

ASSEMBLY BILL NO. 346—ASSEMBLYMEN OHRENSCHALL,
SEGERBLOM, SHERWOOD; AIZLEY, CARRILLO, DIAZ,
ELLISON, FLORES, HAMBRICK, HANSEN, HARDY, HICKEY,
HOGAN, KIRNER, MCARTHUR AND PIERCE

MARCH 21, 2011

JOINT SPONSORS: SENATORS GUSTAVSON AND ROBERSON

Referred to Committee on Judiciary

SUMMARY—Provides a cause of action against public agencies which delay certain actions after adopting a resolution of intent to exercise eminent domain. (BDR 3-531)

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 real property; providing for a cause of action against a public agency which delays certain actions after adopting a resolution of intent to exercise eminent domain; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Supreme Court has held that a governmental entity may be liable for precondemnation damages if it: (1) has taken official action amounting to an announcement of its intent to acquire the real property by eminent domain; and (2) following such action, has “acted improperly.” Two examples given by the Court of circumstances in which a governmental entity acted improperly are when it: (1) unreasonably delayed commencing the eminent domain proceeding; or (2) engaged in other improper or oppressive conduct. The Court further held that the determination of whether a governmental entity has unreasonably delayed the commencement of an eminent domain proceeding or engaged in other oppressive conduct is a question of fact to be determined by the fact finder. (*Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. Adv. Op. 21, 181 P.3d 670 (2008))

This bill, which is patterned after the provisions of California Code of Civil Procedure § 1245.260, creates a statutory cause of action where a governmental entity: (1) has adopted a resolution which announces its intent to acquire property;



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and (2) has not commenced an eminent domain proceeding to acquire the property within 365 days after the adoption of the resolution or has commenced such a proceeding but, within 365 days after commencing the action, has not served the complaint and summons relating to the proceeding. If the action is successful, the governmental entity may be required to do either or both of the following: (1) take the property and pay just compensation for it; or (2) pay damages for any interference with the possession and use of the property which resulted from the adoption of the resolution. An action is exempt from any statutory requirement to present a claim to a governmental entity before the commencement of an action against the governmental entity, and the action must be commenced within 15 years after the adoption of the resolution. After the commencement of an action, the governmental entity may rescind the resolution or abandon the taking of the property only under the same circumstances and subject to the same consequences as the abandonment of an eminent domain proceeding.

Under this bill, in lieu of an action for inverse condemnation or if the statute of limitations has expired, the owner of the property may obtain a writ of mandate to compel the governmental entity to rescind the resolution or commence an eminent domain proceeding to acquire the property.

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

Section 1. Chapter 37 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a public agency has adopted a resolution of necessity but has not commenced an eminent domain proceeding to acquire the property within 365 days after the date of the adoption of the resolution, or has commenced such a proceeding but has not within 365 days after the commencement of the proceeding served the complaint and the summons relating to the proceeding, the owner of the property may, by an action in inverse condemnation, do either or both of the following:

(a) Require the public agency to take the property and pay just compensation therefor.

(b) Recover damages from the public agency for any interference with the possession and use of the property resulting from the adoption of the resolution of necessity.

2. No claim need be presented against a public agency under NRS 41.036, 244.250, 268.020 or any other statute requiring the presentment of claim to a public agency as a prerequisite to commencement or maintenance of an action under subsection 1, but any such action must be commenced within 15 years after the date on which the public agency adopted the resolution of necessity.

3. After the owner of the property has commenced an action under this section, the public entity may rescind the resolution of necessity and abandon the taking of the property only under the



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1 same circumstances and subject to the same conditions and
2 consequences as the abandonment of an eminent domain
3 proceeding pursuant to NRS 37.180.

4 4. Commencement of an action under this section does not
5 affect any authority of a public agency to commence an eminent
6 domain proceeding, take possession of the property pursuant to
7 NRS 37.100 and 37.170, or abandon the eminent domain
8 proceeding pursuant to NRS 37.180.

9 5. In lieu of bringing an action under subsection 1 or if the
10 limitations period set forth in subsection 2 has expired, the owner
11 of the property may obtain a writ of mandate to compel the public
12 agency, within such time as the court deems appropriate, to
13 rescind the resolution of necessity or to commence an eminent
14 domain proceeding to acquire the property.

15 6. As used in this section:

16 (a) "Public agency" means an agency or political subdivision
17 of this State.

18 (b) "Resolution of necessity" means a resolution which:

19 (1) Is adopted by a public agency authorized by NRS
20 37.0095 to exercise the power of eminent domain; and

21 (2) Announces the intent of the public agency to acquire
22 property.

