, and for all mining purposes, outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other work for the reduction of ores from mines, mill dams, pipelines, tanks or reservoirs for natural gas or oil, an occupancy in common by the owners or possessors of different mines, mills, smelters or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke.

~~{7-}~~ (g) Byroads. Byroads leading from highways to residences and farms.

~~{8-}~~ (h) Public utilities. Lines for telegraph, telephone, electric light and electric power and sites for plants for electric light and power.

~~{9-}~~ (i) Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the State or college or university.

~~{10-}~~ (j) Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.

~~{11-}~~ (k) Cemeteries, public parks. Cemeteries or public parks.

~~{12-}~~ (l) Pipelines of beet sugar industry. Pipelines to conduct any liquids connected with the manufacture of beet sugar.

~~{13-}~~ (m) Pipelines for petroleum products, natural gas. Pipelines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

~~{14-}~~ (n) Aviation. Airports, facilities for air navigation and aerial rights-of-way.

~~{15-}~~ (o) Monorails. Monorails and any other overhead or underground system used for public transportation.

~~{16-}~~ (p) Community antenna television companies. Community antenna television companies which have been granted a franchise from the governing body of the jurisdictions in which they provide services. The exercise of the power of eminent domain may include the right to use the wires, conduits, cables or poles of any public utility if:



~~(a)~~ (1) It creates no substantial detriment to the service provided by the utility;

~~(b)~~ (2) It causes no irreparable injury to the utility; and

~~(c)~~ (3) The Public Utilities Commission of Nevada, after giving notice and affording a hearing to all persons affected by the proposed use of the wires, conduits, cables or poles, has found that it is in the public interest.

~~(d)~~ (q) Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.685, inclusive.

2. Notwithstanding any other provision of law, the State, a political subdivision of the State and any other entity which has the power to acquire property by the exercise of eminent domain shall not acquire property by the exercise of eminent domain if:

(a) The State, political subdivision or entity plans to transfer any interest in the property acquired by the exercise of eminent domain to a private entity; and

(b) The sole or primary benefit to the public from the acquisition of the property is economic development that increases the tax base, tax revenues, the level of employment or the general economic health of a community.

3. If a person successfully asserts a claim or defense based on a violation of subsection 2, the court shall award to the person:

(a) Reasonable costs incurred by the person in asserting the claim or defense;

(b) Reasonable attorney's fees; and

(c) Any damages sustained by the person as a result of the violation of subsection 2.

Sec. 3. NRS 279.471 is hereby amended to read as follows:

279.471 1. Except as otherwise provided in this subsection, an agency may exercise the power of eminent domain to acquire property for a redevelopment project only if the agency adopts a resolution that includes a written finding by the agency that a condition of blight exists for each individual parcel of property to be acquired by eminent domain. An agency may exercise the power of eminent domain to acquire a parcel of property that is not blighted for a redevelopment project if the agency adopts a resolution that includes a written finding by the agency that a condition of blight exists for at least two-thirds of the property within the redevelopment area at the time the redevelopment area was created.

2. In addition to the requirement set forth in subsection 1, 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 3; and

(c) The agency has complied with the provisions of NRS 279.4712.

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

(a) A statement that the property will be acquired for purposes of redevelopment as authorized pursuant to ~~subsection 17~~ **paragraph (q) of subsection 1** 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.

4. After an agency adopts a resolution pursuant to subsection 1 or 2, 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. 4. The amendatory provisions of this act apply to an action in eminent domain that is filed on or after October 1, 2007.

