

IN THE SENATE

SENATE BILL NO. 1303

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1 RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-701A, IDAHO CODE, TO PROVIDE
2 A CERTAIN LIMITATION ON THE USE OF EMINENT DOMAIN FOR PRIVATE PROPERTY;
3 AND AMENDING SECTION 50-2006, IDAHO CODE, TO PROVIDE THAT CERTAIN PER-
4 SONS MAY NOT SERVE AS A COMMISSIONER FOR AN URBAN RENEWAL BOARD.
5

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

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

9 7-701A. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN
10 RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES. (1) This section limits and re-
11 stricts the use of eminent domain under the laws of this state or local
12 ordinance by the state of Idaho, its instrumentalities, political subdivi-
13 sions, public agencies, or bodies corporate and politic of the state to
14 condemn any interest in property in order to convey the condemned interest to
15 a private interest or person as provided herein.

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

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

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

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

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

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

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

41 3. The property presents an actual risk of harm to the public
42 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) Any urban renewal agency whose membership is comprised of members
 7 who are not elected pursuant to section 50-2006, Idaho Code, may only sug-
 8 gest the use of eminent domain to acquire private property in an advisory ca-
 9 pacity. Any final decision on the use of eminent domain shall be made by the
 10 elected body that created such urban renewal agency.

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

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

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

19 50-2006. URBAN RENEWAL AGENCY. (a) There is hereby created in each mu-
 20 nicipality an independent public body corporate and politic to be known as
 21 the "urban renewal agency" that was created by resolution as provided in sec-
 22 tion 50-2005, Idaho Code, before July 1, 2011, for the municipality; pro-
 23 vided, that such agency shall not transact any business or exercise its pow-
 24 ers hereunder until or unless: (1) the local governing body has made the
 25 findings prescribed in section 50-2005, Idaho Code; and provided further,
 26 that such agency created after July 1, 2011, shall not transact any busi-
 27 ness or exercise its powers provided for in this chapter until (2) a major-
 28 ity of qualified electors, voting in a citywide or countywide election de-
 29 pending on the municipality in which such agency is created, vote to autho-
 30 rize such agency to transact business and exercise its powers provided for in
 31 this chapter. If prior to July 1, 2011, the local governing body has made the
 32 findings prescribed in subsection (a) (1) of this section then such agency
 33 shall transact business and shall exercise its powers hereunder and is not
 34 subject to the requirements of subsection (a) (2) of this section.

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

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

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

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

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

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

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

1 (7) Any elected official who is appointed to the urban renewal board
2 shall vacate his appointment on such board upon leaving his elected of-
3 office. Nothing in this paragraph shall prevent such an official from be-
4 ing otherwise reappointed or elected to an urban renewal board in accor-
5 dance with the provisions of this section.

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

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

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

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

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