

SENATE BILL NO. 326—SENATOR CARE

MARCH 24, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing eminent domain. (BDR 3-78)

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 eminent domain; limiting the public purposes for which the right of eminent domain may be exercised; restricting the authority of a redevelopment agency to 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 which a business is conducted to compensate the owner of the business for the loss of goodwill under certain circumstances; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 37 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. *Notwithstanding any other provision of law, an***
4 ***agency may not exercise the power of eminent domain to acquire a***
5 ***parcel of property or group of contiguous parcels of property that***
6 ***is more than 40 acres in area for the purpose of open-space use***
7 ***unless:***
8 ***(a) Before the governing body of the agency votes to***
9 ***commence an action in eminent domain to acquire the property,***
10 ***the agency has negotiated with the owner of the property, in good***
11 ***faith, for a period of not less than 24 months beginning on the***
12 ***date on which the agency provided the written offer of***



1 *compensation to the owner of the property pursuant to subsection*
2 *2, to reach an agreement regarding the amount of compensation*
3 *to be paid for the property;*

4 *(b) The use of property for the purpose of open-space use*
5 *conforms with any applicable provisions of the applicable:*

6 *(1) Master plan adopted pursuant to chapter 278 of NRS;*

7 *(2) Zoning regulations adopted pursuant to chapter 278 of*
8 *NRS; and*

9 *(3) Open-space plan adopted pursuant to chapter 376A of*
10 *NRS;*

11 *(c) Each acre of the property is necessary for the purpose of*
12 *open-space use and will be devoted to open-space use for not less*
13 *than 50 years; and*

14 *(d) If the agency is seeking to acquire water rights appurtenant*
15 *to the property, the agency uses the water beneficially on the*
16 *property for the purpose of open-space use.*

17 *2. To satisfy the requirement to have negotiated with the*
18 *owner of the property in good faith, pursuant to paragraph (a) of*
19 *subsection 1, an agency must, at a minimum:*

20 *(a) Provide to the owner of the property, by personal delivery*
21 *or by certified mail, return receipt requested, a written offer of*
22 *compensation that includes:*

23 *(1) A copy of the appraisal report upon which the offer of*
24 *compensation is based;*

25 *(2) A detailed description of the nature of the intended use*
26 *of each acre of the property and the specific reasons for the*
27 *necessity of acquiring each acre of the property for the purpose of*
28 *open-space use;*

29 *(3) If the agency is seeking to acquire any water rights*
30 *appurtenant to the property, a detailed description of the intended*
31 *beneficial use of the water rights on the property and the specific*
32 *reasons for the necessity of acquiring the water rights; and*

33 *(4) The value of the property, plus damages, if any, as*
34 *appraised by the agency; and*

35 *(b) Attempt to engage in meaningful negotiations with the*
36 *owner of the property at least once per calendar month during the*
37 *period described in paragraph (a) of subsection 1.*

38 *3. As used in this section:*

39 *(a) "Agency" means the State of Nevada, any political*
40 *subdivision of the State or any other governmental entity that*
41 *possesses the power of eminent domain.*

42 *(b) "Open-space plan" has the meaning ascribed to it in*
43 *NRS 376A.010.*

44 *(c) "Open-space use" means the use of property:*



1 (1) *To promote the conservation of open space and the*
2 *protection of other natural and scenic resources from*
3 *unreasonable impairment; or*

4 (2) *To protect, conserve or preserve wildlife habitat.*

5 **Sec. 3.** *Notwithstanding any other provision of law, if the*
6 *State of Nevada, any political subdivision of the State or other*
7 *governmental entity that has acquired property pursuant to the*
8 *provisions of this chapter:*

9 1. *Fails to use the property for the public purpose for which it*
10 *was acquired; and*

11 2. *Seeks to convey the right, title or interest in all or part of*
12 *that property to any person,*

13 ↳ *within 15 years after the property is acquired, the person from*
14 *whom the property was acquired or his successor in interest must*
15 *be granted the right of first refusal to purchase the right, title or*
16 *interest in the property sought to be conveyed for fair market value*
17 *which shall be deemed to be an amount which does not exceed the*
18 *proportional amount paid by the State, political subdivision or*
19 *other governmental entity for the acquisition of the property.*

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

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

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

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

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

37 244.290 1. Except as otherwise provided in NRS 278.480 for
38 the vacation of streets and easements, the board of county
39 commissioners of any county may reconvey all the right, title and
40 interest of the county in and to any land donated, dedicated,
41 acquired in accordance with chapter 37 of NRS, or purchased under
42 the threat of an eminent domain proceeding for a public park, public
43 square, public landing, agricultural fairground, aviation field,
44 automobile parking ground or facility for the accommodation of the



1 traveling public, or land held in trust for the public for any other
2 public use or uses, or any part thereof, to the person:

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

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

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

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

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

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

24 (b) Mailed to all owners of record of real property located within
25 300 feet of the land proposed for reconveyance; and

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

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

31 4. If the board, after the hearing, determines that maintenance
32 of the property by the county solely or with a co-owner is
33 unnecessarily burdensome or that reconveyance would be otherwise
34 advantageous to the county and its citizens, the board shall formally
35 adopt a resolution stating that determination. Upon the adoption of
36 the resolution, the chairman of the board shall execute a deed of
37 reconveyance on behalf of the county and the county clerk shall
38 attest the deed under the seal of the county.

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



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

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

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

9 268.050 1. The governing body of any incorporated city in
10 this State may reconvey all the right, title and interest of the city in
11 and to any land donated, dedicated, acquired in accordance with
12 chapter 37 of NRS, or purchased under the threat of an eminent
13 domain proceeding, for a public park, public square, public landing,
14 agricultural fairground, aviation field, automobile parking ground or
15 facility for the accommodation of the traveling public, or land held
16 in trust for the public for any other public use or uses, or any part
17 thereof, to the person:

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

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

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

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

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

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

38 (b) Mailed to all owners of record of real property located within
39 300 feet of the land proposed for reconveyance; and

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

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



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

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

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

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

21 **Sec. 7.** NRS 279.471 is hereby amended to read as follows:

22 279.471 1. *Except as otherwise provided in this subsection,*
23 *an agency may exercise the power of eminent domain to acquire*
24 *property for a redevelopment project only if the agency adopts a*
25 *resolution that includes a written finding by the agency that a*
26 *condition of blight exists for each individual parcel of property to*
27 *be acquired by eminent domain. An agency may exercise the*
28 *power of eminent domain to acquire a parcel of property that is*
29 *not blighted for a redevelopment project if the agency adopts a*
30 *resolution that includes a written finding by the agency that a*
31 *condition of blight exists for at least two-thirds of the property*
32 *within the redevelopment area at the time the redevelopment area*
33 *was created.*

34 2. *In addition to the requirement set forth in subsection 1, in*
35 *a county whose population is 100,000 or more, an agency may*
36 *exercise the power of eminent domain to acquire property for a*
37 *redevelopment project only if:*

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

40 (b) The agency has adopted a resolution of necessity that
41 complies with the requirements set forth in subsection ~~[2-] 3~~; and

42 (c) The agency has made every reasonable effort to negotiate the
43 purchase of the property.

44 ~~[2-] 3.~~ A resolution of necessity required pursuant to paragraph
45 (b) of subsection ~~[H] 2~~ must set forth:



1 (a) A statement that the property will be acquired for purposes
2 of redevelopment as authorized pursuant to subsection 17 of NRS
3 37.010 and subsection 2 of NRS 279.470;

4 (b) A reasonably detailed description of the property to be
5 acquired;

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

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

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

13 ~~[3-]~~ 4. After an agency adopts a resolution ~~[of necessity,]~~
14 *pursuant to subsection 1 or 2*, the resolution so adopted and the
15 findings set forth in the resolution are final and conclusive and are
16 not subject to judicial review unless credible evidence is adduced to
17 suggest that the resolution or the findings set forth therein were
18 procured through bribery or fraud.

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

20 408.533 1. ~~[All]~~ *Except as otherwise provided in section 3*
21 *of this act, all* real property, interests therein or improvements
22 thereon and personal property acquired before, on or after April 1,
23 1957, in accordance with the provisions of NRS 408.487 and
24 408.489 must, after approval by the Board and if no longer needed
25 for highway purposes, be disposed of by the Director in accordance
26 with the provisions of subsection 2, except that:

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

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

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

38 (1) There is no access to the property;

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

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

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



1 (d) When the property has been acquired and the property or any
2 portion of the property is no longer needed for highway purposes,
3 the Department shall give notice of its intention to dispose of the
4 property by publication in a newspaper of general circulation in the
5 county where the property is situated. The notice must include
6 the Department's appraisal of the fair market value of the property.
7 Any person from whom the property was purchased or his heir or
8 grantee may purchase the property at its fair market value by direct
9 sale from the Department within 60 days after the notice is
10 published. If more than one person qualified to purchase the
11 property by direct sale pursuant to this paragraph so requests, the
12 person with the superior claim, as determined by the Department in
13 its sole discretion, is entitled to purchase the property by direct sale.
14 If a person who is entitled to purchase the property by direct sale
15 pursuant to this paragraph reasonably believes that the Department's
16 appraisal of the property is greater than the fair market value of the
17 property, the person may file an objection to the appraisal with the
18 Department. The Department shall set forth the procedure for filing
19 an objection and the process under which a final determination will
20 be made of the fair market value of the property for which an
21 objection is filed. The Department shall sell the property in the
22 manner provided in subsection 2 if:

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

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

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

34 2. All property, interests or improvements not included within
35 the provisions of subsection 1 must first be offered for sale by the
36 Department singly or in combination at public auction or by sealed
37 bids. If the highest bid received is 90 percent or more of the
38 Department's appraisal of the fair market value of the property, the
39 property may be sold to the highest bidder. The notice and the terms
40 of the sale must be published in a newspaper of general circulation
41 in the county where the property is situated. The auctions and
42 openings of bids must be conducted by the Department. If the
43 property cannot be sold for 90 percent or more of its fair market
44 value, the Department may enter into a written listing agreement



1 with a person licensed pursuant to chapter 645 of NRS to sell or
2 lease the property for 90 percent or more of its fair market value.

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

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

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

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

27 (a) Abutter's rights of light, view or air.

28 (b) Easements of access to and from abutting land.

29 (c) Covenants prohibiting the use of signs, structures or devices
30 advertising activities not conducted, services not rendered or goods
31 not produced or available on the real property.

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

34 **Sec. 10.** This act becomes effective upon passage and
35 approval.



