



Senate Local Government and Taxation Committee  
sloc@senate.idaho.gov

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February 16, 2015

Dear Members of the Committee:

We are writing in opposition to Senate Bill 1044 to restrict a community's use of eminent domain to acquire private property "for trails, paths, greenways or other ways for walking, running, hiking, bicycling or equestrian use." This bill appears to signal to Idaho communities that the Legislature knows better than the communities themselves what is good for them.

Eminent domain can be used in Idaho to acquire private property for a multitude of public uses, including buildings and grounds, transportation, irrigation, utilities, sewers and cemeteries, among others. In practice, the use of eminent domain to condemn private property is extremely rare, as elected officials are very reluctant to employ it, preferring instead to acquire property for public uses through voluntary purchase or donation. However, having the tool available to a community can help it accomplish major public projects fairly and in a timely manner. If a community makes a strong case that private property is needed for a particular public benefit, most affected property owners will agree to negotiate and sell at the fair market value for the good of their community. Having eminent domain available as a tool simply prevents a few property owners from exacting an undue gain at the expense of all taxpayers.

Eminent domain is rare and its use for greenways is almost nonexistent, yet there are still important reasons to oppose this bill. A community could decide that a greenway is in the public interest on a number of counts: improved citizen health and safety, better transportation network connectivity, increased economic benefits and ecosystem values are a few. An individual community may find a compelling need that hasn't been identified yet. A greenway could be bundled with other public benefits, such as a sewer or utility corridor. Eliminating one purpose of the eminent domain tool could have unintended consequences on others.

Public benefits of greenways are well researched. In Boise, the "Open Land Utility" study of 2012 determined that open space conservation generated \$11.8 million in economic activity in 2011; of that amount \$2.2 million was generated by the use of trails. The Boise foothills contain 130

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miles of trails resulting in an economic impact of nearly \$17,000 per mile.

Paved multiuse trails can provide a far greater economic benefit. The "Trail of the Coeur d'Alenes" generates \$200,000 per mile per year, for a total \$14 million annual impact to the region.

Property values generally increase with proximity to greenways, up to 20% more with adjacency. The linear nature of greenways, as opposed to most public open space, means that there are likely to be a higher number of adjacent properties, and thus more property owners who are likely to see increases in their property values.

There is no state benefit to this bill. The statute clearly identifies transportation as a use for which eminent domain applies. Why should the state pre-empt a community's determination that walking and biking are important transportation modes? We are not persuaded that under the existing statute private property rights would be easily abrogated. A nightmare scenario in which a jurisdiction in Idaho would run amuck with eminent domain over private land is highly unlikely, and there are checks in place to prevent it. In any case, a rogue body creating pathways is probably the least of that community's worries.

The main reason to stop this bill is fairness. Fairness allows communities to determine their own identities and lets their local leaders make those decisions that really matter to their constituents.

We urge you to vote against Senate Bill 1044.

Sincerely,

A handwritten signature in black ink, appearing to read "Scot Oliver", with a stylized flourish at the end.

Scot Oliver  
Executive Director



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To: Members of the Senate Local Government and Taxation Committee  
From: Seth Grigg, Executive Director  
Date: February 17, 2015  
Re: AIC Opposes Senate Bill 1044

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The Association of Idaho Cities (AIC) appreciates the opportunity to share our concerns about Senate Bill 1044 and respectfully request that **S1044 be held in committee.**

**Senate Bill 1044 is a solution in search of a problem.** The City of Pocatello has been clear and consistent in refusing to use eminent domain and continues to pursue voluntary agreements with property owners to complete disconnected segments of the Portneuf Greenway. In other areas of the state, condemnation has rarely been used for pedestrian and bicycle facilities. Based on AIC's research, cities have only used eminent domain a few times for pedestrian and bicycle facilities:

- Eminent domain was used early on in the development of the Boise River greenbelt and played a key role in bringing to greenbelt to fruition. Today the Boise River greenbelt is the gem of Boise's nationally recognized park and trail system, estimated to carry 65,000 trips per year.
- A couple of years ago, Garden City was requested to use eminent domain by a homeowner's association to acquire property for a greenbelt bridge across the Boise River as an alternative to avoid restrictive covenants placed on the disposal of commonly owned property.
- The City of Eagle filed a widely reported condemnation action in April 2014 over a path next to the Laguna point subdivision, but settled with the property owners and the action never went to court.

Communities throughout Idaho have created **greenbelts** because they **are valuable amenities and economic development tools** that attract new businesses, homeowners, and tourists to our communities. The sponsor of the legislation argues that bicycle and pedestrian facilities are nice, but not truly essential in the same way that streets and roads are. To the contrary, **pedestrian and bike paths provide safe corridors that help children get to school, allow commuters access to work, provide people access to shopping and dining, and offer recreational activities.**

**Eminent domain is a process that serves to protect the interests of property owners**, ensuring they receive fair market value for their land. There are also tax advantages associated with eminent domain – property owners don't pay capital gains tax if the proceeds are reinvested in the same type of property.

Lastly, **Idahoans place a high level of trust in their elected** officials to use condemnation authority sparingly and in only when no other alternatives exist. Although cities and counties are granted broad powers of eminent domain, local elected officials have a single-minded aversion to using it that demonstrates the deep respect for private property rights that is a part of Idaho's political culture. Given how rarely eminent domain has been used for bicycle and pedestrian facilities and the deep respect our elected officials have for this authority, we should trust local elected officials who are ultimately accountable to their constituents to act in the best interests of their communities.