

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, OCEGUERA, OHRENSCHALL, PARNELL, PERKINS, PIERCE, SEALE AND SIBLEY

FEBRUARY 25, 2005

JOINT SPONSORS: SENATORS AMODEI, CARE, CARLTON, WIENER, BEERS, CEGAVSKE, HARDY, HORSFORD, MCGINNESS, NOLAN, TITUS AND WASHINGTON

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning community redevelopment and eminent domain proceedings. (BDR 22-44)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 property; establishing certain requirements that a redevelopment agency must meet before commencing an eminent domain proceeding against a property owner; requiring a redevelopment agency to pay certain fees and costs incurred by a property owner; exempting a redevelopment agency from paying certain fees and costs under certain circumstances; making various changes concerning factors characterizing a blighted area for purposes of the Community Redevelopment Law; providing that a property owner who rejects an offer of judgment may not be required to pay certain penalties or costs; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

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

4 This bill requires a redevelopment agency to follow certain procedures before
5 exercising the power of eminent domain to acquire property for a redevelopment
6 project, such as attempting to negotiate in good faith with a property owner and
7 attempting to reach an agreement with the owner regarding the amount of
8 compensation to be paid for the property. A redevelopment agency is required to
9 provide a written offer of compensation and notice to an owner that the property is
10 necessary for redevelopment as well as other information. A copy of the notice and
11 written offer must also be recorded with the county recorder and provided to any
12 person who owns a business on, or leases any part of, the property to be acquired.

13 This bill provides that an agency must give an owner at least 30 days to accept
14 or reject a written offer of compensation before the agency may commence an
15 eminent domain proceeding. If the owner of the property accepts a written offer of
16 compensation, the agency must pay all reasonable costs and fees incurred by the
17 owner. If the owner rejects the written offer of compensation, this bill provides that
18 the court shall not order the agency to pay the owner's fees and costs if the agency
19 based the written offer of compensation on an appraisal prepared by an appraiser
20 with certain qualifications,

21 Existing law provides for a court to award costs and attorney's fees to a party in
22 an action if that party made an offer which was rejected and the rejecting party fails
23 to obtain a better judgment in court. (NRS 17.115, N.R.C.P. 68)

24 This bill provides that a property owner who rejects an offer of judgment and
25 proceeds to trial may not be ordered to pay any monetary damages, attorney's fees
26 or costs regardless of the outcome of the trial.

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

30 This bill adds environmental contamination of buildings or property to the
31 factors which characterize a blighted area and increases the number of factors
32 necessary to constitute a blighted area from one or more to at least four.

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

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

3 **Sec. 2. 1. *Before an agency may exercise the power of***
4 ***eminent domain to acquire property for a redevelopment project,***
5 ***the agency must:***

6 ***(a) Attempt to negotiate in good faith with the owner of the***
7 ***property and to reach an agreement regarding the amount of***
8 ***compensation to be paid for the property;***

9 ***(b) Provide the owner with a written offer of compensation in***
10 ***the manner set forth in subsection 2 and allow the owner at least***
11 ***30 days after the date he receives the offer to respond to the offer,***
12 ***unless the offer is returned as undeliverable; and***



1 (c) Provide the owner with a copy of the appraisal report upon
2 which the offer of compensation is based within 15 days upon
3 request.

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

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

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

10 (2) The nature of the redevelopment for which the property
11 is considered necessary;

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

14 (4) That the agency will provide a copy of the appraisal
15 report upon which the offer of compensation is based and copies,
16 to the extent prepared, of any preliminary plans or redevelopment
17 plans within 15 days upon request; and

18 (5) The rights and responsibilities of the owner pursuant to
19 this section.

20 (b) Must include the value of the property sought to be
21 acquired and, if the agency is seeking to acquire less than the
22 entire property, an amount to compensate for any resulting
23 damage to the remainder of the property.

24 (c) Must be sent by certified mail, return receipt requested, to
25 the last known address of the owner of the property as shown in
26 the records of the county assessor or by personal delivery. Except
27 as otherwise provided in this paragraph, if there is more than one
28 owner of the property, notice to one owner shall be deemed to be
29 notice to all owners of the property. If the written offer of
30 compensation is returned as undeliverable, no additional notice is
31 required, unless there is another owner and then the written offer
32 of compensation must be sent to the other owner. The agency is
33 not required to provide an additional written offer of
34 compensation to a person who acquires title to the property after
35 the written offer of compensation has been provided in the manner
36 required pursuant to this paragraph.

37 3. If the owner accepts a written offer of compensation, the
38 agency shall pay to the owner of the property all of the reasonable
39 costs, attorney's fees and appraisal fees incurred by the owner
40 from the date of the first written offer of compensation until the
41 date of acceptance of that or any subsequent offer.

42 4. If the owner of the property rejects the written offer of
43 compensation, the court shall not order the agency to pay
44 attorney's fees or costs if the amount of the written offer of



1 *compensation was based on an appraisal report prepared for the*
2 *agency by a certified appraiser who has been licensed pursuant to*
3 *chapter 645C of NRS for at least 5 years.*

4 *5. The provisions of this section do not prohibit an offer of*
5 *judgment pursuant to NRS 17.115 or the Nevada Rules of Civil*
6 *Procedure if the owner of the property rejects the written offer of*
7 *compensation and the agency proceeds to trial, except that the*
8 *property owner may not be ordered to pay any monetary damages,*
9 *attorney's fees or costs if the property owner rejects an offer of*
10 *judgment, regardless of the outcome of the trial.*

11 **Sec. 3.** *Before a person who seeks to purchase, lease or*
12 *otherwise acquire or increase an interest in any property within a*
13 *redevelopment area may request an agency to exercise the power*
14 *of eminent domain to acquire the property, the person requesting*
15 *the redevelopment must:*

16 *1. Make a good faith offer to purchase the property from the*
17 *owner of the property; and*

18 *2. If the first offer is rejected, negotiate in good faith with the*
19 *owner of the property to develop a subsequent offer.*

20 **Sec. 4.** *Within 5 business days after the day on which an*
21 *agency provides a written offer of compensation to an owner of*
22 *property pursuant to section 2 of this act, the agency must provide*
23 *a copy of the written offer of compensation:*

24 *1. To the county recorder of the county in which the property*
25 *is situated for recording;*

26 *2. To any person who owns a business on the property to be*
27 *acquired; and*

28 *3. To any person leasing any part of the property to be*
29 *acquired.*

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

31 279.382 The provisions contained in NRS 279.382 to 279.685,
32 inclusive, *and sections 2, 3 and 4 of this act* may be cited as the
33 Community Redevelopment Law.

34 **Sec. 6.** NRS 279.388 is hereby amended to read as follows:

35 279.388 "Blighted area" means an area which is characterized
36 by ~~{one or more}~~ *at least four* of the following factors:

37 1. The existence of buildings and structures, used or intended
38 to be used for residential, commercial, industrial or other purposes,
39 or any combination thereof, which are unfit or unsafe for those
40 purposes and are conducive to ill health, transmission of disease,
41 infant mortality, juvenile delinquency or crime because of one or
42 more of the following factors:

43 (a) Defective design and character of physical construction.

44 (b) Faulty arrangement of the interior and spacing of buildings.

45 (c) Overcrowding.



1 (d) Inadequate provision for ventilation, light, sanitation, open
2 spaces and recreational facilities.

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

5 2. An economic dislocation, deterioration or disuse, resulting
6 from faulty planning.

7 3. The subdividing and sale of lots of irregular form and shape
8 and inadequate size for proper usefulness and development.

9 4. The laying out of lots in disregard of the contours and other
10 physical characteristics of the ground and surrounding conditions.

11 5. The existence of inadequate streets, open spaces and
12 utilities.

13 6. The existence of lots or other areas which may be
14 submerged.

15 7. Prevalence of depreciated values, impaired investments and
16 social and economic maladjustment to such an extent that the
17 capacity to pay taxes is *substantially* reduced and tax receipts are
18 inadequate for the cost of public services rendered.

19 8. A growing or total lack of proper utilization of some parts of
20 the area, resulting in a stagnant and unproductive condition of land
21 which is potentially useful and valuable for contributing to the
22 public health, safety and welfare.

23 9. A loss of population and a reduction of proper use of some
24 parts of the area, resulting in its further deterioration and added
25 costs to the taxpayer for the creation of new public facilities and
26 services elsewhere.

27 ***10. The environmental contamination of buildings or***
28 ***property.***

29 **Sec. 7.** NRS 279.470 is hereby amended to read as follows:

30 279.470 Within the redevelopment area or for purposes of
31 redevelopment, an agency may:

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

35 2. Except as otherwise provided in NRS 279.471, **and sections**
36 ***2 and 3 of this act***, acquire real property by eminent domain.

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

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

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

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



1 **Sec. 8.** NRS 279.471 is hereby amended to read as follows:

2 279.471 1. In a county whose population is 100,000 or more,
3 an agency may exercise the power of eminent domain to acquire
4 property for a redevelopment project only if:

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

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

9 (c) The agency has ~~[made every reasonable effort to negotiate~~
10 ~~the purchase of the property.]~~ *complied with the provisions of*
11 *sections 2 and 3 of this act.*

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

14 (a) A statement that the property will be acquired for purposes
15 of redevelopment as authorized pursuant to subsection 17 of NRS
16 37.010 and subsection 2 of NRS 279.470;

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

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

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

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

26 3. After an agency adopts a resolution of necessity, the
27 resolution so adopted and the findings set forth in the resolution are
28 final and conclusive and are not subject to judicial review unless
29 credible evidence is adduced to suggest that the resolution or the
30 findings set forth therein were procured through bribery or fraud.

31 **Sec. 9.** NRS 37.190 is hereby amended to read as follows:

32 37.190 ~~{Costs}~~ *Except as otherwise provided by section 2 of*
33 *this act, costs* may be allowed or not, and if allowed may include a
34 maximum of \$350 for appraisal reports used at the trial and \$150 for
35 fees of expert witnesses who testify at the trial, and may be
36 apportioned between the parties on the same or adverse sides, in the
37 discretion of the court.

38 **Sec. 10.** The amendatory provisions of this act apply to an
39 action in eminent domain that is filed on or after October 1, 2005.



