

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 396

BY RUBEL

AN ACT

RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-701A, IDAHO CODE, TO REMOVE LANGUAGE PROHIBITING THE USE OF EMINENT DOMAIN FOR THE PURPOSE OF CERTAIN RECREATIONAL TRAILS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 7-701A, Idaho Code, be, and the same is hereby amended to read as follows:

7-701A. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES. (1) This section limits and restricts the use of eminent domain under the laws of this state or local ordinance by the state of Idaho, its instrumentalities, political subdivisions, public agencies, or bodies corporate and politic of the state to condemn any interest in property in order to convey the condemned interest to a private interest or person as provided ~~herein~~ in this section.

(2) Eminent domain shall not be used to acquire private property:

(a) For any alleged public use ~~which that~~ is merely a pretext for the transfer of the condemned property or any interest in that property to a private party; or

(b) For the purpose of promoting or effectuating economic development; provided however, that nothing herein shall affect the exercise of eminent domain:

(i) Pursuant to chapter 15, title 70, Idaho Code, and title 42, Idaho Code; or

(ii) Pursuant to chapter 19, 20 or 29, title 50, Idaho Code, except that no private property shall be taken through exercise of eminent domain within the area of operation of a housing authority or within an urban renewal area or within a deteriorated or deteriorating area or within a competitively disadvantaged border community area unless the specific property to be condemned is proven by clear and convincing evidence to be in such condition that it meets all of the following requirements:

1. The property, due to general dilapidation, compromised structural integrity, or failed mechanical systems, endangers life or endangers property by fire or by other perils that pose an actual identifiable threat to building occupants; and

2. The property contains specifically identifiable conditions that pose an actual risk to human health, transmission of disease, juvenile delinquency or criminal content; and

3. The property presents an actual risk of harm to the public health, safety, morals or general welfare; or

1 (iii) For those public and private uses for which eminent domain is  
2 expressly provided in the constitution of the state of Idaho, ~~or~~  
3 ~~(c) For trails, paths, greenways or other ways for walking, running,~~  
4 ~~hiking, bicycling or equestrian use, unless adjacent to a highway, road~~  
5 ~~or street.~~

6 (3) This section shall not affect the authority of a governmental en-  
7 tity to condemn a leasehold estate on property owned by the governmental en-  
8 tity.

9 (4) The rationale for condemnation by the governmental entity propos-  
10 ing to condemn property shall be freely reviewable in the course of judicial  
11 proceedings involving exercise of the power of eminent domain.