

IN THE SENATE

SENATE BILL NO. 1303, As Amended

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-701A, IDAHO CODE, TO PROVIDE
2 THAT A MEMBER APPOINTED TO THE BOARD OF COMMISSIONERS OF AN URBAN RE-
3 NEWAL AGENCY SHALL VACATE HIS APPOINTMENT UPON LEAVING ELECTED OFFICE
4 ON THE LOCAL GOVERNING BODY AND TO PROVIDE AN EXCEPTION; AMENDING SEC-
5 TION 50-2006, IDAHO CODE, TO REVISE PROVISIONS REGARDING URBAN RENEWAL
6 AGENCIES; AND AMENDING SECTION 50-2010, IDAHO CODE, TO REVISE PROVI-
7 SIONS REGARDING THE USE OF EMINENT DOMAIN BY AN URBAN RENEWAL AGENCY.
8

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

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

12 7-701A. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN
13 RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES. (1) This section limits and re-
14 stricts the use of eminent domain under the laws of this state or local
15 ordinance by the state of Idaho, its instrumentalities, political subdivi-
16 sions, public agencies, or bodies corporate and politic of the state to
17 condemn any interest in property in order to convey the condemned interest to
18 a private interest or person as provided herein.

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

20 (a) For any alleged public use which is merely a pretext for the trans-
21 fer of the condemned property or any interest in that property to a pri-
22 vate party;

23 (b) For the purpose of promoting or effectuating economic development;
24 provided however, that nothing herein shall affect the exercise of emi-
25 nent domain:

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

28 (ii) Pursuant to chapter 19, 20 or 29, title 50, Idaho Code, except
29 that no private property shall be taken through exercise of emi-
30 nent domain within the area of operation of a housing authority or
31 within an urban renewal area or within a deteriorated or deterio-
32 rating area or within a competitively disadvantaged border commu-
33 nity area unless the specific property to be condemned is proven by
34 clear and convincing evidence to be in such condition that it meets
35 all of the following requirements:

36 1. The property, due to general dilapidation, compromised
37 structural integrity, or failed mechanical systems, endan-
38 gers life or endangers property by fire or by other perils
39 that pose an actual identifiable threat to building occu-
40 pants; and

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

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

6 (iii) For those public and private uses for which eminent domain is
7 expressly provided in the constitution of the state of Idaho; or

8 (c) For trails, paths, greenways or other ways for walking, running,
9 hiking, bicycling or equestrian use, unless adjacent to a highway, road
10 or street.

11 (3) Any board of commissioners for an urban renewal agency whose
12 members are comprised entirely of officials elected pursuant to section
13 50-2006(b) (3) and (5), Idaho Code, may exercise the right of eminent domain.
14 However, if a board of commissioners for an urban renewal agency includes one
15 (1) or more commissioners that are appointed to the board of commissioners,
16 that board may act only in an advisory capacity to the local governing body
17 with regard to eminent domain decisions, and any final decision on the use
18 of eminent domain shall be made by the local governing body that created the
19 urban renewal agency.

20 (4) This section shall not affect the authority of a governmental en-
21 tity to condemn a leasehold estate on property owned by the governmental en-
22 tity.

23 (45) The rationale for condemnation by the governmental entity propos-
24 ing to condemn property shall be freely reviewable in the course of judicial
25 proceedings involving exercise of the power of eminent domain.

26 SECTION 2. That Section 50-2006, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 50-2006. URBAN RENEWAL AGENCY. (a) There is hereby created in each mu-
29 nicipality an independent public body corporate and politic to be known as
30 the "urban renewal agency" that was created by resolution as provided in sec-
31 tion 50-2005, Idaho Code, before July 1, 2011, for the municipality; pro-
32 vided, that such agency shall not transact any business or exercise its pow-
33 ers hereunder until or unless: (1) the local governing body has made the
34 findings prescribed in section 50-2005, Idaho Code; and provided further,
35 that such agency created after July 1, 2011, shall not transact any busi-
36 ness or exercise its powers provided for in this chapter until (2) a major-
37 ity of qualified electors, voting in a citywide or countywide election de-
38 pending on the municipality in which such agency is created, vote to autho-
39 rize such agency to transact business and exercise its powers provided for in
40 this chapter. If prior to July 1, 2011, the local governing body has made the
41 findings prescribed in subsection (a) (1) of this section then such agency
42 shall transact business and shall exercise its powers hereunder and is not
43 subject to the requirements of subsection (a) (2) of this section.

44 (b) Upon satisfaction of the requirements under subsection (a) of this
45 section, the urban renewal agency is authorized to transact the business and
46 exercise the powers hereunder by a board of commissioners to be established
47 as follows:

48 (1) Unless provided otherwise in this section, the mayor, by and with
49 the advice and consent of the local governing body, shall appoint a

1 board of commissioners of the urban renewal agency, which shall consist
2 of not less than three (3) commissioners nor more than nine (9) commis-
3 sioners. In the order of appointment, the mayor shall designate the
4 number of commissioners to be appointed, and the term of each, provided
5 that the original term of office of no more than two (2) commissioners
6 shall expire in the same year. The commissioners shall serve for terms
7 not to exceed five (5) years, from the date of appointment, except that
8 all vacancies shall be filled for the unexpired term.

9 (2) For inefficiency or neglect of duty or misconduct in office, a com-
10 missioner may be removed by a majority vote of the local governing body
11 only after a hearing and after he shall have been given a copy of the
12 charges at least ten (10) days prior to such hearing and have had an op-
13 portunity to be heard in person or by counsel. Any commission position
14 that becomes vacant at a time other than the expiration of a term shall
15 be filled by the mayor or chair of the board of county commissioners, if
16 that is the local governing body, by and with the advice and consent of
17 the local governing body, including the mayor, if applicable, and shall
18 be filled for the unexpired term.

19 (3) By enactment of an ordinance, the local governing body may appoint
20 and designate from among its members to be members of the board of com-
21 missioners of the urban renewal agency, provided that such representa-
22 tion shall be less than a majority of the board of commissioners of the
23 urban renewal agency of the members of the local governing body on and
24 after July 1, 2017, in which case all the rights, powers, duties, priv-
25 ileges and immunities vested by the urban renewal law of 1965, and as
26 amended, in an appointed board of commissioners, shall be vested in the
27 local governing body, who shall, in all respects when acting as an urban
28 renewal agency, be acting as an arm of state government, entirely separ-
29 ate and distinct from the municipality, to achieve, perform and accom-
30 plish the public purposes prescribed and provided by said urban renewal
31 law of 1965, and as amended.

32 (4) By enactment of an ordinance, the local governing body may termi-
33 nate the appointed board of commissioners and thereby appoint and des-
34 ignate itself as the board of commissioners of the urban renewal agency
35 for not more than one (1) calendar year.

36 (5) By enactment of an ordinance, the local governing body may provide
37 that the board of commissioners of the urban renewal agency shall be
38 elected at an election held for such purpose on one (1) of the November
39 dates provided in section 34-106, Idaho Code, and the ordinance may pro-
40 vide term limits for the commissioners. In this case, all the rights,
41 powers, duties, privileges and immunities vested by the urban renewal
42 law of 1965, and as amended, in an appointed board of commissioners,
43 shall be vested in the elected board of commissioners of the urban re-
44 newal agency, who shall, in all respects when acting as an urban renewal
45 agency, be acting as an arm of state government, entirely separate and
46 distinct from the municipality, to achieve, perform and accomplish the
47 public purposes prescribed and provided by said urban renewal law of
48 1965, and as amended. The provisions of chapter 66, title 67, Idaho
49 Code, shall apply to elected commissioners and the county election law
50 shall apply to the person running for commissioner as if they were run-

1 ning for county commissioner. In the event of a vacancy in an elected
2 commissioner position, the replacement shall be appointed by the mayor
3 or chair of the board of county commissioners, if that is the local gov-
4 erning body by and with the advice and consent of the local governing
5 body, and shall be filled for the unexpired term.

6 (6) In all instances, a member of the board of commissioners of the ur-
7 ban renewal agency must be a resident of the county where the urban re-
8 newal agency is located or is doing business.

9 (7) Any urban renewal commissioner who has been appointed to the board
10 of commissioners of an urban renewal agency by virtue of being a member
11 of the local governing body shall vacate his appointment on the board
12 upon leaving his elected position on such local governing body. Nothing
13 in this paragraph shall prevent such an official from being otherwise
14 reappointed or elected to an urban renewal board in accordance with the
15 provisions of this section.

16 (c) A commissioner shall receive no compensation for his services but
17 shall be entitled to the necessary expenses, including traveling expenses,
18 incurred in the discharge of his duties. Each commissioner shall hold office
19 until his successor has been appointed and has qualified. A certificate of
20 the appointment or reappointment of any commissioner shall be filed with the
21 clerk of the municipality and such certificate shall be conclusive evidence
22 of the due and proper appointment of such commissioner.

23 The powers of an urban renewal agency shall be exercised by the commis-
24 sioners thereof. A majority of the commissioners shall constitute a quo-
25 rum for the purpose of conducting business and exercising the powers of the
26 agency and for all other purposes. Action may be taken by the agency upon a
27 vote of a majority of the commissioners present, unless in any case the by-
28 laws shall require a larger number.

29 The commissioners shall elect the chairman, cochairman or vice chair-
30 man for a term of one (1) year from among their members. An agency may employ
31 an executive director, technical experts and such other agents and employ-
32 ees, permanent and temporary, as it may require, and determine their qual-
33 ifications, duties and compensation. For such legal service as it may re-
34 quire, an agency may employ or retain its own counsel and legal staff. An
35 agency authorized to transact business and exercise powers under this chap-
36 ter shall file, with the local governing body, on or before March 31 of each
37 year a report of its activities for the preceding calendar year, which report
38 shall include a complete financial statement setting forth its assets, lia-
39 bilities, income and operating expense as of the end of such calendar year.
40 The agency shall be required to hold a public meeting to report these find-
41 ings and take comments from the public. At the time of filing the report, the
42 agency shall publish in a newspaper of general circulation in the community
43 a notice to the effect that such report has been filed with the municipality
44 and that the report is available for inspection during business hours in the
45 office of the city clerk or county recorder and in the office of the agency.

46 (d) An urban renewal agency shall have the same fiscal year as a munici-
47 pality and shall be subject to the same audit requirements as a municipality.
48 An urban renewal agency shall be required to prepare and file with its lo-
49 cal governing body an annual financial report and shall prepare, approve and
50 adopt an annual budget for filing with the local governing body, for informa-

1 tional purposes. A budget means an annual estimate of revenues and expenses
2 for the following fiscal year of the agency.

3 (e) An urban renewal agency shall comply with the public records law
4 pursuant to chapter 1, title 74, Idaho Code, open meetings law pursuant to
5 chapter 2, title 74, Idaho Code, the ethics in government law pursuant to
6 chapter 4, title 74, Idaho Code, and the competitive bidding provisions of
7 chapter 28, title 67, Idaho Code.

8 (f) Upon dissolution of the urban renewal agency, title to all property
9 of the urban renewal agency shall revert to the municipality.

10 SECTION 3. That Section 50-2010, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 50-2010. ACQUISITION OF PROPERTY. (a) An urban renewal agency shall
13 have the right to acquire by negotiation or condemnation any interest in real
14 property, including a fee simple title thereto, which it may deem necessary
15 for or in connection with an urban renewal project and related activities un-
16 der this act. An urban renewal agency may exercise the power of eminent do-
17 main in the manner now or which may be hereafter provided by any other statu-
18 tory provisions for the exercise of the power of eminent domain. Any board
19 of commissioners for an urban renewal agency whose members are comprised en-
20 tirely of officials elected pursuant to section 50-2006(b) (3) and (5), Idaho
21 Code, may exercise the right of eminent domain. However, if a board of com-
22 missioners for an urban renewal agency includes one (1) or more commis-
23 sioners that are appointed to the board of commissioners, that board may act only
24 in an advisory capacity to the local governing body with regard to eminent
25 domain decisions, and any final decision on the use of eminent domain shall
26 be made by the local governing body that created the urban renewal agency.
27 Property already devoted to a public use may be acquired in like manner: Pro-
28 vided, that no real property belonging to the United States, the state, or
29 any political subdivision of the state, may be acquired without its consent.

30 (b) In any proceeding to fix or assess compensation for damages for the
31 taking or damaging of property, or any interest therein, through the exer-
32 cise of the power of eminent domain or condemnation, evidence or testimony
33 bearing upon the following matters shall be admissible and shall be consid-
34 ered in fixing such compensation or damages, in addition to evidence or tes-
35 timony otherwise admissible:

36 (1) any use, condition, occupancy, or operation of such property, which
37 is unlawful or violative of, or subject to elimination, abatement, pro-
38 hibition, or correction under, any law or any ordinance or regulatory
39 measure of the state, county, municipality, other political subdivi-
40 sion, or any agency thereof, in which such property is located, as be-
41 ing unsafe, substandard, insanitary or otherwise contrary to the public
42 health, safety, or welfare;

43 (2) the effect on the value of such property, of any such use, condi-
44 tion, occupancy, or operation, or of the elimination, abatement, prohi-
45 bition, or correction of any such use, condition, occupancy, or opera-
46 tion.

47 (c) The foregoing testimony and evidence shall be admissible notwith-
48 standing that no action has been taken by any public body or public officer
49 toward the abatement, prohibition, elimination or correction of any such

1 use, condition, occupancy, or operation. Testimony or evidence that any
2 public body or public officer charged with the duty or authority so to do has
3 rendered, made or issued any judgment, decree, determination or order for
4 the abatement, prohibition, elimination or correction of any such use, con-
5 dition, occupancy, or operation shall be admissible and shall be prima facie
6 evidence of the existence and character of such use, condition or operation.