

Amendment No. 998

Assembly Amendment to Senate Bill No. 326 First Reprint	(BDR 3-78)
Proposed by: Committee on Judiciary	
Amendment Box: Replaces Amendment No. 883.	
Resolves Conflicts with: N/A	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: No	

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend the bill as a whole by deleting section 1, renumbering sec. 2 as sec. 7 and adding new sections designated sections 1 through 6, following the enacting clause, to read as follows:

“**Section 1.** Chapter 37 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. 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

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Date: 5/25/2005

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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 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. 3. 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. Fails to use the property for the public purpose for which it was acquired; and

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.

Sec. 4. 1. *In addition to any amount of compensation determined pursuant to NRS 37.110, the owner of a business conducted on property that is acquired pursuant to this chapter must be compensated for loss of goodwill if:*

(a) The condemnation causes the business to be dissolved and the business cannot be relocated for reasons beyond the control of the owner, including, without limitation, the unavailability of a new franchise or when the value of the business is inextricably tied to the unique location of the property being condemned; and

(b) The owner of the business has a property interest in the property acquired pursuant to this chapter.

2. *As used in this section, “goodwill” means the component of value attributed to the reputation, loyal customer base, ability to attract new customers and location of a business. The term does not include the loss of anticipated profits or loss of business opportunity.*

Sec. 5. NRS 244.290 is hereby amended to read as follows:

244.290 1. Except as otherwise provided in NRS 278.480 for the vacation of streets and easements, the board of county commissioners of any county may reconvey all the right, title and interest of the county in and to any land donated, dedicated, acquired in accordance with chapter 37 of NRS, or purchased under the threat of an eminent domain proceeding for a public park, public square, public landing, agricultural fairground, aviation field, automobile parking ground or facility for the accommodation of the traveling public, or land held in trust for the public for any other public use or uses, or any part thereof, to the person:

(a) By whom the land was donated or dedicated or to his heirs, assigns or successors, upon such terms as may be prescribed by a resolution of the board; or

(b) From whom the land was acquired in accordance with the provisions of chapter 37 of NRS, or purchased under the threat of an eminent domain proceeding, or to his heirs, assigns or successors, *except as otherwise provided in section 3 of this act*, for an amount equal to the appraised value of the land at the time of the reconveyance.

↪ The reconveyance may be made whether the land is held by the county solely or as tenant in common with any municipality or other political subdivision of this State under the dedication.

2. If the county has a planning commission, the board shall refer the proposal for reconveyance to the planning commission which shall consider the proposal and submit its recommendation to the board.

3. The board shall hold at least one public hearing upon the proposal for reconveyance. Notice of the time and place of the hearing must be:

(a) Published at least once in a newspaper of general circulation in the county;

(b) Mailed to all owners of record of real property located within 300 feet of the land proposed for reconveyance; and

(c) Posted in a conspicuous place on the property and, in this case, must set forth additionally the extent of the proposal for reconveyance.

↪ The hearing must be held not less than 10 days nor more than 40 days after the notice is so published, mailed and posted.

4. If the board, after the hearing, determines that maintenance of the property by the county solely or with a co-owner is unnecessarily burdensome or that reconveyance would be otherwise advantageous to the county and its citizens, the board shall formally adopt a resolution stating that determination. Upon the adoption of the resolution, the chairman of the board shall execute a deed of

reconveyance on behalf of the county and the county clerk shall attest the deed under the seal of the county.

5. The board may sell land which has been donated, dedicated, acquired in accordance with chapter 37 of NRS, or purchased under the threat of an eminent domain proceeding, for a public purpose described in subsection 1, or may exchange that land for other land of equal value, if:

(a) The person from whom the land was received or acquired or his successor in interest refuses to accept the reconveyance or states in writing that he is unable to accept the reconveyance; or

(b) The land has been combined with other land owned by the county and improved in such manner as would reasonably preclude the division of the land, together with the land with which it has been combined, into separate parcels.

Sec. 6. NRS 268.050 is hereby amended to read as follows:

268.050 1. The governing body of any incorporated city in this State may reconvey all the right, title and interest of the city in and to any land donated, dedicated, acquired in accordance with chapter 37 of NRS, or purchased under the threat of an eminent domain proceeding, for a public park, public square, public landing, agricultural fairground, aviation field, automobile parking ground or facility for the accommodation of the traveling public, or land held in trust for the public for any other public use or uses, or any part thereof, to the person:

(a) By whom the land was donated or dedicated or to his heirs, assigns or successors, upon such terms as may be prescribed by a resolution of the governing body; or

(b) From whom the land was acquired in accordance with chapter 37 of NRS, or purchased under the threat of an eminent domain proceeding, or to his heirs, assigns or successors, *except as*

otherwise provided in section 3 of this act, for an amount equal to the appraised value of the land at the time of the reconveyance.

↪ The reconveyance may be made whether the land is held by the city solely or as tenant in common with any other municipality or other political subdivision of this State under the dedication.

2. If the city has a planning commission, the governing body shall refer the proposal for reconveyance to the planning commission which shall consider the proposal and submit its recommendation to the governing body.

3. The governing body shall hold at least one public hearing upon the proposal for reconveyance. Notice of the time and place of the hearing must be:

(a) Published at least once in a newspaper of general circulation in the city or county;

(b) Mailed to all owners of record of real property located within 300 feet of the land proposed for reconveyance; and

(c) Posted in a conspicuous place on the property and, in this case, must set forth additionally the extent of the proposal for reconveyance.

↪ The hearing must be held not less than 10 days nor more than 40 days after the notice is so published, mailed and posted.

4. If the governing body, after the hearing, determines that maintenance of the property by the city solely or with a co-owner is unnecessarily burdensome or that reconveyance would be otherwise advantageous to the city and its citizens, the governing body shall formally adopt a resolution stating that determination. Upon the adoption of the resolution, the presiding officer of the governing body shall execute a deed of reconveyance on behalf of the city and the city clerk shall attest the deed under the seal of the city.

5. The governing body may sell land which has been donated, dedicated, acquired in accordance with chapter 37 of NRS, or purchased under the threat of an eminent domain proceeding, for a public purpose described in subsection 1, or may exchange that land for other land of equal value, if:

(a) The person from whom the land was received or acquired or his successor in interest refuses to accept the reconveyance or states in writing that he is unable to accept the reconveyance; or

(b) The land has been combined with other land owned by the city and improved in such a manner as would reasonably preclude the division of the land, together with the land with which it has been combined, into separate parcels.”.

Amend sec. 2, page 2, by deleting lines 12 through 16 and inserting:

“within the redevelopment area at the time the redevelopment area was created.”.

Amend the bill as a whole by renumbering sections 3 and 4 as sections 9 and 10 and adding a new section designated sec. 8, following sec. 2, to read as follows:

“Sec. 8. NRS 408.533 is hereby amended to read as follows:

408.533 1. ~~[A]~~ *Except as otherwise provided in section 3 of this act, all* real property, interests therein or improvements thereon and personal property acquired before, on or after April 1, 1957, in accordance with the provisions of NRS 408.487 and 408.489 must, after approval by the Board and if no longer needed for highway purposes, be disposed of by the Director in accordance with the provisions of subsection 2, except that:

(a) When the property was originally donated to the State, no charge may be made if it is returned to the original owner or to the holder of the reversionary right.

(b) When the property has been wholly or partially paid for by towns, cities or counties, disposal of the property and of money received therefor must be agreed upon by the governing bodies of the towns, cities and counties and the Department.

(c) When the title to the real property has been acquired in fee pursuant to NRS 408.487 and 408.489 and, in the opinion of the Board, a sale by means of a public auction or sealed bids is uneconomical or impractical because:

(1) There is no access to the property;

(2) The property has value or an increased value only to a single adjoining property owner; or

(3) Such a sale would work an undue hardship upon a property owner as a result of a severance of the property of that owner or a denial of access to a public highway,

↳ the Board may enter into a direct sale of the property with such an owner or any other person for its fair market value.

(d) When the property has been acquired and the property or any portion of the property is no longer needed for highway purposes, the Department shall give notice of its intention to dispose of the property by publication in a newspaper of general circulation in the county where the property is situated. The notice must include the Department's appraisal of the fair market value of the property. Any person from whom the property was purchased or his heir or grantee may purchase the property at its fair market value by direct sale from the Department within 60 days after the notice is published. If more than one person qualified to purchase the property by direct sale pursuant to this paragraph so requests, the person with the superior claim, as determined by the Department in its sole discretion, is entitled to purchase the property by direct sale. If a person who is entitled to purchase the property by direct sale pursuant to this paragraph reasonably believes that the

Department's appraisal of the property is greater than the fair market value of the property, the person may file an objection to the appraisal with the Department. The Department shall set forth the procedure for filing an objection and the process under which a final determination will be made of the fair market value of the property for which an objection is filed. The Department shall sell the property in the manner provided in subsection 2 if:

(1) No person requests to purchase the property by direct sale within 60 days after the notice is published pursuant to this paragraph; or

(2) A person who files an objection pursuant to this paragraph fails, within 10 business days after he receives a written notice of the final determination of the fair market value of the property, to notify the Department in writing that he wishes to purchase the property at the fair market value set forth in the notice.

(e) When the property is sought by another public agency for a reasonable public use, the Department may first offer the property to the public agency at its fair market value.

2. All property, interests or improvements not included within the provisions of subsection 1 must first be offered for sale by the Department singly or in combination at public auction or by sealed bids. If the highest bid received is 90 percent or more of the Department's appraisal of the fair market value of the property, the property may be sold to the highest bidder. The notice and the terms of the sale must be published in a newspaper of general circulation in the county where the property is situated. The auctions and openings of bids must be conducted by the Department. If the property cannot be sold for 90 percent or more of its fair market value, the Department may enter into a written listing agreement with a person licensed pursuant to chapter 645 of NRS to sell or lease the property for 90 percent or more of its fair market value.

3. It is conclusively presumed in favor of the Department and any purchaser for value that the Department acted within its lawful authority in acquiring and disposing of the property, and that the Director acted within his lawful authority in executing any conveyance vesting title in the purchaser. All such conveyances must be quitclaim in nature and the Department shall not warrant title, furnish title insurance or pay the tax on transfer of real property.

4. No person has a right of action against the Department or its employees for a violation of this section. This subsection does not prevent an action by the Attorney General on behalf of the State of Nevada or any aggrieved person.

5. All sums of money received by the Department for the sale of real and personal property must be deposited with the State Treasurer to be credited to the State Highway Fund, unless the Federal Highway Administration participated in acquisition of the property, in which case a pro rata share of the money obtained by disposal of the property must be paid to the Federal Highway Administration.

6. The Department may reserve and except easements, rights or interests from the conveyance of any real property disposed of in accordance with this section or exchanged pursuant to subsection 5 of NRS 408.489. The easements, rights or interests include, but are not limited to:

- (a) Abutter's rights of light, view or air.
- (b) Easements of access to and from abutting land.
- (c) Covenants prohibiting the use of signs, structures or devices advertising activities not conducted, services not rendered or goods not produced or available on the real property.”.

Amend sec. 3, page 3, by deleting lines 3 through 9 and inserting:

“**Sec. 9.** The provisions of this act apply to an action in eminent domain that is filed on or after the effective date of this act.”.

Amend sec. 4, page 3, line 10, by deleting:

“on July 1, 2005.” and inserting:

“upon passage and approval.”.

Amend the title of the bill by deleting the fourth and fifth lines and inserting:

“acquire real property by eminent domain; limiting the use and reconveyance of real property acquired by eminent domain; requiring an agency that acquires real property on”.