

Assembly Bill No. 102—Assemblymen Horne, Munford, Conklin, Parks, Buckley, Allen, Anderson, Arberry, Atkinson, Carpenter, Christensen, Claborn, Denis, Gansert, Gerhardt, Hardy, Kihuen, Kirkpatrick, Koivisto, Leslie, Mabey, Manendo, Marvel, McClain, Mortenson, Ocegüera, Ohrenschall, Parnell, Pierce, Segerblom, Settelmeyer, Smith, Stewart and Womack

Joint Sponsors: Senators Care, Wiener, Horsford, Carlton, Hardy, Amodei, Beers, Lee, Titus and Woodhouse

## CHAPTER.....

AN ACT relating to eminent domain; prohibiting the use of eminent domain to acquire property for the purpose of transferring an interest in the property to a private person or entity except in certain circumstances; making various other changes relating to eminent domain; and providing other matters properly relating thereto.

### **Legislative Counsel's Digest:**

Existing law lists the purposes for which the power of eminent domain may be exercised. (NRS 37.010) In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that private property may be acquired by eminent domain and transferred to a private party for the purpose of obtaining the benefits of economic development. Assembly Joint Resolution No. 3 proposes an amendment to the Nevada Constitution concerning eminent domain. This bill enacts into statute the provisions of Assembly Joint Resolution No. 3.

**Section 4** of this bill prohibits, except in certain circumstances, the exercise of eminent domain to acquire property if the entity acquiring the property will transfer any interest in the property to a private person or entity. In addition, **section 4** provides that the entity that is taking the property has the burden of proving that the taking is for a public use.

Existing law allows an entity which is taking property by the exercise of eminent domain to move the court for an order allowing the entity to occupy the property, pending a final judgment in the action. (NRS 37.100) **Section 5** of this bill requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, **section 5** requires the court to determine at the occupancy hearing whether the taking is for a public use, if the owner of the property that is the subject of the action requests such a determination.

**Sections 2, 6 and 7** of this bill provide for the manner of computing the just compensation owed to the person whose property is taken by the exercise of eminent domain. **Section 1** of this bill provides that neither the property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney's fees of the other party, except in certain circumstances. **Section 9** of this bill provides that the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to reacquire the property for the price paid by the entity which took the property under certain circumstances.



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:

*Except as otherwise provided in this section, in all actions in eminent domain, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This section does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.*

**Sec. 2.** NRS 37.009 is hereby amended to read as follows:

37.009 As used in this chapter, unless the context otherwise requires:

1. "Date of valuation" means the date on which the value of the property actually taken, and the damages, if any, to the remaining property, must be determined.

2. "Final judgment" means a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment.

3. "Judgment" means the judgment determining the right to condemn property and fixing the amount of compensation to be paid by the plaintiff.

4. "Partnership" includes a limited partnership.

5. "Person" includes a government, governmental agency or political subdivision of a government.

6. "Value" means the ~~most probable price which a property would bring in a competitive and open market under the conditions of a fair sale, without the price being affected by undue stimulus, whereby the sale is consummated on a specified date and the title to the property is passed from the seller to the buyer under the following conditions:~~

~~—(a) The buyer and seller are acting prudently and knowledgeably;~~

~~—(b) The buyer and seller are typically motivated;~~

~~—(c) The buyer and seller are well informed or well advised and acting in what they consider are their own best interests;~~

~~—(d) A reasonable time is allowed to expose the property for sale on the open market;~~

~~—(e) Payment is made with United States dollars in cash or pursuant to another financial arrangement comparable thereto; and~~

~~—(f) The sale price represents the normal consideration for the property and is unaffected by special or creative financing or sales~~



~~concessions granted by any person associated with the sale.]~~ *highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property.*

**Sec. 3.** NRS 37.0095 is hereby amended to read as follows:

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

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

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

**Sec. 4.** NRS 37.010 is hereby amended to read as follows:

37.010 1. Subject to the provisions of this chapter ~~and~~ *and the limitations in subsections 2 and 3*, the right of eminent domain may be exercised in behalf of the following public ~~purposes:]~~ *uses:*

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

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

~~3.]~~ *(c)* County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all



other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.

~~[4.]~~ (d) Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.

~~[5.]~~ (e) Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on 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.

~~{17}~~ (q) Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.685, inclusive.

*2. Notwithstanding any other provision of law and except as otherwise provided in this subsection, the public uses for which private property may be taken by the exercise of eminent domain do not include the direct or indirect transfer of any interest in the property to another private person or entity. Property taken by the exercise of eminent domain may be transferred to another private person or entity in the following circumstances:*

*(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.*

*(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:*



*(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or facility that is owned by a governmental entity; and*

*(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.*

*(c) The entity that took the property:*

*(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and*

*(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.*

*(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.*

*(e) The person from whom the property is taken consents to the taking.*

*3. The entity that is taking property by the exercise of eminent domain has the burden of proving that the taking is for a public use.*

*4. For the purposes of this section, an airport authority or any public airport is not a private person or entity.*

**Sec. 5.** NRS 37.100 is hereby amended to read as follows:

37.100 1. *Before the plaintiff obtains possession of the property, the plaintiff shall give to the owner of the property a copy of all appraisals of the property obtained by the plaintiff.*

2. The plaintiff may move the court or a judge thereof at any time after the commencement of suit, on notice for such time as the court or judge may direct to the defendant if he is a resident of the county or has appeared in the action, otherwise by serving a notice directed to him on the clerk of the court, for an order permitting the plaintiff to occupy the premises sought to be condemned, pending the entry of judgment, and to do such work thereon as may be required for the easement, fee, or property rights sought, according to its nature.

~~2. The~~

*3. At the occupancy hearing, the court shall make a separate and distinct determination as to whether the property is being*



*taken for a public use pursuant to NRS 37.010, if the defendant requests such a determination.*

**4.** *If the defendant does not request a determination pursuant to subsection 3 or if the court determines that the property is being taken for a public use pursuant to NRS 37.010, the court or judge shall take proof, by affidavit or otherwise, of the value of the premises sought to be condemned, the damages which will accrue from the condemnation and the reasons for requiring a speedy occupation, and shall grant or refuse the motion according to the equity of the case and the relative damages which may accrue to the parties.*

~~3-~~ **5.** If the motion is granted, the court or judge shall require the plaintiff to execute and file in court a bond to the defendant, with sureties, to be approved by the court or judge in a penal sum to be fixed by the court or judge, not less than double the value of the premises sought to be condemned and the damages which will ensue from condemnation and occupation, as the value and damages may appear to the court or judge on the hearing, and conditioned to pay the adjudged value of the premises and all damages if the property is condemned, and to pay all damages arising from occupation before judgment if the premises are not condemned, and all costs adjudged to the defendant in the action. The sureties shall justify before the court or judge, after a reasonable notice to the defendant of the time and place of justification.

~~4-~~ **6.** In lieu of a bond the plaintiff, with the consent of the court, may deposit with the clerk of the court a sum equal to the value of the premises plus damages, as appraised by the plaintiff. Upon application of the defendant and upon notice to all parties, the court or judge may order the money deposited with the clerk of the court or any part thereof to be paid to the defendant. If the amount of the compensation awarded upon judgment is less than the sum deposited and paid to the defendant, the court shall enter judgment in favor of the plaintiff and against the defendant for the amount of the excess. Application by the defendant to the court for withdrawal of part or all of the money deposited and the payment of that money to the defendant does not prejudice the right of the defendant to contest the amount of compensation to be finally awarded. The receipt by the defendant of a part or all of the money deposited must be conditioned upon the waiver of all defenses except those relating to the amount of compensation.

~~5-~~ **7.** The amount of the penal bond or the deposit is for the purpose of the motion only and is not admissible in evidence on final hearing.



~~[6-]~~ 8. The court or judge may also restrain the defendant from hindering or interfering with the occupation of the premises and the doing thereon of the work required for the easement, fee, or property rights.

~~[7-]~~ 9. The provisions of this section requiring the execution and filing of a bond do not apply in any action or proceeding in which the State of Nevada is the plaintiff, but the public faith and credit of the State of Nevada, is hereby pledged as security in lieu of the bond. The provisions of this subsection do not prevent the State of Nevada from depositing, in lieu of a pledge of the public faith and credit, with the clerk of the court a sum equal to the value of the premises plus any damages as appraised by the State.

**Sec. 6.** NRS 37.120 is hereby amended to read as follows:

37.120 1. To assess compensation and damages as provided in NRS 37.110, the date of the first service of the summons is the date of valuation, except that, if the action is not tried within 2 years after the date of the first service of the summons, and the court makes a written finding that the delay is caused primarily by the plaintiff or is caused by congestion or backlog in the calendar of the court, the date of valuation is the date of the actual commencement of the trial. If a new trial is ordered by a court, the date of valuation used in the new trial must be the date of valuation used in the original trial.

2. No improvements put upon the property after the date of the service of the summons may be included in the assessment of compensation or damages, regardless of the date of valuation.

3. *In all actions in eminent domain, the court shall award just compensation to the owner of the property that is being taken. Just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest computed pursuant to NRS 37.175 and reasonable costs and expenses, except attorney's fees, incurred by the owner of the property that is the subject of the action.*

4. As used in this section, "primarily" means the greater amount, quantity or quality of acts of the plaintiff or the defendant or, if there is more than one defendant, the total delay caused by all the defendants, that would cause the date of the trial to be continued past 2 years after the date of the first service of the summons.





**Sec. 7.** NRS 37.175 is hereby amended to read as follows:

37.175 1. Except as otherwise provided in this section, the plaintiff shall pay interest on the final judgment on the difference between the amount deposited pursuant to NRS 37.100 or 37.170 and the sum of the amount awarded for the taking and any damages awarded for the severance of the property, excluding costs and attorney's fees, from the date ~~[of the first service of the summons]~~ *ordered by the district court pursuant to paragraph (a) of subsection 4* until the date the judgment is satisfied, at the rate provided in ~~[NRS 17.130.]~~ *paragraph (b) of subsection 4.*

2. The plaintiff is not required to pay interest on any amount deposited pursuant to the provisions of NRS 37.100 or 37.170.

3. No interest is required to be paid for the period from the date of a trial which is continued past 2 years after the date of the first service of the summons, until the date of entry of judgment, if the continuance was caused primarily by the defendant or, if there is more than one defendant, the total delay caused by all the defendants. As used in this subsection, "primarily" means the greater amount, quantity or quality of acts of the plaintiff or the defendant or, if there is more than one defendant, the total delay caused by all defendants, that would cause the trial to be continued past 2 years after the date of the first service of the summons.

*4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:*

*(a) The date on which the computation of interest will commence;*

*(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and*

*(c) Whether the interest will be compounded annually.*

**Sec. 8.** NRS 37.260 is hereby amended to read as follows:

37.260 1. ~~[Any]~~ *Except as otherwise provided in NRS 37.270, any* real property, interest therein or improvement thereon which has been acquired in accordance with the provisions of this chapter or purchased under the threat of eminent domain proceedings by an association, commission, corporation, partnership or political subdivision other than a county or incorporated city may be disposed of as surplus by that entity only in accordance with the provisions of this section.



2. The governing body of the entity desiring to dispose of the property *pursuant to this section* must first adopt a resolution declaring that the property is no longer required for the purposes for which it was acquired or for other reasonable public use.

3. The property, interest or improvement *disposed of pursuant to this section* must be sold by the entity to the highest bidder bidding for the property, either at public auction or by sealed bids, the notice and terms of which must be published in a newspaper of general circulation in the county where the property is situated at least once not less than 15 nor more than 45 days before the sale. When, in the opinion of the governing body of the entity, the property cannot be sold by means of public auction or sealed bids without working an undue hardship upon a property owner either as a result of a severance of that owner's property or a denial of access to a public street or highway, the governing body may first offer the property to that owner at a price determined by the governing body to be in the best interest of the corporation, partnership, association, commission or political subdivision.

4. ~~¶¶~~ *If property is disposed of pursuant to this section, it is conclusively presumed in favor of any purchaser for value and without notice of any such real property, interest therein or improvement thereon conveyed pursuant to this section that the entity disposing of it acted within its lawful authority in acquiring and disposing of the property, and that the officers thereof acted within their lawful authority in executing any conveyance vesting title in the purchaser. All such conveyances must be quitclaim in nature and must not carry any warranty of title.*

**Sec. 9.** NRS 37.270 is hereby amended to read as follows:

37.270 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~~ *property taken pursuant to the provisions of this chapter ~~is~~ must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:*

1. ~~Fails to use the property for the public purpose for which it was acquired; and~~ *use for which the property was taken or for any public use reasonably related to the public use for which the property was taken; or*

2. 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.] and the conveyance is not occurring pursuant to subsection 2 of NRS 37.010.~~

*↪ The entity that has taken the property does not fail to use the property under subsection 1 if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.*

**Sec. 10.** 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. 11.** NRS 37.190 is hereby repealed.

**Sec. 12.** 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. 13.** This act becomes effective upon passage and approval.

