

IN THE SENATE

SENATE BILL NO. 1044

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO URBAN RENEWAL; AMENDING SECTION 7-701A, IDAHO CODE, TO PROVIDE
2 A CERTAIN LIMITATION ON THE USE OF EMINENT DOMAIN AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING SECTION 50-2006, IDAHO CODE, TO PROVIDE THAT
4 PROPERTY OF AN URBAN RENEWAL AGENCY SHALL REVERT TO THE MUNICIPALITY
5 UPON DISSOLUTION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION
6 50-2010, IDAHO CODE, TO PROVIDE A CERTAIN LIMITATION ON THE USE OF
7 EMINENT DOMAIN AND TO MAKE TECHNICAL CORRECTIONS.
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~~ in this section.

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

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

23 (b) For the purpose of promoting or effectuating economic development;
24 provided however, that nothing ~~herein~~ in this subsection shall affect
25 the exercise of eminent 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 eminent
30 domain within the area of operation of a housing authority or
31 within an urban renewal area or within a deteriorated or deteriorating
32 area or within a competitively disadvantaged border community
33 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, endangers
38 life or endangers property by fire or by other perils
39 that pose an actual identifiable threat to building occupants;
40 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 who 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
40 in this chapter. If prior to July 1, 2011, the local governing body has made
41 the findings prescribed in ~~subsection (a) paragraph~~ (1) of this subsection,
42 then such agency shall transact business and shall exercise its powers here-
43 under and is not subject to the requirements of ~~subsection (a) paragraph~~ (2)
44 of this subsection.

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

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

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

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

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

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

1 Code, shall apply to elected commissioners and the county election law
2 shall apply to the person running for commissioner as if they were run-
3 ning for county commissioner. In the event of a vacancy in an elected
4 commissioner position, the replacement shall be appointed by the mayor
5 or chair of the board of county commissioners, if that is the local gov-
6 erning body by and with the advice and consent of the local governing
7 body, and shall be filled for the unexpired term.

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

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

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

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

41 (d) An urban renewal agency shall have the same fiscal year as a munici-
42 pality and shall be subject to the same audit requirements as a municipality.
43 An urban renewal agency shall be required to prepare and file with its lo-
44 cal governing body an annual financial report and shall prepare, approve and
45 adopt an annual budget for filing with the local governing body, for informa-
46 tional purposes. A budget means an annual estimate of revenues and expenses
47 for the following fiscal year of the agency.

48 (e) An urban renewal agency shall comply with the public records law
49 pursuant to chapter 1, title 74, Idaho Code, open meetings law pursuant to
50 chapter 2, title 74, Idaho Code, the ethics in government law pursuant to

1 chapter 4, title 74, Idaho Code, and the competitive bidding provisions of
2 chapter 28, title 67, Idaho Code.

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

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

7 50-2010. ACQUISITION OF PROPERTY. (a) An urban renewal agency shall
8 have the right to acquire by negotiation or condemnation any interest in real
9 property, including a fee simple title thereto, which it may deem necessary
10 for or in connection with an urban renewal project and related activities un-
11 der this ~~act~~ chapter. An urban renewal agency may exercise the power of emi-
12 nent domain in the manner now or which may be hereafter provided by any other
13 statutory provisions for the exercise of the power of eminent domain. Any
14 board of commissioners for an urban renewal agency whose members are com-
15 prised entirely of officials elected pursuant to section 50-2006(b) (3) and
16 (5), Idaho Code, may exercise the right of eminent domain. However, if a
17 board of commissioners for an urban renewal agency includes one (1) or more
18 commissioners who are appointed to the board of commissioners, that board
19 may act only in an advisory capacity to the local governing body with regard
20 to eminent domain decisions, and any final decision on the use of eminent do-
21 main shall be made by the local governing body that created the urban renewal
22 agency. Property already devoted to a public use may be acquired in like man-
23 ner: Provided, that no real property belonging to the United States, the
24 state, or any political subdivision of the state, may be acquired without its
25 consent.

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

32 (1) ~~a~~Any use, condition, occupancy, or operation of such property,
33 ~~which that~~ is unlawful or violative of, or subject to elimination,
34 abatement, prohibition, or correction under, any law or any ordinance
35 or regulatory measure of the state, county, municipality, other po-
36 litical subdivision, or any agency thereof, in which such property is
37 located, as being unsafe, substandard, insanitary or otherwise con-
38 trary to the public health, safety, or welfare;

39 (2) ~~t~~The effect on the value of such property, of any such use, condi-
40 tion, occupancy, or operation, or of the elimination, abatement, prohi-
41 bition, or correction of any such use, condition, occupancy, or opera-
42 tion.

43 (c) The foregoing testimony and evidence shall be admissible notwith-
44 standing that no action has been taken by any public body or public officer
45 toward the abatement, prohibition, elimination or correction of any such
46 use, condition, occupancy, or operation. Testimony or evidence that any
47 public body or public officer charged with the duty or authority so to do has
48 rendered, made or issued any judgment, decree, determination or order for
49 the abatement, prohibition, elimination or correction of any such use, con-

1 dition, occupancy, or operation shall be admissible and shall be prima facie
2 evidence of the existence and character of such use, condition or operation.